

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CASE NO: 8:09-cv-547-T-23TBM

HOME ASSURE, LLC,

B HOME ASSOCIATES, LLC, d/b/a
Expert Foreclosures,

BRIAN BLANCHARD,
individually and as a member, officer,
or director of Home Assure, LLC, and
B Home Associates, LLC,

MICHAEL GRIECO,
MICHAEL TRIMARCO, and
NICOLAS MOLINA,
individually and as members, officers, or
directors of Home Assure, LLC,

Defendants.

ORDER

Pursuant to Section 13(b) of the Federal Trade Commission Act (the "FTC Act"), 15 U.S.C. § 53(b), the Federal Trade Commission (the "FTC" or the "Commission") sues the defendants and requests preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement, and other equitable relief for the defendants' alleged deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with the sale of "mortgage foreclosure rescue



violates the FTC Act, which profit in this case equals zero (or, at most, Trimarco and Molina's salary from Home Assure, LLC).

In an action brought under Section 13(b), a district court may grant preliminary relief, including an asset freeze, if necessary to ensure the possibility of effective final relief. See FTC v. U.S. Oil & Gas Corp., 748 F.2d 1431, 1434 (11th Cir. 1984).⁶

Section 13(b) imposes no limit on a district court's equitable powers, which include "the power to grant restitution and disgorgement." FTC v. Gem Merch. Corp., 87 F.3d 466, 469-70 (11th Cir. 1996) (holding that "section 13(b) permits a district court to order a defendant to disgorge illegally obtained funds").⁷ Because the public interest is involved, a district court's equitable powers in an enforcement action under Section 13(b) "assume an even broader and more flexible character than when only a private controversy is at stake." Gem Merch. Corp., 87 F.3d at 469 (quoting Porter v. Warner Holding Co., 328 U.S. 395, 398 (1946)); see also AT&T Broadband v. Tech Commc'ns, Inc., 381 F.3d 1309, 1316 (11th Cir. 2004).

Final relief under Section 13(b) may include a refund to the consumer of the full amount paid by the consumer to the defendants. See FTC v. Febre, 128 F.3d 530, 536 (7th Cir. 1997) ("Courts have regularly awarded, as equitable ancillary relief, the full amount lost by consumers."); McGregor v. Chierico, 206 F.3d 1378, 1388 (11th Cir. 2000) (affirming contempt sanction in the amount of gross sales and stating in dictum

⁶ See also CFTC v. Levy, 694 F.3d 1152, 1157 (11th Cir. 2012) (affirming a district court's order of disgorgement and civil penalties).

that, “[i]n the underlying action, the sanctions imposed by the district court would have been authorized by Section 13(b)”; FTC v. Freecom Commc'ns, Inc., 401 F.3d 1192, 1206 (10th Cir. 2005) (“[G]ross receipts from consumer sales [is] a proper beginning point for the calculation of sanctions in a § 5 case.”); FTC v. Stefanchik, No. 07-35359, ___ F.3d ___, 2009 WL 636510, *6 (9th Cir. Mar. 13, 2009) (“[B]ecause the FTC Act is designed to protect consumers from economic injuries, courts have often awarded the full amount lost by consumers rather than limiting damages to a defendant's profits.”); FTC v. Transnet Wireless Corp., 506 F. Supp. 2d 1247, 1271 (S.D. Fla. 2007) (“In a deceptive sales scheme, restitution may be measured by the amount of loss suffered by the victim and the return to status quo.”). In a Section 13(b) action of this kind, “the proper amount of restitution has been held to be the purchase price of the relevant product or business opportunity, less any refunds.” FTC v. Nat'l Urological Group, No. 1:04-CV-3294-CAP, 2008 WL 2414317, *33 (N.D. Ga. June 4, 2008) (citation and internal quotation marks omitted).⁸

CFTC v. Wilshire Inv. Management Corp., 531 F.3d 1339 (11th Cir. 2008), compels no different result. Wilshire holds that in an enforcement action under 7 U.S.C. § 13a-1 the proper measure of restitution is not the full amount lost by defrauded customers but “the amount that D/3

does not take into consideration the plaintiff's losses, but only focuses on the defendant's unjust enrichment," 531 F.3d at 1345, admits of the broader interpretation urged by Trimarco and Molina.⁹

F.3d 466, 469-70 (11th Cir.1996)).¹⁰ In short, Wilshire does not unambiguously support the proposition that final relief under Section 13(b) cannot include consumer redress in the amount of gross revenues less refunds, and weighty authority supports the contrary view, which also comports with the deterrent purpose of Section 13(b).¹¹

Finally, Trimarco and Molina's contention that restitution under Section 13(b) is limited to specific assets directly traceable to the alleged violations fails to persuade. Although not without support,¹² the contention (a) ignores the availability of individual liability¹³ for corporate violations of the FTC Act¹⁴ and (b) assumes that Great-West Life & Annuity Insurance Co. v. Knudson, 534 U.S. 204 (2002), a case interpreting Section 502(a)(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(a)(3), fundamentally alters federal equity jurisprudence in statutory enforcement

¹⁰ Cf. FTC v. Febre, 128 F.3d 530, 536 (7th Cir. 1997) (describing FTC v. Gem Merchandising Corp., 87 F.3d 466 (11th Cir. 1996), somewhat loosely as "affirmcont ns Tjtr. w 9 BDC 0.0022 Tc 0 Tw 7.28on 18and (



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1. The FTC is likely to prevail on the merits of this action as to Trimarco, Molina, Home Assure, LLC, and B Home Associates, LLC, doing business as Expert Foreclosure.

2. The Defendants' activities as alleged in the complaint are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

3. There is good cause to believe that immediate and irreparable injury, loss, or damage to the court's ability to grant final and effective relief for consumers in the form of monetary redress will occur from the sale, transfer, or other disposition or concealment by the Defendants of assets or records during the pendency of this action unless the Defendants are immediately restrained and enjoined by order of this court. There is thus good cause for an asset freeze to ensure the possibility of consumer redress and other effective final relief.

4. Good cause exists for requiring the Defendants to produce an accounting of their business assets, sworn financial statements, profit-and-loss statements, and sworn personal financial statements.

5. Good cause exists for the re-appointment of a Temporary Receiver for Defendants Home Assure, LLC ,and B Home Associates, LLC, doing business as Expert Foreclosure.

6. Balancing the equities and considering the FTC's likelihood of success on the merits, the entry of this order as set forth below is in the public interest.

7. No security is required of any agency of the United States for issuance of a preliminary injunction. Fed. R. Civ. P. 65(c).

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "Asset" or "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.
2. "Financial institution" means any bank, savings and loan institution, credit union, financial institution, brokerage house, escrow agent, money market or mutual fund, telephone or other common carrier, storage company, trustee or any other person, partnership, corporation, or other legal entity maintaining or having control of any records, accounts, or other assets, owned directly or indirectly, of record or beneficially,

7. "Receivership Defendants" means the Business Defendants and any entity or name through which they do business.
8. "Document" is synonymous in meaning and equal in scope to the usage of the term in Rule 34(a), Federal Rules of Civil Procedure, and includes both documents and electronically stored information, including but not limited to 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 "document."
9. "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.
10. The terms "and" and "or" shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.

I. ASSET FREEZE

lien or security interest or other interest in, or otherwise disposing of any funds, credit instruments, real or personal property, accounts, contracts, lists of consumer names, shares of stock, or other assets, wherever located, including outside the United States, that are:

1. Owned or controlled by any Defendant, in whole or in part, including but not limited to any assets held by, for, or in the name of the Defendants at any bank or savings and loan institution or credit card processing agent, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, merchant account processor, check processor, or other financial institution, depository of any kind, or business entity, including but not limited to, Bank of America, NA, Wachovia Bank, NA, and MoneyGram, International;

2. In the actual or constructive possession of any Defendant;

3. Held by any agent of any Defendant as a retainer for the agent's provision of services to any Defendant; or

4. Owned, controlled by, or in the actual or constructive possession of any corporation, partnership, limited liability company, or other entity directly or indirectly owned, managed, or controlled by or under common control with any Defendant.

B. Opening or causing to be opened any safe deposit boxes, titled, singly or jointly, in the name of any Defendant, or subject to access by any Defendant;

C. Cashing any checks or depositing any payments received from customers of the Defendants;

D. Incurring charges on any credit card issued in the name, singly or jointly, of any Defendant;

E. Collecting, opening, or causing to be collected or opened, any mail received by or on behalf of the Receivership Defendants, at any address, including but not limited to the following: 2010 Drew Street, Clearwater, Florida 33765, and failing to turn over any such mail to the Temporary Receiver;

F. Obtaining a personal or secured loan; and

G. Incurring liens or other encumbrances on real property, personal property, or other assets of any Defendant or in the name of any Defendant, singly or jointly.

The assets affected by this Section shall include both existing assets and assets acquired after the effective date of this order.

Provided however, the asset freeze described in this Section shall be limited to an amount equal to the gross sales less any refunds of the Business Defendants:

a. The assets of Defendants Trimarco, Molina, and Home Assure, LLC, shall be frozen up to \$3,721,807.84 each. Should the assets of any of these Defendants exceed \$3,721,807.84, the asset freeze shall not apply to that Defendants' assets exceeding this amount; and

b. The assets of Defendant Expert Foreclosure are minimal and do not exceed the potential consumer injury and therefore shall remain frozen.

Notwithstanding the provisions of this Section, the Named Defendants may make transfers as directed by the Temporary Receiver appointed by this court, or as otherwise ordered by this court upon proper showing and after notice to counsel for the Commission.

II. RETENTION OF ASSETS AND RECORDS HELD BY THIRD PARTIES

IT IS FURTHER ORDERED that 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 any Named Defendant, or has held, controlled or maintained custody of any such account or asset at any time since January, 2005, shall:

A. Prohibit the Named Defendants from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of any such account or asset except as directed by further order of the court;

B. Deny the Named Defendants access to any safety deposit box that is:

1. Titled in the name of any of the Defendants, either individually or jointly; or
2. Otherwise subject to access by any of the Defendants, either individually or jointly;

C. Provide counsel for the FTC and the Temporary Receiver, within five (5) business days of receiving a copy of this order, with a sworn statement setting forth:

1. The identification number and description of each such account or asset titled in the name, individually or jointly, of the Named Defendants, or held on behalf of,

3. The identification of any safe deposit box that is either titled in the name, individually or jointly, of the Named Defendants, or otherwise subject to access by any Named Defendant; and

D. Upon the request of the Temporary Receiver or the Commission, provide the Temporary Receiver and the Commission within forty-eight (48) hours, with copies of all records or other documentation pertaining to any account or asset of any Named Defendant, 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; and

E. Cooperate with all requests of the Temporary Receiver relating to implementation of this order, including transferring funds or other assets at the Temporary Receiver's direction and producing records related to the accounts or assets of any Named Defendant.

III. ASSETS AND DOCUMENTS LOCATED IN FOREIGN COUNTRIES

IT IS FURTHER ORDERED that the Named Defendants shall, if they have not already done so:

A. Within forty-eight (48) hours following the service of this order, provide counsel for the Commission and the Temporary Receiver with a full accounting of all documents and assets that are located outside of the territory of the United States of America and are held by or for the benefit of the Named Defendants or are under their direct or indirect control, whether jointly, severally, or individually;

B. Prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds; and

C. Provide counsel for the Commission with access to records and documents of the Named Defendants held by financial institutions outside the territorial United States of America, by signing and delivering to counsel for the Commission the Consent of Release of Financial Records attached as Attachment A to the TRO within forty-eight (48) hours of service of this order.

IT IS FURTHER ORDERED that the Named Defendants are hereby restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of the Named Defendants' foreign assets, including but not limited to:

A. Sending any statement, letter, facsimile, e-mail or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a "duress" event has occurred under the terms of a foreign trust agreement; and

B. Notifying any trustee, protector, or other agent of any foreign trust or other related entities of the existence of this order.

IV. EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that the Commission and the Temporary Receiver are granted leave to conduct certain expedited discovery, and that, commencing with the time and date of this order, in lieu of the time periods, notice provisions, and other requirements of Rules 26, 30, 34, and 45 of the Federal Rules of Civil Procedure, expedited discovery shall proceed as follows:

Pursuant to Fed. R. Civ. P. 30, the Commission may take depositions upon oral examination concerning the nature, location, status, and extent of the Named Defendants' assets; the status and location of documents reflecting the Named

Defendants' business transactions; and compliance with this order, on two (2) days notice of any such deposition. Depositions may be taken Monday through Saturday. Deposition transcripts that have not been signed by the witness may be used for purposes of any further proceeding in this action.

Provided, that this Subsection permitting expedited deposition discovery concerning the nature, location, status, and extent of the Named Defendants' assets, the status and location of documents reflecting the Named Defendants' business transactions, and compliance with this order, shall not be construed in any manner to preclude FTC's right to take subsequent depositions of the same witnesses on the merits of this action.

Provided, further, that any deposition taken pursuant to this Subsection is in addition to, and not subject to, the presumptive limits on depositions set forth in Fed. R. Civ. P. 30(a)(2)(A).

Pursuant to Fed. R. Civ. P. 34(b), the Named Defendants shall produce all documents requested by the Commission within two (2) days of service of such request, with production of documents made to Commission counsel, or to such other person or place as counsel for the Commission may direct in writing.

Provided, that in the event any of the Named Defendants' documents have been removed from the Named Defendants' premises by, and are in the possession of another law enforcement or investigative agency, the Commission may have immediate access to such documents for purposes of inspection, indexing, and copying, subject to the agency consenting to access by the Commission.

V. FINANCIAL REPORTS

IT IS FURTHER ORDERED that the Named Defendants, if they have not already done so, within forty-eight (48) hours of service of this order, shall prepare and deliver to the Temporary Receiver and to counsel for the Commission:

A. Completed financial statements on the forms attached to the TRO as Attachments B and C, for each Named Defendant, and for each business entity (whether or not incorporated) under which they conduct any business, or of which any Named Defendant is an owner or officer, and for each trust of which any Named Defendant is a trustee. The financial statements shall be accurate as of the date of entry of this order; and

B. All current accountants' reports; all federal tax returns filed since January 1, 2007; documents indicating title to real or personal property; and other indicia of ownership that are now in any of the Named Defendants' actual or constructive possession.

VI. IDENTIFYING INFORMATION RELATING TO ACCOUNTANTS, FINANCIAL PLANNERS, INVESTMENT ADVISORS, STOCK BROKERS AND OTHERS

IT IS FURTHER ORDERED that the Named Defendants, if they have not already done so, within forty-eight (48) hours after service of this order, shall provide counsel for the Commission and the Temporary Receiver: (1) the name, address and telephone number for each accountant, financial planner, investment advisor, stock broker or other individual, corporation, limited liability company, or partnership whom they hired for personal advice or services, including but not limited to preparation of tax returns and investment advice, since January 1, 2007, and (2) the name, address and telephone number for each accountant, financial planner, investment advisor, stockbroker or other

for the Receivership Defendants, with the full power of an equity receiver for the Receivership Defendants, and all of the funds, properties, premises, accounts, and other assets directly owned by the Receivership Defendants. The Temporary Receiver shall be solely the agent of this court in ac

Temporary Receiver shall have full power to change mailing addresses of the Receivership Defendants. The Temporary Receiver shall have full power to change any locks on any real or personal property of the Receivership Defendants. The Temporary Receiver shall have full power to divert mail, sue for, collect, receive and take possession of all goods, chattels, rights, credits, moneys, effects, land, leases, books, records, work papers, and records of accounts, including computer-maintained information, and other papers and documents of the Receivership Defendants, including documents related to customers or clients whose interests are now held by or under the direction, possession, custody or control of the Defendants or under the control of any third party for the benefit of the Defendants. The Temporary Receiver shall assume control over the income and profits therefrom and all sums of money now or hereafter due or owing to the Receivership Defendants.

Provided, however, the Temporary Receiver shall not attempt to collect any amount from a consumer if the Temporary Receiver believes the consumer was a victim of the deceptive acts or practices alleged in the Complaint in this matter, without prior court approval;

C. Take all steps necessary to secure the business premises of the Receivership Defendants, including but not limited to all such premises located at 2010 Drew Street, Clearwater, Florida 33765. Such steps may include but are not limited to the following, as the Temporary 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 agents of the Receivership Defendants, including but not limited to the name, home address, social



K. Defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted in the past or in the future against the Temporary Receiver in his role as Temporary Receiver, or against the Defendants that the Temporary Receiver deems necessary and advisable to preserve the assets of the Receivership Defendants or that the Temporary Receiver deems necessary and advisable to carry out the Temporary Receiver's mandate under this order;

L. Continue and conduct the business of the Receivership Defendants in such manner, to such extent, and for such duration as the Temporary Receiver may in good faith deem to be necessary or appropriate to operate the business profitably and lawfully, if at all; provided that the continuation and conduct of the business shall be conditioned upon the Temporary Receiver's good faith determination that the business can be lawfully operated at a profit using the assets of the Receivership estate;

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

N. Open one or more bank accounts as designated depositories for funds of the Receivership Defendants. The Temporary 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;

O. Maintain accurate records of all receipts and expenditures that he makes as Temporary Receiver;

P. Cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency;

Q. Maintain the chain of custody of all of Defendants' records in his possession, pursuant to procedures to be established by the Temporary Receiver in writing with the approval of the Commission; and

R. Prepare and submit periodic Reports to this court and to the parties forty-five (45) days following the entry of this order and seven (7) days prior to the dissolution of the Receivership, or at any other time as the court shall order, describing the Temporary Receiver's activities in connection with carrying out the Temporary Receiver's obligations and responsibilities under this order.

X. COOPERATION WITH THE TEMPORARY RECEIVER

IT IS FURTHER ORDERED that the Named Defendants and their officers, agents, employees, and corporations, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, including but not limited to fictitious business names, shall fully cooperate with and assist the Temporary Receiver. The Named Defendants' cooperation and assistance shall include but not be limited to providing any information to the Temporary Receiver that the Temporary Receiver deems necessary to exercising the authority and discharging the responsibilities of the Temporary Receiver under this order; providing any password or entry code required to access any computer or electronic files of the Defendants in any medium; or advising all persons who owe money to the Receivership Defendants that all debts should be paid directly to the Temporary Receiver. The Named Defendants are hereby restrained and enjoined from directly or indirectly:

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

B.

XI. DELIVERY OF RECEIVERSHIP PROPERTY

IT IS FURTHER ORDERED that immediately upon service of this order upon them, or within a period permitted by the Temporary Receiver, the Named Defendants and any other person or entity served with a copy of this order shall forthwith or within such time as permitted by the Temporary Receiver in writing, transfer or deliver possession, custody, and control of the following to the Temporary Receiver:

A. All assets and property, owned beneficially or otherwise, wherever situated, 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;

D. All keys, computer passwords, entry codes and combination locks necessary to gain or to secure access to any assets or documents of the Receivership Defendants, including but not limited to access to their business premises, means of communication, accounts, computer systems, or other property; and

E. Information identifying the accounts, employees, properties or other assets or obligations of the Receivership Defendants.

In the event any person or entity fails to deliver or transfer any asset or otherwise fails to comply with any provision of this Section, the Temporary Receiver may file an Affidavit of Non-Compliance regarding such failure. Upon filing of the affidavit, the court

representations at any time after the date of this order, for any reason in their sole and absolute discretion, by sending written notice seven (7) days prior to the date the Temporary Receiver intends to withdraw to the court and to the parties; and such Temporary Receiver and professionals shall be relieved of all liabilities and responsibilities seven (7) days from the date of such notice or withdrawal. The written notice shall include an interim report indicating the Temporary Receiver's actions and reflect its knowledge gained. The report shall also contain the Temporary Receiver's recommendations, if any.

name, or otherwise misrepresenting their true identities in the course of business dealings or in publicly filed documents.

XXVII. SERVICE OF ORDER UPON THIRD-PARTY ASSET HOLDERS

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 any Named Defendant, or that may otherwise be subject to any provision of this order.