

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Phillip S. Figa

Civil Action No. 04-F-1065 (MJW)

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

PHILLIP W. RANNEY, Individually,

Defendant.

FILED
United States District Court
District of Colorado

FEB 17 2005

C. LANGHAM
LB
CLERK

ORDER AMENDING SCOPE OF PERMANENT INJUNCTION

This matter comes before the Court on the plaintiff's motion filed on January 24, 2005, seeking to expand the scope of the permanent injunction entered by this Court on January 11, 2005, and to enter an award of monetary relief against Defendant Phillip Ranney. (Dkt. # 116). More than twenty days have passed and Defendant Ranney has filed no response to the motion.

This matter was set for a final Pretrial Conference on February 4, 2005. On January 28, 2005, the Court denied the parties' request to continue the pretrial conference, restated its prior order directing the parties to appear in person at the Pretrial Conference, and directed them to be prepared to address matters relating to the plaintiff's motion to expand the permanent injunction. On or about February 3, 2005, Defendant Ranney apparently commenced a personal bankruptcy proceeding in the United States Bankruptcy Court for the District of Kansas. He caused a copy of the Notice of Bankruptcy Filing to be telecopied to this Court on the afternoon of February

3, 2005. Mr. Ranney did not appear at the Pretrial Conference on February 4, 2005, nor has he contacted the Court at any time since February 3, 2005.

Counsel for plaintiff appeared on February 4, 2005 and presented argument in favor of the motion to expand the permanent injunction. In response to questions from the Court regarding the effect of Defendant Ranney's bankruptcy filing, counsel orally responded that she did not believe that the automatic stay provisions of 11 U.S.C. § 362(a) applied to government law enforcement actions, including those brought by the Federal Trade Commission. The Court requested plaintiff to file a brief on the issue. On February 11, 2005, the plaintiff filed a Response to Notice of Chapter 7 case filed by Defendant Ranney.

THE AUTOMATIC STAY DOES NOT APPLY HERE

The Court agrees that § 362(a) of the Bankruptcy Code does not automatically stay the proceedings brought here by the Federal Trade Commission. Section 362(b) of the Bankruptcy Code contains a list of exceptions to the automatic stay provisions for particular types of actions. Included in the list of exceptions are actions brought by a governmental unit or organization to enforce such unit's or organizations' police and regulatory power, including the enforcement of a judgment other than a monetary judgment. 11 U.S.C. § 362(b)(4). The statement of the court in *In Re Dolen*, 265 B.R. 471 (Bkrcty. M.D. Fla 2001) appears dispositive on the authority of the Federal Trade Commission in a case such as this:

The case law is clear that an action to enjoin illegal conduct and to obtain restitution for that conduct falls squarely within the scope of the paragraph (b)(4) exception. *Federal Trade Commission v. Austin Galleries of Illinois, Inc.*, 1991 WL 18430, 1991 U.S. Dist. Lexis 1223 [exception

to automatic stay allowed the entry of judgment but precluded enforcement]; *Federal Trade Commission v. American Standard Credit Systems, Inc.*, 874 F. Supp. 1080, 1091 (C.D.Cal.1994)[action to enjoin conduct and obtain restitution excepted from automatic stay];

265 B.R. at 481.

Here, the plaintiff is seeking both to enjoin illegal conduct and to obtain restitution. Defendant Ranney's filing of a bankruptcy proceeding does not stay the authority of this Court to issue such relief.

THE MOTION TO EXPAND THE PERMANENT INJUNCTION SHOULD BE GRANTED

By Order entered on January 11, 2005, this Court entered partial summary judgment for plaintiff, and directed the entry of a permanent injunction against Defendant Ranney, prohibiting him from engaging in the same activities that were the subject of the permanent injunction entered by this Court on August 13, 2004 against the corporate defendants. The permanent injunction against Defendant Ranney was entered on the same date.

Plaintiff now requests the Court to expand the permanent injunction to include provisions that would permanently bar Defendant Ranney from working in the home mortgage industry. Alternatively, if the Court declines to permanently ban Mr. Ranney from working in the home mortgage industry, plaintiff moves to broaden the permanent injunction in three respects: first, to enjoin the making of misrepresentations in connection with the advertising, marketing, promotion, offer for sale, or sale of "home mortgage financing services," whereas the present injunction only relates to "home mortgage refinancing services" and fails to include new mortgages as well as refinancings; second, to enjoin violations of the Truth-In-Lending Act, 15 U.S.C. §§ 1601-1666j,

and Regulation Z, 12 C.F.R. Part 226, promulgated thereunder; and third, to include monitoring and compliance provisions similar to those contained in the permanent injunction entered on August 13, 2004 against the corporate defendants.

In addition, the plaintiff requests the Court to order Defendant Ranney to pay restitution in the amount of \$128,300, the minimum amount of consumer injury shown in this case.

First, the Court agrees that the permanent injunction should enjoin Defendant Ranney's deceptive activities in both the refinancing and new financing mortgage markets. The permanent injunction will be amended accordingly.

Second, the Court agrees that Defendant Ranney should be enjoined from violating the Truth-In-Lending Act, 15 U.S.C. §§ 1601-1666j, and Regulation Z, 12 C.F.R. Part 226, promulgated thereunder. The Court declined to enter such relief on January 11, 2005, as it found an absence of a showing that Defendant Ranney or his companies acted as "creditors" within the meaning of the Act. The plaintiff has now demonstrated that the advertising provisions of the Act apply to all persons, not just creditors. See *Federal Reserve Board Official Staff Commentary*, § 226.2(a)(2), 46 FR 50288 (1981). The permanent injunction will be amended accordingly.

Third, the Court finds that the monitoring and compliance provisions requested by the plaintiff are reasonable. The permanent injunction will be amended accordingly.

The Court does not find that a "permanent ban" on Defendant Ranney's activities in the home mortgage industry is appropriate at this time. The Court agrees that Mr. Ranney has presented himself as an apparently incorrigible evader, if not violator, of the law. Yet, on the present record, the Court does not find that such a "permanent

ban" is yet justified. The Court also notes that the plaintiff has not tendered specific language to effectuate this proposed permanent ban.

Finally, the Court finds that an order of restitution should enter in this case. Based on the calculations contained in the Declaration of Craig Kauffman, attached as Exhibit 7 to the present motion, the Court is satisfied that the minimum consumer injury here is \$128,300. Defendant Ranney has filed no papers with the Court contesting that amount, or the method of calculations contained in Mr. Kauffman's declaration. Accordingly, the Court finds that an award of restitution in the amount of \$128,300 in favor of the Federal Trade Commission should be entered against Defendant Ranney. Enforcement and collection of such award must be made in compliance with the applicable Bankruptcy provisions, as plaintiff has acknowledged in its Response to Notice of Chapter 7 Filing at page 5, n. 3.

CONCLUSION

Plaintiff's Motion to Expand the Scope of the Permanent Injunction (Dkt. # 116) is GRANTED in part , and DENIED in part.

The Clerk of the Court is directed to enter an Amended Permanent Injunction in accordance with this Final Order.

The Clerk of the Court is directed to enter final judgment in the amount of \$128,300 in favor of Plaintiff Federal Trade Commission and against Defendant Ranney.

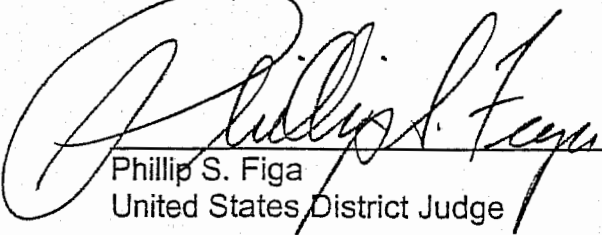
Plaintiff is allowed costs pursuant to Rule 54(d)(1), F.R.Civ.P.

As plaintiff has stated in its proposed Final Pretrial Order that it "cannot identify any claims or defenses that need to be resolved at trial given the Court's Order on

Plaintiff's Motion for Partial Summary Judgment and the stipulated dismissal of Kathleen Ranney as a relief defendant," the Court vacates any future scheduling deadlines and dates, and directs the Clerk of Court to close this case.

DATED: February 17, 2005

BY THE COURT:



Phillip S. Figa
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
CERTIFICATE OF SERVICE

Case No. 04-F-1065 (MJW)

The undersigned certifies that a copy of the foregoing **Order Amending Scope of Permanent Injunction** was served on February 17, 2005, by:

delivery to:

Magistrate Judge Michael J. Watanabe

e-mail to:

facsimile to:

depositing the same in the U.S. Mail, postage prepaid, addressed to:

David Newman
Sarah Schroeder
Kerry O'Brien
Federal Trade Commission
901 Market Street, Suite 570
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GREGORY C. LANGHAM, CLERK

By Valeri
Deputy Clerk/Secretary