



ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 10, 2010

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

IN RE:

Wind Plus Holdings, Inc.,

Debtor-in-Possession

§
§
§
§
§
§
§

CASE NO: 09-47227-rfn11
(Jointly Administered)

Hearing: February 9, 2010
1:30 p.m.

AGREED ORDER OF CONVERSION

On this day came on to be considered the United States Trustee's *Motion for the Appointment of Chapter 11 Trustee under 11 U.S.C. § 1104(a), or to convert case to Chapter 7 under 11 U.S.C. § 1112(b)*, and the court finding that good cause exists to grant the alternative relief requested, conversion of the case to Chapter 7. It is therefore ORDERED that the above-captioned case is hereby CONVERTED to one under Chapter 7 of Title 11, United States Code; it is FURTHER ORDERED that any outstanding United States Trustee quarterly fees owed under 28 U.S.C. §1930 shall be paid within 10 days after entry of this Order; it is FURTHER ORDERED that a Chapter 7 trustee shall be appointed.

###END OF ORDER###

AGREED TO BY:

/s/ Joseph F. Postnikoff (w/permission)

Joseph F. Postnikoff
Attorney for Debtors

/s/ Elizabeth A. Ziegler

Elizabeth A. Ziegler
U.S. Trustee Trial Attorney

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SPECIAL COUNSEL FOR AREYA HOLDER, TRUSTEE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	
WIND PLUS, INC., ET AL.,	§	CASE NO. 09-47227-RFN
	§	(Jointly Administered)
DEBTORS	§	(Chapter 7)

**MOTION TO COMPROMISE CONTROVERSY
WITH DAVID SPALDING**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Areya Holder, Trustee files this Motion to Compromise Controversy with David Spalding (“Motion”) and would respectfully show the Court as follows:

1. Wind Plus Holdings, Inc. and Wind Plus, Inc. (“Debtors”) filed with this Court a voluntary petition under Chapter 11 of the Bankruptcy Code. On November 12, 2009, the Court entered an order for the joint administration of the cases. On February 10, 2010, the cases were converted to a proceeding under Chapter 7 of the Bankruptcy Code.

2. Areya Holder is the duly appointed Trustee.

3. The Trustee initiated adversary no. 11-04193, styled *Areya Holder, Trustee v. Shawn Spalding and David Spalding* (the “Adversary”) based on, *inter alia*, avoidance of fraudulent and preferential transfers. David Spalding was the former principal of the Debtors and Shawn is his wife.

Upon the execution of a Tolling Agreement by Shawn Spalding, the Trustee amended the Complaint to remove her as a party. The Trustee alleged, inter alia, that David Spalding took funds from the Debtors and purchased gifts including jewelry for his wife, Shawn. David Spalding has asserted numerous defenses to the Adversary. After extensive negotiation, the Trustee and David Spalding have reached an agreement whereby David Spalding will pay \$100,000 (the "Settlement Amount") to the Trustee in exchange for mutual releases of all claims upon receipt of payment in full.

4. The Settlement Amount is payable in a combination of a down payment in the amount of \$7,500 (the "Down Payment"), monthly installment payments, anticipated sale of the jewelry with proceeds being turned over to the Trustee, and a final installment of any portion of the Settlement Amount which remains unpaid. Specifically, upon execution of the Settlement Agreement, David Spalding will pay 1) the Down Payment in the amount of \$7,500¹ plus 2) turn over the jewelry for sale by Christie's auction house. Commencing on April 20, 2012 and continuing each month through October 20, 2012, David Spalding will make a payment of \$2,500 each month to the Trustee. The jewelry has been turned over to Christie's for sale in its April 2012 auction.² If the Settlement Amount is paid in full prior to the sale of the jewelry by Christie's, then David Spalding may redeem the jewelry from Christie's provided that he pays any expenses or withdrawal fees required by Christie's. The proceeds from the auction will be paid to the Trustee and will be applied to the balance owed on the Settlement Amount. The Settlement Amount shall be paid in full by November 1, 2012. The Settlement Amount will be secured by an Agreed Judgment. The Trustee, upon receipt of the full payment of the entire Settlement Amount, will release the Agreed Judgment.

¹ As of the filing of this Motion, Mr. Spalding has already made the \$7,500 payment, which the Trustee's law firm is holding in trust.

² The jewelry consisting of a ring and earrings is in the possession of Christie's.

5. Federal Rule of Bankruptcy Procedure 9019(a) provides, in pertinent part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise and settlement.”

6. In deciding whether to approve a proposed settlement agreement or compromise of controversy, a bankruptcy court should consider the following factors:

- a. the probability of success on the merits and the resolution of the dispute;
- b. the complexity of the litigation being settled;
- c. the expense, inconvenience and delay associated with litigating the dispute;
and
- d. the paramount interests of creditors.

Foster Mortgage Corp. v. Connecticut General Life Ins. Co. (In re Foster Mortgage Corp.), 68 F.3d 914 (5th Cir. 1996); Texas Extrusion Corp. v. Lockheed Corp. (In re Texas Extrusion Corp.), 844 F.2d 1142, 1158-59 (5th Cir. 1988), cert. denied, 105 S.Ct. 31 (1989); U.S. v. Aweco, Inc. (In re Aweco, Inc.), 752 F.2d 293, 298 (5th Cir. 1984), cert. denied, 469 U.S. 880 (1984).

7. While it is necessary for the proponent of a compromise to set forth the factual and legal basis for the compromise so the court can make an intelligent and informed evaluation of the proposed settlement, it is not incumbent upon the proponent to present a mini-trial or a full evidentiary hearing. Texas Extrusion, 844 F.2d at 1158-59; Aweco, 725 F.2d at 298.

8. This compromise was the result of an arm’s length negotiation which took place over several weeks. David Spalding has agreed to pay a substantial sum and turn over the jewelry items which were paid for with estate funds. The settlement removes the risk that the estate will litigate with Mr. Spalding only to recover nothing. The fact that the settlement is secured by an agreed judgment will save the estate the expense of preparing for and conducting a trial on the merits. In order to avoid

the expense and uncertainty of litigation, the Trustee prays that the settlement be approved as being in the best interest of the estate and the creditors.

WHEREFORE, PREMISES CONSIDERED the Trustee prays that the Court approve the compromise and for such other and further relief as she may show herself justly entitled.

Respectfully submitted,

SINGER & LEVICK, P.C.

By: /s/Michelle E. Shriro
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NOTICE

A HEARING MAY NOT BE CONDUCTED HEREON UNLESS A RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT, DALLAS AT 501 WEST TENTH STREET, ROOM 147, FT. WORTH, TEXAS 76102-3643 BEFORE CLOSE OF BUSINESS ON **MARCH 5, 2012**, WHICH IS TWENTY-FOUR (24) DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE MUST BE FILED WITH THE CLERK, AND A COPY MUST BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING WILL BE HELD WITH NOTICE TO (1) THE DEBTOR AND DEBTOR'S ATTORNEY; (2) THE OFFICE OF THE U.S. TRUSTEE; (3) ANY TRUSTEE AND THE TRUSTEE'S ATTORNEY; (4) THE MEMBERS OF ANY OFFICIAL COMMITTEE, OR THE ATTORNEY FOR ANY OFFICIAL COMMITTEE IF AN ATTORNEY HAS BEEN EMPLOYED; OR IF THERE IS NO COMMITTEE, THE TWENTY (20) LARGEST UNSECURED CREDITORS; (5) ANY PARTY REQUESTING NOTICE; (6) ANY PARTY NAMED ON A COURT-APPROVED

ALTERNATIVE SERVICE LIST; (7) THE RESPONDING PARTIES; AND (8) ANY OTHER AFFECTED ENTITY.

IF NO HEARING ON SUCH NOTICE OR MOTION INITIATING A CONTESTED MATTER IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

CERTIFICATE OF SERVICE

I hereby certify that Notice of this document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District and to all others listed below and on the attached service list via first class mail, postage prepaid on this 8th day of February 2012.

/s/Michelle E. Shiro

Michelle E. Shiro

Shawn and David Spalding
3993 Spring Garden
Colleyville, TX 76034