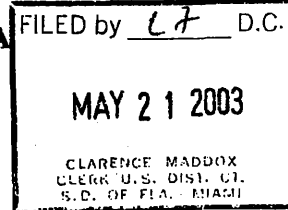


UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case No. 02-21754-CV- MARTINEZ/DUBÉ



FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ASSOCIATED RECORD DISTRIBUTORS, INC.,  
a Florida corporation;

ALFREDO SUSI,  
individually and as an officer  
or director of the above corporation;

RUSSELL MACARTHUR,  
individually and as an officer  
or director of the above corporation;

DAVID SIEGEL,  
individually and as an officer  
or director of the above corporation;

BRIAN MORGENSTERN,  
individually and as an officer  
or director of the above corporation;

Defendants.

**STIPULATED FINAL JUDGMENT AND ORDER FOR  
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF  
AS TO DEFENDANT RUSSELL MACARTHUR**

This matter comes before the Court on stipulation of Plaintiff Federal Trade Commission ("FTC" or "Commission"), and Defendant Russell MacArthur ("MacArthur"). On June 12, 2002, the Commission filed a Complaint for Injunctive and Other Equitable Relief, including redress to consumers, pursuant to Sections 5(a), 13(b), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 53(b) and 57b, and the FTC's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" (the "Franchise Rule" or the "Rule"), 16 C.F.R. Part 436, and moved ex

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*parte* for a Temporary Restraining Order (“TRO”) pursuant to Rule 65 of the Federal Rules of Civil Procedure and S.D. Fla. L.R. 7.1.E. That same day, this Court, having considered the Complaint, memorandum of law, declarations, and other exhibits filed in support of Plaintiff’s motion, issued a TRO including an asset freeze and appointment of a temporary receiver. On June 21, 2002, the FTC, and Defendants ARD, Alfredo Susi and Russell MacArthur consented to a Preliminary Injunction that provided for a continuation of essentially all of the relief in the TRO. Now, Plaintiff, the Federal Trade Commission and Defendant MacArthur offer the following Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief as to Defendant MacArthur (the “Final Order”).

Upon the joint motion of the FTC and MacArthur, it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** as follows:

#### **FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and the parties hereto.
2. Venue is proper as to all parties in the Southern District of Florida under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).
3. The activities of Defendant MacArthur are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Complaint alleges claims upon which relief may be granted against Defendant MacArthur under §§ 5(a)(1), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a)(1), 53(b), and 57b, and under the Franchise Rule.
5. The Federal Trade Commission and Defendant MacArthur stipulate and agree to this Final Order to settle and resolve all matters in dispute arising from the Complaint to the date of entry of this Final Order.
6. Defendant MacArthur has waived all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).

7. Defendant MacArthur acknowledges that he has read the provisions of this Final Order and has agreed to abide by them.

8. Defendant MacArthur waives all rights to seek appellate review or otherwise challenge or contest the validity of this Final Order.

9. Defendant MacArthur waives and releases any claim he may have against the FTC and their employees, representatives or agents.

10. This Order is for settlement purposes only and does not constitute an admission by Defendant MacArthur that he has violated any law or regulation.

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

#### **DEFINITIONS**

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

1. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, inventory, checks, notes, leaseholds, effects, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located, whether in the United States or abroad;

2. "Business venture" means any written or oral business arrangement, however denominated, whether or not covered by the Franchise Rule, which consists of the payment of any consideration for:

- a. The right or means to offer, sell, or distribute goods or services (whether or not 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;

3. "Defendant" means Russell MacArthur and any person insofar as he or she is

acting in the capacity of an officer, agent, servant, employee or attorney of Russell MacArthur and any person acting in active concert or participation with any of the foregoing who receives actual notice of this Final Order by personal service or otherwise (Fed. R. Civ. P. 65(d));

4. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term; and

5. "Person" means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

## INJUNCTIVE PROVISIONS

### I.

**IT IS THEREFORE ORDERED** that, Defendant, and his successors, assigns, and all persons or entities directly or indirectly under Defendant's control, and each such person, whether acting directly or through any corporation, limited liability company, subsidiary, division, or other device, are hereby permanently restrained and enjoined from:

- A. Advertising, marketing, promoting, offering for sale, or selling any business venture; and
- B. Receiving any remuneration of any kind whatsoever from, holding any ownership interest, share, or stock in, or serving as an employee, officer, director, trustee, general manager of, or consultant or advisor to, any business entity engaged in or assisting in the advertising, marketing, promoting, offering for sale, or sale of any business venture.

## II.

**IT IS FURTHER ORDERED** that, in connection with the advertising, marketing, promoting, offering for sale, or sale of any good or service, Defendant, and his successors, assigns, and all persons or entities directly or indirectly under Defendant's control, and each such person, whether acting directly or through any corporation, limited liability company, subsidiary, division, or other device, are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, any fact material to a consumer's decision to buy or accept the good or service.

### **REDRESS AND OTHER EQUITABLE RELIEF**

## III.

**IT IS FURTHER ORDERED** that,

- A. Judgement is entered against MacArthur in the amount of \$3,406,577.75.
- B. Judgement shall be partially satisfied by:
  1. The release by MacArthur to the Commission, upon signing of this Final Order, of all dominion, title and control to all funds or assets listed in *Appendix A*; and
  2. The release by MacArthur to the Receiver appointed by this Court for Asspcoated Record Distributors, Inc. ("ARD") of all dominion, title and control of any assets of or interest in ARD, including \$57,750 and applicable interest held in the trust account of Tyler A. Gold, P.A.
- C. Upon the releases provided in this Paragraph, the remainder of the judgement shall be suspended.
- D. All funds released by MacArthur pursuant to this Final Order 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 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 pay any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the defendants' practices as alleged in the complaint. Any funds not used for such equitable relief shall be deposited into the United States Treasury as disgorgement. MacArthur shall have no right to challenge the Commission's choice of remedies under this Paragraph.

#### **RIGHT TO REOPEN**

#### **IV.**

**IT IS FURTHER ORDERED** that,

- A. The Commission's agreement to this Final Order is expressly premised upon Defendant's representations of his financial condition provided to the Commission in sworn oral testimony given December 16, 2002, and sworn financial statements dated July 9, 2002, and November 18, 2002, as incorporated in the December 16 oral testimony, all of which includes material information upon which the Commission relied in negotiating and consenting to this Final Order. If, upon motion by the Commission, this Court should find that MacArthur made a material misrepresentation or omitted material information concerning his financial condition in any of the sworn statements detailed above, then the Court shall enter a modified judgment holding that MacArthur is liable to the Commission in the amount of \$3,406,577.75, which MacArthur and the Commission stipulate is the amount of consumer injury caused by the defendants to this action. This amount, less the sum of payments to the Commission by any of the defendants to this action, pursuant to this or any other order in this case, shall become immediately due and payable by MacArthur, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately

begin to accrue on the unpaid balance.

- B. MacArthur agrees that the facts as alleged in the Complaint filed in this action shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Order, including, but not limited to, a nondischargeability complaint filed in any bankruptcy proceeding.
- C. Any proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the FTC may initiate to enforce this Order.

#### **LIFTING OF ASSET FREEZE**

##### **V.**

**IT IS FURTHER ORDERED** that, the freeze against the assets of MacArthur pursuant to Section III of the Preliminary Injunction entered by this Court on June 27, 2002, shall be lifted for the sole purpose of transferring funds to the FTC pursuant to Paragraph III of this Final Order, and dissolved upon transfer of all such funds.

#### **CUSTOMER LISTS**

##### **VI.**

**IT IS FURTHER ORDERED** that, Defendant is permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid money to any of the defendants to this matter for purchase of a business venture prior to entry of this Final Order; *provided* that Defendant may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

#### **RECORD KEEPING**

##### **VII.**

**IT IS FURTHER ORDERED** that, for a period of ten (10) years from the date of entry

of this Final Order, in connection with any business where MacArthur is the majority owner of the business or directly or indirectly manages or controls the business, Defendant is hereby restrained and enjoined from failing to create and retain the following records,

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased;
- D. Complaint and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and
- E. Copies of sales and customer service scripts, training materials, advertisements, form letter responses, or other marketing or customer service materials.

#### **COMPLIANCE REPORTING**

#### **VIII.**

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

- A. For a period of ten (10) years from the date of entry of this Final Order, MacArthur shall notify the Commission of the following:
  - 1. Any changes in MacArthur's residence, mailing addresses, or telephone numbers, within thirty (30) days of the date of such change;
  - 2. Any changes in MacArthur's employment status (including self-



employment) within thirty (30) days of such change. Such notice shall include the name and address of each business MacArthur is affiliated with or employed by, a statement of the nature of the business, and a statement of MacArthur's duties and responsibilities in connection with the business or employment; and

3. Any proposed change in the structure of any business entity owned or controlled by MacArthur, such as creation, incorporation, dissolution, assignment, sale, creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of this Final Order, thirty (30) days prior to the effective date of any proposed change.

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

1. MacArthur's then current residence addresses and telephone numbers;
2. MacArthur's then current employment, business addresses and telephone numbers, a description of the business activities of each such employer, and MacArthur's title and responsibilities for each employer;
3. A copy of each acknowledgment of receipt of this Final Order obtained by MacArthur pursuant to this Final Order;
4. A statement describing the manner in which the MacArthur has complied and is complying with the injunctive provisions of this Final Order, including, but not limited to, the monitoring, record keeping, and compliance portions of this Final Order.

C. Upon written request by a representative of the Commission, MacArthur shall submit additional written reports (under oath, if requested) and produce

documents on fifteen (15) days' notice with respect to any conduct subject to this Final Order.

- D. For the purposes of this Final Order, the Defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Marketing Practices  
Federal Trade Commission  
600 Pennsylvania Ave, N.W., Room 238  
Washington, DC 20580  
Re: *FTC v. ARD, Inc. et. al.*

- E. For the purposes of this Paragraph, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom MacArthur performs services as an employee, consultant, or independent contractor.
- F. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate with MacArthur through his counsel at:

Carl A. Schmitt  
1666 Kennedy Causeway, Suite 705  
North Bay Village, Fl 33141

#### **AUTHORITY TO MONITOR COMPLIANCE**

#### **IX.**

**IT IS FURTHER ORDERED** that, the Commission is authorized to monitor Defendant's compliance with this Final Order by all lawful means, including but not limited to the following:

- A. The Commission is authorized, without further leave of the Court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and

- investigating the Defendant's compliance with any provision of this Final Order;
- B. The Commission is authorized to use representatives posing as consumers and suppliers to MacArthur or his employees, or any other entity managed or controlled in whole or in part by MacArthur, without the necessity of identification or prior notice;
- C. Nothing in this Final Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether MacArthur has violated any provision of this Final Order, Section 5 of the FTC Act, 15 U.S.C. § 45 or the Franchise Rule; and
- D. For purposes of the compliance monitoring authorized by this Section, the Commission, and its agents, are authorized to communicate directly with MacArthur and any of his employees, or any other entity managed or controlled in whole or in part by MacArthur.

#### **ACCESS TO BUSINESS PREMISES**

##### **X.**

**IT IS FURTHER ORDERED** that, for a period of ten (10) years from the date of entry of this Final Order, for the purpose of further determining compliance with this Final Order, MacArthur shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

- A. Access during normal business hours to any office, or facility storing documents, of any business where MacArthur owns the majority of the business or directly or indirectly manages or controls the business. In providing such access, MacArthur shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Final Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Final Order, for a period not to exceed five (5) business days, so that the documents

may be inspected, inventoried, and copied; and

- B. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Subparagraph A of this Paragraph applies, concerning matters relating to compliance with the terms of this Final Order. The person interviewed may have counsel present.

*Provided that*, upon application of the Commission and for good cause shown, the Court may enter an *ex parte* order granting immediate access to MacArthur's business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Final Order.

#### **ACKNOWLEDGMENT OF RECEIPT OF FINAL ORDER**

##### **XI.**

**IT IS FURTHER ORDERED** that, within five (5) business days after receipt by MacArthur of this Final Order as entered by the Court, MacArthur shall submit to the Commission at the address provided in Subparagraph D of Paragraph VIII, above, a truthful sworn statement, in the form shown in *Appendix A*, that shall acknowledge receipt of this Final Order.

#### **DISTRIBUTION OF FINAL ORDER**

##### **XII.**

**IT IS FURTHER ORDERED** that, for a period of ten (10) years from the date of entry of this Final Order, MacArthur shall:

- A. Provide a copy of this Final Order to, and obtain a signed and dated acknowledgment of receipt of same from: each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as

employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business where MacArthur owns the majority of the business or directly or indirectly manages or controls the business; and

- B. Maintain, for a period of ten (10) years after creation and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Final Order, as required in Subparagraph A of this Paragraph.

#### **COSTS**

##### **XIII.**

**IT IS FURTHER ORDERED** that each party shall bear its own costs and attorney's fees incurred in connection with this action.

#### **DUTY TO COOPERATE**

##### **XIV.**

**IT IS FURTHER ORDERED** that MacArthur shall cooperate fully, truthfully and completely with Plaintiff, the Federal Trade Commission, in any continuing litigation of this matter. This cooperation includes, but is not limited to, maintaining all documents relevant to this litigation and assisting in the preparation of testimony and testifying fully, truthfully and completely at any trial in this matter, if called upon to do so.

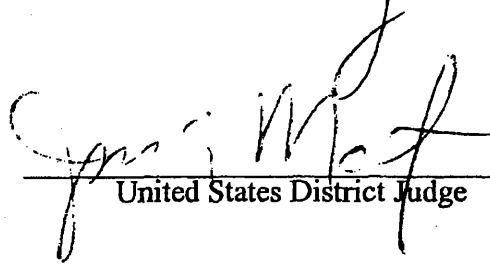
#### **RETENTION OF JURISDICTION**

##### **XV.**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for the purpose of enabling the parties to apply to the Court at any time for such further orders and directives as may be necessary or appropriate for the interpretation or modification of this Final Order, for the enforcement of compliance therewith, or for the punishment of violations thereof.

DONE AND ORDERED, this 21 day of May, 2003, in

Miami, Florida.

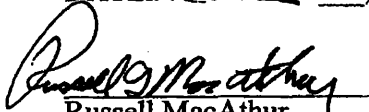
  
United States District Judge


FOR DEFENDANT

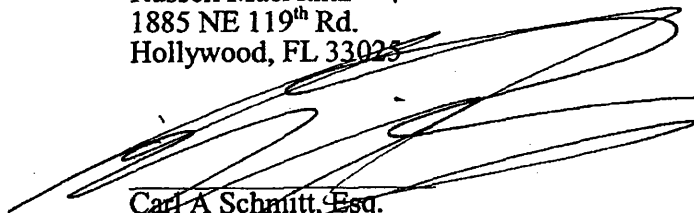
FOR PLAINTIFF

DATED: ~~December~~ JANUARY 13, 2003

DATED: April 10, 2003  
~~December~~, 2002

  
Russell MacArthur  
1885 NE 119<sup>th</sup> Rd.  
Hollywood, FL 33025

  
Elizabeth A. Hone  
Sarah Anne Cutler  
Counsel for Federal Trade Commission  
600 Pennsylvania Ave, NW #238  
Washington, D.C. 20580  
202-326-3207/  
202-326-3395 (fax)  
ehone@ftc.gov  
scutler@ftc.gov

  
Carl A. Schmitt, Esq.  
Counsel for Russell MacArthur  
1666 Kennedy Causeway #705  
North Bay Village, FL 33141  
305-861-7074

*APPENDIX A*

All assets or funds held in any bank, brokerage, trust or escrow account, other than the trust account referred to in paragraph III.B.2. of the Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief as to Defendant Russell MacArthur, and which are held or titled in the name of or on behalf of Russell MacArthur, including but not limited to the following:

<b>Account Location</b>	<b>Account Name and Number</b>
Bank of America	Russell MacArthur 003730268274
Bank of America	Russell MacArthur 003730649437
Bank of America	Russell MacArthur 003738873454
Rickenback Associates	\$1000 and applicable interest, held in escrow account

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
Case No. 02-21754-CIV-GRAHAM

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ASSOCIATED RECORD DISTRIBUTORS, INC.,  
a Florida corporation;

ALFREDO SUSI,  
individually and as an officer  
or director of the above corporation;

RUSSELL MACARTHUR,  
individually and as an officer  
or director of the above corporation;

DAVID SIEGEL,  
individually and as an officer  
or director of the above corporation;

BRIAN MORGENSTERN,  
individually and as an officer  
or director of the above corporation;

Defendants.

**AFFIDAVIT OF RUSSELL MACARTHUR**

Russell MacArthur, being duly sworn, hereby states and affirms as follows:

1. My name is Russell MacArthur. I am one of the individual defendants in the above-captioned civil action. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. My current business address is \_\_\_\_\_  
\_\_\_\_\_. My current business telephone  
number is \_\_\_\_\_. My current residential address is \_\_\_\_\_  
\_\_\_\_\_. My current  
residential telephone number is \_\_\_\_\_.

3. On \_\_\_\_\_, \_\_\_\_\_, 2002, I received a copy of the Stipulated Judgment And Order For



Permanent Injunction And Other Equitable Relief, which was signed and entered by the Court on \_\_\_\_\_, 2002. A true and correct copy of the Final Order that I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on \_\_\_\_\_, 2002, at \_\_\_\_\_.

\_\_\_\_\_  
Russell MacArthur

State of \_\_\_\_\_, City of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## CERTIFICATE OF SERVICE


I hereby certify that on this 10<sup>th</sup> day of April 2003, copies of the attached Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief as to Defendant Russell MacArthur are being served by first class mail on the following:

Carl Schmitt, Esq.  
1666 Kennedy Causeway, Suite 705  
North Bay Village, Fl 33141  
*Counsel for ARD, Susi and MacArthur*

Brian Morgenstern  
3000 South Ocean Blvd. Apt. 10B  
Hollywood, FL 33019-2809

David Siegel  
1600 Polk St, Rear Apartment  
Hollywood, FL 33020

Gaye Huxoll  
Shook, Hardy & Bacon  
Miami Center, Suite 2400  
201 South Biscayne Blvd.  
Miami, FL 33131-4332  
*Counsel for the Receiver*

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Sarah Anne L. Cutler