

ROBB EVANS & ASSOCIATES LLC

Receiver of

Assail, Inc.; Infinium, Inc.; Market-Rep.com, Inc.;
Summit Communications International, Inc.; d/b/a Advantage Capital;
Capital First Benefits, Inc.; Premier One Benefits, Inc., et al.
and Assets of Kyle Kimoto

11450 Sheldon Street
Sun Valley, California 91352-1121
Telephone No.: (818) 768-8100
Facsimile No.: (818) 768-8802

Federal Trade Commission v. Assail, Inc., et al.
CASE No. W-03-CA-007

Order Holding Steven R. Henriksen in Contempt of Court

Filed October 20, 2003

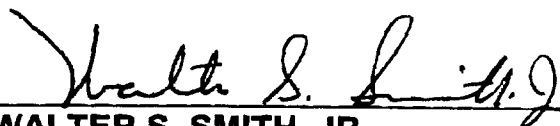
was used by Kimoto and others to circumvent the Preliminary Injunction Order, since the majority of the funds withdrawn were used for the benefit of Kimoto and others, Henriksen still managed to obtain close to \$200,000 for his own benefit. As a result of his actions, Henriksen is in contempt of court.

Henriksen argues that the funds he withdrew from the Valdine account are no longer in his possession and that he is unable to repay the amounts withdrawn. Once it is established that a party is in contempt of court, the party then has the burden of establishing that he is unable to comply with the court's order. See United States v. Rylander, 460 U.S. 752 (1983); Chicago Truck Drivers v. Brotherhood Labor Leasing, 207 F.3d 500 (8th Cir. 2000). Henriksen has failed to meet that burden because he has failed to present sufficient proof to indicate that those funds are no longer available to him. Additionally, any inability to repay the funds in this case is clearly self-induced, and Henriksen has not shown that he has made any reasonable effort to retrieve the dissipated assets. See Chicago Truck Drivers, 207 F.3d at 506-507. See also, FTC v. Affordable Media, LLC, 179 F.3d 1228 (9th Cir. 1999); In re Power Recovery Sys., Inc., 950 F.2d 798 (1st Cir. 1991); Commodity Futures Trading Comm'n v. Wellington Precious Metals, Inc., 950 F.2d 1525 (11th Cir.), cert. denied, 506 U.S. 819 (1992).

As Ordered at the hearing on October 16, 2003, Steven R. Henriksen will be held in the custody of the U.S. Marshals until such time as he repays to the Receiver \$367,800.00.

IT IS SO ORDERED.

SIGNED this 20th day of October, 2003.


WALTER S. SMITH, JR.
Chief United States District Judge