

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
 CAPITAL ACQUISITIONS & MANAGEMENT)
 CORP., a corporation,)
)
 RM FINANCIAL SERVICES, INC., a corporation,)
)
 CAPITAL PROPERTIES HOLDINGS, INC.,)
 a corporation,)
)
 CARIBBEAN ASSET MANAGEMENT, LTD.,)
 a corporation,)
)
 REESE WAUGH,)
)
 JEROME KUEBLER,)
)
 ERIC WOLDOFF,)
)
 GEORGE OTHON,)
)
 JEFFREY GARRINGTON,)
)
 DAVID KAPP,)
)
 JOSHUA RAUSCH,)
)
 MICHAEL SENG, and)
)
 BILLY MARTIN,)
)
 Defendants.)

No. 04-C-7781
Judge Gettleman
Magistrate Judge Nolan

**STIPULATED ORDER FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF AGAINST
CORPORATE DEFENDANTS**

Plaintiff, Federal Trade Commission (“FTC” or “Commission”), filed its Amended Complaint for Permanent Injunctive and Other Relief (“Amended Complaint”) in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC ACT”), 15 U.S.C. § 53(b), Section 814(a) of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692l(a), and Rule 65 of the Federal Rules of Civil Procedure, charging that Defendants engaged in deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the FDCPA, 15 U.S.C. § 1692 *et seq.* The Commission and Defendants Capital Acquisitions & Management Corp., RM Financial Services, Inc., Capital Properties Holdings, Inc., and Caribbean Asset Management, Ltd. (collectively, “Corporate Defendants”), hereby stipulate to the entry of this Stipulated Order for Permanent Injunction Against Corporate Defendants (“Order”) to resolve all matters of dispute between them in this action. Defendants Reese Waugh, Eric Woldoff, and George Othon enter into this Order in their individual capacities and as former acting officers of Capital Acquisitions & Management Corp., RM Financial Services, Inc., and Capital Properties Holdings, Inc.

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

1. This Court has jurisdiction over the subject matter of this case and Corporate Defendants, pursuant to 15 U.S.C. §§ 45(a), 53(b), 1692l(a), as well as 28 U.S.C. §§ 1331, 1137(a) and 1345.
2. Venue lies properly with this Court pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).
3. The activities of Corporate Defendants are in or affecting “commerce,” as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. The Amended Complaint states a claim upon which relief may be granted against Corporate Defendants under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FDCPA, 15 U.S.C. § 1692 et seq.

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

6. The undersigned, individually and by and through their counsel, have agreed that the entry of this Order resolves all matters of dispute between them arising from the Amended Complaint in this action, up to the date of entry of this Order.

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

8. Corporate Defendants agree that this Order does not entitle such 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 such Defendants further waive any right to attorneys' fees that may arise under said provision of law.

9. Entry of this Order is in the public interest, and there being no just reason for delay, the Clerk is directed to enter judgment immediately.

DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

1. "Plaintiff" means the Federal Trade Commission.
2. "Defendant" or "Defendants" means Capital Acquisitions and Management Corp.; RM Financial Services, Inc.; Capital Properties Holdings, Inc.; Caribbean Asset

Management, Ltd.; Reese Waugh, individually and as an officer, director or agent of the corporate defendants; Jerome Kuebler, individually and as an officer, director or agent of the corporate defendants; Eric Woldoff, individually and as an officer, director or agent of the corporate defendants; George Othon, individually and as an officer, director or agent of the corporate defendants; Jeffrey Garrington, individually and as an officer, director or agent of the corporate defendants; David Kapp, individually and as an officer, director or agent of the corporate defendants; Joshua Rausch, individually and as an officer, director or agent of the corporate defendants; Michael Seng, individually and as an officer, director or agent of the corporate defendants; and Billy Martin, individually and as an officer, director or agent of the corporate defendants; and any subsidiaries, affiliates, and any fictitious business entities or business names created or used by these entities; or any of them.

3. "Corporate Defendants" or "Corporate Defendant" means Capital Acquisitions and Management Corp.; RM Financial Services, Inc.; Capital Properties Holdings, Inc.; Caribbean Asset Management, Ltd.; or any of them.

4. "Asset" or "Assets" means any legal or equitable interest in, right to, or claim to any real or personal property, including, but not limited to, "cash," "funds," "money," "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks" or "notes" (as these terms are defined in the Uniform Commercial Code), lines of credit, chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located. "Asset" or "Assets" shall include any "Asset" or "Assets" existing at the effective date of this Order and any and all "Asset" or "Assets" acquired by Defendants after the effective date of this Order.

5. "Document" or "Documents" means any materials listed in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio or video recordings, computer records, and any other data compilations from which information can be obtained and translated into reasonably usable form through detection devices. A draft or non-identical copy of a Document is a separate Document within the meaning of the term.

6. "Consumer" means any person.

7. "Debt collection activities" means any activity the principal purpose of which is to collect or attempt to collect, directly or indirectly, debts owed or asserted to be owed, or due.

8. "Assisting others" means knowingly providing any of the following goods or services to any person or entity: 1) performing customer service functions, including, but not limited to, receiving or responding to customer complaints; 2) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other written marketing material; 3) providing the names of, or assisting in the generation of, potential customers; or 4) performing marketing services of any kind.

I. BAN ON DEBT COLLECTION ACTIVITIES

IT IS THEREFORE ORDERED that Corporate Defendants are banned from engaging in any debt collection activities, or assisting others engaged in debt collection activities.

II. PROHIBITED BUSINESS PRACTICES

IT IS FURTHER ORDERED that Corporate Defendants and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, shareholders, successors, and assigns, and all other persons or entities in 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, are hereby permanently restrained and enjoined from:

A. Making, or assisting in the making of, expressly or by implication, orally or in any writing, any false or misleading statement or representation of material fact, including, but not limited to, any false or misleading representation:

1. that if the consumer does not pay the Defendant, the Defendant can and will take actions that will have a significant adverse effect on the consumer's credit report;

2. that the consumer can be arrested or imprisoned for failing to pay the Defendant;

3. that the consumer has a legal obligation to pay the Defendant; or

4. that if the consumer does not pay the Defendant, the Defendant can or will take formal legal action against the consumer, such as filing suit, seizing or attaching property, or garnishing wages;

B. Communicating with a consumer without the consumer's express prior consent given directly to the Defendant or the express permission of a court of competent jurisdiction:

1. at times or places that the Defendant knew or should have known to be inconvenient to the consumer, including, but not limited to, communicating with the consumer at the consumer's place of employment when the Defendant knew or should have known that it is inconvenient for the consumer to receive such communications; or

2. at the consumer's place of employment when the Defendant knew or had reason to know that the consumer's employer prohibited the consumer from receiving such communications;

C. Communicating with third parties for purposes other than acquiring location information about a consumer, without having obtained directly the express prior consent of the consumer or the express permission of a court of competent jurisdiction, and when not reasonably necessary to effectuate a post judgment judicial remedy;

D. Communicating with a consumer after the consumer has notified the Defendant in writing that the consumer refuses to pay a debt or that the consumer wishes the Defendant to cease further communication with the consumer;

E. Engaging in conduct the natural consequence of which is to harass, oppress, or abuse a person, including, but not limited to:

1. using obscene or profane language or language the natural consequence of which is to abuse the hearer; or

2. causing a telephone to ring or engaging a person in telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass a person at the number called;

F. Using false, deceptive, or misleading representations or means, including, but not limited to:

1. falsely representing the character, amount, or legal status of any debt;

2. falsely representing or implying that an individual is an attorney or that a communication is from an attorney;

3. falsely representing or implying that nonpayment of a debt will result in the arrest or imprisonment of a person or the seizure, garnishment, or attachment of a person's property or wages, when such action is not lawful or when the Defendant has no intention of taking such action;

4 threatening to take action that the Defendant does not intend to take, such as filing a lawsuit;

5. threatening to communicate with any person credit information that the Defendant knew or should have known to be false; or

6. using false representations or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer;

G. When a consumer has notified the Defendant in writing within the thirty-day period pursuant to Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a), that the debt, or any portion thereof, is disputed, continuing to attempt to collect the debt before the verification of the debt is provided to the consumer; and

H. Misrepresenting, directly, indirectly, expressly, or by implication, or omitting, any fact material to a person's decision to purchase or use any product, program, or service.

Provided, however, that nothing in this Section or in any other Section of this Order shall void the ban provision set forth in Section I of this Order.

III. MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. Judgment in the amount of One Million Dollars (\$1,000,000) is hereby entered against Corporate Defendants as equitable monetary relief. Corporate Defendants shall pay to the Commission the sum of One Million Dollars (\$1,000,000), no later than thirty days after the dismissal of Capital Acquisitions & Management Corp.'s bankruptcy case. Payment shall be made to the Commission by certified check or other guaranteed funds payable to and delivered to the Commission, or by wire transfer in accord with directions provided by the Commission;

B. The funds paid pursuant to this Section shall be deposited into a redress fund,

administered by the Commission or its agent, to be used for equitable relief, including but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Corporate Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as equitable disgorgement. Neither Corporate Defendants, nor any other party, shall have the right to challenge the Commission's choice of remedies or the manner of distribution under this Section. The Commission, in its sole discretion, may use a designated agent to administer consumer redress.

C. In the event of any default on any obligation to make payment under this Section, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment, and shall immediately become due and payable;

D. Corporate Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission their Social Security Numbers and/or taxpayer identification numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of such persons' relationship with the government;

E. Corporate Defendants waive any right to contest any of the allegations in the Amended Complaint in any subsequent litigation to collect amounts due pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy proceeding; and

F. The judgment entered pursuant to Subsection A of this Section for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

IV. RECEIVERSHIP

IT IS FURTHER ORDERED that the appointment of LePetomane XII, Inc., not individually but solely in its representative capacity as Receiver, by and through its President, Jay A. Steinberg, not individually but solely in his representative capacity as President of the Receiver, pursuant to the Stipulated Preliminary Injunction entered on January 19, 2005, is hereby continued in full force and effect, and provisions in that order relating to the Receiver are incorporated into this Order by reference as though fully set forth herein, until such time as the Receiver (a) wire transfers to the Commission the equitable monetary relief as set forth in Section III.A above; (b) completes its liquidation of all remaining assets of Corporate Defendants and dissolves such Defendants; and (c) is discharged by the Court after obtaining Court approval of the Receiver's final report and application for fees and expenses, whereupon the receivership shall be terminated.

V. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that each Corporate Defendant, within five (5) business days of receipt of this Order as entered by the Court, shall submit to the Commission a truthful sworn statement, acknowledging receipt of this Order.

VI. DISTRIBUTION OF ORDER BY CORPORATE DEFENDANTS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Corporate Defendants shall deliver a copy of this Order as directed below.

A. **Corporate Defendants:** Each Corporate Defendant must deliver a copy of this Order to all of its principals, officers, directors, and managers. Such Defendants also must deliver copies of this Order to all of their employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities; and

B. Corporate Defendants must secure a signed and dated statement acknowledging receipt of the Order within thirty days of delivery, or, when obtaining such acknowledgment is not practicable despite good faith efforts to do so, proof of service at the last-known address, from all persons receiving a copy of the Order pursuant to this Section.

VII. COMPLIANCE REPORTING BY CORPORATE DEFENDANTS

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Order:
1. Each Corporate Defendant shall notify the Commission in writing of any of the following:
 - a. Any changes in corporate structure that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the business entity about which a Corporate Defendant learns less than thirty (30) days prior to the

date such action is to take place, such Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge;

B. One hundred eighty (180) days after the date of entry of this Order, each Corporate Defendant shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Order. This report shall include but not be limited to:

1. A copy of each acknowledgment of receipt or proof of service of this Order obtained by Corporate Defendant pursuant to this Order; and
2. Any other changes required to be reported under subparagraph A of this Section.

C. For the purposes of this Order, Corporate Defendants shall, unless otherwise directed by a representative of the Commission, identify all written notifications to the FTC as being in reference to *FTC v. Capital Acquisition & Management Corp., et al.*, United States District Court, Northern District of Illinois, Case No. 04-C-7781, and mail them to:

Associate Director for Enforcement
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20580

D. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with Corporate Defendants, in writing, with a copy to counsel of record.

