

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

FILED
JAMES BONINI
CLERK

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1:07 CV 936

RICHARD HERRICK :

Case No:

and

Judge

SPIEGEL, Jr

COLLEEN HERRICK :

Plaintiffs,

v. :

COMPLAINT

LIBERTY LEAGUE INTERNATIONAL

Serve: Nathaniel B. Rose

Mohr, Hackett, Pederson, and Blakely :

2800 N. Central Ave. #1100

Phoenix, AZ 85004-1043

JURY DEMAND

and :

BRENT PAYNE

14300 N. Northsight Blvd. #210

Scottsdale, AZ 85260 :

and

SHANE KRIDER :

14300 N. Northsight Blvd. #210

Scottsdale, AZ 85260

and :

DALE FOSTER

Unknown address :

and

JOHN LAVENIA

Unknown address :

and

John Does 1-100 :
The number and identity
of whom is presently unknown
Defendants, :

**THIS ACTION WAS PREVIOUSLY FILED IN BUTLER COUNTY OH
IN CASE NO: CV 2007 02 0626**

Now come Plaintiffs and for their Complaint against the Defendants state as follows:

PARTIES

1. Plaintiffs Richard and Colleen Herrick are individuals who presently reside at Hamilton, OH and at all relevant times have been citizens and residents of the State of Ohio.
2. Defendant Liberty League International is an Arizona corporation licensed to do business in Arizona. LLI is a defendant only as to the state law claims alleged herein.
3. At all relevant times Defendants Payne and Krider were the principals of Liberty League International (“LLI”). LLI is an “enterprise” for purposes of the RICO claims asserted in this Complaint.
4. At all relevant times Defendants Dale Foster and John Lavenia were employees of or independent contractors working with or for LLI and/or defendants Payne and Krider.
5. Defendants Payne, Krider, Dale Foster, John Lavenia, and John Does constitute an association in fact for purposes of the RICO claims asserted in this Complaint.

JURISDICTION

6. This action is brought under the federal Racketeer Influenced and Corrupt Organizations (“RICO”) statute, 18 U.S.C. § 1961 et seq. This Court has jurisdiction under 28 U.S.C. § 1331.

7. This Court has supplemental jurisdiction over any state law claims pursuant to 28 U.S.C. §1367.

FACTS

8. Between February 2005 and September 2006 Plaintiffs purchased certain products and customer lists from the Defendants. Plaintiffs spent approximately \$30,000 on Defendants various products. These products were sold to Plaintiffs by means of telephone and internet communications between various states of the United States and Plaintiffs in the State of Ohio, and shipped from locations unknown to the Plaintiffs. Defendants further
9. During this time Defendants routinely accosted the Plaintiffs in an effort to get them to purchase more products from the Defendants.
10. Defendants further obtained Plaintiff Richard Herricks (but not Plaintiff Colleen Herricks) signature on certain documents by telling him the documents were standard in their industry and did not contain anything important or necessary for Richard Herrick to be aware of.
11. In fact the documents contained an arbitration clause waiving, inter alia, Mr. Herricks right to a jury trial.
12. Defendants made numerous misrepresentations to the Plaintiffs about what Plaintiffs were purchasing, including but not limited to claiming that others (including the Defendants) had made money with the products in the past and that if Plaintiffs would spend more money they too would make money with the Defendants products.
13. Eventually the Plaintiffs realized they were being defrauded and demanded their money back.
14. No refund of any amount was ever provided.
15. Plaintiffs eventually learned that Defendants had been disciplined and fined by the State of Arizona for activities similar to those complained of herein.

Mail and Wire Fraud

16. The Defendants could foresee that the U.S, Postal Service and interstate wires would be used “for the purpose of” advancing, furthering, executing, concealing, conducting, participating in or carrying out the defrauding of

the Plaintiffs, within the meaning of 18 U.S.C. §§ 1341 and 1343. In particular Defendants could foresee the US Postal Service and interstate wires would be used to, *inter alia*, receive money from the Plaintiffs and deliver fraudulent propositions and items from Defendants to the Plaintiffs.

17. Defendants acting singly or in concert, personally or through their agents, as co-conspirators, or as aiders and abettors, used the US Postal Service and interstate wires or caused the US Postal Service or interstate wires to be used “for the purpose of” advancing, furthering, executing, concealing, conducting, participating in, or carrying out their scheme to defraud the Plaintiffs within the meaning of 18 U.S.C. §§ 1341 and 1343.
18. It is not possible for Plaintiffs to plead with particularity all instances of mail and wire fraud that advanced, furthered, executed, and concealed the Defendants scheme because the particulars of many such communications are, or were, within the exclusive control and within the exclusive knowledge of the Defendants and/or presently unknown individuals.
19. By way of example Defendants specifically used the US Postal Service or interstate wires or caused the US Postal Service or interstate wires to deliver or receive the items described above beginning at paragraph 8.
20. Each and every use of the US Postal Service or interstate wires described above was committed by the defendants with the specific intent to defraud plaintiffs and others or for obtaining the money and property of plaintiffs or others by means of false or fraudulent pretenses, representations, or promises. Acts of mail and wire fraud by the Defendants, in violation of 18 U.S.C. §§ 1341 and 1343, constitute racketeering activity as defined by 18 U.S.C. § 1961(1)(B).
21. Plaintiffs justifiably and reasonably relied on fraudulent representations and omissions by Defendants in that Plaintiffs sent at least \$30,000 to the Defendants on the basis thereof.

Bank Fraud

22. Pursuant to their fraudulent plan the Defendants knowingly executed a scheme or artifice to obtain the moneys, funds, credits, assets, or other property under the control of various financial institutions by means of false or fraudulent pretenses, representations, or promises in violation of 18 U.S.C. § 1344 in that the scheme, among other things, caused Plaintiffs bank to transfer funds from Plaintiffs account to the Defendants.

Interstate Transfer of Stolen Property

23. Pursuant to the their fraudulent plan the Defendants devised and/or intended to devise a scheme or artifice to defraud and obtain money by false pretenses, representations or promises and, pursuant to said scheme or plan, transported, caused to be transported and/or induced persons to travel and transport in interstate commerce in the execution or concealment of the scheme or artifice to defraud in violation of 18 U.S.C. § 2314. In particular Defendants, among other things, transported and/or caused to be transported in interstate commerce payments from Plaintiffs to the Defendants.

COUNT ONE
RICO 18 U.S.C. 1962(c)

24. Plaintiffs re-allege the foregoing paragraphs as if fully re-written herein.
25. At all relevant times Defendants Payne, Krider, Foster, Lavenia, and John Does constituted an “enterprise” within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c), in that they were a union or group associated in fact. Further LLI constituted an “enterprise”.
26. Payne, Krider, Foster, Lavenia were an individual “person” within the meaning of 18 U.S.C. §§1961(3) and 1962(c), who associated with and/or participated in the conduct said enterprise’s affairs.
27. From (at least) February 2005 through September 2006, Defendants conducted, participated in, engaged in, conspired to engage in, or aided and abetted, the conduct of the affairs of the enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5) and 1962(c). Defendants pattern of racketeering activity consisted of mail and wire fraud, bank fraud, and interstate transportation of stolen property. These acts all occurred after the effective date of RICO and more than two such acts occurred within 10 years of one another.
28. At all relevant times the enterprise was engaged in and its activities affected interstate commerce and foreign commerce.
29. All of the predicate acts were related so as to establish a pattern of racketeering activity, within the meaning of 18 U.S.C. § 1962(c), in that their common purpose was to defraud Plaintiffs and other victims of money, their common result was to defraud Plaintiffs and other victims of money; Defendants personally or through their agents, directly or indirectly, participated in all of the acts and employed the same or similar methods of commission; Plaintiffs were the victim of the acts of

racketeering; and/or the acts of racketeering were otherwise interrelated by distinguishing characteristics and were not isolated events.

30. All the predicate acts described herein were continuous so as to form a pattern of racketeering activity in that Defendants engaged in the predicate acts over a substantial period of time or in that such predicate acts have become Defendants regular way of conducting business and said business practiced will continue indefinitely into the future.
31. As a direct and proximate result of, and by reason of, the activities of Defendants and their conduct in violation of 18 U.S.C. §1962(c), Plaintiffs have been injured in their business or property, within the meaning of 18 U.S.C. § 1964(c). Among other things Plaintiffs suffered damages to the extent he “bought” anything from or sent any money to the Defendants. Plaintiffs are therefore entitled to recover threefold the damages they sustained together with the costs of this suit including costs, attorney fees, and expert witness fees.

COUNT TWO
RICO CONSPIRACY 18 U.S.C. §1962(d)

32. Plaintiffs re-allege the foregoing paragraphs as if fully re-written herein.
33. Defendants conspired to conduct or participate, directly or indirectly, in the conduct of the affairs of the enterprises through a pattern of racketeering activity as detailed herein in violation of 18 U.S.C. § 1962(d). In particular, Defendants, intended to further an endeavor of Foster and/or Lavenia which, if completed, would satisfy all the elements of a substantive RICO criminal offense and adopted the goal of furthering or facilitating the criminal endeavor.
34. Plaintiffs were injured by Defendants overt acts that are acts of racketeering or otherwise unlawful under the RICO statute, which include, among other acts, acts of mail and wire fraud, bank fraud, and interstate transportation of stolen property as described herein.
35. As a direct and proximate result of, and by reason of, the Defendants activities, and their conduct in violation of 18 U.S.C. § 1962(d), Plaintiffs have been injured in their business or property, within the meaning of 18 U.S.C. § 1964(c). Among other things, Plaintiffs have suffered damages to the extent they “bought” anything or sent any money to the defendants. Plaintiffs are, therefore, entitled to recover threefold the damages they have sustained together with the cost of this suit, reasonable attorney fees and reasonable expert fees.

COUNT THREE
DECEPTIVE TRADE PRACTICES
OHIO REVISED CODE 1345.01 *et seq.*

36. Plaintiffs re-allege the foregoing paragraphs as if fully re-written herein.
37. Defendants are in the business, vocation, or occupation of selling, among other things, sales oriented materials .
38. As set forth above Defendants engaged in deceptive trade practices when, in the course of business they or their agents represented (*inter alia*) that persons affiliated with the defendants, customers of the defendants, and/or the defendants themselves had made substantial profits by doing business with the defendants.
39. On one particular occasion Plaintiff Richard Herrick was told that Defendants had made \$35,000 a month and that Plaintiff would as well if he only sent more money to the defendants.
40. Plaintiff Richard Herrick was further told he need not worry about the contents of the documents defendants had him sign as they contained nothing important. In fact the documents contained arbitration clauses that attempt to waive Mr. Herricks right to a jury trial.
41. The affirmative misrepresentations made by the Defendants were false or deceptive acts or practices and a violation of Ohio Revised Code 1345.01 *et seq.*
42. Plaintiffs reasonably relied on these false assertions in sending at least \$30,000 to the Defendants.
43. As a direct and proximate result of the Defendants misrepresentations the Plaintiffs suffered monetary loss for which they are entitled to recover.

COUNT FOUR
COMMON LAW FRAUD

44. Plaintiffs re-allege the foregoing paragraphs as if fully re-written herein.
45. Defendants directly or indirectly, made, published, and communicated to Plaintiffs in the State of Ohio orally and in writing untrue, deceptive or misleading material statements and representations of fact as described above.

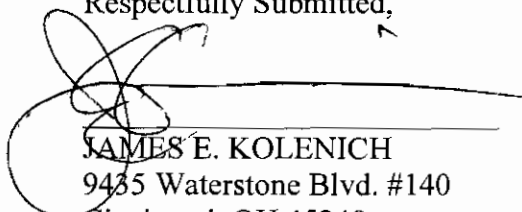
46. Said untrue, deceptive or misleading material statements and representations of fact were intended to induce Plaintiffs to send money to the Defendants.
47. Plaintiffs justifiably relied on said untrue, deceptive, or misleading material representations and statements of fact made by the Defendants in that Plaintiffs sent at least \$30,000 to the Defendants.
48. As a direct and proximate result of the untrue, deceptive, or misleading material misrepresentations and statements of fact made by the Defendants Plaintiffs have incurred at least \$30,000 in damages and will continue to incur damages. Plaintiffs are therefore entitled to recover from Defendants.

WHEREFORE, Plaintiffs demand judgment from the Court as follows:

- a.) To award damages against all defendants, jointly and severally, for \$30,000 and such additional damages as and/or losses as Plaintiffs will sustain.
- b.) To treble the amount of said damages pursuant to 18 U.S.C. § 1964(c).
- c.) To award prejudgment interest on the amount of damages and/or losses that Plaintiffs have sustained.
- d.) To award all costs of litigation incurred by Plaintiffs including attorney fees, costs, and expenses, pursuant to 18 U.S.C. § 1964(c), and Ohio Revised Code 1345.01 *et seq.*
- e.) To award punitive damages
- f.) For any and all other relief to which Plaintiffs may be entitled.

A TRIAL BY JURY IS HEREBY DEMANDED

Respectfully Submitted,



JAMES E. KOLENICH
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
(513) 444-2150
(513) 444-2099
jameseus@hotmail.com
Attorney for the Plaintiffs