

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA

THE PEOPLE OF THE STATE OF NEW YORK, by
ANDREW M. CUOMO, Attorney General of the
State of New York,

Petitioner,

- against -

TW Conroy and Associates, LLC, My Sister the Lister, Inc.
and Timothy W. Conroy, individually and as president of
TW Conroy and Associates, LLC and My Sister the Lister,
Inc. and d/b/a TW Conroy and My Sister the Lister,

Respondents.

**NOTICE OF MOTION
FOR ENTRY OF A
MONEY JUDGMENT
AND PERMANENT
INJUNCTION**

RJI No. 33-08-1182

Index No. 2008- 2591

Hon. Donald A. Greenwood

PLEASE TAKE NOTICE, that upon the Affirmation of Assistant Attorney General Judith C. Malkin, dated October 28, 2008, with exhibits annexed, Petitioner will move this Court at the Onondaga County Courthouse, Syracuse, New York, on ~~November 2~~ ^{December} 2, 2008, at 10:00 a.m., or as soon thereafter as counsel can be heard, for an Order:

- 1) Entering a money judgment against TW Conroy and Associates, LLC, My Sister the Lister, Inc. and Timothy W. Conroy, individually and as president of TW Conroy and Associates, LLC and My Sister the Lister, Inc. and d/b/a TW Conroy and My Sister the Lister (Respondents) in the amount of \$295,940.70 for additional restitution determined to be due and owing pursuant to paragraph 7 of the Consent Order and Judgment ("COJ") dated April 11, 2008, and entered April 14, 2008, with interest thereon at the annual rate of nine (9%) per cent from the date of entry of a money judgment, plus motion costs in the amount of \$100.00;
- 2) Directing the entry of a money judgment against Respondents and authorizing

Petitioner to docket said order as a money judgment pursuant to CPLR § 2222, in the combined amount of \$397,811.35, consisting of a) \$101,770.65 for consumer restitution, with interest thereon at the annual rate of nine (9%) per cent from the date of default on September 5, 2008, as provided for in paragraph 11 of the COJ, b) the \$295,940.70 owed pursuant to paragraph 7 of the COJ, and c) motion costs of \$100;

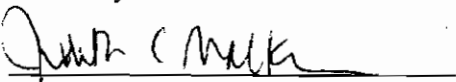
3) Permanently enjoining Respondents from engaging in the auction business in the State of New York, until a \$500,000 performance bond is filed with the Attorney General by a surety or bonding company licensed approved by the Superintendent of Insurance of the State of New York, guaranteeing that Respondents comply with the Order and Judgment, the proceeds of the bond to provide a fund for restitution to consumers defrauded or damaged by the past or future conduct of Respondents; and

4) Any such further relief as the Court deems proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR § 2214(b), Respondents' answering papers, if any, must be served on Petitioner at least seven days before the return date of this motion.

Dated: October 28, 2008

ANDREW M. CUOMO
Attorney General of the State of New York
Attorney for Petitioner

By: 
JUDITH C. MALKIN
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA

THE PEOPLE OF THE STATE OF NEW YORK, by
ANDREW M. CUOMO, Attorney General of the
State of New York,

Petitioner,

- against -

TW Conroy and Associates, LLC, My Sister the Lister, Inc.
and Timothy W. Conroy, individually and as president of
TW Conroy and Associates, LLC and My Sister the Lister,
Inc. and d/b/a TW Conroy and My Sister the Lister,

Respondents.

AFFIRMATION

Index No. 2008-2591

RJI No. 33-08-1182

Hon. Donald A. Greenwood

JUDITH C. MALKIN, an attorney duly admitted to practice law in the state of New York,
affirms the following to be true under penalties of perjury:

1. I am an Assistant Attorney General in the office of Andrew M. Cuomo, Attorney
General of the State of New York, assigned to the Syracuse Regional Office. I am familiar with
the facts and circumstances of this proceeding.

2. I submit this Affirmation in support of the Attorney General's motion for a money
judgment, with interest thereon, plus motion costs, and a permanent injunction against
Respondents TW Conroy and Associates, LLC, My Sister the Lister, Inc. and Timothy W.
Conroy, individually and as president of TW Conroy and Associates, LLC and My Sister the
Lister, Inc. and d/b/a TW Conroy and My Sister the Lister ("Respondents"), enjoining

Respondents from engaging in the auction, antiques and appraisal business in the State of New York, until a \$500,000 performance bond is filed with the Attorney General by a surety or bonding company licensed and in good standing with the New York State Department of Insurance plus motion costs guaranteeing that Respondents comply with the Order and Judgment of this Court dated April 11, 2008. The proceeds of the bond are to provide a fund for restitution to consumers defrauded or damaged by the past or future conduct of Respondents.

3. The facts set forth in this affirmation are based upon my personal knowledge, in addition to information contained in the files of the Syracuse Regional Office, and are believed to be true and correct.

4. In 2007, the Office of the Attorney General (“OAG”) initiated an investigation into Respondents’ auction, antiques and appraisal businesses. The investigation was prompted by numerous complaints received by the OAG alleging that Respondents were engaging in deceptive, fraudulent, and illegal practices in the conduct of their businesses. Specifically, the complaints alleged that Respondents repeatedly and persistently failed to pay consumers for consigned items that had been sold at auction, failed to respond to consumers’ emails, phone calls, letters, and failed to provide consumers with status reports and/or confirmation of the actual auction sales’ prices for items that had been consigned.

5. On March 31, 2008, the OAG and Respondents executed a Stipulation, Acknowledgment and Consent, pursuant to which the parties consented to the entry of a Consent Order and Judgment (“COJ”). The COJ was signed by the Hon. Donald A. Greenwood on April 11, 2008, and entered in the office of the Onondaga County Clerk on April 14, 2008. A copy of the COJ with the Stipulation, Acknowledgment and Consent is annexed hereto as Exhibit A.

6. A certified copy of the COJ was personally served on Respondent Timothy J. Conroy on April 14, 2008, individually and as President of TW Conroy and Associates, LLC, and My Sister the Lister, Inc. A copy of the Affidavit of Service is annexed hereto as Exhibit B.

7. Pursuant to paragraph 2 of the COJ, Respondents are permanently enjoined from engaging in any deceptive, fraudulent or illegal business acts or practices alleged in the Petition in violation of Executive Law § 63(12) and General Business Law (“GBL”) § 349, including a) failing to timely pay consumers for auctioned items; b) issuing checks with insufficient funds to cover the check amounts; c) failing to provide consumers with sufficient documentation regarding auction sales; and d) failing to respond to consumers’ inquiries and complaints.

8. Additionally, pursuant to paragraph 3 of the COJ, Respondents are required to:

- a) clearly and conspicuously disclose to consumers, both verbally and in writing, that payment for items sold shall be made within 30 days of the date of sale of the item;
- b) make payment to clients within 30 days of the date an item is sold;
- c) ensure that sufficient funds are available to cover check amounts when checks are issued;
- d) provide consumers with complete auction contracts, including reserve bids when applicable;
- e) upon request, provide consumers with status reports regarding consigned items;
- f) with payment and issuance of the “settlement report,” include documentation sufficient for the consigner to confirm the final bid (“hammer”) price of the item(s) sold, including the bidder registration number and printed instructions for consigners to access archived on-line information regarding items sold;
- g) make available all unsold items to consigners within 30 days of completion of contract; and

h) promptly respond to consumers' inquiries and complaints.

9. In addition, pursuant to the COJ, Respondents were ordered to pay consumer restitution in the amount of \$161,270.65, civil penalties in the amount of \$13,000.00 and costs in the amount of \$2,000.00, totaling \$176,270.65. An initial sum of \$25,000.00 was due upon execution of the Stipulation, with an additional payment of \$7,500.00 due on April 1, 2008. Thereafter, Respondents were required to make monthly payments of \$10,500.00 to the OAG. Monthly payments were to be paid on the first Friday of every month until the balance of restitution, costs and penalties was paid in full.

10. Pursuant to paragraph 7 of the COJ, Respondents are also obligated to pay restitution to any consumer who files a complaint with the OAG within 180 days of service of the COJ and who substantiates his or her claim for a refund.

11. Prior to executing the Stipulation, Acknowledgment and Consent, the OAG requested that Respondents provide to the OAG a list of all outstanding accounts and complaints. See Letters from Judith C. Malkin, AAG, to V. James Granito, Esq. dated November 1, 2007 and January 9, 2008, Exhibit C, annexed hereto. At the time the Stipulation, Acknowledgment and Consent was signed and the COJ was entered, the OAG understood that Respondents' had disclosed most complaints and unpaid accounts.

12. However, between April 14, 2008 and October 14, 2008, within the 180 days of entry of the COJ, the Attorney General received 79 additional complaints against Respondents. The new complaints alleged that Respondents had failed to pay consumers for items that had been auctioned, failed to respond to their inquiries, failed to provide an accounting of items that had been sold, failed to return items that had not been sold, and checks had been issued with

insufficient funds to cover the check amounts. The amount of the additional restitution that was sought is staggering, more than doubling the original amount. See Consumer complaints, Exhibit D, annexed hereto.

13. As required by the COJ, Respondents were mailed copies of each complaint and provided with the consumers' supporting documentation.

14. Respondents failed to timely respond to the consumer complaints that were mailed to them. This Office sent Respondents at least nine follow-up letters requesting production of information and documentation concerning complaints that had been previously mailed to Respondents and no responses or incomplete responses had been received.

15. Pursuant to paragraph 7 of the COJ, the Attorney General is final arbiter of all disputed claims filed within the 180-day period.

16. Based upon a review of each complaint and its supporting documentation, including Respondents' replies, the Attorney General has determined that additional restitution in the amount of \$295,940.70 is due and payable by Respondents to 63 of the 79 complainants. A list of these consumers and the amounts that they are owed is annexed hereto as Exhibit E.

17. At the time of filing of this Notice of Motion and Affirmation, Respondents had failed to provide sufficient information for 15 of the 79 consumers who filed complaints with this Office. The OAG notified Respondents when restitution calculations were "partial" figures or when no documentation had been provided or when insufficient documentation had been provided in response to the consumer's complaint. Respondents were unable to locate two of these consumers' files.

18. Notice of the Attorney General's determination of additional restitution was duly

provided to Respondents by mail, as required by the COJ, on September 24, 2008, and October 17, 2008. Copies of the letters providing such notice are annexed hereto as Exhibit F.

19. Rather than making monthly payments to the OAG to be distributed to consumers in a pro-rata fashion pursuant to paragraphs 7 and 10 of the COJ, Respondents directly paid several consumers who filed complaints. These consumers, who filed complaints with the OAG during the 180-day “window period” identified in paragraph 7 of the COJ and whose complaints concerned auctions that pre-dated the entry of the COJ, are identified in Exhibit G, annexed hereto.

20. As of the date of filing this Affirmation, Respondents have paid a total of \$74,500 of the original \$176,270.65 in total restitution, civil penalties and costs that were determined to be due, as set forth in paragraphs 5, 8 and 9 of the COJ entered April 14, 2008.

21. Respondents’ August 1, 2008, payment was received on September 5, 2008, one month late. Respondents failed to make their September and October monthly payments. Prior to that, Respondents’ payments were not timely and Respondents required repeated prodding with letters and phone calls from the OAG prior to making a payment. The following list identifies the dates payments were due and the amounts and dates that payments were received:

<u>Due</u>	<u>Received</u>	<u>Amount received</u>
March 26, 2008	March 31, 2008	\$25,000.00
April 01, 2008	April 10, 2008	7,500.00
May 02, 2008	May 05, 2008	10,500.00
June 06, 2008	June 10, 2008	10,500.00
July 04, 2008	July 29, 2008	10,500.00
August 01, 2008	September 05, 2008	10,500.00
September 05, 2008	not received	--
October 03, 2008	not received	--

Respondents are currently behind \$21,000.00 in payments on the court-ordered amount.

22. After deducting Respondents' payments totaling \$74,500.00, there remains a balance due and owing on the original judgment of \$176,278.65, the amount of \$101,770.65, with interest thereon at the annual rate of nine (9%) percent from the date of default on September 5, 2008, jointly and severally against Respondents.

23. Additionally, Petitioner asks for a supplementary money judgment in the amount of \$295,940.70 for restitution owed to the consumers identified in Exhibit E, annexed hereto, who filed complaints pursuant to paragraph 7 of the COJ.

Engaging in Deceptive, Fraudulent and Illegal Business Practices

24. Respondents are actively engaged in fraudulent business practices in direct violation of paragraphs 2 and 3 of the COJ. Six of the 79 complaints received during the 180-day "window-period" were from consumers whose items were auctioned after April 14, 2008, the date of service of the COJ upon Respondents. These complaints clearly demonstrate Respondents' non-compliance with paragraphs 2 and 3 of COJ. Specifically, Respondents have: a) failed to clearly and conspicuously disclose, both verbally and in writing, that payment for items sold shall be made within 30 days of the date of sale of the item; b) failed to make payment to consumers within 30 days of the date sale of an item; c) failed to ensure sufficient funds available to cover the check amounts when checks are issued; d) failed to provide consumers with status reports; e) failure to make available unsold items to consigners within 30 days and f) failed to timely respond to consumers' inquiries and complaints. See Consumer Affidavits and Complaints, Exhibits H-M, annexed hereto and summarized as follows:

See Bonk Affidavit, annexed hereto as Exhibit H. On April 10, 2008, Mr. Bonk consigned fifteen paintings for auction. On April 25, 2008, nine paintings were sold. The rest did not meet the

reserve bid. On April 30, 2008, Mr. Bonk picked up the six unsold paintings and was provided with a preliminary sold statement indicating he was owed \$1,695.75. Mr. Bonk made repeated calls to TW Conroy, but he did not receive a return call. After Mr. Bonk filed a complaint with the Attorney General's Office, TW Conroy responded that it owes Mr. Bonk \$1,562.30. The discrepancy between the preliminary and final sold statements (approximately \$130) relates to one painting (#77) which TW Conroy is unable to account for.

See Arena Affidavit, annexed hereto as Exhibit I. Mr. Arena contracted with TW Conroy for an auction to take place at his home on June 6 and June 7, 2008. Tim Conroy confirmed in writing that the proceeds would be paid *no later than June 21, 2008*. After many calls from Mr. Arena, TW Conroy provided a check dated July 2, 2008, in the amount of \$19,226.06. On the check, TW Conroy indicated that the check should be deposited on July 7, 2008. Funds were not available, however, and the check was returned stamped "Stop Payment." TW Conroy subsequently paid Mr. Arena \$19,226.06, but still owes him an additional \$19,602.31 for the items that were sold in June, 2008.

See Millimaci Affidavit, annexed hereto as Exhibit J. On February 11, 2008, Ms. Millimaci signed a contract with TW Conroy that guaranteed TW Conroy would receive 25% of what was sold and that there would be a "Guarantee Net to Consignor of \$10,000." Items were auctioned by My Sister the Lister on eBay from February 20, 2008 through April 24, 2008. Though Ms. Millimaci was promised e-mail alerts regarding all sales on eBay, she did not receive any such alerts. On June 20, 2008, TW Conroy wrote two checks to Ms. Millimaci, but instructed her not to deposit them until July 1, 2008. Ms. Millimaci deposited the checks on July 7, 2008. On July 10, 2008, Ms. Millimaci's bank informed her that a stop payment had been placed on the \$3,917.29 check. Ms. Millimaci also noted discrepancies in her invoices. For example, the final invoice did not include numerous items (totaling \$607.62) that had been identified as sold in prior invoices.

See Stroup Affidavit, annexed hereto as Exhibit K. On June 12, 2008, John Stroup, as executor of the estate of John R. Gigliotti, entered into an auction contract with TW Conroy for an estate auction. The auction was held June 27, 2008. Despite a written request, no accounting was furnished, no receipts from payments

were sent and no money was received. Mr. Stroup's contracts contained differing language: one contract required payment within 30 days of sale of an item and the other within 30 days of the last item consigned. On October 17, 2008, Respondents acknowledged that they owed Mr. Stroup \$21,270.05.

See Mowers Affidavit, annexed hereto as Exhibit L. On August 12, 2008, Mr. Mowers entered into an auction contract with TW Conroy. His items were auctioned on August 22, 2008. He has not received payment. Mr. Mowers also requested the return of two items which did not sell at the auction but TW Conroy did not respond to his request. Respondents owe Mr. Mowers \$1,061.25.

See Temple Affidavit, annexed hereto as Exhibit M. On July 17, 2008, Mr. Temple hired TW Conroy to auction his belongings. The auction was held on August 22, 2008. In August, Mr. Temple received an itemized statement indicating he was owed \$2,831.85 but never received payment. He attempted to reach Tim Conroy by telephone, but his calls were not returned. In response to the complaint Mr. Temple filed with the OAG on October 7, 2008, TW Conroy mailed Mr. Temple a check for \$1,423.50. TW Conroy stated that the amount was less because a bidder backed out on the purchase of a bedroom set and that Mr. Temple could retrieve the unsold set.

25. The OAG continues to receive complaints from consumers about Respondents' unscrupulous business practices. Even though the 180-day period for additional complaints to be considered pursuant to paragraph 7 of the COJ has closed, these consumer complaints alleging Respondents' failure to pay consigners for items that were sold at auction, constitute further evidence of Respondents' failure and inability to comply with the terms of the COJ. As of the date of this Affirmation, at least one of these complaints pertains to an auction held after April 14, 2008, the date the COJ was entered.

Failure to Submit Sworn Statement of Compliance

26. Additionally, Respondents failed to submit a sworn statement to the OAG within

30 days following the execution of the Consent Order, certifying that the provisions of the Consent Order had been satisfied and setting forth the manner and extent of their compliance, as required by paragraph 13 of the COJ. The OAG notified Respondents by letter dated June 19, 2008, that they had failed to submit a sworn compliance statement and requested that the statement be submitted. See Letter dated June 19, 2008, Judith C. Malkin, AAG, to V. James Granito, Esq., Exhibit N, annexed hereto.

27. This letter also informed Respondents that they were not in compliance with paragraph 4 of the COJ, which required that My Sister the Lister cease advertising as an “official eBay trading post,” register with eBay’s Trading Assistant Program and comply with the programs’ requirements to continue advertising as a “registered eBay drop off location” or as an eBay “Trading Assistant.”

28. As of the date of this Affirmation, Respondents have failed to submit a sworn statement certifying compliance with the COJ as required by paragraph 13.

29. Furthermore, Respondents were later advised, by letter dated August 29, 2008, that they continue to violate the COJ. Respondents’ continuing violation is evinced by their a) failure to keep current in their monthly payments to the OAG, b) failure to make payments to their new clients within 30 days of an auction (i.e., for auctions held after April 14, 2008), c) failure to respond to consumer complaints and inquiries about consigned items, and d) issuing checks without sufficient funds to cover the check amounts. Respondents were warned that their continued failure to comply with the terms of the COJ, could result in further legal action, including the filing of a contempt proceeding. See Letter from Judith C. Malkin, AAG, to V. James Granito, Esq. dated August 29, 2008, Exhibit O, annexed hereto.

30. In a letter dated September 24, 2008, Respondents were provided with restitution calculations for window-period consumers for 68 consumers. See Exhibit F. Given the amount of window-period restitution calculated on that date and Respondents' failure to remain current in their monthly payments, the OAG requested that Respondents appear on September 2, 2008, to discuss financial matters. At the meeting that was held at the Offices of the Attorney General on September 30, 2008, Respondents acknowledged financial difficulties and agreed to immediately produce financial records demonstrating that their bank accounts had been "frozen."

31. In a follow-up letter dated October 6, 2008, the OAG requested that the promised documentation be produced no later than October 10, 2008. As of the date of this Affirmation, Respondents have not produced any financial records to the OAG. See Letter dated October 6, 2008, from Judith C. Malkin, AAG, to V. James Granito, Esq., Exhibit P, annexed hereto.

WHEREFORE, Petitioner respectfully requests that the Court

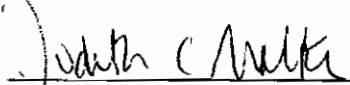
1) Enter a money judgment in the amount of \$295,940.70 for additional restitution determined to be due and owing pursuant to paragraph 7 of the COJ, with interest thereon at the annual rate of nine (9%) per cent from the date of entry of a money judgment, plus motion costs in the amount of \$100.00, and

2) Direct the entry of a money judgment against Respondents and authorizing Petitioner to docket said order as a money judgment pursuant to CPLR § 2222, in the combined amount of \$397,811.35, consisting of a) \$101,770.65 for consumer restitution, with interest thereon at the annual rate of nine (9%) per cent from the date of default on September 5, 2008, as provided for in paragraph 11 of the COJ, b) motion costs of \$100 and c) the \$295,940.70 owed pursuant to paragraph 7 of the COJ, and

3) Permanently enjoin Respondents from engaging in the auction business in the State of New York, until a \$500,000 performance bond is filed with the Attorney General by a surety or bonding company licensed approved by the Superintendent of Insurance of the State of New York, guaranteeing that Respondents comply with the Order and Judgment, the proceeds of the bond to provide a fund for restitution to consumers defrauded or damaged by the past or future conduct of Respondents, and

4) Any such further relief as the Court deems proper.

Dated: Syracuse, New York
October 28, 2008


JUDITH C. MALKIN
Assistant Attorney General