

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY. SS.

SUPERIOR COURT
CIV. No.97-4139A

_____)
COMMONWEALTH OF MASSACHUSETTS.)
Plaintiff.)
)
v.)
)
SEARS. ROEBUCK and CO)
Defendant.)
_____)

**ORDER GOVERNING THE \$5 MILLION FUND
FOR CONSUMER PROTECTION AND EDUCATION ESTABLISHED
PURSUANT TO THE FINAL CONSENT JUDGMENT**

In furtherance of the Final Consent Judgment entered herein. It is hereby ordered that:

1. The \$5 million Consumer Fund Account

1.1 Pursuant to paragraph 26 of the Final Consent Judgment entered between the Commonwealth of Massachusetts and Sears, Roebuck and Co. (“Sears”) in Massachusetts Superior Court for Suffolk County on August 1, 1997, which Consent Judgment was part of a 50 State settlement between the State Attorneys General and Sears arising out of Sears failure to file with the appropriate bankruptcy court certain reaffirmation agreements obtained from chapter 7 debtors. Sears has paid to the Massachusetts Attorney General 5 million dollars. The Massachusetts Attorney General, on behalf of the Attorneys General of the 50 States, shall hold those funds in one or more interest bearing investments, hereinafter collectively referred to as the “Consumer Fund Account.” The Massachusetts Attorney General shall hold in trust all funds in the Consumer Fund Account and such funds and the interest generated therefrom shall not be commingled with other funds. Distributions from the Consumer Fund Account shall be made only as permitted under this Order. Nothing herein shall prohibit the addition of funds to the Consumer Fund Account, provided that such additional sums remain subject to this Order.

2. Governance

2.1 Distributions from the Consumer Fund Account shall be made at the discretion of a Special Committee composed of the representatives of three Attorneys General, subject to the approval, as provided in paragraph 5 herein, of the respective Attorneys General: the Attorney General of Massachusetts, the Attorney General of California, and the Attorney General of another State which shall be selected on an annual rotating basis, in the first instance by the Attorneys General of Massachusetts and California and thereafter by all three Attorneys General represented on the Special Committee. Such representatives of these three Attorneys General shall have knowledge and a minimum of one year experience in enforcing consumer protection laws as civil or criminal prosecutors of consumer law violations.

2.2 The Attorneys General of Massachusetts and California have selected the Attorney General of Tennessee (or his representative) to serve on the initial Special Committee. The representative from Tennessee shall so serve from the entry of this Order through the initial annual distribution from the Consumer Fund Account, as described herein.

3. Distributions from the Consumer Fund Account: Amount and Availability

3.1 Until at least August 1, 2007, ten years from the entry of the Final Consent Judgment, distributions from the Consumer Fund Account shall be made solely from the interest and other returns generated by the account and no expenditures shall be made from the principal of the account.

3.2 Thereafter, the Special Committee may authorize expenditures from the principal of the Consumer Fund Account on an annual (not permanent) basis provided that: i) such authorization by the Special Committee is unanimous; and ii) in no event shall annual expenditures (including administrative expenditures) from the principal of the Consumer Fund Account, if authorized, exceed \$250,000 annually.

3.3 The initial distributions from the Consumer Fund Account shall be made not earlier than August 1, 1998, from the interest accrued since Sears' payment described above. Distributions shall be made on an annual basis thereafter.

4. Distributions from the Consumer Fund Account: Purpose and Scope

4.1 Distributions from the Consumer Fund Account may be made and approved, and distributions used, only for purposes authorized by the judgment and this Order, as amended.

4.2 The monies in the Consumer Fund Account shall be used for consumer education and/or consumer protection purposes. The Special Committee shall give special consideration to those requests for distribution that serve to further consumer education and/or consumer protection purposes in the context of consumer credit and individual bankruptcy. However, the Special Committee may distribute funds to any program that serves the purpose of consumer education and/or consumer protection, which may include payment of costs and expenses incurred by multistate enforcement efforts concerning investigations and prosecutions involving consumer credit, consumer debt collection, and bankruptcy reaffirmation practices, which may include the costs of experts, consultants, investigators, auditors, and reasonable and appropriate travel expenses.

4.3 The Special Committee shall seek, and may give due consideration to, the recommendations, if any, of the Office of the United States Trustee regarding distributions.

4.4 Distributions from the Consumer Fund Account may be made to offices of the State Attorneys General or state consumer affairs agencies, other governmental authorities or agencies related to consumer education, consumer protection, and/or bankruptcy (including the Office of the United States Trustee), or associations of such governmental authorities, including the National Association of Attorneys General. The Special Committee shall give primary consideration to applications from the State Attorneys General (or other state agencies with primary responsibility for enforcing consumer protection laws) or *organizations representing* the State Attorneys General, such as the National Association of Attorneys General. Although Attorneys General and other governmental entities may apply individually or jointly, special consideration shall be given to applicants who have obtained the joint written support of two Attorneys General for their request.

4.5 Distributions also may be made to non-profit entities that have current section 501(c)(3) status from the Internal Revenue Service, acting either independently or jointly with a governmental authority, provided that applications for distribution from such non-profit corporations or entities are accompanied by the joint written support of two Attorneys General for their request. Further, such distributions to non-profit entities may be made *only* where the Special Committee determines, from information provided by such applicant, that the non-profit entity (or its principals if the entity has not existed for three years) has successfully operated consumer protection and/or consumer education programs for at least three years.

4.6 The Special Committee shall not entertain any request for distribution to pay for regular staff of any entity or agency applying for a grant, including any Attorney General's office. Distributions may be used to augment, but not supplant, the budget of the distribution recipient. All distribution requests must be accompanied by a written representation that the budget of the applicant will not be reduced by reason of approval of the application for distribution.

4.7 The Special Committee may consider the following factors, in addition to those considerations described above and others which the Special Committee deems relevant, in acting upon a request for distribution:

- (a) the intended purpose of the grant;
- (b) competing requests for grant funding;
- (c) the financial ability of the intended grant recipient to obtain the requested goods, services or funding assistance without grant funds;
- (d) the anticipated public benefit to be served by approving the grant;
- (e) the ability of the Special Committee to audit the use of the grant to ensure that the grant is used solely for purposes authorized hereunder;
- (f) the amount of previous grants made to a particular grant recipient and the use of previous grants in accordance with the terms of the Judgment and this Order, and
- (g) the ability of the grant recipient to provide the Special Committee with a report regarding the actual results obtained as a result of any grant.

4.8 The Special Committee may attach written conditions to the award of any grant from the Consumer Fund Account. For instance, should distributions be made to fund litigation, or investigations that may generate litigation, the Special Committee may require applicants, as a condition of a grant, to seek reimbursement of the costs of investigation and/or litigation as permitted by law and, if successful, return to the Consumer Fund Account any monies so obtained.

4.9 The Special Committee shall require each grant recipient, prior to receiving any grant, to agree in writing to:

- (a) comply with each and every order of this Court in connection with the Consumer Fund Account and the grant received;
- (b) provide quarterly reports and a final report specifying how grant monies were

used and how the grant furthered the purposes of consumer education and/or protection;

- (c) permit the Special Committee or its designee to conduct an unrestricted audit, review, examination or inquiry concerning the grant and the use of grant funds. and cooperate with any such inquiry by the Special Committee or its designee;
- (d) vigilantly safeguard the monies granted hereunder and maintain financial controls sufficient to protect such monies and ensure that the use of monies fully comports with the recipient's application for grant, and provide detailed written description of such financial controls upon request by the Special Committee;
- (e) use the grant monies solely for the purposes set forth in the grant application and return to the Consumer Fund Account, within ten days of the conclusion of the grant period, any monies not so used. The Special Committee may designate, and require completion of, forms to satisfy the requirements of this paragraph.

4.10 Distributions shall be made on an annual basis only, although applicants may seek distribution for ongoing programs for consecutive years.

5. Procedure for Distributions from the Consumer Fund Account

5.1 The Special Committee shall entertain requests for distribution from the Consumer Fund Account.

5.2 All requests for distribution shall be made in writing on a form approved by the Special Committee, which the Special Committee shall provide to each Attorney General and make available to others upon request.

5.3 The affirmative vote of two or more of the members of the Special Committee shall be required to recommend to the Attorneys General comprising the Special Committee any distribution from the Consumer Fund Account.

5.4 Upon determining proposed distributions from the Consumer Fund Account for a given year, the Special Committee shall provide to the Attorneys General represented on the Special Committee, for their approval, a list of proposed annual distributions, together with a list of applications for distributions. The list of distributions must be approved by each of the Attorneys General represented on the Special Committee. Where proposed distributions have been delivered to an Attorney General for approval and have not been acted upon for 30 days,

the proposed distributions shall be deemed approved.

5.5 The decisions of the Special Committee, as approved by the Attorneys General represented on the Special Committee, shall be final and non-appealable.

5.6 When an application for a grant from the Consumer Fund Account is made by an Attorney General who is then a member of the Special Committee or by a governmental agency within the same State as a member of the Special Committee, such application must be approved by the remaining two members of the Special Committee. In the event that an application for a grant from the Consumer Fund Account is made on behalf of more than one State then represented on the Special Committee (including applications by such States Attorney General or governmental agency within such State), the Special Committee, by majority vote, shall designate additional State Attorneys General, as necessary to provide two voting members of the Special Committee, for the sole purpose of considering such application for a grant from the Consumer Fund Account, which application must be approved by both members of the reconstituted Special Committee.

5.7 Applications for the initial annual distributions from the Consumer Fund Account shall be accepted by the Special Committee through May 1, 1998, unless extended by unanimous vote of the Special Committee. The Special Committee shall award initial distributions from the Consumer Fund Account on or before September 1, 1998, unless extended by unanimous vote of the Special Committee. Thereafter, applications for distribution shall be accepted and grants awarded by the Special Committee on an annual basis pursuant to a similar time frame, subject to amendment in any given year by the Special Committee.

5.8 The Special Committee may entertain emergency applications for distribution and may approve such emergency applications outside of the time frame set forth in paragraph 5.7 above, provided, however, that such applications may be granted only by a unanimous vote of the Special Committee and unanimous approval of the Attorneys General represented thereon. Further, grants made pursuant to emergency applications must comply with paragraphs 3.1- 3.3 herein and all other provisions of this order. If a distribution is made pursuant to an emergency application where the interest from the Consumer Fund Account for that year already has been distributed, the grant shall be applied to decrease the amounts available for distribution the next year.

6. Administration of the Consumer Fund Account

6.1 The Special Committee may, upon vote by two members of the Special Committee, designate a person or entity to administer or help administer the Consumer Fund Account on an annual, renewable basis. Such designee may, for instance, provide notice of the application process and accept applications for distribution on behalf of the Special Committee, and assist in preparation of the Special Committee's annual report described herein.

6.2 The Special Committee, as finally approved by the Attorneys General represented on the Special Committee, also may authorize an annual payment from the Consumer Fund Account to help defray reasonable administrative costs in connection with the Consumer Fund Account (whether incurred by the Special Committee or by its designee, if any), which annual payment must be made from the Consumer Fund Account interest and shall not exceed the value of 1 % of the Consumer Fund Account balance in that year. The administrative fee, if any, shall be verified by the Special Committee as reasonable and appropriate for administrative costs actually incurred.

7. Reporting

7.1 Not less than once each year, the Special Committee shall compile a report, which shall be made available to the Attorneys General, concerning the Consumer Fund Account and the activities funded thereby. Such annual report shall include a report on the following:

- (a) the amount of money in the Consumer Fund Account, a general description of how the funds are held, and the amount of interest generated during the preceding year,
- (b) the composition of the Special Committee, including the representative designated to replace the member of the Special Committee that changes annually;
- (c) the requests for distribution from the Consumer Fund Account and the actions of the Special Committee upon such requests;
- (d) whether the Special Committee has authorized distributions from the principal of the Consumer Fund Account for the preceding year. Such report, including the descriptions of authorized distributions and requests for distributions, shall not disclose confidential information, including information concerning confidential government investigations.

8. Continuing Jurisdiction

This Court shall maintain jurisdiction over this matter to alter or amend this Order as justice so requires.

Signed:

Justice of the Superior Court

Date: 11/14/97