

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CAPITAL ACQUISITIONS & MANAGEMENT  
CORP., a corporation,

RM FINANCIAL SERVICES, INC., a corporation,

CAPITAL PROPERTIES HOLDINGS, INC.,  
a corporation,

CARIBBEAN ASSET MANAGEMENT, LTD.,  
a corporation,

REESE WAUGH,

JEROME KUEBLER,

ERIC WOLDOFF,

GEORGE OTHON,

JEFFREY GARRINGTON,

DAVID KAPP,

JOSHUA RAUSCH,

MICHAEL SENG, and

BILLY MARTIN,

Defendants.

No. 04-C-7781

Judge Gettleman

Mag. Judge Nolan

**STIPULATED ORDER FOR PERMANENT INJUNCTION  
AGAINST DAVID KAPP**

Plaintiff, Federal Trade Commission (“FTC” or “Commission”), filed its Amended Complaint for Injunctive and Other Equitable Relief (“Amended Complaint”), pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC ACT”), 15 U.S.C. § 53(b), Section 814(a) of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692l(a), and Rule 65 of the Federal Rules of Civil Procedure, charging that Defendants engaged in deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the FDCPA, 15 U.S.C. § 1692 et seq. The Commission and Defendant David Kapp hereby stipulate to the entry of this Stipulated Order for Permanent Injunction Against David Kapp (“Order”) to resolve all matters of dispute between them in this action.

**IT IS THEREFORE STIPULATED, AGREED, AND ORDERED** as follows:

1. This Court has jurisdiction over the subject matter of this case and the parties pursuant to 15 U.S.C. §§ 45(a), 53(b), 1692l(a), as well as 28 U.S.C. §§ 1331, 1137(a), and 1345.
  2. Venue lies properly with this Court pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).
  3. The activities of Defendant Kapp are in or affecting “commerce,” as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
  4. The Complaint states a claim upon which relief may be granted against Defendant Kapp under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FDCPA, 15 U.S.C. § 1692 et seq.
  5. Defendant Kapp has entered into this Order freely and without coercion.
- Defendant Kapp further acknowledges that he has read the provisions of this Order and is prepared to abide by them.

6. The undersigned, individually and by and through their counsel, have agreed that the entry of this Order resolves all matters of dispute between them arising from the Amended Complaint in this action, up to the date of entry of this Order.

7. Defendant Kapp waives all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendant Kapp further waives and releases any claim he may have against the Commission, its employees, representatives, or agents.

8. Defendant Kapp agrees that this Order does not entitle him to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and Defendant Kapp further waives any right to attorneys' fees that may arise under said provision of law.

9. Neither entry into this Order, nor performance according to its terms, shall be deemed an admission by Defendant Kapp. This Order has been entered without resolution of any disputed fact.

10. Entry of this Order is in the public interest, and there being no just reason for delay, the Clerk is directed to enter judgment immediately.

#### **DEFINITIONS**

For the purposes of this Order, the following definitions shall apply:

1. "Plaintiff" means the Federal Trade Commission.
2. "Defendant" or "Defendants" means Capital Acquisitions and Management Corp.; RM Financial Services, Inc.; Capital Properties Holdings, Inc.; Caribbean Asset Management, Ltd.; Reese Waugh, individually and as an officer, director or agent of the corporate defendants; Jerome Kuebler, individually and as an officer, director or agent of the corporate defendants; Eric Woldoff, individually and as an officer, director or agent of the

corporate defendants; George Othon, individually and as an officer, director or agent of the corporate defendants; Jeffrey Garrington, individually and as an officer, director or agent of the corporate defendants; David Kapp, individually and as an officer, director or agent of the corporate defendants; Joshua Rausch, individually and as an officer, director or agent of the corporate defendants; Michael Seng, individually and as an officer, director or agent of the corporate defendants; and Billy Martin, individually and as an officer, director or agent of the corporate defendants; and any subsidiaries, affiliates, and any fictitious business entities or business names created or used by these entities; or any of them.

3. "Receivership Defendant" means each of Capital Acquisitions and Management Corp., RM Financial Services, Inc., Capital Properties Holdings, Inc., and Caribbean Asset Management, Ltd.

4. "Defendant David Kapp" or "Defendant Kapp" means David Kapp, by whatever name he might be known.

5. "Asset" or "Assets" means any legal or equitable interest in, right to, or claim to any real or personal property, including but not limited to "cash," "funds," "money," "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks" or "notes" (as these terms are defined in the Uniform Commercial Code), lines of credit, chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located. "Asset" or "Assets" shall include any "Asset" or "Assets" existing at the effective date of this Order and any and all "Asset" or "Assets" acquired by Defendants after the effective date of this Order.

6. "Document" or "Documents" means any materials listed in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio or video

recordings, computer records, and any other data compilations from which information can be obtained and translated into reasonably usable form through detection devices. A draft or non-identical copy of a Document is a separate Document within the meaning of the term.

7. "Consumer" means any person.

8. "Debt collection activities" means any activity the principal purpose of which is to collect or attempt to collect, directly or indirectly, debts owed or asserted to be owed, or due.

9. "Assisting others" means knowingly providing any of the following goods or services to any person or entity: 1) performing customer service functions, including, but not limited to, receiving or responding to customer complaints; 2) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other written marketing material; 3) providing the names of, or assisting in the generation of, potential customers; or 4) performing marketing services of any kind.

#### **I. BAN ON DEBT COLLECTION ACTIVITIES**

**IT IS THEREFORE ORDERED** that Defendant David Kapp is banned from engaging in any debt collection activities, or assisting others engaged in debt collection activities, including, but not limited to, becoming an owner, officer, director or manager of any entity engaged in debt collection activities.

#### **II. PROHIBITED BUSINESS PRACTICES**

**IT IS FURTHER ORDERED** that Defendant David Kapp and his officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, shareholders, successors, and assigns, and all other persons or entities in concert or participation with him who receive actual notice of this Order by personal service or

otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, are hereby restrained and enjoined from:

A. Making, or assisting in the making of, expressly or by implication, orally or in any writing, any false or misleading statement or representation of material fact, including, but not limited to, any false or misleading representation:

1. that if the consumer does not pay the Defendant, the Defendant can and will take actions that will have a significant adverse effect on the consumer's credit report;
2. that the consumer can be arrested or imprisoned for failing to pay the Defendant;
3. that the consumer has a legal obligation to pay the Defendant; or
4. that if the consumer does not pay the Defendant, the Defendant can or will take formal legal action against the consumer, such as filing suit, seizing or attaching property, or garnishing wages;

B. Communicating with a consumer without the consumer's express prior consent given directly to the Defendant or the express permission of a court of competent jurisdiction:

1. at times or places that the Defendant knew or should have known to be inconvenient to the consumer, including but not limited to communicating with the consumer at the consumer's place of employment when the Defendant knew or should have known that it is inconvenient for the consumer to receive such communications; or
2. at the consumer's place of employment when the Defendant knew or had reason to know that the consumer's employer prohibited the consumer from receiving such communications;

C. Communicating with third parties for purposes other than acquiring location information about a consumer, without having obtained directly the express prior consent of the consumer or the express permission of a court of competent jurisdiction, and when not reasonably necessary to effectuate a post judgment judicial remedy;

D. Communicating with a consumer after the consumer has notified the Defendant in writing that the consumer refuses to pay a debt or that the consumer wishes the Defendant to cease further communication with the consumer;

E. Engaging in conduct the natural consequence of which is to harass, oppress, or abuse a person, including, but not limited to:

1. using obscene or profane language or language the natural consequence of which is to abuse the hearer; or

2. causing a telephone to ring or engaging a person in telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass a person at the number called;

F. Using false, deceptive, or misleading representations or means, including, but not limited to:

1. falsely representing the character, amount, or legal status of any debt;

2. falsely representing or implying that an individual is an attorney or that a communication is from an attorney;

3. falsely representing or implying that nonpayment of a debt will result in the arrest or imprisonment of a person or the seizure, garnishment, or attachment of a person's property or wages, when such action is not lawful or when the Defendant has no intention of taking such action;

4 threatening to take action that the Defendant does not intend to take, such as filing a lawsuit;

5. threatening to communicate with any person credit information that the Defendant knew or should have known to be false; or

6. using false representations or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer;

G. When a consumer has notified the Defendant in writing within the thirty-day period pursuant to Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a), that the debt, or any portion thereof, is disputed, continuing to attempt to collect the debt before the verification of the debt is provided to the consumer; and

H. Misrepresenting, directly, indirectly, expressly, or by implication, or omitting, any fact material to a person's decision to purchase or use any product, program, or service.

*Provided, however,* that nothing in this Section or in any other Section of this Order shall void the ban provision set forth in Section I of this Order.

### **III. RIGHT TO REOPEN**

**IT IS FURTHER ORDERED** that within five (5) business days after the date of entry of this Order, Defendant David Kapp shall submit to the Commission a truthful sworn affidavit that shall reaffirm and attest to the truthfulness, accuracy, and completeness of the financial statement, dated August 15, 2005, that Defendant Kapp submitted to the Commission. The Commission's agreement to this Order is expressly premised upon the financial condition of Defendant Kapp, as represented in said financial statement and supporting attachments, which contain material information upon which the Commission relied in negotiating and agreeing to this Order.

If, upon motion of the Commission, the Court finds that Defendant Kapp has failed to disclose any material asset, or materially misrepresented the value of any asset, or has made any other material misrepresentation or omission in his financial statement and supporting attachments, the Court shall enter judgment against Defendant Kapp, in favor of the Commission, in the amount of \$15,000,000.00 (the minimum amount of consumer injury in this matter), and the entire amount of the judgment shall become immediately due and payable.

*Provided, however,* that in all other respects, this Order shall remain in full force and effect, unless otherwise ordered by the Court; and *provided further,* that proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including, but not limited to, contempt proceedings, or any other proceedings that the Commission or the United States may initiate to enforce this Order. For the purposes of reopening or enforcing this Section, Defendant Kapp waives any right to contest any of the allegations set forth in the Amended Complaint filed in this matter.

#### **IV. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

**IT IS FURTHER ORDERED** that Defendant David Kapp, within five (5) business days of receipt of this Order as entered by the Court, shall submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

#### **V. DISTRIBUTION OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order, Defendant David Kapp shall deliver a copy of this Order as directed below.

A. **Defendant David Kapp as control person:** For any business that Defendant Kapp controls, directly or indirectly, or in which such Defendant has a majority ownership interest, Defendant Kapp must deliver a copy of this Order to all principals, officers, directors,

and managers of that business. Defendant Kapp must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendant Kapp. For new personnel, delivery shall occur prior to them assuming their responsibilities.

**B. Defendant David Kapp as employee or non-control person:** For any business where Defendant Kapp is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, such Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

**C.** Defendant Kapp must secure a signed and dated statement acknowledging receipt of the Order, within thirty days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

#### **VI. COMPLIANCE REPORTING BY DEFENDANT**

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order may be monitored:

**A.** For a period of five (5) years from the date of entry of this Order:

**1.** Defendant Kapp shall notify the Commission in writing of any of the following:

**a.** Any changes in residence, mailing addresses and telephone numbers, within ten (10) days of the date of such change;

**b.** Any change in employment status (including self-employment), and any change in the ownership interest of Defendant Kapp in any business entity, within ten (10) days of such change. Such notice shall include the name and address of each business that

Defendant Kapp is affiliated with, employed by, or performs services for, a statement of the nature of the business, and a statement of Defendant Kapp's duties and responsibilities in connection with the business or employment; and

c. Any changes in Defendant Kapp's name or use of any aliases or fictitious names; and

2. Defendant Kapp shall notify the Commission of any changes in the structure of any business entity that Defendant Kapp directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the business entity about which Defendant Kapp learns less than thirty (30) days prior to the date such action is to take place, Defendant Kapp shall notify the Commission as soon as is practicable after obtaining such knowledge;

B. One hundred eighty (180) days after the date of entry of this Order, Defendant Kapp shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendant Kapp has complied and is complying with this Order. This report shall include but not be limited to:

1. The then-current residence address, mailing addresses and telephone numbers of Defendant Kapp;

2. The then-current employment and business addresses and telephone numbers of Defendant Kapp, a description of the business activities of each such employer or

business, and the title and responsibilities of Defendant Kapp, for each such employer or business;

3. Statements of Defendant Kapp's then-current business income and expenses, including copies of such Defendant's income tax returns with returns for any corporations or businesses owned, controlled or operated by Defendant Kapp or on Defendant Kapp's behalf;

4. Statements describing the manner in which Defendant Kapp has complied and is complying with this Order;

5. A copy of each acknowledgment of receipt of this Order obtained by Defendant Kapp pursuant to this Order; and

6. Any other changes required to be reported under subparagraph A of this Section.

C. For the purposes of this Order, Defendant Kapp shall, unless otherwise directed by a representative of the Commission, identify all written notifications to the FTC as being in reference to *FTC v. Capital Acquisition & Management Corp., et al.*, United States District Court, Northern District of Illinois, Case No. 04-C-7781, and mail them to:

Associate Director for Enforcement  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20580

D. For the purposes of this Section, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom Defendant Kapp performs services as an employee, consultant, or independent contractor; and

