

Jonathan L. Flaxer, Esq.  
 Michael S. Devorkin, Esq.  
 GOLENBOCK EISEMAN ASSOR BELL  
 & PESKOE LLP  
 437 Madison Avenue  
 New York, New York 10022  
 (212) 907-7300  
*Counsel for Gerard A. McHale, Jr., Chapter 11 Trustee*

**Hearing Date and Time: November 23, 2009  
 at 10:00 a.m.**

**Last Date to Object: November 18, 2009  
 at 5:00 p.m.**

UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK

-----X	:	
In re	:	
	:	Chapter 11
THE 1031 TAX GROUP, LLC, <u>et al.</u> ,	:	
	:	Case No. 07-11448 (MG)
Debtors.	:	Jointly Administered
-----X	:	
Gerard A. McHale, Jr., as Chapter 11 Trustee,	:	
	:	
Plaintiff,	:	
	:	Adv. Pro. No. 09-01217 (MG)
- against -	:	
	:	
Dorothy E. Jones f/k/a Dorothy E. Okun,	:	
	:	
Defendant.	:	
-----X	:	

**MOTION OF THE CHAPTER 11 TRUSTEE FOR ENTRY OF AN  
 ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY  
 CODE AND RULE 9019(a) OF THE FEDERAL RULES OF  
 BANKRUPTCY PROCEDURE APPROVING A SETTLEMENT  
 AGREEMENT BETWEEN THE TRUSTEE AND DOROTHY E. JONES**

Gerard A. McHale, Jr., the chapter 11 trustee (the "Trustee") for the 1031 Debtors' estates (the "Estates"), by his undersigned counsel, hereby makes this motion (the "Motion") for entry of an order (the "Order") pursuant to section 105(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") approving a settlement agreement dated as of September 15, 2009 (the

“Settlement Agreement”),<sup>1</sup> by and between the Estates, on the one hand, and Dorothy E. Jones, (“Jones”). A copy of the Settlement Agreement is attached hereto as **Exhibit A**. In support of the Motion (the “Motion”), the Trustee states as follows:

### **PRELIMINARY STATEMENT**

Pursuant to the Settlement Agreement, in summary, a potential fraudulent conveyance action in the amount of \$5.95 million against Dorothy E. Jones is settled in exchange for Jones’ agreement to forego any interest she may have to \$2,815,629 in federal and state income tax returns filed by Edward H. Okun (“Okun”), which can be carried back to 2004 and 2005 tax returns jointly filed by Jones and Okun, and when carried back results in a tax refund.

### **JURISDICTION AND VENUE**

By this Motion, the Trustee seeks entry of an order approving the Settlement Agreement pursuant to section 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019.

This Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334. Venue is proper in this district pursuant to 28 U.S.C. § 1408. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (B) and (O). The statutory predicates for the Motion are sections 105(a) and 363(b) of the Bankruptcy Code, as supplemented by Bankruptcy Rule 9019(a).

### **BACKGROUND**

1. On May 14, 2007 (the “Petition Date”), all but one of the 1031 Debtors filed voluntary petitions for relief under chapter 11, title 11 of the United States Code (the “Bankruptcy Code”). On June 11, 2007, AEC Exchange Company, LLC, one of the 1031 Debtors, also filed a voluntary petition for chapter 11 relief. From their respective filing dates until October 24, 2007, the 1031 Debtors continued in possession of their properties and

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meanings given to them in the Settlement Agreement.

operated their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. By order entered May 22, 2007, the Court authorized the joint administration of the 1031 Debtors' bankruptcy cases.

3. On May 30, 2007, the United States Trustee appointed the Official Committee of Unsecured Creditors.

4. On or about October 15, 2007, the United States Trustee and several other creditors filed motions seeking, inter alia, the appointment of a chapter 11 trustee.

5. After an evidentiary hearing held on October 23, 2007, the Court entered an amended memorandum opinion and order granting the motions for the appointment of a chapter 11 trustee.

6. On October 24, 2007, the United States Trustee filed a motion for approval of the appointment of Gerard A. McHale, Jr., as the chapter 11 trustee. The Court granted the United States Trustee's motion by Order dated October 25, 2007.

7. Between August 2005 and December 2006, The 1031 Tax Group, LLC ("1031 Tax Group"), one of the 1031 Debtors, acquired all or most of the six businesses (including various subsidiaries and affiliates thereof) that were engaged in the business of acting as a "qualified intermediary" ("QI") for deferred exchanges of real property pursuant to Section 1031 of the Internal Revenue Code, 26 U.S.C. § 1031. As of the petition date for the 1031 Debtors, there were over three hundred open exchange contracts, at an estimated total open amount of approximately \$150 million, including contractual interest at the non-default rates provided therein. The primary creditors of the Estates are the individual and entities (collectively,

“Exchangers”) who deposited funds (the “Exchange Deposits”) with the 1031 Debtors in connection with 1031 Exchanges.

8. Beginning in August 2005 and continuing until April 2007, Edward H. Okun (“Okun”), Lara D. Coleman (“Coleman”) and others acting in concert with them engaged in numerous misappropriations of funds belonging to the 1031 Debtors. In general, upon acquiring a QI, Okun, Coleman and others transferred or caused the transfer of some or all of the Exchange Deposits to personal and business accounts controlled by Okun or certain officials of his companies, and then misappropriated them. Subsequent Exchange Deposits were misappropriated in the same fashion.

9. Okun, Coleman and others used the misappropriated funds, among other things, (i) to fund Okun’s lavish lifestyle, including acquiring residential properties and luxury assets, (ii) to pay monies and bonuses to Coleman and other participants in the wrongdoing, (iii) to invest for Okun or entities related to him (such as Investment Properties of America, LLC and its affiliates) in commercial real estate, (iv) to acquire QIs and other companies, (v) to pay off lenders who provided loans secured by residential and commercial properties owned by Okun or related entities (such as Investment Properties of America, LLC and its affiliates), (vi) to pay operating expenses for Okun’s various companies and (vii) to make “lulling” payments -- *i.e.*, to use subsequently deposited funds to complete earlier exchange transactions -- and otherwise conceal the wrongdoing.

***Tax Refund Claim***

10. Okun transferred to the Trustee any claims Okun has to any tax refunds, pursuant to an agreement approved by the Bankruptcy Court by ordered dated October 26, 2007.

11. The Trustee, through a power of attorney executed by Okun, filed amended federal and state tax returns for 2004 and 2005 seeking to recover for the Estates \$2,815,629 in federal taxes and state taxes as a result of loss of income incurred by Okun in 2006, which can be carried back to 2004 and 2005 tax returns jointly filed by Jones and Okun, and when carried back to the 2004 returns results in a tax refund (collectively, the “Tax Refunds”).

12. Jones claims an interest in the Tax Refunds and entitlement to a portion of any money received by the Trustee from the filing of the amended tax returns, and the Trustee asserts that Jones has no interest in the Tax Refunds.

***Marital Agreement***

13. Jones and Okun were married on May 28, 1988.

14. On April 22, 2005, Jones and Okun separated, and Okun filed a Verified Petition for Legal Separation in the Circuit Court of Hamilton County, Indiana, under the caption *In Re the Marriage of Edward Okun, Petitioner, and Dorothy Elizabeth Okun, Respondent*, Cause No. 29C01-0504-DR-545. Okun thereafter converted said action for legal separation to an action for dissolution of marriage by filing a Verified Petition to Convert Verified Petition for Legal Separation to Verified Petition for Dissolution of Marriage.

15. On August 26, 2005, Jones and Okun entered into an Agreement for Property Settlement and Judgment (the “Marital Agreement”).

16. As part of the Marital Agreement, Okun agreed to pay Jones \$7,950,000, interest free and tax-free (the “Payment”). The Payment was to be paid in the following manner: \$5,950,000 within 30 days of the approval of the Agreement, and \$2,000,000 no later than 180 days after the approval of the Agreement. If Okun failed to transfer the funds in this time frame,

Okun would be charged a \$25,000 penalty for each day on which any payment due was not paid in full.

17. On August 30, 2005, the Circuit Court of Hamilton County, Indiana, approved the Marital Agreement.

18. Pursuant to the Marital Agreement, Okun paid Jones \$5,950,000 on September 28, 2005 (the "Jones Transfer"). The Jones Transfer was paid from Okun's bank account at Union Federal Bank (the "Okun Account"), which included funds Okun misappropriated from 1031 Debtor, Atlantic Exchange Co. LLC ("AEC").

### ***Claims Against Jones***

19. The Trustee and his counsel have been conducting an investigation of the assets, liabilities and affairs of the 1031 Debtors, including any potential claims against third parties, including Jones, and have concluded that potential claims may exist against Jones.

20. On May 13, 2009, the Trustee commenced the adversary proceeding, *Gerard A. McHale, Jr., as Chapter 11 Trustee v. Dorothy E. Jones f/k/a Dorothy E. Okun*, Adv. Pro. No. 09-01217(MG) (the "Adversary Proceeding") to avoid and recover pursuant to Bankruptcy Code §§ 544, 548 and 550, alleged transfers by the Debtors to defendant Dorothy E. Jones ("Jones") in the total amount of \$5,950,000 (the "Transfers").

21. Jones disputes the Trustee's claims and asserts that, *inter alia*, the Trustee cannot recover any transfers because (i) Jones was not the initial transferee of the alleged Transfers, (ii) Okun was the initial transferee; (iii) Okun was solvent at the time of the Transfers, which occurred before the majority of the Misconduct occurred; (iv) Jones claims the marital estate at the time of the separation was worth substantially more than \$16,000,000; (v) the purchase of AEC, the first QI bought by Okun, was purchased long after Okun and Jones separated; (vi)

Jones received the alleged Transfers in exchange for fair consideration, and Jones gave more than reasonably equivalent value for the monies she received; (vii) the transfers were part of an arms' length divorce settlement approved by an Indiana court, which is binding; (viii) the marital estate is determined under Indiana law and under Indiana law, the presumption is that the marital estate is divided 50-50 between the spouses; and (ix) Jones acted in good faith and had no personal knowledge of Okun's fraud.

### **THE PROPOSED SETTLEMENT**

22. The salient terms of the Settlement Agreement are:<sup>2</sup>
- (i) Jones releases the Trustee, the 1031 Debtors, and their respective bankruptcy Estates, from any and all claims and causes of action of whatever kind or nature that Jones has or may have in the future relating to (i) the claims asserted by the Trustee herein, (ii) the Tax Refunds or (iii) anything else related to the 1031 Debtors, from the beginning of time through the Effective Date (collectively, the "Claim Waiver").
  - (ii) The Trustee, for himself and on behalf of all the 1031 Debtors, forever releases and discharges Jones from any claims and causes of action that the Trustee has or may have in the future relating to (i) the claims asserted by the Trustee herein, (ii) the Tax Refunds or (iii) anything else related to the 1031 Debtors or Okun, from the beginning of time through the Effective Date.
  - (iii) The Trustee agrees to accept the Claim Waiver in full and final satisfaction of all claims asserted or which could have been asserted in the Adversary Proceeding.

### **LEGAL BASIS FOR THE RELIEF REQUESTED**

23. The Trustee requests approval of the Settlement Agreement pursuant to Bankruptcy Rule 9019(a), which governs approval of compromises and settlements of claims. Bankruptcy Rule 9019(a) provides, in pertinent part:

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<sup>2</sup> The following is a summary of the terms of the Settlement Agreement and does not purport to recite all the terms of the Settlement Agreement in full. Parties are encouraged to read the entire Settlement Agreement, annexed hereto as **Exhibit A**.

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a).

24. This rule empowers the bankruptcy court to approve a proposed compromise or settlement “if [it is] in the best interests of the estate.” *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). The settlement need not result in the best possible outcome for the . . . Debtor[] but must not “fall below the lowest point in the range of reasonableness.” *Id.* (citation omitted).

25. Approval of a proposed compromise or settlement is within the sound discretion of the Court. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, *reh’g denied*, 391 U.S. 909 (1968); *In re W.T. Grant Co.*, 699 F.2d 599 (2d Cir.), *cert. denied sub nom., Cosoff v. Rodman*, 464 U.S. 822 (1983); *Fischer v. Pereira (In re 47-49 Charles St. Inc.)*, 209 B.R. 618, 620 (S.D.N.Y. 1997).

26. In determining whether to approve a proposed compromise or settlement, the Bankruptcy Court need not decide the numerous issues of law and fact raised by the compromise or settlement but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983). *See Purified Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993) (emphasizing that “the court need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation”).

27. Among other things, “in making such a determination, the bankruptcy court should apprise itself ‘of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated’ and should review ‘all other

factors relevant to a full and fair assessment of the wisdom of the proposed compromise.” *In re Telcar Group, Inc.*, 363 B.R. 345, 352-53 (Bankr. E.D.N.Y. 2007) (quoting *Protective Comm. for Indep. Stockholders*, 390 U.S. at 424-25). These factors include:

- a. The balance between the likelihood of the plaintiff’s or the defendant’s success should the case go to trial as compared with the benefits of the settlement without the expense and delay of a trial;
- b. The prospect of a complex and protracted litigation if the settlement is not approved;
- c. The proportion of creditors who do not object to, or who affirmatively support, the proposed settlement;
- d. The proposed benefits to be received;
- e. The nature and breadth of releases to be issued as a result of the settlement; and
- f. The extent to which the settlement is truly the product of arms’ length bargaining and not the product of fraud or collusion.

*Telcar Group, Inc.*, 363 B.R. at 352-53 (citing *In re Interstate Cigar Co., Inc.*, 240 B.R. 816, 822 (Bankr. E.D.N.Y. 1999)).

28. The Court should also consider additional factors such as weighing the informed judgments of the trustee and considering the competency and experience of counsel. *Telcar Group, Inc.*, 363 B.R. at 352 (citing *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991)).

29. The Trustee submits that the Settlement Agreement meets the above criteria. First and foremost, litigating the issue of whether the Transfers to Jones constitutes a fraudulent conveyance under §§ 544, 548 and 550 of the Bankruptcy Code could result in costly litigation, the result of which is not free from doubt. The Trustee would have to prove under these sections that Okun made these transfers at this early stage (i.e. just after he bought AEC) (a) with the

actual intent to hinder, delay or defraud present and future creditors of the Debtors, or (b) when the Debtors (i) were insolvent or as a result of which became insolvent; (ii) were engaged in business or a transaction, or were about to engage in business or a transaction, for which any property remaining with the respective Debtors was an unreasonably small capital; or (iii) intended to incur, or believed that it would incur, debts that would be beyond their ability to pay as such debts matured.

30. On the other hand, Jones would assert defenses which are potentially meritorious, including (i) Jones was not the initial transferee of the alleged Transfers, (ii) Okun was the initial transferee; (iii) Okun was solvent at the time of the Transfers, which occurred before most of the Misconduct occurred; (iv) Jones received the alleged Transfers in exchange for fair consideration, and Jones gave more than reasonably equivalent value for the monies she received; (v) the transfers were part of an arms' length divorce settlement approved by an Indiana court, which is binding; (vi) the marital estate is determined under Indiana law and under Indiana law, the presumption is that the marital estate is divided 50-50 between the spouses; and (vii) Jones acted in good faith and had no personal knowledge of Okun's fraud.

31. This leads to the next consideration supporting the Settlement Agreement, *i.e.*, that litigation would be very fact-intensive and accordingly protracted and expensive. Each side could easily expend a six figure sum – particularly when the cost of experts on such issues as fair consideration and Okun's solvency at the time Jones and Okun executed the Agreement, are included. Approval of the settlement would avoid the incurrence of these expenses, as well as free up the time and resources of the Trustee, the Estate, and the Trustee's professionals, to focus on many other pressing matters in the 1031 Debtors' cases.

32. Additionally, as part of the Settlement Agreement, Jones has agreed to relinquish her interest in the Tax Refunds. Although the Trustee asserts that Jones has no interest in the Tax Refunds, the substance of Jones' claim to the Tax Refunds requires an extensive review of tax laws in various states and is not free from doubt.

33. For the foregoing reasons, the Trustee respectfully submits that the Settlement Agreement represents a fair and equitable compromise, a sound exercise by the Trustee of business judgment and a decision that is in the best interest of the 1031 Debtors' Estates and creditors. Moreover, the Settlement Agreement is above the lower range of reasonableness. Accordingly, the Trustee respectfully submits that the Court should approve the compromise of claims as embodied in the Settlement Agreement pursuant to Bankruptcy Rule 9019(a).

#### **NOTICE**

34. The Trustee is serving the Notice of this Motion upon: (i) the United States Trustee; (ii) counsel to the Committee; (iii) counsel to Jones; and (iv) all persons and/or entities entitled to notice in these cases. The Trustee submits that under the circumstances, such service is good and sufficient notice, as required by Bankruptcy Rule 2002 and Local Rules 2002-1 and 9013-1(c).

35. No previous motion for the relief requested herein has been made to this or any other Court.

**WHEREFORE**, the Trustee respectfully requests that the Court enter an order, substantially in the form annexed hereto as **Exhibit B**, approving the Settlement Agreement and

authorizing the Trustee to take any actions necessary to consummate the transactions contemplated in the Settlement Agreement; and (ii) grant such other relief as is just.

Dated: New York, New York  
October 30, 2009

Respectfully submitted,

GOLENBOCK EISEMAN ASSOR BELL  
& PESKOE LLP  
437 Madison Avenue  
New York, New York 10022  
Tel: (212) 907-7300  
Fax: (212) 754-0330

By:           /s/ Jonathan L. Flaxer            
Jonathan L. Flaxer, Esq.

*Counsel for Gerard A. McHale, Jr., Chapter 11 Trustee*

# **Exhibit A**

Michael S. Devorkin, Esq.  
 Allyson R. Albert, Esq.  
 GOLENBOCK EISEMAN ASSOR BELL & PESKOE LLP  
 437 Madison Avenue  
 New York, New York 10022  
 (212) 907-7300  
*Counsel to Gerard A. McHale, Jr., Trustee*

UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK

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	:	
In re:	:	Chapter 11
	:	
THE 1031 TAX GROUP, LLC, <u>et al.</u> ,	:	Case No. 07-11448 (MG)
	:	Jointly Administered
Debtors.	:	
	:	
-----	X	
Gerard A. McHale, Jr., as Chapter 11 Trustee,	:	
	:	Adv. Pro. No. 09-01217 (MG)
Plaintiff,	:	
	:	
- against -	:	
	:	
Dorothy E. Jones f/k/a Dorothy E. Okun,	:	
	:	
Defendant.	:	
	:	
-----	X	

**STIPULATION SETTLING ADVERSARY PROCEEDING**

WHEREAS, on May 14, 2007 (the "Petition Date"), each of the above-captioned debtors (collectively, the "1031 Debtors")<sup>1</sup> filed voluntary petitions for relief in this Court under

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<sup>1</sup> The Debtors are: The 1031 Tax Group, LLC; 1031 Advance 132 LLC; 1031 Advance, Inc.; 1031 TG Oak Harbor LLC; Atlantic Exchange Company, Inc.; Atlantic Exchange Company LLC; Investment Exchange Group, LLC; National Exchange Accommodators, LLC; National Exchange Services QI, Ltd.; NRC 1031, LLC; Real Estate Exchange Services, Inc.; Rutherford Investment LLC; Security 1031 Services, LLC; Shamrock Holdings Group, LLC; and AEC Exchange Company LLC.

chapter 11 of Title 11, United States Code (the “Bankruptcy Code”), excluding AEC Exchange Company, LLC, (“AEC”) which filed a voluntary petition for relief on June 11, 2007;

WHEREAS, this Court issued separate orders directing that the AEC case be jointly administered with the other 1031 Debtors’ cases, and further that certain “first day” orders shall apply in the AEC case;

WHEREAS, on May 30, 2007, the United States Trustee appointed an official committee of unsecured creditors to serve in these cases pursuant to section 1102 of the Bankruptcy Code;

WHEREAS, on October 24, 2007, the United States Trustee filed a motion for approval of the appointment of Gerard A. McHale, Jr., as the chapter 11 trustee (the “Trustee”).

WHEREAS, the 1031 Debtors continued in possession of their properties and in the operation of their businesses pursuant to sections 1107(a) and 1108 of the Bankruptcy Code until October 25, 2007, when the Court approved the United States Trustee’s motion to appoint the Trustee;

WHEREAS, on May 13, 2009, the Trustee commenced the captioned adversary proceeding (the “Adversary Proceeding”) to avoid and recover pursuant to Bankruptcy Code §§ 544, 548 and 550, alleged transfers by the Debtors to defendant Dorothy E. Jones (“Jones”) in the total amount of \$5,950,000 (the “Transfers”);

WHEREAS, the complaint asserts that the Transfers to Jones are avoidable and recoverable as fraudulent conveyances because, *inter alia*, (a) they were made with the actual intent to hinder, delay or defraud present and future creditors of the Debtors, or (b) they were made when the Debtors (i) were insolvent or as a result of which became insolvent; (ii) were engaged in business or a transaction, or were about to engage in business or a transaction, for

which any property remaining with the respective Debtors was an unreasonably small capital; or (iii) intended to incur, or believed that it would incur, debts that would be beyond their ability to pay as such debts matured;

WHEREAS, Jones disputes the Trustee's claims and asserts that, *inter alia*, the Trustee cannot recover any transfers because (i) Jones was not the initial transferee of the alleged Transfers, (ii) Edward H. Okun ("Okun") was the initial transferee, and Jones received the alleged Transfers in exchange for fair consideration, (iii) the transfers were part of an arms' length divorce settlement approved by an Indiana court; and (iv) Jones acted in good faith and had no personal knowledge of Okun's fraud;

WHEREAS, Okun transferred to the Trustee any claims Okun has to any tax refunds, pursuant to an agreement approved by the Bankruptcy Court by ordered dated October 26, 2007.

WHEREAS, the Trustee has caused to be filed by Okun amended federal and state tax returns for 2004 and 2005 seeking to recover for the Estates \$2,815,629 in federal taxes and state taxes as a result of loss of income incurred by Okun in 2006, which can be carried back to 2004 and 2005 tax returns jointly filed by Jones and Okun (collectively, the "Tax Refunds");

WHEREAS, Jones claims an interest in the Tax Refunds and entitlement to a portion of any money received by the Trustee from the filing of the amended tax returns, and the Trustee asserts that Jones has no interest in the Tax Refunds.

WHEREAS, the Trustee and his counsel have been conducting an investigation of the assets, liabilities and affairs of the 1031 Debtors, including any potential claims against Jones, as well as any potential claims creditors of the 1031 Debtors may have against Jones, and any potential claims Jones may have against the Estates of the 1031 Debtors;

WHEREAS, the parties hereto believe that the continued investigation and potential litigation of (i) possible claims of the Trustee against Jones, and the defenses thereto; and (ii) possible claims of Jones against the Estates of the 1031 Debtors, will be complex and expensive, and that the likelihood of ultimate success on the merits cannot be predicted with certainty;

WHEREAS, after balancing the possible benefit that could be obtained from a wholly successful outcome in any potential litigation, against the risk, cost, complexity, and delay involved in litigating these matters to final judgment, the parties hereto have determined that settlement of these disputes would be prudent and appropriate; and

WHEREAS, the Trustee and Jones have engaged in good faith, arms-length negotiations, in exchange for the considerations set forth herein, the sufficiency of which they acknowledge, and subject to Bankruptcy Court approval, do agree to this settlement concerning all of the issues between them in the Adversary Proceeding and any claims by Jones, upon the terms set forth below;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Trustee and Jones, as follows:

1. This Stipulation shall become effective on the date of entry of an order of the Bankruptcy Court approving this Stipulation, which becomes a Final Order (as defined below) (the "Effective Date"). The necessity of a Final Order can be waived if both parties to the settlement send written notice to each other pursuant to Paragraph 18 of this Stipulation.
2. Upon the Effective Date, Jones forever releases and discharges the Trustee, the 1031 Debtors, their respective bankruptcy Estates, and the Trustee's representatives, attorneys, and advisors in all capacities from any and all actions, complaints,

claims, debts, liens, payments, security interests, offsets, demands, damages, losses, allegations, suits in equity, counterclaims, third-party actions, proofs of claim, and/or causes of action of whatever kind or nature, whether direct or indirect, absolute or contingent, in tort, contract, common law, under state or federal constitution or state or federal statute or regulation, that Jones has or may have in the future relating to or in any way directly or indirectly arising out of, resulting from, or in connection with, or attributable to (i) the claims asserted by the Trustee herein, (ii) the Tax Refunds or (iii) anything else related to the 1031 Debtors, from the beginning of time through the Effective Date (collectively, the “Claim Waiver”).

3. Upon the Effective Date, the Trustee, for himself and on behalf of all the 1031 Debtors, forever releases and discharges Jones and her heirs, successors and assigns, and her representatives, attorneys, and advisors in connection with their activities in this Adversary action brought by the Trustee against Jones and activities related to the dissolution of the marriage to Okun from any and all actions, complaints, claims, debts, liens, payments, security interests, offsets, demands, damages, losses, allegations, suits in equity, counterclaims, third-party actions, proofs of claim, and/or causes of action of whatever kind or nature, whether direct or indirect, absolute or contingent, in tort, contract, common law, under state or federal constitution or state or federal statute or regulation, that the Trustee has or may have in the future relating to or in any way directly or indirectly arising out of, resulting from, or in connection with, or attributable to (i) the claims asserted by the Trustee herein, (ii) the Tax Refunds or (iii) anything else related to the 1031 Debtors or Okun, from the beginning of time through the Effective Date.

4. The Trustee agrees to accept the Claim Waiver in full and final satisfaction of all claims asserted or which could have been asserted in the Adversary Proceeding.

5. Nothing in this Stipulation, including the releases contained herein, constitutes a release of any claims, except which are expressly released herein, that the Trustee acting on behalf of the 1031 Debtors may have against third parties.

6. The parties hereto agree that the Trustee commenced the Adversary Proceeding; the Adversary Proceeding is based on a derivative claim owned by the Trustee on behalf of the 1031 Debtors and their Estates; no Exchanger (as defined in the Debtors' Second Amended Plan) owns a claim for fraudulent conveyance against Jones.

7. On the Effective Date and without further notice to Jones, the Trustee shall file a notice dismissing the Adversary Proceeding with prejudice as against Jones, pursuant to Fed. R. Civ. P. 41(a)(1), as made applicable herein by Fed. R. Bankr. P. 7041, with each party to bear its own costs and attorneys' fees.

8. "Final Order" means an order as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending, or as to which any such right to appeal, petition for certiorari, reargue, or rehear shall have been waived in writing.

9. The Trustee and Jones and the parties hereto admit no liability of any sort; the settlement is made to terminate further controversy respecting all claims for damages that the parties have heretofore asserted or that they or their representatives might hereafter assert against each other for actions to date.

10. This Stipulation shall be null and void if it is not approved by the Bankruptcy Court. In the event that this Stipulation shall become null and void: (a) the parties' agreements as set forth herein shall be deemed to have been made without prejudice and immediately withdrawn; (b) this Stipulation shall not be allowed or permitted to be used in any litigation; and (c) the parties shall return to the *status quo ante* with a full reservation of rights.

11. Each of the parties hereto acknowledges that he/she has read all of the terms of this Stipulation and agrees to its terms voluntarily and without duress.

12. This Stipulation shall be deemed to have been jointly drafted by the parties, and in construing and interpreting this Stipulation, no provision shall be construed or interpreted for or against any of the parties because such provision or any other provision of the Stipulation or the Stipulation as a whole was purportedly prepared or requested by such party.

13. This Stipulation constitutes the entire agreement between the parties hereto and may only be modified in a writing signed by each of the parties hereto or their duly appointed agents and approved by further Order of this Court.

14. Each of the parties hereto represents and warrants that the person signing this Stipulation on its behalf has the authority to do so.

15. The Bankruptcy Court shall retain jurisdiction to hear and determine any matter arising from, arising under or relating to the making, interpretation, or enforcement of this Stipulation.

16. This Stipulation and the rights and obligations of the parties under this Stipulation shall be governed by, and construed and interpreted in accordance with the laws of the State of New York.

17. This Stipulation shall be binding upon and inure to the benefit of the parties' heirs, successors and assigns.

18. Notices shall be sent by certified mail return receipt requested as follows:

If to the Trustee:

Michael S. Devorkin, Esq.  
Allyson R. Albert, Esq.  
Golenbock Eiseman Assor Bell & Peskoe LLP  
437 Madison Avenue  
New York, New York 10022

and:

If to Jones:

Harris D. Leinwand, Esq.  
One Grand Central Place  
305 Madison Avenue  
Suite 449  
New York, New York 10165

Any party may change its address for purposes of this paragraph upon delivery to the other parties of a written notice of change of address.

19. This Stipulation may be signed in facsimile counterparts, all of which when taken together will constitute one original document.

***Signatures on the following page***

Dated: New York, New York

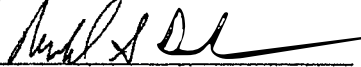
September 6, 2009

GOLENBOCK EISEMAN ASSOR BELL  
& PESKOE LLP

*Counsel to Gerard A. McHale, Jr.,  
Plaintiff-Trustee*

437 Madison Avenue  
New York, New York 10022  
(212) 907-7300

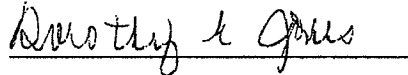
By



Michael S. Devorkin, Esq.  
Allyson R. Albert, Esq.

Dated: Damari's will ME  
September 16 2009

DOROTHY E. JONES



# **Exhibit B**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
In re: : Chapter 11  
: :  
THE 1031 TAX GROUP, LLC, et al., : Case No. 07-11448 (MG)  
: Jointly Administered  
Debtors. :  
: :  
----- X  
Gerard A. McHale, Jr., as Chapter 11 Trustee, :  
: Adv. Pro. No. 09-01217 (MG)  
Plaintiff, :  
: :  
- against - :  
: :  
Dorothy E. Jones f/k/a Dorothy E. Okun, :  
: :  
Defendant. :  
: :  
----- X

**ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY  
CODE AND RULE 9019(a) OF THE FEDERAL RULES OF BANKRUPTCY  
PROCEDURE APPROVING A SETTLEMENT AGREEMENT  
BETWEEN THE TRUSTEE AND DOROTHY E. JONES**

Upon the motion (the “Motion”) of Gerard A. McHale, Jr., the chapter 11 trustee (the “Trustee”) for the estates of The 1031 Tax Group, LLC, *et al.*, (collectively, the “1031 Debtors”) <sup>1</sup>, dated October 30, 2009, seeking the entry of an order, pursuant to 11 U.S.C. § 105(a) and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure, for approval of a settlement agreement dated as of September 15, 2009 (the “Settlement Agreement”) <sup>2</sup>, by and between the Estates, on the one hand, and Dorothy E. Jones, on the other hand; and it appearing from the

<sup>1</sup> The Debtors are: The 1031 Tax Group, LLC; 1031 Advance 132 LLC; 1031 Advance, Inc.; 1031 TG Oak Harbor LLC; Atlantic Exchange Company, Inc.; Atlantic Exchange Company LLC; Investment Exchange Group, LLC; National Exchange Accommodators, LLC; National Exchange Services QI, Ltd.; NRC 1031, LLC; Real Estate Exchange Services, Inc.; Rutherford Investment LLC; Security 1031 Services, LLC; Shamrock Holdings Group, LLC; and AEC Exchange Company LLC.

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meanings given to them in the Settlement Agreement.

certificate of service filed with this Court that due and sufficient notice of the Motion was given to parties entitled to receive notice; and it appearing that no objections to the Motion were filed; and it appearing that the Settlement Agreement is reasonable and is in the best interests of the Estates; and after due deliberation and sufficient cause appearing therefor; it is

**ORDERED**, that the Motion is granted to the extent set forth herein; and it is further

**ORDERED**, that the Trustee be, and hereby is, authorized to enter into the Settlement Agreement and to take such steps as are reasonably necessary to effectuate the Settlement Agreement.

Dated: New York, New York  
November \_\_, 2009

---

Honorable Martin Glenn  
United States Bankruptcy Judge

Jonathan L. Flaxer, Esq.  
 Michael S. Devorkin, Esq.  
 GOLENBOCK EISEMAN ASSOR BELL  
 & PESKOE LLP  
 437 Madison Avenue  
 New York, New York 10022  
 (212) 907-7300  
*Counsel for Gerard A. McHale, Jr., Chapter 11 Trustee*

**Hearing Date and Time: November 23, 2009  
 at 10:00 a.m.**

**Last Date to Object: November 18, 2009  
 at 5:00 p.m.**

UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK

-----X	:	
In re	:	
	:	Chapter 11
THE 1031 TAX GROUP, LLC, <u>et al.</u> ,	:	
	:	Case No. 07-11448 (MG)
Debtors.	:	Jointly Administered
-----X	:	
Gerard A. McHale, Jr., as Chapter 11 Trustee,	:	
	:	
Plaintiff,	:	
	:	Adv. Pro. No. 09-01217 (MG)
- against -	:	
	:	
Dorothy E. Jones f/k/a Dorothy E. Okun,	:	
	:	
Defendant.	:	
-----X	:	

**DECLARATION OF GERARD A. McHALE, JR., CHAPTER 11  
 TRUSTEE, IN SUPPORT OF MOTION TO APPROVE SETTLEMENT  
AGREEMENT WITH DOROTHY E. JONES**

**GERARD A. MCHALE, JR.**, pursuant to 28 U.S.C. § 1746, hereby deposes and says  
 under penalty of perjury:

1. I submit this declaration in support of the motion (the "Motion") for entry of an  
 order pursuant to section 105(a) of title 11 of the United States Code and Rule 9019(a) of the  
 Federal Rules of Bankruptcy Procedure approving a settlement agreement dated as of September

15, 2009 (the “Settlement Agreement”),<sup>1</sup> by and between the 1031 Debtors’ estates (the “Estates”), on the one hand, and Dorothy E. Jones (“Jones”) on the other. A copy of the Settlement Agreement is attached to the Motion as Exhibit A.

2. The Settlement Agreement represents a settlement with Jones that allows the Estates to avoid a potentially costly litigation, the outcome of which is uncertain, and permits the Estates to recover the entire sum of Edward H. Okun’s (“Okun”) tax return refund.

***Background***

3. The primary creditors of the Estates are the individual and entities (collectively, “Exchangers”) who deposited funds with the 1031 Debtors in connection with 1031 Exchanges.

4. Beginning in August 2005 and continuing until April 2007, Okun, Lara D. Coleman (“Coleman”) and others acting in concert with them engaged in numerous misappropriations (collectively, the “Misappropriation”) of funds belonging to the 1031 Debtors. In general, upon acquiring a QI, Okun, Coleman and others transferred or caused the transfer of some or all of the funds of QI entity (the “Exchange Deposits”) to personal and business accounts controlled by Okun or certain officials of his companies (including 1031 Debtors), and then misappropriated them. Subsequent Exchange Deposits were misappropriated in the same fashion.

5. Okun, Coleman and others used the misappropriated funds, among other things, (i) to fund Okun’s lavish lifestyle, including acquiring residential properties and luxury assets, (ii) to pay monies and bonuses to Coleman and other participants in the wrongdoing, (iii) to invest for Okun or entities related to him (such as Investment Properties of America, LLC and its affiliates) in commercial real estate, (iv) to acquire QIs and other companies, (v) to pay off

---

<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

lenders who provided loans secured by residential and commercial properties owned by Okun or related entities (such as Investment Properties of America, LLC and its affiliates), (vi) to pay operating expenses for Okun's various companies and (vii) to make "lulling" payments -- *i.e.*, to use subsequently deposited funds to complete earlier exchange transactions -- and otherwise conceal the wrongdoing. (The allegations in this and the preceding paragraph are referred to herein as the "Misconduct.")

### ***Tax Refund Claim***

6. Okun transferred to me any claims Okun has to any tax refunds, pursuant to an agreement approved by the Bankruptcy Court by order dated October 26, 2007.

7. Through a power of attorney executed by Okun, I filed amended federal and state tax returns for 2004 and 2005 seeking to recover for the Estates \$2,815,629 in federal taxes and state taxes as a result of loss of income incurred by Okun in 2006, which can be carried back to 2004 and 2005 tax returns jointly filed by Jones and Okun, and when carried back results in a tax refund (collectively, the "Tax Refunds").

8. Jones claims an interest in the Tax Refunds and entitlement to a portion of any money the Estates receive from the filing of the amended tax returns. I contend that Jones has no interest in the Tax Refunds.

### ***Marital Agreement***

9. Jones and Okun were married on May 28, 1988.

10. On April 22, 2005, Jones and Okun separated, and Okun filed a Verified Petition for Legal Separation in the Circuit Court of Hamilton County, Indiana, under the caption *In Re the Marriage of Edward Okun, Petitioner, and Dorothy Elizabeth Okun, Respondent*, Cause No. 29C01-0504-DR-545. Okun thereafter converted said action for legal separation to an action for

dissolution of marriage by filing a Verified Petition to Convert Verified Petition for Legal Separation to Verified Petition for Dissolution of Marriage.

11. On August 26, 2005, Jones and Okun entered into an Agreement for Property Settlement and Judgment (the "Marital Agreement").

12. As part of the Marital Agreement, Okun agreed to pay Jones \$7,950,000, interest free and tax-free (the "Payment"). The Payment was to be paid in the following manner: \$5,950,000 within 30 days of the approval of the Agreement, and \$2,000,000 no later than 180 days after the approval of the Agreement. If Okun failed to transfer the funds in this time frame, Okun would be charged a \$25,000 penalty for each day on which any payment due was not paid in full.

13. On August 30, 2005, the Circuit Court of Hamilton County, Indiana, approved the Marital Agreement.

14. Pursuant to the Marital Agreement, Okun paid Jones \$5,950,000 on September 28, 2005 (the "Jones Transfer"). The Jones Transfer was paid from Okun's bank account at Union Federal Bank (the "Okun Account"), which included funds Okun misappropriated from 1031 Debtor, Atlantic Exchange Co. LLC ("AEC").

### ***Claims Against Jones***

15. I and my counsel have conducted an investigation of the assets, liabilities and affairs of the 1031 Debtors, including any potential claims against third parties, including Jones, and we determined that a potential claim may have existed against Jones.

16. I have investigated the fraudulent conveyance claims against Jones under sections §§ 544, 548 and 550 of the Bankruptcy Code. These claim are generally based on the allegation

that Okun, with the assistance of others, misappropriated such sums from the 1031 Debtors, and these funds were used to make a divorce settlement payment to Jones in the amount of \$5,950,000.

17. On May 13, 2009, I commenced the adversary proceeding, *Gerard A. McHale, Jr., as Chapter 11 Trustee v. Dorothy E. Jones f/k/a Dorothy E. Okun*, Adv. Pro. No. 09-01217(MG) (the “Adversary Proceeding”) to avoid and recover pursuant to Bankruptcy Code §§ 544, 548 and 550, alleged transfers by the Debtors to defendant Jones in the total amount of \$5,950,000 (the “Transfers”).

18. In response to these claims, Jones contends: (i) Jones was not the initial transferee of the alleged Transfers, (ii) Okun was the initial transferee; (iii) Okun was solvent at the time of the Transfers, which occurred before the majority of the Misconduct occurred; (iv) Jones claims the marital estate at the time of the separation was worth substantially more than \$16,000,000; (v) the purchase of AEC, the first QI bought by Okun, was purchased long after Okun and Jones separated; (vi) Jones received the alleged Transfers in exchange for fair consideration, and Jones gave more than reasonably equivalent value for the monies she received; (vii) the transfers were part of an arms’ length divorce settlement approved by an Indiana court, which is binding; (viii) the marital estate is determined under Indiana law and under Indiana law, the presumption is that the marital estate is divided 50-50 between the spouses; and (ix) Jones acted in good faith and had no personal knowledge of Okun’s fraud.

19. I submit that the Settlement Agreement is reasonable and in the best interests of the Estates. My professionals and I have evaluated the relative merits of the case against Jones, as well as other factors which concern the evaluation of the settlement. I believe that contesting the litigation against Jones would be very fact-intensive and accordingly protracted and expensive. Each side could easily expend a six figure sum – particularly when the cost of

experts on such issues as fair consideration and Okun's solvency at the time Jones and Okun executed the Agreement, are included. After consideration of Jones' position as to the claims filed, I have concluded that she has substantial defenses, the result of the litigation is uncertain, and I would be assuming substantial risk in litigating the case against Jones. Approval of the settlement would avoid the incurrence of these expenses.

20. In addition, as part of the Settlement Agreement, Jones has agreed to relinquish her interest in the Tax Refunds. Although I do not believe that Jones has a substantial claim to the Tax Refunds, resolution of Jones' claim to the Tax Refunds will require an extensive review of tax laws in various states and is not free from doubt.

21. For the foregoing reasons, I respectfully submit that the Settlement Agreement represents a fair and equitable compromise, a sound exercise of my business judgment and a decision that is in the best interest of the Estates and creditors. Moreover, the Settlement Agreement is above the lower range of reasonableness.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Fort Myers, Florida  
October 27, 2009

/s/ Gerard A. McHale, Jr.  
GERARD A. McHALE, JR.,  
as Chapter 11 Trustee