

**UNITED STATES BANKRUPTCY COURT
Eastern District of New York**

*NOTE: All documents filed in this matter must be identified by both
adversary and bankruptcy case numbers, case chapter and judge's initials.*

In re: Agape World, Inc., Agape Merchant Advance LLC, Aga

Bankruptcy Case No.: 8-09-70660-dte

Kenneth P. Silverman

Plaintiff(s),

-against-

Adversary Proceeding No. 8-11-09192-dte

Eugene Ferraiolo

Defendant(s)

SUMMONS IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to submit a motion or answer to the complaint which is attached to this summons to the clerk of the bankruptcy court within **30 DAYS AFTER THE DATE OF ISSUANCE OF THIS SUMMONS**, except that the United States and its offices and agencies shall submit a motion or answer to the complaint within 35 days.

Address of Clerk:

**United States Bankruptcy Court
290 Federal Plaza, P.O. Box #9013
Central Islip, NY 11722-9013**

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

**Name and Address of
Plaintiff's Attorney:**

**David J Mahoney
SilvermanAcampora LLP
100 Jericho Quadrangle
Suite 300
Jericho, NY 11753**

If you make a motion, your time to answer is governed by Bankruptcy Rule 7012.

**IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR
CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT
MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.**

Dated: July 14, 2011

Robert A. Gavin, Jr., Clerk of the Court

SILVERMANACAMPORA LLP
Attorneys for Kenneth P. Silverman, Esq.,
Chapter 7 Trustee
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300
Jay S. Hellman, Esq.
David J. Mahoney, Esq.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
AT CENTRAL ISLIP

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In re:

Chapter 7
Case No.: 09-70660 (DTE)
Substantively Consolidated

AGAPE WORLD, INC.,
AGAPE MERCHANT ADVANCE LLC,
AGAPE COMMUNITY LLC, AGAPE
CONSTRUCTION MANAGEMENT LLC,
AGAPE WORLD BRIDGES LLC, AND
114 PARKWAY DRIVE SOUTH LLC,

Debtors.

-----X
KENNETH P. SILVERMAN, ESQ., as
Chapter 7 Trustee of Agape World, Inc., *et al.*,

Plaintiff,

Adv. Pro. No.: 11-09192 (DTE)

-against-

EUGENE FERRAILOLO a/k/a GINO FERRAILOLO,

Defendant.

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COMPLAINT

Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee" of "Plaintiff") of the substantively consolidated bankruptcy estate of Agape World, Inc., *et al.*, by his attorneys, SilvermanAcampora LLP, complaining of defendant Eugene Ferraiolo a/k/a Gino Ferraiolo (the "Defendant") alleges as follows:

Nature of the Action

1. This adversary proceeding is commenced pursuant to 11 U.S.C. §§105(a), 541, 542, 544 and 550(a)(2) to set aside and recover certain transfers from The Untouchable Group LLC ("Untouchable") to Defendant.

Jurisdiction and Venue

2. This adversary proceeding is related to the substantively consolidated cases entitled *In re Agape World, Inc., et al.*, Case No. 09-70660 (DTE), under chapter 7 of title 11 of the United States Code, 11 U.S.C. §§101, *et seq.* (the "Bankruptcy Code") filed in the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court").

3. The Bankruptcy Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§157, 1334 and 1367 in that it arises in, or is related to, the Agape chapter 7 case.

4. The statutory predicates for the relief sought herein are 11 U.S.C. §§105(a), 541, 542, 544 and 550, Federal Rule of Civil Procedure 64 and Federal Rule of Bankruptcy Procedure 7064.

5. This is a core proceeding under 28 U.S.C. §§157(b)(2)(E), (H) and (O), and with respect to any claims that may hereafter be determined to be non-core, the Trustee consents to the entry of final orders and judgments by the Bankruptcy Court.

6. Venue is proper pursuant to 28 U.S.C. §1409.

Parties and Procedural History

7. At all relevant times, Agape World, Inc. ("AWI") was a domestic corporation with principal places of business located at 150 Motor Parkway, Suite 106, Hauppauge, New York; 64-13B Grand Avenue, Maspeth, New York; and 82-11 37th Avenue, Suite 602, Jackson Heights, New York.

8. On February 5, 2009 (the "Filing Date"), an involuntary chapter 7 petition was filed by four petitioning creditors (the "Petitioning Creditors") pursuant to 11 U.S.C. §303(b), against AWI, in the United States Bankruptcy Court for the Eastern District of New York.

9. On February 9, 2009, the Petitioning Creditors filed a motion to appoint an interim chapter 7 trustee under 11 U.S.C. §303(g).

10. On February 12, 2009, this Court granted the Petitioning Creditors' motion and entered an order directing the United States Trustee's Office to immediately appoint an interim chapter 7 trustee in the AWI case.

11. On February 12, 2009, Kenneth P. Silverman, Esq., was appointed the interim trustee in the AWI case, and has since duly qualified as and is now the permanent Trustee in the above captioned, substantively consolidated case.

12. On March 4, 2009, the Court issued an Order for relief in the AWI chapter 7 case.

13. On April 14, 2009, the Court issued an Order substantively consolidating AWI, Agape Merchant Advance LLC, Agape Community LLC, Agape Construction Management, LLC, Agape World Bridges LLC, and 114 Parkway Drive South LLC (collectively, "Agape" or the "Debtor").

14. Upon information and belief, at all times relevant, Defendant was and is an individual who resides at 1075 65th Street, Brooklyn, New York 11219.

Background Facts Common To All Claims For Relief

15. Upon information and belief, since at least 1999 Agape was purportedly operating as a bridge lender, whereby investors were advised that Agape provided short-term bridge loans to commercial borrowers in order to generate high rates of return.

16. Prior to the Filing Date, various "brokers" and "sub-brokers" of Agape, recruited third-parties to invest money with the Debtor.

17. The Debtor and the various "brokers" and/or "sub-brokers" offered contracts to various third-parties to induce those third-party "investors" to "invest" in the purported bridge loans.

18. Pursuant to the terms of the various contracts entered into between the Debtor and the purported investors, those investors were permitted to receive payments from their

purported investments in the form of "interest payments" or, alternatively, the purported investors were permitted to "roll-over" their investments to a future bridge loan offer.

19. The representations to investors were, in large measure, false.

20. Rather than utilizing all of the third-party funds to invest in bridge loans, the majority of the investor funds were, among other things, (i) utilized to pay prior investors their promised rate of interest or to provide a return of their investment, (ii) squandered in connection with undisclosed and unauthorized commodity futures trading, and/or (iii) transferred to Agape's alter-egos or to brokers or their sub-brokers for their own personal enrichment and to the detriment of Agape's legitimate creditors.

Plaintiff's Judgment Against Untouchable

21. On or about June 4, 2010, the Trustee commenced an adversary proceeding against Untouchable in the Bankruptcy Court seeking to set aside fraudulent transfers from Agape to Untouchable (the "Untouchable Transfers") under 11 U.S.C. §§105, 502, 544, 547, 548, 550 and 551, New York Debtor and Creditor Law §§273, 274, 275, 276 and 276-A, and New York common law.

22. A default judgment avoiding the Untouchable Transfers was entered by the Bankruptcy Court Clerk on August 30, 2011 in the amount of Two Hundred Twelve Thousand Four Hundred Forty-One and 76/100 (\$212,441.76) Dollars (the "Judgment").

23. To date, the Judgment has not been satisfied.

24. Subsequent to the Untouchable Transfers, Untouchable made transfers to Defendant in an amount to be determined at trial, but in no event less than Sixteen Thousand Seven Hundred and 44/100 (\$16,700.44) Dollars (the "Subsequent Transfers").

First Claim for Relief (Recovery under Bankruptcy Code §550(a)(2)) (incorporating all previous allegations)

25. By his receipt of the Subsequent Transfers, Defendant is an immediate or mediate transferee of Untouchable under Bankruptcy Code §550(a)(2).

26. By reason of the foregoing, the Trustee is entitled to judgment against Defendant recovering the Subsequent Transfers or the value of the said transfers in an amount as yet undetermined but in no event less than Sixteen Thousand Seven Hundred and 44/100 (\$16,700.44) Dollars, plus appropriate interest thereon.

Second Claim for Relief
(Turnover of Estate Property)
(incorporating all previous allegations)

27. Because the Untouchable Transfers were previously avoided by the Trustee, the Subsequent Transfers made by Untouchable to Defendant are property of the Debtor's estate under Bankruptcy Code §§541(a) and 550.

28. By reason of the foregoing, the Trustee is entitled to the turnover by Defendant of an amount not less than Sixteen Thousand Seven Hundred and 44/100 (\$16,700.44) Dollars, plus appropriate interest thereon, and for a full and complete accounting thereof under 11 U.S.C. §542.

Third Claim for Relief
(Unjust Enrichment)
(incorporating all previous allegations)

29. Defendant was a beneficiary of the Subsequent Transfers under circumstances in which he would be unjustly enriched if he were to retain the Subsequent Transfers.

30. Defendant has been unjustly enriched at Agape's expense and may not in equity and good conscience retain the Subsequent Transfers.

31. By reason of the foregoing, Defendant is liable to the Trustee in an amount as yet undetermined but in no event less than Sixteen Thousand Seven Hundred and 44/100 (\$16,700.44) Dollars, plus appropriate interest thereon.

WHEREFORE, plaintiff Kenneth P. Silverman, Esq., the chapter 7 Trustee demands judgment:

- (a) on Trustee's First Claim for Relief against Defendant under Bankruptcy Code §550(a)(2) for recovery of the Subsequent Transfers or the value of the said transfers in an amount as yet undetermined but in no event less than Sixteen Thousand Seven Hundred and 44/100 (\$16,700.44) Dollars, plus appropriate interest thereon;
- (b) on Trustee's Second Claim for Relief against Defendant for a determination that the Subsequent Transfers are property of the Debtor's estate under Bankruptcy Code §541(a) and for turnover of the value of said transfers in an amount as yet undetermined but in no event less than Sixteen Thousand Seven Hundred and 44/100 (\$16,700.44) Dollars, plus appropriate interest thereon, and for a full and complete accounting thereof under 11 U.S.C. §542;
- (c) on Trustee's Third Claim for Relief against Defendant for money damages for unjust enrichment in an amount as yet undetermined but in no event less than Sixteen Thousand Seven Hundred and 44/100 (\$16,700.44) Dollars, plus appropriate interest thereon; and
- (d) for such other, further and different relief as the Court deems proper.

Dated: Jericho, New York
July 1, 2011

SILVERMANACAMPORA LLP
Attorneys for Kenneth P. Silverman, Esq.,
the Chapter 7 Trustee

By:



Jay S. Hellman, Esq.
David J. Mahoney, Esq.
Members of the Firm
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Jericho, New York 11753
(516) 479-6300

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----x
In re:

AGAPE WORLD, INC.,
AGAPE MERCHANT ADVANCE LLC,
AGAPE COMMUNITY LLC, AGAPE
CONSTRUCTION MANAGEMENT LLC,
AGAPE WORLD BRIDGES LLC, AND
114 PARKWAY DRIVE SOUTH LLC,

Debtors.
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Chapter 7
Case No. 09-70660 (DTE)
Substantively Consolidated

**ORDER ESTABLISHING PROCEDURES: (I) PURSUANT TO BANKRUPTCY
RULE 7016 FOR CASE MANAGEMENT AND SCHEDULING IN ADVERSARY
PROCEEDINGS FILED BY THE TRUSTEE, AND (II) PURSUANT TO BANKRUPTCY
CODE §105(a) AND BANKRUPTCY RULE 9019(b) FOR SETTLEMENT OF CERTAIN
CLAIMS BROUGHT BY THE TRUSTEE FOR THE BENEFIT OF THE DEBTORS' ESTATE**

Upon the motion (the "Motion")¹ of Kenneth P. Silverman, the chapter 7 trustee (the "Trustee") of the substantively consolidated estate of Agape World, Inc., *et al.* (collectively, the "Debtors"), seeking entry of an order establishing procedures (i) pursuant to Bankruptcy Rule 7016 for case management and scheduling procedures in adversary proceedings commenced by the Trustee on or after August 25, 2010 (the "Avoidance Litigation"), and (b) pursuant to Bankruptcy Code §105(a) and Bankruptcy Rule 9019(b) governing the settlement of certain claims brought by the Trustee seeking the avoidance and recovery of, *inter alia*, preferential transfers and fraudulent conveyances; and notice of the hearing on the Motion having been given pursuant to this Court's Order dated July 8, 2009 and no opposition to the Motion having been filed; and upon the record of the hearing held before the Honorable Dorothy T. Eisenberg, United States Bankruptcy Judge, on September 30, 2010, the transcript of which is incorporated by reference herein; and the Court having determined that sufficient cause having been shown for the relief requested in the Motion and granted herein, it is now hereby

ORDERED, that the Motion is granted to the extent set forth herein, and it is further

¹ Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Motion.

ORDERED, that the following Case Management Procedures are approved and shall apply to all Avoidance Litigation adversary proceedings filed on or after August 25, 2010:

- a. Bankruptcy Rule 7026(f) (requiring the parties to confer prior to commencing discovery) is not applicable in any of the adversary proceedings.
- b. Notwithstanding any pre-trial date printed on the summons issued in each adversary proceeding, no initial pretrial conference or hearing will be held.
- c. All parties are relieved of the obligations set forth in the Bankruptcy Court's Standing Pretrial Conference Orders.
- d. The Trustee will serve a copy of the [proposed] Order in connection with his service of the summons and complaint in all adversary proceedings filed after entry of the [proposed] Order.
- e. Within seven (7) days after the entry of the [proposed] Order, the Trustee will serve a copy of the executed Order on all defendants previously served with a summons, complaint and Bankruptcy Court's Standing Pretrial Conference Order in adversary proceedings commenced on or after August 25, 2010.
- f. Within four (4) days after the entry of the [proposed] Order, the Trustee will post a copy of the executed Order on the estate's court-authorized, public website: www.aqapeworldbankruptcy.com.
- g. If a defendant fails to answer or otherwise respond to the complaint filed in any adversary proceeding, the Trustee is authorized to move the Bankruptcy Court for entry of an order directing entry of default judgment against defendant, so long as the motion for default judgment is made on at least fourteen (14) days written notice and the Bankruptcy Court conducts a hearing related to the motion.
- h. Bankruptcy Rule 7026 disclosures must be made by all parties within 30 days after the filing of an answer to the complaint. Promptly thereafter, each party must file an affidavit of service evidencing compliance with this order.
- i. If the parties fail to settle the adversary proceeding within 3 months after the filing of the complaint, the Court will schedule a pretrial conference to discuss the

status of settlement negotiations and the time needed to complete all necessary discovery.

ORDERED, Any party to any Avoidance Litigation adversary proceeding commenced by the Trustee may, for good cause shown and where circumstances warrant, seek a modification of the Case Management Procedures ordered above; and it is further

ORDERED, that the Settlement Guidelines are approved as follows:

- a. With respect to the settlement of Claims against any Avoidance Litigation defendant of whom the amount demanded is less than \$50,000, the Trustee, in his discretion, may settle any of the Claims on any reasonable terms, and may enter into, execute and consummate a Claims Settlement which will be binding on the Debtors' estate and their creditors without further action by this Court, or giving notice to, or receiving consent from any other party, and where an adversary proceeding has been commenced, upon the consummation of the settlement, the Trustee shall dismiss the Claim: (1) if no answer has been filed, by filing a Notice of Dismissal pursuant to Bankruptcy Rule 7041(a)(1)(i); and (2) if an answer has been filed, by filing of a stipulation and order of dismissal pursuant to Bankruptcy Rule 7041(a)(1)(ii).
- b. No Claims Settlement will be entered into by the Trustee unless it is reasonable in the Trustee's judgment upon consideration of (i) the probability of success if the Claim is litigated, (ii) the complexity, expense and likely duration of any litigation with respect to the Claim, (iii) the difficulty in collection of any judgment, (iv) other factors relevant to assessing the reasonableness of the settlement, and (v) the fairness of the settlement to the Debtors' estate and their creditors.
- c. Any settlement which falls outside the Settlement Guidelines must be approved by further order of this Court upon the Trustee's motion served in accordance with Bankruptcy Rule 9019(a).
- d. Regardless of whether a settlement would otherwise be authorized under the proposed Settlement Guidelines, **any** settlement of Claims against an individual or entity alleged by the Trustee to be an "insider" of the Debtors, as such term is defined in Bankruptcy Code §101(31), shall be brought before the Bankruptcy Court for approval.
- e. No settlement will be effective unless it is executed by the Trustee or his counsel. The Trustee shall memorialize all settlements by stipulation. Any party in interest in the Debtors' cases may request a copy of any such stipulation by contacting the Trustee or his counsel.

- f. Notwithstanding the Settlement Guidelines, nothing contained in this Motion or the proposed Order shall be construed or interpreted to preclude the Trustee from exercising his discretion to seek Bankruptcy Court approval of any of Claim otherwise authorized under the proposed Settlement Guidelines should he deem it necessary or reasonable under all attendant circumstances.

ORDERED, that the Trustee is authorized to take such steps as may be reasonably necessary to effectuate and implement the terms and conditions of this Order.

Dated: Central Islip, New York
October 1, 2010

s/ Dorothy Eisenberg
Honorable Dorothy Eisenberg
United States Bankruptcy Judge