

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY



-----X  
ELIOT SPITZER, as the Attorney General of the State  
of New York, in the name and on behalf of  
the People of the State of New York, and on behalf of  
ultimate charitable beneficiaries,

Index No. 6726-02

Plaintiff,

- against -

STIPULATION AND  
ORDER OF SETTLEMENT

ALL-PRO TELEMARKETING ASSOCIATES CORP.  
and MARK GELVAN,

Defendants.  
-----X

Albany County Clerk  
Document Number 9154085  
Rcvd 01/09/2004 2:35:09 PM



WHEREAS, by Verified Complaint dated October 7, 2002, the Attorney General of the State of New York (the "Attorney General") commenced this action against defendants All-Pro Telemarketing Associates Corp. ("All-Pro") and its sole officer, director, and shareholder Mark Gelvan, seeking, *inter alia*, to permanently enjoin said defendants from soliciting charitable donations from residents of the State of New York;

WHEREAS, on or about November 27, 2002, defendants filed a motion pursuant to CPLR 3211 seeking partial dismissal of the action as against All-Pro based, in part, upon a purported statute of limitations defense, and dismissal of the action as against defendant Gelvan;

WHEREAS, on or about December 19, 2002, the Attorney General filed papers in opposition to defendants' motion to dismiss;

WHEREAS, this Court, by Decision and Order dated February 21, 2003, denied defendants' motion in its entirety;

WHEREAS, on or about March 19, 2003, defendants filed a notice of appeal of this Court's Decision and Order dated February 21, 2003, which appeal has not yet been perfected;

WHEREAS, defendants answered the Attorney General's complaint on or about March 5, 2003, demanding judgment dismissing the action in its entirety; and

WHEREAS, the Attorney General and defendants agree that it is in their respective best interests to compromise, settle and dismiss this action as between them without further litigation, on the terms set forth below;

IT IS HEREBY STIPULATED AND AGREED, by and among the Attorney General and defendants, that:

#### Definitions

1. The terms "person," "charitable organization," "solicit," "solicitation," "contribution," "professional fund raiser," "professional solicitor," "fund raising counsel," and "commercial co-venturer," as used herein, shall have such meanings as are defined in Executive Law § 171-a or any amendment or successor thereto.

2. "Benefit," as used herein, shall include, without limitation, gifts, devises, or bequests in cash or in kind, and the use of real or personal property.

3. "Effective Date," as used herein, shall mean the date the Court "so orders" this Stipulation. The terms of this Stipulation are effective as of the Effective Date unless otherwise provided.

#### Stipulations

4. Neither All-Pro nor Mark Gelvan shall solicit any contributions for any charitable organization from any person resident in the State of New York, or participate in or control such solicitations conducted by any other person.

5. Neither All-Pro nor Mark Gelvan shall, directly or indirectly (including through any alter ego such as a family member of Mark Gelvan), act as a professional fund raiser, professional solicitor, fund raising counsel, or commercial co-venturer for the solicitation of charitable contributions from any person resident in the State of New York, or as a broker of contracts or agreements contemplating such solicitations.

6. Defendant Gelvan shall not serve as an officer, director, shareholder, owner, partner, employee, independent contractor or agent of, nor be otherwise retained or engaged by a professional fund raiser, professional solicitor, fund raising counsel, or any person that sells or brokers contracts or agreements contemplating the solicitation of charitable contributions from any person resident in the State of New York.

7. Neither All-Pro nor Mark Gelvan shall directly or indirectly acquire any right to receive any compensation of any kind whatsoever in respect of or derive, directly or indirectly, any benefit from the solicitation of contributions for charitable organizations from any person resident in the State of New York or from the sale or brokering of contracts or agreements contemplating such solicitations. Notwithstanding the foregoing, All-Pro and Gelvan may receive such compensation or benefit after the Effective Date regarding any contract or agreement that is in effect as of the Effective Date, so long as neither All-Pro nor Gelvan engage after the Effective Date in any activity prohibited by paragraphs 4, 5, or 6 of this Stipulation.

8. Notwithstanding the restrictions set forth in paragraphs 6 and 7, Gelvan may serve as a paid employee of a professional fund raiser that solicits charitable contributions from persons resident in the State of New York provided that: a) in doing so he does not otherwise

engage in any activity prohibited by paragraphs 4, 5, 6, or 7 of this Stipulation, and; b) such employment occurs after three years from the Effective Date.

9. Within ten days after the Effective Date, defendants shall file such papers as are necessary to discontinue, with prejudice, the appeal of this Court's Decision and Order dated February 21, 2003.

10. Within thirty days after the Effective Date, All-Pro shall provide the Attorney General with evidence reasonably satisfactory to the Attorney General that All-Pro has cancelled, effective immediately, all of its contracts with charitable organizations for the solicitation of persons resident in the State of New York, or, in the case of contracts contemplating solicitation in multiple states, a contract addendum signed by All-Pro and its client indicating that no further solicitations of persons resident in the State of New York shall occur thereunder.

11. Within ninety days after the Effective Date, All-Pro shall file with the Attorney General's Charities Bureau such closing statements as are required by Executive Law § 173-a and 13 N.Y.C.R.R. § 95.5, in the form described therein, along with an affidavit sworn to under the penalties for perjury that all required closing statements have been filed.

12. Within ten days after the last of the actions by defendants required under Paragraphs 8, 9, 10, and 11 of this Stipulation has been completed, the Attorney General shall file with the Court a stipulation of dismissal with prejudice pursuant to CPLR 3217(a)(2).

13. In the event that All-Pro shall hereafter do business in the State of New York through activities not otherwise prohibited hereunder, it shall do so only after becoming

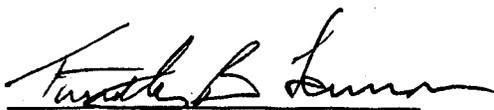
authorized to do business as provided in Business Corporation Law Article 13. All-Pro shall give the Attorney General, attention Charities Bureau, immediate written notice of any such authorization.

14. By "so ordering" this Stipulation, this Court shall retain jurisdiction in this action for the purpose of interpreting or carrying out the terms of this Stipulation and/or granting such other and further relief as may be necessary for its enforcement. In addition, if the Court should find or hold that the defendants have materially breached any portion of this Stipulation, the defendants agree that the Attorney General's causes of action against the defendants shall be revived without right to any defenses based upon the statute of limitation, laches, estoppel or any other defenses based on lapses of time or changed circumstances or both.

15. This Stipulation constitutes the entire agreement among the parties hereto and supersedes all prior agreements, negotiations, representations, statements, understandings and discussions among the Attorney General, defendants, and counsel concerning the subject matter hereof.

ELIOT SPITZER  
Attorney General of the  
State of New York

By:



Timothy B. Lennon  
Assistant Attorney General  
The Capitol  
Albany, New York 12224

\* \* \*

ALL-PRO TELEMARKETING  
ASSOCIATES CORP.

By:

  
\_\_\_\_\_  
Mark Gelvan, President  
All-Pro Telemarketing  
Associates, Corp.  
c/o Copilevitz & Canter, LLC  
423 W. Eighth Street  
Kansas City, Missouri 64105

MARK GELVAN, for himself in his  
personal capacity as defendant

  
\_\_\_\_\_  
Mark Gelvan  
c/o Copilevitz & Canter, LLC  
423 W. Eighth Street  
Kansas City, Missouri 64105



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Errol Copilevitz, Esq.  
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423 W. Eighth Street  
Kansas City, Missouri 64105  
As co-counsel to defendants

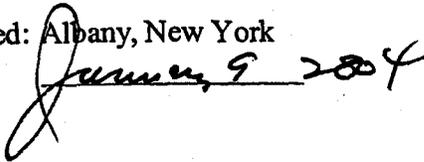
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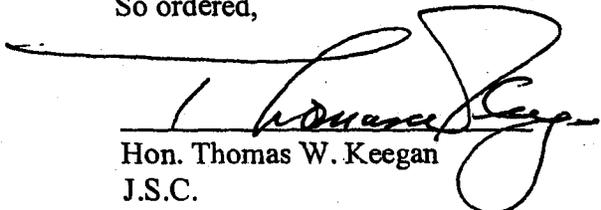
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Brian D. Casey, Esq.  
Bouck, Holloway, Kiernan & Casey  
107 Columbia Street  
Albany, New York 12210  
As co-counsel to defendants

\* \* \*

Dated: Albany, New York

  
June 9 2004

So ordered,

  
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Hon. Thomas W. Keegan  
J.S.C.

ENTER