

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**FEDERAL TRADE COMMISSION,** )  
 )  
 **Plaintiff,** )  
 )  
 **vs.** )  
 )  
 **RICHARD C. NEISWONGER, ET. AL.,** )  
 )  
 **Defendants.** )

**Case No. 4:96CV2225SNL**

**MEMORANDUM OPINION**

Plaintiff Federal Trade Commission (FTC) has filed this civil contempt action against defendant Richard C. Neiswonger, contempt defendant William S. Reed, and contempt defendant Asset Protection Group, Inc. (APGI) contending that the defendants have violated a 1997 Permanent Injunction by marketing and selling a training and business program with misrepresentations and by failing to disclose material facts to a large number of consumers. The FTC further alleges that defendant Neiswonger, individually, violated the 1997 Permanent Injunction by failing to provide a current performance bond to the FTC and to notify the FTC of his affiliation with defendant APGI. A hearing was conducted on October 25 and 26, 2006 to address the two primary issues present in this civil contempt action: 1) the FTC's desire to modify the 1997 Permanent Injunction as to defendant Neiswonger; and 2) the FTC's desire to have the Court find defendant Neiswonger, contempt defendant Reed, and contempt defendant APGI in civil contempt for violating the 1997 Permanent Injunction.<sup>1</sup> At the conclusion of the

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<sup>1</sup>Motions pending raising these issues are as follows: Contempt defendant Reed's motion to dismiss (#57), filed September 29, 2006; FTC's motion for an order modifying the Permanent Injunction as to defendant Neiswonger (#72), filed October 20, 2006; and Receiver's Application for Order as to why defendant Reed should not be held in contempt (#98), filed January 26, 2007.

hearing, all interested parties were permitted to file post hearing briefs. Furthermore, following the hearing on the civil contempt matter as to the 1997 Permanent Injunction, the Receiver filed a motion requesting that the Court make a separate ruling finding contempt defendant Reed in contempt for violating the provisions of a temporary restraining order (TRO) that this Court entered on July 17, 2006. *See*, Court Order #29. Contempt defendant Reed has filed a response to this additional motion for contempt as it relates to the alleged violation of the July 17, 2006 TRO. All substantive matters relating to this civil contempt action have been fully briefed, and the matter is now ripe for disposition.

After careful consideration of all objections to exhibits and testimony taken with the case, all said objections are hereby overruled, and all exhibits offered into evidence at the hearing are received into evidence.<sup>2</sup> All testimony will be considered by the Court and given its due weight. This Court, having now considered the pleadings, the testimony of witnesses, documents in evidence, and any other evidentiary materials submitted for the Court's consideration, and being fully advised in the premises, enters its findings and final disposition of this matter.

### **Background**<sup>3</sup>

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<sup>2</sup>In connection with this ruling, the Court expressly grants the FTC's motion *in limine* to admit testimony and exhibits from the deposition of contempt defendant Reed (#75), filed October 24, 2006.

<sup>3</sup>The Court's recitation of background material, including any specific findings of fact, it considers relevant to the issues before the Court are derived from the hearing transcript(s) of the TRO/Permanent Injunction hearing held on October 25-26, 2006 (#87 and #88, filed November 28, 2006); the parties' pleadings; the hearing exhibits, including deposition testimony; and post-hearing briefs. Where necessary, the Court will cite to specific evidence and/or testimony. Where more than one copy of the same exhibit has been filed by different parties, the Court will cite to only one exhibit; however, the reference should not be considered any indication of bias on the part of the Court. Referring to only one of duplicative exhibits is simply a matter of judicial efficiency.

Plaintiff, the FTC, is a federal law enforcement agency created by Congress, 15 U.S.C. §§41 *et. seq.*, charged with enforcing Section 5(a) of the FTC Act, 15 U.S.C. §45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

In 1996, defendant Neiswonger was involved, along with others, in a business venture known as Medical Recovery Systems, Inc. The FTC filed a complaint against Neiswonger, charging him and others with marketing training and business programs with false and misleading income claims, among other deceptive practices, in violation of Section 5(a) of the FTC Act.<sup>4</sup> Specifically, the FTC alleged that Neiswonger was deceptively marketing business training programs for upwards of \$10,000.00 that purportedly equipped members of the general public to become well-paid business consultants in the areas of finance and expense reduction, among other things. Some of the alleged deceptive practices were Neiswonger's claims that consumers who purchased these programs were likely to earn six-figure incomes from fees generated using the programs, when in actuality, such incomes were rarely (if ever) achieved. Neiswonger also allegedly urged potential clients to speak with named "references" before purchasing the program(s), without disclosing that said "references" were paid to provide a positive (if not profitable) picture of the success of the program(s).

After filing the complaint, Neiswonger and his co-defendants stipulated to the entry of a Permanent Injunction (hereinafter referred to as the 1997 Permanent Injunction), which is the subject of this current litigation.

After Neiswonger signed the 1997 Permanent Injunction and paid \$425,000.00 in redress to the FTC, the United States Department of Justice charged him with financial crimes relating to

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<sup>4</sup>**FTC v. Neiswonger, et. al.**, 4:96CV2225SNL, filed November 13, 1996.

the program(s) which were the subject of the FTC's 1996 civil lawsuit.<sup>5</sup> In September 1998, Neiswonger pled guilty to one (1) count of wire fraud and two (2) counts of money laundering. United States District Court Judge Rodney W. Sippel sentenced Neiswonger to eighteen (18) months in a federal penitentiary and further ordered restitution in the amount of \$2,750,000.00 to the consumer victims.

As he was preparing to enter federal prison to serve his term of imprisonment, on or about October 23, 1998, Neiswonger joined contempt defendant Reed in constituting the first Board of Directors of contempt defendant APGI.

Defendant Neiswonger subsequently entered federal prison to serve his term of incarceration. Thereafter, the Justice Department initiated civil forfeiture action(s) against him, charging that he failed to disclose approximately \$1,300,000.00 in illicit proceeds to the authorities during plea negotiations in his criminal case. Neiswonger ultimately forfeited \$750,000.00 in settlement of the government's forfeiture proceedings.

Contempt defendant William Reed and defendant Neiswonger have been business partners for many years prior to the present action. Reed is a former Colorado attorney whose license to practice was suspended by the Supreme Court of the State of Colorado in 1997 for "engag[ing] in misrepresentations and dishonesty".<sup>6</sup> In addition to joint business ventures with defendant Neiswonger, contempt defendant Reed has written a book entitled "Bulletproof Asset Protection (2004)" which advises the reader of methods by which to "hide" their assets from potential creditors, government agencies, receivers, and the courts.

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<sup>5</sup>**United States of America v. Neiswonger**, 4:98CR364RWS.

<sup>6</sup>**Colorado v. Reed**, 942 P.2d. 1204, 1205 (Colo. 1997). As of today's date, Reed's law license has not been reinstated.

Contempt defendant APGI is a Nevada corporation created in late 1998 by defendant Neiswonger and contempt defendant Reed. From 1999 to mid-2006, APGI offered and sold a training and business opportunity program (the “APGI Program”) to consumers nationwide. The APGI Program was marketed and sold as an “assets protection” program wherein consumers who purchased the program became APGI “asset protection consultants”. They, in turn, would presumably sell APGI “asset protection services” to clients wishing to conceal assets from potential litigants and creditors, government agencies, and the courts. APGI “asset protection consultants” presumably would receive a portion of the fees paid by clients who purchased APGI’s services.

APGI’s “asset protection services” involved the sale and use of Nevada corporations that employed APGI’s services as a resident agent. APGI also sold services related to the formation and maintenance of offshore international business companies (“IBCs”). APGI “asset protection consultants” not only received a portion of the fees paid by clients who purchased APGI’s services, including the Nevada corporations and IBCs sold; but also, presumably received payments for the annual renewal of these corporations by said clients.

#### **Defendant Neiswonger and APGI**

Defendant Neiswonger actively participated in marketing and promoting the APGI Program. He personally promoted the program to potential “asset protection consultants” in person and by telephone. Neiswonger’s name, statements attributed to him, and signature all appear in APG promotional materials for the APG Program. . Neiswonger served as a Director of APG in 1998 and 1999.<sup>7</sup> He then served as APGI’s Marketing Director. From 1998 to 2006, he additionally served as an agent of APGI.

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<sup>7</sup>From all accounts it appears that he served in this capacity during his incarceration.

For a time, Neiswonger used an entity called APGI Marketing, Inc. to assist in the marketing of the APGI Program. According to the Receiver's Report (FTC's Exhibit 112), APGI Marketing, Inc. was a fictitious division of contempt defendant APGI. APGI internal documents do not distinguish between the two business entities. *See*, FTC's Exhibits 51, 105.

#### **Contempt Defendant Reed and APGI**

Contempt defendant Reed served as APGI's Director and President from late 1999 until mid-July 2006. Reed actively participated in promoting and marketing the APGI program along with Neiswonger. Reed's name, picture, statements attributed to him, and his signature all appear in APGI promotional materials. He also promoted the APGI Program via phone and other means. Reed reviewed and approved the development and final versions of most promotional materials for APGI. *See*, Neiswonger Deposition, pgs. 94, 179, 207.

#### **Contempt Defendant APGI's Operation**

Contempt defendant APGI was marketed throughout the United States via printed advertisements in various publications, mailed promotional letters, and interstate phone calls between APGI agents and prospective consumer purchasers. Via print ads, APGI solicited potential purchasers of the APGI Program with the promise of a substantial income in a "lucrative business". FTC Exhibit 13 and 14. Such persons were then invited to call a number to get more information. Consumers who called the advertised phone number got a recording requesting that they leave their mailing address for receipt of an "introductory package". This "introductory package" included a video describing the advantages of Nevada and offshore business corporations in general, as well as a "Special Free Report" signed by Neiswonger and containing statements from Neiswonger and Reed describing the APGI Program. FTC Exhibit 6; FTC Exhibit 15. The highlights of the "Special Free Report" include (but are not limited to)

Neiswonger's exaltation of the "overwhelming" demand for APG's services, Reed's account of how he gave up his law practice to develop APGI's "unique business system" which could easily provide anyone working the program part-time with an income of "more than \$90,000", and touting the benefits of Nevada and offshore business corporations. Potential buyers are again invited to call APGI for additional information.

When consumers called for additional information, APGI personnel would again reiterate the claims made in the introductory materials. They would provide consumers with the names of "references"; i.e., purportedly active APGI consultants who would corroborate these claims. The references were paid to recommend APGI but this fact was not normally disclosed to the consumer nor the amount paid to the reference for the positive spin put on APGI to the inquiring consumer. *See*, FTC Exhibits 33, 36, 37, 38, 40, 41, 42 (consumers' declarations); *see also*, FTC Exhibits 7, 9, 11, 14, 16-20, 23-24 (transcripts of recorded phone calls between FTC investigators posing as consumers and APGI personnel verbal sales pitches).

These contacts often next lead to a direct solicitation from defendant Neiswonger extolling the virtues of the APGI Program and additional promotional letters from Neiswonger and Reed. Ultimately, if a consumer elected to purchase the APGI Program for approximately \$9800.00; s/he received training materials, access to a one-day "training session" and a business affiliation with APGI as an "asset protection consultant". FTC Exhibit 6.

**(Mis)representations re APGI**

Consistently throughout APGI's written promotional materials are statements attributed to Reed and Neiswonger, including but not limited to:

- 1) that prospective purchasers of the APGI Program did not need prior experience in sales, management, or professional businesses to be successful APGI consultants (FTC Exhibits 6, 15);

2) that a “6-figure income potential” was obtainable on a part-time schedule (FTC Exhibits 6, 42C, 42D);

3) acquiring 6-8 clients in a single month was a “**VERY reasonable, very achievable goal**” (FTC Exhibit 10, 38; *see also*, FTC Exhibits 15, 64 speaking to the ease of obtaining clients);

4) that APGI was a business opportunity that could “generate a substantial income”; “a true **\$250,000+++ yearly income**” (FTC Exhibit 63);

5) promising prospective purchasers that “**\$350,000+** First year potential income. Part or full time. Unique products with no competition.” (FTC Exhibit 65);

The vast number of written representations throughout the marketing and promotional materials regarding the APGI Program as a “lucrative business” and likely incomes as “substantial” or “six-figure” were convincing to a significant number of consumers and relied upon by these same consumers to purchase the program.

In the promotional materials, Reed and Neiswonger attempted to “disclaim” their representations regarding income potential and ease of obtaining clients by placing such statements infrequently in the materials, using small print-type, and then “disclaiming” the disclaimers. For example, near the end of the “Special Free Report”, Neiswonger states that APGI “do[es] not guarantee any specific or certain income, nor should you consider any of the examples used . . . as projections of your income. Individual results may vary.” FTC Exhibit 6. He then goes on to state that “your income will depend on your initiative, time and effort invested . . . and other factors over which we have no control.” FTC Exhibit 6. However, he immediately negates the impact of this disclaimer by stating “You can certainly see, however, at a profit of \$1,700 to \$6,400 per client served, it takes only a small number of clients each year to create a very substantial income.” FTC Exhibit 6. Another example is Reed states in another

APGI promotional sales letter that a first year consultant, working part-time, can earn \$114,000 selling a certain ratio of Nevada and Bahamas corporations to clients. FTC Exhibit 36B. He follows this assertion by disclaiming this six-figure income claim “as a mathematical example only”. FTC Exhibit 36B. However, he too immediately negates this disclaimer by stating that “Our current experience is that the ratio is actually much more favorable than our example.” FTC Exhibit 36B.

A particularly effective representation by the defendants consisted of an advertisement featuring an APGI consultant named Barbara Black who purportedly had “absolutely no sales background” and made a “six-figure” income in her first year as an APGI consultant. FTC Exhibit 64. The defendants failed to inform prospective purchasers that 1) Ms. Black had been supplied with numerous names of prospective clients prepared to buy corporations (*see*, FTC Exhibit 105; Neiswonger Deposition, pgs. 124); 2) that Ms. Black was the only person out of nearly 2000 APGI consultants to have obtained a “six-figure” income at any time from the APGI Program; and 3) Ms. Black obtained this level of income for only two (2) years. *See*, FTC Exhibit 64, 105.

Numerous verbal representations were made to prospective purchasers regarding the likelihood of earning a “substantial income” or “six-figure” income from fees generated by using the APGI Program. Neiswonger repeatedly referred to a “six-figure” income when speaking directly to potential purchasers. The APGI “references” verbally corroborated written statements regarding the earning potential for “six-figure” incomes. Consumer declarations verify that the defendants repeatedly told consumers that they were likely to earn a “substantial income” or “six-figure” income from working as APGI consultants.

**Factual Findings based on Receiver’s Report and APGI Records**

Nearly two thousand (2000) consumers bought the APGI Program and became APGI consultants. FTC Exhibit 112. However, according to APGI's business records, only three (3) consultants, in a period of over six (6) years, succeeded in selling more than fifty (50) corporations in total. FTC Exhibit 119. A majority of APGI consultants failed to sell any corporations. FTC Exhibits 112, 113, 119.

The Receiver, upon review and analysis of APGI's records, found that the vast majority of APGI consultants actually lost money. The Receiver estimated that approximately 94% of the consultants failed to earn back their initial purchase fee for the program. Several of these consultants testified at the hearing as to their monetary losses and/or inability to earn an income that anywhere near the "six-figure" income represented multiple times to them by the defendants. The Receiver's findings corroborated the testimony of the consultant witnesses regarding little or no sales. Using APGI's own database, the Receiver ranked the listed APGI consultants by the number of corporations they sold, and concluded that the median number of corporations sold was zero (0). *See*, FTC Exhibit 113; Receiver's Hearing Testimony.

Neither defendant Neiswonger nor contempt defendant Reed disputed the Receiver's findings at the hearing. Neither party presented any evidence of consumer satisfaction or documentary evidence of actual income of APGI consultants.

Contempt defendant Reed put the number of APGI consultants, during the relevant timeperiod, at approximately 400. FTC Exhibit 18. However, State of Nevada corporate records show that APGI has provided resident agent services for nearly 3200 Nevada corporations since 1998; thus, at best, each of the 400 consultants only sold eight (8) corporations during his/her relationship with APGI. FTC Exhibit 26. Furthermore, as of the time of the initiation of this lawsuit, nearly 50% of the 3200 corporations listing APGI as their resident agent are defunct; i.e.,

