

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

In re:

TELEXFREE, LLC,  
TELEXFREE, INC. and  
TELEXFREE FINANCIAL, INC.,

Debtors.

Chapter 11 Cases

14-40987-MSH  
14-40988-MSH  
14-40989-MSH

Jointly Administered

STEPHEN DARR, AS HE IS THE TRUSTEE  
OF THE CHAPTER 11 ESTATES OF EACH  
OF THE DEBTORS,

Plaintiff,

Adversary Proceeding  
No. 16-4036

v.

JOELE FRANK WILKINSON BRIMMER  
KATCHER,

Defendant.

**MOTION BY TRUSTEE TO APPROVE STIPULATION OF SETTLEMENT BETWEEN  
CHAPTER 11 TRUSTEE AND JOELE FRANK, WILKINSON, BRIMMER, KATCHER**

Stephen B. Darr, the duly appointed Chapter 11 Trustee (the "Trustee") of the bankruptcy estates ("Estates") of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively, the "Debtors"), respectfully requests that the Court approve the stipulation ("Stipulation") filed herewith by and between the Trustee and Joele Frank, Wilkinson, Brimmer, Katcher ("Joele Frank"), pursuant to Federal Rule of Bankruptcy Procedure 9019. The Stipulation provides for a payment into the Estates of \$20,000, a release by the Trustee in favor of Joele Frank, and the waiver by Joele Frank of approximately \$60,000 in claims. In support of this motion, the Trustee states as follows:



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**BACKGROUND**

1. On April 13, 2014 (the "Petition Date"), the Debtors filed voluntary Chapter 11 petitions with the United States Bankruptcy Court for the District of Nevada.
2. By order dated May 6, 2014, the Nevada Bankruptcy Court approved a motion to change venue filed by the Securities and Exchange Commission. The cases were transferred to this Court on May 9, 2014.
3. On May 30, 2014, this Court approved the motion of the Office of the United States Trustee to appoint a Chapter 11 trustee, and the Trustee was appointed on June 6, 2014.
4. The Debtors ostensibly operated a multi-level marketing company engaged in the sale of voice over internet service. On November 25, 2015, the Court, on motion by the Trustee and after notice, entered an Order, as amended on December 21, 2015, that the Debtors were engaged in a Ponzi scheme and that this ruling was the law of the case in each of the jointly administered cases.
5. The Defendant provides corporate and crisis communication services.
6. Two days before the Petition Date, the Debtors paid the sum of \$85,000 to the Defendant (the "Transfer") as a nonrefundable advance.
7. During the period from April 11, 2014 through April 29, 2014, Joele Frank purportedly provided services to the Debtors in the aggregate amount of \$129,592. Of this amount, approximately \$80,000 was incurred on or prior to the Petition Date.
8. On or about April 4, 2016, the Trustee commenced this action against Joele Frank seeking avoidance of the Transfer as a fraudulent transfer and for preservation of such transfer for the benefit of the Estates pursuant to 11 U.S.C. §§548, 550, 551. The Trustee has alleged that Joele Frank provided insufficient value for the services charged to the Debtors. The Trustee has

further alleged that Joele Frank was not retained postpetition and is not entitled to compensation for any postpetition services.

9. The Complaint was served on or about April 11, 2016.

10. Joele Frank provided the Trustee with an informal response to the Complaint on or about April 13, 2016. Joele Frank alleged in its response that it provided its services under significant time pressure, that it had no knowledge of the existence of the Debtors' Ponzi scheme, and that it did not participate in the scheme.

11. The Parties have since had discussions and exchanged information regarding the merits of the Trustee's claims and any defenses. As a result of these discussions, and in order to avoid the costs, delays and uncertainty of litigation, the Parties have entered into the Stipulation, which provides that upon Court approval:

(i) Joele Frank shall pay the sum of \$20,000 to the Trustee<sup>1</sup>;

(ii) The Trustee, for himself and on behalf of the Debtors' bankruptcy Estates, shall release and forever discharge Joele Frank from any and all claims and liabilities that the Trustee or the Debtors' bankruptcy Estates have or may have against Joele Frank;

(iii) Joele Frank shall release and forever discharge the Debtors' bankruptcy Estates from any and all claims and liabilities that Joele Frank may have;

(iv) The releases provided shall be self-executing.

#### **Basis for Approval of Stipulation**

12. Bankruptcy Rule 9019(a) provides, in relevant part, that "On the motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Settlements and compromises are normal parts of the process of reorganization. While the decision to approve a particular settlement lies within the sound discretion of the Bankruptcy

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<sup>1</sup> Such amount has already been advanced to the Trustee.

Court, the Court should give some deference to the business judgment of the estate representative. Jeffrey v. Desmond, 70 F.3d 183 (1<sup>st</sup> Cir. 1995).

13. The Court of Appeals has described the test to be used by Bankruptcy Courts called upon to approve or reject proposed compromises and settlements as follows:

The bankruptcy judge has the authority to approve a compromise of a claim pursuant to Bankruptcy Rule 9019(a). The ultimate issue on appeal is whether the bankruptcy court abused its discretion when it approved the compromise, which is a process requiring the bankruptcy court to “assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal.” In re GHR Cos., 50 B.R. 925, 931 (Bankr. D. Mass. 1985) (quoting In re Boston & Providence R.R., 673 F.2d 11, 12 (1<sup>st</sup> Cir. 1982)). The specific factors which a bankruptcy court considers when making this determination include: (i) the probability of success in the litigation being compromised; (ii) the difficulties, if any, to be encountered in the matter of collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay attending it; and (iv) the paramount interest of the creditors and a proper deference to their reasonable views in the premise. In re Anolik, 107 B.R. 427, 429 (D. Mass. 1989).

Jeffrey v. Desmond, 70 F.3d 183, 185 (1<sup>st</sup> Cir. 1995).

14. In determining whether the proposed settlement is fair and equitable, two principles should guide the court. First, “[c]ompromises are favored in bankruptcy[.]” 10 Lawrence P. King, *Collier on Bankruptcy*, ¶ 9019.01, at 9019-2 (15<sup>th</sup> ed. Rev. 1997) (citing *Marandas v. Bishop (In re Sassales)*, 160 B.R. 646, 653 (D. Ore. 1993)). See also *In re A & C Properties*, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986) (“The law favors compromise and not litigation[.]”). Second, settlements should be approved if they fall above the lowest point on the continuum of reasonableness. “[The] responsibility of the bankruptcy judge . . . is not to decide the numerous questions of law and fact raised . . . but rather to canvass the issues and see whether the settlement fall[s] below the lowest point in the range of reasonableness.” *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2<sup>nd</sup> Cir. 1983); *In re Planned Protective Services, Inc.*, 130 B.R. 94, 99 n.7 (Bankr. C.D. Cal. 1991). Thus, the question is not whether a

better settlement might have been achieved, or a better result reached if litigation pursued. Instead, the court should approve settlements that meet a minimal threshold of reasonableness. *Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994); 10 *Collier on Bankruptcy*, ¶ 9019.02, at 9019-4.

15. The Trustee asserts that the Stipulation is fair and reasonable and should be approved by the Court. While the Trustee has raised reservations as to the value that the Debtors derived from Joele Frank's services, the Defendant was a third party vendor not directly involved in the Ponzi scheme and does not appear to have had knowledge of the scheme. The settlement results in a payment to the Estates of \$20,000 and the waiver of claims that could amount to as much as \$60,000. Further litigation would likely entail disputes of fact and law, including issues respecting the nature and value of services rendered by Joele Frank. Under the circumstances, the Trustee has concluded that the settlement is favorable to the Estates and should be approved.

Wherefore, the Trustee prays that this Court:

1. Approve the Stipulation for the reasons set forth; and
2. Grant such other relief as is just and proper.

STEPHEN DARR AS HE IS THE  
TRUSTEE OF THE CHAPTER 11  
ESTATES OF EACH OF THE DEBTORS  
By his attorneys,

/s/ Andrew G. Lizotte

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