

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Civ. No.
)	
v.)	Judge:
)	
S.J.A. SOCIETY, INC.,)	
doing business as)	
Apex Marketing Group,)	
Atlantic Service Corp.,)	
ASC, and Publishers Service,)	
)	
Thomas P. Johnson,)	
individually, and as an officer)	
and director of said corporation,)	
and)	
Thomas Alan Blair,)	
d/b/a Advance Communications,)	
individually, and as general)	
manager of S.J.A. Society, Inc.,)	
)	
Defendants.)	

TEMPORARY RESTRAINING ORDER

Plaintiff Federal Trade Commission ("Commission"), pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.*, and the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, filed a complaint to obtain preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement, appointment of a receiver,

and other equitable relief, and applied ex parte for both a temporary restraining order with asset freeze and an order to show cause why a preliminary injunction should not be granted pursuant to Rule 65 of the Federal Rules of Civil Procedure. The Court has considered the pleadings, declarations, exhibits, and memoranda filed in support of the Commission's application and makes the following findings of fact:

1. This Court has jurisdiction of the subject matter of this case, and there is good cause to believe it will have jurisdiction over all parties.

2. There is good cause to believe that defendants have engaged in and are likely to engage in practices that violate Section 5 of the FTC Act, 15 U.S.C. § 45(a), the Telemarketing Sales Rule, 16 C.F.R. Part 310, and the FDCPA, 15 U.S.C. § 1692 *et seq.*, and that the Commission is likely to prevail on the merits of this action.

3. There is good cause to believe that immediate and irreparable harm will result from defendants' ongoing violations of the FTC Act, the Telemarketing Sales Rule ("TSR"), and the FDCPA, and that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition or concealment by defendants of their assets or records unless defendants are immediately

restrained and enjoined by Order of this Court. There is, thus, good cause for issuing this Order without prior notice to the defendants of the Commission's application, pursuant to Federal Rule of Civil Procedure 65(b).

4. Weighing the equities and considering the Commission's likelihood of success in its causes of action, this Temporary Restraining Order is in the public interest.

5. No security is required of any agency of the United States for the issuance of a restraining order. Fed. R. Civ. P. 65(c).

ORDER

Definitions

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, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables, and all cash, wherever located.

2. "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.

I. PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that defendants S.J.A. Society, Inc., doing business as Apex Marketing Group, Atlantic Service Corp., ASC, and Publishers Service, Thomas P. Johnson, and Thomas Alan Blair, and their agents, employees, officers, servants, and attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, are hereby temporarily restrained and enjoined from:

A. Making, or assisting others in making, directly or by implication, any false or misleading oral or written statement or representation of material fact concerning:

1. any magazine subscriptions, sales, or promotions;
2. the costs of defendants' magazine subscriptions, sales, or promotions;
3. whether consumers pay for shipping and handling costs only;
4. whether consumers will receive or are entitled to receive any prizes, cash, or coupons;
5. defendants' cancellation policy; and

6. the enforceability, validity, or legal status of defendants' contracts;

B. Failing to disclose, before a person pays for goods or services, in a clear and conspicuous manner, orally and in writing, the exact cost of defendants' magazine subscriptions, including:

1. the amount of any monthly payment;
2. the number of payments;
3. the total payment;
4. the amount of any late charge; and
5. under what conditions and when any late charge might accrue;

C. Charging any consumer's credit card account, debiting any consumer's bank account, or sending consumers any bill or invoice prior to providing a complete copy of the contract, and any disclosure required by the Truth in Lending Act;

D. Failing to allow a person 30 days to cancel a purchase from the date of delivery of all materials and disclosures required by this Part;

E. Failing to credit a person's credit card account or issue a refund check within seven business days from a valid cancellation request;

F. Attempting to collect, either directly or through any debt collector, any debt or alleged debt;

G. Violating the TSR, 16 C.F.R. Part 310; and

H. Violating the FDCPA, 15 U.S.C. § 1692 *et seq.*

II. ASSET FREEZE

IT IS FURTHER ORDERED that defendants S.J.A. Society, Inc., doing business as Apex Marketing Group, Atlantic Service Corp., ASC, and Publishers Service, Thomas P. Johnson, and Thomas Alan Blair, and their agents, employees, officers, servants, and attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, are hereby temporarily restrained and enjoined from:

A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, or otherwise disposing of any funds, property, accounts, contracts, shares of stock, lists of consumer names, or other assets, wherever located, including outside the United States, other than to make transfers to any receiver appointed herein, that are (1) owned or controlled, directly or indirectly, by any defendant, in whole or in part; (2) in the actual or constructive possession of any 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 defendant, including but not limited to, any assets held by,

for, or under the name of any defendant at any bank or savings and loan institution, 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. Except as otherwise provided herein, opening or causing to be opened any safe deposit boxes titled in the name of any defendant, or subject to access by any defendant; and

C. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any defendant.

III. FINANCIAL REPORTS

IT IS FURTHER ORDERED that S.J.A. Society, Inc., doing business as Apex Marketing Group, Atlantic Service Corp., ASC, and Publishers Service, Thomas P. Johnson, and Thomas Alan Blair shall each, within forty-eight (48) hours after entry of this Order, prepare and deliver to this Court, to the Receiver, and to counsel for the Commission the financial form attached hereto as Attachment 1, verified under oath, and subject to the penalty for perjury pursuant to 28 U.S.C. § 1746.

IV. FOREIGN ACCOUNTS

IT IS FURTHER ORDERED that, within five (5) business days following the service of this Order, defendants shall:

A. Provide plaintiff and the temporary receiver with a full accounting of all funds, documents, and assets outside of the territory of the United States which are held either: (1) by them; (2) for their benefit; or (3) under their direct or indirect control, jointly or singly;

B. Transfer to the territory of the United States all such funds, documents, and assets in foreign countries;

C. Hold and retain all repatriated funds, documents, and assets, and prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds, except as required by this Order; and

D. Provide plaintiff access to defendants' records and documents held by financial institutions outside the territorial United States, by signing the Consent to Release of Financial Records attached to this Order.

V. PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that defendants S.J.A. Society, Inc., doing business as Apex Marketing Group, Atlantic Service Corp., ASC, and Publishers Service, Thomas P. Johnson, and Thomas Alan Blair, and their agents, employees, officers, servants, and attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, are hereby temporarily restrained and

enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind that relate to the business practices or business or personal finances of the defendants.

VI. RECORD KEEPING/BUSINESS OPERATIONS

IT IS FURTHER ORDERED that defendants S.J.A. Society, Inc., doing business as Apex Marketing Group, Atlantic Service Corp., ASC, and Publishers Service, Thomas P. Johnson, and Thomas Alan Blair, and their agents, employees, officers, servants, and attorneys, and those persons who receive actual notice of this order by personal service or otherwise, are hereby temporarily restrained and enjoined from:

A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money; and

B. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers and employees; and (4) a detailed description of the business entity's intended activities.

VII. SERVICE OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that defendants S.J.A. Society, Inc., doing business as Apex Marketing Group, Atlantic Service Corp., ASC, and Publishers Service, Thomas P. Johnson, and Thomas Alan Blair, shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, agent, attorney, and representative of any defendant, and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that defendants have complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order.

VIII. SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of the defendants, or that may be subject to any provision of this Order.

IX. CREDIT REPORTS

IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any credit reporting agency may furnish a credit report concerning any of the defendants to the Commission.

X. RETENTION OF ASSETS AND RECORDS

IT IS FURTHER ORDERED that, pending determination of the Commission's request for a preliminary injunction, any financial or brokerage institution, business entity, or person served with a copy of this order that holds, controls or maintains custody of any account or asset of the defendants, or their affiliates or subsidiaries, or has held, controlled or maintained custody of any such account or asset at any time since January 1, 1992, shall:

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset except by further order of the Court;

B. Deny defendants access to any safe deposit box that is:

1. titled in the name of any defendant, either individually or jointly; or

2. otherwise subject to access by any defendant;

C. Provide counsel for the FTC and the receiver appointed herein, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:

1. the identification number of each such account or asset titled in the name, individually or jointly, of any of the defendants, or held on behalf of, or for the benefit of, any of the defendants;

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, individually or jointly, of any

defendant, or is otherwise subject to access by any defendant;
and

D. Upon the request by the FTC or the receiver appointed herein, promptly provide the FTC with copies of all records or other documentation 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 and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any such financial institution, account custodian, or other aforementioned entity may arrange for the FTC to obtain copies of any such records which the FTC seeks, provided that such institution or custodian may charge a reasonable fee not to exceed fifteen cents per page copied.

XI. RECEIVER

A. APPOINTMENT OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that _____, whose address is _____, is appointed temporary receiver for the business activities of defendant S.J.A. Society, Inc., doing business as Apex Marketing Group, Atlantic Service Corp., ASC, and Publishers Service, and any affiliates, subsidiaries, divisions, sales entities,

successors, or assigns of S.J.A. Society, Inc., doing business as Apex Marketing Group, Atlantic Service Corp., ASC, and Publishers Service, and any and all dba's that any defendant controls, (hereinafter referred to as the "Receivership Defendants"), 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 of this Court governing receivers.

B. RECEIVERSHIP DUTIES

IT IS FURTHER ORDERED that the receiver is directed and

manage all assets and documents of the Receivership Defendants and other persons or entities whose interests are now held by or under the direction, possession, custody, or control of the Receivership Defendants. **PROVIDED, HOWEVER,** the receiver shall not attempt to collect any amount from a consumer if the receiver believes the consumer was a victim of the deceptive acts or practices alleged in the Complaint in this matter;

3. Take all steps necessary to secure the business premises of the Receivership Defendants. Such steps may include, but are not limited to, the following, 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

persons are not removing from the premises documents or assets of the Receivership Defendants;

4. 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 or to creditors of the Receivership Defendants, including, but not limited to, obtaining an accounting of the assets and preventing transfer, withdrawal, or misapplication of assets;

5.

9. 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 Defendants prior to the date of entry of this Order, except payments that the receiver deems necessary or advisable to secure assets of the Receivership Defendants, such as rental payments;

10. Determine and implement the manner in which the Receivership Defendants will comply with, and prevent violations of, this Order and all other applicable laws, including but not limited to, revising sales materials and implementing monitoring procedures;

11. 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 Defendants or that the receiver deems necessary and advisable to carry out the receiver's mandate under this Order;

12. Defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted in the past or in the future against the receiver in his role as receiver, or against the Receivership Defendants that the receiver deems necessary and advisable to preserve the assets of the

Receivership Defendants or that the receiver deems necessary and advisable to carry out the receiver's mandate under this Order;

13. Continue and conduct the business of the Receivership Defendants 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 business profitably and lawfully, if at all; **PROVIDED, HOWEVER,** that the continuation and conduct of the business shall be conditioned upon the receiver's good faith determination that the businesses can be lawfully operated at a profit using the assets of the receivership estate;

14. Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate;

15. Open one or more bank accounts in Broward or Palm Beach County as designated depositories for funds of the Receivership Defendants. The receiver shall deposit all funds of the Receivership Defendants in such a designated account and shall make all payments and disbursements from the receivership estate from such an account; and

16. Maintain accurate records of all receipts and expenditures that he makes as receiver.

C. COOPERATION WITH THE RECEIVER

IT IS FURTHER ORDERED that defendants shall fully cooperate with and assist the receiver. Defendants' cooperation and assistance shall include, but not be limited to, providing any information to the receiver that the receiver deems necessary to exercising the authority and discharging the responsibilities of the receiver under this Order; providing any password required to access any computer or electronic files in any medium; or advising all persons who owe money to the Receivership Defendants that all debts should be paid directly to the receiver. Defendants are hereby restrained and enjoined from directly or indirectly:

1. Transacting any of the business of the Receivership Defendants;

2. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any documents of the Receivership Defendants, including, but not limited to, books, records, accounts, or any other papers of any kind or nature;

3. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Defendants, or the receiver;

4. Excusing debts owed to the Receivership Defendants;

5. Failing to notify the receiver of any asset, including accounts, of a Receivership Defendant held in any name other than the name of the Receivership Defendant, or by any person or entity other than the Receivership Defendant, or failing to provide any assistance or information requested by the receiver in connection with obtaining possession, custody, or control of such assets; or

6. Doing any act or refraining from any act whatsoever to interfere with the receiver's taking custody, control, possession, or managing of the assets or documents subject to this receivership; or to harass or interfere with the receiver in any way; or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants; or to refuse to cooperate with the receiver or the receiver's duly authorized agents in the exercise of their duties or authority under any Order of this Court.

D. DELIVERY OF RECEIVERSHIP PROPERTY

IT IS FURTHER ORDERED that:

1. Immediately upon service of this Order upon them, or within a period permitted by the receiver, defendants or any other person or entity shall transfer or deliver possession, custody, and control of the following to the receiver:

- a. All assets of the Receivership Defendants;
- b. All documents of the Receivership Defendants, including, but not limited to, books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;
- c. All assets belonging to members of the public now held by the Receivership Defendants; and
- d. All keys and codes necessary to gain or to

E. TRANSFER OF FUNDS TO THE RECEIVER

IT IS FURTHER ORDERED that, upon service of a copy of this Order, all banks, broker-dealers, savings and loans, escrow agents, title companies, commodity trading companies, or other financial institutions shall cooperate with all reasonable requests of the receiver relating to implementation of this Order, including transferring funds at his direction and producing records related to the assets of the Receivership Defendants.

F. STAY OF ACTIONS

IT IS FURTHER ORDERED that:

1. Except by leave of this Court, during pendency of the receivership ordered herein, defendants and all other persons and entities be and hereby are stayed from taking any action to establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the name of, any of the Receivership Defendants, any of their subsidiaries, affiliates, partnerships, assets, documents, or the receiver or the receiver's duly authorized agents acting in their capacities as such, including, but not limited to, the following actions:

a. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding, except that such

actions may be filed to toll any applicable statute of limitations;

b. Accelerating the due date of any obligation or claimed obligation; filing or enforcing any lien; taking or attempting to take possession, custody, or control of any asset; attempting to foreclose, forfeit, alter, or terminate any interest in any asset, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise;

c. Executing, issuing, serving, or causing the execution, issuance or service of, any legal process, including, but not limited to, attachments, garnishments, subpoenas, writs of replevin, writs of execution, or any other form of process whether specified in this Order or not; or

d. Doing any act or thing whatsoever to interfere with the receiver taking custody, control, possession, or management of the assets or documents subject to this receivership, or to harass or interfere with the receiver in any way, or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants;

2. This paragraph does not stay:

a. The commencement or continuation of a criminal action or proceeding;

b. The commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

c. The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power, including execution on any security interest in favor of the Federal Trade Commission;

d. The commencement of any action by the Secretary of the United States Department of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units; or

e. The issuance to a Receivership Defendant of a notice of tax deficiency; and

3. Except as otherwise provided in this Order, all persons and entities in need of documentation from the receiver shall in all instances first attempt to secure such information by submitting a formal written request to the receiver, and, if such request has not been responded to within thirty (30) days of receipt by the receiver, any such person or entity may thereafter seek an Order of this Court with regard to the relief requested.

G. COMPENSATION OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that the temporary receiver and all personnel hired by the temporary receiver as herein authorized, including counsel to the temporary receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by or in the possession or control of or which may be received by the Receivership Defendants. The temporary receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of this Order. The temporary receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

H. RECEIVER'S BOND

IT IS FURTHER ORDERED

XII. ACCESS TO PREMISES

IT IS FURTHER ORDERED that defendants and the temporary receiver shall allow the Commission's representatives, agents, or designees immediate access to the defendants' business premises, wheresoever located, and irrespective of any location specified in the complaint.

The purpose of this access shall be to inspect and copy any materials relevant to this action and to inventory defendants'

IT IS FURTHER ORDERED that, if any party to this action intends to present the testimony of any witness at the hearing on a preliminary injunction in this matter, that party shall, at least forty-eight (48) hours prior to the scheduled date and time of hearing, file with this Court and serve on all other parties a statement disclosing the name, address, and telephone number of any such witness, and either a summary of the witness's expected testimony, or the witness's affidavit revealing the substance of such witness's expected testimony. Service on the Commission shall be performed by personal delivery to the attention of counsel at the Federal Trade Commission, 6th & PA Ave., NW, Washington, DC 20580, or by facsimile transmission to 202-326-3395.

XV. EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that in anticipation of the preliminary injunction hearing in this matter, the parties and the temporary receiver are granted leave to conduct expedited discovery. The parties or the temporary receiver may depose witnesses at any time after the date of this Order upon two (2) business days notice. The parties shall respond to any interrogatories, requests for admissions, or requests for production of documents within three (3) business days after service of the discovery request.

XVI. DURATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on _____, 1997, unless within

SO ORDERED, this ____ day of _____, 1997, at
____.m.
