

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

IN THE MATTER OF:)	Chapter 7
)	Case No. 97-03618 DJ
THOUSAND ADVENTURES, INC.,)	
)	
Debtor.)	
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ERIC W. LAM, exclusively in his capacity as Trustee of the bankruptcy of: THOUSAND ADVENTURES, INC.,)	Adversary No. 98-98203
)	
)	
Plaintiff,)	
	)	MOTION TO APPROVE
vs.	)	COMPROMISE
	)	SETTLEMENT AND
	)	MOTION TO PAY
Herman C. Weist and Stockyards Bank and Trust Co.	)	ATTORNEY FEES
)	
Defendants.)	
)	

COMES NOW the Plaintiff in the above-captioned adversary and hereby moves that this Court approve a compromise settlement with Defendants in the above-captioned adversary, and pay Plaintiff's attorney in this action, stating to the Court the following:

1. Plaintiff's counsel has conducted extensive discovery in this adversary proceeding. The discovery has revealed the following:

2. The Debtor purchased the yacht from Defendant, Weist in 1993 pursuant to an oral lease-purchase agreement. In February of 1995, the Debtor and Defendant, Weist entered into a written agreement for the Debtor to purchase the yacht. At that time the amount due and owing on the yacht was \$400,000 which the Debtor agreed to pay to Defendant, Weist in monthly payments of \$15,000 with interest accruing at the rate of 10% per annum. The sale was secured by the Debtor granting Defendant, Weist a preferred mortgage which was properly perfected by filing at the National Vessel Documentation Center, which is operated by the United States Coast Guard.

3. That discovery has revealed that the Debtor, Thousand Adventures, Inc. did transfer a 78' yacht to Defendant, Herman Weist on January 27, 1997. Defendant, Weist had been asked to refurbish the yacht by the President of the Debtor, Mr. David Vopnford. The Debtor did not pay for much of the refurbishment and Defendant, Weist asserted a Maritime lien against the yacht for over \$200,000 for repairs allegedly performed by him.

4. When the yacht was transferred back to Defendant, Weist, it had not been totally refurbished. Defendant, Weist continued the refurbishment after the yacht was transferred back to him in January of 1997.

5. On the date the yacht was transferred back to Defendant, Weist the Debtor was delinquent by two payments. The amount owed to Defendant, Weist when the yacht was returned to him was approximately \$134,000.

6. The value of the yacht on the date of the transfer to Defendant, Weist is in dispute. Plaintiff's expert testified that if it was in the same condition in January of 1997 as it was in September of 1998, when Plaintiff's counsel photographed it that it could be worth \$500,000. Unfortunately, Plaintiff cannot prove the extent of the refurbishment in January of 1997 to accurately determine the yacht's value as of that date.

7. Defendant, Weist contends that the yacht did not have a value in excess of \$300,000 when it was returned to him. If Defendant, Weist's assertion is correct, there would be no equity for the Trustee to acquire. In addition, the transfer would not be fraudulent or even a preferential transfer.

8. In light of the discovery conducted by Plaintiff's counsel, the risks associated with going to trial as well as the uncertainty of trial, Plaintiff has agreed to settle this case for the sum of \$5,000.

9. Defendant, Weist, has offered the sum of \$5,000 in complete and full settlement of the action brought against him.

10. Trustee has concluded that there may be some merit to some of the defenses set forth above. In which case, if litigation were completed, the Trustee would risk receiving less than the entire amount of the transfer or, no judgment against the Defendant. In addition, if successful, the Trustee would still need to transfer the judgment to the Defendant's state and county in order to begin execution to collect any judgment.

11. Defendant has already tendered to Plaintiff the sum of \$5,000.00, which is being held in Plaintiff's trust account. These funds will be retained by the Trustee, if this settlement is approved. If this settlement is not approved, all funds paid by the Defendant and deposited by the Trustee will be returned to the Defendant herein.

12. It is in the best interest of this estate that Plaintiff be authorized to accept the sum of \$5,000 as full and complete settlement of the above-captioned adversary and that this adversary be dismissed with prejudice.

13. On the 16th day of March, 1999, the undersigned was authorized to pursue preference actions on behalf of the Trustee.

14. The terms of that engagement provided that at this point of the litigation, the undersigned would receive one-third of the proceeds, plus out-of-pocket expenses.

15. Assuming this Court approves the compromise settlement, counsel for the Plaintiff is entitled to one-third of the proceeds received, \$1,666.67

16. Applications for out-of-pocket expenses have been made on a periodic basis for all of the preference actions and other matters being handled by this counsel for the Plaintiff.

17. If this Court approves this settlement, it is appropriate to enter an order directing the Trustee to pay the undersigned one-third of the settlement, as agreed when the undersigned was engaged to pursue the preference actions.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order authorizing him to accept the compromise proposed by Defendant, Weist of \$5,000; and, dismiss this adversary with prejudice. Plaintiff further respectfully requests that if this settlement is approved, this Court enter an order directing the Trustee to forthwith pay the undersigned one-third of the settlement, \$1,666.67, and grant such other and further relief as the Court deems just and equitable, given the circumstances.

Dated this 1st day of June, 2000.

ATTORNEY FOR THE PLAINTIFF

/s/ Joseph A. Peiffer
Joseph A. Peiffer IS9999471
DAY RETTIG PEIFFER JOHANSEN, P.C.
PO Box 2877
Cedar Rapids IA 52406-2877
(319) 365-0437
Fax (319) 365-5866

CERTIFICATE OF SERVICE

I hereby certify that a copy of the document on which this appears and all enclosures, was mailed the date indicated below, to the parties in interest listed below as required by the Bankruptcy Rules by Day Rettig Peiffer Johansen, P.C.

Dated: June 2, 2000.

Signed: /s/ Susan Lancaster

James Snyder
Assistant U.S. Trustee
Room 517
210 Walnut Street
Des Moines, IA 50309-2108

Eric W. Lam, Esq.
Moyer & Bergman
PO Box 1943
Cedar Rapids, IA 52406-1943

Dennis Puckett
Sullivan & Ward, P.C.
801 Grand Ave. Suite 3500
Des Moines, IA 50309

Michael L. Jenkins
Murray, Jenkins & Noble
2903 Ingersol Avenue
Des Moines IA 50312

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

IN THE MATTER OF:	)	Chapter 7
	)	Case No. 97-03618 DJ
THOUSAND ADVENTURES, INC.,)	
)	
Debtor.)	
)	
ERIC W. LAM, exclusively in his capacity as	)	Adversary No. 98-98203
Trustee of the bankruptcy of:)	
THOUSAND ADVENTURES, INC.,	)	ORDER APPROVING
vs.	)	COMPROMISE
	)	AND PAYMENT OF
Herman C. Weist and Stockyards Bank and Trust Co.	)	ATTORNEY FEES
Defendants.)	

THIS COURT having been presented with the Plaintiff's Motion to Approve Compromise Settlement with Defendants, and Motion to Pay Attorneys Fees, finds that the Motions were filed with this Court and served upon the parties as directed by this Court pursuant to prior Court order herein.

THE COURT FURTHER FINDS that the time for objections has passed and no objections to the settlement or payment of Attorney fees have been filed.

THE COURT FURTHER FINDS that it is in the best interests of the estate that the settlement proposed herein be approved and that the attorney fees be approved with the Trustee being directed to pay the attorney fees.

WHEREFORE, IT IS HEREBY ORDERED that the settlement proposed in the Trustee's Motion be approved and the Trustee is authorized to accept \$5,000.00 in full and complete settlement of his actions against the Defendants herein.

IT IS FURTHER ORDERED that the Motion to Approve Attorney Fees is approved with the Trustee directed to forthwith pay his attorney the sum of \$1,666.67 from the settlement proceeds.

IT IF FURTHER ORDERED that the above adversary is now dismissed with prejudice.

Dated this _____ day of _____, 2000.

LEE M. JACKWIG, Bankruptcy Judge
Southern District of Iowa

Order prepared by:
Joseph A. Peiffer IS 9999471
P.O. Box 2877
Cedar Rapids, IA 52406-2877
Telephone: (319) 365-0437
FAX: (319) 365-5866
ATTORNEY FOR CHAPTER 7 TRUSTEE

Rapids, Iowa 52406-1943 and Counsel for Trustee, Joseph A. Peiffer, P.O. Box 2877, Cedar Rapids, Iowa 52406-2877.

NOTICE IS GIVEN that if objections are filed a hearing shall be set by separate notice.

NOTICE IS FURTHER GIVEN that if no objections are timely filed the Court may enter an order consistent with the relief sought in the Motion.

Dated this 1st day of June, 2000.

Eric W. Lam, Trustee

by /s/ Joseph A. Peiffer
Joseph A. Peiffer IS 9999471

P.O. Box 2877
Cedar Rapids, IA 52406-2877
Telephone: (319) 365-0437
FAX: (319) 365-5866
ATTORNEY FOR CHAPTER 7 TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the document on which this appears and all enclosures, was mailed the date indicated below, to the parties in interest listed below as required by the Bankruptcy Rules by Day Rettig Peiffer Johansen, P.C.; it was also transmitted to Dan Hopper, Chairman of the Thousand Adventures, Inc. Members Committee for posting on the National Association of Members web site. In addition, this Notice was mailed to the parties listed on attached Exhibit B, which are the same parties listed in the Motion to Limit Notice filed in Bankruptcy Case #97-03618DJ on December 1, 1999 as amended on January 12, 2000.

Dated: June 2, 2000.

Signed: /s/ Susan Lancaster

Dennis Puckett
Sullivan & Ward, P.C.
801 Grand Ave. Suite 3500
Des Moines, IA 50309

Michael L. Jenkins
Murray, Jenkins & Noble
2903 Ingersol Avenue
Des Moines IA 50312