

HOUMAND LAW FIRM, LTD.
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Bruce T. Beesley

Honorable Bruce T. Beesley
United States Bankruptcy Judge



Entered on Docket
August 06, 2019

Jacob L. Houmand, Esq. (NV Bar No. 12781)
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Counsel for Shelley D. Krohn, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

ROBERT C. GRAHAM, LTD. fdba ROB
GRAHAM & ASSOCIATES fdba
LAWYERS WEST,

Debtor.

Case No. BK-S-16-16655-BTB
Chapter 7

**ORDER GRANTING MOTION TO
APPROVE COMPROMISE PURSUANT
TO FEDERAL RULE OF BANKRUPTCY
PROCEDURE 9019**

Date of Hearing: July 30, 2019
Time of Hearing: 1:30 p.m.
Place: Courtroom No. 4, Second Floor
Foley Federal Building
300 Las Vegas Blvd., S.
Las Vegas, NV 89101

Judge: Honorable Bruce T. Beesley¹

This matter came before the Court on the *Motion to Approve Compromise Pursuant to Federal Rule of Bankruptcy Procedure 9019* [ECF No. 449] (the "Motion") filed by Shelley D.

¹ In this Order, all references to ECF No." are to the numbers assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the clerk of the court.

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Krohn, the Chapter 7 Trustee appointed in the above-captioned bankruptcy case (the “Trustee”),
 by and through her counsel of record, Jacob L. Houmand, Esq. and Kyle J. Ortiz, Esq. of the
 Houmand Law Firm, Ltd. The Motion sought an order approving a settlement agreement (the
 “Settlement Agreement”) entered into between the Trustee and American Express Company,
 American Express Travel Related Services Company, Inc. and American Express National Bank,
 f/k/a American Express Centurion Bank and successor by merger to American Express Bank FSB
 (collectively, “AMEX”) that resolves a dispute concerning transfers that were made by the Debtor
 to AMEX prior to the Debtor’s bankruptcy case pursuant to Federal Rule of Bankruptcy
 Procedure 9019.²

No Opposition was filed to the Motion. Kyle J. Ortiz, Esq. appeared on behalf of the
 Trustee and no other appearances were noted on the record.

The Court reviewed the Motion, the *Declaration of Shelley D. Krohn In Support of Motion
 to Approve Compromise Pursuant to Federal Rule of Bankruptcy Procedure 9019* [ECF No. 450],
 the *Notice of Hearing On Motion to Approve Compromise Pursuant to Federal Rule of
 Bankruptcy Procedure 9019* [ECF No. 451], the *Certificate of Service of Motion to Approve
 Compromise Pursuant to Federal Rule of Bankruptcy Procedure 9019* [ECF No. 455], the
 exhibits attached thereto, and all the pleadings on file herein.

It appearing to the Court that it is in the best interests of the Estate and its creditors to
 approve the Settlement Agreement and upon consideration of the pleadings and arguments of
 counsel, and based upon the findings of fact and conclusions of law placed on the record at the
 hearing and incorporated herein pursuant to Federal Rule of Civil Procedure 52, incorporated by
 reference by Federal Rules of Bankruptcy Procedure 7052 and good cause appearing,

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED in its entirety; and

...

...

² All defined terms in this Order shall have the same meaning ascribed to them in the Motion unless otherwise provided herein.

2. The Settlement Agreement, a copy of which is attached hereto and marked as **Exhibit “1”**, is approved pursuant to Federal Rule of Bankruptcy Procedure 9019 and the provisions thereof are made an order of the Court.

IT IS SO ORDERED.

Prepared and submitted by:

HOUMAND LAW FIRM, LTD.

By: /s/ Kyle J. Ortiz
Jacob L. Houmand, Esq. (NV Bar No. 12781)
Kyle J. Ortiz, Esq. (NV Bar No. 14252)
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Counsel for Shelley D. Krohn, Chapter 7 Trustee

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LOCAL RULE 9021 CERTIFICATE

In accordance with Local Rule 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that:

☐ The Court has waived the requirements set forth in Local Rule 9021(b)(1).

☒ No party appeared at the hearing or filed an objection to the Motion.

☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to Local Rule 9014(g), and that no party has objected to the form or content of the order.

Dated this 1st day of August, 2019.

HOUMAND LAW FIRM, LTD.

By: /s/ Kyle J. Ortiz

Jacob L. Houmand, Esq. (NV Bar No. 12781)

Kyle J. Ortiz, Esq. (NV Bar No. 14252)

9205 West Russell Road, Building 3, Suite 240
Las Vegas, NV 89148

Telephone: 702/720-3370

Facsimile: 702/720-3371

Counsel for Shelley D. Krohn, Chapter 7 Trustee

###

EXHIBIT “1”

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement (the "Agreement") is made and entered into effective the date it is signed by all parties (the "Effective Date") by and between American Express Company, American Express Travel Related Services Company, Inc. and American Express National Bank, f/k/a American Express Centurion Bank and successor by merger to American Express Bank FSB (collectively, "AMEX") and Shelley D. Krohn, the Chapter 7 Trustee appointed for the bankruptcy estate of In re Robert C. Graham, Ltd. (BK-S- 16-16655-BTB) (the "Trustee"). AMEX and the Trustee shall collectively be referred to herein as the "Parties," or individually, as a "Party." This Agreement is made with respect to the following facts:

RECITALS

WHEREAS, on December 15, 2016 (the "Petition Date"), an *Involuntary Bankruptcy Petition* [ECF No. 1]¹ (the "Involuntary Petition") was filed against Robert C. Graham, Ltd. f/d/b/a Rob Graham & Associates f/d/b/a Lawyerswest (the "Debtor") pursuant to 11 U.S.C. § 303 in the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court").

WHEREAS, the Involuntary Petition was filed by the Estate of Michael B. Mackinn, the Sharona Dagani Trust, and the Marguerite Owens Revocable Trust (collectively, the "Petitioning Creditors").

WHEREAS, on December 16, 2016, the Petitioning Creditors filed a *Motion to Appoint Interim Trustee in Involuntary Case* [ECF No. 3] (the "Interim Trustee Motion"), which sought authority to appoint an interim trustee to take possession of property and to manage the business operations and assets of the Debtor.

WHEREAS on December 22, 2016, the Bankruptcy Court entered an *Order on Trustee Motion and Order for Relief Under Chapter 7* [ECF No. 21] (the "Order for Relief").

WHEREAS, the Order for Relief provided that the Debtor had consented to the filing of a bankruptcy petition and that the filing of the bankruptcy case was effective as of the Petition Date.

WHEREAS, the Order for Relief further required that the Office of the United States Trustee (the "U.S. Trustee") appoint an Interim Chapter 7 Trustee pursuant to 11 U.S.C. § 701.

WHEREAS, on December 22, 2016, Victoria L. Nelson ("Trustee Nelson") was appointed as the Chapter 7 Trustee in the Debtor's bankruptcy case [ECF No. 22].

WHEREAS, on January 13, 2018, Trustee Nelson died.

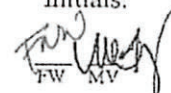
¹ All references to "ECF No." are to the numbers assigned to the documents filed in the above-referenced case as they appear on the docket maintained by the clerk of the court.

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WHEREAS, on January 19, 2018, the Trustee was appointed as the successor Chapter 7 Trustee in the Debtor's bankruptcy case [ECF No. 296].

WHEREAS, the Trustee has investigated the Debtor's financial affairs and has discovered that AMEX received transfers in the approximate amount of \$2,711,028.73 (the "Transfers") from the Debtor prior to the Petition Date.

WHEREAS, the Transfers were payments made by the Debtor for credit cards in the name of the Debtor and Robert C. Graham ("Graham").

WHEREAS, the Trustee contends that she can avoid and recover some of the Transfers under applicable state and federal law (the "Trustee Claims").

WHEREAS, AMEX has asserted various factual and legal defenses and disputes the Trustee's contention that the Transfers can be avoided and recovered.

WHEREAS, after extensive discussions and exchanges of applicable information and documents, and without any admissions or concessions as to their respective positions, the Parties mutually desire to enter into this Agreement, and the terms and implications of the Agreement have been openly and mutually negotiated and agreed to as set forth herein.

WHEREAS, the terms and conditions have been fully explained to each Party by its respective counsel of choice. The Parties certify that they have been afforded a reasonable opportunity to consider this Agreement, and the Parties have carefully read and fully understand all of the provisions and effects of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements, understandings, undertakings, representations, warranties and promises, and subject to the conditions hereinafter set forth, and intending to be legally bound thereby, the Parties covenant and agree as follows:

AGREEMENT

1. Settlement Sum. In consideration of the release provided in Section 2 and the other covenants and agreements made by the Parties in this Agreement, AMEX shall pay the Trustee the sum of \$250,000.00 (the "Settlement Sum") no later than thirty (30) calendar days after the later to occur of (a) delivery to counsel for AMEX of a current IRS Form W-9 completed by the payee of the Settlement Sum, as provided herein; and (b) receipt by AMEX's counsel of the fully executed Agreement. The check for the Settlement Sum shall be payable to "Shelley D. Krohn, Chapter 7 Trustee." AMEX shall send the check to Trustee at the following address: Shelley D. Krohn, 510 South 8th Street, Las Vegas, Nevada 89101.

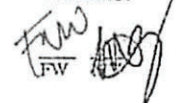
2. Release by Trustee. The Trustee, on behalf of herself, the Debtors' estate, and any entity owned or controlled by the Trustee in her capacity as such, whether now or hereafter, hereby fully and forever completely releases, acquits, and discharges AMEX and its

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past, present, and future, agents, managing agents, attorneys, assigns, employees, affiliates, and all other persons and entities acting by or on their behalf or claiming through them, of and from all manner of claims, counter-claims, cross-claims, third-party claims, demands, losses, expenses, damages (whether general, special or punitive), costs and expenses, attorneys' fees, expert/consultant fees (whether incurred prior to or after the execution of this Agreement), arbitration awards, suits, judgments, actions, contractual rights/provisions, orders, defects, action or actions, causes of action, economic and personal/psychological injuries, rights, debts, agreements, promises, liens, indemnities, and liabilities of whatever kind and nature, whether known or unknown, suspected or unsuspected, claimed or unclaimed, fixed or contingent, matured or unmatured, liquidated or unliquidated, accrued or un-accrued, existing or potential, whenever and however occurring, and whether at law or in equity which each has or might have, without limitation or exception, whether known or unknown, suspected or unsuspected, whether based on fraud, fraudulent transfer, embezzlement, misappropriation of funds, conversion, theft, breach of fiduciary duty, malpractice, tort, violation of law, statute or ordinance, or equitable theory of recovery, or any other theory of liability or declaration of rights whatsoever, which the Trustee has as of the execution of this Agreement or acquires from any third-parties after the execution of this Agreement. For the avoidance of doubt, the release provided by this section shall include any and all claims related to the Transfers, the Debtor or the Debtor's bankruptcy case.

3. Release of Claims Against the Trustee. AMEX, on behalf of itself and any entity owned or controlled by AMEX, whether now or hereafter, hereby fully and forever completely releases, acquits, and discharges the Trustee and her past, present, and future, agents, managing agents, attorneys, assigns, employees, and all other persons and entities acting by or on their behalf or claiming through them, of and from all manner of claims, counter-claims, cross-claims, third-party claims, demands, losses, expenses, damages (whether general, special or punitive), costs and expenses, attorneys' fees, expert/consultant fees (whether incurred prior to or after the execution of this Agreement), arbitration awards, suits, judgments, actions, contractual rights/provisions, orders, defects, action or actions, causes of action, economic and personal/psychological injuries, rights, debts, agreements, promises, liens, indemnities, and liabilities of whatever kind and nature, whether known or unknown, suspected or unsuspected, claimed or unclaimed, fixed or contingent, matured or unmatured, liquidated or unliquidated, accrued or un-accrued, existing or potential, whenever and however occurring and whether at law or in equity which each has or might have, without limitation or exception, whether known or unknown, suspected or unsuspected, whether based on fraud, fraudulent transfer, embezzlement, misappropriation of funds, conversion, theft, breach of fiduciary duty, malpractice, tort, violation of law, statute or ordinance, or equitable theory of recovery, or any other theory of liability or declaration of rights whatsoever, which AMEX has as of the execution of this Agreement or acquires from any third-parties after the execution of this Agreement that is related in any way to the Debtor's bankruptcy case; provided, however, that this release does not extend to any contractual obligations (including charges on credit or charge cards) by any entity other than the Debtor. The release provided by this section shall preclude AMEX from filing a proof of claim in the Debtor's bankruptcy case pursuant to 11 U.S.C. § 502(h).

4. Reservation of Rights. Notwithstanding anything to the contrary contained in this Agreement, the Parties expressly reserve unto themselves any claims or causes of action,

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whether at law or in equity, arising out of the non-performance of this Agreement by a Party.

5. Approval of Agreement by Bankruptcy Court. This Agreement is contingent on Bankruptcy Court approval pursuant to Federal Rule of Bankruptcy Procedure 9019. The Trustee shall take all necessary and appropriate action to prepare and file a motion for the approval of the settlement as documented by this Agreement by the Bankruptcy Court pursuant to Federal Rule of Bankruptcy Procedure 9019. The Trustee shall use her best efforts to obtain approval of the motion including, without limitation, defending it against any objections. Any order issued by the Bankruptcy Court granting the motion shall incorporate this Agreement as part of its terms. In the event that the Trustee receives the Settlement Sum prior to approval of this Agreement by the Bankruptcy Court, the Trustee shall hold the Settlement Sum in trust pending such approval. In the event that an objection to approval of the Agreement is received and an Order of the Bankruptcy Court is entered denying approval of this Agreement, (i) the Settlement Sum shall be promptly returned to AMEX, and (ii), this Agreement shall be null and void with the parties returning to their original respective positions with no rights waived.

6. Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes all prior agreements, statements and representations with respect to the matters resolved herein.

7. Successors Bound. This Agreement is binding upon and inures to the benefit of the heirs, successors, and assigns of the Parties.

8. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Nevada and the United States Bankruptcy Code.

9. Bankruptcy Court Jurisdiction. In the event of a dispute concerning this Agreement, the Parties agree and consent to the jurisdiction of the Bankruptcy Court.

10. Independent Counsel. The Parties represent and warrant that they have been advised that they should be represented by counsel of their own choosing in the preparation and analysis of this Agreement, that they have been represented by their own independent counsel and that they have read this Agreement and believe that they are fully aware of and understand the contents hereof and its legal effect. The Parties further represent and warrant that they have entered into this Agreement voluntarily and with the approval and advice of their counsel.

11. Countersigned And Faxed Signatures. It is understood and agreed that signatures or copies sent by facsimile transmission or countersigned documents are fully enforceable as originals signed by the Parties.

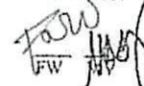
12. Attorneys' Fees. In the event of any litigation among the Parties, including any appeals, in connection with or arising out of this Agreement, the prevailing Party shall recover all of its costs and expenses, including experts' fees and attorneys' fees actually incurred, which shall be determined and fixed by the court as part of the judgment. The Parties covenant and agree that they intend by this section for the prevailing Party to recover for all attorneys' fees actually

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incurred by the prevailing Party at the attorneys' then existing normal hourly rate and that this section shall constitute a request to the court that such rate or rates be deemed reasonable.

13. Representations and Warranties. Each Party hereby represents and warrants to the other Parties as follows, which shall be true and accurate as of the Effective Date:

a. The execution and delivery of this Agreement and consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of the Party and no other proceedings on the part of the Party are necessary to authorize this Agreement or any of the transactions contemplated hereby.

b. This Agreement has been duly executed and delivered by the Party and constitutes a legal, valid, and binding obligation of the Party and, assuming this Agreement constitutes a legal, valid, and binding obligation of the other Parties, is enforceable against the Party in accordance with its terms.

c. The execution and delivery of this Agreement does not, and the performance of this Agreement will not: (i) violate the constituent documents of the Party, if any; (ii) conflict with or violate any law, rule, regulation, order, judgment or decree applicable to the Party or by which the Party and its assets are bound or affected; or (iii) result in any material breach of or constitute a material default (or an event that with notice or lapse of time or both would become a material default) under, or impair the rights of the Party or alter the rights or obligations of any third party under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of a material encumbrance on any of the material properties or assets of the Party pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise, concession, or other instrument or obligation to which the Party is a party or by which the Party or its assets are bound or affected.

14. Time of the Essence. Time is of the essence of this Agreement, and in all the terms, provisions, covenants and conditions hereof.

15. Severability. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions contained herein and any present or future statute, law, ordinance or regulation, the latter shall prevail, but the provision of this Agreement which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the statute, law, ordinance or regulation.

16. Further Assurances. Each of the Parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder to carry out the intent of the Parties.

17. Modifications or Amendments. No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the Parties.

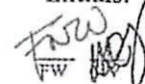
18. Non-Waiver. No waiver by any Party hereto of a breach of any provision

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of this Agreement shall constitute a waiver of any preceding or succeeding breach of the same or any other provision hereof.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20. Number and Gender. In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so requires.

21. Captions and Headings. The captions and headings appearing at the commencement of the sections hereof are descriptive only and for convenience in reference.

22. Costs and Expenses. Each of the Parties shall pay all of its own costs and expenses in connection with the Action, including, but not limited to, legal fees, accounting fees, and any other costs and expenses incurred or to be incurred by it or them in negotiating and preparing this Agreement. Nothing in this section is meant to alter or otherwise diminish a Party's ability to recover attorneys' fees and costs incurred in enforcing the terms of this Agreement as set forth in Section 12.

23. Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons or entities other than the Parties and their respective successors and assigns, nor is anything in this Agreement except as provided herein intended to relieve or discharge the obligation or liability of any third parties to any Party to this Agreement, nor shall any provision give any third parties any right of subrogation or action over or against any Party to this Agreement.

24. Notices. Any and all notices and demands by any Party to any other Party, required or desired to be given hereunder shall be in writing and shall be validly given only if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, or if made by Federal Express or other delivery service which keeps records of deliveries and attempted deliveries, or if made by facsimile machine with electronic confirmation of receipt (receipt of which is acknowledged or if a copy thereof is promptly delivered by a delivery service which keeps records of deliveries and attempted deliveries). Service shall be conclusively deemed made on the first business day delivery is attempted, and addressed as follows:

To Trustee:

Shelley D. Krohn, Chapter 7 Trustee
c/o Jacob L. Houmand, Esq.
Houmand Law Firm, Ltd.
9205 West Russell Road, Building 3, Suite
240
Las Vegas, NV 89148
Facsimile: 702.320.3371

To AMEX:

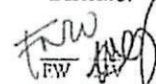
American Express

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c/o Frank N. White, Esq.
Arnall Golden Gregory LLP
171 17th Street NW, Suite 2100
Atlanta, GA 30363

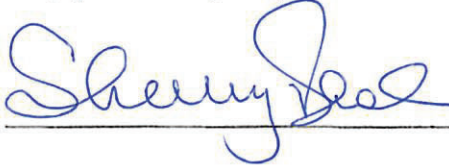
Any Party may change its address for the purpose of receiving notices or demands as herein provided by a written notice given in the manner aforesaid to the other Parties, which notice of change of address shall not become effective, however, until the actual receipt thereof by the other Parties.

25. No Admission. Each of the Parties hereto acknowledges and agrees that the terms of this Agreement are contractual and that the agreements herein contained and the consideration given hereunder is to compromise and settle the Trustee Claims and to avoid litigation. Accordingly, the Parties hereto acknowledge and agree that no statement made herein or payment, release, or other consideration given hereunder shall be construed as an admission by any Party of any kind or nature whatsoever.

26. Interpretation. This Agreement is the result of negotiations among the Parties who have each negotiated and reviewed its terms. No Party shall be deemed to be the drafter for purposes of interpreting any ambiguity or uncertainty in this Agreement against that Party.


Executed this 21st day of June, 2019.

Shelley D. Krohn, Chapter 7 Trustee



Executed this 21st day of June, 2019.

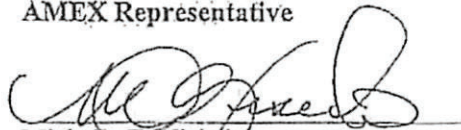
Counsel for Shelley D. Krohn, Chapter 7 Trustee



Jacob L. Houmand, Esq. (NV Bar 12781)
Kyle J. Ortiz, Esq. (NV Bar No. 14252)
Houmand Law Firm, Ltd.
9205 West Russell Road, Building 3, Suite 240
Las Vegas, NV 89148

Executed this ____ day of June, 2019.

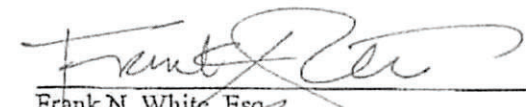
AMEX Representative



Michelle T. Visiedo
Senior Litigation Counsel

Executed this ____ day of June, 2019.

Counsel for AMEX



Frank N. White, Esq.
Arnall Golden Gregory LLP
171 17th Street NW, Suite 2100
Atlanta, GA 30363

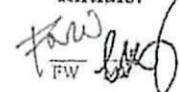
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