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W. DOBBINS
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
PARTNERS IN CHARITY, INC.,)
)
Defendant.)

Civil No.

05C 6374

JUDGE DER-YEGHIAYAN
MAGISTRATE JUDGE ASHMAN

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff, the United States of America, complains as follows against defendant Partners in Charity, Inc.

1. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to Internal Revenue Code (I.R.C.) (26 U.S.C.) §§ 7402(a) and 7408.

2. Jurisdiction is conferred on this court by 28 U.S.C. §§ 1340 and 1345 and I.R.C. §§ 7402(a) and 7408.

3. Venue is proper in this court pursuant to 28 U.S.C. §§ 1391 and 1396.

Partners in Charity, Inc.

4. Partners in Charity, Inc. (PIC) is an Illinois corporation located at 613 W. Main Street in West Dundee, Illinois.

5. PIC's registered agent and president is Charles M. Konkus.

6. PIC's marketing and press representative is Royale Dynamics, Inc. Tambra Butler, Konkus's wife, is Royale Dynamics' president.

7. On July 12, 2000, PIC applied for recognition as a tax-exempt organization under

I.R.C. § 501(c)(3). On November 9, 2000, based on the information that PIC supplied in its application as well as based on the assumption that PIC would operate in the manner represented in its application, the IRS recognized that, as of July 10, 2000, PIC was a tax-exempt organization as described in I.R.C. § 501(c)(3).

PIC's Activities

8. Since 2000, PIC has promoted a down-payment assistance program for house buyers under which it provides funds to the buyers for use as their down payment and collects the same amount (plus an additional fee) from the house sellers. In marketing and operating this scheme PIC falsely and fraudulently advises house sellers and others that the sellers may claim charitable deductions on their federal income tax returns for amounts they pay to PIC.

9. Under PIC's program, down-payment assistance is provided for all types of housing-loan programs including federally insured mortgages.

10. To qualify for a federally insured mortgage, a buyer must make a down payment in a specified minimum amount, generally equal to 3% of the purchase price. To qualify, if a buyer receives gifts to use for the down payment the gifts may only be from a relative, employer, labor union, charitable organization, close friend, governmental agency, or public entity. A buyer may not use as all or part of the down payment direct or indirect gifts from any party that has an interest in the sales transaction, such as the seller.

11. Through PIC's down-payment assistance program, buyers receive a "gift" of the funds that they need for the down payment. On information and belief, the down-payment "gift" under PIC's program is generally between 1% and 10% of the property's stated sale price.

12. A house buyer can participate in PIC's down-payment-assistance program only if the

buyer purchases the house from a seller that has agreed to PIC's contractual terms.

13. PIC requires the seller to pay PIC an amount equal to the down payment "gift" that the buyer receives under PIC's program.

14. PIC claims that the seller's payment will not be provided directly to the buyer, but instead will be used to "replenish" the pool of funds that is used to provide "gifts" to future buyers.

15. In addition to requiring the seller to pay PIC an amount equal to the amount of PIC's "gift" to the house buyer, PIC requires the seller to pay PIC an "administrative fee," typically equal to 0.75% of the purchase price.

16. PIC advertises that the seller's payment to PIC is offset by the seller's receipt of the full asking price, rather than a reduced price that would otherwise occur through negotiations if the buyer did not have down-payment assistance.

17. On its website, www.partnersincharity.org, in advertisements, and in other promotional materials PIC falsely and fraudulently has characterized house sellers' payments to PIC as, *inter alia*, "gifts," "donations," "contributions," and "charitable contributions." Yet on its IRS Form 990 tax returns ("Return of Organization Exempt From Income Tax") for 2001, 2002, and 2003, PIC listed no contributions received—reporting its revenue as program service revenue. PIC has not yet filed its Form 990 return for 2004.

18. On its contract with each seller PIC also falsely and fraudulently labels the seller's payment to PIC as both a "gift" and a "contribution." It is these contracts that obligate the seller, in consideration for participating in PIC's program, to pay PIC an amount equal to the amount of down-payment assistance received by the buyer. The contract, which must be signed by each

participating seller, states: "Seller further understands that the seller is only obligated to make the contribution if a home buyer utilizing the Partner In Charity program purchases the participating home." In a recorded audio promotion on the PIC website directed at real estate agents, PIC acknowledges that sellers' payments to PIC are reimbursements for the down-payment assistance given to the buyer: "the seller agrees to reimburse Partners in Charity for the amount of the down-payment and closing-cost assistance plus an administrative fee."

19. PIC promotes its down-payment-assistance program on its website, www.partnersincharity.org, in newspaper advertisements, and through seminars targeted at builders, lenders, loan officers, mortgage brokers, real estate agents, title insurers, buyers, and sellers.

20. In a 2002 sales seminar in Texas, and in two separate 2002 television appearances on a Dallas-Ft. Worth television news program (WFAA Channel 8) that amounted to free infomercials (with PIC's phone number displayed on the screen), a PIC representative, in describing the PIC down-payment-assistance program, falsely stated that the seller's payment to PIC is tax-deductible for the seller as a charitable contribution. On information and belief, other PIC representatives have made and are making similar false statements in promoting the PIC scheme.

21. As part of its contractual obligations to promote PIC's down-payment-assistance program, Royale Dynamics, Inc., PIC's marketing and press representative, wrote in its October 2001 newsletter, "Outlook," that PIC's down-payment-assistance program allows a seller to "get full-appraised value on [his or her] home and a tax write off." This newsletter is distributed to real estate agents and mortgage lenders, who in turn distribute it to their own clients.

22. In promotional and other materials furnished to actual and prospective house-seller customers and others, PIC refers to its charitable, non-profit, or I.R.C. § 501(c)(3) status in a manner that is designed to and does mislead house sellers and real-estate professionals (such as realtors, lenders, etc.) into believing that sellers' payments to PIC for the down-payment-assistance program are tax-deductible charitable contributions.

23. In response to an IRS summons requesting all promotional and marketing materials, PIC provided a videotape edited in a manner to promote and market PIC that included clips of the Dallas-Ft. Worth television news broadcasts where PIC's representative falsely and fraudulently stated that the seller's payment to PIC is tax deductible for the seller as a charitable contribution. On information and belief, PIC has displayed this videotape, including these clips, for promotional and marketing purposes to builders, lenders, loan officers, mortgage brokers, real estate agents, title insurers, buyers, and sellers.

24. PIC falsely and fraudulently advises sellers participating in its down-payment-assistance program that their payments to PIC are tax-deductible charitable contributions.

25. By using such terms as "gift," "contribution," "donation," "charitable contribution," and "tax-deductible charitable gift" on its website, in its newspaper advertisements, in its other promotional materials, in its contracts with sellers, and through its public promotional statements on television and in seminars, PIC falsely and fraudulently represents that the sellers' payments to PIC are tax-deductible charitable contributions.

26. PIC advertises that its down-payment-assistance program financially benefits sellers by providing them with ready buyers, enabling the sellers to sell for higher prices, and allowing them to sell faster due to the larger pool of potential buyers, thereby reducing the costs associated

with real estate remaining unsold for an extended period. For example PIC advertises on its website: “Sell Your Home Faster and Easier With a PIC Approved Buyer!” and “Advertise your home as a PIC home. This will increase the potential buyers to your home by 30%, which means your home will sell faster.”

27. To qualify as a tax-exempt organization described in I.R.C. § 501(c)(3) an organization must be organized and operated exclusively for one or more exempt purposes described in § 501(c)(3). The focus of this injunction complaint is PIC’s promotion of improper charitable-contribution deductions. Whether PIC or other organizations that provide down-payment assistance financed by payments from sellers are organized and operated exclusively for exempt purposes, consistent with the requirements of section 501(c)(3), is a separate question, which is not presented in this injunction suit.

28. A payment of money generally cannot be deducted as a charitable contribution if the payor expects to receive a substantial benefit in return. A seller’s payment to PIC is not tax deductible as a charitable contribution under I.R.C. § 170 because the seller receives valuable consideration in exchange for the payment. The seller’s payment to PIC is further not tax deductible to the seller because the payment is compulsory.

29. In addition, a seller’s payment to PIC is not tax deductible to the seller as a charitable contribution under I.R.C. § 170 because the payment is not a gift under I.R.C. § 102 because the payment does not proceed from detached and disinterested generosity, but rather is in anticipation of an economic benefit to the seller, namely facilitating the sale of the seller’s house.

30. PIC knew or had reason to know (and knows or has reason to know) that sellers’ payments to PIC are not tax deductible charitable contributions. Indeed, the IRS’s November 9,

2000 letter which recognized PIC as an organization described in I.R.C. § 501(c)(3) stated that “[d]onors may deduct contributions to [PIC] only to the extent that their contributions are gifts, with no consideration received.”

31. In addition, in 2001, 2002, and 2003, PIC did not report the seller’s payments as contributions on its annual tax-exempt organization returns. On information and belief, PIC instead reported these payments as program service revenue. PIC listed the total amount of contributions and gifts it received, from all sources, in 2001, 2002, and 2003 as zero.

32. In addition, PIC knew or had reason to know (and knows or has reason to know) that sellers’ payments to PIC are not tax-deductible charitable contributions because Charles M. Konkus, PIC’s president, has served on boards of directors for other tax-exempt organizations and is familiar with the laws governing tax-exempt organizations and charitable contributions.

33. The United States has determined that a significant portion of sellers participating in PIC’s scheme have in fact improperly claimed charitable contributions for their payments to PIC in connection with the down-payment-assistance program.

34. On its IRS Forms 990 (Return of Organization Exempt from Income Tax) filed with the IRS for 2001 through 2003, PIC reported \$73,315,437 of program revenue for those three years. Assuming operations at a similar level, the United States estimates that PIC would have additional program service revenue of \$40,316,934 from January 1, 2004 through October 31, 2005. On information and belief, the vast bulk of this \$113,632,371 estimated total program revenue consists of the contractually obligated reimbursement payments PIC receives from sellers in amounts equal to the amounts of down-payment assistance provided to buyers.

Count I:

Injunction under I.R.C. § 7408

35. The United States incorporates by reference the allegations in paragraphs 1 through 34.

36. I.R.C. § 7408 authorizes this Court to enjoin persons from engaging in conduct subject to penalty under I.R.C. §§ 6700 or 6701 if injunctive relief is appropriate to prevent recurrence of the conduct.

37. I.R.C. § 6700 penalizes any person who organizes or participates in the sale of a plan or arrangement and, in connection therewith, makes, furnishes, or causes others to make or furnish a statement regarding the securing of any federal tax benefit that the person knows or has reason to know is false or fraudulent as to any material matter.

38. I.R.C. § 6701 penalizes any person who aids or assists in, or advises with respect to, the preparation or presentation of a document that the person has reason to believe will be used in connection with any material matter arising under the internal revenue laws and who knows that the document, if so used, would result in an understatement of another person's tax liability.

39. In connection with the organization and sale of its down-payment-assistance program, PIC has engaged in and is engaging in conduct subject to the I.R.C. § 6700 penalty by falsely stating that the sellers' payments to PIC are "gifts," "contributions," "charitable contributions," and "tax deductible charitable contributions."

40. PIC knew or had reason (and knows or has reason) to know that these statements are

false.

41. PIC knows or has reason to know that its false and fraudulent statements about the nature of sellers' payments to PIC that are contained on documents PIC provides to sellers (including the PIC-printed contracts that sellers are required to sign) will be used in connection with material matters under the internal revenue laws—namely the preparation of sellers' federal income tax returns and the claiming of deductions on those returns. PIC knows that these documents it provides to sellers, if so used, would result in understatements of sellers' federal income tax liabilities. PIC has thus engaged in conduct subject to the I.R.C. § 6701 penalty.

42. In the absence of an injunction, PIC is unlikely to stop its improper promotion and its aiding and abetting of others' tax understatements.

Count II:

Injunction Under I.R.C. § 7402(a)

and the Appropriateness of Injunctive Relief

43. The United States incorporates by reference the allegations contained in paragraphs 1 through 42.

44. I.R.C. § 7402(a) authorizes a court to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws, even if the United States has other remedies available for enforcing those laws.

45. PIC substantially interferes with the administration and enforcement of the internal revenue laws by advising and assisting sellers participating in PIC's down-payment-assistance program to claim improper charitable deductions on their federal income tax returns.

Additionally, while PIC has made false statements subject to the I.R.C. § 6700 penalty, as

described above, PIC has also made and is currently making many misleading statements to sellers and their agents and representatives designed to cause them to believe erroneously that sellers' payments to PIC are tax deductible.

46. Unless enjoined by this Court, PIC is likely to continue to engage in such misconduct.

47. PIC's conduct results in irreparable harm to the United States for which the United States has no adequate remedy at law. The IRS is forced to use its limited resources in identifying the improper charitable-contribution deductions caused by PIC's conduct and in recovering the resulting lost revenue from potentially thousands of taxpayers.

48. House sellers who take the improper charitable-contribution deductions are harmed by PIC's promotion because they may be liable for penalties and interest on the amount of additional tax they owe.

49. PIC will not be harmed by being enjoined from violating the law or refraining from making misleading statements about the tax consequences of participation in its program.

WHEREFORE, plaintiff, the United States of America, prays for the following relief:

A. That this Court find that PIC has engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701, and that injunctive relief under I.R.C. § 7408 is appropriate to prevent a recurrence of that conduct;

B. That this Court find that PIC is interfering with the administration and enforcement of the internal revenue laws and that injunctive relief is both necessary and appropriate to prevent the recurrence of that conduct pursuant to I.R.C. § 7402(a) and the Court's inherent equity powers;

C. That this Court, pursuant to I.R.C. §§ 7402(a) and 7408, enter a permanent injunction prohibiting PIC, and its representatives, agents, contractors, servants, employees, attorneys, brother or sister organizations, and those persons in active concert or participation with them, from directly or indirectly:

1. Organizing, promoting, marketing, or selling any down-payment-assistance program or other plan or arrangement that advises, encourages, or assists anyone to falsely claim a charitable deduction on a federal tax return;
2. Characterizing, either orally or in writing, the payment made by a seller participating in PIC's down-payment-assistance program as a "gift," "contribution," "donation," "charitable gift," "charitable contribution," "tax-deductible gift," "tax-deductible contribution," "deductible gift," "deductible contribution," or any other phrase or term suggesting or implying that the payment is or may be a tax-deductible charitable contribution;
3. Referring to its tax-exempt or non-profit status in contracts, marketing materials, or other documents discussing the seller's payment obligations to PIC, or in any other manner that suggests or implies that the seller's payment to PIC is or may be a tax-deductible charitable contribution;
4. Making false or misleading statements about the allowability of tax deductions or the securing of any other tax benefit in relation to PIC's down-payment-assistance program or any other plan or arrangement;
5. Engaging in any other conduct subject to penalty under either I.R.C. § 6700 or

§ 6701 or any other penalty provision of the I.R.C.; and

6. Engaging in any other conduct that interferes with the administration and enforcement of the internal revenue laws;

D. That this Court, pursuant to I.R.C. § 7402(a), order PIC to file with the Court and serve upon counsel for the United States a complete list of sellers who have participated in PIC's down-payment-assistance program at any time, including the sellers' full names, addresses, telephone numbers, e-mail addresses, and Social Security numbers or other taxpayer identification numbers or employer identification numbers;

E. That this Court, pursuant to I.R.C. § 7402(a), order PIC to provide a copy of the complaint and injunction, at its own expense and as a corrective measure, to (1) each seller who has participated in PIC's down-payment assistance program at any time, (2) all prospective participants in its down-payment assistance program, and (3) all builders, lenders, loan officers, mortgage brokers, real estate agents, title insurers, buyers, and sellers to whom PIC has marketed or promoted its down-payment-assistance program;

F. That this Court, pursuant to I.R.C. § 7402(a), order PIC to file with the Court and serve on counsel for the United States a complete list identifying by name, address, telephone number, e-mail address, and Social Security number or other taxpayer identification number (1) PIC's former and current employees, associates, and marketing and sales representatives, including but not limited to all independent contractors, and (2) all builders, lenders, loan officers, mortgage brokers, real estate agents, title insurers, and any other entities or persons that promoted PIC's down-payment-assistance program, including but not limited to those entities and persons in formal agreement or contractual obligation to promote PIC's down-payment

assistance program;

G. That this Court, pursuant to I.R.C. § 7402(a), order PIC to post prominently and conspicuously in large print at the top of the first page of its website, www.partnersincharity.org, and all other websites on which it promotes its down-payment-assistance program, a statement that no portion of sellers' payments to PIC can be claimed as a charitable deduction for federal tax purposes;

H. That this Court, pursuant to I.R.C. § 7402(a), order PIC to comply with the requirements of paragraphs D through G within eleven days of entry of the injunction and to file a sworn certificate of compliance with the requirements of paragraphs D through G, attaching copies of all correspondence and other evidence of compliance, within twelve days of the date of the injunction;

I. That this Court, pursuant to I.R.C. § 7402(a), order PIC to state, expressly and conspicuously, in all promotional materials and all contracts it enters into regarding its down-payment-assistance program that the seller's payment is not a charitable contribution;

J. That this Court permit the United States to conduct post-judgment discovery to ensure PIC's compliance with the permanent injunction; and

K. That this Court grant the United States such other relief as the Court deems appropriate.

Respectfully submitted,

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