

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil No. 3:08-cv-00136-RV-EMT
)
 PINNACLE QUEST INTERNATIONAL et al.,)
)
 Defendants.)

ORDER GRANTING MOTION FOR DEFAULT JUDGMENT

Upon the United States' motion for entry of default judgment and for injunctive relief against the following defendants: Brian Barker, Claudia Hirmer, Dover Perry, Joshua Holder, Mark Hirmer, MCD Productions, Nadine Griffin, Pinnacle Quest International, Synergy Productions International, Inc., Tonya Holder, and Joseph McPhillips (hereinafter "Defaulted Defendants"), the Court makes the following findings of fact and conclusions of law and enters this permanent injunction:

Findings of Fact

1. The Defaulted Defendants were properly served with a summons and complaint, but have failed to answer or otherwise respond in the time permitted by law and this court. The Clerk entered default against the Defaulted Defendants (excluding

McPhillips) on December 14, 2010 (Dkt. No. 166) and against Joseph McPhillips on January 5, 2011 (Dkt. No. 175).

2. Claudia Hirmer was a member of PQI's Executive Council and was its de facto leader. She was also an events director for Synergy Productions International, Inc. ("SPI") and an employee or agent of MCD Productions ("MCD"). From 2002 to 2006, Claudia Hirmer earned approximately \$320,000 in commissions on the sale of PQI products.

3. Mark Hirmer, Claudia Hirmer's husband, was the owner of MCD and an accounts manager for SPI.

4. Brian Barker was a manager of MCD, a business entity operating from within this judicial district and division.

5. Tonya Holder is the daughter of Claudia and Mark Hirmer. Tonya Holder was an events director for SPI, a business entity operating from within this judicial district and division.

6. Joshua Holder is the husband of Tonya Holder. He participated in organizing the activities of SPI, a business entity operating from within this judicial district and division.

7. Nadine Griffin was a member of PQI's Executive Council. From 2002 to 2006, Griffin earned approximately \$665,000 in commissions on the sale of PQI products.

8. Dover Perry was a member of PQI's Executive Council. From 2002 to 2006, Perry earned approximately \$349,000 in commissions on the sale of PQI products.

9. Joseph McPhillips was a member of PQI's Executive Council. From 2002 to 2006, McPhillips earned approximately \$1.6 million in commissions on the sale of PQI products.

10. Pinnacle Quest International ("PQI") was an unincorporated organization conducting business from several addresses within this judicial district and division. PQI held itself out as a Panamanian International Business Company (IBC), but was in reality a collection of individuals carrying on a fraudulent promotion for profit.

11. SPI was an incorporated organization that supported the fraudulent business activities of PQI. SPI operated from two addresses within this judicial district and division.

12. MCD was an unincorporated business entity that supported the fraudulent business activities of PQI and SPI. MCD operated within this judicial district and division.

13. PQI was a successor organization to the Institute of Global Prosperity ("Global Prosperity"), which ceased operations in 2002. Global Prosperity's products falsely assured customers they could legally stop paying federal income taxes without repercussion. The sale of these products caused five state attorneys general to issue cease and desist orders to Global Prosperity. (Dkt No. 1, Compl. at ¶ 24).

14. PQI began offering for sale products very similar to those formerly offered

by Global Prosperity. PQI formed its original sales force by allowing Global Prosperity salespeople to pay a fee in exchange for permission to promote PQI products.

15. PQI sold three products, named Q1, Q2, and Q3. These products were promoted by a team of approximately 830 PQI-authorized “Qualified Consultants,” and PQI customers were required to purchase these products from Qualified Consultants in a prescribed sequence.

16. PQI was a multilevel marketing scheme. Qualified Consultants were individually authorized by PQI to sell one, two, or all three of PQI’s products, depending on the Qualified Consultant’s previous sales record. In order for a customer to become a Qualified Consultant for any of PQI’s three products, the customer was required to purchase the product and refer two sales of that product to the Qualified Consultant from whom the customer purchased that product.

17. Qualified Consultants paid PQI \$99 per year to serve as Qualified Consultants, and in return, they received a portion of the purchase price of each PQI product they sold.

18. The first product, Q1, is a package of purported “educational” resources created by PQI. Qualified Consultants told potential customers that when they purchased Q1, they would receive a 21-hour “educational” course on audio compact discs, access to an online resource center, and access to PQI-vetted experts in various fields, including federal income taxes, financial planning, and alternative medicine. In order to access the

online resource center or to consult with these supposed experts, the customer was required to first purchase Q1.

19. PQI's 21-hour compact disc promotional course consisted of recorded interviews of individuals purporting to have expertise in a particular subject matter. Claudia Hirmer is the interviewer on some of these discs. The speakers on these compact discs make several false statements about federal income tax laws including: claiming the Sixteenth Amendment was not properly ratified, and consequently, direct taxes by Congress upon individual citizens are unconstitutional; the Internal Revenue Code does not require United States citizens to pay federal taxes on income earned from wage labor; and IRS employees do not have authority to assess taxes against individuals, and IRS agents are personally liable to taxpayers for taxes they collect from individuals.

20. In addition to these false statements, PQI's Q1 contained false commercial speech advertising Bill Benson's Reliance Defense package and IMF Decoder's decoding services.

21. PQI's online resource center was a collection of written materials prepared by various individuals and touted by PQI as presenting true information not widely available to the public. PQI asserted that this information was intended to dispel "frauds" imposed on the public by politicians, bureaucrats, and the government. Written materials presented in the online resource center made several false statements about the federal tax laws including claiming that: United States citizens working within a state of the United States are liable for income taxes only if they complete a Form W-4 with a Social

Security number and individuals working within the fifty states are liable for federal income taxes only if they are employed by the federal government.

22. PQI used the false statements contained in the compact disc course and the online resource center to persuade customers that they were under no legal obligation to pay federal income taxes. PQI, speaking through its Qualified Consultants and the online resource center, told customers they could learn how to protect themselves against alleged government-perpetrated frauds—such as the obligation to pay federal income taxes—by using the services of PQI-vetted experts.

23. PQI, acting through its Qualified Consultants, attempted to sell Q1 purchasers tickets to attend PQI's Q2 and Q3 conferences at which the PQI-vetted experts offered their services for sale. The PQI Q2 and Q3 seminars at posh resorts and hotels in Mexico, Panama, Malta, and Paris provided customers with one-stop shopping for all their tax-fraud needs. After buying a scheme that purported to eliminate their federal income taxes through “decoding” and “rebuttal,” customers could go across the aisle to a different vendor, who offered a so-called asset protection scheme—just in case the IRS isn't persuaded by the first vendor's “rebuttal.”

24. The PQI Executive Council was composed of 15 to 25 people who collectively operated PQI for profit. PQI Qualified Consultants who had a sufficiently robust sales record were elected to the Executive Council by the existing Executive Council members. Because Executive Council members were also PQI sales personnel,

Executive Council members stood to realize a personal pecuniary gain from the profitable operation and growth of PQI.

25. PQI, acting through its Executive Council, created relationships with entities and individuals who desired to sell their products and services to PQI's customers. PQI used exclusive, mutually beneficial contracts with these vendors as a part of its strategy to sell more Q1, Q2, and Q3 products.

26. PQI's Executive Council vetted all vendors who sold products to PQI's customers.

27. As a condition of obtaining the PQI Executive Council's approval to market a vendor's products to PQI customers, PQI insisted that vendors not deal with any PQI competitor.

28. As a further condition, the vendor was required to agree that it would not sell its scheme or investment to any customer under any circumstances if the customer had not first purchased Q1 from a PQI-approved Qualified Consultant.

29. PQI's Executive Council approved numerous vendors to market their goods to PQI customers despite these vendors' promotion of tax schemes that were obviously fraudulent. In fact, PQI vendors were a Who's Who of notorious tax defiers, including Sherry Peel Jackson (who was convicted of federal tax crimes), Bill Benson (who was enjoined for promoting his tax-fraud scheme, and previously convicted of tax evasion) and David Carroll Stephenson (who was enjoined from promoting tax scams and then later convicted of conspiring to defraud the government).

30. Southern Oregon Resource Center Educational Service (SORCE), organized by Gino Casternovia, was a PQI-approved vendor that sold a fraudulent tax scheme designed to assist others hide their personal assets in sham entities. SORCE falsely told customers that income generated by those entities and assets was not taxable. SORCE also falsely told customers that the federal income tax system was voluntary, and that its customers could opt out of their federal income tax obligations simply by revoking their social security numbers and other government identification numbers. PQI's Executive Council vetted SORCE's tax-fraud schemes, approved these schemes for sale to PQI customers, and allowed SORCE to present these schemes at Q2 and Q3 conferences.

31. IMF Decoder was organized by Sharon Kukhahn, Daniel Shaw, and Robbie Struckman. It was a PQI-approved vendor that sold a fraudulent tax scheme. Through seminars, promotional materials, and websites, IMF Decoder sold a multi-phase program that falsely claimed that (1) customers were not required to pay federal income taxes unless they were living in a United States territory and (2) United States residents could be taxed only by a federal excise tax and only if they were involved in an excise-taxable enterprise. IMF Decoder further falsely told customers that in order to subject citizens to a tax, the IRS fraudulently misidentified citizens as residents of a U.S. territory such as the U.S. Virgin Islands and/or misidentified their occupations as an enterprise subject to an excise tax, such as firearms manufacturing or narcotics trafficking.

32. PQI's Executive Council vetted IMF Decoder's fraudulent tax schemes, approved these schemes for sale to PQI customers, and allowed IMF Decoder to present these schemes on Q1 audio compact disc course and at Q2 and Q3 conferences.

33. Bill Benson was authorized by PQI to promote his fraudulent tax scheme called the Reliance Defense Package to PQI customers. Benson assured PQI customers that they were not required to file federal income tax returns based on his false claim that the Sixteenth Amendment to the United States Constitution was not properly ratified. Benson also sold PQI customers products that Benson falsely promised would shield these customers from criminal prosecution for not paying federal income taxes. Benson advertised this scheme on PQI's Q1 compact disc course and at Q2 conferences. PQI Qualified Consultants could link to Benson's webpage from their own websites with PQI approval. The United States sued Benson to enjoin this sale of the Reliance Defense Package on November 10, 2004. The federal district court for the Northern District of Illinois permanently enjoined Benson from selling this fraudulent tax scheme on January 11, 2008.

34. PQI-approved vendor Sherry Peel Jackson sold materials that fraudulently purport to help customers avoid federal tax by showing that they are not required to pay federal income taxes. Jackson, a former I.R.S. Revenue Agent, based her argument on a false and tortured reading of section 861 of the Internal Revenue Code that has been consistently rejected by courts. Jackson advocated her frivolous positions on PQI's Q1 "educational" audio course and promoted the sale of her "861 Evidence Disc" at Q2 and

Q3 conferences. This disc purports to explain why U.S. citizens are not obligated to pay federal income taxes or file federal income tax returns. Jackson was convicted in November 2007 in the U.S. District Court for the Northern District of Georgia of four counts of willfully failing to file federal income tax returns. Jackson was also a PQI Qualified Consultant, and from 2002 to 2006, Jackson earned approximately \$138,000 in commissions on the sale of PQI products.

35. American Business Estate and Tax Planning (ABETP, a.k.a. ABEP), organized by David Carroll Stephenson and Michael Shanahan, was a PQI-approved vendor prior to May 2004. Stephenson falsely advised PQI customers they could avoid paying federal income taxes on income and assets placed into “pure equity trusts” over which the customer retained full control. Stephenson was enjoined from promoting his scheme in 2004. In 2006 Shanahan pled guilty to federal charges of conspiracy to defraud the government and willful failure to file federal income tax returns.

36. The Defaulted Defendants had reason to know and knew that their conduct and their false statements about the tax laws helped PQI vendors sell tax-fraud schemes.

37. PQI was a continuation of Global Prosperity and offered for sale products very similar to those formerly offered for sale by Global Prosperity, which the members of PQI’s Executive Council knew and had reason to know were fraudulent.

38. Despite injunction suits and criminal prosecutions against principals of Global Prosperity, PQI did not cease approving and promoting similar tax-fraud schemes offered by its vendors.

39. PQI helped vendors sell their products by assuring customers that PQI had thoroughly investigated the products that the vendor offered. But even a cursory review of the legal positions asserted by PQI's tax-scheme vendors would reveal the falsity of their claims.

40. Synergy Productions International, Inc. (SPI) supported the fraudulent activities of PQI and its vendors. PQI's Executive Council determined which products PQI sold and promoted to customers; SPI provided the mechanisms necessary to deliver those products to the customer and received payment from the customer. SPI was solely dedicated to serving PQI and served no other client. SPI was thus a division of PQI and not an independent entity.

41. SPI was operated by Claudia Hirmer and Mark Hirmer, with the assistance of Brian Barker, Tonya Holder, and Joshua Holder.

42. PQI's Qualified Consultants were required to execute an agreement with SPI in order to become a PQI Qualified Consultant. Completing this agreement allowed the Qualified Consultant to place an order for PQI's products through SPI on the customer's behalf. SPI then shipped the PQI product directly to the customer. SPI received all payments made by customers for all PQI products.

43. SPI determined which PQI Qualified Consultants were eligible to sell which of PQI's three products to customers based on the Qualified Consultant's sales record. Under the Qualified Consultant agreement that all Qualified Consultants

executed, SPI and PQI shared control over the approved sales methods Qualified Consultants were permitted to use to promote PQI products.

44. SPI was exclusively responsible for making all local arrangements for PQI's Q2 and Q3 conferences. SPI was also responsible for collecting payment from PQI-approved vendors of those fees vendors were required to pay in order to appear at Q2 and Q3 conferences.

45. Between January 1, 2003, and December 31, 2004, alone, a bank account held by SPI received deposits exceeding \$3.6 million.

46. Like SPI, MCD supported the fraudulent activities of PQI. MCD operated PQI's website, and operated the website for PQI-approved vendor Bill Benson. Before serving PQI, MCD maintained the website for the Institute of Global Prosperity. MCD was operated by Claudia Hirmer, Mark Hirmer, and Brian Barker. MCD maintained a database of sales made by PQI's Qualified Consultants that SPI used to determine which Qualified Consultants were permitted to sell which PQI products. MCD processed credit card sales of PQI products. MCD maintained a bank account in which funds received from the sale of PQI products were deposited.

47. The Defaulted Defendants' schemes and the schemes of PQI's vendors harmed the government by fraudulently helping customers evade federal taxes and helping customers hide assets and income from the IRS.

48. The scope of the Defaulted Defendants' scheme was enormous: From 2002 to 2006, PQI had gross sales of approximately \$54 million. Of this sum, PQI

realized approximately \$16 million in sales revenue from the sale of its various products and the approximately 830 Qualified Consultants collectively realized approximately \$37 million in sales commissions.

49. Approximately 11,500 customers purchased the Defaulted Defendants' tax-fraud schemes. The fraudulent tax schemes of just two PQI-vetted vendors, IMF Decoder and SORCE, deprived the United States of over \$13 million in forgone federal income tax revenue.

50. The United States is further harmed because the IRS must dedicate its scarce resources to detecting and examining the inaccurate returns filed by PQI customers as a result of tax-fraud schemes that PQI promotes, and in attempting to assess and collect unpaid taxes.

51. Some of the revenue loss caused by the Defaulted Defendants' activities may never be recovered.

52. The Defaulted Defendants' extensive involvement in these numerous and elaborate schemes and their willingness to continue promoting these fraudulent schemes while former PQI members are enjoined, prosecuted, and convicted indicate that the misconduct described in this complaint or other similar misconduct is likely to recur unless Defaulted Defendants are permanently enjoined.

Conclusions of Law

53. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1340 and 1345 and 26 U.S.C. §§ 7402(a) and 7408.

54. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1396.

55. I.R.C. § 7408 authorizes a district court to enjoin any person from engaging in conduct subject to penalty under I.R.C. § 6700 if injunctive relief is appropriate to prevent recurrence of that conduct.

56. Section 6700 imposes a penalty on any person who organizes or participates in the sale of a plan or arrangement and in so doing makes or furnishes a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by participating in the plan or arrangement which that person knows or has reason to know is false or fraudulent as to any material matter.

57. The Defaulted Defendants also organized two similar tax-fraud arrangements. First, PQI, its Executive Council, and SPI sold customers the Q1 audio course that contained false statements about the internal revenue laws, but also provided exclusive access to PQI-approved vendors of tax fraud schemes, such as IMF Decoder, SORCE, and Bill Benson.

58. The Defaulted Defendants organized Q2 and Q3 conferences at which PQI allowed tax-fraud promoters to hawk their wares. This is a plan or arrangement within the meaning of 26 U.S.C. § 6700 because PQI, its Executive Council members, and SPI organized these conferences, approved vendors to promote fraudulent tax products at the conferences, sold customers admission to the conferences, and received a portion of the proceeds.

59. The Defaulted Defendants made false statements about the tax benefits to be derived from these arrangements in two ways. First, the Q1 audio course contained false and fraudulent statements about the internal revenue laws and the benefits that can purportedly be derived from using vendors' products. Second, PQI, its Executive Council, and SPI organize fora at which vendors of tax fraud schemes were knowingly allowed to present false and fraudulent statements about the benefits that can purportedly be derived from using their schemes.

60. The Defaulted Defendants knew or had reason to know that these statements are false or fraudulent.

61. Under 26 U.S.C. §6700, a court may infer the knowledge a reasonable person in the defendant's position would have discovered, Estate Preservation Servs., 202 F.3d at 1103, and may impute to the defendant knowledge "commensurate with the level of comprehension required by the speaker's role in the transaction," United States v. Cambell, 897 F.2d 1317, 1321-22 (5th Cir. 1990). A reasonable person in the Defaulted Defendants' position—promoters of products they claimed to investigate thoroughly—would discover that schemes purporting to allow U.S. citizens to stop paying federal income taxes are not legal.

62. The false statements made by the Defaulted Defendants were "material" within the meaning of section 6700. If a particular statement has a substantial impact on the decision-making process or produces a substantial tax benefit to a taxpayer, the matter is properly regarded as "material" within the meaning of section 6700. United

States v. Buttorff, 761 F.2d 1056, 1062 (5th Cir. 1985). Customers could, and in fact did, rely on false statements made on PQI's Q1 audio course and statements made by PQI vendors in deciding to not file federal income tax returns and to not pay federal income taxes.

63. Based on the history of Global Prosperity, and the disregard PQI, its Executive Council, and SPI have shown for the internal revenue laws, an injunction is necessary and appropriate to prevent a recurrence of the conduct.

64. An injunction is appropriate under 26 U.S.C. § 7402. A district court may grant an injunction under 26 U.S.C. § 7402 if it is necessary or appropriate for the enforcement of the internal revenue laws. Injunctions can only issue under section 7402 if the traditional bases for equitable relief are also satisfied.

65. The traditional bases for issuing equitable relief are (1) irreparable injury during the pendency of the suit unless the injunction issues immediately; (2) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (3) if issued, the injunction would not be adverse to the public interest. Alabama v. U.S. Army Corps of Engineers, 424 F.3d 1117, 1128 (11th Cir. 2005).

66. The United States has met these equitable factors. An injunction is necessary and appropriate to ensure that the Defaulted Defendants do not continue to market and promote tax-fraud schemes.

67. The Defaulted Defendants will not suffer any hardship by being ordered to obey the law. They have no First Amendment interest in using false or misleading commercial speech. Greater New Orleans Broadcasting Ass'n v. United States, 527 U.S. 173, 183-84 (1999). An injunction prohibiting the use of false or misleading commercial speech to promote tax-fraud schemes is not adverse to the public interest.

For the foregoing reasons, it is therefore,

A. ORDERED that pursuant to 26 U.S.C. §§ 7402 and 7408, the Defaulted Defendants named hereinabove are permanently enjoined, from directly or indirectly by means of false, deceptive, or misleading commercial speech:

(1) Organizing, promoting, marketing, or selling (or assisting therein) any tax shelter, plan, or arrangement, including but not limited to those described in this order, or any other tax shelter, plan or arrangement that incites or assists customers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities or unlawfully claim improper tax refunds;

(2) engaging in activity subject to penalty under 26 U.S.C. § 6700, including making, in connection with the organization or sale of any plan or arrangement, any statement about the securing of any tax benefit that the Defaulted Defendants know or have reason to know is false or

fraudulent as to any material matter, including but not limited to the statements in the Q1 materials and other false statements described in this order; and

(3) engaging in conduct subject to penalty under any provision of the Internal Revenue Code, or engaging in any other conduct that interferes with the proper administration and enforcement of the internal revenue laws.

B. ORDERED that a copy of this order be displayed on all websites over which any Defaulted Defendant has control that pertains in any way to PQI, products or services offered by PQI vendors, or SPI; and

C. ORDERED that the government is authorized to engage in post-judgment discovery to monitor the Defaulted Defendants' compliance with this injunction order.

DONE AND ORDERED this 18th day of January, 2011

/s/ Roger Vinson

ROGER VINSON

Senior United States District Judge

Presented by:

s/ John R. Monroe

John R. Monroe

Trial Attorney, Tax Division

U.S. Department of Justice