

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED
FEB 1 2008
CLERK'S OFFICE
DETROIT

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MAZZONI & SON, INC.,
a Michigan corporation, *et al.*,

Defendants.

CASE NO. 06-15766

Honorable John Feikens
FEB 26 2008
CLERK'S OFFICE
DETROIT

STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION
AS TO ALL DEFENDANTS

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed its Complaint in the United States District Court for the Northern District of Ohio on October 3, 2006, seeking a Permanent Injunction and Other Relief, including redress to consumers, pursuant to Sections 13(b) and 19(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b(a). On October 3, 2006, the Court entered an Ex Parte Temporary Restraining Order With Appointment of Receiver, Asset Freeze and Accounting, and Order to Show Cause Why a Preliminary Injunction Should Not Issue (the "TRO"), wherein the Court appointed Phillip S. Stenger as Temporary Receiver for Defendant Mazzoni & Son, Inc. d/b/a EDI Healthclaims Network ("EDP"). The FTC filed an Amended Complaint on October 10, 2006. On November 6, 2006, the parties entered into a Stipulated Preliminary Injunction ("Preliminary Injunction") wherein, among other things, the Temporary Receiver was appointed as receiver for the other corporate defendants for the limited purpose of establishing an escrow account and monitoring operations of the other Corporate Defendants. The Temporary Receiver continued as receiver for Mazzoni & Son, Inc. with full powers to manage the affairs of that defendant. The matter was transferred to this district on December 14, 2006, pursuant to order of the court for the Northern District of Ohio. Simultaneously with the filing of this order, plaintiff has filed its Second Amended Complaint.

The Commission alleges that Defendants engaged in deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), and the Commission's Rule entitled Disclosure Requirements and Prohibitions Concerning Franchise and Business Opportunity Ventures (the "Franchise Rule"), 16 C.F.R. Part 436, in the marketing and sale of a work-at-home electronic medical billing business opportunity. Defendants have denied all allegations of wrongdoing in the Commission's complaint, have contested the Commission's authority to seek certain requested relief, and have denied any liability in any amount under any theory asserted by the Commission.

On April 13, 2007, Defendant Chester J. Mazzoni, Jr. filed a voluntary petition for relief under the liquidation provisions of Chapter 7 of the Bankruptcy Code, 11 U.S.C. § 101 et seq., in the United States Bankruptcy Court for the Eastern District of Michigan, Case No. 07-47294-pjs. The Commission's action against Defendant Chester J. Mazzoni, Jr., including the enforcement of a judgment other than a monetary judgment obtained in this action, is not stayed by 11 U.S.C. § 362(a)(1), (2), (3) or (6) because it is an exercise of the Commission's police or regulatory power as a governmental unit pursuant to 11 U.S.C. § 362(b)(4) and thus falls within an exception to the automatic stay.

The Commission and undersigned Defendants hereby stipulate to the entry of, and request the Court to enter, this stipulated Final Judgment and Order for Permanent Injunction ("Final Order") to resolve all matters of dispute between them in this action without a trial on the merits, presentation of evidence or further judicial proceedings.

FINDINGS OF FACT

IT IS THEREFORE STIPULATED, AGREED, AND ORDERED as follows:

1. This Court has jurisdiction of the subject matter of this case and jurisdiction over the Defendants.
2. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).
3. The activities of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. The Second Amended Complaint states a claim upon which relief may be granted under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Commission's Franchise Rule.

5. Defendants have entered into this Final Order freely and without coercion. Defendants further acknowledge that they have read the provisions of this Final Order and are prepared to abide by them.

6. The Commission and Defendants agree that the entry of this Final Order resolves all matters of dispute between them arising from the conduct which is the subject of the Second Amended Complaint in this action, up to the date of entry of this Final Order.

7. Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Final Order. Defendants further waive and release any claim they may have against the Commission, its employees, representatives, or agents.

8. Defendants agree that this Final Order does not entitle Defendants to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and Defendants further waive any rights to attorneys' fees that may arise under said provision of law.

9. This Final Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

10. Entry of this Final Order is in the public interest.

11. This Final Order is for settlement purposes only, and does not constitute an admission by Defendants that the law has been violated as alleged in the Second Amended Complaint, or that the facts alleged in the Second Amended Complaint, other than jurisdictional facts, are true.

However, for the purposes of bankruptcy proceedings, this Final Order is governed by Paragraph III.C. and III.D.

DEFINITIONS

1. "Business Venture" means any written or oral business arrangement, however denominated, regardless of whether it is covered by the Franchise Rule or Business Opportunity Rule, which includes the payment of any consideration for:

A. The right or means to offer, sell, or distribute goods or services (regardless of whether identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and

B. More than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.

2. "Franchise Rule or Business Opportunity Rule" means:

A. The FTC Trade Regulation Rule codified at 16 C.F.R. Part 436, until the effective date of the amendments to the FTC Trade Regulation Rule titled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," approved by the Commission on January 22, 2007;

B. After the effective date of the amendments to the FTC Trade Regulation Rule titled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," approved by the Commission on January 22, 2007:

1. The FTC Trade Regulation Rule titled "Disclosure Requirements Concerning Franchising," to be codified at 16 C.F.R. Part 436, or as it may be amended; and

2. The FTC Trade Regulation Rule titled "Disclosure Requirements Concerning Business Opportunities," to be codified at 16 C.F.R. Part 437, or as it may be amended.

3. "Corporate Defendants" means Mazzoni & Son, Inc., d/b/a EDI Healthclaims Network ("EDF") and also d/b/a Concept Trading Company; Breeze Freeze, Inc.; Dolele & Associates, L.L.C.; Four Seasons Beverage & Equipment, Inc.; Metro Plymouth Business Park, L.L.C.; and Mazzoni & Sons, L.L.C.;

4. "Individual Defendants" means Chester J. Mazzoni, Jr. and Leo Douglas Lepo a/k/a Douglas L. Lepo;

5. "Defendants" means: (a) the Corporate Defendants; and (b) the Individual Defendants.

6. "Mazzoni Bankruptcy Case" means the case commenced upon the filing of the voluntary petition by Defendant Chester J. Mazzoni, Jr. on April 13, 2007, for relief under the liquidation

provisions of Chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 101, et seq., in the United States Bankruptcy Court for the Eastern District of Michigan, Case No. 07-47294-pjs.

7. "Receiver" shall mean Phillip S. Stenger.

ORDER

I. PROHIBITION AGAINST VIOLATION OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

IT IS ORDERED that, in connection with the offering for sale or sale of any Business Venture, Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other entity, and their officers, agents, servants, employees, and all persons and entities in active concert or participation with them who receive actual notice of this Final Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

- A. Misrepresenting, directly or by implication, orally or in writing, to any potential purchaser of a Business Venture, any material fact, including, but not limited to:
1. the likelihood that purchasers of a Business Venture will earn a substantial income;
 2. the amount of income purchasers of a Business Venture can expect to receive;
 3. the amount of income that any existing purchaser of a Business Venture has received;
 4. the degree or type of assistance to be provided to potential purchasers of a Business Venture by the offeror;
 5. any risks involved in the purchase of a Business Venture; or
 6. that references have purchased a Business Venture or will provide reliable descriptions of their experience with the Business Venture.

B. Providing substantial assistance to any third party to make any material misrepresentation, including, but not limited to, those misrepresentations prohibited by Paragraph I.A., above.

**II. PROHIBITION AGAINST VIOLATION OF THE FRANCHISE RULE OR
BUSINESS OPPORTUNITY RULE**

IT IS FURTHER ORDERED that Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other entity, and their officers, agents, servants, employees, and all persons and entities in active concert or participation with them who receive actual notice of this Final Order by personal service or otherwise, are hereby restrained and enjoined from violating or assisting others to violate any provisions of the Franchise Rule or Business Opportunity Rule by, including, but not limited to:

A. Failing to provide each prospective purchaser with a complete and accurate disclosure document as prescribed by the Franchise Rule or Business Opportunity Rule;

B. Failing to have a reasonable basis for any earnings claim or financial performance representation at the time such claim or representation is made, as required by the Franchise Rule or Business Opportunity Rule;

C. Failing to provide prospective purchasers with required disclosures for any earnings claim or financial performance representations, as required by the Franchise Rule or Business Opportunity Rule;

D. Failing to disclose, in immediate conjunction with any earnings claim or financial performance representation, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the earnings claim or financial performance representation is available to prospective franchisees, as required by the Franchise Rule or Business Opportunity Rule;

E. Failing to provide material which constitutes a reasonable basis for any earnings claim or financial performance representation to prospective purchasers, the Commission, or its staff upon reasonable demand, as required by the Franchise Rule or Business Opportunity Rule; and

F. Failing to disclose, in immediate conjunction with any generally disseminated (“advertised”) earnings claim or financial performance representation, information required by the Franchise Rule or Business Opportunity Rule, including the number and percentage of prior purchasers known by the franchisor or business opportunity seller to have achieved the same or better results, as required by the Franchise Rule or Business Opportunity Rule.

III. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. The FTC is awarded a monetary judgment in the amount of Seventeen Million Six Hundred Sixty Thousand Dollars (\$17,660,000). *Provided, however*, that this judgment shall be suspended subject to the conditions set forth in this Paragraph and Paragraph IV of this Final Order and upon Defendants’ completion of the following within 10 days of entry of this Final Order:

1. payment of \$50,000 to the Federal Trade Commission by the Corporate Defendants;

2. unless Defendants have done so already, in accordance with 31 U.S.C. § 7701, furnishing to the Commission their taxpayer identification numbers (Social Security Numbers and employer identification numbers) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants’ relationship with the government.

3. as to the Individual Defendants, unless they have done so already, providing the Commission with clear, legible and full-size photocopies of all valid driver’s licenses they possess, which will be used for reporting and compliance purposes.

4. upon entry of this Final Order the Receiver is hereby discharged in all respects as Receiver under the terms of the TRO and the Preliminary Injunction as receiver for corporate defendants Mazzoni & Son Inc., d/b/a Concept Trading Company, Breeze Freeze, Inc., Dolele & Associates, L.L.C., Four Seasons Beverage & Equipment, Inc., and Metro Plymouth Business Park, L.L.C.; however, the Receiver shall carry out his duties as receiver of EDI as directed by the Preliminary Injunction and TRO by ceasing the business operations and winding

down the business of EDI. Other than winding down the business of EDI, the Receiver shall have no further obligations under the TRO or the Preliminary Injunction and is hereby discharged from any liability in connection therein by the Corporate Defendants, the Individual Defendants and the Court. The Individual Defendants shall be responsible for filing tax returns and paying taxes, interest and penalties owing (if any) in connection with the Individual and Corporate Defendants. Upon completion of the winding down of EDI, and the payment of all outstanding fees and expenses of the receivership, the Court shall enter an order discharging the Receiver of all liabilities in connection with his duties as receiver and directing the Receiver to pay all remaining funds in his possession to the Federal Trade Commission.

B. Any and all funds paid pursuant to this Final Order, including this Paragraph III and Paragraph IV, shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress, restitution, and any attendant expenses for the administration of any fund for redress or restitution. In the event that redress or restitution to purchasers is wholly or partially impracticable, or any funds remain after redress or restitution is completed, the Commission may apply any remaining funds to such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited in the United States Treasury as disgorgement. Defendants shall have no right to contest the manner of distribution chosen by the Commission. The Commission in its sole discretion may use a designated agent to administer consumer redress.

C. Defendants agree that the facts as alleged in the Second Amended Complaint filed in this action shall be taken as true in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights pursuant to this Final Order, and further stipulate and agree that the facts alleged in the Second Amended Complaint establish all elements necessary to sustain an action pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A). Defendant Mazzone further stipulates and agrees that the Judgment ordered by this Paragraph is not dischargeable in bankruptcy and agrees to file, within ten (10) days of the date of entry of this Final Order, an agreed judgment in the Mazzone Bankruptcy Case, substantially in the form attached hereto as Appendix A, determining that the Judgment ordered

by this Paragraph, including the conditions set forth in Paragraph IV of this Final Order, will be nondischargeable pursuant to Section 523 of the Bankruptcy Code, 11 U.S.C. § 523.

D. Defendant Mazzoni further stipulates and agrees, pursuant to Section 502 of the Bankruptcy Code, 11 U.S.C. § 502, to the allowance of a general unsecured claim in the Mazzoni Bankruptcy Case in favor of the FTC in the amount of \$17,660,000.00, less the sum of any payments previously made, and that the FTC is entitled to participate in any payments in the Mazzoni Bankruptcy Case paid on account of such allowed general unsecured claim.

IV. RIGHT TO REOPEN

A. The Commission's agreement to this Final Order is expressly premised upon the financial condition of Defendants as represented in the sworn financial statements and supporting documents they provided to the Commission as follows:

Defendant	Date(s)
Breeze Freeze, Inc.	September 25, 2007, with corrections dated October 3, 2007
Four Seasons Beverage & Equipment, Inc.	September 24, 2007, with corrections dated October 3, 2007
Metro Plymouth Business Park	September 25, 2007
Chester J. Mazzoni	September 24, 2007
Leo Douglas. Lepo a/k/a Douglas L. Lepo	September 24, 2007

The Commission's agreement to this Final Order also is expressly premised upon the financial condition of Defendants as represented by the asset depositions of the Individual Defendants taken on October 2 and October 3, 2007. All of the above include material information upon which the Commission relied in negotiating and consenting to this Final Order. By agreeing to this Final Order, the Defendants reaffirm and attest to the truthfulness, accuracy, and completeness of the sworn financial statements and supporting documents and asset depositions described herein above.

