

STATE OF MAINE

KENNEBEC, ss.

SUPERIOR COURT

CIVIL ACTION

DOCKET NO. CV-01-174

STATE OF MAINE,

Plaintiff

v.

FINAL DISPOSITION

THEORDORE McLEOD, JR.,

Defendant

By Decision and Order dated January 3, 2003, this court found that defendant Theodore McLeod violated the Unfair Trade Practices Act as alleged in count I of the complaint. By separate order, the court permanently enjoined Mr. McLeod from organizing, promoting or participating in The Car Club or any other illegal lottery in the State of Maine, including any schemes similar to The Car Club which require the recruitment of an infinite number of individuals to succeed. Other remedies sought by the plaintiff were held in abeyance pending an accounting by Mr. McLeod and further development of the money trail.

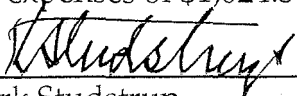
Mr. McLeod initially objected to providing an accounting of the funds he received through The Car Clubs, suggesting that to do so might expose him to criminal penalties. The plaintiff countered with a motion for contempt. Ultimately, Mr. McLeod did file an affidavit indicating that he had collected a total of \$29,500 from various individuals, which he turned over to Sidney Andrews of Hermon, Maine. As it turns out, Mr. Andrews died of lung cancer shortly after the events which gave rise to this litigation, and his personal representative testified at a subsequent hearing that there was no cash in the estate or other indications of a recent windfall. Nor did Mr. Andrews give any extensive funds to his girlfriend of 27 years, Jackie Knowlton.

At hearing, there was also testimony from a Louis Lachance who testified convincingly that Mr. Andrews had shown him a substantial amount of money which Andrews represented as having won. After considering all of the evidence presented at the time of trial and during subsequent dispositional proceedings, the court finds it likely that Mr. McLeod conveyed at least a portion of the funds which he had received from the victims of The Car Club scheme to Mr. Andrews, but it is also likely that he did not convey the entire \$29,500. From the beginning, this court has been skeptical that Mr. McLeod would receive no personal benefit from organizing and promoting The Car Clubs. The court does not find it likely that Mr. McLeod would do all of this work out of the goodness of his heart and with no expectation of any profit for himself, when the entire scheme is based upon individual greed.

In order to obtain disgorgement of profits, the plaintiff would have to prove that Mr. McLeod personally benefited from the scheme. This is not necessarily true with regard to an order of restitution, which focuses on those people who have been victimized by the defendant's activities. Therefore, the court is going to order partial restitution to those victims, in addition to a civil penalty and payment of the plaintiff's cost of litigation. The entry will be:

- (1) This court's order dated January 3, 2003, enjoining Mr. McLeod from certain activities is CONTINUED indefinitely.
- (2) Theodore McLeod is ORDERED to pay restitution in the amount of \$15,000 for the prorata benefit of victims of The Car Club as revealed by testimony in this case. This restitution fund shall be administered by the Office of the Attorney General.
- (3) A civil penalty of \$5,000 is ASSESSED against Mr. McLeod.
- (4) Mr. McLeod is further ORDERED to pay the plaintiff's attorney's fees in the amount of \$4,000 plus other expenses of \$1,024.30.

Dated: 8/4/03



S. Kirk Studstrup
Justice, Superior Court

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-01-174

STATE OF MAINE,

Plaintiff

v.

ORDER

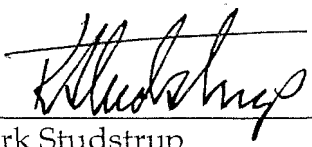
THEODORE McLEOD, JR.,

Defendant

By separate Judgment and Order, defendant Theodore McLeod, Jr. has been found to have intentionally participated in unfair and deceptive acts or practices in the conduct of commerce which is unlawful. These acts occurred during Mc. McLeod's participation in, organization and/or promotion of The Car Club, which is a pyramid scheme. Based upon these findings set forth in the separate Judgment, the court enters the following order:

Theodore McLeod, Jr. is permanently enjoined from organizing, promoting or participating in The Car Club or any other illegal lottery in the State of Maine. This order includes any scheme similar to The Car Club in that it requires the recruitment of an infinite number of individuals to succeed.

Dated: January 3, 2003



S. Kirk Studstrup
Justice, Superior Court

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-01-174

STATE OF MAINE,
Plaintiff

v.

DECISION AND ORDER

THEODORE McLEOD, JR.,
Defendant

This matter came on for trial before the court without a jury on the complaint of the State of Maine, Office of the Attorney General against defendant Theodore McLeod, Jr. alleging that he violated the Maine Unfair Trade Practices Act (UTPA), 5 M.R.S.A. §§ 205-A-215 (Supp. 2001).¹ After fully considering the unrebutted testimonial and other evidence presented, the court concludes that the Attorney General is entitled to judgment, and injunctive and other remedies.

Facts

This case arises from a "get rich quick" scheme, which circulated through Penobscot County in the Spring of 2001. The scheme was known by a variety of names, including "The Car Club." Actually, due to the structure of the scheme, there

¹ The Attorney General had also originally charged McLeod with a violation of 17 M.R.S.A. § 2305, which outlaws pyramid schemes as being lotteries and declares a violation of the section to also be an unfair trade practice. Section 2305 also provides, "Whoever shall organize or participate in any such lottery by organizing or inducing membership in any such group or organization shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 11 months, or by both." Faced with McLeod's constitutional demand for a jury trial in light of the clearly criminal nature of the statute, the Attorney General dismissed the second count of the complaint which included the section 2305 allegation. Nor did the Attorney General bring other charges under the Criminal Code, e.g., aggravated unlawful gambling, 17-A M.R.S.A. § 953, or seek an injunction for unlawful gambling under that title, 17-A M.R.S.A. § 958.

would be a series of clubs in a stream. Each club is organized as a "car racing team" with a driver, two crew chiefs, four pit crew members, and eight fans. The fans are the lowest level of the club and attain membership by giving \$5,000 each to the driver. When the driver has received his \$40,000, the team splits into two new teams with the two crew chiefs becoming the drivers, half of the original pit crew moving up to the position of crew chiefs, half the original fans moving up to the pit crew, leaving eight new fan positions to be recruited of the two new teams. The process continues when the new fans all make their \$5,000 gifts to the new drivers, and all of the participants move up the ladder again in four new teams. In theory, a fan can move from his position as a \$5,000 donor to a \$40,000 recipient on the fourth division. As testified to by Professor William Soule (and as further explained in *Pacurib v. Villacruz*, 705 N.Y.S.2d 819, 823 (N.Y. City Civ. Ct. 1999)), this means that for any of the original eight fans to reap the \$35,000 profit, at least 120 total fans would have to have given their \$5,000 to the "drivers." In other words, there is a constant and constantly increasing demand for new fans in order to make the clubs work. Eventually, and this could happen quite quickly, the club collapses due to the lack of new fans and at this point, according to Professor Soule, the situation is extremely unfair because the last three levels recruited into the clubs cannot recover their losses.

Defendant McLeod was both active and prominent in the organization and promotion of the car clubs. Although his name does not appear as one of the drivers, McLeod hosted recruiting gatherings at his garage and made promotional speeches to gatherings there and elsewhere. According to the witnesses, these speeches included representations that The Car Club was not an illegal pyramid scheme, that an attorney had been retained to guarantee the legality and keep up with rules and regulations, that

members could get out of the organization at any time and that McLeod kept a fund to provide refunds to those who wished to leave. Most important, all four of the witnesses testified that they physically gave their \$5,000 "gift" as new fans to McLeod himself.

Discussion

Based on the facts set forth above, it is clear to the court that the car clubs organized in Penobscot County and in which the defendant played an active role, were part of a pyramid scheme. If the State had continued to pursue this matter as a violation of 17 M.R.S.A. § 2305, there would be more than a sufficient factual basis for a fact finder to find beyond a reasonable doubt that this was a pyramid scheme which violated that section of the statute. However, the fact that the State has elected not to proceed criminally through either Title 17 or 17-A, does not foreclose a finding of unfair trade practice under the UTPA. The representations McLeod made during his promotional speeches were themselves untrue and an unfair or deceptive act or practice in the conduct of commerce, which is declared unlawful in 5 M.R.S.A. § 207. McLeod stated that the club was legal and not a prohibited pyramid scheme, when he knew or should have known to the contrary. McLeod represented that an attorney had certified to the legality of the scheme, when no reputable attorney could come to that conclusion. Finally, McLeod's representations that members could get out of the club at any time and be reimbursed their investment from a fund which he had set up was also apparently false since he refused to reimburse any of the four witnesses their investment upon their requests. In summary, the court finds and concludes that defendant McLeod violated the UTPA through his promotional activities for the car clubs. Judgment will be for the plaintiff on count I of the complaint.

The State seeks a variety of remedies including a permanent injunction, an accounting, restitution, a civil penalty and its costs of investigation including attorney's fees. The court will issue a permanent injunction by separate order. As authorized in 5 M.R.S.A. § 209, since the court is issuing a permanent injunction, it will exercise its discretion to order defendant McLeod to pay the State the cost of the investigation by the Attorney General and the cost of suit, upon filing by the Attorney General of an affidavit detailing those costs. Other remedies will require further development.

Defendant McLeod argues against orders of restitution or disgorgement pointing out the lack of evidence that he personally gained from any of the car clubs and, even if he had, the law discourages courts from enforcing illegal contracts. As to the second point, none of the cases cited by the defendant involved claims under the UTPA. While the defendant is correct that generally the law will not enforce illegal contracts, that does not mean that the court is prevented from ordering either restitution or disgorgement or both -- which are not enforcement of a contract -- in the context of a UTPA case. Restitution focuses on making whole the victim of some illegal activity, while disgorgement focuses on preventing a wrongdoer from profiting from his wrongdoing without a focus on individual victims. In either case, it is important to have the defendant account for not only the \$20,000 which the witnesses have placed in his hands, but all car club funds which have come through his hands. Such an accounting was requested in the original complaint and is within the legal tool box available to the court.

With regard to the Attorney General's request for civil penalties, those penalties are available under 5 M.R.S.A. § 209, but only if the Attorney General proves that the violations of section 207 were intentional and unfair or deceptive. As set forth above,

the court makes those findings. However, since the amount of such penalties, if any, may depend in part on the size of any restitution or disgorgement, the court will reserve ruling on these issues until after the accounting has taken place.

For the reasons stated above, the entry will be:

(1) The defendant's oral Motion for Judgment as a Matter of Law is DENIED.

(2) Judgment for the plaintiff on count I.

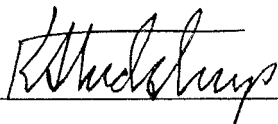
(3) The defendant is declared to have intentionally committed an unfair or deceptive act or practice in the conduct of commerce. The defendant will be enjoined from such further acts by separate order.

(4) The defendant is ORDERED to file with the court within thirty (30) days a full accounting of the receipt and expenditure of all funds in whatever form which he has received in connection with any of the car clubs. Entries for funds obtained from Mr. Nylund, Mr. Watters, Mr. Spaulding, and Mr. Hanscomb and their disposition should be highlighted.

(5) The court will retain jurisdiction to order further UTPA remedies upon receipt of the defendant's accounting.

(6) The State is awarded the Attorney General's investigation expenses and costs of litigation, including attorney's fees, in an amount to be determined after filing of an affidavit of such costs and fees.

Dated: January 3, 2003



S. Kirk Studstrup

Justice, Superior Court

Nancy A. Desjardin,
Clerk of Court

Michele Garwood,
Administrative Clerk

Clerk's Office
Kennebec County Superior Court
95 State Street
Augusta, ME 04330
(207) 622-9357

Date: 1/3/03

Docket No. CV01-174 STATE OF MAINE VS. THEODORE MCLEOD

NOTICE TO COUNSEL:

Now that your case is finished you have ten (10) days after the 21day appeal period, to claim your exhibits and/or record or they will be disposed of. In the event your case is to be appealed, please notify our office. At the conclusion of your appeal you will have ten (10) days to claim your exhibits and/or record.

Please note there will be no further reminders to claim your exhibits and/or record in your case. The Clerk's office will not mail any of the above. It is the responsibility of the parties to arrange for pick up.

EXHIBITS/POSTERS

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ATTORNEY GENERAL



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REGIONAL OFFICES:

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128 SWEDEN ST., STE. 2
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TEL: (207) 496-3792
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November 6, 2002

HAND DELIVERED

Nancy Desjardin, Clerk
Kennebec County Superior Court
95 State Street
Augusta, Maine 04330

Re: State of Maine v. Theodore McLeod, Jr.
Civil Action Docket No. CV-01-174

Dear Ms. Desjardin:

Enclosed please find the State's Post Trial Brief in the above-referenced matter,
along with copies of three cases cited in the Brief. Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Linda J. Conti'.

Linda J. Conti
Assistant Attorney General

Enclosures
LJC/ajm

cc: Pasquale J. Perrino, Jr., Esq.

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-01-174

STATE OF MAINE,

Plaintiff

v.

THEODORE MCLEOD, JR.,

Defendant

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STATE'S POST TRIAL BRIEF

The trial in this case was held on October 28, 2002. The State proved by a preponderance of the evidence, and the Court should find, that the Defendant Theodore McLeod, Jr. ("McLeod") violated the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207 ("the UTPA"), by promoting a pyramid scheme. To remedy this violation, the Court should issue a permanent injunction barring the Defendant from promoting a pyramid scheme, and order disgorgement and restitution for consumers harmed by the Defendant's unlawful practices, as well as civil penalties and costs, including attorney's fees.

FACTS

In the spring of 2001, Mr. McLeod promoted the Car Club at meetings in a warehouse in Brewer. The Car Club is a classic pyramid scheme. It depends on the recruitment of an ever-increasing number of new members who, theoretically by their voluntary gifts, enable participants to pay \$5,000 and receive a \$40,000 payment for a net profit of \$35,000. The Club charts (State's Exhibits 2, 3, and 4) present a four level, three step pyramid with a driver at the top, two crew chiefs beneath the driver position, four pit crew beneath them, and eight newly

recruited racing fans at the bottom. When the “gifting” process is complete, the driver is removed from the sheet, and the remainder of the pyramid splits. Everyone advances up in rank, and two new pyramids are formed, each containing a new driver, crew chief, and pit crew, all of whom must then actively seek eight new recruits which enables the process to continue ad infinitum to everyone’s monetary benefit, or so everyone is told. What is presented is thus not a singular ever expanding pyramid, but one which spawns a chain of multiple ongoing pyramids, each of which is linked to its predecessor.¹

The witnesses in this case, Michael Watters, Kevin Nylund, Leon Spaulding, and Stanley Hanscom, each invested \$5,000 cash in order to receive a large payout in a short period of time. The Defendant McLeod actively promoted the Club by speaking to large groups of people at a warehouse in Brewer on numerous occasions. At these meetings, Mr. McLeod explained the rules of the Club and invited people to join his racing team. He told people that the Club was legal, that an attorney had been retained by the Club, and that they could get their money back any time. Relying on these statements made by McLeod, as well as similar statements made by others, Watters, Nylund, Spaulding, and Hanscom invested in the Club. They were directed to go to Mr. McLeod’s garage in Hermon, Maine and to pay \$5,000 to Mr. McLeod. On the appointed day in early April of 2001, they went to Mr. McLeod’s garage and paid him \$5,000 in cash each. At that time, Mr. McLeod reiterated the Club rules, including statements that the Club was legal, that it had a lawyer, and that money would be returned to people upon request. They all then left and went to another meeting at the Brewer warehouse where Mr. McLeod again promoted the Car Club to approximately 100 to 200 people.

¹ This description of a pyramid set forth in *Pacurib v. Villacruz*, 705 NYS.2d 819 (Ny.Y. City Civ. Ct. 1999) is a very apt description of the Car Club.

Soon thereafter, or at about the same time, one of the witnesses, Leon Spaulding, began promoting the pyramid at his place of business in Bangor, lowering the entrance fee from \$5,000 to \$1,000. Kevin Nylund and Stanley Hanscom each gave Spaulding \$1,000 in this scheme. Hanscom testified that he received a profit of \$8,000 due to his \$1,000 Car Club scheme. It is undisputed that Watters and Nylund did not promote the scheme, did not recruit anyone, and did not accept cash from anyone. Hanscom recruited Noor Khan. However, Hanscom did not take money from Khan or anyone else, nor did he make any money on his investment in the \$1,000 or the \$5,000 Car Clubs.

A. McLeod Violated the Unfair Trade Practices Act, 5 M.R.S.A. § 207.

The Act prohibits “unfair or deceptive acts or practices...in the conduct of any trade or commerce.” 5 M.R.S.A. § 207. These terms are incapable of precise definition, so whether a given practice is unfair or deceptive must be determined on a case-by-case basis. *State v. Shattuck*, 2000 ME 38 ¶13, 747 A.2d 174.

Pyramid programs such as the Car Club, which induce a person to participate on the representation that he or she cannot only regain the purchase price, but also reap profits by recruiting others, are inherently deceptive and contrary to public policy. The deception arises because the market eventually becomes saturated and the seemingly endless chain must end; consequently, many participants cannot even recoup their investments, let alone make a profit. As Professor Soule’s testimony demonstrates, the Car Club is such a scheme. Marketing programs based on a pyramid principle similar to the Car Club have been found to violate consumer protection statutes. *Illinois ex rel. Fahner v. Walsh*, 461 N.E.2d 78, 82-83 (Ill. 1984).

B. The Court Should Issue an Order Pursuant to 5 M.R.S.A. § 209 to Remedy McLeod's Violations of the UTPA.

The UTPA vests the trial court with considerable discretion to fashion an equitable remedy once a finding of unlawful trade practices has been made, and the Court should and must fashion an appropriate remedy to do complete justice. *State v. Bob Chambers Ford*, 522 A.2d 362, 366-367 (Me. 1987). Equitable remedies that may be applied in this case to do complete justice include injunctive relief, accounting², restitution and disgorgement. Once a Court finds that the Defendant has violated the Unfair Trade Practice Act, 5 M.R.S.A. § 209 allows the Court to issue a permanent injunction against further violations and to order the Defendant to pay back any monies obtained as a result of the unfair trade practice. The Attorney General may also seek to recover civil penalties for intentional violations of the UTPA,³ and if a permanent injunction is granted, the Court may also order that the defendant pay the Attorney General's costs of investigation and suit, including attorney fees.⁴ All of these remedies are necessary and appropriate in this case.

The Attorney General requests that the Court find that Mr. McLeod violated the UTPA by promoting the Car Club pyramid and issue a permanent injunction restraining Mr. McLeod from promoting the Car Club or any similar scheme that requires recruitment of an infinite number of individuals in order to succeed. Injunctive relief is appropriate and necessary in this case to ensure that the Car Club does not start up again.

² The Court has the equitable remedy of an accounting at its disposal (27A Am. Jur.2d *Equity* § 99); see also *State of Maine v. Richard*, 1997 ME 144, 697 A.2d 410. To assist formulating appropriate judgment, the Court may order the defendant to submit an accounting of all his Car Club activities.

³ The State does not need to prove that the violation was intentional to obtain injunctive and other equitable relief. *Bartner v. Carter*, 405 A.2d 194, 200-201 (Me. 1979); *State of Maine v. Bob Chambers Ford, Inc.*, 522 A.2d 365.

⁴ 14 M.R.S.A. § 1522.

Injunctive relief alone, however, will not deter others from attempting such a scheme, and will not provide relief to those at the bottom of the pyramid who inevitably lost their money in this scheme. The Court has equitable power to order monetary relief as restitution and or disgorgement in addition to injunctive relief. Disgorgement and restitution are not mutually exclusive. *SEC v. Penn Central Co.*, 425 F. Supp. 593, 598-599 (E. D. Pa. 1976). Even if the Court orders full restitution of all monies lost by known victims of the scheme, it may also order disgorgement of any wrongfully obtained money not paid out in restitution. Similarly, even if the Court orders full disgorgement, if the disgorged funds do not adequately compensate those at the bottom of the pyramid, the Court may also order additional payments as restitution.

Restitution is necessary in this case to compensate the victims⁵ and to deter future pyramid schemes. The statutory language of section 209 provides for restitution as a remedy for persons harmed by the Defendant's UTPA violations. While Mr. McLeod may not have been the person who initiated the "Car Club" and could be viewed as merely one of many participants in the chain, an order requiring Mr. McLeod to pay restitution is not unfair as the amount that he must pay in restitution is limited to the amount of gain that he received. *People ex rel. Fahner v. Walsh*, 461 NE.2d 78, 85 (Ill. 1984).

The Defendant has argued that restitution is inappropriate in this case because the victims have unclean hands. The unclean hands doctrine has no application to this case for two reasons. First, the Defendant cannot raise the clean hands doctrine as a defense because he does not have clean hands. *Dudley v. Wyler*, 647 A. 2d 90 (Me. 1994). Second, the maxim of clean hands applies solely to some willful misconduct with reference to the matter in litigation and not to

⁵ Such a restitution order should apply to all consumers who paid the Defendant to join the Car Club and not be limited to the consumers who testified at trial. *State v. Ralph Williams Northwest Chrysler Plymouth, Inc.*, 553 P.2d 423, 437-439 (Wash. 1976)

some other illegal transaction, although it may be indirectly connected with the subject matter of the suit. *Mason v. Carrothers*, 74 A. 1030, 1037 (Me. 1909). Hanscom, Watters and Nylund did not take money from others, and therefore do not have unclean hands. Any money that Spaulding received was unrelated to his transaction with the Defendant.

In pari delicto is a corollary of the clean hands doctrine and means that where the wrong of the one party equals the other, the Defendant is in the stronger position. The rule is often applied between parties to an illegal transaction. 27A Am Jur.2d *Equity* § 132 (1996). In this case, the party seeking restitution is the State of Maine which has clean hands, is not *in pari delicto*, and which is authorized by 5 M.R.S.A. § 209 to recover restitution for consumers. Therefore, neither *in pari delicto* nor the clean hands doctrine has any application to this action brought by the Attorney General to enforce the UTPA.

Even if *in pari delicto* applies in this case, at least one court has allowed some recovery to private litigants in a pyramid case. Where the parties appear not to have been *in pari delicto*, the one whose wrong is less than that of the other may recover. *Id.*, *Pacurib v. Villacruz*, 705 NYS.2d 819, 829-830 (N.Y. City Civ. Ct. 1999). *Pacurib* involved a quite similar pyramid scheme. The court found that Plaintiff and Defendant Villacruz were aggressive promoters and therefore *in pari delicto* and denied Plaintiff recovery from Defendant Villacruz. However, the Court also found that the conduct of Defendant Terez was more egregious than that of Plaintiff, and therefore Defendant Terez was liable to return the Plaintiff's money. In this case, Defendant McLeod's conduct is more egregious than Watter's, Nylund's, and Hanscom's. They were not aggressive promoters and themselves took no money from other participants. Therefore, McLeod should pay them restitution. Even if the Court finds that Spaulding was *in pari delicto* with the

Defendant, Mr. McLeod should not be permitted to profit by his own fraud or to take advantage of his own wrong and retain the \$5,000 given to him by Spaulding.

To do complete justice in this case, disgorgement is also necessary. Disgorgement is an equitable remedy designed to deter future law violators and to deprive defendants of the proceeds of their wrongful conduct. It takes into account the fact that the issuance of an injunction by itself does not correct the consequences of past activities. Disgorgement contemplates total recovery from the wrongdoer, whereas restitution may be limited to a few of the total number injured. This Court should order Defendant McLeod to disgorge all of his Car Club profits to the State of Maine. To the extent that the defendant is ordered to pay restitution, those amounts would serve to offset part or all of a judgment for disgorgement. *SEC v. Penn Central Co.*, 425 F.Supp. 593, 598-599 (E.D. Pa. 1976).

The Attorney General's purpose in bringing this case, and other similar cases, was to stop pyramids in Maine.⁶ In light of this extensive pyramid activity in the State of Maine, the Attorney General is seeking injunctive relief, restitution and disgorgement in this case. The Unfair Trade Practices Act, 5 M.R.S.A. § 209 also provides that the Attorney General may recover a civil penalty of up to \$10,000 per violation for violations of the Unfair Trade Practices Act which are intentional. In this case, a civil penalty is warranted because the Defendant's participation in the scheme was intentional. He actively promoted the Car Club and told people who gave him \$5,000 that they could get their money back at any time if they asked to have it returned. When Watters, Nylund, Hanscom and Spaulding asked McLeod for their money back,

⁶ There has been a lot of pyramid activity in this State, all of which used the "gifting" theme. There are currently three more cases pending. *State of Maine v. Chad Beauchesne et al. d/b/a Changing Lives* (Kennebec Cty. CV-01-03) (\$2,000 payment by eight Freshmen who are trying to reach the "Senior" level); *State of Maine v. Jacqueline Abraham et al. d/b/a A Woman's Project or Women Helping Women* (Kennebec Cty. CV-02-88) (\$5,000 paid by eight Appetizers who are trying to reach the "Dessert" level); *State of Maine v. John Neddeau* (Washington Cty. CV-02-02) (eight racing Fans who are trying to reach the "Driver" level).

he told them that in fact they could not get it back, and that he would not give it back to them. Therefore, the Defendant McLeod should be assessed a civil penalty of up to \$10,000 for intentionally violating the Unfair Trade Practices Act.

CONCLUSION

For the foregoing reasons, the State requests that this Court issue an Order finding that the Defendant Theodore McLeod, Jr. violated the Unfair Trade Practices Act, issue an injunction enjoining him from promoting or participating in the Car Club or any similar scheme that requires the recruitment of an infinite number of individuals to succeed, order the Defendant to pay restitution and disgorgement of the money that he made by participating in the Car Club, order the Defendant to pay a civil penalty, and order the Defendant to pay the State the cost of its investigation and suit, including its attorneys fees.

Respectfully submitted,

G. STEVEN ROWE
Attorney General

Dated: November 6, 2002



LINDA J. CONTI
Maine Bar No. 3638
Assistant Attorney General
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Maine Department of the Attorney General
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Augusta, Maine 04333-0006
(207) 626-8800

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-01-

STATE OF MAINE,)
)
Plaintiff)
)
v.)
)
THEODORE MCLEOD, JR.,)
)
Defendant)

**COMPLAINT FOR
INJUNCTIVE AND OTHER RELIEF**

Plaintiff, the State of Maine, by its Attorney General, brings this action against Defendant, Theodore McLeod, Jr., d/b/a NASCAR Men's Club, and states as follows:

JURISDICTION AND VENUE

1. This action is brought for and on behalf of the State of Maine, by G. Steven Rowe, its Attorney General, pursuant to the provisions of the Unfair Trade Practices Act, ("UTPA") 5 M.R.S.A. § 207, and his common law authority as Attorney General to represent the People of the State of Maine.

2. Venue for this action properly lies in Kennebec County, Maine, pursuant to 5 M.R.S.A. § 209.

PARTIES

3. The Attorney General of the State of Maine, is charged, *inter alia*, with the enforcement of the Unfair Trade Practices Act, 5 M.R.S.A. § 205-A *et seq.*

4. Defendant Theodore McLeod, Jr. (hereafter referred to as "McLeod"), an individual doing business as NASCAR Men's Club, resides at the address of Main Road,

Hermon, Maine 04402 and has a mailing address of P.O. Box 6150, Hermon, Maine 04402.

COMMERCE

5. Subsection 1 of the Unfair Trade Practices Act defines “trade” and “commerce” as follows:

“Trade” and “commerce” shall include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.

6. The Defendant was at all times relevant hereto engaged in trade and commerce in the State of Maine by advertising, promoting, offering for sale, selling and distributing intangible property, specifically, the right to invest or participate in the NASCAR Men’s Club.

DEFENDANT’S COURSE OF CONDUCT

A. Defendant’s Gifting Program

7. During the Spring of 2001, Defendant was engaged in an unincorporated business in the State of Maine which he refers to as the “NASCAR Men’s Club”.

8. Defendant actively solicited and sold the opportunity to participate in the NASCAR Men’s Club.

9. Defendant garnered participation in the gifting club by soliciting individuals to pay \$5,000 and receive a position as a “racing fan” on a “board”. Typically, there are fifteen positions on a board and as an individual moves up the board, he would become a “driver”. Upon reaching “driver” status, a participant is supposed to receive a return of \$40,000.

10. Participants are paid from the proceeds paid by newly recruited members. Defendant enticed participants to join this gifting club by promising returns of \$40,000. Defendant's gifting scheme relies on the recruitment of additional persons to participate, and the plan requires an infinite number of new members to succeed.
11. Defendant occasionally hosted and/or encouraged others to host gifting club meetings.
12. In his efforts to advance the marketing and sale of his pyramid scheme, Defendant represented to potential investors that the NASCAR Men's Club was a legal method of investing and receiving income without paying any income taxes.
13. Defendant also routinely represented to potential investors that the NASCAR Men's Club was not an illegal pyramid scheme and that attorneys had reviewed it and determined that it was legal.
14. The NASCAR Men's Club is in actuality a pyramid scheme that is an illegal lottery under Maine law.
15. NASCAR is an acronym for National Association for Stock Car Auto Racing. It is a for-profit corporation which has not consented to the use of its trade name for purposes of promoting the Defendant's pyramid scheme.

B. Specific Illustrations of Defendant McLeod's Conduct

16. Defendant McLeod's acts and practices complained of above are ongoing. In one illustrative, nonexclusive example, on April 2, 2001, five Maine residents gave the Defendant at least \$5,000 each. These participants were told that the scheme was legal and that they would make money. Relying on this information, they each gave \$5,000 to McLeod.

17. These participants have asked Theodore McLeod, Jr. to return their money and he has refused.

APPLICABLE STATUTES

18. Pursuant to the UTPA, 5 M.R.S.A. § 207:

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful.

19. Pursuant to 10 M.R.S.A. § 1212(1)(B):

A person engages in a deceptive trade practice when, in the course of his business, vocation or occupation, he [c]auses likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services.

20. Pursuant to 17 M.R.S.A. § 2305:

The organization of any multi-level distributorship arrangement, pyramid club or other group, organized or brought together under any plan or device whereby fees or dues or anything of material value to be paid or given by members thereof are to be paid or given to any other member thereof who has been required to pay or give anything of material value for the right to receive such sums, with the exception of payments based exclusively on sales of goods or services to persons who are not participants in the plan and who are not purchasing in order to participate in the plan, which plan or device includes any provision for the increase in such membership through a chain process of new members securing other new members and thereby advancing themselves in the group to a position where such members in turn receive fees, dues or things of material value from other members, is declared to be a lottery, and whoever shall organize or participate in any such lottery by organizing or inducing membership in any such group or organization shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 11 months, or by both.

A violation of this section shall constitute a violation of Title 5, chapter 10, Unfair Trade Practices Act.

VIOLATIONS

COUNT I

(Violation of the Unfair Trade Practices Act – Deceptive Conduct)

21. The Plaintiff repeats the preceding paragraphs of the Complaint.

22. Defendant, in conjunction with his conduct set forth herein above, has engaged in a course of trade or commerce which constitutes unfair and deceptive conduct declared unlawful under 5 M.R.S.A. § 207, by representing to Maine participants that the NASCAR Men's Club was not illegal when in fact it is a pyramid scheme that is an illegal lottery in Maine, by falsely representing that the NASCAR Men's Club is a tax free way to earn income, and by using the trade name "NASCAR" without permission, falsely implying that the organization was sponsored by or associated with that entity.

23. The Defendant's conduct as described in this Count constitutes deceptive acts or practices and intentional violations of 5 M.R.S.A. § 207.

COUNT II

(Violations of the Unfair Trade Practices Act – Unlawful Pyramid)

24. The Plaintiff repeats the preceding paragraphs of the Complaint.

25. Defendant, in conjunction with his conduct set forth herein above, has engaged in a course of trade or commerce declared unlawful under 17 M.R.S.A. § 2305, by selling, offering to sell and attempting to offer to sell the right to participate in a pyramid sales scheme, namely the NASCAR Men's Club.

26. The Defendant's conduct described in this Count constitutes intentional violations of 5 M.R.S.A. § 207.

REMEDIES

27. 5 M.R.S.A. § 209 provides:

Whenever the Attorney General has reason to believe that any person is using or is about to use any method, act or practice declared by section 207 to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by temporary or permanent injunction the use of such method, act or practice and the court may make such other orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice, any moneys or property, real or personal, which may have been acquired by means of such method, act or practice.

28. 5 M.R.S.A. § 209 also provides that each intentional violation of section 207 in which the Attorney General establishes that the conduct giving rise to the violation is either unfair or deceptive is a violation for which a civil penalty of not more than \$10,000 shall be adjudged.

29. 5 M.R.S.A. § 209 provides that in any action under this section where a permanent injunction is issued, the court may order the person against whom the permanent injunction has been issued to pay the State the costs of the investigation of that person by the Attorney General and the costs of the suit.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff requests this honorable Court enter an order:

A. Finding that the Defendant has violated 5 M.R.S.A. § 207, the Maine Unfair Trade Practices Act, by making misrepresentations to consumers regarding the NASCAR Men's Club;

B. Finding that the Defendant has violated 17 M.R.S.A. § 2305 by selling an illegal pyramid;

C. Permanently enjoining Defendant from engaging in the business of advertising, marketing, distributing, selling and offering to sell a right to participate in a pyramid sales scheme in the State of Maine in violation of the Unfair Trade Practices Act;

D. Declaring that all contracts entered into between Defendant and Maine consumers by the use of methods and practices declared unlawful are rescinded and requiring Defendant to disgorge all funds received through the NASCAR Men's Club;

E. Assessing a civil penalty in the amount of Ten Thousand Dollars (\$10,000) per intentional violation of the Unfair Trade Practices Act;

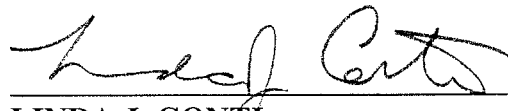
F. Requiring Defendant to pay all costs and attorneys fees for the prosecution and investigation of this action, as provided by 5 M.R.S.A. § 207 of the Unfair Trade Practices Act; and

G. Providing such other and further equitable relief as justice and equity may require, including an accounting of all moneys collected and expended by Defendant in connection with the NASCAR Men's Club.

G. STEVEN ROWE
Attorney General of Maine

FRANCIS ACKERMAN
Chief, Public Protection Division

Dated: August 14, 2001


LINDA J. CONTI
Maine Bar No. 3638
Assistant Attorney General

Public Protection Division
Maine Department of the Attorney General
6 State House Station
Augusta, Maine 04333-0006
(207) 626-8800

STATE OF MAINE

KENNEBEC, ss.

SUPERIOR COURT

CIVIL ACTION

DOCKET NO. CV-01-174

STATE OF MAINE,

Plaintiff

v.

THEODORE McLEOD, JR.,

Defendant

**DECISION ON MOTION
FOR SUMMARY JUDGMENT**

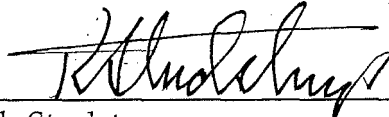
This matter came before the court for hearing on the plaintiff's motion for summary judgment. After considering the parties' statements of material fact and memoranda, the court will deny the motion.

The water is muddied a bit by the defendant's failure to meet the requirements of M.R. Civ. P. 56(h)(3) & (4). The defendant failed to reply to the plaintiff's statement of material facts in a manner that would "admit, deny or qualify such additional facts by reference to the numbered paragraphs of the opposing party's statement of material facts and unless a fact is admitted, shall support each denial or qualification by a record citation." (3). As a result, the plaintiff's statement of material fact should be considered as admitted. However, the court will not accept as admitted the facts set forth in paragraphs 19-29 because they are supported only by a permissible inference from the defendant's invocation of his Fifth Amendment rights rather than sworn testimony. The court declines to draw that inference for purposes of this motion for summary judgment.

The defendant also failed to present any statement of additional facts, filing instead a list of factual issues which he claims remain to be tried. However, it is clear that his list of material issues which remain in dispute are based upon his own affidavit, which the court has more leeway in accepting under subsection (4). The defendant's statements in his affidavit are not contrary to his prior deposition testimony since at that point in the proceedings the defendant essentially refused to testify, asserting his Fifth Amendment privilege. This would not prevent consideration of the affidavit statements. In summary, there remain material facts at issue, primarily concerning the defendant's role in the so-called NASCAR Club, sufficient to defeat the motion for summary judgment. Therefore, the entry will be:

Motion DENIED.

Dated: May 17, 2002



S. Kirk Studstrup
Justice, Superior Court

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-01-

STATE OF MAINE,)	
)	
Plaintiff)	
)	
v.)	COMPLAINT FOR
)	INJUNCTIVE AND OTHER RELIEF
)	
THEODORE MCLEOD, JR.,)	
)	
Defendant)	

Plaintiff, the State of Maine, by its Attorney General, brings this action against Defendant, Theodore McLeod, Jr., d/b/a NASCAR Men's Club, and states as follows:

JURISDICTION AND VENUE

1. This action is brought for and on behalf of the State of Maine, by G. Steven Rowe, its Attorney General, pursuant to the provisions of the Unfair Trade Practices Act, ("UTPA") 5 M.R.S.A. § 207, and his common law authority as Attorney General to represent the People of the State of Maine.

2. Venue for this action properly lies in Kennebec County, Maine, pursuant to 5 M.R.S.A. § 209.

PARTIES

3. The Attorney General of the State of Maine, is charged, *inter alia*, with the enforcement of the Unfair Trade Practices Act, 5 M.R.S.A. § 205-A *et seq.*

4. Defendant Theodore McLeod, Jr. (hereafter referred to as "McLeod"), an individual doing business as NASCAR Men's Club, resides at the address of Main Road,

Hermon, Maine 04402 and has a mailing address of P.O. Box 6150, Hermon, Maine 04402.

COMMERCE

5. Subsection 1 of the Unfair Trade Practices Act defines “trade” and “commerce” as follows:

“Trade” and “commerce” shall include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.

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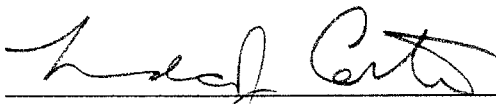
F. Requiring Defendant to pay all costs and attorneys fees for the prosecution and investigation of this action, as provided by 5 M.R.S.A. § 207 of the Unfair Trade Practices Act; and

G. Providing such other and further equitable relief as justice and equity may require, including an accounting of all moneys collected and expended by Defendant in connection with the NASCAR Men's Club.

G. STEVEN ROWE
Attorney General of Maine

FRANCIS ACKERMAN
Chief, Public Protection Division

Dated: August 14, 2001


LINDA J. CONTI
Maine Bar No. 3638
Assistant Attorney General

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Maine Department of the Attorney General
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