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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CROOKED OAK INVESTMENTS, INC.; D.H.I.  
CORPORATION; HANDICAPPED INDUSTRIES  
MIDWEST, INC.; HANDICAPPED INDUSTRIES  
NORTHWEST, INC.; HANDICAPPED INDUSTRIES  
SOUTHEAST, INC.; LIGHTNING TREE, INC.,  
an Arizona corporation; THE RIGHT PATH,  
INC.; STONE FULFILLMENT & SHIPPING  
COMPANY; corporations, dba HANDICAPPED  
INDUSTRIES; DISADVANTAGED AND  
HANDICAPPED INDUSTRIES, CORP.; JOBS FOR  
THE DISADVANTAGED; WORKSHOP FOR THE  
DISADVANTAGED; RELIABLE HANDICAPPED  
WORKERS; BRUCE HOLLEY, INC.; B.H.  
INDUSTRIES; T.J. BEARD, INC.; and BRUCE  
EDWARD HOLLEY; BENJAMIN WADE HOLLEY;  
ROBERT DALE HOLLEY; CHRISTOPHER JAY  
COTTET; TERRY JEFF BEARD, and JOANN  
PORTER individuals,

Defendants.

CIV.

(Proposed) FINAL  
JUDGMENT AND ORDER FOR  
PERMANENT INJUNCTION

1 Plaintiff Federal Trade Commission ("Commission") has  
2 commenced this action by filing its Complaint for a permanent  
3 injunction and other equitable relief pursuant to Section 13(b) of  
4 the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b),  
5 charging the above-captioned defendants with violations of Section 5  
6 of the FTC Act, 15 U.S.C. § 45, the accompanying Stipulation For  
7 Entry of Final Judgment and Order for Permanent Injunction  
8 ("Stipulation"), and this (Proposed) Final Judgment and Order for  
9 Permanent Injunction ("Order"). Finding good cause therefore,

10 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

11 **FINDINGS**

12 1. This Court has jurisdiction over the subject matter and the  
13 parties.

14 2. Venue in this district is proper under 28 U.S.C. § 1391(b)  
15 and (c), and 15 U.S.C. § 53(b).

16 3. The acts and practices of the defendants were or are in or  
17 affecting commerce, as "commerce" is defined in Section 4 of the FTC  
18 Act, 15 U.S.C. § 44.

19 4. The Complaint states a claim upon which relief may be  
20 granted against the defendants, under Sections 5 and 13(b) of the FTC  
21 Act, as amended, 15 U.S.C. §§ 45 and 53(b).

22 5. The defendants have waived all claims under the Equal  
23 Access to Justice Act, 28 U.S.C. § 2412.

24 6. The defendants waive all rights to appeal or otherwise  
25 challenge or contest the validity of this Order.



1 Lightning Tree, Inc., The Right Path, Inc., and Stone Fulfillment &  
2 Shipping Company, while doing business in their own names or as  
3 Handicapped Industries, Disadvantaged and Handicapped Industries,  
4 Jobs for the Disadvantaged, Workshop for the Disadvantaged, Reliable  
5 Handicapped Workers, Bruce Holley, Inc., B.H. Industries, or T.J.  
6 Beard, Inc.

7 D. "Individual Defendants" mean Bruce Edward Holley, Benjamin  
8 Wade Holley, Robert Dale Holley, Christopher Jay Cottet, Terry Jeff  
9 Beard, and JoAnn Porter; and

10 E. "Defendants" and "HI" mean both the Corporate and  
11 Individual Defendants.

12 F. "Telemarketing" means a plan, program, or campaign that is  
13 conducted to induce the purchase of goods or services by use of one  
14 or more telephones and involves more than one interstate telephone  
15 call made to or from any customer, provided however, that  
16 "telemarketing" does not include telephone calls in which the sale of  
17 goods or services is not completed, and payment or authorization of  
18 payment is not required, until after a face-to-face sales  
19 presentation by the seller.

20 G. "Handicapped" or "Disabled" are synonymous in meaning and  
21 equal in scope to the usage of term "Disability" in the Americans  
22 With Disabilities Act, 42 U.S.C. § 12102.

## 23 II.

### 24 PROHIBITED BUSINESS ACTIVITIES

25 IT IS THEREFORE ORDERED that the Defendants and their agents,  
26 servants, employees, and attorneys, and all persons or entities  
27 directly or indirectly under their control or under common control

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1 HI Northwest, and HI Southeast; signed by Ben W. Holley, undated, for  
2 Lightning Tree, (AZ); initialed by Ben W. Holley, undated, for The  
3 Right Path; initialed by Ben W. Holley on 4/7/00 on behalf of Mamie  
4 Beard as President of Stone Fulfillment; signed by Bruce E. Holley on  
5 4/5/2000 for Bruce Edward Holley; signed by Ben W. Holley on 4/5/2000  
6 for Ben Wade Holley; signed by Robert Dale Holley on 4/6/2000 for  
7 Robert Dale Holley; signed by Chris Cottet, undated, for Chris  
8 Cottet; signed by Terry Beard, undated, for Terry Jeff Beard; and  
9 signed by JoAnn Porter on 4/7/2000 for JoAnn Porter, and related  
10 documents that were submitted to the Federal Trade Commission, listed  
11 on Attachment A. Such financial statements and supporting documents  
12 contain material information upon which the Commission relied in  
13 negotiating and agreeing to the amount or terms of the redress  
14 payment stated in this paragraph. If, upon motion by the Commission,  
15 this Court finds that any Defendant filed a financial statement that  
16 failed to disclose any material asset, or materially misrepresented  
17 the value of any asset, or made any other material misrepresentation  
18 in or omission from the financial statement, the Court shall enter  
19 judgment against such Defendant, in favor of the Commission, in the  
20 amount of four million dollars (\$4,000,000), which is intended to  
21 represent the amount of unjust enrichment obtained by the Defendants,  
22 or the loss to consumers, and which will become immediately due and  
23 payable. For purposes of this paragraph and any subsequent  
24 proceedings to enforce payment, including but not limited to a non-  
25 dischargeability complaint filed in a bankruptcy proceeding, the  
26 Defendants waive any right to contest any of the allegations in the  
27 Commission's Complaint.

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1           A.     The funds paid by Defendants pursuant to this paragraph  
2 shall be deposited into a redress fund, administered by the  
3 Commission, to be used for equitable relief including but not limited  
4 to consumer redress and any attendant expenses for the administration  
5 of any redress fund. The Commission, in its sole discretion, may use  
6 a designated agent to administer consumer redress. If the Commission  
7 determines, in its sole discretion, that redress to purchasers is  
8 wholly or partially impractical, any funds not so used shall be paid  
9 to the United States Treasury in lieu of redress;

10           B.     If an administrator is employed to administer redress, such  
11 administrator may destroy all records relating to this matter six  
12 years after the transfer of any remaining redress funds to the FTC  
13 Treasury account or the closing of the account from which such funds  
14 were disbursed, whichever is earlier, provided that no records shall  
15 be destroyed unless and until a representative of the Commission has  
16 received and approved the administrator's final accounting report.  
17 Records shall be destroyed in accordance with disposal methods and  
18 procedures to be specified by the Commission. The Commission may, in  
19 its sole discretion, require that such records, in whole or in part,  
20 be transferred, in lieu of destruction, to the Commission;

21           C.     Defendants forever disclaim all right, title, and interest  
22 in all sums paid. None of these funds shall be returned to the  
23 Defendants, their successors, heirs, or assigns. No portion of any  
24 payments under the judgment herein shall be deemed a payment of any  
25 fine, penalty, or punitive assessment;

26           D.     Unless previously provided to the FTC, Defendants are  
27 hereby required, in accordance with 31 U.S.C. § 7701, to furnish to  
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1 the FTC their respective taxpayer identifying numbers (social  
2 security numbers or employer identification numbers), which shall be  
3 used for purposes of collecting and reporting on any delinquent  
4 amount arising out of such persons' relationship with the government;  
5 and

6 E. Proceedings instituted under this paragraph are in addition  
7 to, and not in lieu of, any other civil or criminal remedies that may  
8 be provided by law, including any other proceedings the Commission  
9 may initiate to enforce this Order.

10 **IV.**

11 **CUSTOMER LISTS**

12 **IT IS FURTHER ORDERED** that Defendants, and each of their  
13 successors, assigns, officers, agents, servants, employees,  
14 subsidiaries and affiliates, and those persons in active concert or  
15 participation with them who receive actual notice of this Order by  
16 personal service or otherwise, are permanently restrained and  
17 enjoined from selling, renting, leasing, transferring, or otherwise  
18 disclosing the name, address, telephone number, credit card number,  
19 bank account number, e-mail address, or other identifying information  
20 of any person who paid any money to any Defendant, at any time prior  
21 to entry of this Order, in connection with the advertising,  
22 promotion, offering for sale or sale of any product or service;  
23 provided, however, that Defendants may disclose such identifying  
24 information to a law enforcement agency, or as required by any law,  
25 regulation, or court order.

26 **V.**

27 **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

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1 VII.

2 MONITORING COMPLIANCE OF SALES PERSONNEL

3 IT IS FURTHER ORDERED that Defendants, in connection with any  
4 business where:

5 (1) any Defendant is the majority owner of the business or  
6 directly or indirectly manages or controls the business, and where

7 (2) the business engages in the sale or distribution of any  
8 product or service or assists others engaged in these activities, are  
9 hereby permanently restrained and enjoined from:

10 A. Failing to take reasonable steps sufficient to monitor and  
11 ensure that all employees and independent contractors engaged in  
12 sales or other customer service functions comply with Paragraph II of  
13 this Order. Such steps shall include adequate monitoring of sales  
14 presentations or other calls with customers, and shall also include,  
15 at a minimum, the following: (1) listening to the oral  
16 representations made by persons engaged in sales or other customer  
17 service functions, as necessary; (2) establishing a procedure for  
18 receiving and responding to customer complaints; and (3) ascertaining  
19 the number and nature of customer complaints regarding transactions  
20 in which each employee or independent contractor is involved;  
21 provided that this sub-paragraph does not authorize or require  
22 Defendants to take any steps that violate any federal, state, or  
23 local laws;

24 B. Failing promptly to investigate fully any customer  
25 complaint received by any business to which this paragraph applies;  
26 and

27 C. Failing to take corrective action with respect to any sales  
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1 person whom any Defendant determines is not complying with this  
2 Order.

3 **VIII.**

4 **RECORD KEEPING**

5 **IT IS FURTHER ORDERED** that, for a period of three years from the  
6 date of entry of this Order, in connection with any business where  
7 any Defendant is the majority owner of the business or directly or  
8 indirectly manages or controls the business, and where the business  
9 is engaged in the sale, distribution, or marketing of any product or  
10 service, the Defendants are hereby restrained and enjoined from  
11 failing to create, and from failing to retain for a period of three  
12 years following the date of such creation, unless otherwise  
13 specified:

14 A. Books, records and accounts that, in reasonable detail,  
15 accurately and fairly reflect the cost of goods or services sold,  
16 revenues generated, and the disbursement of such revenues;

17 B. Records accurately reflecting: the name, address, and  
18 telephone number of each person employed in any capacity by such  
19 business, including as an independent contractor; that person's job  
20 title or position; the date upon which the person commenced work; and  
21 the date and reason for the person's termination, if applicable. The  
22 businesses subject to this paragraph shall retain such records for  
23 any terminated employee for a period of two years following the date  
24 of termination;

25 C. Records containing the names, addresses, phone numbers,  
26 dollar amounts paid, quantity of items or services purchased, and  
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1 description of items or services purchased, for all customers to whom  
2 such business has sold, invoiced or shipped any goods or services;

3 D. Records that reflect, for every consumer complaint or  
4 refund request, whether received directly or indirectly or through  
5 any third party:

6 1. the consumer's name, address, telephone number and the  
7 dollar amount paid by the consumer;

8 2. the written complaint or refund request, if any, and  
9 the date of the complaint or refund request;

10 3. the basis of the complaint, including the name of any  
11 salesperson complained against, and the nature and result  
12 of any investigation conducted concerning any complaint;

13 4. each response and the date of the response;

14 5. any final resolution and the date of the resolution;  
15 and

16 6. in the event of a denial of a refund request, the  
17 reason for the denial; and

18 E. Copies of all sales scripts, training materials,  
19 advertisements, or other marketing materials utilized; provided that  
20 copies of all sales scripts, training materials, advertisements, or  
21 other marketing materials utilized shall be retained for three years  
22 after the last date of dissemination of any such materials,

23 **IX.**

24 **COMPLIANCE REPORTING BY DEFENDANTS**

25 **IT IS FURTHER ORDERED** that, in order that compliance with the  
26 provisions of this Order may be monitored:

27

28

1           A.    For a period of five years from the date of entry of this  
2 Order, Defendants shall notify the Commission of the following:

3           1.    Any changes in the residence, mailing addresses, and  
4 telephone numbers of any individual Defendant, within ten  
5 days of the date of such change;

6           2.    Any changes in the employment status (including  
7 self-employment) of any individual Defendant, within ten  
8 days of such change. Such notice shall include the name  
9 and address of each business that such Defendant is  
10 affiliated with or employed by, a statement of the nature  
11 of the business, and a statement of the Individual  
12 Defendant's duties and responsibilities in connection with  
13 the business or employment;

14           3.    Any proposed change in the structure of any Corporate  
15 Defendant, or of any business entity that any Individual  
16 Defendant directly or indirectly manages, controls or has a  
17 majority ownership interest in, such as creation,  
18 incorporation, dissolution (including the dissolution of  
19 any subsidiaries), assignment, proposed filing of a  
20 bankruptcy petition, or sale or merger resulting in the  
21 emergence of a successor corporation, or any other change  
22 in that entity, including a change in the corporate name or  
23 address, that may affect any compliance obligations arising  
24 out of this Order, at least thirty days prior to the  
25 effective date of any such change; provided, however, that,  
26 with respect to any proposed change in any Corporate  
27 Defendant, or any business entity that any Individual

1 Defendant directly or indirectly manages, controls or has a  
2 majority ownership interest in, about which the Defendant  
3 learns less than thirty days prior to the date such action  
4 is to take place, the Defendant shall notify the Commission  
5 as soon as is practicable after learning of such proposed  
6 change;

7 B. One hundred eighty days after the date of entry of this  
8 Order, Defendants shall provide a written report to the FTC, sworn to  
9 under penalty of perjury, setting forth in detail the manner and form  
10 in which Defendants have complied and are complying with this Order.

11 This report shall include but not be limited to:

12 1. Each Individual Defendant's then current residence  
13 address and telephone numbers;

14 2. Each Individual Defendant's then current employment,  
15 business address and telephone numbers, a description of  
16 the business activities of each such employer or business,  
17 and the Individual Defendants' title and responsibilities  
18 for each such employer or business;

19 3. A copy of each acknowledgment of receipt of this Order  
20 obtained by Defendant pursuant to Paragraph VI; and

21 4. A statement describing the manner in which Defendants  
22 have complied and are complying with Paragraphs II-III of  
23 this Order; and

24 C. Upon written request by a representative of the Commission,  
25 Defendants shall submit additional written reports (under oath, if  
26 requested) and produce documents on fifteen days' notice with respect  
27 to any conduct that is subject to this Order;

1 D. For the purposes of this Order, Defendants shall, unless  
2 otherwise directed by the Commission's authorized representatives,  
3 mail all written notifications to the Commission to:

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5 Regional Director  
6 Western Region  
7 Federal Trade Commission  
8 901 Market Street, Room 570  
9 San Francisco, CA 94103  
10 Re: FTC v. Handicapped Industries

11 E. For the purposes of this paragraph, "employment" includes  
12 the performance of services as an employee, consultant, or  
13 independent contractor; and "employers" include any individual or  
14 entity for whom any Individual Defendant performs services as an  
15 employee, consultant, or independent contractor; and

16 F. For purposes of the compliance reporting required by this  
17 paragraph, the Commission is authorized to communicate directly with  
18 Defendants.  
19

20 **X.**

21 **COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

22 **IT IS FURTHER ORDERED** that the Commission is authorized to  
23 monitor the Defendants' compliance with this Order by all lawful  
24 means, including but not limited to the following means:

25 A. The Commission is authorized, without further leave of  
26 Court, to obtain discovery from any person in the manner provided by  
27 Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26  
28 - 37, including the use of compulsory process pursuant to Fed. R.

1 Civ. P. 45, for the purpose of monitoring and investigating the  
2 Defendants' compliance with any provision of this Order;

3 B. The Commission is authorized to use representatives posing  
4 as consumers and suppliers to the employees of any Defendant, or any  
5 other entity managed or controlled in whole or in part by any  
6 Defendant without the necessity of identification or prior notice;

7 C. Nothing in this Order shall limit the Commission's lawful  
8 use of compulsory process, pursuant to Sections 9 and 20 of the FTC  
9 Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether any Defendant has  
10 violated any provision of this Order or Section 5 of the FTC Act, 15  
11 U.S.C. § 45;

12 D. During the period in which the Defendants are required to  
13 maintain records pursuant to this Order, they shall permit  
14 representatives of the Commission, within three days of receipt of a  
15 written notice from the Commission:

16 1. Access during normal business hours to any office, or  
17 facility storing documents, of any business where any  
18 Defendant is the majority owner, or any business that  
19 either directly or indirectly manages or controls that  
20 engages in the sale, distribution, or marketing any product  
21 or service. In providing such access, the Defendants shall  
22 permit representatives of the Commission to inspect and  
23 copy all documents relevant to any matter contained in this  
24 Order, and shall permit Commission representatives to  
25 remove documents relevant to any matter contained in this  
26 Order for a period not to exceed five business days so that

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1 the documents may be inspected, inventoried, and copied;  
2 and

3 2. to interview the officers, directors, and employees,  
4 including all personnel involved in responding to consumer  
5 complaints or inquiries, and all sales personnel, whether  
6 designated as employees, consultants, independent  
7 contractors or otherwise, of any business engaged in the  
8 sale, distribution, or marketing of any product or service,  
9 concerning matters relating to compliance with the terms of  
10 this Order, subject to the reasonable convenience of the  
11 Defendants and their counsel and the person to be  
12 interviewed, and without restraint or interference from the  
13 Defendants, at a location reasonably convenient to the  
14 person to be interviewed or deposed, the Defendants and  
15 their counsel, and the Commission. The person interviewed  
16 may have counsel present.

17 *Provided* that, upon application of the Commission and a  
18 showing that it is in the interest of justice, the Court may  
19 issue an *ex parte* order, without prior notice to the Defendants  
20 granting immediate access to the business premises of any  
21 Defendant for the purposes of inspecting and copying all  
22 documents relevant to any matter contained in this Order.

23 **XI.**

24 **COSTS AND ATTORNEYS FEES**

25 **IT IS FURTHER ORDERED** that each party shall bear its own costs  
26 and attorneys fees incurred in connection with this action.

27 **XII.**



ATTACHMENT A

- 1
- 2 A. For Chris Cottet: U.S. and Arizona Individual Tax returns for
- 3 1997 and 1998.
- 4 B. For JoAnn Porter: U.S and Arizona Individual Tax returns for
- 5 1997, 1998, and 1999.
- 6 C. For The Right Path: U.S. Corporate tax Return for 1997; Arizona
- 7 Corporate Tax returns for 1997 and 1998.
- 8 D. Lightning Tree, Inc.: U.S and Arizona corporate tax returns for
- 9 1998 and 1999.
- 10 E. Documents attached to and information stated in the April 6,
- 11 2000, letter from Robert Mothershead to Raymond E. McKown;
- 12 F. Documents attached to and information stated in the February 4,
- 13 2000, letter from Robert Mothershead to Raymond E. McKown;
- 14 G. Documents attached to and information stated in the October 14,
- 15 1999, letter from Robert Mothershead to Jerome M. Steiner.
- 16 H. Bankruptcy schedule for defendant Terry Jeff Beard filed March
- 17 16, 1999.
- 18 I. Bankruptcy schedule for defendant Bruce Edward Holley filed
- 19 December 9, 1998.
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ATTACHMENT B

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CROOKED OAK INVESTMENTS, INC.,  
et al.

Defendants.

CIVIL NO.

AFFIDAVIT OF DEFENDANT  
(NAME) \_\_\_\_\_

RE RECEIPT OF ORDER

\_\_\_\_\_, being duly sworn, hereby states and affirms as follows:

1. My name is \_\_\_\_\_. My current residence address is \_\_\_\_\_ I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a Defendant in Federal Trade Commission v. Crooked Oak Investments, Inc., (United States District Court for the Central District of California).

3. On \_\_\_\_\_, I received a copy of the Stipulated Judgment and Order for Permanent Injunction, which was signed by the Honorable \_\_\_\_\_, and entered by the Court on \_\_\_\_\_, 2000. A true and correct copy of the Order I received is appended to this Affidavit.

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

\_\_\_\_\_  
[Full name of defendant]

Executed on \_\_\_\_\_, at \_\_\_\_\_ [city and state].

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
\_\_\_\_\_