

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

FEDERAL TRADE COMMISSION)
)
 Plaintiff,)
)
 v.)
)
 ECOLOGICAL FOX, LLC, *et al*)
)
 Defendants.)

Civil Action No. 18-cv-3309-PJM

FILED
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FEB 19 2021
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

A BETTER PLACE PROPERTIES LLC CONSUMER COMMENTS - RESPONSE TO
FTC’S REDRESS PLAN

Comes Now, A Better Place Properties, L.L.C., by and through its Organizer, Clifford Smith, and pursuant to this Court’s January 26, 2021 Order (Docket (“Doc.”) No. 1123) hereby submits the following comments and objections to the Federal Trade Commission’s (“FTC”) Proposed Redress Plan (Doc. No. 1117-1).

INTRODUCTION

A Better Place Properties LLC, a Georgia limited liability company, should be considered a ‘Consumer’ under the redress plan’s ‘Definition’ of a “Consumer” on pages 4 and 5 of 49 of the FTC’s January 21, 2021 (Proposed) Order Governing Redress (Doc. No. 1117-1) and the FTC’s MOTION IN SUPPORT OF THE REDRESS PLAN AND EXECUTIVE SUMMARY THEREOF. (Doc. No. 1117.)

ARGUMENT

A Better Place Properties LLC (“ABPP”) is requesting ‘Consumer’ status and approval based upon the definition of “Consumer” or “Consumer Entity”, which provides as follows:

- 5. “Consumer” means any person or entity who: (i) purchased an Eligible Lot as part of the Sanctuary Belize or Kanantik retail sales process; (ii) purchased an

Eligible Lot that was originally purchased from Subject Sellers as part of the retail sales process; or (iii) reached a Court-approved settlement with the FTC or Receiver entitling the person or entity to be treated similarly to a consumer with respect to Court-approved redress. Notwithstanding the foregoing, a person or entity is not a “Consumer” if the person or entity: (i) received a full refund; (ii) (a) received compensation from Subject Sellers for help selling lots, (b) made a representation the Court found to be unlawful (or controlled others who did), and knew or reasonably should have known that the misrepresentation was false or misleading, and (c) has not reached a Court-approved settlement with the FTC or Receiver entitling the person or entity to be treated similarly to a consumer with respect to Court-approved redress; (iii) (a) performed work of any sort, at any time, at any location anywhere owned or controlled by Subject Sellers (including, without limitation, the California locations at Michelson Drive, Dove Street, and Edinger Avenue) regardless of whether the person or entity contends the work was unpaid, purportedly unrelated to lot sales, purportedly independent, or immaterial for some other reason; (b) made a representation the Court found to be unlawful (or controlled others who did), and knew or reasonably should have known that the misrepresentation was false or misleading, and (c) has not reached a Court-approved settlement with the FTC or Receiver entitling the person or entity to be treated similarly to a consumer with respect to Court-approved redress; or (iv) (a) is a person or entity that received from Subject Sellers, as part of the consideration for a lot or otherwise, any Asset (including, without limitation, equity or rights) the value of which depended on anything other than the value of a specific Eligible Lot, and (b) has not reached a Court-approved settlement with the FTC or Receiver entitling the person or entity to be treated similarly to a consumer with respect to Court-approved redress, provided, however, if the Receiver can reasonably distinguish the Putative Consumer’s investment transaction from the Putative Consumer’s retail lot purchase, Putative Consumer may still qualify as a Consumer with respect to the retail lot purchase only.

(Doc. No. 1117-1, ¶ 5, pages 3-4.) ABPP is concerned that given the breadth of the exclusion from the settlement with respect to persons or entities that “received compensation from Subject Sellers for help selling lots” that it will be deemed ineligible to participate in the Settlement. This concern is premised on the fact that the Organizer of ABPP is Clifford Smith who at times certain was engaged in selling lots for Sellers. ABPP does not believe that the facts of this case would support it being excluded from the settlement because it is a separate and distinguishable legal entity that was not engaged in the sale of property for the Sellers, and did not receive directly or indirectly any compensation with regard to its Organizer’s involvement in the selling of such properties.

In August, 2015, myself, Clifford M. Smith, and my wife, Terri Smith, went on a Buy Belize property tour to investigate investing in a property in Belize. We attended the Buy Belize tour, solely as consumers. We had no prior contact or relationship with any of the Sellers, owners or investors of Sanctuary Belize. After reviewing the property and learning about the proposed development plans we made the decision to invest in lot #SR190 in Sapidillo Ridge in Sanctuary Belize, which was being offered for sale for \$170,000.00. We discussed financing options with the Buy Belize sales representative, and they recommended that we purchase the property through a corporation owned by a self-directed IRA since the purchase was for investment purposes. After some discussion, we decided to purchase the property, for \$170,000 with a 50% down payment. The proposed terms were a 0% interest loan to finance the balance over a 10 year term. (Exhibit 1 (“Ex.”) Affidavit of Clifford Smith, at ¶¶12-14; Ex. 2, Memorandum of Sale, SR190 Sapidillo Ridge dated August 10, 2015.)

The ‘concierge’ in California for Buy Belize directed us to an independent qualified custodian that would guide us through incorporation and movement of funds from one IRA to another. The custodian/administrator we were directed to use was The Kingdom Trust Company, located at 1105 State Route 121 North, Suite B, Murray, KY 42071. In September 2015, the account (ending in 2961) with Kingdom Trust was established. (Ex. 1, at ¶¶14-16; Ex. 3, Kingdom Trust Account Agreement), and a Georgia LLC was formed in the name of ‘A Better Place Properties LLC’, (Ex. 4, Georgia Business Formation.) We then transferred funds from our Charles Schwab Traditional IRA, which is also a qualified retirement plan, into the Kingdom Trust Self-Directed IRA in the amount of \$105,000.00. (Ex. 5, Account Transfer Authorization.) On September 30, 2015, a Wells Fargo National Bank business account (ending in 8869) was established for ABPP. An initial deposit by check was made from Kingdom Trust into the Wells

Fargo account in the amount of \$104,000.00 to fund ABPP's purchase of the property. (Ex. 1, at ¶¶ 15-17; Ex. 6.)

After the funds had settled with Wells Fargo for the initial \$104,000.00 deposit, a wire transfer was initiated on October 15, 2015 from A Better Place Properties LLC to Eco-Futures Belize in the amount of \$95,625.00 (Ex. 7) representing the 50% down payment of \$85,000.00 plus 12.5% GST (Belize General Sales Tax) of \$10,625.00 ($\$85,000 \times 12.5\%$). From November 2015 through October 2018, 36 monthly payments were paid by ABPP to Eco-Futures Belize in the amount of \$796.87 per month (\$708.33 principal + \$88.54 GST) towards the remaining \$85,000.00 principal balance. A total of \$25,499.88 in principal payments and \$3,187.44 in GST payments were made during the Period. (Ex. 10) There is a remaining principal balance due of \$59,500.12 as reflected in the last Invoice received from Eco-Futures Belize dated October 30, 2018. (See Ex. 8.) The payments that were made by ABPP to Eco-Futures Belize during the period of November 2015 through October 2018 were funded by transfers from my Charles Schwab Traditional IRA to the Kingdom Trust Self-Directed IRA. (Ex. 9.)

My wife and I moved from Georgia to Sanctuary Belize in September, 2016. At the time, I was performing IT consulting services remotely for clients in the U.S. In July 2017, I was hired as a 1099 onsite sales consultant by Buy Belize, conducting property tours and sharing my onsite living experiences with potential consumers. I resigned from the sales consulting position in September, 2018. Sanctuary Belize property was seized early November, 2018 by the FTC and placed into Receivership. All lot payments were ceased at that time. At no time during my employment with Buy Belize did I have any knowledge of the Seller's alleged fraudulent conduct. (Ex. 1, at ¶¶ 18-20.)

CONCLUSION

As the above facts clearly demonstrate, ABPP is a Consumer entitled to share in the Settlement. ABPP is a separate legal entity that has not “received compensation from Subject Sellers for help selling lots”; (2) “performed work of any sort, at any time, at any location anywhere owned or controlled by Subject Sellers”; (3) nor it is an “entity that received from Subject Sellers, as part of the consideration for a lot or otherwise, any Asset (including, without limitation, equity or rights) the value of which depended on anything other than the value of a specific Eligible Lot.” While ABPP’s Organizer was involved in the sale of lots during a limited time period, none of the monies disbursed by ABPP were attributable to the Organizer’s sales activities. Rather, the purchase of lot #SR190 in Sapadillo Ridge in Sanctuary Belize was funded entirely by monies from a qualified IRA. (See, Ex. 1, Smith Aff’d at ¶¶ 21-22; Ex. 5-10.)

Based upon the investment intent and obvious separate distinguishable movement of money from a Self-directed IRA to Buy Belize through A Better Place Properties LLC owned by the Self-directed IRA at Kingdom Trust, A Better Place Properties LLC qualifies as a ‘Consumer’ and satisfies the Putative Consumer exception since the Putative Consumer’s investment transaction in a retail lot purchase was separate and distinguishable from the Putative Consumer’s financial transactions with the Defendants. At no time were any monies received by the Putative Consumer from the Defendants’ company Buy Belize between July 2017 and September 2018 ever commingled with or used by A Better Place Properties LLC to make lot payments. All monies paid to Eco-Futures Belize for the purchase of lot SR#190 have been derived from money earned and saved by the Putative Consumer well before ever working for the defendants in July of 2017. The retail lot purchase transaction has been distinguishably separate from the Putative Consumers financial affairs and A Better Place Properties LLC is seeking the Court-approved settlement with

the FTC or Receiver entitling A Better Place Properties LLC to be treated similarly to a consumer with respect to Court-approved redress as it relates to the retail lot purchase.

This 18th day of February 2021.

Respectfully submitted,



s/ Clifford Smith

On Behalf of A Better Place Properties LLC

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed with the Clerk of the Court via overnight ~~United States Postage via US Postal Service~~ mailed on February 18, 2021.

Federal Express
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