

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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FEDERAL TRADE COMMISSION,)
)
Plaintiff,) Case No. 12-cv588
)
v.) Judge Kenelly
)
APOGEE ONE ENTERPRISES LLC, a) Magistrate Judge Enlow
Pennsylvania limited liability company)
d/b/a/ Apogee Enterprises LLC, Platinum)
Trust Card, and Express Platinum Card, et al.,)
)
Defendants.)
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PRELIMINARY INJUNCTION WITH
ASSET FREEZE AND OTHER EQUITABLE RELIEF

Plaintiff, Federal Trade Commission (“FTC” or “Commission”), filed its Complaint for a Permanent Injunction and Other Equitable Relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, and motion for an Ex Parte Temporary Restraining Order with Asset Freeze, Appointment of a Receiver and Other Equitable Relief and Order to Show Cause Why Preliminary Injunction Should Not Issue (the TRO”).

The TRO having been granted and served with the FTC’s Complaint and Summons on Defendants Apogee One Enterprises LLC, also allegedly doing business as Apogee Enterprises LLC, Platinum Trust Card, and Express Platinum Card; Marketing LLC, also allegedly doing business as Express Platinum Card, Blake Rubin, also allegedly doing business as CR Ventures LLC, Platinum Trust Card, Express Platinum Card, and Maxim Management Group,

LLC; Chase Rubin, also allegedly doing business as CR Ventures LLC, Platinum Trust Card, Express Platinum Card, Maxim Management Group, LLC, and Oakmont Management Services, LLC; Justin Diaczuk; and Jules Shore, and the Court having considered all pleadings, memoranda declarations, and other exhibits filed herein and being fully advised in the premises, it is now ORDERED, ADJUDGED, and DECREED as follows:

1. This Court has jurisdiction over the subject matter of this case and has jurisdiction over the parties.

2. Venue, process, and service of process are proper.

3. There is good cause to believe that Defendants have engaged in, and are likely to engage in the future in, acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) as well as multiple provisions of the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and that the Commission therefore likely to prevail on the merits of this action.

4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary restitution will occur from the sale, transfer, or other disposition or concealment by Defendants of the assets or corporate records unless Defendants are immediately restrained and enjoined by Order of this Court.

5. There is good cause for issuing this Order pursuant to Federal Rule of Civil Procedure 65(b) Fed. R. Civ. P. 65(b).

6. Weighing the equities and considering the Commission's likelihood of ultimate success, a preliminary injunction with asset freeze and other equitable relief is in the public interest; and

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

8. This Order does not constitute, and shall not be interpreted to constitute, either an admission by Defendants of any of the Commission's allegations as set forth in the Commission's Complaint (the "Complaint") and Motion for TRO, or a finding by the Court that Defendants have engaged in any violations of the FTC Act or engaged in any conduct alleged in the Commission's Complaint or Motion for TRO. Defendants specifically reserve their right to challenge and/or contest any such allegations and nothing herein shall serve or constitute a waiver or forbearance of any of Defendants' defenses.

DEFINITIONS

For purposes of this Preliminary Injunction Order ("Order"), the following definitions shall apply

9. "Asset" or "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes," (as these terms are defined in the Uniform Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located.

10. "Assisting Others" includes, solely in connection with the business activities described and alleged in the Commission's Complaint and Motion for TRO: (1) performing customer service functions, including but not limited to, receiving or responding to consumer complaints; (2) formulating or providing or arranging for the formulation or provision of, any

sales script or other marketing material; (3) providing names of, or assisting in the creation of, potential customers; (4) performing or providing marketing or billing services of any kind; (5) acting as an officer or director of a business entity; or (6) providing telemarketing services.

11. "Corporate Defendants" or "Receivership Defendants" means Apogee One Enterprises LLC, also doing business as Apogee Enterprises LLC, Platinum Trust Card, and Express Platinum Card; Marquee Marketing LLC, also doing business as Express Platinum Card; and their successors and assigns, as well as any subsidiaries, and any fictitious business entities or business names created or used by these entities, or any of them, including CR Ventures LLC.

12. "Defendants" means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

13. "Document" or "Documents" means any materials listed in Federal Rule of Civil Procedure 34(a) and includes 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, into reasonably usable form through detection devices. A

orally or in writing, expressly or by implication, any material fact, including, but not limited to, that:

1. after payment of a fee, Defendants will provide consumers with a general-purpose credit card;

2. Defendants will report the credit history of their customers to the major credit bureaus;

C. Charging, causing to be charged, or assisting others in charging any consumer's credit card, or debiting, causing to be debited, or assisting others in debiting any consumer's bank account without the consumer's knowledge or authorization;

D. Violating, or assisting others in violating, any provision of the TSR, 16 C.F.R. Part 310, including but not limited to:

1. Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii), by misrepresenting directly or by implication, material aspects of the performance efficacy, nature or central characteristics of any product or service Defendants sell, including but not limited to that:

a. after payment of a fee, Defendants will provide consumers with a general-purpose credit card;

b. Defendants will report the credit history of their customers to the major credit bureaus;

2. Section 310.4(a)(1) of the TSR, 16 C.F.R. § 310.4(a)(1) (by requesting or receiving payment of a fee or consideration in advance of consumers obtaining a loan or other extension of credit when Defendants have guaranteed or represented a high likelihood of success

by, or subject to access by or belonging to, any other corporation, partnership, trust, or any other entity directly or indirectly owned, managed, or controlled by or under common control with, any Defendant, including but not limited to, any assets held by or for any Defendant in any account at any bank or savings and loan institution, or with any credit card processing agent, automated clearing house processor, network transaction processor, bank debit processing agent, customer service agent, commercial mail receiving agency, or mail holding or forwarding company or any credit union, retirement fund custodian, money market or mutual fund, storage company trustee, or with any broker dealer, escrow agent, title company, commodity trading company, precious metal dealer or other financial institution or depository of any kind, either within or outside the territorial United States;

B. Opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of any Defendant, or subject to access by any Defendant or under any Defendant's control, without providing the Commission prior notice and a opportunity to inspect the contents in order to determine that they contain no assets covered by this Section;

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

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

E. Incurring liens or encumbrances on real property, personal property or other assets in the name, singly or jointly, of any Defendant or of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant.

Notwithstanding the asset freeze provisions of Section I A-E above, this Section shall not prohibit either transfers of assets that have been unfrozen by further order of the Court or by written agreement with the Commission by and between counsel for the parties to the instant litigation, or the use of such unfrozen assets in the ordinary course of business, including without limitation, with respect to any other business or business operations engaged in by Defendants, separately or collectively, unrelated to the business of the Partnership Defendants as alleged and described in the Complaint and Motion for TRO. Use of unfrozen funds is unrestricted except that Defendants are restrained and enjoined from transferring, pledging, loaning, dissipating, disbursing, or otherwise moving any assets unfrozen pursuant to this Section outside the territorial United States.

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DUTIES OF THIRD PARTIES HOLDING DEFENDANTS' ASSETS

IT IS FURTHER ORDERED that any financial institution, business entity, or person maintaining or having custody or control of any account or other asset of any Defendant, or any corporation, partner, officer, or director of any such entity, shall not transfer, pledge, loan, dissipate, disburse, or otherwise move any assets of any Defendant outside the territorial United States.

subject to Section above;

2. In any account maintained in the name, or for the bene

or is otherwise subject to access or control by any Defendant or other party subject to Section I above, whether in whole or in part, and

4. If the account, safe deposit box storage facility, or other asset has been closed or removed, the date closed or removed and the balance on said date;

D. Allow representatives of Plaintiff immediate access to inspect and copy or upon Plaintiff's request, within five (5) business days of said request, provide the Commission with copies of all records or other documentation pertaining to each such account or asset, including but not limited to, originals or copies of account applications, account statements, corporate resolutions, 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. This Section shall apply to existing accounts and assets, assets deposited or accounts opened after the effective date of this Order, and any accounts or assets maintained, held or controlled two years prior to the effective date of this Order. This Section shall not apply to any accounts or assets that were not frozen upon order of the Court or pursuant to a written agreement between counsel for the Commission and for the Defendants.

IV.

MAINTAIN RECORDS

IT IS FURTHER ORDERED that Defendants, and their officers, agents, servants, employees, and attorneys, and all other persons in active contact or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether directly or through any trust, corporation, subsidiary, division, or other device or any of them,

are hereby restrained and enjoined from:

A. Failing to create and maintain books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipt ledgers, cash disbursement ledgers and source documents, documents indicating title to real personal property and any other data which, in reasonable detail, accurately, fairly and completely reflect the income, disbursements, transactions, dispositions, and uses of the Defendants' assets; and

B. Destroying, erasing mutilating, concealing altering transferring, or otherwise disposing of, in any manner directly or indirectly, any documents, including electronically-stored materials, that relate in any way to the business practices or business or personal finances of Defendants; to the business practices or finances of entities directly or indirectly under the control of Defendants; or to the business practices or finances of entities directly or indirectly under common control with any other Defendant.

V.

PROHIBITION ON DISCLOSING CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants, and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, birth date, telephone number, email address, Social Security number, Social Insurance number, credit card number, bank account number or other financial or identifying personal information of any person from whom or about whom a Defendant obtained such information in

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B. RECEIVERSHIP DUTIES

IT IS FURTHER ORDERED that the Receiver is direc

and 2200 Market Street, Suite 12, Philadelphia, Pennsylvania 19115. Such steps may include, but are not limited to, the following as the Receiver reasonably deems necessary or advisable: (a) serving this Order; (b) completing a written inventory of all receivership assets; (c) obtaining pertinent information from all employees and other agents of the Receivership Defendants, including, but not limited to, the name, home address, Social Security number, job description, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent; (d) videotaping all portions of the locations; (e) securing the locations by changing the locks and disconnecting any computer monitors or other means of access to the computer or other records maintained at the locations; (f) requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the Receiver with proof of identification, or to demonstrate to the satisfaction of the Receiver that such persons are not removing from the premises documents or assets of the Receivership Defendants; and/or (g) employ the assistance of law enforcement officers as the Receiver deems necessary to implement the provisions of this Order.

4. Conserve, hold, and manage all receivership assets, and perform all acts necessary or advisable to preserve the value of those assets, in order to prevent any irreparable loss, damage, or injury to consumers or creditors of the Receivership Defendants, including but not limited to, obtaining an accounting of the assets and preventing transfer, withdrawal, or misapplication of assets, and including the authority to liquidate or close out any open securities or commodity futures positions of the Receivership Defendants;

5. Enter into contracts and purchase insurance as advisable or necessary

6. Prevent the inequitable distribution of assets and define, adjust, and

protect the interests of consumers and creditors who have transacted business with the Receivership Defendants;

7. Manage and administer the business of the Receivership Defendants until further order of this Court by performing all incidental acts that the Receiver reasonably deems to be advisable or necessary, which includes retaining hiring, or dismissing any employees, independent contractors, or agents;

8. With prior notice to all parties and upon approval by the Court, choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;

9. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Defendants prior to the date of entry of this Order except payments that the Receiver deems necessary or advisable to secure assets of the Receivership Defendants, such as rental payments;

10. Determine and implement the manner in which the Receivership Defendants will comply with, and prevent violations of, this Order and all other applicable laws;

11. Institute, compromise, adjust, appear, intervene in, or become party to such actions or proceedings in state, federal or foreign courts that the Receiver deems necessary and advisable to preserve or recover the assets of the Receivership Defendants or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order

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

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

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

15. Open one or more bank accounts as designated depositories for funds of the Receivership Defendants. The Receiver shall deposit all funds of the Receivership Defendants in such designated account and shall make payments and disbursements from the receivership estate from such account;

16. Maintain accurate records of all receipts and expenditures that he/she makes as Receiver

17. Cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency, and

18. File reports with the Court on a timely and reasonable basis.

limited to, books, records, accounts, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations, electronically-stored records, or any other records of any kind or nature

c. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating or otherwise disposing of any assets owned, controlled, or in the possession or custody, or in which an interest is held or claimed by the Receivership Defendants, or the Receiver;

d. Excusing debts owed to the Receivership Defendants;

e. Failing to notify the Receiver of any asset, including accounts, of the Receivership Defendants held in any name other than the name of the Receivership Defendants, or by any person or entity other than the Receivership Defendants, or failing to provide any assistance or information requested by the Receiver in connection with obtaining possession, custody, control of such assets;

f. Doing any act or refraining from any

boxes controlled by or in the name of the Receivership Defendants, including but not limited to P.O. Box 2236, Parktown, PA 19046

2. In the event any person or entity fails to deliver or transfer any receivership asset or document or otherwise fails to comply with any provision of this Section, the Receiver may file an Affidavit of Non-Compliance regarding the failure upon notice to Defendants' counsel and affording Defendants an opportunity to respond within ten (10) business days of the filing of the Affidavit. Defendants shall have two (2) days in which to inform the Receiver that they intend to file a response. Upon filing of the affidavit and any response by Defendants, the Court may authorize, without additional process or demand, Writs of Possession or Sequestration or other equitable writs requested by the Receiver. The writs shall authorize and direct the United States Marshal or any sheriff or deputy sheriff of any county or any other federal or state law enforcement officer, to seize the asset, document or other thing and to deliver it to the Receiver.

E. TRANSFER OF FUNDS TO THE RECEIVER

IT IS FURTHER ORDERED that, upon service of a copy of this Order, all financial institutions, finance companies, commercial lending companies, credit card processing agents or agents providing electronic funds transfers services or automated clearing house (ACH) services shall

F. STAY OF ACTIONS

IT IS FURTHER ORDERED that:

1. Except by leave of this Court, during pendency of the receivership ordered herein, Defendants and all other persons and entities be and hereby are stayed from taking any action to establish or enforce any claim, right, or interest for or against, on behalf of, or in the name of the Receivership Defendants, any of their subsidiaries, affiliates, partnerships, assets, documents, or the Receiver or the Receiver's duly authorized agents acting in their capacities as such, including but not limited to, the following actions:

a. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding except that such actions may be filed to toll any applicable statute of limitations;

b. Accelerating the due date of any obligation or claimed obligation; filing, perfecting or enforcing any lien; taking or attempting to take possession, custody or control of any property or any report or record of the Receiver or the Receiver's duly authorized agents acting in their capacities as such;

d. Doing any act or thing whatsoever to interfere with the Receiver taking custody control, possession, or management of the assets or documents subject to this receivership, or to harass or interfere with the Receiver in anyway, or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants.

2. This Order does not stay

a. The commencement or continuation of a criminal action or proceeding

b. The commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power, or

c. The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power

3. Except as otherwise provided in this Order, if persons and entities in need of documentation from the Receiver shall in all instances first attempt to secure such information by submitting a formal written request to the Receiver and, if such request has not been responded to within fifteen (15) days of receipt by the Receiver, any such person or entity may thereafter seek an Order of this Court with regard to the relief requested.

G. COMPENSATION OF RECEIVER

IT IS FURTHER ORDERED that the Receiver and all persons hired by the Receiver as herein authorized, including counsel to the Receiver and accountants, are entitled to

reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by or in the possession or control of or which may be received by the Receivership Defendants. The Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request

where the Receivership Defendants conduct business or telephone or customer service operations, or maintain documents or records. Such locations include, but are not limited to: 419 Johnson Street, J

documents and assets that are located outside the territory of the United States of America or that have been transferred to the territory of the United States of America pursuant to Subsection A above and are held by or for any Defendant or are under any Defendant's direct or indirect control, jointly, severally, or individually, including the addresses and names of any foreign or domestic financial institution or other entity holding the documents and assets, along with the account numbers and balances;

C. Hold and retain all such documents and assets and prevent any transfer, disposition, or dissipation whatsoever of any such documents or assets; and

D. Unless previously completed in full compliance with the TRO, within three (3) business days following entry of this Order, provide Plaintiff access to Defendants' records and documents held by financial institutions or other entities outside the territorial United States, by signing and delivering to Plaintiff's counsel the Consent to Release of Financial Information attached to the TRO as Attachment A.

IX.

INTERFERENCE WITH REPARATION

IT IS FURTHER ORDERED that Defendants are hereby restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the reparation required by the preceding Section VII of this Order, including, but not limited to:

A. Sending any statement, letter or simile, email or wire transmission, or telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a "deus" event has occurred under the terms of a foreign

trust agreement, until such time that assets have been fully repatriated pursuant to the preceding Section of this Order and

B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this Order or of the fact that repatriation is required pursuant to a Court Order until such time as assets have been fully repatriated pursuant to the preceding Section of this Order

X.

EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that pursuant to Federal Rules of Civil Procedure 30(a), 31(a), 34, and 45, and notwithstanding the provisions of Federal Rules of Civil Procedure 26(d) and (f), 30(a)(2)(A), and 31(a)(2)(A), the parties are granted leave at any time after entry of this Order to:

A. Take the deposition of any person, whether or not a party, for the purpose of discovering the nature, location, status, and extent of the assets of Defendants, and Defendants' affiliates and subsidiaries; the nature and location of documents reflecting the business transactions of Defendants, and Defendants' affiliates and subsidiaries; the location of any premises where Defendants, directly or through any third party, conduct business operations; the Defendants' whereabouts; and/or the applicability of any evidentiary privileges to this action; and

B. Demand the production of documents from any person, whether or not a party, relating to the nature, status, and extent of the assets of Defendants, and Defendants' affiliates and subsidiaries; the nature and location of documents reflecting the business transactions of Defendants, and Defendants' affiliates and subsidiaries; the location of any premises where

Defendant shall file with this Court and serve on Plaintiff, an affidavit identifying the names, titles, addresses, and telephone numbers of the persons that Defendants have served with a copy of this Order in compliance with this provision.

XII.

SERVICE OF THIS ORDER

IT IS FURTHER ORDERED that copies of this Order may be distributed by U.S. First Class Mail, overnight delivery, facsimile, electronic mail, or personally, by agents or employees of Plaintiff, by agents or employees of the Receiver, by any law enforcement agency, or by private process server, upon any person, financial institution, or other entity that may have possession or control of any property, property right, document, or asset of any Defendant, that may be subject to any provision of this Order. Service upon any branch or office of any financial institution or entity shall effect service upon the entire financial institution or entity.

XIII.

CONSUMER REPORTING AGENCIES

IT IS FURTHER ORDERED

XIV.

CORRESPONDENCE WITH AND NOTICE TO PLAINTIFF

IT IS FURTHER ORDERED that for purposes of this Order all correspondence and pleadings to the Commission shall be addressed to:

James Davis
Joannie Wei
Federal Trade Commission
55 West Monroe Street, Suite 1825
Chicago, Illinois 60603
(312) 9605634 [Telephone]
(312) 9605600 [Facsimile]

XV.

JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for

A handwritten signature in black ink is visible above a large black rectangular redaction box. The signature appears to be "James Davis".