

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

Case No. : 6:16-CV-02123-Orl-31DCI

v.

J. WILLIAM ENTERPRISES, LLC, a Florida
limited liability company, also d/b/a PRO
TIMESHARE RESALES;

PRO TIMESHARE RESALES OF FLAGLER
BEACH, LLC, Florida limited liability company;

JESS KINMONT, individually and as an officer
of J. WILLIAM ENTERPRISES, LLC and PRO
TIMESHARE RESALES, LLC;

and

JOHN P. WENZ, JR., individually and as an
officer of PRO TIMESHARE RESALES OF
FLAGLER BEACH, LLC,

Defendants.

FIRST INTERIM REPORT OF TEMPORARY RECEIVER

Brian A. McDowell, as Temporary Receiver (“Receiver”) of J. William Enterprises, LLC and Pro Timeshare Resales of Flagler Beach, LLC, files this First Interim Report (“First Report”), documenting the current status of the receivership estate and his activities since the December 13, 2016 appointment as Receiver.

I. PROCEDURAL BACKGROUND

On December 12, 2016, the Federal Trade Commission (“FTC”) filed a civil Complaint (Doc. No. 1) in the United States District Court for the Middle District of Florida against J. William Enterprises, LLC, d/b/a Pro Timeshare Resales, Pro Timeshare Resales of Flagler Beach, LLC (collectively, the “Receivership Defendants”), Jess Kinmont, individually and as an officer of J. William Enterprises, LLC and Pro Timeshare Resales (“Kinmont”), and John P. Wenz, Jr., individually and as an officer of Pro Timeshare Resales of Flagler Beach, LLC (“Wenz”) (Receivership Defendants, Kinmont, and Wenz are collectively referred to as “Defendants”). In the Complaint, the FTC alleges that the Defendants, through a common enterprise, engaged in a plan, program, or campaign to deceptively advertise, market, promote, offer for sale, or sell timeshare resale or rental services. The Complaint alleges that Defendants contacted consumers through telemarketing calls, including consumers on the National Do Not Call Registry, and represented that they could sell or rent the consumer’s timeshare property. Consumers were asked to pay an upfront fee of \$500.00 - \$2,500.00, and upon receipt of their financial information, were sent a contract that they were to immediately sign and return (in most cases through e-mail and electronic signature). The contract sent to the consumers was only for advertising services, and did not relate to the actual sale or rental of the timeshare property. The Complaint alleges that Defendants’ tactics and representations to consumers were in violation of the FTC Act and the Telemarketing Act, specifically the Telemarketing Sales Rule (“TSR”). The FTC seeks a preliminary injunction to avert further consumer injury during the pendency of this action, a permanent injunction to prevent any future

violation of the FTC Act and the TSR, equitable relief as the Court finds necessary to redress injury to consumers, including disgorgement of all ill-gotten monies, and an award the FTC's cost for bringing this action.

In conjunction with filing the Complaint, the FTC filed an *Ex Parte* Motion for Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, and Other Equitable Relief. (Doc. No. 2). On December 13, 2016, the Court entered an *Ex Parte* Temporary Restraining Order ("TRO") (Doc. No. 11). The TRO, *inter alia*, enjoined Defendants from misrepresenting, or assisting others in misrepresenting, directly or indirectly, expressly or by implication, that Defendants have a buyer or renter for consumer's timeshare property who will pay a specified price or that Defendants will quickly sell or rent a consumer's timeshare, and from violating certain specified provisions of the TSR. The TRO also froze the Defendants' assets and appointed Brian A. McDowell as temporary receiver over the Receivership Defendants. The TRO outlines the Receiver's duties as temporary receiver for the Receivership Defendants.

II. IMPLEMENTATION OF THE TRO

Immediately upon his appointment, the Receiver took the following actions to carry out his mandate to take possession of the receivership property and to protect the estate from further dissipation or liability.

The Receiver retained Holland & Knight, LLP ("H&K") as legal counsel and to organize the immediate access to the Receivership Defendants' business premises. At approximately 10:30 a.m. on Wednesday, December 14, 2016, the Receiver, in coordination with three H&K attorneys, the FTC, and local law enforcement, took

possession of the Receivership Defendants' business locations at 1607 S. SR 15-A, Suite 11, Deland, FL 32720 (the "Deland Premises") and 105/106 S. Anderson St., Bunnell, FL 32110 (the "Bunnell Premises). The Receiver implemented the immediate access at the Deland Premises with attorney Erica Bartimmo. Gideon Sinasohn, trial counsel for the FTC, an FTC investigator, two FTC forensic computer examiners, and local law enforcement accompanied the Receiver and Ms. Bartimmo to secure the Deland Premises. Hollan & Knight attorneys Edward Fitzgerald and Robert Davis implemented the immediate access at the Bunnell Premises on behalf of the Receiver. Harold Kirtz, trial counsel for the FTC, an FTC investigator, two FTC forensic computer examiners, and local law enforcement accompanied Mr. Fitzgerald and Mr. Davis to secure the Bunnell Premises.

A. Deland Premises

The Deland Premises consists of an office condominium containing a reception area, approximately 5 office alcoves, and 1 larger call center section comprised of approximately 18 call center desks. Kinmont maintained an office at the Deland Premises. At the time the Receiver took possession, there were approximately 10 - 15 employees on site working on the Deland Premises. Kinmont was present at the time of the immediate access.

After taking possession of the Deland Premises, the Receiver advised all of the persons present that a receiver has been appointed over the Receivership Defendants and that all business activity would be suspended until further notice. The Receiver and his counsel conducted voluntary interviews with willing employees on-site. Thereafter, the

Receiver's counsel conducted a room-by-room inspection of the Deland Premises and directed an inventory of the physical items located therein. The Receiver directed the review of all the paper documents on-site and the photocopying of certain documents relevant to the Receiver's charge. During the inspection and inventory, the Receiver's counsel found typed and hand-written scripts throughout the Premises, including on the telemarketers' desks and posted on the walls. Exemplars of scripts found at the Deland Premises are attached as **Composite Exhibit A**.

The Receiver also caused the locks on the Deland Premises to be changed by a locksmith to further effectuate taking possession of the Premises. In addition, the Receiver took possession of all of the available bank records located at the Deland Premises. Further, the Receiver took possession of all cash and checks located on the premises. Based on the records found on-site, at this time it appears that all of the banks with which J. William Enterprises, LLC, d/b/a Pro Timeshare Resales, held an account have been served with a copy of the TRO.

On this same day, the Receiver and Receiver's counsel extensively interviewed Kinmont regarding the business operations of the Receivership Defendants and the profitability absent the alleged deceptive and misleading telemarketing activities. During this interview, Kinmont's attorney was present.

Simultaneous with the Receiver's investigation at the Deland Premises, the FTC conducted their own, independent investigation. Professional forensic computer examiners retained by the FTC imaged certain files and data maintained on-site, including Kinmont's computer hard drive, and other computer hard drives located at the Deland Premises.

B. Bunnell Premises

The Bunnell Premises consists of an approximate 1,800 sq. ft. office space that appears to have been converted from a residential house. The majority of the house was used for telemarketing, with several bedrooms used as offices and/or storage space. Wenz maintained an office at the Deland Premises. At the time the Receiver took possession, there were approximately 6 - 10 employees on site working on the Bunnell Premises. Wenz was present at the time of the immediate access.

After taking possession of the Bunnell Premises, Mr. Fitzgerald and Mr. Davis advised all of the persons present that a receiver has been appointed over the Receivership Defendants and that all business activity would be suspended until further notice. The Receiver's counsel then attempted to conduct voluntary interviews with the employees on-site. Counsel for the Receiver offered copies of the TRO to the employees, and instructed them that they were obligated to cooperate per the provisions of the TRO, but none were willing to speak with counsel for the Receiver at that time. Counsel for the Receiver also attempted to interview Wenz, but after only a brief conversation he indicated that he was overwhelmed and was not able to speak with counsel at that time. He then left the Bunnell Premises. All employees and Wenz were instructed that they may only leave with their personal belongings, and all property of the business must remain.

Thereafter, the Receiver's counsel conducted a room-by-room inspection of the Bunnell Premises and directed an inventory of the physical items located therein. Counsel for the Receiver reviewed all paper documents on-site. During the inspection and inventory, the Receiver's counsel found typed and hand-written scripts throughout the

Bunnell Premises, including on the telemarketers' desks and posted on the walls. Exemplars of scripts found at the Bunnell Premises are attached as **Composite Exhibit B**.

The Receiver also caused the locks on the Bunnell Premises to be changed by a locksmith to further effectuate taking possession of the Bunnell Premises. In addition, Counsel for the Receiver took possession of all of the available bank records located on the Bunnell Premises. Further, the Receiver took possession of all checks located on the premises. Based on the inspection, there was no cash maintained at the Bunnell Premises. Based on the records found on-site, at this time it appears that all of the banks with which Pro Timeshare Resales of Flagler Beach, LLC held an account were served with a copy of the TRO.

Simultaneous with the Receiver's investigation of the Bunnell Premises, the FTC conducted their own, independent investigation. Professional forensic computer examiners retained by the FTC imaged certain computer files on-site, including Wenz's computer hard drive, and other computer hard drives located on the premises.

Since the date of the immediate access, Wenz has contacted the Receiver, and he has agreed to meet with the Receiver at his office in Orlando. The Receiver is in the process of coordinating a meeting time with Wenz and his potential counsel.

III. INVENTORY

The Receiver conducted a physical inventory of the Deland Premises and the Bunnell Premises. A detailed inventory list of each is attached as **Composite Exhibit C**.

IV. ASSETS OF THE ESTATE

The Receiver has reviewed bank records and financial records bank accounts for the Receivership Defendants. Based on the information obtained to date, the Receiver there is approximately \$2,000,000.00 in total funds in the receivership estate. The investigation into the banking and financial records is ongoing, and the Receiver has directed Kinmont and will direct Wenz to provide copies of financial records to assist the investigation and to further assess the value of the estate.

V. THE BUSINESS OF THE RECEIVERSHIP DEFENDANTS

The Receiver has investigated the business operations of the Receivership Defendants to determine whether the enterprise could remain operational without the telemarketing of the sale and rental of timeshare properties. Based on this investigation, including discussions with Kinmont, reviewing recorded voicemail messages from current customers left after the seizure, and an analysis of the service actually provided to the customers, it has been determined that the Receivership Defendants cannot operate their business lawfully and profitably. The customers were led to believe there were buyers or renters for the customer's timeshare, there were essentially no buyers or renters as represented to the customer, and it was highly unlikely that the Receivership Defendants' advertising services would result in a sale or rental of the customer's timeshare, if they occurred at all.

The Receiver will be prepared to elaborate in more detail regarding his investigation of the legal and profitable operation of the Receivership Defendants at the hearing scheduled in this matter on December 21, 2016.

VI. PENDING LITIGATION

Kinmont and his counsel have not advised the Receiver of any pending litigation against the Receivership Defendants. The Receiver's counsel will conduct an independent search to confirm that there are no pending actions, locally or nationally, against the Receivership Defendants.

VII. FINANCIAL RECORDS OF RECEIVERSHIP DEFENDANT

At this time the Receiver has been able to obtain only limited financial records of the Receivership Defendants. Nonetheless, the financial records obtained from the Deland Premises, the Bunnell Premises, and from Kinmont indicate cash and accounts totaling over \$2,000,000.00.

To obtain additional financial records, the Receiver will request that all financial records under the control of the Defendants be forwarded to the Receiver at the earliest opportunity. Once the financial records are obtained and reviewed, the Receiver expects to further interview Kinmont and Wenz concerning such records.

VIII. TERMINATION OF BUSINESS ACTIVITIES

As indicated above, the Receiver has determined that the Receivership Defendants business cannot operate profitably without misrepresentations to consumers regarding their ability to sell and rent the consumer's timeshare property. Consequently, the Receiver has terminated the business operations.

IX. SUPPLEMENTAL REPORTS

The Receiver will file from time to time further reports as his investigation proceeds.

Dated this 20th day of December, 2016.

Respectfully submitted,

/s/ Brian A. McDowell
Brian A. McDowell, Esq.
Court-Appointed Receiver

and

/s/ Edward M. Fitzgerald
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Counsel for Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of December, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF System, which will send electronic filing to all counsel of record.

/s/ Edward M. Fitzgerald
Attorney