

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re:

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

Debtors.

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

Plaintiff,

v.

HANNA-SHEA CONSULTING, LLC,

Defendant.

Chapter 11 Cases

14-40987-MSH

14-40988-MSH

14-40989-MSH

Jointly Administered

Adversary Proceeding

No. 16-4028

**MOTION BY TRUSTEE TO APPROVE STIPULATION OF SETTLEMENT BETWEEN
CHAPTER 11 TRUSTEE AND HANNA SHEA CONSULTING, LLC**

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 Hanna-Shea Consulting, LLC ("Hanna"), pursuant to Federal Rule of Bankruptcy Procedure 9019. The Stipulation provides for a release by Hanna of approximately \$20,000 in claims. 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 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 and pyramid scheme and that this ruling was the law of the case in each of the jointly administered cases.
5. The Defendant provides executive search placement services.
6. In late 2013, Hanna entered into an agreement with the Debtors to assist in placing a new chief executive officer with the Debtors.
7. Hanna's fee was to be 25% of the officer's first year salary.
8. In November 2013, the Debtors made an initial payment of \$18,750 to Hanna.
9. Hanna assisted the Debtor in placing Stuart MacMillan for the position in February/March 2014.
10. Hanna asserted a fee owing of \$56,250.

11. Hanna billed the Debtor for the balance of the fees in March 2014. In March 2014 and April 2014, the Debtors made two installment payment of \$10,000 each, for a total of \$20,000.

12. Hanna claims an outstanding balance owing of \$17,500.

13. On or about April 4, 2016, the Trustee commenced this action against Hanna seeking avoidance of the \$20,000 paid within 90 days of the Petition Date pursuant to 11 U.S.C. §§547, 548, 550, 551.

14. Hanna filed an answer as well as an affidavit of a former employee attesting to the foregoing facts.

15. 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) Hanna shall waive any remaining claims against the Trustee or the estate;

(ii) The Trustee shall waive any claims he may have against Hanna;

(iii) While the Trustee shall retain no causes of action against Hanna, 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 Hanna 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

16. 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).

17. 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).

18. 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.

19. The Trustee asserts that the Stipulation with Hanna is fair and reasonable and should be approved by the Court. Based upon the timing of the services rendered, invoice, and payments, the Trustee believes that Hanna has a substantial argument that the payments were either made in advance or were in the ordinary course of business, thereby providing a defense to the preference claim. Hanna was a third party vendor not directly involved in the Ponzi scheme and does not appear to have had knowledge of the scheme. Therefore, it does not appear that there was a fraudulent transfer.

20. The settlement results in the waiver of an unsecured claim in the approximate amount of \$20,000, providing a benefit to the Estates, without incurring any additional costs or risks associated with litigation. The costs of further litigation are not warranted given the amounts at issue, the costs to be incurred, and the likelihood of success.

21. 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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