

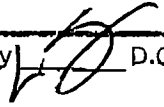
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 00-514-CIV-GOLD/SIMONTON

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

FILED by  D.C.  
APR 09 2004

AMERICAN TELEPHONE DISTRIBUTORS

and Order for Permanent Injunction ("Permanent Injunction") which was filed on February

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

submitted a Supplemental Report (DE #136, filed March 10, 2004) which indicated that the

Company reported that it had received 2000-2001 U.S. Census Bureau data

### Legal Standards

Proper civil contempt sanctions either coerce compliance with the order, or redress consumer injury. *In re: Lawrence*, 279 F.3d 1294, 1300 (11th Cir. 2002); *McGregor v. Chierico*, 206 F.3d 1387 (11th Cir. 2000); *Popular Bank of Florida v. Banco Popular de Puerto Rico*, 180 F.R.D. 461, 465 (S.D. Fla. 1998); see also *United States v. Tankersley*

incurred in perpetration of the fraud"), *aff'd* 12 F.3d 214 (6th Cir. 1993). For example, courts have explicitly disallowed expenses for overhead and commissions, because the manner in which the defendants "chose to spend their misappropriation is irrelevant" as to disgorgement. Great Lakes Equities, 775 F. Supp. at 214; see also United Monetary

Services, 1990 WL 91912, at \*9 (disallowing effects for sales commissions and printing

costs); SEC v. TLC Investments and Trade Co., 179 F. Supp. 2d. 1149, 1157 (C.D. Cal.

2001) (deductions for business expenses in carrying out a fraudulent scheme "are hardly

used to pay the business expenses of the Corporate Respondents. As outlined above

however, the Court has the discretion to disregard claims for offset of business expenses. There is no evidence that the Respondents conducted any legitimate business that was not prohibited by the Permanent Injunction. Accordingly, the Court denies Respondents'

severally liable for the gross sales of Ameritel and PTC from March 28, 2001 (the date of the first proven misrepresentations in violation of the Permanent Injunction) to September 10, 2003, the date where Respondents were to show cause before the Court why they

Matthew Matolen is individually liable for \$424,229.37, and he shall disgorge and pay

\$424,229.37 to the Receiver within 30 days after this Order.

Lenora Kaus aided and abetted the Respondents' violations of the Permanent Injunction. Contempt Order, pp.16-17. She was also heavily involved with PTC, Ameritel's successor. *Id.*, p.21. Thus, Lenora Kaus is individually liable for \$206,093.00, and she shall disgorge and pay \$206,093.00 to the Receiver within 30 days after this Order.

Cir. 1071 (failure to pay pursuant to a Court order enforcing "fiduciary" obligations)

enforceable by law or execution. But ~~the~~ ~~the~~ ~~the~~

The Court has the power to order that amounts disgorged be used to compensate victims. *SEC v. First Pacific Bancorp*, 142 F.3d 1186, 1192 (9th Cir. 1998); *SEC v. R.J.*

*Allen & Associates, Inc.*, 386 F. Supp. 866, 891 (S.D. Fla. 1974). The Court orders the

Further, the court has the power in a contempt proceeding to appoint a permanent

Receiver incident to the contempt proceeding for violation of the Permanent Injunction

Gill, 183 F. Supp.2d at 1186; see also *FTC v. Slimamerica, Inc.*, 77 F. Supp. 2d 1263, 1276-77 (S.D. Fla. 1999). The Court hereby appoints David R. Chase as permanent Receiver of the Corporate Respondents



2. Nathan Matalon shall disgorge \$424,229.37 within 30 days after this Order.

Nathan Matalon, et al. v. SEC, et al.

[REDACTED]

Key shall be the disgorge for...

- a. Take full control of the Corporate Respondents, with the power to retain or remove as the Receiver deems necessary or advisable any officer director

independent contractor, employee, or agent of these entities;

property, premises, accounts, rights of action, mail and other assets of, or in the possession or under the control of, or held for the benefit of, the

injury to consumers who purchased business ventures or franchises from the

Corporate Respondents:

[REDACTED]

d. Obtain by order of the Court documents from the following:

or brokerage institution, escrow agent, title company, commodity trading

company, business entity, trust or person concerning the nature, location

[REDACTED]

[REDACTED]

purchased business ventures or franchises from the Corporate Respondents, including against the Corporate Respondents, their officers, directors, employees, agents, trustees, holding companies, affiliates, subsidiaries or any persons acting in concert or participation with them, or against any transfers of monies or other proceeds directly or indirectly traceable from consumers who purchased business ventures or franchises from the Corporate Respondents; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits,

rescission and avoidance of fraudulent transfers under Florida Statute §

726.101 et. seq. or otherwise rescission and restitution the collection of

which said order from this Court may be necessary to enforce this

after the date of this Order. The Receiver shall not increase his fee rate billed to the Respondents without prior approval of the Court.

8 The Commission may use the funds collected by or disbursed to the Receiver.

redress and for paying any attendant expenses of administering any redress fund. To the extent excess funds remain following payment of redress to consumers and redress

Director, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Room 238, Washington, DC 20580.

10. Pursuant to Federal Rule of Civil Procedure 54(b), that there is no just cause for delay and the Clerk of Court immediately shall enter this Order as a final order.

### Definitions

A. "Assets" means all real and personal property of Respondents, or held for the benefit of Respondents, including but not limited to "goods," "instruments," "equipment,"

type of business, including, but not limited to, referrals to one or more persons providing location services.

C. "Franchise" is defined as that term is defined in the Franchise Rule, and includes "business opportunity ventures" as defined in sections 436.2(a)(1)(ii) and (2) of the Franchise Rule, and discussed in the FTC's Final Interpretive Guide for the Franchise Rule, 44 Fed. Reg. 49966-68 (August 24, 1979). The term "Franchise" in this order shall also encompass any successor definition of "franchise," "business opportunity," and "business opportunity venture" in any future trade regulation rule or rules that may be

in part, from the date any such rule takes effect.

D. "Corporate Respondents" means Ameritel Payphone Distributors, Inc., Public Telephone Corporation, American Payphone Distributors, L.L.C., Jakina Consulting Corp.,

G "Individual Respondent" means any of the following: Roy B. Goodman, Nathan

Matalon, Kimberly Matalon, and Janice K...

**ORDERED IN CHAMBERS** at Miami, Florida this 9 day of April 2004



**THE HONORABLE ALAN S. GOLD  
UNITED STATES DISTRICT JUDGE**

Copies furnished (via Telefax):  
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