



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

January 8, 2010

VIA EXPRESS MAIL

Mr. Kelly E. Reilly
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No. 131
Dallas, TX 75287

Mr. James F. Wojcik
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Dallas, TX 75248

Mr. Alvin B. Bell
1344 Crystal Lane
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Re: Petition of Messrs. Reilly, Wojcik, and Bell (“Petitioners”) to Quash Civil Investigative Demands for Testimony Issued on October 23, 2009, File No. 092-3052

Dear Messrs. Reilly, Wojcik, and Bell:

The Commission is investigating whether Debt Relief USA, Inc. (“DRUSA”) has violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, in the advertisement and sales of debt relief products and services. On October 23, 2009, the Commission issued separate Civil Investigative Demands for testimony (“CIDs”) to each of the Petitioners, individuals who are officers, directors and stockholders of DRUSA. On October 28, 2009, Petitioners filed their Petition to Quash CIDs (“Petition”), citing the pendency of bankruptcy proceedings involving DRUSA and the supposed protection of the “corporate veil” of DRUSA as grounds. Petition at 2. The Petition is wholly without merit; and must, therefore, be denied. In accordance with the provisions of Rule 2.7(e), 16 C.F.R. § 2.7(e), Petitioners shall comply with the CIDs on the following dates, at the times and places stated in the CIDs: Mr. Reilly on January 19, 2010; Mr. Wojcik on January 20, 2010; and Mr. Bell on January 21, 2010.

This letter advises you of the Commission’s disposition of the Petition. This ruling was made by Commissioner Pamela Jones Harbour, acting as the Commission’s delegate. See 16 C.F.R. § 2.7(d)(4). Pursuant to 16 C.F.R. § 2.7(f), Petitioners have the right to request review of this matter by the full Commission. Such a request must be filed with the Secretary of the Commission within three days after service of this letter.¹

¹ Computation of the time for appeal should be calculated from the date you receive the original by express mail. In accordance with the provisions of 16 C.F.R. § 2.7(f), the timely filing of a request for review of this matter by the full Commission shall not stay the return date established pursuant to this decision.

I. Petitioners Must Comply with the CIDs.

Petitioners are officers, directors and stockholders of DRUSA, and appear to possess information regarding DRUSA's sales and marketing of debt relief products and services to consumers. Petitioners have not claimed that the CIDs were issued for an improper purpose, or that the information that would be sought through their testimony would be irrelevant, privileged, or unduly burdensome to provide.²

Petitioners' arguments appear to be largely based on the assumption that the Commission's investigation of DRUSA's activities can only result in relief directed at DRUSA itself, and that the liquidation of DRUSA in bankruptcy "would negate the need for this action to continue." Petition at 3. This premise is incorrect. Petitioners may be independently liable for injunctive and monetary relief for the corporate acts of DRUSA in violation of the FTC Act. An individual may be liable for corporate violations of the FTC Act where it can be shown that such individual participated in or had control over corporate practices and had knowledge of such practices. *Fed. Trade Comm'n v. Amy Travel Serv.*, 875 F.2d 564, 573 (7th Cir. 1989).³ There is thus no need to "pierce the corporate veil" to impose liability on petitioners individually.

Accordingly, ascertaining the nature of each petitioner's actions regarding and knowledge of DRUSA's activities is plainly a proper subject of the Commission's investigation. Further, in the absence of any contrary facts or authorities, each Petitioner must be held to be the best available source for evidence regarding that Petitioner's knowledge of, and involvement in, the business operations of DRUSA. Moreover, it is highly likely that each Petitioner is one of the next best sources of evidence available regarding the other Petitioners' knowledge of, and involvement in, the business operations of DRUSA.

Petitioners also invoke the automatic stay provided by the Bankruptcy Code as a ground for quashing the CIDs. Petition at 2.⁴ This argument is also without merit. The FTC is

² See *Fed. Trade Comm'n v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992) ("It is well established that a district court must enforce a federal agency's investigative subpoena if the information sought is reasonably relevant, . . . or, put differently, not plainly incompetent or irrelevant to any lawful purpose of the [agency], . . . and not unduly burdensome to produce.") (internal quotations and citations omitted).

³ "Once corporate liability is established, the FTC must show that the individual defendants participated directly in the practices or acts or had authority to control them. . . . Authority to control the company can be evidenced by active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer. . . . The FTC must show that the individual had some knowledge of the practices. The knowledge requirement is the key issue in this case." *Id.* (citations omitted).

⁴ Petitioners also claim that the bankruptcy clerk failed to provide notice to all potential creditors of DRUSA in a timely fashion; and that such failure, in turn caused unnoticed creditors

conducting a law enforcement investigation of the conduct of DRUSA and the petitioners. Pursuant to 11 U.S.C. § 362(b)(4), the stay provisions of 11 U.S.C. § 362(a) do not prevent the FTC from exercising its police and regulatory duties as an agency of the government of the United States regarding the conduct of DRUSA. Furthermore, Petitioners are not themselves in bankruptcy, and are not entitled to any of the protections of the Bankruptcy Code. In short, the Commission's continuing investigation of DRUSA's activities, including taking testimony from Petitioners, will not violate any provisions of the Bankruptcy Code.

II. CONCLUSION AND ORDER

For all the foregoing reasons, **IT IS ORDERED THAT** the Petition be, and it hereby is, **DENIED**.

IT IS FURTHER ORDERED THAT Petitioners shall comply with the CIDs on the following dates: Mr. Reilly on January 19, 2010; Mr. Wojcik on January 20, 2010; and Mr. Bell on January 21, 2010.

By direction of the Commission.

Donald S. Clark
Secretary

to ask the "FTC to protect their assets." *Id.* Neither the timing or scope of notice provided to DRUSA's creditors by the bankruptcy clerk nor the source of any complaints that may have alerted the Commission to possible law violations is relevant to the resolution of this Petition.