

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.
Jessi L. Kleinman, Esq.

Presentment Date: March 27, 2014
Time: 9:30 a.m.

Objections Due: March 25, 2014
Time: 4:00 p.m.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
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.: 11-08842 (AST)

-against-

BRANDI KERYC,

Defendant.
-----X

**NOTICE OF PRESENTMENT OF TRUSTEE'S MOTION
UNDER BANKRUPTCY RULE 9019(a) SEEKING THE ENTRY
OF AN ORDER APPROVING THE RESOLUTION OF THIS ADVERSARY
PROCEEDING BY DEFENDANT'S EXECUTION OF A CONFESSION OF JUDGMENT**

PLEASE TAKE NOTICE, that upon the application (the "Application") of 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, the Trustee 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 Alfonse M. D'Amato Federal Courthouse, 290 Federal Plaza, Courtroom 960, Central Islip, New York 11722 on **March 27, 2014 at 9:30 a.m.**, or as soon thereafter as counsel can be heard, for entry of an

Order under Bankruptcy Rule 9019(a) approving the settlement of the trustee's claims against Brandi Keryc as memorialized in the confession of judgment, a copy of which is annexed to the Motion as **Exhibit 2**. A copy of the proposed Order is annexed to the Motion as **Exhibit 1**.

PLEASE TAKE FURTHER NOTICE, that objections, if any, to the relief requested in the Application or the proposed Order must be (i) made in writing; (ii) electronically filed with the Bankruptcy Court; (iii) mailed to Chambers of the Honorable Alan S. Trust, United States Bankruptcy Judge, 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 25, 2014 at 4:00 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 28, 2014

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

By: s/ David J. Mahoney
David J. Mahoney
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SILVERMANACAMPORA LLP
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

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

AGAPE WORLD, INC.,
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KENNETH P. SILVERMAN, ESQ., as
Chapter 7 Trustee of Agape World, Inc., *et al.*,

Plaintiff,

Adv. Pro. No.: 11-08842 (AST)

-against-

BRANDI KERYC,

Defendant.

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**TRUSTEE'S MOTION UNDER
BANKRUPTCY RULE 9019(a) SEEKING THE ENTRY OF AN
ORDER APPROVING THE RESOLUTION OF THIS ADVERSARY
PROCEEDING BY DEFENDANT'S EXECUTION OF A CONFESSION OF JUDGMENT**

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 motion (the "Motion") under 11 U.S.C. §105 and Federal Rule of Bankruptcy Procedure 9019(a) for entry of an order (the "Order") (annexed hereto as **Exhibit 1**) approving the proposed settlement of the Trustee's claims under 11 U.S.C. §§105, 502, 544, 548, 550, and 551, New York Debtor and Creditor Law §§273, 274, 275, 276, and 276-a, and

New York common law against Brandi Keryc as memorialized in the Confession of Judgment which is annexed hereto as **Exhibit 2**.

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 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 "Debtor").

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 Brandi Keryc ("Defendant") received certain transfers totaling Two Hundred Seven Thousand One Hundred Twenty-Two and 25/100 (\$207,122.25) Dollars (the "Transfers") made by the Debtor to the

Defendant that are avoidable pursuant to 11 U.S.C. §§105, 502, 544, 548, 550, and 551, New York Debtor and Creditor Law §§273, 274, 275, 276, and 276-a, and New York common law.

9. On March 2, 2011, 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. 11-08854 seeking to, *inter alia*, avoid the Transfers pursuant to 11 U.S.C. §§105, 502, 544 and 548, New York Debtor and Creditor Law §§273, 274, 275, 276, and 276-a, and New York common law and to recover the Transfers from Defendant pursuant to 11 U.S.C. §550(a) (the "Trustee's Claims").

10. On March 30, 2011, Defendant filed an answer to the complaint asserting general denials.

11. Thereafter, Defendant produced documentation demonstrating a triable issue of fact relating to investments with the Debtor that, if accepted by the Court, could have reduced Defendant's net benefit liability to \$21,000.00. Further, Defendant has produced information demonstrating an inability to satisfy a judgment in the amount of the Transfers.

12. Pursuant to an Order of the Bankruptcy Court, the Trustee, through his counsel, and the Defendant engaged in mediation before Ted Berkowitz, Esq. to consensually resolve the Adversary Proceeding. By way of the mediation process, and in order to avoid the costs and expenses of continued litigation, Defendant has agreed to resolve the Trustee's Claims by confessing judgment in the amount of Seventy-Five Thousand and 00/100 dollars (\$75,000.00) (the "Judgment Amount").

13. For all of the reasons set forth herein, the Trustee submits that accepting Defendant's offer to confess judgment in the Judgment Amount is a reasonable exercise of the Trustee's business judgment and is in the best interests of the Debtor's estate.

Settlement

14. The Trustee has determined that accepting Defendant's confession of judgment is the most economical and efficient way to resolve this Adversary Proceeding and preserve the

estate's right to enforce the resulting judgment for the benefit of creditors, without the need to incur legal fees and risks inherent with the prosecution of the Trustee's Claims.

15. In light of the foregoing, and mindful of the costs and risks of litigating the Trustee's Claims, the Trustee agreed to accept the confession of judgment in final resolution of the Trustee's Claims.

Basis for Relief Requested

16. Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") governs the approval of compromises and settlements, and provides as follows:

On motion by the trustee and after notice and a 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.

FED. R. BANKR. P. 9019(a)

17. In approving the compromise and settlement, the 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 such 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.¹

18. In making its determination on the "propriety of the settlement", the Court should consider whether the proposed settlement is in the "best interest of the estate."² As stated in

¹ *In re Iridium Operating LLC*, 478 F.3d 452, 462 n.15 (2d Cir. 2007) (quoting *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 *In re Arrow Air, Inc.*, 85 B.R. 886, 891 (Bankr. S.D. Fla. 1988); *In re Bell & Beckwith*, 77 B.R. 606, 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").

² *Handler v. Roth (In re Handler)*, 386 B.R. 411, 420 (Bankr. E.D.N.Y. 2007) (quoting *In re Adelpia Communications Corp.*, 327 B.R. 143, 158 (Bankr. S.D.N.Y. 2005)); *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).

Arrow Air, supra, the "approval of [a] proposed compromise and settlement is a matter of this Court's sound discretion."³ In passing upon a proposed settlement, "the bankruptcy court does not substitute its judgment for that of the trustee". *In re 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."⁴ In passing upon the reasonableness of a proposed compromise, the Court "may give weight to the opinions of the Trustee, the parties and their counsel."

19. The Second Circuit in *In re Iridium Operating LLC*⁵ outlined the following seven factors (the "Iridium Criteria") to be considered by a court in deciding whether to approve a compromise or settlement:

- i. the balance between the litigation's possibility of success and the settlement's present and future benefits;
- ii. the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment if the settlement is not approved;
- iii. the paramount interest of the creditors, including the proportion of class members who do not object to or who affirmatively support the settlement;
- iv. whether other parties in interest support the settlement;
- v. the competency and experience of the counsel who support the proposed settlement;
- vi. the relative benefits to be received by individuals or groups within the class; and
- vii. the extent to which the settlement is the product of arm's

³ *Arrow Air*, supra, 85 B.R. at 891.

⁴ *Bell & Beckwith*, 77 B.R. at 612; see also *In re Handler*, 386 B.R. at 421.

⁵ 478 F.3d 452, 462 (2d Cir. 2007).

length bargaining.⁶

20. The Trustee does not anticipate that any of the Debtor's creditors will object to confession of judgment or the relief requested in this Motion.

21. The confession of judgment is a product of extensive arm's length bargaining facilitated by a mediator appointed by this Court, and exceeds the lowest range of reasonableness consistent with the applicable law.

22. The Trustee submits that considering the costs and uncertainties associated with trial, the additional resources that would necessarily be expended to adversarially enforce the judgment against Defendant, and the likelihood of collecting anything more than the amount confessed by Defendant, it is unlikely that further litigation would result in a "net benefit" to the Debtor's estate in excess of the Judgment Amount. In the Trustee's sound business judgment, the proposed settlement is both appropriate and warranted because it provides the Debtor's estate with an opportunity to proceed with judgment enforcement or market the judgment for sale. Accordingly, the Trustee believes that the settlement is fair and equitable and in the best interest of the estate.

Notice

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

⁶ See *In re Iridium Operating LLC*, 478 F.3d at 462; See also *In re Handler*, 386 B.R. at 421.

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

WHEREFORE, the Trustee respectfully requests that the Court grant this Motion authorizing and approving the confession of judgment, and grant such other, further and different relief as the Court deems just and proper.

Dated: Jericho, New York
February 28, 2014

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

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

EXHIBIT 1

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.

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

Plaintiff,

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

Adv. Pro. No.: 11-08842 (AST)

-against-

BRANDI KERYC,

Defendant.

-----X

**ORDER UNDER BANKRUPTCY RULE 9019(a)
APPROVING THE RESOLUTION OF THIS ADVERSARY
PROCEEDING BY DEFENDANT'S EXECUTION OF A CONFESSION OF JUDGMENT**

Upon the Notice of Presentment (the "Notice"), dated February 28, 2014, and related application (collectively, the "Application") of Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the substantively consolidated estate of Agape World, Inc., *et al.* (the "Debtor"), by his counsel, SilvermanAcampora LLP, seeking the entry of an order (the "Order") approving a resolution of the this adversary proceeding by defendant's execution of a confession of judgment; and upon the affidavit of service filed with the Court; and no objections to the Application or the proposed Order having been filed; and the Court having found that Brandi Keryc's execution of a confession of judgment in the amount of \$75,000.00 in full and final resolution of the Trustee's claims pursuant to 11 U.S.C. §§105, 502, 544, 548, 550, and 551, New York Debtor and Creditor Law §§273, 274, 275, 276, and 276-a, and New York common law against Defendant to be fair, reasonable, and in the best interests of the Debtor's

estate; and sufficient cause having been shown therefor; and after due deliberation and consideration having been had; and it appearing that sufficient notice of the Application and proposed Order has been given; and it appearing that good and sufficient cause exists for granting the Application and proposed Order; and no additional notice being necessary or required;

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

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

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

ORDERED, that the resolution of this adversary proceeding by confessed judgment in the amount of \$75,000.00 is approved; and it is further

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

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
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. 11-08842 (AST)

-against-

BRANDI KERYC,

Defendant.

CONFESSION OF JUDGMENT

-----X
Trustee's 100 Jericho Quadrangle
Address: Suite 300
Jericho, NY 11753

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

BRANDI KERYC, being duly sworn, deposes and says that:

1. I hereby confess Judgment and authorize the entry of a money judgment against me in the sum of \$75,000.00 in favor Kenneth P. Silverman, Esq., as Chapter 7 Trustee (the "Trustee") of the substantively consolidated estates of Agape World, Inc., *et al.* (the "Debtor").

2. My personal residence is 3040 Ann Street, Baldwin, New York 11510.

3. I authorize the entry of the Judgment with the Bankruptcy Court for the Eastern District of New York and any and all counties or other appropriate judicial districts within the United States of America and its territories that the Trustee deems appropriate.

4. This confession of Judgment is for a debt justly due to the Trustee arising from the following facts:

- Between February 5, 2003 and February 5, 2009, I received transfers from Agape in an amount of not less than \$75,000.00 (the "Transfers");

- The Transfers were made for no consideration or less than reasonable equivalent value;

- The Debtor was insolvent at the times the Transfers were made;

- At the times the Transfers were made, there existed unsecured creditors of the Debtor who remained unsecured creditors as of the filing date of the Debtor's bankruptcy cases;

- Based upon the forgoing, the Trustee is entitled to a judgment avoiding the Transfers from Agape to Brandi Keryc and recovering no less than \$75,000.00;

5. Pursuant to my agreement between with the Trustee, I agree to confess judgment in the amount stated herein.

BRANDI KERYC

s/ Brandi Keryc
Brandi Keryc

Sworn to before me this
24th day of February, 2014

s/ Ellen J. Gallopini
Notary Public

ELLEN J. GALLOPINI
Notary Public, State of New York
Qualified in Nassau County
No. 01GA6149013
My Commission Expires 07/03/2014