UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-61017-CIV-ALTONAGA/Seltzer

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

POINTBREAK MEDIA, LLC, *et al.*,

Defendants.

PLAINTIFF'S REPLY TO DUSTIN PILLONATO'S RESPONSE TO ORDER TO SHOW CAUSE WHY SEIZED WATCHES SHOULD NOT BE LIQUIDIATED AND SEIZED FUNDS SHOULD NOT BE TURNED OVER TO THE FEDERAL TRADE COMMISSION

Only Defendant Dustin Pillonato responded to the Court's order directing him and nonparties Jeremy Valentino and Jeremy Drob to "file written memoranda, declarations, or other evidence showing cause, if there is any, why the Court should not order the Receiver to (1) liquidate the watches (the "Seized Watches") . . . and (2) turn over to the FTC the funds (the "Seized Funds.")." (ECF No. 296 at 1). Pillonato does not deny that the luxury watches or $109,020 in seized funds belonged to him; that he directed his brother to lie to law enforcement officials about that fact; and that he attempted to violate the Court's asset freeze by paying his brother to transport the cash and watches to his father in Pennsylvania. (ECF No. 295 at 2-3) ("FTC Mot."). In fact, Pillonato does not dispute any fact the FTC set forth in its initial motion. Instead, he relies solely on the erroneous argument that the Supreme Court's decision in *AMG Capital* affects the enforceability of the judgment in this matter.

Pillonato, of course, never appealed the Final Order of Permanent Injunction and Monetary Judgment the Court entered against him (ECF No. 266). Thus, the judgment against him is not on direct review and has been final for over two years. Accordingly, *AMG Capital* has no effect on the judgment because it has no retroactive application to cases that are no longer

on appeal. *See, e.g.*, *Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 97 (1993) (Supreme Court decisions "must be given full retroactive effect in all cases *still open on direct review*" (emphasis added)); *James B. Beam Distilling Co. v. Ga.*, 501 U.S. 529, 541 (1991) ("[R]etroactivity in civil cases must be limited by the need for finality . . . a new rule cannot reopen the door already closed."); *Fusilamp, LLC v. Littelfuse, Inc.*, 2017 WL 2671997, at *1 (S.D. Fla. June 13, 2017) (Altonaga, J.) (citing *Harper* and denying motion to dismiss for improper venue based on change in controlling law because "this is not a currently pending case"). Notwithstanding Pillonato's accusation (ECF No. 297 at 2) that the FTC failed to address *AMG Capital* in its Motion, the FTC's Motion in fact made the exact same non-retroactivity argument as the FTC makes now (FTC Mot. at 5 n.1). Pillonato simply failed to address it. Because *AMG Capital* has no retroactive effect, the $3.3 million judgment against Pillonato remains valid and enforceable.

Without making a motion, Pillonato requests that the Court "modify the terms of the Final Order to conform with the *AMG Capital* ruling, eliminating the monetary relief provisions that were disallowed by the Supreme Court." (ECF No. 297 at 4). Unsurprisingly, he provides no basis—other than his misguided attempt to apply *AMG* retroactively—for this request because there is none. Instead, based on a misreading of one Commissioner's two-page concurrence,[1] Pillonato erroneously argues that "FTC leadership has publically admitted that the FTC does not have authority to ***collect*** monetary relief in judgments entered before the ruling was entered." (ECF No. 297 at 3 (emphasis in original)). Not so. That concurrence merely stated that, based on *AMG*, the FTC cannot presently obtain monetary relief in cases *currently* pending where its sole basis for seeking that relief is Section 13(b) of the FTC Act. Indeed, had Pillonato read the two sentences immediately preceding the language he block quotes, he would have seen Commissioner Slaughter's recitation of that case's procedural history, which make evident why Pillonato is differently situated: "Tate's Auto filed for bankruptcy and the FTC settled for injunctive relief and a $7 million judgment that was entered by the court, but remained unpaid by the conclusion of the bankruptcy proceedings. ***Thereafter, litigation continued against the individual owners Richard Berry and Linda Tate***." *See* Concurring Statement of Commissioner Rebecca Kelly Slaughter at 2 (emphasis added); *see also FTC v. Tate's Auto Ctr. of Winslow*

[1] Even had Pillonato not misread this concurrence, the statement of one Commissioner does not bind the five-member Commission, which requires a majority of its Commissioners to act.

Inc., et al., Case No. 3:18-cv-08176 (D. Ariz.), ECF No. 148 (pre-*AMG* August 2020 settlement imposing $7.2 million judgment against the corporate defendants); *id.* at ECF No. 192 (post-*AMG* July 2021 settlement against the individual defendants with payment of $450,000). That is, the $450,000 settlement Pillonato cites was with the individual defendants who were ***still litigating*** the case. In contrast, *AMG* does not affect the final $7 million, August 2020 settlement with the corporate defendants**,** which ***had concluded*** at the time of the Supreme Court's decision.

CONCLUSION

To further redress Dustin Pillonato's victims,[2] the FTC respectfully requests entry of the attached proposed order, directing the Receiver to (1) liquidate the Seized Watches, and, after payment of any expenses approved by the Court, pay any proceeds from the liquidation of the Seized Watches to the FTC, and (2) turn over to the FTC the Seized Funds.

Respectfully submitted,

Dated: August 16, 2021

/s/ Christopher J. Erickson

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[2] Thus far, the FTC has mailed refund checks totaling more than $707,000. *See* https://www.ftc.gov/enforcement/cases-proceedings/refunds/pointbreak-media-refunds.

CERTIFICATE OF SERVICE

I hereby certify that, on August 16, 2021, I caused a true and correct copy of the foregoing to be served on all counsel or parties of record on the Service List, via the method indicated below.

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[3] In addition to the mailing address listed above, counsel will also send copies of the foregoing to two other potential mailing addresses for Mr. Valentino: 8665 Cobblestone Point Circle, Boynton Beach, FL 33472 and 103 N. Main St., Woonsocket, RI 02895.

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[Proposed] ORDER

THIS CAUSE came before the Court on Plaintiff's Motion for Order to Show Cause Why Dustin Pillonato's Seized Cash and Watches Should Not Be Liquidated and Turned over to the FTC [ECF No. 295], filed July 20, 2021. This motion pertained to the watches (the "Seized Watches") turned over to the Receiver pursuant to the Court's October 12, 2018 Order [ECF No. 190] and the funds (the "Seized Funds") turned over to the Receiver pursuant to the Court's November 5, 2018 Order [ECF No. 202]. After the Court entered an Order to Show Cause [ECF No. 296], Pillonato responded [ECF No. 297], and the Federal Trade Commission ("FTC") filed a reply in opposition to that response. Being fully advised, it is

ORDERED AND ADJUDGED that the Receiver shall, as described below, turn over the Seized Funds to the FTC and liquidate the Seized Watches:

a. After payment to the Receiver of any expenses approved by the Court, all proceeds from the liquidation of the Seized Watches shall be paid to the FTC, in accordance with instructions provided by a representative of the FTC. The Receiver is excused from the requirements of 28 U.S.C. §§ 2001, 2004 in connection with any pending or contemplated sale by the Receiver.

b. The Receiver shall transfer the Seized Funds to the FTC, in accordance with instructions provided by a representative of the FTC.

DONE AND ORDERED in Miami, Florida, this _____ day of _____, 2021.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record
Justin Ramsey (*pro se*)