

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case No. 96-1754-Civ-Moore
Magistrate Bandstra

FEDERAL TRADE COMMISSION,)	
)	
)	
Plaintiff,)	
v.)	
)	
MICHAEL CHIERICO, TERI CHIERICO,)	
AMERICAN BUSINESS SUPPLIES, INC.,))
INTERSTATE OFFICE SYSTEMS, INC., and)	
NATIONWIDE OFFICE PRODUCTS, INC.,)	
)	
Defendants.)	

STIPULATED ORDER AND SETTLEMENT OF CLAIMS

THIS MATTER comes before the Court upon a joint request by all parties, the Federal Trade Commission (“FTC”), the Receiver Clinton R. Losego, Michael Chierico, and Teri Chierico, for entry of this Stipulated Order and Settlement Of Claims, resolving all claims and issues involving possession, control, and distribution of assets held by the Chiericos as tenants by the entirety and assets held solely by Teri Chierico and as to certain matters relating to Michael Chierico. By Stipulation of the parties, the Court finds as follows:

1. On November 13, 1996, pursuant to stipulation of the parties, this Court entered a Stipulated Final Judgment enjoining defendants Michael Chierico, Teri Chierico, American Business Supplies, Inc., Interstate Office Systems, Inc., Nationwide Office Products, Inc. and Creative Business Consultants, Inc. (“defendants”) from making misrepresentations in the

telemarketing of goods, engaging in deceptive telemarketing practices, and shipping and billing for unordered merchandise; requiring the individual defendants to post a performance bond should they resume their telemarketing business activities; and requiring defendants to pay consumer redress.

2. On June 23, 1998, pursuant to Plaintiff FTC's motion, this Court issued an ex parte Emergency Order requiring defendants to show cause why they should not be held in contempt for violating the Stipulated Final Judgment, freezing defendants' assets, and appointing a Receiver of the corporate defendants.

3. On June 30, 1998, after a hearing and review of evidence submitted by the parties, this Court issued an order ("June 30, 1998 Order") finding defendants Michael Chierico, Teri Chierico, American Business Supplies, Inc., Interstate Office Systems, Inc., and Nationwide Office Products, Inc. in civil contempt, banning defendants from engaging in any telemarketing sales and from sales of office supplies by direct mail, transferring defendants' assets to the FTC and the Receiver for payment of consumer redress, and requiring defendants to pay the FTC an additional \$2 million for consumer redress.

4. This Court held Michael and Teri Chierico in civil contempt for violating the June 30, 1998 Order on two subsequent occasions; August 12, 1998 and August 31, 1999. The Chiericos were held in contempt for failing to pay the FTC the \$2 million amount ordered by the June 30, 1998 Order, by failing to acquire a loan against the equity in their homestead or by transferring title to their homestead.

5. Defendants appealed all three contempt orders to the United States Court of Appeals for the Eleventh Circuit, case nos. 98-5290, 99-13250, and 99-13868. On March 24,

2000, the Eleventh Circuit issued its opinion affirming the June 30, 1998 contempt order as to Michael Chierico and three corporate defendants and vacating the order as to Teri Chierico. The Eleventh Circuit also vacated the two subsequent contempt orders and remanded the case to this Court for further proceedings consistent with the court's opinion.

6. The FTC and the Receiver, by and through their counsel, and defendants Michael Chierico and Teri Chierico, by and through their counsel, have agreed to the entry of this Stipulated Order and Settlement of Claims to resolve all claims and issues involving the ownership, possession, control, title, and distribution of assets held by the Chiericos as tenants by the entirety and assets held solely by Teri Chierico and as to certain other matters.

NOW THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

I. EFFECT ON PRIOR COURT ORDERS

The Stipulated Final Judgment, entered November 13, 1996, shall remain in full force and effect as to Michael Chierico and Teri Chierico, American Business Supplies, Inc., Interstate Office Systems, Inc., and Nationwide Office Products, Inc. The June 30, 1998 Contempt Order shall remain in full force and effect as to Michael Chierico, American Business Supplies, Inc., Interstate Office Systems, Inc., and Nationwide Office Products, Inc. Nothing contained in this Order shall alter, modify, or limit in any way the terms and conditions of either the November 13, 1996 Stipulated Final Judgment or the June 30, 1998 Order, except as expressly provided herein.

II. DISPOSITION OF ASSETS

IT IS FURTHER ORDERED that:

A. Teri Chierico, individually, Michael Chierico, individually, and Michael and Teri Chierico, as tenants by the entirety, shall transfer, convey, and assign by warranty deed and bill of sale, and release to the Receivership Estate for purposes of consumer redress consistent with this Court's June 30, 1998 Order and the administration of the estate all right, title and interest in, and all claims to the following assets:

1. Commercial Bank account numbers 9043005993 and 4052873410; and Prudential Securities Account numbers 032-592341, 032-589464, 032-R10795, 032-R13875, 032-R10787,
2. All assets of American Business Supplies, Interstate Office Systems, and Nationwide Office Products, including but not limited to the outstanding common stock of each company and any Commercial Bank accounts in their names,
3. All receivership accounts held by any financial institution,
4. The proceeds of the performance bond required by the Stipulated Final Judgment and paid to the FTC by American Alliance Insurance, Co.,
5. The property located at 1090 N.E. 127th Street, Miami, Florida, 33161 (hereinafter the "Fourplex") (The complete legal description is included in Attachment A),
6. The property located at 9448 West Broadview Drive, Bay Harbor, Florida, 33154 (hereinafter "Broadview Property") (The complete legal description is included in Attachment A), and
7. The sum of \$286,718.05, (the "lump sum payment") to be withdrawn by the Receiver, upon entry of this Stipulated Order and Settlement of Claims as to Teri Chierico, from Prudential Securities account number 032-575595. To the extent that the Prudential Securities account 032-575595 does not have sufficient funds to meet this obligation, the Chiericos shall turn over to the estate, within five (5) business days from entry of this Order, the remaining balance of this obligation. The Receiver shall not release, transfer, or convey any assets to Teri Chierico or Michael and Teri Chierico as tenants by the entirety until the Receiver has received the entire lump sum payment.

B. Within five business days from the entry of this Order, Michael and Teri Chierico shall convey and transfer by warranty deed and bill of sale, title to the Broadview Property, free and clear of all liens, claims and encumbrances, other than the first mortgage in the approximate amount of \$825,000, to the Receiver or such other person as the FTC or the Receiver directs. Michael and Teri Chierico shall not cause or allow any liens, encumbrances or claims to be assessed against the Broadview Property, and shall vacate the Broadview Property no later than September 30, 2000.

C. Michael and Teri Chierico consent to the immediate sale, by the Receiver, of the Fourplex and waive any claim to the Fourplex or the proceeds of sale. Michael and Teri Chierico agree to convey the Fourplex to the Receiver by warranty deed and bill of sale, free and clear of all liens, claims and encumbrances, other than the first mortgage. Michael and Teri Chierico shall not cause or allow any liens, encumbrances or claims to be assessed against the Fourplex prior to its conveyance to the Receiver.

D. Michael and Teri Chierico waive all rights to contest the validity of the transfers of title of the Broadview Property and the Fourplex, and shall execute any other documents necessary to effectuate the conveyance and transfer of title to such properties by warranty deed and bill of sale to the Receiver.

E. Within five business days after entry of this Order, the FTC and the Receiver shall quitclaim and release all claims, right, title and interest in the following assets, by among other things, releasing any liens the FTC or the Receiver has placed on those assets, and shall transfer all right, title and interest in the following assets to Michael and Teri Chierico, as tenants by the entirety or to Teri Chierico, individually:

1. Commercial Bank account numbers 9041001389, 904003140, 9043004431; Prudential Securities account numbers 032-580386, 0BR-968771, 032-R10809, 032-R14022, and Washington Bank account number 831-0000288543-3,
2. The property located at 915 N.E. 125th Street, Miami, Florida, 33161 (The complete legal description is included in Attachment A),
3. The property located at 9416 Bay Drive, Surfside, Florida, 33154 (The complete legal description is included in Attachment A),
4. All personal property in which Teri Chierico has a legal interest, except any fixtures in the Broadview Property which shall remain on the property; *provided however*, that Teri Chierico may remove the swing set and dolphin statues from the Broadview Property, and
5. The following vehicles and vessel that are currently in the Chierico's possession: the Jeep Grand Cherokee (vin number IJ4FX58S4RC205125), the Lincoln Towncar (vin number ILNCM82W6MY688378), and the Donzi boat (vin number DMRCA072F090).

F. The parties agree that while they are in constructive or actual possession, care, custody, or control, or actually occupying real property to be returned or transferred to another party, as provided above in this Order, they shall not cause any material damage, destruction or waste of said property and shall use their best efforts to maintain the property in its current condition.

III. WAIVER OF CLAIMS

IT IS FURTHER ORDERED that:

A. Michael and Teri Chierico hereby waive, release, and discharge all claims they have in any capacity against the Receiver, his agents, employees or professionals for any reason, and all claims, including claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, either has in any capacity against the Commission or its agents for conduct undertaken through the date of

entry of this Order. The Commission and the Receiver agree to accept the asset transfer payment and other undertakings described in this Order in full settlement of:

1. any claim or right, known or unknown, asserted or unasserted, that the Commission or the Receiver has as to assets described in Part II above and that were transferred to Michael and Teri Chierico, as tenants by the entirety or to Teri Chierico, individually; and
2. Teri Chierico's conduct alleged in the FTC motion for contempt filed June 22, 1998, and Michael Chierico's financial obligations set forth in Part II.B of the June 30, 1998 Order, provided that, Michael Chierico otherwise remains bound by the terms of the June 30, 1998 Order and Michael and Teri Chierico remain bound by the terms of the November 13, 1996 Stipulated Final Judgment, and provided further, that if (a) Michael Chierico has an interest in any asset that was not disclosed to the FTC in his financial statement executed on or about July 6, 1998 or in his August 12, 1998 affidavit, or (b) Michael Chierico has not relinquished to the FTC all right, title and interest in any asset as required by Part II.B.1 of the June 30, 1998 Order, then Michael Chierico shall immediately turnover that asset or an amount equivalent to the value of that asset to the FTC and this Court shall enter judgment against Michael Chierico in the amount of \$7,282,405 (less any amounts already paid).

The agreements by the parties pursuant to this subparagraph are expressly premised and conditioned upon the entry of this Order.

B. Other than as set forth herein, Teri Chierico shall have no further liability to the Receiver or to the FTC except as may hereafter arise under the November 13, 1996 Stipulated Final Judgment or unless she defaults under this Order.

C. Michael Chierico and Teri Chierico, either directly or indirectly, shall have no further standing in this case to object to (1) the disposition of any assets held by the Receiver or the FTC; (2) the Receiver's administration of the receivership estate; (3) the FTC's plan for the disbursement of funds as the FTC, in its sole discretion shall determine; or (4) any requests for the payment of Receiver expenses from the receivership estate, or (5) any other purpose.

IV. CONTINUATION OF RECEIVERSHIP

IT IS FURTHER ORDERED that:

A. Clinton R. Losego shall continue as permanent Receiver over American Business Supplies, Inc., Interstate Office Systems, Inc., Nationwide Office Products, Inc. (“corporate defendants”), and all assets retained by or transferred to the FTC or the Receiver in Paragraph II above, with full powers of a permanent federal equity receiver, including but not limited to those powers set forth in this Court’s June 23, 1998 ex parte Emergency Order in this case.

B. Notwithstanding all other express and implied Receiver duties, the Receiver shall cause the Receiver’s accountant to expeditiously prepare all outstanding corporate tax returns for the corporate defendants and Chierico Enterprises, Inc. at the Receivership estate’s expense. The Receiver’s accountants shall provide Michael and Teri Chierico with the completed returns and any K-1 forms to which they are entitled by close of business November 27, 2000. The Receiver’s accountant shall consult with Michael and Teri Chierico’s accountant regarding the tax treatment of any loans or advances made by the Receiver for the benefit of either Michael or Teri Chierico or any losses of the corporate defendants. The Receiver’s accountant shall consult with the Receiver regarding any suggested treatment requested by the Chiericos. The Receiver shall exercise his business judgment with respect to any proposed agreement on said treatment. The Receiver’s business judgment shall be in his sole and final discretion.

V. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purpose of enabling the parties to apply to the Court at any time for such further orders as

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