

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

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| In Re: |) | |
| |) | |
| |) | Chapter 11 |
| |) | |
| TELEXFREE, LLC , |) | Case No. 14-40987-MSH |
| TELEXFREE, INC., |) | Case No. 14-40988-MSH |
| TELEXFREE FINANCIAL, INC., |) | Case No. 14-40989-MSH |
| |) | |
| Debtors. |) | Jointly Administered |
| |) | |

**SUPPLEMENT BY CHAPTER 11 TRUSTEE TO
SECOND AND THIRD OMNIBUS OBJECTIONS TO CLAIMS**

To the Honorable Melvin S. Hoffman, United States Bankruptcy Judge:

Stephen B. Darr, the duly appointed Chapter 11 trustee (the "Trustee") of the bankruptcy estates (the "Estates") of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively, the "Debtors" or "TelexFree"), respectfully submits this supplement to the Second and Third Omnibus Objections (the "Objections") by Chapter 11 Trustee to Disputed Participant Claims. This supplement is submitted with respect to those claimants represented by the office of Attorney Jordan Shapiro (the "Shapiro Claimants").

Background

1. The Trustee filed the Objections on or about August 30, 2019. The omnibus Objections pertained to the following Shapiro Claimants:

- Claim 53913 Mohamed Bendahgane
- Claim 41941 Edward DiLorenzo
- Claim 42528 Carolina Jimenez
- Claim 122731 Saif Muhsen
- Claim 121715 Peter Rahhaoui
- Claim 41972 Maria Avila
- Claim 42506 Panagiotis Iatrou
- Claim 42543 Manal Hamadi



- Claim 42547 Ali Hamadi
- Claim 131699 George Berube
- Claim 76811 Carlos DeAlvarenga
- Claim 67559 Rachid Saleh
- Claim 131618 Earley Barbosa
- Claim 57228 Isabel Torres
- Claim 130708 Rahima Boughalem
- Claim 122256 Marcio Costa
- Claim 131640 Sharon Reed
- Claim 129389 Kyi Kyi Soe
- Claim 42581 Hubert Lubin
- Claim 131732 Joseph Zagarella Jr.
- Claim 131729 Brandon Zagarella

2. On October 7, 2019, the Shapiro Claimants filed an *Omnibus Notice of Claimants' Response to Trustee's Proposed Claim Disallowance*, which attached twenty (20) exhibits in support of the asserted claims of the Shapiro Claimants.

3. The Court scheduled an initial hearing on the Omnibus Objections for October 23, 2019.

4. By order dated October 25, 2019, after the initial hearing, the Court continued the hearing on the Objections as to the Shapiro Claimants to November 26, 2019. On or about November 18, 2019, the Trustee filed a motion to continue the hearing scheduled for November 26, 2019 as to the Shapiro Claimants. The motion was approved, and the hearings were continued to January 22, 2020.

5. On November 26, 2019, the Trustee sent counsel to the Shapiro Claimants a file containing the detailed User Account activity of each Shapiro Claimant, as well as an analysis comparing each claim as filed with the information contained in the TelexFree books and records, and requested that the Shapiro Claimants provide any additional information available.

6. On January 15, 2020, certain Shapiro Claimants provided the Trustee with affidavits in further support of their claims.

7. On January 21, 2020, the Trustee submitted the Affidavit of Timothy Martin in support of the Omnibus Objections. That Affidavit, among other things, set forth the Ponzi finding made by the Court, the Net Equity ruling for determining claims, and the methodology used by the Trustee to aggregate User Accounts of claimants.

8. At the hearing held on January 22, 2020, the Trustee requested that the claims filed by the Shapiro Claimants be determined based upon the documentation submitted to the Court without further notice or hearing. The Shapiro Claimants requested additional time to submit further supplemental responses. The Court granted the Shapiro Claimants an extension of time until February 24, 2020 in which to file further supplemental responses. This deadline was extended first to March 31, 2020 and later to April 30, 2020 at the request of the Shapiro Claimants.

9. The Trustee was provided until May 15, 2020, later extended to May 29, 2020, in which to respond to the information and documents submitted by the Shapiro Claimants.

10. The Trustee has conducted a detailed analysis of the claims of the Shapiro Claimants, the documents submitted by the Shapiro Claimants to the Court on October 7, 2019, and the supplemental documents filed. The Trustee has attempted to reconcile the supplemental information provided with the TelexFree records where possible, including locating additional User Accounts not identified by the Shapiro Claimants and verifying payment information. Where appropriate, the Trustee also conducted an analysis of counterparty data in connection with Triangular Transactions.

11. The Trustee has filed contemporaneously herewith the Second Affidavit of Timothy Martin. The affidavit, and the accompanying documentation, describes in detail the claim that each Shapiro Claimant would have based upon the TelexFree books and records and

the documents and information provided by the Shapiro Claimants in support of their alleged claims.

Argument

1. The proper filing of a proof of claim, including supporting documentation, is prima facie evidence of the amount and validity of the claim. *See, e.g., In re Plourde*, 418 B.R. 495 (BAP 1st Cir. 2009); *Xinergy Ltd. V. Meral, Inc. (In re Xinergy Ltd.)*, 2016 Bankr. LEXIS 329 (Bankr. W.D. Va. 2016). If a proof of claim is properly filed, the burden shifts to the estate to introduce evidence to rebut the claim's presumptive validity. *Plourde, infra*; *Sherman v. Novak (In re Reilly)*, 245 B.R. 768, 773 (2nd Cir. BAP 2000); *In re Allegheny Int'l, Inc.*, 954 F.2d 167 (3rd Cir. 1992). If the estate satisfies this burden, the burden shifts back to the claimant who has the ultimate burden of proving the amount and validity of the claim by a preponderance of evidence. *Plourde, Xinergy, infra*. *See also In re Currie*, 2013 Bankr. LEXIS 2261 (Bankr. D. Mass. 2013)(if the objecting party produces substantial evidence in opposition to a proof of claim and rebuts the prima facie evidence, the burden shifts to the claimant to establish the validity of the claim); *In re Interact Med Techs. Corp.*, 2003 Bankr. LEXIS 2276 (Bankr. D. Mass. 2003)(if estate produces evidence of probative force equal to that of the claimant, the burden returns to the claimant).

Federal Rule of Bankruptcy Procedure 3001 and Official Form 10 require a claimant to attach supporting documentation to a proof of claim. *In re Minbatiwalla*, 424 B.R. 104 (Bankr. S.D.N.Y. 2010); *Plourde, infra*. Failure to attach the required documentation results in the loss of the prima facie validity of the claim. *Minbatiwalla*, 424 B.R. at 112; *In re Hight*, 393 B.R. 484, 493 (Bankr. S.D. Tex. 2008).

By and large, and as set forth in greater detail in the Second Affidavit of Timothy Martin and supporting attachments, the Shapiro Claimants have failed to provide sufficient evidence to establish the validity and amount of their claims.

The Shapiro Claimants were provided ample opportunity, both in connection with the filing of their electronic proof of claim and through their supplemental responses, to provide supporting backup for their claims. Yet, the Shapiro Claimants have collectively failed to challenge the detailed accounting prepared by Huron of the activity in each Claimant's User Account or dispute identify a single User Account associated with them; Nor have demonstrated any payments that were not already account for by Huron in preparing its accounting of User Account activity and/or have not provided any evidence of payment.

2. Collectively and individually the shapiro Claimant have submitted no sustenance support of their claims .For the most part their claims ate based on no more than statement of what they claim to be owed. The claim process as approved by the Court was established to insure the integrity of the distribution process and only those Participant who suffered actual losses would receive a distribution If a bare assertion by a claimant that money was paid to TelexFree was adequate to substantiate a claim, with no evidence of amounts paid and to whom, the integrity of the TelexFree claim process would be greatly compromised.

3. As set forth in the Martin affidavit, the Shapiro claimant has failed to provide necessary supporting documentation to support a claim prima facie evidence of the validity and amount of the claim. Certainly, what has been submitted is woefully inadequate to meet the Claimants burden of proof.

4. Not only have the claimant failed to meet their burden of proof.. But the Trustee based on the detailed investigation conducted by Huron has completely rebutted each claimant's claim.

5. Even in those instances where the claimant has offer some modicum of support in the form of evidence of some payments made directly or indirectly to TelexFree, Huron's analysis has accounted for that payment in preparing it analysis and the payment has been addressed in connection with Huron's recommendation to the Trustee as to the allowance of the Claim.. Further in those these circumstances, the Shapiro Claimants have failed to address the offsetting payments received by them as identified in the Huron analysis. . One cannot provide evidence of amounts paid to a debtor without addressing offsetting transactions in connection with the assertion of a claim.

6. Under the claims determination rubric, these claimants may have satisfied their initial burden to establish some claim (although not necessarily the amount asserted in their proof of claim) but the Trustee has provided sufficient evidence to rebut the claim, and the Shapiro Claimant has failed to carry their ultimate burden of proof to establish the validity of the claim asserted.

The Trustee requests that the Court consider the Second Affidavit of Timothy Martin, the information contained in the TelexFree books and records, and the documentation provided by the Shapiro Claimants (all of which are attached to the Second Affidavit) and determine those claims as to which the Shapiro Claimants have clearly not satisfied their burden of establishing the claim. The Court, and the estates, should not be required to participate in multiple evidentiary claims hearings as to those claims where the Shapiro Claimant has clearly failed to satisfy the threshold of providing adequate documentation and proof to substantiate an allowed claim against the TelexFree estates.

To the extent that the Court finds that any of the claims asserted by the Shapiro Claimants cannot be resolved without further notice and hearing, the Trustee requests that the matters be continued for a status conference.

STEPHEN B. DARR,
CHAPTER 11 TRUSTEE,
By his attorneys,

/s/ Andrew G. Lizotte

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