

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

_____)	
FEDERAL TRADE COMMISSION,)	
)	
)	
Plaintiff,)	Case No. 4:96CV02225 SNL
v.)	
)	
RICHARD C. NEISWONGER, <i>et al.</i> ,)	Judge Limbaugh
)	
)	
Defendants.)	
_____)	

~~(Proposed)~~
EX PARTE TEMPORARY RESTRAINING ORDER
WITH ANCILLARY EQUITABLE RELIEF

On February 28, 1997, pursuant to the stipulation of the parties, this Court entered its Final Judgment and Order for Permanent Injunction ("Permanent Injunction") in this case. Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), has moved for an *ex parte* Temporary Restraining Order with Ancillary Equitable Relief and an Order to Show Cause why Defendant Richard C. Neiswonger ("Neiswonger"), William S. Reed ("Reed"), and Asset Protection Group, Inc. ("APG" or "Receivership Defendant") (collectively, "Contempt Defendants"), should not be held in civil contempt for violating that Permanent Injunction.

The Court has considered Plaintiff's Motion for Temporary Restraining Order with Ancillary Equitable Relief, and the declarations, exhibits, and memorandum of law submitted in support thereof, and finds as follows:

1. This Court has jurisdiction over this matter for all purposes, as specifically reserved in Paragraph XIII (“Retention of Jurisdiction”) of the Permanent Injunction.

2. There is good cause to believe that Contempt Defendants have actual notice of the Permanent Injunction and the ability to comply with that order.

3. There also is good cause to believe that Contempt Defendants have violated, and continue to violate, the Permanent Injunction. The evidence submitted with Plaintiff’s *ex parte* Motion for Temporary Restraining Order and its Motion for Order to Show Cause, and the supporting memoranda, shows that Contempt Defendants have engaged in prohibited activity in advertising, marketing, promoting, and selling the APG training and business opportunity program, in violation of Paragraphs I and II of this Court’s Permanent Injunction. There is also good cause to believe that Contempt Defendant Neiswonger has further violated the Permanent Injunction by failing to provide proof of a current \$100,000 performance bond before marketing the APG Program, in violation of Paragraph V of the Permanent Injunction.

4. The FTC has not provided notice to Contempt Defendants of its Motions due to the likelihood that advance notice of this action will lead to the dissipation of assets and the destruction of property or evidence. The FTC’s request for *ex parte* relief is premised on Contempt Defendants’ continuing order violations, their touted expertise in protecting assets from seizure, and their prior records of dishonest conduct relating to the concealment of assets. Based on the foregoing, there is good cause to issue this order on an *ex parte* basis.

5. The Court has considered the FTC’s likelihood of ultimate success and weighed the equities, and finds that a temporary restraining order providing for an asset freeze, the appointment of a temporary Receiver, the preservation of business records, financial disclosures,

expedited discovery, and other equitable relief is in the public interest.

6. FED. R. CIV. P. 65(c) does not require security of the United States or an officer or agency thereof.

DEFINITIONS

For the purposes of this Temporary Restraining Order, the following definitions apply:

A. "APG Program" means the training and business opportunity program marketed and sold by Contempt Defendants, including the training session, course of instruction, class material, and business affiliation provided therein.

B. "Assets" means any legal or equitable interest in, right to, or claim to, any and all real and personal property of Contempt Defendants, or held for the benefit of Contempt Defendants, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, inventory, checks, notes, accounts, credits, receivables, shares of stock, contracts, and all cash and currency, or other assets, or any interest therein, wherever located.

C. "Contempt Defendants" means Richard C. Neiswonger, William S. Reed, and Asset Protection Group, Inc., and each of them, individually and jointly, and their successors and assigns.

D. "Document" shall mean the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise) of any written, typed, printed, transcribed, taped, recorded, computer-stored, or graphic matter of any kind, including but not limited to any books, records, writings, correspondence, handwritten notes, appointment books, day books, diaries, receipts and receipt books, cancelled checks and

check registers, bank statements, accounting data, ledgers, corporate documents, tax returns, contracts, files, invoices, tabulations, phone logs, phone scripts, advertisements, marketing materials, membership records and lists, refund records, drawings, graphs, charts, photographs, audio and video recordings, manuals, guides, outlines, code books, electronically-stored records, computer media, servers, e-mail, print-outs, and any other kinds of data compilations or papers.

E. "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 Contempt Defendants.

F. "Receiver" or "Temporary Receiver" shall mean the temporary receiver appointed in Paragraph V of this Order. The term "temporary receiver" also includes any deputy receivers or agents as may be named by the temporary receiver.

G. "Receivership Defendant" means Asset Protection Group, Inc. and its subsidiaries, affiliates, divisions, successors, and assigns.

I. CONDUCT PROHIBITIONS

IT IS HEREBY ORDERED that Contempt Defendants, their successors and assigns, officers, agents, servants and employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, in connection with advertising, promoting, marketing, offering for sale, selling, or otherwise inducing participation in the APG Program or any other program are hereby temporarily restrained and enjoined from:

A. misrepresenting, directly or by implication, any material fact, including, but not limited to, any representation that consumers will earn a six-figure income, a \$150,000 income, or words of similar import, from participation in any program; and

B. failing to disclose to consumers in advance of any purchase all material facts, including, but not limited to, the amount of remuneration or any other benefit received by each reference whose name is provided to the prospective purchaser.

II.
ADDITIONAL CONDUCT PROHIBITIONS
WITH RESPECT TO DEFENDANT NEISWONGER

Defendant Neiswonger is further temporarily restrained and enjoined from advertising, marketing, offering for sale or selling the APG Program or any other program until he provides proof of a performance bond in the principal sum of \$100,000, made in favor of the Federal Trade Commission for the benefit of any party injured as a result of any violation of the Permanent Injunction.

III.
ASSET FREEZE

IT IS FURTHER ORDERED that Contempt Defendants are hereby temporarily restrained and enjoined from directly or indirectly:

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest in, or otherwise disposing of any assets, wherever located, including outside the United States, that are (1) owned or controlled, directly or indirectly, by any Contempt Defendant, in whole or in part, or held, in whole or in part for the benefit of Contempt Defendants; (2) in the

actual or constructive possession of any Contempt Defendant; or (3) owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with any Contempt Defendant, including but not limited to, any assets held by, for, or under the name of any Contempt Defendant at any bank, savings and loan institution, or Contempt Defendant bank, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind;

B. Opening or causing to be opened any safe deposit boxes titled in the name of any Contempt Defendant, or subject to access by Contempt Defendants;

C. Incurring charges or cash advances on any credit card, debit card, or checking card issued in the name, singly or jointly, of any Contempt Defendant;

D. Obtaining a personal or secured loan;

E. Incurring liens or encumbrances on real property, personal property or other assets in the name, singly or jointly of any Contempt Defendant; and

F. Cashing any checks from consumers for programs or asset protection products or services, or any combination thereof.

The assets affected by this Paragraph shall include (a) all assets of Contempt Defendants as of the time this Order is entered; and (b) those assets obtained after entry of this Order that are derived from any conduct that violates the Permanent Injunction. This Paragraph does not prohibit transfers to the Receiver, as specifically required in Paragraphs VII and XI of this Order.

**IV.
RETENTION OF ASSETS BY FINANCIAL INSTITUTIONS
AND OTHER THIRD PARTIES**

IT IS FURTHER ORDERED that any financial or brokerage institution, escrow agent, title company, commodity trading company, trust, entity, or person that holds, controls or maintains custody of any account or asset owned or controlled by any Contempt Defendant, or has held, controlled or maintained any account or asset of, or on behalf of, any Contempt Defendant at any time since the entry of this Court's Permanent Injunction on February 28, 1997, upon service with a copy of this Order, shall:

A. Hold and retain within its control and prohibit Contempt Defendants from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, gifting, or otherwise disposing of any of the assets, funds, or other property held by or on behalf of any Contempt Defendant in any account maintained in the name of or for the benefit of any Contempt Defendant, in whole or in part, except:

1. as directed by further order of the Court;
2. as directed in writing by the Receiver (regarding assets held in the name or for the benefit of Receivership Defendants); or

B. Deny the Contempt Defendants access to any safe deposit box titled in the name of any Contempt Defendant, individually or jointly, or subject to access by any Contempt Defendant, whether directly or indirectly;

C. Provide counsel for Plaintiff¹ and the Receiver, within three (3) business days

¹ Counsel for Plaintiff means FTC attorneys Joshua S. Millard and Melinda A. Claybaugh, and any other FTC attorneys who appear in this action after the entry of this Order. Counsel for Plaintiff's mailing address for all materials mailed pursuant to this Order is 601 New

after being served with a copy of this Order, a certified statement setting forth:

1. the identification number of each such account or asset titled (1) in the name, individually or jointly, of any Contempt Defendant; (2) held on behalf of, or for the benefit of, any Contempt Defendant; (3) owned or controlled by any Contempt Defendant; or (4) otherwise subject to access by any Contempt Defendant, directly or indirectly;
2. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
3. the identification of any safe deposit box that is either titled in the name of any Contempt Defendant, or is otherwise subject to access by any Contempt Defendant;
4. if an account, safe deposit box, or other asset has been closed or removed, the date closed or removed, the balance on such date, and the manner in which such account or asset was closed or removed.

D. Provide counsel for Plaintiff or the Receiver, within three (3) business days after being served with a request, copies of all documents pertaining to such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit

Jersey Ave., N.W., Suite NJ-2122, Washington, D.C. 20001. Counsel for Plaintiff's fax number is (202) 326-2558.

and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs; *provided that* such institution or custodian may charge a reasonable fee not to exceed ten cents per page copied.

E. Cooperate with all reasonable requests of the Receiver relating to this Order's implementation.

V.

APPOINTMENT OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Robb Evans is appointed temporary Receiver for Receivership Defendant Asset Protection Group, Inc., and any affiliates or subsidiaries thereof that the Receivership Defendant controls, with the full power of an equity Receiver. The Receiver shall be the agent of this Court and solely the agent of this Court in acting as Receiver under this Order. The Receiver shall be accountable directly to this Court. The Receiver shall comply with all local rules and laws governing federal equity receivers.

VI.

DUTIES AND AUTHORITY OF RECEIVER

IT IS FURTHER ORDERED that the Receiver is directed and authorized to accomplish the following:

A. Assume full control of the Receivership Defendant by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee, attorney, or agent of the Receivership Defendant, including any Contempt Defendant(s), from control of, management of, or participation in, the affairs of the Receivership Defendant.

B. Take exclusive custody, control and possession of all assets and documents of, or in the possession, custody, or under the control of, the Receivership Defendant, wherever

situated. The Receiver shall have full power to divert mail and to sue for, collect, receive, take in possession, hold, and manage all assets and documents of the Receivership Defendant and other persons or entities whose interests are now held by or under the direction, possession, custody, or control of the Receivership Defendant.

C. Take all steps necessary to secure the business premises of the Receivership Defendant, which may include, but are not limited to, taking the following steps as the Receiver deems necessary or advisable: (1) serving and filing this Order; (2) completing a written inventory of all receivership assets; (3) obtaining pertinent information from all employees and other agents of the Receivership Defendant, including, but not limited to, the name, home address, social security number, job description, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent; (4) video-recording all portions of the location; (5) changing the locks and disconnecting any computer modems or other means of access to the computer or other documents maintained at that location; or (6) requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the Receiver with proof of identification, and/or to demonstrate to the satisfaction of the Receiver that such persons are not removing from the premises documents or assets of the Receivership Defendant. Such authority shall include, but not be limited to, the authority to order any owner, director, or officer of any Receivership Defendant to remove him or herself from the business premises.

D. Conserve, hold, and manage all receivership assets, and perform all acts necessary or advisable to preserve the value of those assets, in order to prevent any irreparable loss, damage, or injury to consumers, including, but not limited to, obtaining an accounting of the

assets and preventing transfer, withdrawal, or misapplication of assets.

E. Enter into contracts and purchase insurance as advisable or necessary.

F. Prevent the inequitable distribution of assets and to determine, adjust, and protect the interests of consumers and creditors who have transacted business with the Receivership Defendant.

G. Manage and administer the business of the Receivership Defendant until further order of this Court by performing all incidental acts that the Receiver deems to be advisable or necessary, which includes retaining, hiring, or dismissing any employees, independent contractors, or agents.

H. Choose, engage, and employ attorneys, accountants, appraisers, investigators, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order.

I. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Defendant prior to the date of entry of this Order, except payments that the Receiver deems necessary or advisable to secure assets of the Receivership Defendant, such as rental payments.

J. Collect any money due or owing to the Receivership Defendant.

K. Institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts that the Receiver deems necessary and

advisable to preserve or recover the assets of the Receivership Defendant or to carry out the Receiver's mandate under this Order.

L. Defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted against the Receivership Defendant or the Receiver, that the Receiver deems necessary and advisable to preserve the assets of the Receivership Defendant or to carry out the Receiver's mandate under this Order.

M. Continue and conduct the businesses of the Receivership Defendant in such manner, to such extent, and for such duration as the Receiver may in good faith deem to be necessary or appropriate to operate the businesses profitably, using the assets of the receivership estate, and lawfully, if at all.

N. Take depositions and issue subpoenas to obtain documents and records pertaining to the receivership and compliance with this Order and the Permanent Injunction. Subpoenas may be served by agents or attorneys of the Receiver and by agents of any process server retained by the Receiver.

O. Open one or more bank accounts as designated depositories for funds of the Receivership Defendant. The Receiver shall deposit all funds of the Receivership Defendant in such a designated account and shall make all payments and disbursements from the receivership estate from such an account.

P. Maintain accurate records of all receipts and expenditures made by the Receiver.

**VII.
DELIVERY OF RECEIVERSHIP PROPERTY**

IT IS FURTHER ORDERED that immediately upon service of this Order upon them,

