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

FEDERAL TRADE COMMISSION, Plaintiff, v. Centurion Financial Benefits LLC, *et al.*, Defendants.	)	Civil Action No. 05 C 5442 Judge Moran Magistrate Denlow

PLAINTIFF FEDERAL TRADE COMMISSION'S REPLY IN SUPPORT OF ITS MOTION FOR ORDER TO SHOW CAUSE WHY FRANK BELLISSIMO AND IRA RUBIN SHOULD NOT BE HELD IN CONTEMPT

I. INTRODUCTION

As outlined in great detail in the exhibits supporting the Federal Trade Commission's motion, individual defendant Frank Bellissimo and non-party Ira N. Rubin repeatedly and brazenly violated multiple provisions of this Court's Preliminary Injunction Order ("PI"). Specifically, the FTC has established that Bellissimo and Rubin commenced operating a telemarketing scam that sold non-existent government grants to U.S. consumers and then transferred hundreds of thousands of dollars of proceeds from this scam mere months after being

challenges whether it was possible for them to actually abide by these provisions.[1] Instead, Bellissimo and Rubin each improperly invoke their Fifth Amendment right against self-incrimination and assert an "impossibility" argument that is both baseless and irrelevant. Bellissimo also claims that the FTC has not met its burden, suggesting, in essence, that the FTC has him confused with another Canadian telemarketer (and associate of Ira Rubin) named Frank Bellissimo. None of these objections represent a valid defense to the FTC's allegations. The Court should therefore find Bellissimo and Rubin in contempt.[2]

II. THE FTC HAS SHOWN BY CLEAR AND CONVINCING EVIDENCE THAT BELLISSIMO HAS VIOLATED THIS COURT'S ORDERS[3]

As the moving party in a civil contempt proceeding, the Commission bears "the initial burden of proving, by clear and convincing evidence, that the alleged contemnors violated a court order." *Chicago Truck Drivers Union Pension Fund v. Brotherhood Labor Leasing,* 207 F.3d

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[1] Indeed, given Bellissimo and Rubin's longstanding involvement with scams of this nature and their unhesitating willingness to violate court orders, it is a virtual certainty that they are continuing to engage in the same fraudulent conduct underlying the FTC's motion.

[2] The Commission submits that its contempt motion should be decided on the written record. Just as courts decide summary judgment motions on the basis of written testimony, courts may also make contempt findings in the face of "overwhelming evidence" supporting contempt when the alleged contemnors do "not present any arguments which [create] any issue of material fact." *U.S. v. Ayres*, 166 F.3d 991, 994 (9th Cir. 1999) (district court did not violate due process by finding defendant in contempt on the basis of uncontroverted affidavits offered in support of contempt finding) (quoting *Commodity Futures Trading Commission v. Premex, Inc.*, 665 F.2d 779, 782 n.2 (7th Cir. 1981.)) This case is particularly suited for such a summary determination because neither Bellissimo nor Rubin have offered any evidence controverting the overwhelming evidence presented by the FTC in support of its motion.

[3] Unlike Bellissimo, Rubin does not challenge the sufficiency of the FTC's evidence, effectively conceding that the Commission has met its initial burden. The FTC therefore addresses its reply on this issue solely to Bellissimo.

500, 505 (8th. Cir. 2000); *see also CFTC v. Wellington Precious Metals, Inc.,* 950 F.2d 1525, 1529 (11th. Cir. 1992); *In re Kademoglou,* 199 B.R. 35, 36 (N.D. Ill. 1996). If a violation is shown, "[t]he defendant's intent regarding compliance with the order is irrelevant." *SEC v. Showalter,* 227 F. Supp. 2d 110, 120 (D.D.C. 2002); *see also SEC v. Yun,* 208 F. Supp. 2d 1279, 1285 (M.D. Fla. 2002); *SEC v. Bilzerian,* 112 F. Supp. 2d 12, 16 (D.D.C. 2000) ("Bilzerian's intent is irrelevant; the Court need not find that his failure to comply with the orders was willful or intentional.").

The Commission clearly has satisfied its initial burden here. It has shown that the Preliminary Injunction entered by the Court: (1) froze Bellissimo's assets, prohibiting him or any third party from transferring, concealing, dissipating, disbursing, or otherwise disposing of such assets; (2) prohibited Bellissimo from operating a new business without first making certain disclosures to the Commission about the nature of the new business; (3) prohibited third parties from providing any payment processing services to Bellissimo; and (4) prohibited Bellissimo and anyone with actual notice of the order from making misrepresentations in connection with the sale of any product or service. (*See* FTC's Mot. for Order to Show Cause at ¶ 6.) The FTC has further shown that Bellissimo and Rubin systematically violated all of these provisions through their operation of a telemarketing scam, doing business as Easton Consulting Group and Potomac Fidelity Group, that sold non-existent government grants to U.S. consumers; through Rubin's provision of payment processing services to Bellissimo and transfer of over half a million dollars in scam proceeds to Canadian bank accounts controlled by Bellissimo; and through Bellissimo's failure make any of the required disclosures about his new business to the Commission. (*See id.* at ¶¶ 18 - 27.)

Having produced no evidence of his own, Bellissimo's challenge rests solely on his interpretation of the FTC's evidence. In particular, Bellissimo disputes whether the FTC's evidence clearly and convincingly shows that he controlled and benefitted financially from the Easton Consulting and Potomac Fidelity ventures. Among other things, this evidence shows:

- Email messages dated July 10 and July 13, 2006 from an individual with the initials "FB" at the address pfidelity@@gmail.com negotiating fees and other terms of a payment processing agreement for a telemarketing venture with Ira Rubin. FB asks Rubin to call him at 647-333-0251.

categorically and in detail they cannot repay the funds; why this purported inability is not self-induced; or how they have made all reasonable efforts to comply. For example, neither Bellissimo nor Rubin claim not to possess $657,648, much less that they are so impoverished that they are unable to pay even a portion of this amount. Similarly, Rubin does not indicate what steps, if any, he has taken to persuade the Florida court to relax the asset freeze in anticipation of satisfying a contempt judgment by this Court.[4]

Bellissimo and Rubin's assertions of impossibility do not constitute a valid defense to the FTC's contempt allegations. Even if they did bear some relevance to the central issue of whether Bellissimo and Rubin should be held in contempt for violating the PI, neither individual comes close to satisfying the heavy burden of establishing a legitimate impossibility defense.

IV. BELLISSIMO AND RUBIN'S ATTEMPTS TO INVOKE THE FIFTH AMENDMENT ARE INVALID

In an attempt to excuse their non-compliance with the PI, both Bellissimo and Rubin claim in their opposition that they fear any admission or denial of the FTC's allegations "either would directly incriminate [them] or furnish a link in the chain of evidence needed to prosecute [them] in violation of [their] privilege against self-incrimination under the Fifth Amendment to the Constitution of the United States of America." (Rubin and Bellissimo's Opp. at 2.) They go on to assert that the facts giving rise to the FTC's "Contempt Motion can easily serve as the basis for a criminal prosecution of offenses including, but not limited to, the felonies of mail fraud, wire fraud, or conspiracy to commit the foregoing offenses." (*Id.*)

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[4] Indeed, counsel for the FTC has already represented to Rubin's attorney that the Commission would support temporarily relaxing the Florida asset freeze to permit repatriation of funds associated with the government grants ventures.

As of this date, neither Bellissimo nor Rubin have asserted *on their own behalf* a Fifth Amendment privilege against self-incrimination. Any Fifth Amendment privilege that may be applicable here belongs to Bellissimo and Rubin themselves, not to their counsel, and they therefore must personally assert the privilege. *See United States v. Schmidt*, 816 F.2d 1477, 1481 n.3 (10th Cir. 1987) (stating that Fifth Amendment privilege against self-incrimination is a personal privilege and that appellants, not their counsel, were the proper parties to claim the privilege); *State ex rel. Butterworth v. Southland Corp.*, 684 F. Supp. 292, 294-95 (S.D. Fla. 1988) (holding that where interrogating party insisted that witness personally invoke privilege against self-incrimination, witness was required to do so). Thus far, Bellissimo and Rubin have not personally asserted their Fifth Amendment privilege, and as a result, they each remain in contempt of the PI.

Furthermore, the blanket assertion of the Fifth Amendment privilege that Bellissimo and Rubin appear to be attempting here would effectively preclude both the Commission and the Court from assessing the applicability of the privilege. It is not enough for Bellissimo and Rubin to broadly state that information related to their alleged violations of the PI would incriminate them -- this is an issue for the Court to decide. *See Hoffman v. United States*, 341 U.S. 479, 486 (1951) ("[The witness'] say-so does not of itself establish the hazard of incrimination. It is for the court to say whether his silence is justified."). Yet before the Court may do so, Bellissimo and Rubin must show how particular admissions or denials regarding the FTC's allegations would be incriminating. Thus far, Bellissimo and Rubin have only indicated (through their attorney) that they do not want *any* relevant information regarding their compliance with the PI shared with unnamed criminal authorities. This is not a legitimate invocation of the Fifth

Amendment. *See U.S. v. Butler*, 211 F.3d 826, 832 (4th Cir. 2000) (district court correctly prohibited defendant from asserting

IV. CONCLUSION

WHEREFORE, Plaintiff Federal Trade Commission respectfully requests that the Court enter an order to show cause why Frank Bellissimo and Ira Rubin should not be held in contempt for violating the Preliminary Injunction.

Respectfully Submitted,

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DATED: April 26, 2007

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of **Plaintiff Federal Trade Commission's Reply in Support of its Motion for Order to Show Cause Why Frank Bellissimo and Ira Rubin Should Be Held in Contempt** and the **Supplemental Declaration of Douglas McKenney** were served electronically via the EC/EMF system on April 26, 2007, upon the following: Michael Sharif Baig, Daniel Steven Reinberg, and Hector E. Lora.

/s James H. Davis
Attorney for Federal Trade Commission