

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 00-514-CIV-GOLD/SIMONTON

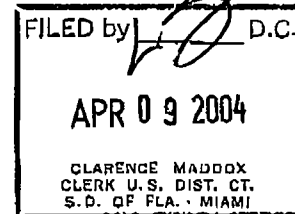
FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMERITEL PAYPHONE DISTRIBUTORS,
INC., a Florida corporation and ROY B.
GOODMAN, individually and as an officer
of the corporation,

Defendant(s).



ORDER IMPOSING FINAL CIVIL CONTEMPT REMEDIES

This Cause is before the Court upon Plaintiff Federal Trade Commission's ("FTC" or "the Commission") request for a judgment against Respondents, jointly and severally, in the amount of \$6,412,035.13. (FTC's Reply to the Receiver's Report, DE #121, filed December 19, 2003). The Individual Respondents filed a Response (DE #134) on March 2, 2004). The Court held a hearing on the FTC's motion on March 5, 2004. Upon review of the parties' arguments, the record, applicable statutes, and case law, the FTC's motion is GRANTED, and Respondents are jointly and severally liable in the amount of \$6,412,035.13.

Background

The Court issued an Order (DE #104, filed October 15, 2003) holding Defendants Ameritel and Goodman, along with Public Telephone Corporation, Lenora Kaus, Nathan Matalon, Kimberly Matalon, American Payphone Distributors, LLC, and Jakina Consulting Corporation (collectively "Respondents") in contempt for violating a Stipulated Judgment

and Order for Permanent Injunction ("Permanent Injunction"), which was filed on February 1, 2001 (DE #62). The findings of fact in the Civil Contempt Order are incorporated herein.¹ Respondents violated the Permanent Injunction by making misrepresentations to consumers regarding likely profits of a payphone business venture, renaming themselves Public Telephone Corporation ("PTC") without informing the Federal Trade Commission of the change, and continuing to deceive customers under the new name. The Order appointed David R. Chase as Receiver to, among other things, file a report detailing the amount of income Respondents received or generated. The Order also granted the FTC's request for \$2.7 million in damages. The Receiver's report was to propose the manner in which this amount was to be distributed among defrauded consumers.

The Receiver submitted his Report (DE #120) on December 15, 2003, in which he stated that the gross sales for PTC exceeded \$6.4 million. According to the Report, the available redress at that time totaled \$1,190.31. The Receiver submitted another Report (DE #126, filed February 12, 2004) detailing the transfers from Corporate Respondents to Individual Respondents and seeking compensation for receivership services. Based on the records available to the Receiver at the Corporate Respondents' premises, he determined that these Corporations transferred \$938,872.62 to the Individual Respondents. Due to scrivener's errors in the February 12, 2004 Report, the Receiver

1
Part of this Final Order enters disgorgement and restitution remedies. The Eleventh Circuit calls such contempt remedies "non-injunctive equitable sanctions." *McGregor v. Chierico*, 206 F.3d 1378, 1387 (2000). Other circuits refer to disgorgement as akin to an injunction, *SEC v. Huffman*, 996 F.2d 800, 802 (5th Cir.1993), and might under these circumstances require the Civil Contempt Order findings of fact to be restated in the remedial order because Rule 65(b), Fed. R. Civ. P., requires that every injunction set forth the reasons for its issuance and "not by reference to the complaint or other document."

