

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

Hearing Date: July 9, 2013
Time: 10:00 a.m.
Objections Due: July 2, 2013
Time: 4:00 p.m.

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,
AGAPE CONSTRUCTION MANAGEMENT LLC,
AGAPE WORLD BRIDGES LLC, AND
114 PARKWAY DRIVE SOUTH LLC,

Debtors.

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

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**TRUSTEE'S APPLICATION FOR ORDER
AWARDING FIRST INTERIM COMMISSION**

**TO: HONORABLE DOROTHY T. EISENBERG
UNITED STATES BANKRUPTCY JUDGE:**

Kenneth P. Silverman, Esq., Chapter 7 Trustee (the "Trustee") of Agape World, Inc. *et al.*, (the "Debtors"), by his attorneys, SilvermanAcampora LLP, submits this application (the "Application") seeking the entry of an order authorizing and directing the payment of a first interim commission to the Trustee based upon the Trustee's disbursements pursuant to 11 U.S.C. §§105, 326, and 330, and respectfully sets forth and represents as follows:

BACKGROUND

1. On February 5, 2009, an involuntary petition was filed against Agape World, Inc. ("AWI"), in accordance with chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York.

2. On February 12, 2009, the Court granted the motion of the petitioning creditors and directed the United States Trustee to appoint an interim trustee and by Notice of Appointment,

Kenneth P. Silverman, Esq., was appointed the interim trustee of the AWI estate has since duly qualified and is now the permanent trustee in this case.

3. By Order of the Court dated February 17, 2009, SilvermanAcampora was retained as counsel to the Trustee, effective February 12, 2009, a copy of which is annexed hereto as Exhibit "A".

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

5. On April 12, 2009, the Court entered an Order substantively consolidating Agape Merchant Advance LLC, Agape Community LLC, Agape Construction Management LLC, Agape World Bridges LLC, and 114 Parkway Drive South LLC (together with "AWI", the "Debtors"), in the AWI case.

THE TRUSTEE'S FIRST INTERIM COMMISSIONS REQUEST

6. The total receipts in the Debtors' estates, including interest, for the period February 12, 2009 through April 30, 2013 (the "First Interim Period"), is \$36,728,486.87. The Total disbursements made by the Trustee from the Trustee's accounts for this First Interim Period was \$16,299,760.85.

7. Based upon the total sum disbursed from the Trustee's accounts, and in accordance with Bankruptcy Code Section 326, the total commission earned by the Trustee for the First Interim Period equals \$512,242.83. However, the Trustee is requesting payment of 48.8%, or \$250,000.00.

8. During this first interim period, the Trustee has performed the following services:

- (a) reviewed the memorandum of law and order to show cause filed by petitioning creditors seeking to appoint a trustee in this case;
- (b) analyzed the Affidavit of Richard Cimmano, United States Postal Inspector, Complaint of US Attorney regarding prosecution of former principal of the Debtors, Nicholas Cosmo ("Cosmo"), for his operation of a Ponzi scheme through the Debtors and complaint filed by Future Commodities Trading Commission ("CFTC"), in order to ascertain whether the information contained in those documents indicated the existence of any legal claims, rights or actions which could be pursued for the benefit of the estate;

- (c) numerous and on-going telephone and in-person conferences with the Office of the United States Attorney, Federal Bureau of Investigations (“FBI”) and the United States Postal Inspection Service (“USPIS”) to exchange information, review and regarding the Debtors’ books and records, the Debtors’ assets, pursuit of third-party claims and liquidation of assets;
- (d) telephone conferences and email exchanges with Stacey Richman, Esq., criminal counsel to Cosmo regarding turnover of books and records, assets, examination of Cosmo under §341(a) of the Bankruptcy Code and Cosmo’s consent to preliminary injunction and pre-judgment attachment and assignment of interest in Esau, LLC;
- (e) retained SilvermanAcampora LLP (“SilvermanAcampora”) as counsel to the Trustee;
- (f) caused my counsel to retain Navigant Consulting, Inc., (“Navigant”) as forensic accountants to the Trustee;
- (g) instructed my counsel to retain Garden City Group, Inc. (“GCG”), as noticing and claims agent to the Trustee;
- (h) directed my counsel to prepare and file the Trustee’s application for (i) an order fixing the last day for filing proofs of gap period claims and (ii) to limit notice to preserve assets of the estate due to the impending plethora of service of motions in this case;
- (i) conferred with counsel regarding whether substantive consolidation was warranted and would best benefit the creditors of the Debtors’ estates, and thereafter instructed counsel to prepare and file an adversary proceeding against Cosmo for the substantive consolidation of the Debtors related entities;
- (j) caused counsel to enter into negotiations and draft a stipulation with Cosmo for preliminary injunction and pre-judgment attachments, together with the assignment of Cosmo’s interest in Esau, LLC, to the Trustee;
- (k) directed my counsel to request the turnover of Debtors’ books and records from criminal counsel to Cosmo;
- (l) caused my counsel to prepare subpoena under the Bankruptcy Code for Debtors’ former accountant;
- (m) attended the inspection of the Debtors’ three office locations in Hauppauge, New York, Jackson Heights, New York and Maspeth, New York to recover all relevant books and records not already seized by the FBI;
- (n) caused my counsel to retain David R. Maltz & Co., Inc. (“Maltz”) as auctioneer to prepare for, and sell (i) the Debtors’ furniture, fixtures and equipment located at its three premises, (ii) vehicles of the Debtors, (iii) real property known as, and located at (a) 114 Parkway Drive South, (b) Braithwaite Louisiana, (c) 229 E. 14th Street, Unit 4W, New York, NY, (d) 900 acres of land located in several counties in upstate New York, (e) 1 Wills Point, Montauk, NY, (f) 137 Cardinal Lane,

Levittown, NY, (g) Pickens County, South Carolina, and (h) St. Lawrence County, NY property;

- (o) analyzed the Debtors' Petition, Schedules and Statement of Financial Affairs for the purpose of ascertaining whether the information contained in those documents indicated the existence of any legal claims, rights or actions which could be pursued for the benefit of the estate;
- (p) prepared for and conducted the Section 341(a) First Meeting of Creditors and analyzed the Statement of the United States Trustee's Report of Election Controversy and response by proposed counsel to the Creditors' Committee;
- (q) together with my counsel, conducted numerous telephone calls and email exchanges with matrimonial counsel to Cosmo's spouse in connection with personal assets of Cosmo;
- (r) caused my counsel to prepare and file motions for the authorization to reject the Debtors' leases at its Hauppauge and Maspeth locations, and conferred with my counsel regarding its analysis of the objection filed by the landlord for the Hauppauge premises;
- (s) directed my counsel to prepare over 500 Bankruptcy Rule 2004 orders and applications of (i) various financial institutions utilized by the Debtors for their daily banking, (ii) commodities future trading merchants, (iii) certain witnesses allegedly involved in or otherwise aware of the Ponzi scheme including relatives, of Cosmo, "brokers" and their relatives, "sub-brokers" and their relatives, and those parties who received monies in excess of \$100,000 from the Debtors; and follow-up for compliance with subpoenas;
- (t) instructed my counsel to perform legal research regarding Trustee's claims against brokers and related third parties and conferred with my counsel regarding results of same;
- (u) caused my counsel to create and maintain a website for creditors of the estate containing all Court filings by the Trustee, forms, upcoming hearing dates, and other related information;
- (v) consulted with my counsel and forensic accountants regarding their extensive review and analysis of the Debtors financial records including the Debtors accounts receivable ledger, accounts payable ledger, and bank records;
- (w) conferred with my counsel regarding their extensive analysis and review of documents obtained from the plethora of financial institutions in response to Rule 2004 Orders of this Court;
- (x) consulted with my counsel regarding the analysis of enormous volume of documents produced by the various third parties regarding the Debtors financial affairs;
- (y) extensive communication and conferencing with Navigant regarding pursuit of claims to be filed on behalf of the estate;

- (z) consultation with Navigant regarding its analysis and with respect to claims of the debtors for tax refunds;
- (aa) instructed my counsel to pursue demands to recover preferential transfers;
- (bb) consulted with my counsel regarding the Debtors' fraudulent conveyances;
- (cc) directed my counsel to commence and prosecute over 1,000 adversary proceedings to avoid and recover asserted preferences and fraudulent conveyances;
- (dd) conferred with law firms to investigate potential third-party claims that the Trustee may maintain against certain entities and individuals and caused my counsel to negotiate and obtain Court approval for the retention of Diamond McCarthy LLP, Ruskin Moscou Faltischek, P.C., Reid Collins & Tsai, LLP as special litigation counsel to the Trustee and this estate;
- (ee) oversaw the analysis of defenses proffered by preference and fraudulent conveyance recipients, and conferred with counsel and special litigation counsel;
- (ff) directed my counsel and special litigation counsel to continue prosecution of adversary proceedings to avoid and recover asserted preferential transfers and fraudulent conveyances of the Debtors' property;
- (gg) attend conferences with counsel and special litigation counsel regarding status of their prosecution of over 1,000 adversary proceedings, mediations, settlement negotiations, procurement and turnover of settlement proceeds;
- (hh) directed my counsel to pursue potential claims against various individuals and entities under Bankruptcy Code §550;
- (ii) oversaw my counsel's prosecution of the balance of various subsequent transfer actions in accordance with §550 of the Bankruptcy Code for the recovery of funds transferred to third parties in furtherance of Default Judgment enforcement
- (jj) instructed my counsel to commence claims analysis of the over 5,000 claims on file to date and conferred with my counsel and Navigant regarding (i) preparation of numerous claims objection motions, (ii) drafting of numerous letter agreements to consensually reduce and/or withdraw claims without the need of formal claims objection motions, and (iii) the status of the claims resolution process throughout the course of my administration of this case;
- (kk) directed my counsel to move before this Court on multiple occasions for authorization to disburse \$3,400,000.00 in interim distributions to holders of claims that have been analyzed and validated, such that to date, over \$1,134,671.20 of that amount has been distributed and the balance of \$2,265,328.80 is being held in a distribution escrow account to be distributed as additional claims are validated;
- (ll) oversaw my counsel's efforts to collect on the negotiated settlement with Clemson Grande Lakefront Condominiums LLC ("Clemson Grande") and its principals and

negotiations related to the secured claim in the resulting Clemson Grande chapter 11 proceeding in the United States Bankruptcy Court for the District of South Carolina, whereby the estate received \$716,611.14;

- (mm) reviewed applications for payment of administrative fees filed by the attorneys for the Petitioning Creditors and conferred with counsel to prepare a Statement of No Objection;
- (nn) conferred with my counsel regarding its analysis of motions filed by Capri 508 W. 25th Acquisition Group LLC, seeking to lift the automatic stay in the Debtors' cases to proceed in a state court action to foreclose on certain real properties on which the Debtors maintained junior mortgages;
- (oo) oversaw the negotiation and settlement of the Trustee's interest in and to the claim of MF Global Inc. f/k/a Man Financial Inc. SIPA Liquidation, and successfully obtained the turnover of \$13,500,000.00 in settlement proceeds for this estate;
- (pp) reviewed all interim and final fee applications filed by the Trustee's professionals;
- (qq) responded to inquiries of creditors regarding status of claims and the administration of the estate; and
- (rr) prepared and filed the instant first interim commission's application.

9. The foregoing represents a brief recitation of the litany of services performed by the Trustee in the oversight and administration of these substantial substantively consolidated estates and is not intended to be all encompassing. The Trustee reserves his right to provide further amplification of the services performed.

10. The estate will continue to be administered in Chapter 7 to liquidate any and all remaining assets, to include the (a) prosecution of substantial litigation and adversary proceedings, (b) the resolution of objections to claims, (c) the preparation of a final report, and (d) the preparation and filing of any other applications and orders that may be necessary to effectuate a complete liquidation of the assets of this estate. As such, the administration of this estate will continue until such time that the adversary proceedings are concluded and the claims resolved.

11. During the First Interim Period, the Trustee earned commissions on \$16,299,760.85 as follows:

25% of \$5,000.00	=	\$ 1,250.00
10% of the next \$45,000.00	=	\$ 4,500.00
5% of the next \$950,000.00	=	\$ 45,000.00
3% of the balance of \$15,299,760.85	=	<u>\$458,992.83</u>
Total first interim commissions earned	=	\$512,242.83
First interim commissions requested	=	\$250,000.00
Balance of holdback for future application	=	\$262,242.83

12. Pursuant to §326(a) of the Bankruptcy Code, the Trustee requests, as and for a First Interim Award of Commissions, an order providing payment of \$250,000.00 at this time, with the balance of commissions in the amount of \$262,242.83 to be subject to further order of this Court.

13. No prior request for the relief sought herein, has been made to this or any other Court. Nothing contained herein shall be construed to be a waiver by of the Trustee of his right to seek additional commissions as warranted under Bankruptcy Code §326.

WHEREFORE, the Trustee respectfully requests the entry of an order: (i) awarding first interim commissions to the Trustee in the amount of \$250,000.00; (ii) authorizing payment of such commission; and (iii) such other, further and different relief as the Court may deem just and proper.

Dated: Jericho, New York
June 20, 2013

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

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