

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

<p>In re:</p> <p>TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC.,</p> <p style="text-align: center;">Debtors.</p> <hr/> <p>STEPHEN DARR, AS HE IS THE TRUSTEE OF THE CHAPTER 11 ESTATES OF EACH OF THE DEBTORS,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>ISG TELECOM CONSULTANTS, LLC,</p> <p style="text-align: center;">Defendant.</p>
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Chapter 11 Cases

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

Jointly Administered

Adversary Proceeding
No. 16-4029

**MOTION BY TRUSTEE TO APPROVE SETTLEMENT AGREEMENT AMONG
CHAPTER 11 TRUSTEE, ISG TELECOM CONSULTANTS, LLC,
AND JOSEPH ISAACS**

Stephen Darr, the duly appointed Chapter 11 Trustee (the “Trustee”) of TelexFree, LLC, TelexFree, Inc. and TelexFree Financial, Inc. (“TelexFree” or the “Debtors”), respectfully requests that the Court approve the settlement agreement (“Stipulation”) filed herewith by and among the Trustee, ISG Telecom Consultants, LLC (“ISG”), the Defendant herein, and Joseph Isaacs the principal of ISG (“Isaacs”). The Stipulation provides for a payment by ISG of \$50,000 in settlement of the claims asserted in this action. In support of this motion, the Trustee states as follows:



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, the 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 with its headquarters in Marlborough, Massachusetts. It represented itself as being in the business of selling telephone service plans that use "voice over internet protocol" ("VoIP") technology. The sale of VoIP, however, constituted only a minor portion of their business; the Debtors' actual business was the recruitment of participants ("Participants"). The Debtors operated a massive Ponzi and pyramid scheme which involved more than a million Participants from multiple countries.
5. On November 25, 2015, the Court, on motion by the Trustee and after notice, entered an Order, as amended on December 21, 2015, finding 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.
6. In early 2014, the Debtors retained ISG to register the VoIP phone service and mobile telephone service with various public utility agencies and to perform related services.

7. The mobile telephone application being built was intended to be a joint venture between Infinium Wireless and Telex Mobile, LLC. The owners of Telex Mobile, LLC were Carlos Wanzeler and James Merrill, the Debtors' principals.

8. During the first four months of 2014, the Debtors made payments to ISG totaling approximately \$575,000¹ for the foregoing services.

9. On or about April 1, 2016, the Trustee commenced this action against ISG seeking avoidance of the foregoing payments as fraudulent and/or preferential transfers pursuant to 11 U.S.C. §§547, 548, 550, 551.

10. ISG has denied any liability and has claimed that it is unable to pay any judgment.

11. ISG and Isaacs have provided financial information to the Trustee respecting their financial condition and ability to pay a judgment.

12. 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.

STIPULATION

A. ISG shall pay the sum of \$50,000.00 ("Settlement Amount") to the Trustee upon entry of the order approving the Stipulation. ISG and Isaacs have paid the Settlement Amount to their counsel, who will hold such funds in escrow pending Court approval of the Stipulation.

B. ISG and Isaacs shall waive, release, and discharge any and all claims they may have against the Trustee, the Debtors or the Debtors' estates.

C. The Trustee shall release any claims he may have against ISG and Isaacs, other than the obligations under the terms of the Stipulation, including the continuing obligations

¹ During the course of discovery, the Trustee determined that a payment in the amount of \$175,000 that was listed on the Debtors' records as having been paid to ISG was in fact paid to another party. This accounts for the discrepancy between the amount asserted in the Complaint and the amount set forth herein.

therein.

D. Upon Court approval of the Stipulation and payment of the Settlement Amount, this adversary proceeding shall be dismissed.

E. If any of the financial information provided by ISG and Isaacs to the Trustee is later demonstrated to be materially misleading, the Trustee: shall not be bound by the release granted herein to ISG and Isaacs; may retain the Settlement Amount; and may pursue additional recovery against ISG and any mediate transferees.

F. While the Trustee shall retain no causes of action against ISG and Isaacs, nothing contained in the Stipulation shall impair, release, or discharge claims that have been or could be asserted, whether or not such claims have to date been asserted, by the plaintiffs in the multi-district litigation pending in the United States District Court for the District of Massachusetts, *captioned* In re TelexFree Securities Litigation, MDL No. 4:14-md-2566- TSH. For the avoidance of doubt, the Trustee agrees he shall not attempt to assert any claims or causes of action against ISG and Isaacs in this multi-district litigation or otherwise. Nothing in this release grants the plaintiffs in the multi-district litigation any claims or causes of action that they would otherwise not have absent the Stipulation.

Basis for Approval of Stipulation

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

14. 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 (1st 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 (1st Cir. 1995).

15. 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 (15th 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 (9th 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 (2nd 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.

16. The Trustee asserts that the Stipulation is fair and reasonable and should be approved by the Court. The Trustee has evaluated the transaction history with ISG for potential recovery as preferential or fraudulent transfers. Based upon the discovery provided by ISG, the Trustee has concluded that the payments are likely subject to meritorious new value and ordinary course defenses that would mitigate any claims of preferential transfer. The Debtors did pay ISG in the range of \$125,000 to \$150,000 for services relating to registration of Telex Mobile. Because the Debtors had no ownership interest in Telex Mobile, a claim may exist for recovery of such amounts as fraudulent transfers, as the Debtors may not have received reasonably equivalent value for the payments. The Trustee has also raised issues respecting the reasonableness of the charges imposed by ISG. ISG has contested these allegations.

17. In addition to the costs and delays that would be associated with litigating this action, the Trustee also has concerns as to collectability. The Trustee has been provided tax return data for ISG, which demonstrates modest income and few assets, and personal financial information for Isaacs as well as an affidavit of financial condition signed by Isaacs individually and as president of ISG. The financial documentation provided by ISG and Isaacs demonstrates that the Trustee would have difficulty collecting amounts in excess of the Settlement Amount and, in fact, it has been represented to the Trustee that the source of the settlement was borrowed funds. The settlement is premised upon the accuracy of the financial information provided to the Trustee, and any misrepresentations would be grounds for revocation of the release.

18. 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
Charles R. Bennett, Jr. (BBO #037380)
Andrew G. Lizotte (BBO #559609)
Murphy & King, Professional Corporation
One Beacon Street
Boston, MA 02108
(617) 423-0400
ALizotte@murphyking.com

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