

FILED

FEB 28 1997

U. S. DISTRICT COURT
E. DIST. OF MO.
ST. LOUIS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

_____)
FEDERAL TRADE COMMISSION,)
)
	Plaintiff,)
)
	v.)
)
RICHARD C. NEISWONGER)
individually and d/b/a)
"MARKETING SYSTEMS,"	<i>et al.</i> ,)
)
	Defendants.)
_____)

Case No. 4:96CV02225 SNL
Judge Limbaugh

**STIPULATED FINAL JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff Federal Trade Commission ("Commission") has filed a complaint seeking preliminary and permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging defendants with deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

FINDINGS

By the stipulation of the parties, the Court finds as follows:

1. This Court has jurisdiction over the subject matter of this case and all parties hereto.
2. The Commission alleges that defendants Richard C. Neiswonger, S&K Group, Inc., Carl F. Kossmeyer, Medical Recovery Service, Inc., Nancy Freeman and Marc Freeman have violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by committing unfair or deceptive acts and practices in connection with the advertising, marketing and sale of programs as defined herein.
3. The defendants deny the Commission's allegations of violations of Section 5(a) of the FTC Act and consent to entry of this final consent order in the interest of settling this litigation. The Court makes no findings of liability regarding said defendants for violations of the FTC Act. Neither entry into this stipulated judgment nor performance according to its terms, including any payment made thereunder, shall be deemed an admission of liability by the defendants, the same being explicitly denied.
4. This action and the relief ordered herein are in addition to, and not in lieu of, other remedies as may be provided by law to any party or parties other than the FTC, including both civil and criminal remedies.
5. The parties agree that this Order shall be construed as solely remedial in nature, and shall not be construed as the payment of a fine, penalty, punitive assessment or forfeiture.
6. The parties agree that this stipulation shall be submitted to the Court once fully executed, and shall be binding upon approval by this Court.
- ~~7. Defendants waive all rights to seek judicial review of, or otherwise challenge or contest the validity of, this Order.~~
8. Entry of this Order is in the public interest.

DEFINITIONS

1. "Defendants" means Richard C. Neiswonger, S&K Group, Inc., Carl F. Kossmeyer, Medical Recovery Service, Inc., Nancy Freeman and Marc Freeman, and each of them, and their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division or other device.
2. "Assets" means all real and personal property of any defendant, or held for the benefit of any defendant, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks" or "notes" (as these terms are defined in the Uniform Commercial Code) and all cash, wherever located.
3. "Program" means any training session, course of instruction, class material, computer software, affiliation, association, newsletter, period of support, joint venture opportunity or combination thereof advertised, marketed, offered or sold by any of the defendants.
4. "Affiliate" means one who has purchased, purchases or received or receives any MRS program.
5. "Associate" means one who has purchased, purchases or received or receives any S&K program.

I.

BUSINESS PRACTICES PROHIBITED

IT IS STIPULATED AND ORDERED that defendants and their successors and assigns, agents, representatives, servants, employees, salespersons, independent contractors, attorneys, and all other persons or entities directly or indirectly under their control or under common control with

them and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, in connection with advertising, promoting, marketing, offering for sale, selling or otherwise inducing participation in any program, are permanently restrained and enjoined from misrepresenting, directly or by implication, any material fact, including, but not limited to, any representation:

A. that consumers will earn a six-figure income, \$150,000 income, doctor's income or surgeon's income, or words of similar import, from client fees generated using any program.

B. that defendants work with consumers on joint ventures and split large consulting fees on joint ventures with consumers, or words of similar import;

C. that defendant's references have purchased a program or will provide reliable descriptions of the references' experiences with defendant's business ventures, or words of similar import; and/or

D. regarding the relationship between defendant S&K Group, Inc. and defendant Shapiro, Kossmeyer & Flom.

II.

AFFIRMATIVE DISCLOSURE OF MATERIAL FACTS

IT IS FURTHER STIPULATED AND ORDERED that defendants and their successors and assigns, agents, representatives, servants, employees, salespersons, independent contractors, attorneys, and all other persons or entities directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or

through any trust, corporation, subsidiary, division or other device, in connection with advertising, promoting, offering for sale, selling or otherwise inducing participation in any program, shall disclose to all purchasers in advance of any purchase all material facts, including, but not limited to:

- A. the amount of remuneration or any other benefit received by each reference whose name is provided to the prospective purchaser;
- B. the fact, if true and if any representation is made regarding joint venture opportunities, that no joint ventures have been consummated as part of the program.

III.

DEFENDANTS TO MAINTAIN SUBSTANTIATION

IT IS FURTHER STIPULATED AND ORDERED that for three (3) years after the last date of dissemination of any representation covered by this Order, defendants or their successors and assigns shall maintain and upon request make available to the Commission for inspection and copying:

- A. all materials that were relied upon in disseminating such representation; and
- B. all tests, reports, studies, surveys, demonstrations or other evidence in defendants' possession or control that contradict, qualify or call into question such representation—including complaints from consumers, or that forms the basis relied upon for such representation.

IV.

CONSUMER REDRESS

IT IS FURTHER STIPULATED AND ORDERED that defendants shall make the following redress payments to the Federal Trade Commission in the form of certified checks or

cashier's checks made payable to the Federal Trade Commission and delivered to Virginia A. Davidson, Staff Attorney, Federal Trade Commission, 668 Euclid Avenue, Suite 520-A, Cleveland, Ohio 44114, or such other address as the Commission may provide, as follows:

A. Defendant Richard C. Neiswonger shall pay Four Hundred and Twenty-Five Thousand Dollars (\$425,000) within thirty (30) days of entry of this Order.

B. Defendants S&K Group, Inc. and Carl F. Kossmeyer collectively shall pay Two Hundred and Sixty-Five Thousand Dollars (\$265,000), as follows: (1) \$50,000 in the form of an initial payment to be made within thirty (30) days of entry of this order; and (2) \$215,000 in the form of twelve (12) equal payments to be made on the last business day of each month thereafter until paid in full.

C. Defendants Medical Recovery Service, Inc., Nancy Freeman and Marc Freeman shall collectively pay Three Hundred Thousand Dollars (\$300,000), as follows: (1) \$180,000 in the form of an initial payment to be made within thirty (30) days of entry of this order; and (2) \$120,000 in the form of twelve (12) equal payments to be made on the last business day of each month thereafter until paid in full.

D. As security for the payment of the amounts set forth above, Defendants S&K Group, Inc., Carl F. Kossmeyer, Medical Recovery Service, Inc., Nancy Freeman and Marc Freeman have provided to the Commission the security interests set forth in the agreements attached hereto as Appendix A and incorporated herein as if fully set forth verbatim. Said defendants represent and acknowledge that the Commission is relying on this material representation, that the property each defendant has pledged as security is encumbered only as set forth in Appendix A. Each defendant agrees that, as of the date such defendant signs this document, (s)he or it shall not further encumber

the security except with the express prior written permission of Commission staff. Should the Commission reject the Stipulated Judgment, this provision shall be of no further force or effect.

E. In the event of default on any obligation to make payment under this section — which default continues for ten (10) days beyond the due date of payment — the entire unpaid amount, together with interest computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment, and shall become immediately due and payable. Funds collected by the FTC under this section shall be used to provide redress to consumers and to pay any expenses attendant to the administration of such redress. If the Commission, in its sole discretion, determines that redress to purchasers is wholly or partially impracticable, any such funds not so used shall be paid to the United States Treasury. Defendants shall have no right to contest the manner of distribution chosen by the Commission.

V.

PERFORMANCE BOND

IT IS FURTHER STIPULATED AND ORDERED that Defendants Richard C. Neiswonger, Nancy Freeman and Marc Freeman are hereby permanently restrained and enjoined from engaging, whether directly, in concert with others, or through any business entity, in the advertising, marketing, offering for sale or sale of any program unless such defendant first obtains a performance bond in the principal sum of \$100,000. The terms and conditions of this bond requirement shall be as follows:

A. the bond is conditioned upon compliance by such defendant with Section 5(a) of the FTC Act, 15 U.S.C. § 45, and with the provisions of this Order;

B. the bond shall remain in full force and effect as long as the defendant continues to engage in the sale of any program, and for at least three (3) years thereafter;

C. the bond shall be an insurance agreement providing surety for financial loss that is issued by a surety company (1) admitted to do business in the state in which the defendant obtaining the bond has its principal place of business and (2) that holds a Federal Certificate of Authority As Acceptable Surety On Federal Bond and Reinsuring;

D. the bond shall be in favor of the Federal Trade Commission for the benefit of any party injured as a result of any deceptive misrepresentation or violation of this Order;

E. any defendant engaging in activity requiring the obtaining of a bond shall provide written notice and proof of such bond to the Federal Trade Commission at least ten (10) days before the commencement of the activity for which the bond is required; and

F. each defendant shall obtain any other bond required by federal, state or local law, or the order of another court, in addition to the bond required by this Order.

VI.

FINANCIAL STATEMENTS AND RIGHT TO REOPEN

IT IS FURTHER STIPULATED AND ORDERED that the Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy and completeness of defendants' signed and sworn financial statements provided to the Commission. Those financial statements contain material information upon which the Commission relied in negotiating and agreeing to this Order. If, upon motion by the Commission, the Court finds that defendants failed to disclose any material asset, or materially misrepresented the value of any asset in said financial statements, or made any other material misrepresentation or omission as to their financial status, this Order may be

reopened to allow the Commission to seek modification to defendants' equitable monetary liability; *provided, however*, that all other respects of this Order shall remain in full force and effect, and defendants shall have no right to contest any allegations in the Commission's Complaint in any proceedings brought pursuant to this paragraph; *and provided further* that proceedings instituted under this paragraph are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

VII.

**ADDITIONAL STIPULATION
AS TO DEFENDANT RICHARD C. NEISWONGER**

IT IS FURTHER STIPULATED AND ORDERED that if, upon motion by the Commission, the Court finds that defendant Richard C. Neiswonger has violated any of the prohibitions contained in Section I of this Order then, in addition to any other sanctions the Court may deem appropriate, defendant Neiswonger shall be permanently banned from the advertising, promotion, offering for sale or sale of any program.

VIII.

MAINTAIN BUSINESS RECORDS

IT IS FURTHER STIPULATED AND ORDERED that defendants and their successors and assigns, in connection with advertising, promoting, offering for sale, selling, or otherwise inducing participation in any program, shall for a period of three years from the date of the entry of this Order for Permanent Injunction and Final Judgment:

A. maintain and make available to representatives of the Commission, upon reasonable notice, all records relating to copies of all contracts or agreements between them or persons or entities directly or indirectly under their control or under common control with them and any consumer, information provider, telephone company and/or telephone service common carrier, and/or any media through which defendants advertise or promote their goods and services, as well as copies of all advertisements, promotional materials, telemarketing scripts, and audio and visual tapes utilized in the advertisement, promotion, or provision of any goods or services; and

B. maintain and make available to representatives of the Commission, upon reasonable notice, records that, for every consumer complaint or refund request made to such defendant and all persons or entities directly or indirectly under his, her or its control, reflect: the consumer's name, address, telephone number; amounts paid by the consumer; the date of the complaint or refund request; the amount refunded to the consumer, if any, and in the event of a denial by them of a refund request, the reason for such denial.

IX.

ACCESS TO DOCUMENTS AND INFORMATION RELATING TO DEFENDANTS' BUSINESS

IT IS FURTHER STIPULATED AND ORDERED that for a period of three years from the date of the entry of this Order for Permanent Injunction and Final Judgement representatives of the Federal Trade Commission shall be permitted:

A. to interview defendants, their agents, representatives, servants, employees, salespersons, independent contractors or those of any corporations, trusts, or persons or other

entities managed or controlled in whole or in part by them without restraint or interference, relating to compliance with the terms of this Order; and

B. to contact the employees and/or telephone numbers used in advertisements and promotions of defendants, and their successors and assigns, agents, representatives, servants, employees, salespersons, independent contractors or those of any corporations, trusts, or persons or other entities managed or controlled in whole or in part by them or any of them, without the necessity of identification or prior notice to determine whether any defendant is in compliance with the terms of this Order.

X.

REPORT PLACEMENT OF ADVERTISEMENTS

IT IS FURTHER STIPULATED AND ORDERED that for the purposes of determining or securing compliance with this Order for Permanent Injunction and Final Judgment, defendants and their successors and assigns, shall, within sixty days of a written request from the Federal Trade Commission, file with the Federal Trade Commission, a statement containing the names of the media in or on which they, their agents, representatives, servants, employees, salespersons, independent contractors or those of any corporations, trusts, or persons or other entities managed or controlled in whole or in part by them have placed advertisements, the months during which those advertisements were published or broadcast, the telephone numbers utilized in furtherance of the sale of goods and services, and the local carriers and/or telephone service common carriers utilized in furtherance of any telemarketing activities. This reporting requirement shall extend for three years from the date of the entry of this Order. Any reports requested shall be sent by certified mail to: Virginia A. Davidson, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Avenue,

Suite 520-A, Cleveland, Ohio 44114, or such other address as the Federal Trade Commission may provide.

XI.

REPORT NEW BUSINESS AFFILIATIONS

IT IS FURTHER STIPULATED AND ORDERED that defendants and their successors and assigns, for a period of three years from entry of this Order, shall promptly give written notice to the Federal Trade Commission, at the address indicated above, of each new affiliation with any program. Such notice shall include the new name and address of the new program, a statement of the nature of the program and a statement of the defendant's duties and responsibilities in connection with the program.

XII.

**SERVICE OF THIS ORDER
ON OFFICERS, EMPLOYEES, *ET AL.***

IT IS FURTHER STIPULATED AND ORDERED that defendants and their successors and assigns, in connection with advertising, promoting, offering for sale, selling, or otherwise inducing participation in any program, shall for a period of three years from the date of the entry of this Order for Permanent Injunction and Final Judgement:

A. provide a copy of this Order to each of their officers, directors, agents, attorneys, representatives, servants, employees, salespersons, and telemarketers; and

B. maintain and, upon reasonable notice, make available to representatives of the Commission a list identifying the names, addresses, and telephone numbers of the persons and entities served with a copy of this Order.

XIII.

RETENTION OF JURISDICTION

IT IS FURTHER STIPULATED AND ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

XIV.

COSTS AND ATTORNEY'S FEES

IT IS FURTHER STIPULATED AND ORDERED that:

A. each party shall bear its own costs and attorney's fees; provided, however, in the event the Federal Trade Commission or the United States initiates proceedings to enforce the provisions of this Judgment and Order and provided further the Court determines that a defendant has violated any term or provision of this Judgment and Order, the defendant shall pay the costs and attorney fees incurred by the Federal Trade Commission, the United States or their agents in connection with proceedings to enforce this Judgment and Order; and

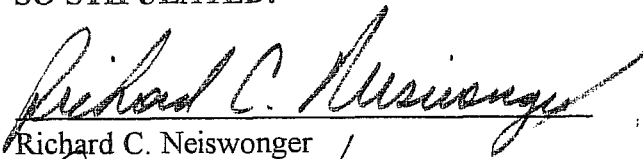
B. notwithstanding any other provision of this Judgment and Order, if any defendant fails to meet the payment obligations set forth herein, the defendant shall pay the costs and attorneys fees incurred by the Federal Trade Commission and its agents in any attempt to collect amounts due pursuant to this Judgment and Order.

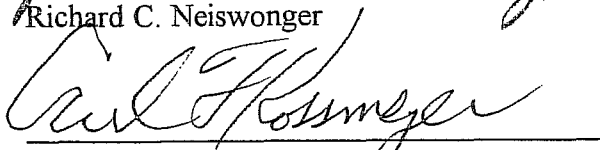
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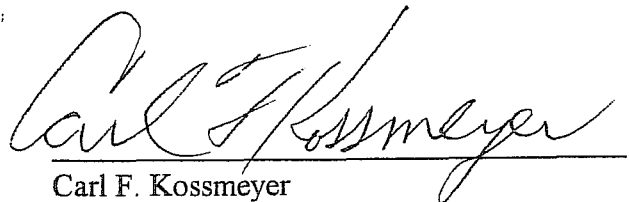
WAIVER OF 28 U.S.C. SECTION 2412


IT IS FURTHER STIPULATED AND ORDERED that, by consenting to entry of this judgment, defendants waive any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order. Each settling party shall bear its own costs and attorney's fees.

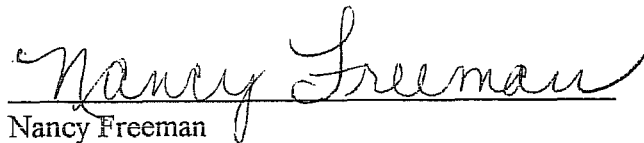
SO STIPULATED:

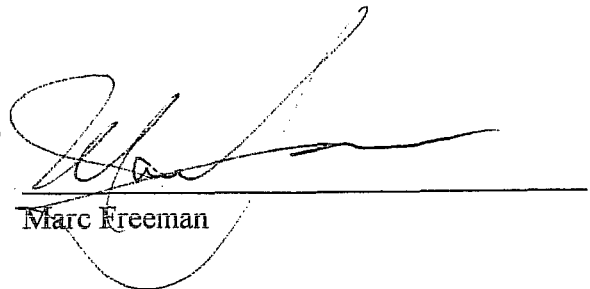

Richard C. Neiswonger



S&K Group, Inc.
By Carl F. Kossmeyer, its president


Carl F. Kossmeyer

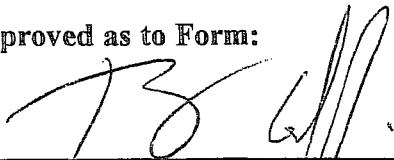

Medical Recovery Service, Inc.
By Nancy Freeman, its president


Nancy Freeman

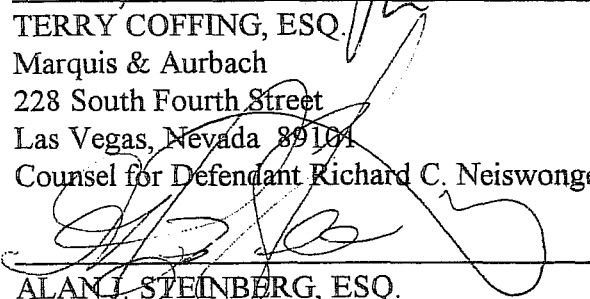

Marc Freeman


Virginia A. Davidson, Esq.
Federal Trade Commission
Cleveland Regional Office
668 Euclid Avenue, Room 520-A
Cleveland, Ohio 44114
Attorney for Plaintiff

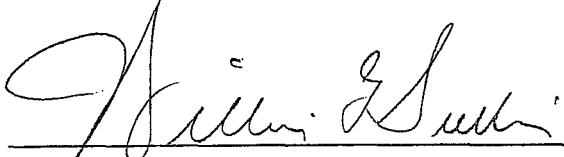
Approved as to Form:




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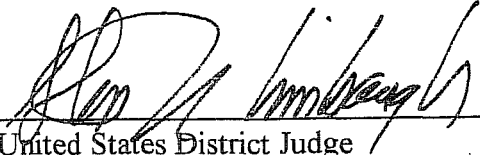
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Counsel for Defendants Nancy Freeman and Marc Freeman

IT IS SO ORDERED.

ISSUED ON 2/28, 1997



United States District Judge