

SILVERMANACAMPORA LLP
Counsel to Kenneth P. Silverman, Esq.,
The Chapter 7 Trustee
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300
David J. Mahoney, Esq.

Presentment Date: March 13, 2015
Time: 9:30 a.m.

Objections Due: March 6, 2015
Time: 5:00 p.m.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 7
Case No. 09-70660 (AST)
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.: 10-08396 (AST)

-against-

ANTHONY PIZZELLA,

Defendant.
-----X

**NOTICE OF PRESENTMENT OF AN ORDER AND APPLICATION UNDER
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019(A) SEEKING THE
ENTRY OF AN ORDER APPROVING A MEDIATOR'S REPORT SETTLING
THE TRUSTEE'S PREFERENCE CLAIM AGAINST ANTHONY PIZZELLA**

PLEASE TAKE NOTICE, that upon the annexed motion (the "Motion"), Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") for the substantively consolidated estate of Agape World, Inc., *et al.*, by his counsel, SilvermanAcampora LLP, will present a proposed order before the Honorable Alan S. Trust, United States Bankruptcy Judge, United States Bankruptcy Court for the Eastern District of New York, located at the Alfonse M. D'Amato Federal Courthouse, 290 Federal Plaza, Courtroom 960, Central Islip, New York 11722 on **March 13, 2015 at 9:30 a.m.**, seeking entry of an Order under Bankruptcy Rule 9019(a)

Approving The Mediator's Report Settling the Trustee's Preference Claim Against Anthony Pizzella. A copy of the Proposed Order is annexed to the Motion as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE, that objections, if any, to the relief requested in the Motion or the proposed Order must be (i) made in writing; (ii) electronically filed with the Bankruptcy Court; (iii) delivered to Chambers of the Honorable Alan S. Trust, United States Bankruptcy Judge, United States Bankruptcy Court, Eastern District of New York, Alfonse M. D'Amato Federal Courthouse, 290 Federal Plaza, Courtroom 960, Central Islip, New York 11722; (iv) mailed to SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753, Attn: David J. Mahoney, Esq.; and (v) mailed to the Office of the United States Trustee, 560 Federal Plaza, Central Islip, New York 11722, no later than **March 6, 2015 at 5:00 p.m.**

PLEASE BE ADVISED, that if an objection is timely filed to the relief requested, or if the Court determines that a hearing is appropriate, the Court will schedule a hearing. Notice of such hearing will be provided by the applicant.

PLEASE BE ADVISED, that if no objection is received by the Objection Deadline, the order may be signed without a hearing.

Dated: Jericho, New York
February 13, 2015

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

By: s/ David J. Mahoney
David J. Mahoney
A Member of the Firm
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300

SILVERMANACAMPORA LLP
Counsel to 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.

Presentment Date: March 13, 2015
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

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

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

Debtors.

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

Plaintiff,

Adv. Pro. No.: 10-08396 (AST)

-against-

ANTHONY PIZZELLA,

Defendant.
-----X

**TRUSTEE'S APPLICATION UNDER BANKRUPTCY RULE
9019(a) SEEKING THE ENTRY OF AN ORDER APPROVING A MEDIATOR'S REPORT
SETTLING THE TRUSTEE'S PREFERENCE CLAIM AGAINST ANTHONY PIZZELLA**

Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the substantively consolidated estate of Agape World, Inc., *et al.*, by his attorneys SilvermanAcampora LLP, respectfully submits this application (the "Application") under 11 U.S.C. §105 and Federal Rule of Bankruptcy Procedure 9019 for entry of an Order (annexed hereto as **Exhibit A**) approving the proposed settlement of the Trustee's claims under 11 U.S.C. §§547(b) and 550 against Anthony Pizzella as memorialized in the Mediator's Report Settling the Trustee's Preference Claim Against Anthony Pizzella (the "Mediator's Report"), which has been annexed hereto as

Exhibit B. All parties are encouraged to review the annexed Mediator's Report in its entirety for the specific terms of the proposed settlement.

Background

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

2. On February 9, 2008, the Petitioning Creditors filed a motion to appoint an interim chapter 7 trustee under 11 U.S.C. §303(g).

3. On February 12, 2009, the 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.

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

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

6. 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 "Debtors").

7. Thereafter, pursuant to an Order of this Court dated April 21, 2009 (Dkt. No. 106), the Trustee retained Navigant Consulting Inc. ("Navigant") to, among other things, conduct a forensic analysis of Agape's books and records.

8. Based upon Navigant's analysis, the Trustee determined that within the ninety (90) day period immediately preceding the Petition Date, Agape transferred \$56,123.25 (the "Transfers") to Anthony Pizzella ("Defendant").

9. On August 27, 2010, the Trustee commenced an adversary proceeding against the Defendant (the "Adversary Proceeding") by the filing and service of a summons and complaint under Adv. Pro. No. 10-08396 seeking to, *inter alia*, avoid the Transfers pursuant to 11 U.S.C. §547 and recover the Transfers from Defendant pursuant to 11 U.S.C. §550(a) (the "Preference Claim").

10. The Trustee, through his counsel, and the Defendant engaged in settlement discussions in an effort to consensually resolve the Adversary Proceeding. Pursuant to this Court's Order, the parties attended mediation sessions on October 30, 2014 at the offices of Andrew M. Thaler, Esq. In order to avoid the costs, expenses, and uncertainty of continued litigation, the parties have agreed to resolve the Trustee's Claims upon the terms and conditions contained in the Mediator's Report. For all of the reasons set forth herein, the Trustee submits that accepting Defendant's offer to remit \$10,000.00 (the "Settlement Sum") in full and final settlement of the Preference Claim is a reasonable exercise of the Trustee's business judgment and is in the best interests of the Debtors' estate. Defendant has also agreed to Waive Proof of Claim No. 1540 filed in the name of Pizzella Family Trust and to waive any 502(h) claims in connection with the Settlement Sum.

11. The Trustee submits that the Mediator's Report, which was signed by Defendant and his attorney, contains all of the essential terms of the settlement of the Trustee's Claims and is sufficient to close the adversary proceeding

Settlement

12. The Trustee has determined that settling this matter for the Settlement Sum, as well as the Waiver of Proof of Claim No. 1540 filed in the name of Pizzella Family Trust, as well as any 502(h) claims relating to the Settlement Sum, is the most economical and efficient way to realize a meaningful and beneficial recovery for the benefit of creditors without the need to incur legal fees and risks inherent with the prosecution of the Preference Claim and any resulting judgment enforcement efforts.

13. Indeed, after consultation with his retained professionals, and in the exercise of his business judgment, the Trustee has determined that the payment of the Settlement Sum outweighs the potential net recovery to the estate if the Trustee elected to prosecute the Trustee's Claim through trial and enforce a resulting judgment against the Defendant.

14. In light of the foregoing, and mindful of the costs and risks of litigating the Preference Claim, the Trustee has agreed to accept the Settlement Sum.

Basis for Relief Requested

15. Federal Rule of Bankruptcy Procedure 9019(a), which governs the approval of compromises and settlement, provides:

(a) Compromise. On motion by the trustee and after notice and hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

16. In approving a compromise and settlement, the Bankruptcy Court is required to make an "informed and independent judgment" as to whether the compromise and settlement is fair and equitable based on an:

[e]ducated estimate of the complexity, expense and likely duration of [any] litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process, in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.

Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-425, *reh'g denied*, 391 U.S. 909 (1968). See *American Can Co. v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 605, 607 (5th Cir. 1980); *Chopin Assoc. v. Smith (In re Holywell Corp.)*, 93 B.R. 291, 294 (Bankr.S.D.Fla. 1988); *In re Arrow Air, Inc.*, 85 B.R. 886, 891 (Bankr. S.D. Fla. 1988); *In re Bell & Beckwith*, 77 B.R. 628, 611 (Bankr.N.D.Ohio), *aff'd*, 87 B.R. 472 (N.D.Ohio 1987); *Cf. Magill v. Springfield Marine Bank (In re Heissinger Resources Ltd.)*, 67 B.R. 378, 383 (C.D. Ill. 1986) ("the law favors compromise").

17. In making its determination, the Court should consider whether the proposed compromise is in the "best interest of the estate". *Depo v. Chase Lincoln First Bank, N.A. (In re Depo)*, 77 B.R. 381, 383 (N.D.N.Y. 1987), *aff'd*, 863 F.2d 45 (2d Cir. 1988). As stated in *Arrow Air*, the "approval of [a] proposed compromise and settlement is a matter of this Court's sound discretion." *Arrow Air*, 85 B.R. at 891. In passing upon a proposed settlement, "the bankruptcy court does not substitute its judgment for that of the Trustee [or debtor in possession]". *Depo*, 77 B.R. at 384 (citations omitted). The bankruptcy court is not required "to decide the numerous questions of law and fact raised by [objectors].... [R]ather [the Court should] canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness." *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir.), *cert denied*, 464 U.S. 822 (1983) (*quoting Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.), *cert denied*, 409 U.S. 1039 (1972)). See *Holywell* 93 B.R. at 294. ("In order to exercise this discretion properly, the Court must consider all the relevant facts and evaluate whether the compromise suggested falls below the 'lowest point in the range of reasonableness'" (*quoting In re Teltronics Services, Inc.*, 762 F.2d. 185, 189 (2d Cir. 1985)). In passing upon the reasonableness of a proposed compromise, the Court "may give weight to the opinions of the Trustee [or debtor in possession], the parties and their counsel." *Bell & Beckwith*, 77 B.R. at 512.

18. The factors to be considered by the Court in determining whether to approve a compromise or settlement include (a) probability of success in the litigation, with due consideration for the uncertainty in fact and law, (b) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and (c) all other factors bearing on the wisdom of the compromise. *Arrow Air*, 85 B.R. at 891 (*citing TMT Trailer Ferry*, 390 U.S. at 424-25). See *Jackson Brewing Co.*, 624 F.2d at 507; *Holywell Corp.*, 93 B.R. at 294-95 (citations omitted).

19. Defendant has remitted the Settlement Sum in satisfaction of the Preference Claim without causing the Debtors' estate to incur significant fees or expenses. The Trustee

submits that, based upon the costs and uncertainties associated with trial and judgment enforcement, further litigation of the Preference Claims and Defendant's 11 U.S.C. §547(c) defenses, as well as the enforcement of a potential judgment, would not result in a "net benefit" to the Debtors' estate in excess of the Settlement Sum. In the sound business judgment of the Trustee, the proposed settlement is both appropriate and warranted. The Trustee believes that the Settlement is fair and equitable and in the best interest of the estate.

Notice

20. The Trustee has served the Notice and Application and proposed Order on: (i) the Office of the United States Trustee; (ii) Nicholas Cosmo, former principal of the Debtors, (iii) criminal counsel to Nicholas Cosmo, (iv) Defendant, (v) the appropriate taxing authorities, and (vi) all parties having filed a Notice of Appearance in this case, and copies have been posted on the Trustee's website located at www.agapeworldbankruptcy.com. The Trustee respectfully submits that the Trustee's service complies with this Court's Order Establishing Noticing Procedures entered on July 8, 2009, and is otherwise sufficient.

21. No previous application for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Trustee respectfully requests that this Court grant this application authorizing and approving the Mediator's Report and grant such other further and different relief as this Court deems just and proper.

Dated: Jericho, New York
February 13, 2015

SILVERMANACAMPORA LLP
Attorneys for Kenneth P. Silverman, Esq.,
the chapter 7 trustee

By: s/ David J. Mahoney
David J. Mahoney
A Member of the Firm
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 7
Case No.: 09-70660 (AST)
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.: 10-08396 (AST)

-against-

ANTHONY PIZZELLA,

Defendant.

-----X

**ORDER UNDER FEDERAL RULE OF BANKRUPTCY
PROCEDURE 9019(a) APPROVING THE MEDIATOR'S REPORT
SETTLING THE TRUSTEE'S PREFERENCE CLAIM AGAINST ANTHONY PIZZELLA**

Upon the Notice of Motion (the "Notice"), dated February 13, 2015, and related documents (collectively, the "Motion") of Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the substantively consolidated estate of Agape World, Inc., *et al.*, by his counsel, SilvermanAcampora LLP, seeking the entry of an Order Approving the Mediator's Report Settling the Trustee's Preference Claim Against Anthony Pizzella; and upon the Affidavit of Service filed with the Court; and no objections to the Motion or the proposed Order having been filed; and the Court having found that settling the Trustee's claims arising under 11 U.S.C. §§105, 502, 544, 547, 550, and 551, is reasonable and in the best interest of the Debtors' estate; and sufficient cause having been shown therefor; and after due deliberation and consideration; and it appearing that sufficient notice of the Motion and proposed Order has been

given; and it appearing that good and sufficient cause exists for granting the Motion and entering the proposed Order; and no additional notice being necessary or required:

NOW, THEREFORE, upon the Trustee's Notice and Motion and pursuant to Federal Rule of Bankruptcy Procedure 9019(a) and other applicable law, it is hereby

ORDERED, that the Motion is granted, and it is further

ORDERED, that the settlement of the Trustee's Claims against Defendant, as memorialized in the Mediator's Report (a copy of which is attached to the Motion as Exhibit B), is approved; and it is further

ORDERED, that Proof of Claim No. 1540 filed in the name of Pizzella Family Trust is hereby expunged; and

ORDERED, that upon entry of the within Order the instant Adversary Proceeding shall be closed.

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 7

Agape World, Inc.,
Agape Merchant Advance LLC,
Agape Community LLC, Agape
Construction Management LLC,
Agape World Bridges LLC, and
114 Parkway Drive South LLC,

Case No.: 09-70660-478
Substantively Consolidated

Debtors.

-----X
Kenneth P. Silverman, Esq., as
Chapter 7 Trustee of Agape World, Inc., et al.,

Plaintiff,

Adv. Pro. No. 10-08396 (AST)

-against-

Anthony Pizzella,

Defendant(s).

-----X

MEDIATOR'S REPORT

Mediator: I, Andrew M. Thaler, was the mediator of the
above captioned adversary proceeding. On October 30, 2013, I conducted a
mediation of this dispute, and file the following report:

Mediation was successful – the essential terms of settlement are as follows, and have been
agreed to by the parties.

Terms of Settlement:

1. Defendant shall pay the Trustee the total sum of \$10,000.00, to
be paid as follows:

\$5,000 shall be paid by December 1, 2014 and

\$5,000 shall be paid by January 15, 2015.

_____.

2. (Choose one) [] Defendant shall be allowed an unsecured claim of

\$ _____ OR [X] Defendant shall waive all claims.

3. Other essential terms:

Defendant waives (a) the Proof of Claim numbered 1540
filed in the name of Pizzella Family Trust; and (b)
any 502(h) claim relating to the Settlement Sum

An additional mediation session has been requested by the parties, and I have agreed to conduct another session, to be held on or before: _____ at

_____.

Mediation was unsuccessful.

An interpreter was used for mediation.

By signing below, the parties acknowledge that the above accurately represents the results of the mediation, and, if an agreement was reached, that the essential terms of their settlement is accurately stated above:

s/ David J. Mahoney for: _____
Kenneth P. Silverman
Chapter 7 Trustee

s/ Anthony Pizzella _____
Defendant, Anthony Pizzella

Lamonica Herbst & Maniscalco, LLP

s/ Joseph Maniscalco _____
By Defendant's Attorney, Joseph Maniscalco

s/ Andrew M. Thaler _____
Andrew M. Thaler, Mediator