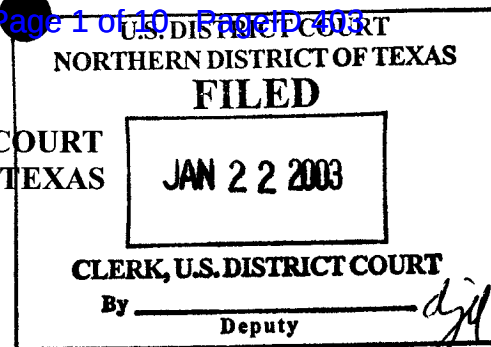


ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

AMERICAN AUTOMATION, INC., a Texas corporation;  
KENDYLL R. HORTON; HAZEL A. HORTON;  
MERLE B. GROSS; and JAYNE R. ROOSE,

Defendants,

and

MUSCLEWEAR, INC., a Texas corporation;  
ANGEL WORLD INSURANCE GROUP, INC.,  
a Texas corporation;  
LORD & KENDYLL INVESTMENTS, INC.,  
a Texas corporation;  
FAMILY LIGHT CO., LLC, a Texas limited liability  
company; and  
DIRECTION MANAGEMENT CO., LLC,  
a Texas limited liability company,

Defendants Solely for Purposes  
of Equitable Relief.

Civil Action No.  
3:98-CV-1596-D



On January 7, 2003, the above-entitled matter came before the undersigned pursuant to the Court's Order to Show Cause dated November 25, 2002. Robert A. Brunig, Esq., Securities and Exchange Commission, Fort Worth District Office, Fort Worth, Texas, appeared on behalf of Plaintiff Securities and Exchange Commission. Richard Todd, Esq., Law Offices of Richard Todd, Borger, Texas, appeared on behalf of and with Defendants Kendyll R. Horton and Hazel A. Horton. Based on all of the files, records and proceedings herein, including the

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testimony elicited on January 7, 2003, and the exhibits offered and received at that time, the undersigned makes the following:

Findings of Fact

1. On February 28, 2002, the Court entered a Judgment against Defendants Kendyll R. Horton ("K. Horton") and Hazel A. Horton ("H. Horton") ("the Judgment").

2. The Judgment ordered *inter alia* that K. Horton and H. Horton, jointly and severally, make disgorgement of \$4.8 million.

3. On May 31, 2002, the Court entered a Final Judgment against K. Horton and H. Horton ("the Final Judgment").

4. The Final Judgment ordered that K. Horton and H. Horton, jointly and severally, pay prejudgment interest of \$1,436,351.32 through February 28, 2002, and pay post-judgment interest.

5. The Final Judgment also ordered that K. Horton and H. Horton each pay civil money penalties of \$110,000.00.

6. Shortly after entry of the Judgment and of the Final Judgment, K. Horton and H. Horton were served with copies of the Judgment and of the Final Judgment, and they were and are aware of the terms of the Judgment and of the Final Judgment.

7. Neither K. Horton nor H. Horton has made any payment of disgorgement, interest or civil money penalties.

8. K. Horton has no substantial assets.

9. H. Horton has the following assets:

Lot Eight (8), Block Seven (7), Yucca Park, City of Borger, in Hutchinson County, Texas;

Lot One (1), Block Five (5), Fairlanes, City of Borger, in Hutchinson County, Texas;

Southwest 1/4 of the Northeast 1/4 of the Northeast 1/4 of Section Thirty-Six (36), Township Five (5) South, Range Twenty-Eight (28) West, containing ten (10) acres, more or less, in Howard County, Arkansas; and

1993 Toyota Camry LE, VIN 4T1SK12EXPU276914, Texas Plate KVJ57Z.

10. K. Horton currently has no substantial income.

11. H. Horton's current income is limited to \$1,071 per month in Social Security benefits and irregular payments of \$350 per month in rent.

12. The following described real estate

Lot Eight (8), Block Seven (7), Yucca Park, City of Borger, in Hutchinson County, Texas

is subject to a mortgage in the approximate amount of \$43,000 and has an estimated fair market value of \$65,000.

13. H. Horton does not have the financial resources to be able to obtain and make monthly payments to amortize a second mortgage on the following described real estate

Lot Eight (8), Block Seven (7), Yucca Park, City of Borger, in Hutchinson County, Texas.

14. In the absence of the opportunity to continue to reside at the premises legally described as

Lot Eight (8), Block Seven (7), Yucca Park, City of Borger, in Hutchinson County, Texas,

neither K. Horton nor H. Horton would have housing.

15. Without the 1993 Toyota Camry LE, VIN 4T1SK12EXPU276914, Texas Plate KVJ57Z, neither K. Horton nor H. Horton would have private transportation.

16. Public transportation is not readily available in Borger, Texas.

Based on the foregoing, the undersigned reaches the following:

Conclusions of Law

1. Contempt is an appropriate means by which to enforce a judgment requiring disgorgement. SEC v. AMX Int'l, Inc., 7 F.3d 71, 72 (5th Cir. 1993); Donovan v. Sovereign Sec., Ltd., 726 F.2d 55, 59 (2d Cir.1984).
2. A court has the inherent power to enforce compliance with its lawful orders and mandates by contempt. Shillitani v. United States, 384 U.S. 364, 370 (1966); McComb v. Jacksonville Co., 336 U.S. 187, 191 (1940); Powell v. Ward, 643 F.2d 924, 931 (2d Cir.), cert. denied, 454 U.S. 832 (1981).
3. Without the power of contempt, courts would be unable to preserve decorum or assert their authority by order or decree. See, e.g., In re Williams, 306 F. Supp. 617, 618 (D.D.C. 1969).
4. Congress codified the courts' contempt powers in 18 U.S.C. §401:  
  
A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as  

\* \* \*

(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.
5. A party commits contempt when the party "violates a definite and specific court order requiring him to perform or refrain from performing a particular act or acts with knowledge of that order." Whitfield v. Pennington, 832 F.2d 909, 913 (5th Cir. 1987), cert. denied, 487 U.S. 1205 (1988)(quoting SEC v. First Fin. Group of Tex., Inc., 659 F.2d 660, 669 (5th Cir. 1981).

6. Financial inability is a defense for failure to comply with a court-ordered disgorgement. SEC v. AMX Int'l, Inc., 7 F.3d at 72; Donovan v. Sovereign Sec., Ltd., 726 F.2d at 59.

7. Any defendant who attempts to assert an inability to pay defense has “the burden of establishing his inability to pay.” SEC v. AMX Int'l, Inc., 7 F.3d at 72; SEC v. Huffman, 996 F.2d 800, 803 (5th Cir. 1993).

8. The relief the Commission seeks includes an appropriate remedial mechanism to achieve full compliance with the Judgment and Final Judgment. See Hicks v. Feiock, 485 U.S. 624, 631 (1988); McComb v. Jacksonville Paper Co., 336 U.S. at 191; Petroleos Mexicanos v. Crawford Enterprises, Inc., 826 F.2d 392, 399-400 (5th Cir. 1987).

9. The sanctions which the Commission and which the Court will order are civil and are therefore conditional, such that the contemnor may avoid the sanctions by complying with the order, Hicks v. Feiock, 485 U.S. at 632-35; see also Penfield Co. of Cal. v. SEC, 330 U.S. 585, 590 (1947).

10. A party commits contempt when the party “violates a definite and specific court order requiring him to perform or refrain from performing a particular act or acts with knowledge of that order.” Whitfield v. Pennington, 832 F.2d 909, 913 (5th Cir. 1987), cert. denied, 487 U.S. 1205 (1988)(quoting SEC v. First Fin. Group of Tex., Inc., 659 F.2d 660, 669 (5th Cir. 1981).

11. The following described real estate

Lot Eight (8), Block Seven (7), Yucca Park, City of Borger, in Hutchinson County, Texas

is H. Horton’s homestead. TEX. PROPERTY CODE §41.002(a)(defining “homestead” to include “not more than one acre of land which may be in one or more lots, together with

any improvements thereon,” if the land and improvements are “used for the purposes of an urban home”).

12. Under most circumstances, H. Horton would be able to protect her residence from execution to satisfy a judgment debt. See, e.g., TEX. CONST. art. XVI, §50 (exempting homestead from forced sale except for a purchase money loan, for taxes due or for work or material used in constructing improvements).

13. It would be error to hold that the undersigned is “precluded from considering the homestead in determining whether [H. Horton] had met h[er] burden of establishing financial inability.” SEC v. AMX Int’l, Inc., 7 F.3d at 73.

14. The undersigned has discretion to order H. Horton’s homestead sold to satisfy her disgorgement obligation. Id.

15. In its discretion the undersigned believes that H. Horton should be allowed to retain possession of her homestead based on certain conditions.

16. H. Horton should disgorge the other real estate which she owns.

17. In its discretion the undersigned believes that H. Horton should be allowed to retain possession of the 1993 Toyota Camry LE, VIN 4T1SK12EXPU276914, Texas Plate KVVJ57Z.

Based on the foregoing,

IT IS ORDERED that Defendant Hazel A. Horton shall disgorge the following property

Lot One (1), Block Five (5), Fairlanes, City of Borger, in Hutchinson County, Texas; and

Southwest 1/4 of the Northeast 1/4 of the Northeast 1/4 of Section Thirty-Six (36), Township Five (5) South, Range Twenty-Eight (28) West, containing ten (10) acres, more or less, in Howard County, Arkansas,

by promptly transferring title thereto to Robert Newhouse, of 1412 Main Street, Suite 2450, Dallas, Texas, duly appointed Bankruptcy Trustee in *In re American Automation, Inc.*, Bankruptcy Case No. 01-38573-HCA-7 in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division,, as trustee of the bankruptcy estate of American Automation, Inc., a Texas corporation.

IT IS FURTHER ORDERED that Robert Newhouse, of 1412 Main Street, Suite 2450, Dallas, Texas, duly appointed Bankruptcy Trustee in *In re American Automation, Inc.*, Bankruptcy Case No. 01-38573-HCA-7 in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division,, as trustee of the bankruptcy estate of American Automation, Inc., a Texas corporation, shall permit Defendant Hazel A. Horton ninety (90) days from the date of this Order to present a bona fide purchase at fair market value for the following property:

Southwest 1/4 of the Northeast 1/4 of the Northeast 1/4 of Section Thirty-Six (36), Township Five (5) South, Range Twenty-Eight (28) West, containing ten (10) acres, more or less, in Howard County, Arkansas,

before he offers the property for sale on the open market.

IT IS FURTHER ORDERED that Defendant Hazel A. Horton (or her heirs or assigns) shall disgorge the following property

Lot Eight (8), Block Seven (7), Yucca Park, City of Borger, in Hutchinson County, Texas

by transferring title thereto to Robert Newhouse, of 1412 Main Street, Suite 2450, Dallas, Texas, duly appointed Bankruptcy Trustee in *In re American Automation, Inc.*, Bankruptcy Case No. 01-38573-HCA-7 in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division,, as trustee of the bankruptcy estate of American Automation, Inc., a Texas corporation, upon the occurrence of the earliest of the following:

- (a) her failure to maintain the improvements in good order;

(b) her failure to maintain a policy of homeowner's insurance on the premises that names Robert Newhouse, of 1412 Main Street, Suite 2450, Dallas, Texas, duly appointed Bankruptcy Trustee in *In re American Automation, Inc.*, Bankruptcy Case No. 01-38573-HCA-7 in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division,, as trustee of the bankruptcy estate of American Automation, Inc., a Texas corporation, as an additional named insured;

(c) her failure to make timely monthly payments on the existing mortgage;

(d) her failure to make timely payment of real estate taxes; and

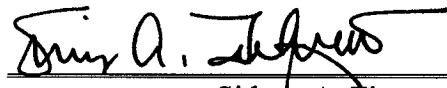
(e) her death.

IT IS FURTHER ORDERED that Defendant Hazel A. Horton need not disgorge the 1993 Toyota Camry LE, VIN 4T1SK12EXPU276914, Texas Plate KVI57Z.

IT IS FURTHER ORDERED that the terms of this Order shall not preempt the Commission's ability to file abstracts of judgment.

IT IS FINALLY ORDERED that any other relief sought by the Commission is denied without prejudice.

Dated: January 22, 2003.

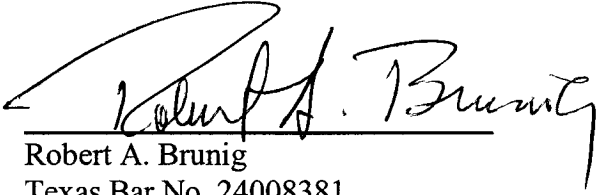


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Sidney A. Fitzwater  
United States District Judge



Agreed As To Form:



Robert A. Brunig

Texas Bar No. 24008381

**SECURITIES AND EXCHANGE COMMISSION**

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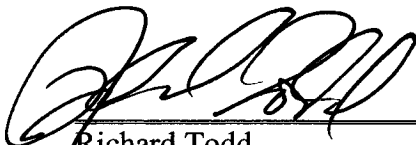
Facsimile: (806) 274-6632

Attorney for Kendyll R. Horton and Hazel A. Horton

Agreed As To Form:

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