

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

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In re:

CASE NO. 05-90259-BKC-RBR

KIRA VOLPI,

Chapter 7

Debtor /

NICHOLAS SCHIANO
Plaintiff,

ADV. CASE NO.: 07-01854-BKC-RBR-A

vs.

KIRA VOLPI,
Defendant/Debtor.

SETTLEMENT AGREEMENT

WHEREAS, Plaintiff, Nicholas Schiano (“Schiano”), sued Defendant, Kira Volpi (“Volpi”), as above styled in the United States Bankruptcy Court, Southern District of Florida, Adversary Case No.: 07-01854-BKC-RBR-A, for a declaration that Schiano’s claim(s) against Volpi, were non-dischargeable, pursuant to 11 U.S.C. §523(a)(3)(a), to revoke Discharge, pursuant to 11 U.S.C. §727(d), and for unjust enrichment;

WHEREAS, Volpi disputes Schiano’s claims; and,

WHEREAS, the parties wish to resolve their disputes without resort to any further litigation;

THEREFORE, THE PARTIES hereby stipulate and agree as follows:

1. Upon execution of the instant Settlement Agreement, Volpi, shall pay the sum of Five Thousand Dollars And No/100 (\$5,000.00) to the Boys & Girls Clubs Of Broward County “Gina M. Wojciechowski Scholarship Fund”. Such payment shall be made by check delivered to

the Law Office of Gary J. Rotella & Associates, P.A. ("Rotella, P.A.") at New River Center, Suite 1850, 200 East Las Olas Boulevard, Fort Lauderdale, Florida 33301-2274 ("Rotella, P.A. Address")

2. Within thirty (30) days of the execution of the instant Settlement Agreement, Volpi shall make a second payment in the amount of Five Thousand Dollars And No/100 (\$5,000.00) payable to the Boys & Girls Clubs Of Broward County "Gina M. Wojciechowski Scholarship Fund" and, likewise, deliver said payment to Rotella, P.A. at Rotella, P.A. Address.

3. Over the course of the next three (3) consecutive years, 2009, 2010 and 2011, Volpi shall make payment each year, on or prior to November 7 of that year, in the amount of Five Thousand Dollars And No/100 (\$5,000.00), payable to the Boys & Girls Clubs Of Broward County "Gina M. Wojciechowski Scholarship Fund", to be delivered to the Boys & Girls Clubs Of Broward County, Attn: Matthew Organ, Chief Director of Special Events & Marketing, at 877 Northwest 61 Street, Fort Lauderdale, Florida 33309.

4. Upon execution of the instant Settlement Agreement, Volpi shall execute and deliver a Non-Recourse Promissory Note ("Schiano Note"), in favor of and payable to Schiano, in the amount of One Hundred Twenty Five Thousand Dollars And No/100 (\$125,000.00), payable on or before November 1, 2018, with interest at the rate of seven and one-half percent (7½%) per year, commencing on the date of execution of the Schiano Note. The principal and interest shall be payable on or before the maturity date of the Schiano Note, consistent with the information and instructions on the Schiano Note. The Schiano Note shall be entirely non-recourse with respect to Volpi. Schiano shall look solely to the Property securing such note for payment and specifically without the imposition of personal liability on the part of Volpi.

5. Upon execution of the instant Settlement Agreement, in addition to the above funds, and in full compensation and consideration of Schiano's claimed interest in the Property, Volpi shall execute a Mortgage in favor of Schiano ("Schiano Mortgage"), as security for the Schiano Note. Schiano Mortgage shall be upon Volpi's claimed homestead property located at 5211 Northeast 29th Avenue, Fort Lauderdale, Florida 33308 ("The Property") which shall contain standard terms, and require that upon sale or transfer, except in the event of a sale under paragraph 7, of The Property to a person or entity other than Volpi, the Schiano Note and Schiano Mortgage shall immediately become due and payable, that Volpi shall not enter into any new mortgage upon The Property, or obtain additional monies under the present mortgages above the balance currently thereon without the advanced written consent of Schiano. Schiano Note and Schiano Mortgage may be prepaid and mortgage satisfied at any time without penalty. Upon full payment of Schiano Note, principal and interest, Schiano shall provide a satisfaction of Schiano Mortgage to Volpi and cancel Schiano Note.

6. Upon execution of the instant Settlement Agreement and recording of the Schiano Mortgage, Volpi shall execute and deliver a Quit Claim Deed conveying The Property to Volpi and Schiano, or his assigns, to hold as tenants in common. Schiano, and his successors and assigns, shall have no rights of possession, partition or entry upon The Property with respect to his interest, which fact shall be duly noted and recorded upon the aforementioned Deed. Schiano, and his successors and assigns, shall have no obligation to pay for maintenance or upkeep, including taxes, of the property in connection with such Quit Claim Deed. Upon a satisfaction of the Schiano Mortgage, Schiano, or his successors and assigns, shall immediately convey all their right, title and interest in The Property to Volpi, which reversion shall be duly noted and recorded upon the aforementioned Deed.

7. Volpi may sell or transfer the entire Property, including any interest of Schiano, or his assigns, if:

- a. The Schiano Note and Mortgage are satisfied from the proceeds of such sale; or
- b. Schiano consents to the sale or transfer of The Property in writing; or
- c. The sale is agreed to by the holders of all interests superior to the Schiano Mortgage. In the event proceeds of the sale would exceed the amount to satisfy mortgages or encumbrances on The Property superior to those of Schiano, Schiano will receive any such proceeds until the Schiano Note and Mortgage are fully paid and satisfied.

8. Schiano shall have a right of first refusal in respect of any sale under paragraph 7(c). Schiano may exercise such right of first refusal on or before 15 days after written notice of a proposed sale under 7(c)

9. The parties hereby stipulate that the above styled Adversary Proceeding shall be dismissed with prejudice, with each party to bear their own attorneys' fees and costs, with the Bankruptcy Court to retain jurisdiction of this matter until delivery and clearance of funds of the two (2) checks referenced in Paragraph Numbers "1" and "2" above, solely to enforce the instant Settlement Agreement.

10. Within seven (7) days of the execution of the instant Settlement Agreement, Schiano agrees to remove from the internet or any similar publication, any and all derogatory information, including the information that was the subject of the Order entered by the bankruptcy court (D.E. 51), posted by him, over which he has control, including but not limited to programming, search engine optimization, graphic design, consulting, hosting, or link building, and to refrain from posting information on the internet or other similar publications that

disclose Volpi's past, present or future. Otherwise, in the event of a breach of this paragraph, Volpi shall be at liberty to pursue any and all legal and equitable remedies for breach of this Paragraph, including damages, appropriate restraining orders or injunctive relief in a court of competent jurisdiction. The parties expressly consent to jurisdiction and venue within Broward County, Florida. In the event of a material breach by Volpi under Numbers 1 through 9 above, this Paragraph is inapplicable and unenforceable.

11. Schiano agrees to refrain from any communication with Volpi outside of legal counsel, including but not limited to placing telephone calls, text messages and/or emails to Volpi. In the event of a breach of this paragraph, Volpi shall be at liberty to pursue any and all legal and equitable remedies for breach of this Paragraph, including damages, appropriate restraining orders or injunctive relief in a court of competent jurisdiction. The parties expressly consent to jurisdiction and venue within Broward County, Florida. In the event of a material breach by Volpi under Numbers 1 through 9 above, this Paragraph is inapplicable and unenforceable.

12. Within seven (7) days of the execution of the instant Settlement Agreement, Volpi agrees to remove from the internet or any similar publication, any and all derogatory information posted by her, over which she has control, including but not limited to programming, search engine optimization, graphic design, consulting, hosting, or link building, and to refrain from posting information on the internet or other similar publications that disclose Schiano's past, present or future. The parties acknowledge and represent that as of the date of this Settlement Agreement, they are unaware of any such website. In the event of a breach of this paragraph, Schiano shall be at liberty to pursue any and all legal and equitable remedies for breach of this Paragraph, including damages, appropriate restraining orders or injunctive relief in a court of

competent jurisdiction. The parties expressly consent to jurisdiction and venue within Broward County, Florida. In the event Schiano does not satisfy the obligations within Paragraph Numbers 1 through 11 herein, this Paragraph is inapplicable and otherwise unenforceable.

13. Volpi agrees to refrain from any communication with Schiano outside of legal counsel, including but not limited to placing telephone calls, text messages and/or emails to Schiano. In the event of a breach of this paragraph, Schiano shall be at liberty to pursue any and all legal and equitable remedies for breach of this Paragraph, including damages, appropriate restraining orders or injunctive relief in a court of competent jurisdiction. The parties expressly consent to jurisdiction and venue within Broward County, Florida. In the event of a material breach by Schiano under Numbers 1 through 9 above, this Paragraph is inapplicable and unenforceable.

14. Whether expressly so stated or not, all notices, demands, requests and other communications required or permitted by or provided for in the instant Settlement Agreement (collectively "Communications") shall be given in writing. Communications to Volpi shall be sent to counsel for Volpi, Craig A. Pugatch, Rice Pugatch Robinson and Schiller, P.A., 101 N.E. 3rd Ave, Suite 1800, Fort Lauderdale, FL 33301 as well as by facsimile transmission to (954) 462-4300. Communications to Schiano shall be sent to counsel for Schiano, at the Rotella, P.A. Address and by facsimile transmission to (954) 467-2231. Communications may be transmitted to the physical address (i) by personal delivery, (ii) by delivery by messenger, express or air courier, or similar courier, or (iii) by delivery by United States first class certified or registered mail, postage prepaid.

15. The parties shall each execute and exchange mutual general releases, releasing the other party from all claims of every nature, with the exception of claims related to the instant Settlement Agreement.


16. If it becomes necessary to file suit to enforce the instant Settlement Agreement, Schiano Note, Schiano Mortgage, or any document appurtenant to the instant Settlement Agreement, the prevailing party shall be entitled to recover his/her reasonable attorneys' fees and costs at all trial and appellate levels as well as reasonable attorneys fees and costs in respect of the above captioned instant proceeding.

17. This Agreement may be executed in several counterparts, each of which, whether by facsimile or original, shall be fully effective as an original and all of which together constitute one and the same instrument but only after all of the parties have executed counterparts of this Agreement.

18. The instant Settlement Agreement constitutes the complete and entire agreement and understanding of the Parties and shall not be modified or otherwise changed without the written consent of both Parties.

Agreed to By:

_____ Dated _____
Kira Volpi

 Dated 12-30-08
Nicholas Schiano