

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

In re SANCTUARY BELIZE LITIGATION

No: 18-cv-3309-PJM

**NOTICE REGARDING REDRESS PROCESS AND REQUEST FOR STATUS
CONFERENCE AND GUIDANCE FROM THE COURT**

Following the Court's Order Implementing the Next Phase of Consumer Redress (DE 1446) ("Redress Order"), the Federal Trade Commission ("FTC") has continued to work with the Receiver to provide consumers with an equitable result. Through this filing:

- The FTC is notifying the Court of a potentially-inequitable situation. As the FTC has worked with the Receiver to apply the Redress Order, it has become apparent that there are consumers who, through no fault of their own, will not receive the same opportunities as similarly-situated consumers. The Redress Order offers lot owners the ability to acquire their lots as part of the redress process through a consumer survey. But, consumers who are not in government-approved subdivisions will not be eligible and those whose lots are subject to competing claims (because the defendants sold certain lots multiple times) may also be ineligible.
- The FTC, therefore, asks the Court to set a status conference to discuss the redress and sales process on or around January 18, 2024, shortly after the consumer survey should be completed.
- The FTC also requests the Court, at or following that status conference, to provide guidance on how to balance the relief for consumers against other issues, such as the status of the land in Belize and the assets of the receivership estate.

I. The Redress Order provides consumers options, subject to certain caveats.

A. The Redress Order survey will provide consumers with options.

Through a survey, the Redress Order provides consumers three options: (1) acquire their lot promptly before the Receiver sells the Belizean land, while being able to take advantage of certain discounts if they do so; (2) wait to decide if they want to own a lot in Sanctuary Belize or Kanantik until after the Receiver sells the land; or (3) affirmatively decide now that they do not want a lot in Sanctuary Belize or Kanantik.

For those consumers preferring option 1, they must meet certain requirements to acquire a lot. If they do not meet all of the requirements, the Receiver has stated they will be deemed to have chosen Option 2.¹ As the FTC has detailed in a previous filing, DE 1433, there is a real possibility that Option 2 consumers will not be able to buy a lot in the future or, if they can, will not receive any credit for payments made to the defendants. Thus, it is possible that choosing Option 2 will be the same as choosing Option 3. So, if a consumer wishes to buy now but does not qualify, they will potentially lose the ability to buy a lot at all, in contradiction to their preferences and the options available to similarly-situated consumers. At the very least this fact should be made clear to consumers.

B. Caveats limit consumers' ability to immediately acquire a lot.

To be able to buy a lot after selecting Option 1, there are two primary qualifications and one restriction.

Qualification 1: The consumer's lot must be in a government-approved subdivision. DE 1446 ¶ 7. Although most of the lots in Sanctuary Belize are within government-approved subdivisions, the Receiver has told the FTC the defendants sold some "lots" that were not.

¹ The Redress Order does not explicitly state this, but the FTC trusts the Receiver's statements that this is how it would treat such a consumer.

Kanantik's situation is more extreme. The Receiver has informed the FTC there are no government-approved subdivisions in Kanantik. So, some number of Sanctuary Belize consumers will not meet this qualification and no Kanantik consumers will.

Qualification 2: If the defendants sold the lot in question more than once, only the consumer with the stronger interest in the lot will be permitted to acquire it. DE 1446 ¶ 7 (“Option No. 1 is available only to Consumers with ownership interest in lots . . . for which any competing claims have been resolved in their favor.”). This could mean that a consumer who paid a large amount of money to the defendants will not be allowed to acquire the lot if someone else has a stronger interest and, ultimately, may be unable to acquire any lot even if that is their preference.

Restriction: “Those Consumers electing Option No. 1 shall be entitled to only buy the Eligible Lots reflected in their Claim Applications.” DE 1446 ¶ 7. In effect, this means if a consumer fails to meet one of the qualifications just discussed, the Receiver will not offer them a different lot, although there are other unsold or unclaimed lots.²

Importantly, if a consumer fails to meet either qualification, that is not their fault. Instead, it is the defendants' fault for selling unapproved “lots” or for inappropriately reselling lots. But, these consumers will be treated differently than consumers who lucked into buying real lots that the defendants did not resell. Although it is possible consumers who do not acquire title to their lots will be better off (and the opposite is also true), these consumers will not be permitted to make this choice for themselves.

² The original proposed Redress Plan, which the then-Receiver supported, would provide for reasonably comparable lots. *See, e.g.*, DE 1117-1 at Section III.K (ECF pagination 24-25). The Receiver's general authority to liquidate assets, subject to court approval, would not preclude sales of individual lots to these consumers or other entities or individuals.

II. There are potential solutions for these consumers.

The solutions include offering different lots to consumers and obtaining final approval for the subdivision(s) in Kanantik. Such solutions, however, must be balanced against competing concerns. For those consumers who originally bought a lot in Sanctuary Belize but who do not meet one or both of the qualifications, the simplest solution would be to offer them a different unclaimed lot in Sanctuary Belize. There would, of course, be some cost involved in ensuring these other lots are salable and presenting them to the consumer. With the current financial status of the receivership estate, *see* DE 1457, all such costs are relevant and should be taken into account.

For Kanantik consumers, things are more difficult. It is possible, but not assured, the Receiver could complete the subdivision process. It is also possible these consumers could be offered lots in Sanctuary Belize. However, completing the subdivision process would be expensive and may affect the ultimate sales price for the Kanantik land. Offering Sanctuary Belize lots would also cost receivership assets. Moving Kanantik consumers to Sanctuary Belize may also be challenging because Kanantik lots were, generally, less expensive than Sanctuary Belize lots. So, finding comparable lots may be difficult or require Kanantik consumers to pay more to complete the transaction.

III. The Court's guidance on these thorny issues will be helpful.

Because of the defendants' conduct—deceptively selling and reselling lots—redress here is not as straightforward as it would be in other cases. The FTC and the Receiver have spent significant resources considering many issues in an attempt to reach a fair and equitable result for the most number of consumers. The Court's opinion on how to resolve this specific issue, however, will be helpful and, if received timely, will allow the redress process to move forward

in an efficient way. The FTC proposes the status conference for after the survey has closed so that the FTC can present the Court with more concrete information on the number of consumers this affects and what is known at that time about their preferences. Additionally, it is likely the Receiver will know both more about the estate's finances and the sales prospects for the Sanctuary Belize and Kanantik land.

Because the Receiver himself and his counsel would need to travel for an in-person conference, the FTC proposes that this conference be held by videoconference.

IV. Conclusion

In light of the potentially-inequitable situation, the FTC asks the Court to set a status conference where it can hear from the FTC and the Receiver on the results of the consumer survey and then provide guidance on how to proceed.

Dated: August 31, 2023

Respectfully Submitted,

/s/ Benjamin J. Theisman
Jonathan Cohen (jcohen2@ftc.gov)
Benjamin J. Theisman (btheisman@ftc.gov)
Christopher J. Erickson (cerickson@ftc.gov)
Federal Trade Commission
600 Pennsylvania Ave., N.W., CC-9528
Washington, DC 20580
202-326-2551 (Cohen); -2223 (Theisman); -3167
(Erickson)

Counsel for the Federal Trade Commission

Certificate of Service

I hereby certify that on August 31, 2023, I caused to be served the foregoing, and all related documents, through the Court's electronic filing system ("ECF") and otherwise on the following people and entities by email at the email addresses provided:

Allison Rego and James E. Van Horn, counsel for the Receiver, by ECF or at arego@btlaw.com and jvanhorn@btlaw.com;

John B. Williams, by ECF or at jbwilliams@williamslopatto.com, counsel for Defendants;

Neil H. Koslowe, by ECF or at nkoslowe@potomaclaw.com, counsel for Defendants;

/s/ Benjamin J. Theisman