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PUBLIC UTILITIES COMMISSION

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In the Matter of:

Complainants,

Case No. 96-289-TP-CSS

Respondent .

Met, pursuant to assignment, at 11:00 o'clock a.m.

Kerry K. Sheets, Attorney-Examiner.

\* DEPONET AFFILIATE \* CERTIFIED MIN-U-SCRIPT PUBLISHER \*

MC GINNIS & ASSOCIATES, INC.  
COLUMBUS, OHIO (614) 431-1344

1 APPEARANCES:

2 ON BEHALF OF THE COMPLAINANTS:

3 Edward W. Cochran, Esq.  
4 One Public Square  
Streetsboro, Ohio 44124  
(216) 626-5600

5 ON BEHALF OF THE RESPONDENT:

6 William H. Hunt, Esq.  
7 800 Bank One Center  
8 600 Superior Avenue East  
Cleveland, Ohio 44114  
(216) 566-8200

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P R O C E E D I N G S

- - -

Tuesday, July 16, 1996

Morning Session

- - -

THE EXAMINER: The Public Utilities  
Commission of Ohio has set for hearing at this time and  
place Case No. 96-289-TP-CSS, In the Matter of: Bob  
Zames and Zames Realty, Inc. versus Ameritech.

My name is Kerry Sheets, I'm an  
Attorney-Examiner for the Commission, and I've been  
assigned to hear this case.

May I now have the appearances of the  
parties, please, beginning with the Complainants?

MR. COCHRAN: For the Complainants,  
Bob Zames, his attorney, Edward W. Cochran,  
C-o-c-h-r-a-n, One Public Square, Streetsboro, Ohio  
44124. The phone number is (216) 626-5600.

MR. HUNT: On behalf of  
Ameritech Ohio, your Honor, William H. Hunt, attorney  
at law, 800 Bank One Center, 600 Superior Avenue East,  
Cleveland, Ohio 44114, Area Code (216) 566-8200.

THE EXAMINER: Very good.

Normally, now, we just start with the  
witnesses, but you say you want to make copies?

1 MR. COCHRAN: For the record, your  
2 Honor, I have eight or 10 exhibits of mostly records of  
3 Ameritech, which I do not have copies of. I will  
4 certainly make copies when we take a break, and go with  
5 the one copy and we can all look at it. Doesn't matter  
6 to me.

7 THE EXAMINER: Why don't we try and  
8 go with the one copy unless you feel it necessary to  
9 make copies at a later time. You can do that.

10 MR. COCHRAN: You can take all the  
11 time you need to pass it around. I don't care.

12 For the record, we only have one witness.  
13 I certainly hope we'll be done by 5:00 o'clock,  
14 hopefully a lot sooner than that.

15 MR. HUNT: Likewise, your Honor,  
16 we have one witness, as well.

17 THE EXAMINER: All right. So we'll  
18 start with the Complainants.

19 Do you have a witness to call?

20 MR. COCHRAN: Your Honor, are you  
21 interested in opening statements, or should we go right  
22 into it?

23 THE EXAMINER: I think it's pretty  
24 clear from the complaint; however, you can make an  
25 opening statement, if you'd like.



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1 MR. COCHRAN: I'm willing to waive  
2 an opening statement.

3 THE EXAMINER: That's fine.

4 MR. HUNT: That's fine.

5 MR. COCHRAN: Call Bob Zames.

6 THE EXAMINER: You want to take the  
7 witness stand? I'll swear you in. Raise your right  
8 hand.

9 (Witness was sworn.)

10 THE EXAMINER: Be seated.

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ROBERT F. ZAMES

being first duly sworn, as prescribed by law, was  
examined and testified as follows:

DIRECT EXAMINATION

BY MR. COCHRAN:

Q. Sir, what is your full name?

A. Robert F. Zames.

Q. Okay. Are you a real estate broker?

A. Yes, I am.

Q. When did you first become a real estate broker  
licensed in Ohio?

A. Over 20 years ago; the exact date, I don't  
recall.

Q. And you have been practicing your trade of a  
real estate broker from over 20 years ago?

A. Yes, sir.

Q. Did there come a time when you became involved  
as a real estate broker as a franchisee of a national  
real estate brokerage company?

A. Yes.

Q. When did that occur? What year?

A. In the spring, April, May of '91, 1991.

Q. And what is the name of the company with whom  
you affiliated as a franchisee?

A. RE/MAX.

1 Q. I'm sorry?

2 A. RE/MAX.

3 Q. And what is RE/MAX?

4 A. It's an international real estate franchise  
5 dealing primarily with real estate brokerage.

6 Q. Okay. And how long did you remain a RE/MAX  
7 franchisee?

8 A. For approximately four years.

9 Q. Do you recall when your franchise status  
10 ended, approximately? Do you recall the year?

11 A. Officially, late '94, early '95.

12 Q. Okay. Do you recall the circumstances in  
13 which you became involved in litigation leading to a  
14 federal court injunction concerning your franchise?

15 A. Not precisely the date, but in general the  
16 circumstances, if that's what you're asking.

17 Q. Can you tell us what happened that led to the  
18 injunction?

19 A. RE/MAX International filed a complaint to  
20 terminate my franchise.

21 Q. A lawsuit, you mean?

22 A. Yes, that's correct.

23 Q. And do you recall in what court that was?

24 A. It was up, I believe, in the federal  
25 courthouse in Cleveland.

1 Q. And do you recall the name of that litigation?

2 A. No, I don't.

3 MR. COCHRAN: May I approach the  
4 witness, your Honor?

5 THE EXAMINER: Yes.

6 BY MR. COCHRAN:

7 Q. Handing you -- Or, showing you a pleading --  
8 Handing you -- I'm going to hand you a pleading and ask  
9 you if you recognize whether that is the case.

10 A. Yes. It appears to be, yes.

11 Q. You're referring to what appears on here as  
12 Case No. 1:95CV1453?

13 A. Yes, sir.

14 Q. In fact, isn't that a copy of the injunction  
15 that resulted from that case? Do you recognize it?

16 A. Yes.

17 Q. Okay.

18 MR. COCHRAN: I'm going to have  
19 this marked later because it's attached to other  
20 things.

21 BY MR. COCHRAN:

22 Q. Mr. Zames, was an injunction entered by the  
23 United States District Court for the Northern District  
24 of Ohio in that case?

25 A. Yes.

1 MR. COCHRAN: Your Honor, how do  
2 you want to mark exhibits? Do you want --

3 THE EXAMINER: We can start with 1.

4 MR. COCHRAN: -- the court reporter  
5 to mark them?

6 THE EXAMINER: I'll go ahead and  
7 mark them.

8 MR. COCHRAN: Exhibit 1.

9 - - -

10 Thereupon, Complainants' Exhibit  
11 No. 1 was marked for purposes of  
12 identification.

13 - - -

14 MR. COCHRAN: This is a copy of the  
15 injunction, Bill.

16 MR. LINTON: Which one?

17 MR. COCHRAN: Okay. All right.

18 For the record, this is a copy of the injunction -- Go  
19 ahead and take a look.

20 THE EXAMINER: It was marked as  
21 Complainants' Exhibit 1.

22 MR. COCHRAN: I don't know, Bill.  
23 Obviously, as you know, there are some that were signed  
24 by different parties. This one is a copy that was  
25 signed just to get to the terms of what the injunction

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1 is. A copy signed by me is exactly the same as the one  
2 signed later the same day by the judge. Would you be  
3 willing to stipulate that --

4 MR. HUNT: Unfortunately, I'm  
5 not willing or able to stipulate precisely because in  
6 this particular case, and a major issue in the case, is  
7 what, in fact, was the federal court order. There's  
8 one that's signed by the judge and Mr. Zames and  
9 Mr. Cochran, and there's one that is signed by Betty  
10 Zames, Elizabeth Zames, only some days later. There's  
11 also two versions. One ends in Paragraph G and the  
12 other one ends in paragraph H.

13 So I guess what I would ask is -- I have  
14 no objection to the document itself, but I do object to  
15 the characterization that it is, in fact, an injunction  
16 of the federal court because, in fact, the copy that  
17 Mr. Cochran proposes to present is not an order of the  
18 federal court, it's signed by no one at the federal  
19 court.

20 MR. COCHRAN: Yes, I'm not  
21 representing that. I just want to have it separate  
22 from -- Let me say this on the record: I will  
23 represent to you, Bill, and the Court, that Exhibit 1  
24 is an exact copy of the injunction signed by the court  
25 without the signature of the court, and if that doesn't

1 turn out to be true, we'll compare them when I get to  
2 that exhibit.

3 MR. HUNT: Could we just have it  
4 introduced for whatever it is and let it speak for  
5 itself without a characterization --

6 MR. COCHRAN: Exactly.

7 MR. HUNT: -- because I just  
8 can't concur as to what it is or what it says.

9 BY MR. COCHRAN:

10 Q. Mr. Zames, handing you what's been marked as  
11 Complainants' Exhibit 1, a four-page document with the  
12 caption of the United States District Court case and  
13 pleading entitled "Stipulated Order of Injunction,"  
14 signature page signed only by me as your attorney,  
15 dated June 30, 1995. Do you recognize that?

16 (Pause.)

17 A. Yes, I do.

18 Q. What is it? I should say, is that a copy of  
19 the injunction that was entered by the court as you  
20 understand it?

21 A. As I understand it, to the best of my  
22 knowledge, that's what that is, yes, sir.

23 Q. Okay.

24 MR. COCHRAN: I'd like to mark as  
25 Complainants' Exhibit 2 -- Probably different markings

1 for exhibits there.

2

- - -

3 Thereupon, Complainants' Exhibit  
4 No. 2 was marked for purposes of  
5 identification.

6

- - -

7 BY MR. COCHRAN:

8 Q. Mr. Zames, handing you what's been marked  
9 Complainants' Exhibit 2, a document of six pages, first  
10 two pages being faxes and the next four pages being  
11 what appears to be the same injunction order attached  
12 thereto.

13 Take a look at that injunction, along with  
14 Exhibit 1, and tell me, are they the -- are they the  
15 same except for the signatures?

16 A. Yes, they appear to be the same.

17 THE EXAMINER: Now, Exhibit 2 has  
18 whose signatures on it?

19 MR. COCHRAN: Exhibit 2 -- First of  
20 all, let me correct the record by saying they're  
21 clearly not exactly the same. The signatures are  
22 different, and there -- there are more -- the signature  
23 page is more than one set out for signatures of people,  
24 but to answer the question on Exhibit 2, it's a copy of  
25 a fully executed order executed by the judge and signed



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1 by everyone except Elizabeth Zames. It's signed by  
2 attorneys for the Plaintiff, RE/MAX, signed by Attorney  
3 Mike Vary, signed by attorneys for Defendant Zames,  
4 signed by Attorney Ed Cochran, and signed by the  
5 magistrate, and certified by the clerk of the United  
6 States District Court and dated June 30, 1995.

7 BY MR. COCHRAN:

8 Q. Now, Mr. Zames, what is it -- what is your  
9 understanding of what that injunction required you to  
10 do relative to your phone listings?

11 A. My understanding is that it required me to  
12 terminate or revoke all listing orders placed with  
13 Ameritech up to that point in time relative to Zames  
14 Realty phone listings, RE/MAX specialists in real  
15 estate. Any and all listings that have been placed  
16 with Ameritech were to be revoked in accordance with  
17 that federal court order.

18 Q. You mean any and all listings that had been  
19 placed by you?

20 A. Any and all listings placed by me.

21 Q. Had you -- At the time of this order on June  
22 30, did you have a pending order for White Pages  
23 listings?

24 A. Yes.

25 Q. Okay. I'm going to show you what will be

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1 marked as Complainants' Exhibit 3.

2

3

Thereupon, Complainants' Exhibit

4

No. 3 was marked for purposes of

5

identification.

6

7 BY MR. COCHRAN:

8

Q. Mr. Zames, handing you what's been marked as

9

Complainants' Exhibit 3, a fax transmittal from you to

10

Ameritech dated May 15th, 1995, two weeks before the

11

court order. Does that represent the pending order for

12

White Pages service that was in existence at the time

13

of the court order?

14

MR. HUNT:

May I have the

15

question reread? I'm sorry.

16

(Record read back as requested.)

17

MR. HUNT:

I don't believe it

18

was two weeks before the court order. The court order

19

was 6-30 of 95, the end of June, and that's May 15th.

20

MR. COCHRAN:

Thank you. I'm

21

sorry.

22

BY MR. COCHRAN:

23

Q. Does Exhibit 3 represent the order for White

24

Pages services that was pending as ordered by you that

25

existed at the time of the court order?

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- 1 A. Yes, it does.
- 2 Q. And what date did you order that service?
- 3 A. May 15th, 1995.
- 4 Q. And how did you communicate it to Ameritech?
- 5 A. By fax.
- 6 Q. Is that a copy of that fax?
- 7 A. Yes, it is.
- 8 Q. Was that fax sent by you to Ameritech on May
- 9 15th, 1995?
- 10 A. Sent by me personally, yes.
- 11 Q. Okay. And can you describe the White Pages
- 12 listing that is requested in that fax?
- 13 A. The top line in bold print states, "RE/MAX
- 14 Masters, Real Estate," and then on the second line it
- 15 says, "Specialists, Phone No. 639-4333," third line, it
- 16 says, "Betty Zames, 975-0899," fourth line states,
- 17 "Appraisals, 639-4334," and the last line, "Bob Zames,
- 18 975-5964."
- 19 - - -
- 20 Thereupon, Complainants' Exhibit
- 21 No. 4 was marked for purposes of
- 22 identification.
- 23 - - -
- 24 BY MR. COCHRAN:
- 25 Q. Okay. Handing you what has been marked

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1 Complainants' Exhibit 4, a document of six pages also,  
2 with the cover page being a fax transmittal form from  
3 you to Ameritech dated May 26, 1995.

4 Mr. Zames, what is Exhibit 4?

5 A. It's a copy of a fax that I transmitted to  
6 Ameritech directly to a Joanne Zivsak on May the 26th,  
7 1995, and it relates to her request for a signed  
8 agreement for advertising in the new Lake County phone  
9 directory.

10 I further asked that somebody could fax me  
11 proof -- a proof of how the White Pages ad would  
12 appear, as well as regular Yellow Pages listing. I  
13 stated at the end, "I simply wish to eliminate any  
14 chance for errors."

15 Q. Okay. Now, this Exhibit 4 has various  
16 documents attached to it.

17 A. Yes.

18 Q. Is it fair to say that this represents the  
19 signed contract and the more detailed description of  
20 the listing?

21 A. Could I please look at it again?

22 MR. HUNT: Your Honor, I'm going  
23 to object to the form of the question. I think the  
24 document could speak for itself rather than have Mr. --  
25 I don't think Mr. Zames needs to characterize it.

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1 MR. COCHRAN: All right.

2 THE EXAMINER: Yeah, he can  
3 characterize it. He can tell us what he thinks it is,  
4 his understanding.

5 MR. HUNT: All right.

6 THE WITNESS: Yes, it's an  
7 agreement, a contract, that I signed along with Joanne  
8 Zivsak, who is the lady I was communicating with at  
9 Ameritech.

10 BY MR. COCHRAN:

11 Q. Okay. Is it fair to say that Exhibit 4 is a  
12 follow-up to Exhibit 3?

13 A. It is fair to say that, yes.

14 Q. Okay. Now, do you remember the day, June 30,  
15 1995, that the United States District Court order was  
16 signed by your attorney on your behalf?

17 A. I do.

18 Q. Did you, in fact, see a faxed copy of that  
19 order on that date?

20 A. I did.

21 Q. And did you agree to consent to the terms of  
22 that injunction?

23 A. I did agree.

24 Q. Now, what -- was there any reference in the  
25 order as you recall that authorized Ameritech to revoke

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1 your then existing White Pages order?

2 MR. HUNT: Objection. The order  
3 speaks for itself. Best evidence rule.

4 MR. COCHRAN: I'll withdraw it.

5 BY MR. COCHRAN:

6 Q. Mr. Zames, what was your understanding as to  
7 how the requirements and terms of this United States  
8 District Court order were going to be conveyed to  
9 Ameritech?

10 A. During the week that ended in Friday, May the  
11 30th, you and I had had several --

12 Q. I'm sorry, I assume you mean June 30th.

13 A. I'm sorry, June the 30th.

14 During that week, you and I had had several  
15 conversations about the matter. You conveyed to me  
16 that you and the attorneys from Jones-Day that were  
17 representing RE/MAX had had either meetings or  
18 conversations.

19 On Friday, June the 30th, you had indicated  
20 that the previous conversations and communications  
21 between apparently you, Jones-Day, the head attorney  
22 from Ameritech, who apparently was out of state  
23 somewhere, had reached agreement and the court order  
24 would be communicated to the head attorney for  
25 Ameritech on Friday the 30th, as well as to the

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1 Ameritech office somewhere in northeast Ohio, in the  
2 Cleveland area, apparently, and that there was no need  
3 for me to do anything else.

4 MR. HUNT: Does that finish your  
5 answer?

6 THE WITNESS: Yes.

7 MR. HUNT: Okay. Your Honor,  
8 I'm going to move to strike the answer unless the  
9 answer is expressly limited to his understanding of  
10 what was going to happen.

11 MR. COCHRAN: It is, Bill.

12 MR. HUNT: Okay. Because he's  
13 relating hearsay upon hearsay and he cannot be  
14 permitted to testify as to things said by other people  
15 outside his presence as related to him by his attorney.

16 THE EXAMINER: I understood him to  
17 be testifying from his own personal knowledge, and  
18 we'll let it stand as that.

19 MR. HUNT: His own personal  
20 belief as to what was going to happen.

21 THE EXAMINER: His own personal  
22 knowledge; it's the same thing.

23 Please continue.

24 BY MR. COCHRAN:

25 Q. Mr. Zames, were you familiar with the

1 provision in the United States District Court  
2 injunction which provided as follows: "Service of a  
3 copy of this order by any party to this lawsuit shall  
4 be sufficient evidence or notice of the rescission and  
5 shall operate as an order to Ameritech to rescind, even  
6 in the absence of a directive from the defendants"?

7 A. I read the document and, you know, I couldn't  
8 repeat what you've just said verbatim, but yes, I do  
9 understand what the document was about.

10 Q. Was it your understanding that the delivery of  
11 this order, therefore, was all that was required to  
12 effect a rescission of your White Pages listing?

13 A. Absolutely.

14 Q. Did you rely on the delivery of this United  
15 States District Court order to Ameritech as the means  
16 by which your White Pages listing would be rescinded?

17 A. I totally relied on the order that was issued  
18 by the federal judge to do that, yes, sir.

19 Q. Did you have an understanding on Friday, June  
20 30 -- I'm not asking you to testify as to what happened  
21 or what didn't happen, I'm asking what was your  
22 understanding as far as whether this order was served  
23 on Ameritech on Friday, June 30th.

24 MR. HUNT: Your Honor, I'm going  
25 to object. No foundation has been established for his



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1 knowing that one way or the other.

2 MR. COCHRAN: I'm just asking what  
3 his understanding was. I'm not asking him what  
4 happened.

5 THE EXAMINER: Yeah, he can answer  
6 the question.

7 MR. COCHRAN: There will be other  
8 evidence of that.

9 THE WITNESS: My understanding was  
10 that the court order took care of the revocation of all  
11 the listings that I had ordered in the Ameritech book.

12 BY MR. COCHRAN:

13 Q. Now I'm handing you what's been marked as  
14 Complainants' Exhibit 5, I believe it is.

15 - - -  
16 Thereupon, Complainants' Exhibit  
17 No. 5 was marked for purposes of  
18 identification.

19 - - -

20 BY MR. COCHRAN:

21 Q. What is Exhibit 5, one page?

22 A. This is a fax that I personally transmitted to  
23 a person by the name of Pat Andreatis on June 30, 1995.

24 Q. What was the purpose of that fax?

25 A. The purpose of that fax was to order a listing

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1 in the Ameritech phone book for Lake County under the  
2 name of Zames Realty, Incorporated and under  
3 Diversified Appraisers. This, I felt, was necessary,  
4 because otherwise I would have no listing in the phone  
5 book for my company or my business.

6 Q. Is it fair to say that you were ordering a  
7 listing for Zames -- listing for Zames Realty to  
8 replace that which was being revoked for your RE/MAX  
9 business?

10 MR. HUNT: Objection; leading.

11 THE WITNESS: That was the absolute  
12 purpose of this fax.

13 THE EXAMINER: That's fine.

14 Please continue.

15 BY MR. COCHRAN:

16 Q. Can you describe the listing that you ordered  
17 in the White Pages by virtue of Exhibit 5?

18 A. Capital letters ZAMES REALTY, INCORPORATED,  
19 and then the phone number, 639-5131, the address, 2167  
20 Mentor Avenue, and I asked that they be in bold print.

21 Q. Now, you'll notice the phone number on there  
22 is 5131.

23 A. Yes, that's correct.

24 Q. There's another number crossed out.

25 A. Yes.

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1 Q. What's the number that's crossed out?

2 A. It's difficult to read from this copy.

3 Q. Is it 4334?

4 A. It appears --

5 Q. 4339? 4334?

6 A. It appears to be 639-4334.

7 Q. And who crossed out 4334?

8 A. I did.

9 Q. And who put the new number?

10 A. I did.

11 Q. Did you send a previous fax that had the 4334  
12 and then replace it with that one?

13 MR. HUNT: Objection.

14 THE WITNESS: Yes.

15 BY MR. COCHRAN:

16 Q. Okay. Did you, in fact, send that fax,  
17 Exhibit 5, to Ameritech on June 30, 1995?

18 A. I personally sent the fax, yes.

19 Q. Okay.

20 MR. COCHRAN: Next is Exhibit 6.

21 - - -

22 Thereupon, Complainants' Exhibit  
23 No. 6 was marked for purposes of  
24 identification.

25 - - -

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1 MR. COCHRAN: Your Honor -- You  
2 know what, Bill, I think I will withdraw this exhibit  
3 to save time. I think I will withdraw that exhibit.

4 THE EXAMINER: Exhibit 6?

5 MR. COCHRAN: Yeah.

6 THE EXAMINER: All right.

7 - - -

8 Thereupon, Complainants' Exhibit  
9 No. 6 was withdrawn.

10 - - -

11 MR. COCHRAN: You want to make the  
12 next one 6 or 7?

13 THE EXAMINER: Right, make it 6.

14 Let's note for the record the first  
15 Exhibit 6 was withdrawn.

16 MR. COCHRAN: Exhibit 6.

17 THE EXAMINER: Where is the other  
18 one?

19 - - -

20 Thereupon, Complainants' Exhibit  
21 No. 6 was marked for purposes of  
22 identification.

23 - - -

24 MR. COCHRAN: Thank you.

25 BY MR. COCHRAN:

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1 Q. Mr. Zames, handing you what's been marked  
2 Complainants' Exhibit 6, one page, appearing to be a  
3 fax from you to Ameritech dated July 17, 1995.

4 Do you recognize that?

5 A. Yes, I do.

6 Q. What is it?

7 A. This is a fax that I transmitted on July 17,  
8 1995, to a Pat Andreatis and a Miss Paris.

9 Why the two names? I was becoming  
10 increasingly frustrated with getting no response to my  
11 previous fax transmissions and numerous phone calls  
12 that I had made that were not returned to find out the  
13 status of the order that I placed on June 30th, and I  
14 indicated in the fax that I had not received any  
15 response to my fax of June 30, 1995.

16 I further stated that it was critical for my  
17 business to be listed in the Lake County directory, and  
18 please contact me right away to confirm that everything  
19 is okay. This was on July 17th.

20 I had also transmitted a copy of my previous  
21 fax to their attention. I figured by sending it to  
22 both people I might get some response, but I didn't.

23 Q. Did you ever receive any response to your fax  
24 of June 30?

25 A. I received absolutely no response to that fax,

1 or any fax after that.

2 Q. Well, let's deal with them one at a time to  
3 make sure we're clear.

4 Did you ever receive a response to the June 30  
5 fax?

6 A. No.

7 Q. Okay. Did you ever receive a response to the  
8 July 17 fax?

9 A. No.

10 Q. Did you make, in addition to these faxes, any  
11 phone calls to Ameritech at about the same time on the  
12 same subject?

13 A. I did.

14 Q. Approximately how many phone calls?

15 A. Well over a dozen.

16 Q. Do you recall when the first phone call was in  
17 relation to the June 30 fax?

18 A. Probably within a matter of two or three days.

19 Q. Do you recall what happened in that phone  
20 conversation?

21 A. I received a voicemail message, and I left a  
22 message on voicemail, and I got no response.

23 Q. When you say you received a voicemail, you  
24 mean you received their voicemail on your call and you  
25 left a message?

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1 A. When I called, a voicemail answered my call,  
2 and I left a message.

3 Q. What message did you leave?

4 A. Identified myself, my company, and the purpose  
5 of my call, to find out if the order has been -- was  
6 confirmed.

7 Q. Were you concerned about getting your listing  
8 in the '95-'96 directory?

9 A. Extremely concerned.

10 Q. Is that why you made that phone call?

11 A. Yes, it is.

12 Q. Did you make additional calls after that call?

13 A. I did.

14 Q. Do you remember the next call after that?

15 A. Not specifically. I made so many, they kind  
16 of blended in.

17 Q. What was the -- Let me put it this way: All  
18 of these calls that you're referring to, were they all  
19 made in the June, July, August time frame of 1995?

20 A. Yes, they were.

21 Q. Were they all on the same subject, i.e., I  
22 need my White Pages listing?

23 A. Absolutely.

24 Q. In these phone calls, did you ask if your fax  
25 had been received?

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1 A. I did.

2 Q. What answer did you receive to that?

3 A. I received no answer.

4 In my 20 years in business, I've never been so  
5 totally ignored by anybody.

6 MR. HUNT: Objection. Move to  
7 strike as not responsive to the question.

8 THE EXAMINER: Yeah, we'll let that  
9 stand on the record. It's just your opinion.

10 Proceed.

11 MR. COCHRAN: Yeah. I'm sorry, the  
12 motion to strike was granted?

13 THE EXAMINER: No. We'll let that  
14 stand.

15 MR. COCHRAN: I would caution you,  
16 Bob, you know, just answer the question that I'm  
17 asking.

18 THE WITNESS: Okay.

19 BY MR. COCHRAN:

20 Q. Mr. Zames, is it important in the business of  
21 a real estate broker that you be listed in the White  
22 Pages?

23 A. Very important.

24 Q. Why is that?

25 A. Typically, people will make phone calls to



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1 real estate companies for real estate services, as well  
2 as appraisal services, not only new -- potentially new  
3 customers, but customers that have been dealt with in  
4 the past, and without a listing you're, in effect, in  
5 my opinion, out of business.

6 Q. And is this why you went to such efforts to  
7 confirm your White Pages listing?

8 A. Yes, it is.

9 Could I add something to answer -- to that  
10 answer?

11 THE EXAMINER: Yeah.

12 MR. COCHRAN: If it's responsive.

13 THE WITNESS: I believe that there  
14 may be a requirement under the Ohio Revised Code -- and  
15 I'm not an attorney -- dealing with real estate brokers  
16 that requires that they do have a listed phone and  
17 address, a place of doing business.

18 MR. HUNT: I'm going to object  
19 to the answer.

20 THE EXAMINER: It's his belief.

21 BY MR. COCHRAN:

22 Q. Now, Mr. Zames, you said you had an  
23 understanding on June 30, 1995 that the court order was  
24 communicated to attorneys for Ameritech.

25 A. Yes, sir.

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1 Q. Referring you to -- Did you have any  
2 understanding how the order was communicated?

3 A. I did, yes.

4 Q. What was your understanding?

5 A. I do.

6 My understanding was that there was a fax  
7 transmission and perhaps a phone call made to the chief  
8 attorney of Ameritech, and also, there was something  
9 that was hand-carried or delivered by a Jones-Day  
10 attorney to the Ameritech office in northern Ohio.

11 Q. Now, the '95-'96 directory eventually did get  
12 published, did it not?

13 A. Yes, it did.

14 Q. And did you see that directory when it came  
15 out?

16 A. I did.

17 Q. Was your listing for Zames Realty that you had  
18 ordered in there?

19 A. No, it wasn't.

20 Q. Was there any listing that concerned you in  
21 there?

22 A. Absolutely.

23 Q. What was that?

24 A. That was the listing that still identified me  
25 with RE/MAX.

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1 Q. A listing that was enjoined by the court  
2 order?

3 A. That's correct.

4 MR. COCHRAN: Exhibit -- What are  
5 we at, 7?

6 THE EXAMINER: Yes.

7 - - -

8 Thereupon, Complainants' Exhibit  
9 No. 7 was marked for purposes of  
10 identification.

11 - - -

12 BY MR. COCHRAN:

13 Q. Handing you what's been marked as Exhibit 7.  
14 Do you know what that is?

15 A. Appears to be a copy of the page that shows  
16 the RE/MAX listing that was published in that Lake  
17 County directory.

18 Q. There's one listing for RE/MAX Masters, Betty  
19 Zames, at 975-0899.

20 Whose number is 975-0899?

21 A. That's Betty Zames' number. It's a voicemail  
22 number.

23 Q. Then there's another listing, RE/MAX Masters,  
24 Real Estate Appraisals, 639-4334.

25 Whose number is the that?

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1 A. That's my number.

2 Q. Now, the number 639-4334, which has RE/MAX,  
3 that number was contained in your original request for  
4 White Pages ordered on May 15th as described in  
5 Exhibit 3, was it not?

6 A. Yes.

7 Q. That was one of the numbers that was -- listed  
8 RE/MAX, and the May 15th order requested a listing for  
9 RE/MAX Masters Real Estate Appraisals, 639-4334,  
10 correct?

11 A. Yes, that's correct.

12 Q. That was proscribed by the injunction?

13 A. That's correct.

14 Q. But yet, that's exactly the listing that  
15 appears on Exhibit 7, right?

16 A. That's correct.

17 MR. HUNT: Your Honor, I'm going  
18 to object to the question and the answer on the basis  
19 that the order speaks for itself. The witness should  
20 not be permitted to interpret the order.

21 BY MR. COCHRAN:

22 Q. Okay. Well, let me ask it this way then: Was  
23 it your understanding when you signed that order that  
24 any number of yours that contained a reference to the  
25 RE/MAX name or trademark was enjoined from being

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1 listed?

2 A. That was my understanding.

3 Q. And in the May 15th order, you, in fact, did  
4 order a White Pages listing using the name RE/MAX Real  
5 Estate and your name and phone number?

6 A. Yes.

7 Q. If someone called 639-4334, they would reach  
8 you, correct?

9 A. That is correct.

10 Q. Yet, it had -- that was the only number in the  
11 phone book, is it not, for RE/MAX?

12 A. That is correct.

13 Q. Isn't there a RE/MAX broker right in your  
14 town?

15 A. Yes, there is.

16 Q. Right down the street from you?

17 A. Yes, there is.

18 Q. He's the authorized agent?

19 A. That's correct.

20 Q. Did he have a listing for his RE/MAX business  
21 in the '95-'96 directory?

22 A. Not to my knowledge.

23 Q. But you did --

24 A. That's correct.

25 Q. -- in spite of the injunction?

1 A. That's correct.

2 Q. What did you think when you saw this '95-'96  
3 directory?

4 A. Pardon me?

5 Q. What did you think when you first saw the  
6 '95-'96 directory containing that listing?

7 A. My first thought?

8 Q. Yeah.

9 A. I'm going to be sent to prison for violation  
10 of a federal court order.

11 Q. Did you, in fact, eventually hear from RE/MAX  
12 about this problem?

13 A. Yes, sir.

14 Q. What did they do?

15 A. Filed a lawsuit or complaint regarding my  
16 violation.

17 Q. Did they file for an order to show cause why  
18 you shouldn't be held in contempt of federal court?

19 A. That's my understanding, yes.

20 MR. COCHRAN: Exhibit 8.

21 THE EXAMINER: Eight.

22 - - -

23 Thereupon, Complainants' Exhibit  
24 No. 8 was marked for purposes of  
25 identification.

1

2 BY MR. COCHRAN:

3 Q. Did RE/MAX, in fact, request by pleadings in  
4 federal court, to your understanding, that you be found  
5 in contempt of court because of the listing in  
6 Exhibit 7?

7 A. Yes, that's my understanding.

8 Q. And did the United States District Judge  
9 Lesley Brooks Wells order you to appear in court and  
10 show cause why you should not be found in contempt of  
11 court?

12 A. Yes, she did.

13 Q. And did not, in fact, you appear in court as  
14 ordered by Judge Wells? Were you not compelled to  
15 appear?

16 A. Absolutely.

17 MR. COCHRAN: Your Honor, I'd like  
18 to submit into evidence Complainants' Exhibit 8, a copy  
19 of a public record, which is the order of Judge -- U.S.  
20 District Court Judge Lesley Brooks Wells entitled  
21 "Order to Show Cause and Order Regarding Discovery in  
22 Case No. 1:95CV1453," in which the Court grants  
23 RE/MAX's motion for an order to show cause why Zames  
24 should not be held in contempt of court.

25 MR. HUNT: Your Honor, we have

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1 no objection to the document being admitted on the  
2 record. We do object to the characterization that the  
3 judge granted the motion to show cause, per se. I  
4 think that characterization is both inaccurate and  
5 incomplete.

6 If counsel is willing to have the  
7 document on the record and let it speak for itself, we  
8 have no objection.

9 MR. COCHRAN: Okay. That's  
10 pretty --

11 THE EXAMINER: What's the document?  
12 What's the order?

13 MR. COCHRAN: There's a motion  
14 before the court to show cause and for expedited  
15 discovery. The court granted the motion as to Robert  
16 and Elizabeth Zames, ordered them to appear on 'X'  
17 date.

18 THE EXAMINER: So there's an order  
19 that he should appear in court?

20 MR. COCHRAN: Yeah, there was a  
21 motion to show cause.

22 THE EXAMINER: In that document?

23 MR. COCHRAN: Yeah. This is the  
24 order of the judge.

25 MR. HUNT: I may have misheard



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1 you; if so, I apologize.

2 What I want clear on the record is that  
3 Mr. Zames nor Mrs. Zames nor Zames Realty, Inc., the  
4 customer in this case, was found in contempt by Judge  
5 Wells; none of the three of them were found to be in  
6 contempt. They were ordered to appear to show cause,  
7 which apparently they did, but they were not found in  
8 contempt.

9 MR. COCHRAN: That is correct.  
10 There was a motion for an order to show cause  
11 compelling Zames to appear in court to show cause why  
12 he should not be held in contempt of court. Said  
13 motion was granted by virtue of Exhibit 8. We'll  
14 address those other things in due course.

15 BY MR. COCHRAN:

16 Q. Now, Mr. Zames, did you engage an attorney to  
17 defend you in the contempt action against you?

18 A. I did.

19 Q. Who did you retain?

20 A. I retained you.

21 Q. Okay. And did I defend that action for you?

22 A. You did.

23 Q. And did I attend court with you pursuant to  
24 the order to show cause why you shouldn't be held in  
25 contempt?

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1 A. Yes, you did.

2 Q. Okay. Now, were there depositions taken in  
3 that case?

4 A. Yes.

5 Q. Was your deposition taken?

6 A. Yes.

7 Q. Do you remember how long it was? Was it more  
8 than one day?

9 A. Yes.

10 Q. How many days was it?

11 A. It was -- I don't remember the exact number.

12 Q. Was your wife's deposition taken?

13 A. Yes, it was.

14 Q. By the way, was your deposition compelled by  
15 subpoena?

16 A. Yes, it was.

17 Q. You didn't want to give a deposition, did you?

18 A. No.

19 Q. Was your wife's deposition compelled by  
20 subpoena?

21 A. It was compelled, also.

22 Q. Do you recall how many days her deposition  
23 took?

24 A. At least one.

25 MR. HUNT: Your Honor, I'm going

1 to either object/inquire what the purpose of this  
2 questioning is for two reasons.

3 One is, as the Commission is well aware,  
4 to the extent that this is going to money damages, that  
5 is not a proper topic for this proceeding, as noted by  
6 counsel in his responses to my interrogatories, wherein  
7 he refused to answer questions regarding attorney's  
8 fees in this case, and I would respectfully suggest he  
9 can't have it both ways.

10 MR. COCHRAN: Well, I agree with  
11 that, that wasn't my purpose. I'll stop it right  
12 there. Damages are not at issue.

13 For the record, all I wanted to establish  
14 by that is that the motion to show cause why he  
15 shouldn't be held in contempt was opposed, seriously  
16 opposed, wasn't something somebody consented to. There  
17 was a massive discovery, et cetera. Beyond that, it  
18 relates to damages and I won't inquire further.

19 In fact, for the record, I was going to,  
20 but I won't, inquire any further into the results of  
21 that case for the same reason, except to say, you are  
22 right, Bill, there was a settlement at that trial,  
23 there was no contempt, it was settled, and we all went  
24 home. You were correct in your description of that.

25 MR. HUNT: Just so the record is

1 clear, my objection only went to the issue of money  
2 damages and attorney's fees, which is where I thought  
3 you were going. I have no objection to any inquiry as  
4 to the outcome of that proceeding.

5 MR. COCHRAN: Okay.

6 BY MR. COCHRAN:

7 Q. Mr. Zames, did, in fact, that case go to  
8 trial?

9 A. Yes, it did.

10 Q. You appeared for trial --

11 A. Yes, I did.

12 Q. -- on the motion to show cause?

13 A. Yes, I did.

14 Q. And the matter was -- Was the matter settled?

15 A. The matter was settled, yes.

16 Q. Okay. And as part of the settlement, you  
17 entered into an additional injunction in addition to  
18 the one you were subject to, did you not?

19 A. Yes, I did.

20 Q. Mr. Zames, have you ever inquired of Ameritech  
21 when this listing came out as to why there was a  
22 listing in there with your phone number that you had  
23 ordered on May 15th under the RE/MAX name?

24 A. I personally never inquired, no. Seemed to me  
25 that that would be a big waste of time as my previous

1 efforts.

2 MR. HUNT: Move to strike, your  
3 Honor. The last comment is not responsive to the  
4 question.

5 THE EXAMINER: Okay. We'll strike  
6 that.

7 MR. COCHRAN: I'll consent to that.

8 BY MR. COCHRAN:

9 Q. You have to be -- Bob, again, I'd ask you to  
10 just respond to the questions.

11 A. I'm sorry.

12 Q. Now, referring back to Exhibit 2. There's a  
13 copy. Exhibit 2 is six pages, contains two faxes, and  
14 then a copy of the order.

15 Is that the order that was entered by the  
16 court, as far as you know? Referring to the signature  
17 page, Bob, is this the --

18 A. As far as I know, yes.

19 Q. That's signed by your attorney?

20 A. Yes.

21 Q. By the plaintiff's attorney?

22 A. Yes.

23 Q. By the magistrate?

24 A. Yes.

25 Q. And the clerk of court for certification,

1 correct?

2 A. Yes.

3 Q. Now, attached to that on the front page is a  
4 fax dated June 30, 1995 from Marc Alan Silverstein to  
5 Tyrone Tartt, attorney at Ameritech Publishing.

6 Do you know who Marc Alan Silverstein is?

7 A. He is an attorney with Jones-Day in Cleveland.

8 Q. Is he the attorney that was representing  
9 RE/MAX in the contempt charge against you?

10 A. Yes, he was.

11 Q. Did you have an understanding that he would be  
12 faxing a copy of the order on June 30 to the Ameritech  
13 attorney?

14 A. That was my understanding.

15 Q. Have you ever seen that fax before?

16 A. No, I haven't.

17 Q. Okay. Do you know where it came from -- where  
18 this document came from?

19 A. You're the first one to show it to me.

20 Q. Okay. Now, the second page of the fax is a  
21 facsimile transmission on the fax form of the Jones-Day  
22 law firm, again, from Marc Alan Silverstein to Tyrone  
23 Tartt at Ameritech Publishing. The phone number is the  
24 same to Tyrone Tartt on both documents, Area (810)  
25 524-7227. Again, is that the same -- Strike that.

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1 Marc Alan Silverstein, again, he is the  
2 attorney who obtained the injunction against you?

3 A. Yes.

4 MR. HUNT: Objection to the  
5 characterization of the question. An injunction was  
6 not obtained against Mr. Zames, it was consented to in  
7 a stipulated order.

8 MR. COCHRAN: Fair enough.

9 THE EXAMINER: Okay. We'll go with  
10 that.

11 BY MR. COCHRAN:

12 Q. By the way, Mr. Zames, the stipulated order of  
13 injunction, that concerned -- that was in this  
14 particular lawsuit, 1:95CV1453, correct?

15 A. Yes.

16 Q. Did you desire to enter into this injunction?

17 A. No.

18 Q. Weren't you sued some months prior to that  
19 seeking this injunction?

20 A. Yes.

21 Q. Were you -- Did you have any understanding of  
22 what your chances of avoiding an injunction were?

23 MR. HUNT: Your Honor, I'm going  
24 to object to this line of questioning and the final  
25 question, as well, on the basis that, you know, his

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1 motivation for entering into a stipulated order is  
2 really irrelevant to our proceeding.

3 What I was trying to establish by virtue  
4 of my objection was that the outcome of the federal  
5 case was agreed upon in a stipulated order, not a  
6 federal judge saying, "You are hereby ordered to do 'X'  
7 based on a trial, findings, et cetera."

8 MR. COCHRAN: I misunderstood. If  
9 it's irrelevant, if you're not making the point that  
10 the injunction means anything less because it was  
11 stipulated to, then fine, I don't need to go into it.

12 MR. HUNT: I agree. He was  
13 bound by it.

14 BY MR. COCHRAN:

15 Q. Mr. Zames, is it fair to say that you were --  
16 Strike that.

17 When you saw the listing contained in  
18 Exhibit 7 that appeared in the '95-'96 directory with  
19 your phone number under the RE/MAX name, were you  
20 shocked?

21 MR. HUNT: Objection; asked and  
22 answered.

23 THE EXAMINER: I think we've gone  
24 into that before. He said he was shocked. That was  
25 his --



1 MR. COCHRAN: Okay.  
2 THE EXAMINER: -- testimony.  
3 MR. COCHRAN: I think that's all I  
4 have of this witness at this time. I do reserve the  
5 right to redirect after cross-examination.  
6 THE EXAMINER: Mr. Hunt.  
7 MR. HUNT: Thank you, your  
8 Honor.

9 - - -  
10 CROSS-EXAMINATION

11 BY MR. HUNT:

12 Q. Good morning, Mr. Zames. Good afternoon.

13 A. Good afternoon.

14 Q. Do you still have a copy of Complainants'  
15 Exhibit 6 with you?

16 A. Here's 5 and 6.

17 MR. COCHRAN: Your Honor, would you  
18 mind if we looked at it at the same time?

19 MR. HUNT: I'm not going to  
20 question about it, I just wanted to see something.

21 BY MR. HUNT:

22 Q. Mr. Zames, your dispute with RE/MAX began  
23 sometime in 1994, didn't it?

24 A. Probably, yes.

25 Q. And there was an arbitration in connection

1 with that dispute, wasn't there?

2 MR. COCHRAN: Objection. There's  
3 more than one dispute. There was no arbitration  
4 concerning this dispute, but there was another.

5 MR. HUNT: Well, there was an  
6 arbitration concerning Mr. Zames' use of the RE/MAX  
7 logo and name, et cetera. No?

8 THE WITNESS: Not that I recall.

9 MR. HUNT: If I may have just a  
10 moment, your Honor, please.

11 (Pause.)

12 MR. COCHRAN: I don't need to, but  
13 if you want, I can clarify it at this point.

14 MR. HUNT: If you would like to  
15 clarify it, be my guest, Mr. Cochran.

16 MR. HUNT: There is a pending  
17 arbitration dispute between RE/MAX and Mr. Zames. The  
18 aspect of it concerning this use of the trademark or  
19 any other use of the trademark has been settled. The  
20 arbitration commenced after the settlement.

21 MR. HUNT: Okay.

22 MR. COCHRAN: So there's no  
23 arbitration as to these issues. There is an  
24 arbitration for an unrelated claim, but the alleged  
25 unauthorized use of trademarks has been resolved by

1 virtue of the subsequent settlement and injunction in  
2 federal court and is not a part of the arbitration.

3 BY MR. HUNT:

4 Q. Mr. Zames, did you enter into an arbitration  
5 agreement dated December 1st, 1994?

6 A. With who and --

7 Q. With RE/MAX International.

8 A. You know, I -- Regarding what subject?

9 Q. Well, termination of your franchise, for one  
10 thing.

11 A. You know, I'm not sure if it was an  
12 arbitration agreement. I don't understand.

13 MR. HUNT: If I may have a  
14 moment.

15 (Pause.)

16 Your Honor, may we have marked as Joint  
17 Exhibit No. 1 --

18 MR. COCHRAN: I have no objection  
19 to the introduction of that.

20 MR. HUNT: -- a letter from  
21 Attorney Silverstein at Jones, Day, Reavis & Pogue,  
22 which describes an arbitration agreement originally  
23 dated December 1st, 1994, and which goes on to describe  
24 some either additional terms or repeats terms contained  
25 in that agreement?

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1                   It is signed by Mr. Cochran on behalf of  
2     Robert Zames, et al., wherein Zames and RE/MAX mutually  
3     agree that the franchise agreement between them is  
4     terminated effective January 16, 1995; and that Zames  
5     has elected not to cure in connection with the  
6     termination letter; that during the pendency of the  
7     arbitration process Zames will cease holding himself or  
8     itself out in any way as a franchisee or affiliate of  
9     RE/MAX; and, (i), will not display any signage or  
10    use -- or use any stationery, documentation, or other  
11    material that incorporates any of the various RE/MAX  
12    trademarks, service marks, or commercial logos; (ii),  
13    will not answer the telephone with the word "RE/MAX";  
14    (iii), will not cause to be run in any broadcast or  
15    print media any advertisement that incorporates any of  
16    the various RE/MAX trademarks, service marks, or  
17    commercial logos; and will assign numbers listed for  
18    the formerly franchised real estate office to RE/MAX,  
19    which is on Page 2.

20                   MR. COCHRAN:           I will not object to  
21    the introduction of this as an exhibit. I would say,  
22    rather than argue with you, the thing speaks for  
23    itself.

24                   MR. HUNT:            Fine.  
25

- - -

1                   Thereupon, Joint Exhibit No.  
2                   1 was marked for purposes of  
3                   identification.  
4                   - - -

5       BY MR. HUNT:

6           Q.    Now, Mr. Zames, handing you what's been marked  
7       for identification purposes as Joint Exhibit No. 1 and  
8       having that as a basis for refreshing your  
9       recollection, your franchise agreement was cancelled  
10      with RE/MAX effective January 1995; is that correct?

11                   MR. COCHRAN:           Again, I'd say this  
12      document speaks for itself.

13                   MR. HUNT:            Again, I'm going to  
14      his understanding of the document.

15                   MR. COCHRAN:           Okay.

16                   (Pause.)

17                   THE WITNESS:           Yes, that's what the  
18      document states.

19       BY MR. HUNT:

20           Q.    Well, I understand what the document states.  
21      What I was asking about, sir, was your understanding of  
22      it. .

23                   Was that your understanding of the meaning of  
24      it?

25           A.    There's some additional language and another

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1 date in here that deals with the telephone company and  
2 changing display ads and so forth.

3 Q. Agreed; but just to the one narrow point, was  
4 it your understanding that effective January --

5 A. Yes.

6 Q. -- 1995 --

7 A. That's correct.

8 Q. -- your franchise with RE/MAX was terminated?

9 A. That's correct.

10 Q. Okay.

11 A. Absolutely.

12 Q. Was it also your understanding, among other  
13 things, that after that point in time, by virtue of  
14 that agreement, you were not allowed to use the RE/MAX  
15 logo, RE/MAX signage, et cetera?

16 A. As Zames Realty, that is correct.

17 Q. Okay. Now, who's the customer of White Pages  
18 listing with the phone company?

19 A. Who is the customer?

20 Q. Yes. Zames Realty, Inc. or Robert Zames?

21 A. Zames Realty, Inc.

22 Q. Does Zames Realty, Inc. still exist?

23 A. Yes, it does.

24 MR. HUNT: Your Honor, may I  
25 have this marked as Respondent's 1, please?

5

7 Q. Mr. Zames, handing you what's been marked for  
8 identification purposes as Respondent's No. 1. I ask  
9 you if you can identify that document.

12 Q. Have you ever seen it before?

14 Q. Now, attached to it is a handwritten page  
15 marked "Verification" about, oh, halfway down. Do you  
16 find that page?

18 Q. Is that signature yours?

19           A.    At the top, toward the top of the page?

21 Does your signature appear any place on that  
22 page?

23           A.    Not on that page, no.

24 Q. Okay. Does your -- Whose signature is that?

25           A.     Mr. Cochran's.

1 Q. Okay. Was he authorized to sign on your  
2 behalf?

3 A. Yes, he was.

4 Q. Okay. So the answers given by Mr. Cochran are  
5 your answers?

6 A. They are answers that he and I worked on  
7 together, yes.

8 Q. Well, are they your answers or his answers?

9 A. They're my answers, yes.

10 Q. Okay. So they're the answers of Zames Realty,  
11 Inc., as well?

12 A. That is correct.

13 Q. Okay. Now, you indicate in response to No. 1  
14 that you ordered a listing in the Ameritech White Pages  
15 by fax on May 15th, 1996, correct? Do you find my  
16 reference? Answer 1a on the first page.

17 A. Yes.

18 Q. Okay. And attached to that document is  
19 something called Exhibit 1.

20 A. Okay. Yes.

21 MR. HUNT: Your Honor, may I  
22 have the copy of Complainants' Exhibit 3?

23 THE EXAMINER: Complainants' 3? I  
24 don't have it.

25 MR. COCHRAN: Right here. Oh, no.



1 Oh, here it is right here (indicating).

2 BY MR. HUNT:

3 Q. Now, I would ask you to compare what's been  
4 marked for identification purposes as Complainants'  
5 Exhibit 3 with the Exhibit 1 attached to Respondent's  
6 No. 1 and tell me if you see any differences.

7 (Pause.)

8 A. Yes, I do.

9 Q. And what are the differences you see?

10 A. On the second page that you handed me --

11 Q. Which is -- I'm sorry, Mr. Zames, I don't mean  
12 to interrupt you, but the record won't tell us --

13 A. Exhibit 3.

14 Q. Complainants' Exhibit 3.

15 A. There's a yellow highlight across my name.

16 Q. All right. Anything else?

17 A. And there is a note attached.

18 Q. A note attached?

19 A. Well, there's a note handwritten --

20 Q. All right.

21 A. -- on that page.

22 Q. About in the middle of the page?

23 A. About in the middle of the page, yes.

24 Q. What's the note say?

25 A. "I removed this shortly after 5-15 by fax."

1 Q. What does it reference to, can you tell?

2 A. My name and the 975 number, 975-5964.

3 Q. When did you write that?

4 A. I don't remember the exact date or time.

5 Q. Wasn't near 5-15, was it?

6 A. I don't remember.

7 Q. Wasn't in 1995, was it?

8 MR. COCHRAN: You mean that he  
9 wrote that?

10 MR. HUNT: Yes.

11 THE WITNESS: I don't remember.

12 BY MR. HUNT:

13 Q. All right. Suffice it to say, you didn't  
14 write that at the time you faxed the removing listing,  
15 right?

16 A. That's correct.

17 Q. Now, you didn't supply a copy of the fax which  
18 removed the listing you say you removed with that  
19 marginalia, did you?

20 A. Supply it to?

21 Q. Is it in the record any place?

22 A. I'm not sure. I don't know.

23 Q. All right. Do you have a copy of it with you?

24 A. Whatever records that I have over with  
25 Mr. Cochran.

1 Q. So the answer is you don't know whether you  
2 have it or not?

3 A. I don't know.

4 Q. Do you know whether it still exists?

5 A. I don't know.

6 Q. All right. When was it created?

7 A. I don't remember the exact date or time.

8 Q. All right. So to the extent that --

9 MR. COCHRAN: Object. For the  
10 record, the fax referred to there that he's looking for  
11 has already been introduced as an exhibit. He's seen  
12 it.

13 MR. HUNT: I don't believe I  
14 have. I would be more than --

15 MR. COCHRAN: It's Exhibit 4.  
16 Right here in my hand.

17 MR. HUNT: Let me see it.

18 MR. COCHRAN: I guess I don't  
19 understand the point. And it is shortly after May  
20 15th. In fact, it's dated May 26th. I kind of resent  
21 the implication...

22 MR. HUNT: Where do you think  
23 this says --

24 MR. COCHRAN: Right here  
25 (indicating).

1 MR. HUNT: I understand, but  
2 where do you think it says remove the listing?

3 MR. COCHRAN: Of the 4334?

4 (Pause.)

5 What's the number that is removed?

6 (Pause.)

7 Why don't you continue.

8 BY MR. HUNT:

9 Q. Mr. --

10 MR. COCHRAN: Or if you want to  
11 wait, it doesn't matter.

12 THE EXAMINER: You can continue. I  
13 don't think it's necessary for him. Go ahead.

14 MR. HUNT: He's a witness  
15 anyway.

16 THE EXAMINER: I know.

17 MR. HUNT: Thank you.

18 BY MR. HUNT:

19 Q. Mr. Zames, you know, I don't mean to imply  
20 that there's anything untoward about this, I guess what  
21 I would like to establish first off on the record is  
22 that Complainants' Exhibit No. 3, which we talked  
23 about --

24 A. Yes.

25 Q. -- is, in fact, not what you sent on May 15th,

1 1995, because it contains the blue marginalia.

2 MR. COCHRAN: Objection, your  
3 Honor. Apparently, when I marked that exhibit this  
4 morning I gave you the version that has that  
5 handwritten notation, and it's otherwise the same.  
6 Apparently, that was my mistake.

7 MR. HUNT: All I want --

8 MR. COCHRAN: The exhibit to the  
9 interrogatory answers is -- the only difference is  
10 that. We can talk about that for a while, but I must  
11 have given you one that he marked for my benefit  
12 subsequently, that's all.

13 BY MR. HUNT:

14 Q. So the marginalia, the blue writing on  
15 Complainants' No. 3, you wrote sometime later for the  
16 benefit of your attorney?

17 A. Yes.

18 Q. Okay. And Exhibit 1 attached to Respondent's  
19 No. 1 does represent, in your view, an accurate version  
20 of what you faxed on May 15th?

21 A. Yes.

22 Q. Now, you faxed this to whom?

23 A. Joanne Zivsak.

24 Q. And she's with Ameritech Advertising, isn't  
25 she?

1           A.   That's what -- I typed that, too. You know,  
2           that's what's typed there. Who she works for, you  
3           know, I have no way of really knowing, but all I know  
4           is she works for Ameritech.

5           Q.   Well, we need to clarify that, Mr. Zames.

6                     Joanne Zivsak was the lady you were working  
7           with on your Yellow Pages advertising, as well as your  
8           White Pages advertising; isn't that correct?

9           A.   Let me clarify some confusion that I have to  
10          this day -- to this morning.

11                    Ameritech to me is Ameritech and, you know,  
12          there may be different companies, but I think the  
13          general public, and me specifically, you know, if you  
14          start talking about Ameritech this, Ameritech that, it  
15          doesn't really -- it doesn't mean anything to me.

16          Q.   I understand, Mr. Zames, but to this  
17          Commission there is a difference. Ameritech Ohio is a  
18          regulated company, Ameritech Publishing, Ameritech  
19          Advertising, are not.

20          A.   I don't know that.

21          Q.   They are not subject to the jurisdiction of  
22          this Commission. So therefore, I need you to answer  
23          for me, if you can, was Joanne Zivsak the person you  
24          dealt with on your Yellow Pages advertising?

25          A.   I believe she is the lady. I never met the

1 lady and I believe she is the lady.

2 Q. Okay.

3 A. She represented Ameritech to me.

4 Q. Okay. I understand.

5 MR. HUNT: Your Honor, may I  
6 have the copy of Complainants' Exhibit No. 2, please?

7 MR. COCHRAN: This is 4, 7, 8.  
8 What is 2; do you recall?

9 MR. HUNT: It's the stipulated  
10 order.

11 MR. COCHRAN: Five and 6. Oh, copy  
12 of the order. Oh, it's the one with the faxes to you.  
13 Where did it go? Is it up there?

14 THE WITNESS: What are you looking  
15 for?

16 THE EXAMINER: Exhibit 2.

17 MR. COCHRAN: Do you have any  
18 exhibits there?

19 THE EXAMINER: Complainants'  
20 Exhibit 2.

21 THE WITNESS: There's 1 and I see  
22 Exhibit 3.

23 MR. COCHRAN: We're looking for 2.  
24 Are you sure -- Here's 1 here.

25 MR. COCHRAN: I think you have --

1 MR. HUNT: Your Honor, could we  
2 go off the record?

3 THE EXAMINER: Let's go off the  
4 record.

5 (Discussion held off the record.)

6 BY MR. HUNT:

7 Q. All right. Now, Mr. Zames, handing you what's  
8 been previously marked for identification purposes as  
9 Complainants' Exhibit 2. That document on its face was  
10 sent to Tyrone Tarrt at Ameritech Publishing; is that  
11 correct?

12 A. Yes.

13 Q. In Michigan.

14 A. I don't see anything that says Michigan,  
15 but...

16 Q. Did you have any idea of where Mr. Tarrt was?

17 A. No, not really.

18 Q. All right. Now, do you know what time of day  
19 on the 30th of June you finally agreed to the  
20 stipulated injunction?

21 A. I don't remember.

22 Q. Am I correct in assuming that you were not  
23 present where these negotiations were taking place; is  
24 that correct?

25 A. Physically, I was not present, that's correct.



1 Q. Where were you that day?

2 A. Either at my office or home, depending on the  
3 time of day.

4 Q. And you were communicating with your lawyer by  
5 telephone?

6 A. That's correct.

7 Q. Would you look at Respondent's No. 1 again,  
8 specifically the response to 2b on Page 3? Do you find  
9 my reference?

10 A. Yes, I do.

11 Q. Now, that question asked you to provide a copy  
12 of the order in which you contend the court order  
13 provided that service of the order on Ameritech would  
14 be sufficient authorization to withdraw said listing.  
15 Do you find my reference? That's the question.  
16 Page 3.

17 A. Yes, I see the question.

18 Q. Okay. And your response is "See Exhibit Z,"  
19 correct?

20 THE EXAMINER: Exhibit 2.

21 THE WITNESS: It says, "See  
22 Exhibit 2."

23 BY MR. HUNT:

24 Q. I'm sorry. "See Exhibit 2." You see my  
25 reference?

1 A. I see that, yes.

2 Q. Now, would you look at what's marked in  
3 response to that package as Exhibit 2 in Respondent's  
4 No. 1 back in the back?

5 A. Okay. I see Exhibit 2 in the back.

6 Q. All right. Now, Exhibit 2 is a one-, two-,  
7 three-, four-, five-page document, correct?

8 A. Yes.

9 Q. All right. Now, this five-page document is  
10 what you've represented as being the order which caused  
11 you to be prohibited from listing and using the RE/MAX  
12 name; is that correct?

13 A. Yes.

14 Q. Now, you've also represented in your direct  
15 testimony this morning that Complainants' 2 represents  
16 a copy of that same order; is that correct?

17 (Pause.)

18 A. Yes.

19 Q. You've represented them to be the same?

20 A. No. I think we talked about signatures being  
21 on one --

22 Q. All right.

23 A. -- and maybe not on the other earlier.

24 Q. Now, Attachment 2 -- Attachment 2 -- I'm  
25 sorry, Exhibit 2 to Respondent's No. 1 has two Page 4s,

1 doesn't it?

2 A. Excuse me, sir, I'm not sure which --

3 Q. This is Exhibit 1 of the Respondent.

4 A. Okay.

5 MR. COCHRAN: I stipulate that it  
6 does.

7 BY MR. HUNT:

8 Q. Page 4 and Page 4.

9 A. Yes.

10 Q. All right. Which one is it?

11 MR. COCHRAN: Objection.

12 BY MR. HUNT:

13 Q. Which one is the order? I guess what I'm  
14 saying is, is it the Page 4 that has "G" on it or "H"?

15 MR. COCHRAN: Objection; the  
16 implication of the question.

17 MR. HUNT: There's no  
18 implication in the question. All I would like to know  
19 is which one is the order upon which you're relying?

20 MR. COCHRAN: Well, the implication  
21 of the question is that one of the Page 4s shouldn't be  
22 there. I mean, one is just another signature page.

23 MR. HUNT: Well, it's not just  
24 another signature page.

25 MR. COCHRAN: A counterpart, that's

1 the only difference.

2 MR. HUNT: No, it's not. If you  
3 would take a look at it, please. On the two Page 4s,  
4 the last paragraph is numbered G on one Page 4 and H on  
5 the other one, so it must not be that they are the  
6 same.

7 MR. COCHRAN: No, I'm just saying  
8 the two Page 4s, the second Page 4 was put in there for  
9 countersignature of the other defendant.

10 MR. HUNT: So we have  
11 counterpart signatures that don't conform.

12 THE EXAMINER: What does Paragraph  
13 G -- H state?

14 MR. COCHRAN: Paragraph H states,  
15 "Magistrate Judge Streepy is authorized to sign and  
16 enter this order, with the same force and effect as if  
17 it were signed and entered by a United States District  
18 Judge."

19 THE EXAMINER: It's a procedural  
20 paragraph?

21 MR. COCHRAN: Yes. That's what it  
22 is.

23 THE EXAMINER: Does it have anything  
24 to do with the substance of the order?

25 MR. HUNT: Your Honor, my

1 purpose is basically this, it's really two-fold: One  
2 is, the essence of this complaint is that an order of  
3 the federal court has somehow impacted the Complainant.  
4 I think it's fair to know which order we're talking  
5 about, whether it's the one that contains H or not.

6 THE EXAMINER: Is there any  
7 difference between the two besides the procedural  
8 paragraph?

9 MR. HUNT: Not to my knowledge.

10 THE EXAMINER: You don't think so,  
11 either?

12 MR. COCHRAN: No.

13 THE EXAMINER: Okay. We agree then,  
14 there's no difference.

15 MR. COCHRAN: I won't argue that.

16 BY MR. HUNT:

17 Q. Now, the other aspect I would like to have an  
18 understanding of, is it your understanding that  
19 Elizabeth Zames signed this on July the 5th, 1995?

20 A. If that's the date that's there. I have to  
21 assume that.

22 Q. All right.

23 A. Maybe I shouldn't assume that. I don't know  
24 that to be fact.

25 Q. All right. Would it be fair to say that the

1 order which you say impacted you, which is the context  
2 of this particular litigation, is the one that you've  
3 introduced and marked -- I'm sorry, have marked as  
4 Complainants' No. 2; is that fair to say?

5 MR. COCHRAN: I'm not sure the two  
6 orders are substantively the same.

7 MR. HUNT: They're not the same.

8 MR. COCHRAN: One is signed by  
9 Elizabeth Zames and one is not.

10 MR. HUNT: And the other one is  
11 signed by Judge Streepy and the other one is not.

12 MR. COCHRAN: All right.

13 MR. HUNT: The other one is  
14 signed by you and the other one is not. One is signed  
15 by Mr. Zames and the other one is not.

16 THE EXAMINER: We've agreed that  
17 both are substantively the same.

18 MR. COCHRAN: If by mistake an  
19 unsigned copy was given in answer to interrogatories,  
20 so what? We both know what you were faxed by your own  
21 fax from your own records, so we will stipulate for the  
22 record that in an answer to the interrogatories you  
23 have a copy of the order that's substantively the same  
24 that is not signed by Judge Streepy. I will stipulate.  
25 We will confess that apparently I made a mistake, but

1 the two orders are the same other than that. What  
2 difference is there other than the signatures of Zames  
3 and Streepy?

4 MR. HUNT: May I respond?

5 THE EXAMINER: Yes.

6 MR. HUNT: Your Honor, my only  
7 purpose is to establish one order upon which they're  
8 relying, and my reason is this: This one has been  
9 signed by a representative or the magistrate of federal  
10 court. It also has marginalia written on it not  
11 contained on the one attached to interrogatories. If  
12 they made a mistake, I don't care, it doesn't matter,  
13 as long as they're not relying on that.

14 MR. COCHRAN: Yes, we will  
15 stipulate, to save time for everybody, the order we're  
16 talking about is the one signed by Streepy that was  
17 faxed to your client on June 30th.

18 MR. HUNT: Well, let's correct  
19 the record, as well. I do not represent Ameritech  
20 Publishing, I represent Ameritech Ohio. Ameritech  
21 Publishing is not a party to this proceeding, their  
22 counsel is, Tyrone Tartt.

23 MR. COCHRAN: I misstated. The  
24 order that was faxed to the general counsel for  
25 Ameritech Publishing and hand delivered to your counsel

1 several days later is the one signed by Judge Streepy.

2 MR. HUNT: All right.

3 MR. COCHRAN: And I apologize to  
4 the court for Mr. Zames did not make that mistake, I  
5 did, that is my mistake, you're correct in pointing it  
6 out, and I just don't want to waste any more time on  
7 that than we have to.

8 THE EXAMINER: All right. Let's  
9 proceed to another item.

10 BY MR. HUNT:

11 Q. Now, Mr. Zames, Complainants' Exhibit No. 2  
12 also specifies that as of June 30, 1995, this order  
13 applies only to Robert Zames. Do you find my  
14 reference?

15 A. I do.

16 Q. So it was your understanding as of June 30th,  
17 1995, that this order as of that date applied only to  
18 you and not to Elizabeth Zames; is that correct?

19 A. That's what it says.

20 Q. Was that your understanding?

21 A. I don't think I gave that a whole lot of  
22 thought, frankly.

23 Q. All right. Now, the order attached to --  
24 Strike that. Thank you.

25 During the course of your negotiations with



1 Jones-Day and your counsel's negotiations with  
2 Jones-Day, in the week of -- week before June 30th,  
3 1995, which you testified on direct you had a number of  
4 conversations with your lawyer when this was all going  
5 on, right?

6 A. Yes.

7 Q. It was your understanding, was it not, that  
8 the last day to remove listings from the Lake County  
9 White Pages was June 30th, wasn't it? That's what made  
10 June 30th important.

11 A. At the time I'm not, frankly, sure I knew what  
12 made that day important.

13 Q. All right. Did you ever recall seeing an  
14 affidavit from Lou Ann Trumka of Ameritech Publishing  
15 indicating that the last day was June 30th of '95?

16 A. If I do, I don't recall, you know. If you let  
17 me look at it, I could perhaps answer that question.

18 MR. HUNT: I don't have extra  
19 copies of this, your Honor. I apologize. I didn't  
20 know whether I was going to use it or not.

21 THE WITNESS: I've never seen this  
22 before.

23 BY MR. HUNT:

24 Q. All right. So what you're telling us is, as  
25 you sit here today, you really don't recall whether you

1 knew June 30th was the last day to withdraw Yellow  
2 Pages listings or not?

3 A. That is correct.

4 Q. All right. Now, handing you what's been  
5 marked previously as Complainants' Exhibit 7, which was  
6 represented as a copy of the White Pages listing --

7 A. Yes.

8 Q. -- that also has marginalia written in. The  
9 word "Zames" in the listing, was that for your  
10 attorney's benefit, too?

11 MR. COCHRAN: By "marginalia," you  
12 mean additional handwritten --

13 BY MR. HUNT:

14 Q. Handwritten, not printed.

15 A. I don't remember. I don't know if -- I don't  
16 remember.

17 Q. We can agree, can we not, that as published,  
18 just the printed words are the only things that were  
19 published, the word "Zames" was not specifically  
20 listed?

21 A. Zames was not specifically listed, that's  
22 correct.

23 Q. Okay.

24 MR. COCHRAN: Yes, we will  
25 stipulate to that.

1 BY MR. HUNT:

2 Q. So the listing that, in fact, appears is one  
3 for Betty Zames at 975-0899 under the heading "RE/MAX  
4 Masters Real Estate"?

5 A. Yes.

6 Q. And also one for Appraisals at 639-4334;  
7 right?

8 A. Yes, that's correct.

9 Q. Now, on the left on the board is what you  
10 asked to be placed on 5-15 of '95; on the board on the  
11 right is what appeared in August of '95.

12 A. Could I make a comment?

13 Q. Absolutely.

14 A. That number by Appraisals on the left I think  
15 should be 639.

16 MR. COCHRAN: It is 639.

17 MR. HUNT: Oh, okay. Yes.

18 BY MR. HUNT:

19 Q. All right. Now, my first question is this:  
20 We established earlier that you agreed as a part of an  
21 arbitration agreement not to use the word "RE/MAX" and  
22 its logos, et cetera, in January of '95.

23 A. Uh-huh.

24 Q. Yet, in May of '95, you specifically  
25 authorized the listing -- this listing -- or, ordered

1 this listing with Ameritech Publishing.

2 Why did you do that if you weren't allowed to  
3 use the name RE/MAX?

4 A. RE/MAX Masters is another RE/MAX franchisee.  
5 Elizabeth Zames transferred her license to RE/MAX  
6 Masters.

7 Q. From where?

8 A. From Zames Realty. RE/MAX Masters gave Betty  
9 Zames permission to run an ad, a listing in the phone  
10 book, so that's the listing. That's how that listing  
11 involved --

12 Q. But Betty Zames didn't place this listing, you  
13 did.

14 A. That's correct, I did, to help her.

15 Q. Okay. So what you're saying is you placed  
16 this listing as an agent for RE/MAX Masters?

17 A. I was helping her get the ad, the listing in  
18 the book; yes, that's correct.

19 Q. Who do these telephone numbers belong to?

20 A. 639-4333, 639-4334 belong to Zames Realty,  
21 Inc.; 975-5964 belongs to me; 975-0899 belongs to her  
22 as a voicemail number.

23 Q. So what you're saying is, even though you were  
24 prevented from using the logo, RE/MAX, and the RE/MAX  
25 name, by virtue of an agreement with another franchisee

1 of RE/MAX, you listed or proposed to have listed in the  
2 1995 White Pages --

3 A. Yes.

4 Q. -- your telephone numbers and Betty Zames'  
5 telephone numbers along with your names; is that  
6 correct?

7 A. That is correct.

8 Q. And that's why you got sued, isn't it?

9 A. There's more to it, if you'll let me finish.

10 Q. Be my guest.

11 A. Okay. Those numbers that were with Zames  
12 Realty, Inc. were going to be transferred to RE/MAX  
13 Masters, but we never got that far.

14 Q. Why didn't you get that far?

15 A. Because other things started to happen.

16 Q. The arrangement with RE/MAX Masters fell  
17 apart, didn't materialize?

18 A. Not with me. I had no arrangement with her.

19 Q. But you were listing your name with her.

20 A. But as you'll notice on one of these exhibits,  
21 I took it out.

22 Q. You proposed to take it out.

23 A. I proposed to take it out.

24 Q. All right.

25 A. That's right.

1 Q. All right. Okay. And it didn't appear, in  
2 any event, so it doesn't matter, does it?

3 A. That one really doesn't matter, no.

4 Q. All right. So you were being a little  
5 aggressive when you put this one in originally on the  
6 15th, but a few days later, or sometime later, nah,  
7 better not do that, you took it out; is that right?

8 A. I don't remember a few days or whatever it  
9 was, but I attempted to take it out.

10 Q. Sometime later.

11 All right. Now, Appraisals, however, lists  
12 639-4334, and that's your number, isn't it?

13 A. It was at the time, yes.

14 Q. It was at the time.

15 And you're an appraiser, aren't you?

16 A. That's correct.

17 Q. You were at the time?

18 A. So is Betty Zames.

19 Q. But Betty Zames' number wasn't listed, it was  
20 your number that was listed, right?

21 A. But I just stated a minute ago those two  
22 numbers were going to be assigned to RE/MAX Masters.

23 Q. All right. Now, were you going to be joining  
24 RE/MAX Masters as well?

25 A. Absolutely not.

1 Q. Okay. So basically, you were going to give  
2 your numbers to RE/MAX Masters because Betty Zames was  
3 going to be going with them?

4 A. So she could do business, yes.

5 Q. Okay. Fine.

6 Now, in the court order -- Strike that.

7 Would you pull out the order attached to  
8 Complainants' Exhibit 2, and specifically the  
9 stipulated order of injunction? This is the one  
10 assigned -- or, signed by Magistrate Judge Streepy and  
11 on its face applies only to you, right?

12 Now, looking at that order, specifically  
13 Paragraph C on Page 2, that paragraph says that,  
14 "Robert Zames and Elizabeth Zames, and any persons in  
15 active concert or participation with them, shall  
16 immediately cease from any further conduct or  
17 advertising," and then it lists some various provisions  
18 of that paragraph. Do you find my reference?

19 A. I do.

20 Q. Then in the following one, following  
21 paragraph, it says that you'll cease advertising or  
22 further use of the telephone number 639-4338 -- -33,  
23 right?

24 A. Yes.

25 Q. Does telephone number 975-0899 appear in that

1 order?

2 MR. COCHRAN: To save time, we'll  
3 stipulate it doesn't appear, that number.

4 BY MR. HUNT:

5 Q. And the order on its face, Complainants'  
6 Exhibit 1 -- or, Exhibit 2 --

7 A. Yes.

8 Q. -- does not apply to Betty Zames, does it?

9 A. Not according to the handwriting that's  
10 written in there, yes.

11 Q. Would you agree with me also that the order  
12 does not contain a specific reference to the number  
13 639-4334, either?

14 A. If it does, I don't see it. I see one number.

15 Q. And would you agree with me that it contains a  
16 specific reference to you by name?

17 A. Yes, it does.

18 MR. COCHRAN: A brief objection on  
19 the record. The provision in this order, which is  
20 relevant today, which is Paragraph A, does not refer to  
21 any phone number by number, and I think it's  
22 misleading, the question, to suggest that the provision  
23 we're talking about refers to any specific numbers.  
24 There's another provision later in the order that does,  
25 of course, but that's my objection.



1 THE EXAMINER: Proceed.

2 MR. HUNT: Thank you.

3 BY MR. HUNT:

4 Q. So would you agree with me that specifically  
5 there's nothing in the order that says specifically  
6 take out this reference to Betty Zames at 975-0899 and  
7 nothing in the order specifically that says take out  
8 this reference to Appraisals at 639-4334?

9 MR. COCHRAN: Objection. Same  
10 objection. It's misleading to the extent that it's a  
11 matter of interpretation for what that question means  
12 as against this order. Paragraph A of the order says  
13 remove any listings of any number that mentions the  
14 name RE/MAX. So does that include these numbers? Yes,  
15 I guess it does. You seem to be asking him does it  
16 list the number anywhere. Of course, it does not.  
17 Therefore, I think that question is misleading for that  
18 reason.

19 MR. HUNT: My question goes to  
20 whether any -- there's any specific reference to those  
21 two items; and, secondly, this complaint sounds in  
22 gross negligence. It seems to me at a minimum if  
23 you're going to accuse somebody of gross negligence the  
24 instructions ought to be very clear.

25 MR. COCHRAN: I'll reserve that for

1 argument.

2 THE EXAMINER: Okay. Go ahead.

3 Keep asking.

4 BY MR. HUNT:

5 Q. Now, handing you what's been marked for  
6 identification purposes as Complainants' No. 5, I would  
7 ask you to examine that document and compare it with  
8 Exhibit 4 attached to Respondent's No. 1.

9 MR. COCHRAN: If it will help save  
10 time -- You can ask him these questions, I have no  
11 objection, but if it will help save time, it would  
12 appear that the document which was made an exhibit  
13 earlier this morning is the same except that there's  
14 some subsequent writing on it and we probably ought to  
15 use the one that's attached to the interrogatories, if  
16 that saves any time.

17 BY MR. HUNT:

18 Q. My question is: You said you sent an  
19 instruction to Ameritech with the one number crossed  
20 out, 4334 crossed out, and 5131 written in. When did  
21 you do that?

22 A. June 30, the date of the fax.

23 Q. Well, why did you supply your attorney with  
24 Exhibit 4, which is the one that's not written in?

25 A. I gave him all -- I gave him all of the

1 information that I had, everything.

2 Q. So what you're saying is, you sent Exhibit 4  
3 attached to Respondent's 1 on June 30th and the same  
4 day you sent a correcting one, which was Complainants'  
5 No. --

6 A. 5.

7 Q. -- 5?

8 A. When I do faxes and I date them, I send them  
9 the day that I do them, so June 30.

10 Q. So the answer is yes?

11 A. The answer is yes.

12 Q. And this is the same June 30th that you're  
13 talking to your lawyer about entering into this  
14 stipulated agreement, right?

15 A. Earlier in the day, I'm sure.

16 Q. Well, earlier in the day?

17 A. I don't know how much earlier.

18 Q. Do you know when Jones-Day transmitted the  
19 stipulated order of injunction to Tyrone Tarrt at  
20 Ameritech Publishing?

21 A. What time?

22 Q. Yes.

23 A. I would have -- No, I don't.

24 Q. If I represented to you it was after 4:00  
25 o'clock in the afternoon...

1 A. I have no way of knowing that.

2 Q. And it's your testimony that after 4:00  
3 o'clock in the afternoon you sent two faxes to Pat  
4 Andreas -- or, Andreatis regarding this listing for  
5 Zames Realty?

6 A. Apparently. I don't know if it was after  
7 4:00, either.

8 Q. Well, but it was after you agreed to the  
9 entry --

10 A. Slightly.

11 Q. -- which was agreed to at 4:00 o'clock?

12 A. But I don't know the exact time that was; I  
13 don't remember.

14 Q. Now, Pat Andreatis worked for Ameritech  
15 Publishing, as well, with the Yellow Pages, right?

16 A. The ladies that I address these faxes to, you  
17 know, to my knowledge worked for Ameritech, and I have  
18 no way of knowing how to differentiate between that.

19 Q. Would it be fair to say that you communicated  
20 to the same person with that communication,  
21 specifically Complainants' Exhibit No. 5, as you  
22 communicated with in Complainants' No. 4?

23 A. Again, to me, you know, Ameritech -- really,  
24 Ameritech is Ameritech to me, and I have no way of  
25 really differentiating.

1 Q. I understand.

2 A. I really don't know.

3 Q. I understand, but it is of significant legal  
4 significance.

5 What I'm asking you is, as you sit here today,  
6 you cannot say you communicated personally through any  
7 of these faxes to Ameritech Ohio, the Respondent in  
8 this case, can you?

9 A. I have absolutely no way of knowing that. To  
10 me, Ameritech is Ameritech.

11 Q. That's fine. Thank you.

12 A. You're welcome.

13 Q. Now, just for purposes of the record, your  
14 Complainants' Exhibit No. 2 contains the fax  
15 transmission report from Jones-Day to Tyrone Tartt,  
16 Ameritech Publishing attorney, and note the time that  
17 it was sent, and that was 4:19 p.m.

18 A. That's what this states, yes.

19 Q. Now, does Betty Zames still work for RE/MAX  
20 Masters?

21 A. No.

22 Q. Did that arrangement ever take place?

23 A. Yes, it did.

24 Q. Okay. And she worked for them in August of  
25 '95?

1           A.   For some period of time of which, you know, I  
2   don't remember how long it was.

3           Q.   So in your view, this was a permissible  
4   listing, the Betty Zames 975-0899 under RE/MAX Masters  
5   Real Estate?

6                   MR. COCHRAN:           Objection. That  
7   wasn't the time. You mean before the order?

8                   MR. HUNT:             No, at the time the  
9   book was published.

10                  MR. COCHRAN:           After the order?

11                  MR. HUNT:             Well, if the order  
12   was June 30th, I guess that would be after it, yeah.

13                  MR. COCHRAN:           I mean, I don't know  
14   how -- Object. I don't know how we can ask this  
15   witness -- I guess I don't object to him answering. I  
16   guess it's misleading asking him to interpret the  
17   order. The order says no listing of Betty Zames or Bob  
18   Zames having to do with RE/MAX. The order on June 30,  
19   which was not signed by Betty Zames, said any order  
20   placed by Bob Zames. Whether it's Joe Smith, doesn't  
21   matter who it is, if the order was placed by Bob Zames,  
22   it was improper.

23                         Now, if you want to ask him what his  
24   understanding is, that's fine, but I don't want to  
25   confuse the record by not objecting.

1 THE EXAMINER: Read back the  
2 question and see if we can get an answer to it.

3 (Record read back as requested.)

4 BY MR. HUNT:

5 Q. My question was in your view.

6 A. You know, I don't have reason to think  
7 otherwise.

8 Q. Well, in August of '95 was Betty Zames working  
9 for Masters Real Estate?

10 A. I don't know. I don't remember. I would have  
11 no way of knowing.

12 MR. COCHRAN: Again, I object. If  
13 you're asking was it proper when it was placed, that's  
14 one question. Was it proper after the June 30 order,  
15 the answer to that must be obvious, but you still  
16 haven't told him that.

17 MR. HUNT: Well, I asked him his  
18 view and I asked him also about this listing.

19 BY MR. HUNT:

20 Q. Let me phrase it this way: Betty Zames had  
21 the number 975-0899; is that correct? That was her  
22 number?

23 A. Yes, that's correct.

24 Q. All right. And she's not a complainant in  
25 this case, is she?

1 A. No.

2 Q. So this listing really has nothing to do with  
3 this case, does it?

4 MR. COCHRAN: Objection. The order  
5 states that any listing ordered by Bob Zames, whether  
6 it's for Betty Zames or Ed Cochran, must be revoked.  
7 It's unfair to ask this witness to constantly frame  
8 answers based upon interpretation and knowledge of the  
9 injunction.

10 THE EXAMINER: Respond to that?

11 MR. HUNT: I'm sorry?

12 THE EXAMINER: You want to respond  
13 to that?

14 MR. HUNT: Yes, please.

15 Your Honor, the essence of this complaint  
16 is that Ameritech Ohio was grossly negligent because it  
17 failed to follow a federal court order which resulted  
18 in a number of problems for Mr. Zames and Zames Realty.

19 We have a listing here that belongs to  
20 Betty Zames, but this witness has no knowledge as to  
21 whether it's permissible or not, but because he placed  
22 it, it is somehow connected to this case.

23 I guess what I'm trying to establish for  
24 the record is specifically what was wrong, and based on  
25 the testimony we've heard this morning, I believe that



1 either this witness has no standing to complain about  
2 this listing, because it's not his, or it wasn't wrong,  
3 because she was associated with RE/MAX Masters. I  
4 think it's got to be one or the other.

5 MR. COCHRAN: May I?

6 THE EXAMINER: Go ahead.

7 MR. COCHRAN: Number one, the order  
8 states that Robert Zames shall immediately rescind all  
9 orders that he placed, and they knew -- we all knew at  
10 the time that Betty Zames' phone numbers, all of them,  
11 had been placed by Bob. They also included Betty  
12 because they don't know if she had placed other orders  
13 on her own. The order applies to any White Pages  
14 listing ordered by Bob Zames.

15 Secondly, Betty Zames wasn't -- I mean, I  
16 don't think it's relevant and there's no evidence here,  
17 but she was not affiliated with RE/MAX Masters at that  
18 time. She's not here to testify because that's  
19 irrelevant.

20 That listing is proscribed by this order  
21 for the simple reason that it was a listing placed by  
22 Bob Zames. Any order placed by Bob Zames had to be  
23 revoked. That's why he sent an order for a new listing  
24 on June 30.

25 THE EXAMINER: Okay. Here's my

1 ruling. We'll let that substance of the order stand as  
2 his answer to the question, that any order placed by  
3 Bob Zames wasn't to be listed. As I understand it,  
4 that's what you maintain; is that correct?

5 THE WITNESS: Yes, your Honor.

6 THE EXAMINER: Okay. Now we'll  
7 proceed to another question, Mr. Hunt.

8 BY MR. HUNT:

9 Q. Mr. Zames, it's your testimony that the  
10 federal court order required you to rescind your  
11 advertising -- or, the advertising that you placed on  
12 May 15, correct?

13 A. Any listing in the phone book.

14 Q. What I'm talking about is what's on the board.

15 A. Okay. Yes.

16 Q. Yes.

17 And to get that accomplished, you relied on  
18 Jones-Day to fax a copy of the stipulated injunction to  
19 Tyrone Tarrt, counsel for Ameritech Publishing; is that  
20 correct?

21 A. You know, at the time I didn't know who they  
22 were communicating with.

23 Q. But you relied on that communication to  
24 whoever?

25 A. Absolutely. Absolutely.

1 Q. All right.

2 MR. HUNT: If I can have one  
3 minute, your Honor.

4 THE EXAMINER: Yes.

5 (Pause.)

6 MR. HUNT: Nothing further, your  
7 Honor.

8 Thank you, Mr. Zames.

9 THE WITNESS: You're welcome.

10 THE EXAMINER: Redirect?

11 MR. COCHRAN: Very briefly.

12 - - -

13 REDIRECT EXAMINATION

14 BY MR. COCHRAN:

15 Q. Mr. Zames, you heard testimony about the  
16 distinction between Ohio Bell, Ameritech Publishing,  
17 Ameritech Ohio, subsidiaries of Ameritech, correct?

18 A. Yes.

19 Q. Now, you faxed to Joanne Zivsak your listing  
20 that was pending on June 30th, correct?

21 A. I'm not sure which fax you're referring to.

22 Q. The May 15th fax to Joanne Zivsak.

23 MR. COCHRAN: Do you have the  
24 exhibits there?

25 Here it is right here.

1 BY MR. HUNT:

2 Q. Complainants' 3, the May 15th fax, the one  
3 that ordered the service --

4 A. Yes.

5 Q. -- was to a lady named Joanne Zivsak.

6 A. Yes, sir.

7 Q. Now, in the past, did she handle your White  
8 Pages listings?

9 A. I don't know who did.

10 Q. Did you fax -- In the past, did you deal with  
11 more than one person for your White or Yellow Pages, or  
12 did you deal with one person?

13 A. I don't remember.

14 Q. And where did you get the name of Pat  
15 Andreatis for purposes of your June 30 fax?

16 A. I don't remember.

17 MR. COCHRAN: That's all I have.

18 THE EXAMINER: Okay. Any recross?

19 MR. HUNT: No. Thank you, your  
20 Honor.

21 THE EXAMINER: Okay. Before I  
22 excuse you, I just want to clarify a couple of points  
23 here.

24 It's obvious that Elizabeth and Betty  
25 Zames, your wife, are one in the same person, right?

1 THE WITNESS: Yes, your Honor.

2 THE EXAMINER: Okay. And we've  
3 spoken here today of a number of versions of the  
4 court's order having to do with signatures. I assume  
5 they were sent to the person for signature and then  
6 sent back; is that correct?

7 MR. COCHRAN: Yes. Would it help  
8 to describe that?

9 THE EXAMINER: Okay. Go ahead.

10 MR. COCHRAN: Basically, on June  
11 30th, I did not represent Betty Zames, the main person  
12 they were concerned about is Bob Zames. We signed for  
13 Bob Zames on June 30th, we all knew that he had ordered  
14 the service, the telephone service, that's all they  
15 were concerned about. Later -- Betty Zames decided  
16 later in the month to consent to the same injunction,  
17 which resulted in another version of the order with a  
18 signature page for her.

19 THE EXAMINER: Okay. And the  
20 arbitration agreement, Mr. Hunt spoke of that, that was  
21 in December of '94, correct, with RE/MAX?

22 MR. HUNT: A supplement in  
23 January.

24 MR. COCHRAN: Yes, I could clarify  
25 that for you.

1 MR. HUNT: That's Joint 1.

2 MR. COCHRAN: In December of '94  
3 there was an arbitration agreement. I guess it was in  
4 January it was supplemented that he wouldn't -- Zames  
5 wouldn't use any RE/MAX logos or names, et cetera,  
6 pending the arbitration.

7 Subsequent to January, there was a legal  
8 ruling obtained that they could affiliate with RE/MAX  
9 Masters and at least have a phone number that way.

10 When RE/MAX found out about that, that's  
11 when they sued us, which resulted in this injunction,  
12 and which we agreed we wouldn't list it anywhere,  
13 period, end of sentence.

14 That's what caused the -- That's why  
15 there was a dispute over the logos, even after the  
16 January letter, because there was an advice given that  
17 even though your franchise was cancelled, you're a  
18 realtor in Ohio, you can affiliate with whoever you  
19 want, which is true, and they were going to affiliate  
20 with Masters, RE/MAX obviously didn't agree with that,  
21 they sued us, i.e., the injunction.

22 THE EXAMINER: Okay.

23 MR. COCHRAN: We agreed to walk  
24 away from everything, not have any listing of any sort  
25 having in the world to do with RE/MAX.

1 THE EXAMINER: And what was the  
2 original dispute about, the arbitration agreement? Is  
3 that something that's confidential?

4 MR. COCHRAN: We go back in history  
5 on the thing is Bob Zames suing RE/MAX alleging  
6 misrepresentation in the sale of the franchise. He  
7 then stopped making his payments to them and they then  
8 cancelled his franchise. Sort of a routine series of  
9 events. They're still in court. They have an  
10 arbitration trial coming up. None of these issues is  
11 relevant to the arbitration, but they have been settled  
12 by Bob Zames entering into a second injunction at his  
13 contempt trial that puts him in a situation even worse  
14 than the first. That's all resolved. So this  
15 subject -- None of this subject is any longer relevant  
16 to the arbitration.

17 THE EXAMINER: Okay. You agree with  
18 that, Mr. Hunt, that's the sequence of events as you  
19 know them, to your knowledge?

20 MR. HUNT: To my knowledge;  
21 although, I must say that Mr. Cochran's knowledge far  
22 exceeds what I know. What I knew was based on the one  
23 letter which I introduced as Joint 1, which was  
24 provided to my client by Jones-Day.

25 THE EXAMINER: Okay.

1 MR. COCHRAN: Well, I'm an officer  
2 of the court and attorney, I consider what I'm saying  
3 to be under oath.

4 THE EXAMINER: All right. You're  
5 excused.

6 THE WITNESS: Thank you, your  
7 Honor.

8 (Witness excused.)

9 (Short recess taken.)

10 THE EXAMINER: Back on the record.  
11 You may call your witness, Mr. Hunt.

12 MR. HUNT: Call Thomas Linton.

13 (Witness was sworn.)

14 THE EXAMINER: Be seated.

15 - - -

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1 THOMAS A. LINTON

2 being first duly sworn, as prescribed by law, was  
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. HUNT:

6 Q. Would you state your name for the record,  
7 please?

8 A. My name is Thomas A. Linton, L-i-n-t-o-n.

9 Q. Mr. Linton, by whom are you employed?

10 A. I'm employed by Ameritech Corporation.

11 Q. What is your position?

12 A. I'm an attorney.

13 Q. Are you licensed to practice law in this  
14 state?

15 A. Yes, I am.

16 Q. How long have you been an attorney?

17 A. Twenty-three years.

18 Q. Mr. Linton, did you have occasion to become  
19 involved with the White Pages listings for Zames Realty  
20 and Robert Zames?

21 A. Yes, I did.

22 Q. When did you -- When did this matter first  
23 come to your attention?

24 A. In May of 1995.

25 Q. And what was the occasion?

1           A.   I received a series of telephone calls from an  
2   Attorney Silverstein who was with Jones-Day. He was  
3   one of a group of attorneys representing RE/MAX  
4   International in some disputes they had with Mr. Zames,  
5   and he indicated to me that he would be sending me some  
6   paperwork that would allow Ohio Bell, for whom I worked  
7   at the time, Ameritech Ohio, to transfer a certain  
8   telephone number from Mr. Zames to RE/MAX  
9   International.

10          Q.   Handing you what's been previously marked as  
11   Joint Exhibit No. 1, purporting to be a letter to  
12   Mr. Edward W. Cochran, dated January 17th, 1995, and a  
13   facsimile sheet dated May 24th, 1995, to you from  
14   Jones-Day.

15                I ask you, is that the document that was  
16   communicated to you?

17          A.   Yes, that's correct.

18          Q.   Okay.

19          A.   It is.

20          Q.   What did you do in response to that telephone  
21   call and that communication?

22          A.   I advised my client that this letter  
23   constituted Mr. Zames' consent to transfer that  
24   particular phone number to comply with the requirement  
25   of the tariff that you needed consent of the old

1 customer to transfer a number to a new customer, and I  
2 understand they accepted my advice and went ahead and  
3 did that.

4 Q. What telephone number's referred to in that  
5 letter?

6 A. Well, it may be in the letter, but I sure  
7 don't remember, my own personal knowledge. I could  
8 consult my notes. It's none of the numbers that are up  
9 there.

10 Q. Okay. Then let's move on.

11 Did you have any other involvement about Zames  
12 Realty and Robert Zames and his listings?

13 A. Well, I had phone calls from time to time from  
14 Mr. Silverman (sic). Apparently, there was ongoing  
15 disputes. At one point he informed me that Mrs. Zames  
16 had a relationship with another outfit in Youngstown  
17 called RE/MAX Masters and that they felt this was a  
18 scam of some kind and they were going to do something  
19 about it.

20 I said that -- I reminded them that since we  
21 were a regulated entity we would require some kind of  
22 court order under federal law or the consent of  
23 Mr. Zames before we could do anything, and don't bother  
24 to go to state court, only the PUCO has jurisdiction  
25 over these matters.

1 Q. And that was in the late May, early June time  
2 frame?

3 A. That probably would have been mid-June,  
4 somewhere in that period.

5 Q. Of 1995?

6 A. 1995, yes, sir.

7 Q. Now, what happened next?

8 A. Well, on July the 3rd of 1995, in the  
9 afternoon, I received a phone call that there was a  
10 messenger downstairs for me, and my secretary went  
11 downstairs and there was a package from Jones-Day from  
12 Mr. Silverstein that had a letter and attached court  
13 order.

14 MR. COCHRAN: Thank you.

15 MR. HUNT: Can we have this  
16 marked as Complainants' -- or, Respondent's 2, please?

17 - - -

18 Thereupon, Respondent's Exhibit  
19 No. 2 was marked for purposes of  
20 identification.

21 - - -

22 BY MR. HUNT:

23 Q. Now, Mr. Linton, handing you a copy of what's  
24 been marked for identification purposes as Respondent's  
25 No. 2. I ask you if that is the document that you just

1 made reference to -- or, a copy of the document you  
2 just made reference to?

3 A. Well, I have the original here. I could  
4 compare it.

5 Q. All right. If you would do that, please.

6 (Pause.)

7 A. In Respondent's 2 is a copy of the letter and  
8 the attachment, including my handwriting of a phone  
9 number in there for Mr. Vary.

10 Q. What did you do with that document once you  
11 received it?

12 A. Well, the first thing I did is I called  
13 Mr. Silverstein and told him that since this was an  
14 August book it would be some kind of miracle if, in  
15 fact, we could do anything, but that I would do my  
16 best.

17 I then called Carol Dove, who's an employee in  
18 Ohio, who handles small business service, the kind of  
19 service we're talking about here, and told her that as  
20 best I understood the order, which is rather confusing,  
21 was confusing to me and I think it's confusing now,  
22 given the limitation that it applied only to Robert  
23 Zames, that was somewhat inconsistent with the whole  
24 tenor of the letter, and I didn't really understand  
25 about this business about shall operate as an order to

1 Ameritech, it's either an order to Ameritech or it's  
2 not, and I had no understanding with anybody that we'd  
3 be bound. We weren't a party to the case. We had no  
4 notice.

5 But the best I made out, I told her that my  
6 advice would be remove any listing that associates  
7 RE/MAX with Mr. Zames and remove the listing for the  
8 4333 number because that's going to be transferred like  
9 the other one had been to RE/MAX International, and she  
10 told me that she didn't know whether that was possible  
11 at that point, this was after 5:00 o'clock now on July  
12 the 3rd, but that she would do her best.

13 Q. So your instruction to her was to the extent  
14 that it was still possible, remove any listing using  
15 639-4333?

16 A. Correct.

17 Q. And any listing relating to Robert Zames under  
18 the heading RE/MAX?

19 A. Right. Because I didn't know at that point  
20 what the status of his orders were. I knew -- I did  
21 have knowledge from checking on things from time to  
22 time that there was some kind of listing for Betty  
23 Zames with RE/MAX Masters, but I didn't know the  
24 details; didn't know them then and don't know them now.  
25 I just wanted to be sure we didn't have a listing for

1 Bob Zames and we didn't have a listing for 4333, if we  
2 could accomplish that, because I -- again, I didn't  
3 know whether the order bound us or not, but I assumed  
4 that since his attorney, Mr. Cochran, had signed it, he  
5 was at least consenting to anything in here as to him,  
6 and again, that that would constitute consent for  
7 tariff purposes.

8 Q. Okay.

9 A. And I throw that around like I'm a regulatory  
10 lawyer, your Honor, I'm not, I'm a litigator, but at  
11 least after 18 years with the company I understood we  
12 needed to comply with something.

13 So whether the order, in fact, was a valid  
14 federal order ordering me to do something or not, I  
15 thought at least it would be consent, and probably, if  
16 we got sued for doing it, we'd be all right.

17 Q. Okay. So you didn't give in the contact that  
18 you made any instructions with regard to Betty Zames  
19 because you had -- because Mr. Silverstein had said she  
20 was associated with --

21 A. No.

22 Q. -- Masters Realty?

23 A. I knew that he had told me that. I remembered  
24 he told me that, but my thinking was the order said on  
25 its face, "This only applies to Robert Zames."

1 Q. I see.

2 A. And, in fact, Carol Dove called me back the  
3 next day and said, "What about listings for Betty  
4 Zames?" And I said, "No, leave those alone.  
5 Presumably at some point they're going to get her  
6 signature and the other shoe will drop."

7 Q. All right. We have in the record as an  
8 attachment to Respondent's 1 a sort of conforming copy  
9 of the order which Elizabeth Zames signed on July the  
10 5th, 1995.

11 Assuming for the purposes of my question that  
12 she did, in fact, do that on the 5th, were you ever  
13 given a copy of that order with her signature which on  
14 its face would appear to apply to her?

15 A. No. Well, I shouldn't say that. A copy of  
16 that order was attached to a brief that RE/MAX filed in  
17 October of 1995. That's the first I saw it and that's  
18 the first I knew of it was in October of '95.

19 Q. So the book published in August of '95 and the  
20 order -- the first time you saw an order with Betty  
21 Zames' name on it and applying to Betty Zames was in  
22 October?

23 A. That's correct.

24 Q. All right. Now, in your conversations with  
25 Mr. Silverstein, did he demonstrate any recognition



1 that the last day for leaving -- or, removing listings  
2 from the White Pages was June 30th of 1995?

3 A. Yeah. When I said to him that this may not be  
4 possible, he said, yes, he knew that June 30th was  
5 the -- was supposed to be the last day, and I told him,  
6 well, sometimes there's a little wiggle room, but I  
7 represented to him that I made no commitment that that  
8 court order would have any consequence whatsoever.

9 Q. Now, did he say to you that he had provided  
10 this also to Mr. Tartt at Ameritech Publishing?

11 A. No, he didn't mention Mr. Tartt.

12 Q. What happened next?

13 A. Well, the next thing that happened is I got a  
14 communication from Jones-Day indicating that they felt  
15 that my client, Ohio Bell, was in contempt of the court  
16 order, and that communication was from Mr. Vary.

17 Q. What was the time frame of that?

18 A. I think that was in October; in other words, I  
19 didn't hear from them when the book came out or for  
20 weeks after that.

21 Q. All right. And what was your response to  
22 Mr. Vary?

23 A. Well, I told Mr. Vary that I was surprised to  
24 hear that, that I hadn't actually looked at the book to  
25 confirm it, but I was pretty sure that we'd taken out

1 the 4333 listing and the listing for Robert Zames  
2 because I was dealing with a reliable person in Carol  
3 Dove who never let me down before, but that I would  
4 look at the book and get back to him.

5 So I went downstairs to the public office and  
6 got a copy of the White Pages for that area and looked  
7 at it, and that's what I saw, those two listings up  
8 there (indicating).

9 Q. And you found, in fact, that the 4333 listing  
10 had, in fact, been removed?

11 A. Right.

12 Q. And the listing for Robert Zames had been  
13 removed?

14 A. Right.

15 Q. Did that satisfy Mr. Vary?

16 A. Well, apparently not, nor was he satisfied  
17 when I called him back and told him that I didn't think  
18 we'd violated the order; and that on top of that I  
19 don't think the order applied to us in the first place.  
20 He told me that was going to cost my client a lot of  
21 money and embarrass me.

22 Q. I see.

23 All right. Now, why did you believe that the  
24 order didn't apply to Ohio Bell?

25 A. Well, Ohio Bell wasn't a party to the

1 litigation.

2 Q. Was Ameritech a part of the litigation?

3 A. You mean Ameritech Publishing?

4 Q. Ameritech.

5 A. Ameritech? Well, that's a trade name --

6 Q. Okay.

7 A. -- that's not a legal entity, but as far as I  
8 knew, none of the Ameritech companies nor Ameritech as  
9 a name were parties to the original lawsuit, it was  
10 Mr. Zames in his personal capacity and his company, and  
11 I guess his wife, too, somehow, and RE/MAX  
12 International on their part, and I told him that as I  
13 understood the Lanham Act we were not subject to such  
14 an order if we hadn't been made a party since we  
15 weren't acting for Lanham Act purposes in concert with  
16 Mr. Zames or his company, and he told me I was wrong  
17 and basically, in a polite sort of way, I'd be real  
18 sorry that I took that position.

19 Q. All right. Did the court -- Let me roll  
20 forward.

21 So Mr. Vary filed a motion with the federal  
22 court which we've heard discussed this morning relating  
23 to a show cause and Ameritech was named in that,  
24 correct, or Ameritech Ohio?

25 A. Well, Ameritech, Ameritech, Incorporated,

1 Ameritech Publishing, yeah, there were lots of  
2 Ameritech's in the motion.

3 Q. All right. And that those companies be made  
4 to show cause why they weren't in violation of this  
5 order or contempt of the court?

6 A. Yes.

7 Q. Did the court have occasion to rule on that  
8 motion with respect to Ameritech and Ameritech  
9 Publishing, all those other entities?

10 A. Yes.

11 Q. What was the court's ruling?

12 A. The court held that the order didn't compel  
13 Ameritech to do anything, that the order didn't apply  
14 to Ameritech in any way, and that Ameritech would not  
15 have to appear and show cause.

16 MR. HUNT: Your Honor, may I  
17 have this marked as Complainants' -- I think I'm up to  
18 what, 4?

19 THE EXAMINER: What do we have here?  
20 We have 3? Do you remember --

21 MR. HUNT: Not Complainants',  
22 Respondent's. I want Respondent's 3.

23 THE EXAMINER: Okay.

24 - - -

25 Thereupon, Respondent's Exhibit

1                   No. 3 was marked for purposes of  
2                   identification.

3                   - - -

4       BY MR. HUNT:

5           Q.   Mr. Linton, handing you what's been marked for  
6       identification purposes as Respondent's Exhibit 3. I  
7       ask you if you can identify that document?

8           A.   That's the order issued by the district court  
9       ordering that Mr. Zames and his company appear to show  
10      cause, and holding that Ameritech cannot have violated  
11      the court's order, and that the motion to show cause is  
12      denied with respect to Ameritech.

13          Q.   Okay.

14          A.   This was served on me, I think, by Attorney  
15      Vary, your Honor.

16          Q.   All right. Did the court -- What happened  
17      next?

18          A.   Well, there was discovery taken. I think  
19      Mr. Zames has alluded to that. Mr. Vary takes very  
20      long depositions. He deposed Ohio Bell's witnesses for  
21      the better part of a day. I don't think Mr. Cochran  
22      was present for that party, I certainly wouldn't blame  
23      him, it was pretty boring, and he attempted to depose  
24      Ameritech Publishing. I think that lasted a much  
25      shorter period of time due to a personality conflict

1 between counsel for Ameritech Publishing and Mr. Vary.

2 Then I was served with a subpoena personally  
3 to appear and be a witness at the hearing, the show  
4 cause hearing. Mr. Tartt was also subpoenaed, by the  
5 way, and returned from his vacation in Florida to be a  
6 witness.

7 Q. When was that show cause hearing?

8 A. I think that was in November of 1995.

9 Q. November 21st of '95?

10 A. I believe that's correct. It was close to  
11 Thanksgiving.

12 Q. You were present during that hearing?

13 A. I was not only present at the hearing, I was  
14 in chambers at the conferences that the judge held with  
15 the lawyers.

16 Q. What happened at that hearing?

17 A. Well, we all met in Judge Brooks' library.  
18 She informed Mr. Vary that she wasn't going to hold  
19 anybody in contempt and she thought the parties ought  
20 to work out any differences. Mr. Vary insisted that --

21 MR. COCHRAN: Objection. This is  
22 all hearsay.

23 THE WITNESS: Well, this is my  
24 understanding of what the judge's words meant since I  
25 heard them personally.

1 MR. HUNT: He was there.

2 THE EXAMINER: Yeah.

3 MR. COCHRAN: I understand. I was  
4 there, too, but all he's doing is reporting  
5 conversations of people who aren't here to be  
6 cross-examined.

7 THE EXAMINER: Well, if he heard  
8 what was going on, he can give us his understanding of  
9 what they said.

10 THE WITNESS: Thank you, your  
11 Honor.

12 Mr. Vary insisted on going forward and  
13 the hearing went forward. There was one witness  
14 called, that was Mr. Tartt. He was on the stand for  
15 about two hours. I really don't remember much of what  
16 was established by his testimony. The questioning was  
17 a lot about didn't we fax you this and didn't we fax  
18 you that. Mr. Tartt at various points asserted an  
19 attorney-client privilege. There was some wrangling  
20 about that. Finally, Judge Wells again reiterated to  
21 Mr. Vary that she wasn't going to hold anybody in  
22 contempt and she very strongly suggested that the  
23 parties get together in the back room and work things  
24 out, and that's what happened.

25 BY MR. HUNT:

1 Q. Were you present during that back room  
2 conversation?

3 A. I was present for part of it up to the point  
4 when an agreement in principle was reached, and I was  
5 also participating to the extent I explained how an  
6 intercept might be set up, because that was part of the  
7 agreement, an intercept would be put up on these two  
8 numbers to direct people to the proper recipient of the  
9 calls.

10 The parties then retired to the courtroom and  
11 informed the judge that an agreement in principle had  
12 been reached. She then replied that based on the  
13 previous experience of consent orders that that wasn't  
14 good enough and she would supply papers and pencils and  
15 the parties would be required to reduce their agreement  
16 to writing to be reviewed by her, that she would not  
17 allow the parties simply to leave on the basis that  
18 they agreed to agree. At that point, I and Mr. Tartt  
19 left and so I don't know what happened after that.

20 Q. Was an entry agreed to, to your knowledge?

21 A. Well, I've seen one, but I don't know any more  
22 than what's on the piece of paper. That order was sent  
23 to us and we put the intercept up, which my department  
24 is paying for.

25 Q. All right. So in an effort to assist the



1 parties, 975-0899 and 639-4334 were put on a split  
2 intercept; is that correct?

3 A. What it is, it's an extended absence greeting  
4 on voicemail service because that's the only way you  
5 can put a recorded intercept on. It's not a live  
6 intercept, it's a recorded intercept, and  
7 technologically I guess that's how you have to do it.

8 Q. Can you explain briefly how that works? What  
9 happens?

10 A. You call and you hear a recorded message.

11 Q. Which says what, approximately?

12 A. In substance, if you want to reach RE/MAX, you  
13 call this number; if you want to reach Mr. Zames, you  
14 call this number.

15 Q. Did the federal judge have occasion to clarify  
16 her order with regard to denying the show cause order  
17 as to Ameritech?

18 A. Well --

19 MR. COCHRAN: Objection.

20 MR. HUNT: Basis?

21 MR. COCHRAN: Again, there's a  
22 written order. There was never any legal clarification  
23 of that order. No subsequent order. He had  
24 conversations --

25 THE WITNESS: There was a

1 subsequent --

2 MR. COCHRAN: I had my own  
3 conversations with the judge which were black to his  
4 white. The judge is telling him one thing and me  
5 another. I don't see the relevance of all that to this  
6 proceeding.

7 MR. HUNT: Your Honor, this was  
8 a prefatory question in order that I might have marked  
9 and identified Respondent's Exhibit No. 4, which is a  
10 copy of an order granting reconsideration by the  
11 federal court of its decision denying the motion for  
12 Ameritech to show cause.

13 THE EXAMINER: Why don't you just  
14 have that marked and question him on that.

15 MR. HUNT: That's why I was just  
16 trying to set that up; that's all.

17 THE EXAMINER: Fine. Okay.

18 - - -

19 Thereupon, Respondent's Exhibit  
20 No. 4 was marked for purposes of  
21 identification.

22 - - -

23 BY MR. HUNT:

24 Q. Handing you what has been marked for  
25 identification purposes as Respondent's No. 4. I ask

1 you if you can identify that document.

2 A. Yes, I can.

3 Q. What is it?

4 A. This is the court's order granting  
5 reconsideration of the court's earlier order denying  
6 the motion to order Ameritech to show cause.

7 Mr. Vary had filed several briefs urging that  
8 the court reconsider and urging that the court hold  
9 Ameritech and Mr. Zames and his company in contempt,  
10 and this is the order as to -- well, granting their  
11 motion for reconsideration and stating emphatically  
12 again that the order did not -- the order of June 30th,  
13 and this also mentions the order of July 14th, I take  
14 it that means on July 14th the order with Mrs. Zames'  
15 signature on it was entered by the court. That's the  
16 only way I can interpret that. I don't know for sure  
17 because we were only served with a June 30 order.

18 But in any case, saying that those orders  
19 together did not compel Ameritech to do anything and  
20 that Ameritech was not bound by the order.

21 That order was entered by the court in this  
22 case. To my knowledge, there was no appeal by  
23 Mr. Zames or Zames Realty of that order, it stands as a  
24 final order of the federal court in the litigation to  
25 which Mr. Zames and his company were parties.

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1 Q. Does that order address the language in the  
2 July 14th order with regard to "Service of a copy of  
3 this order by any party to this lawsuit shall be  
4 sufficient evidence or notice of the rescission and  
5 shall operate as an order to Ameritech to rescind, even  
6 in the absence of a directive from the defendants"?

7 A. It does, and the Judge can see what it says  
8 about that.

9 MR. COCHRAN: Object. I don't  
10 object to putting it in evidence. It speaks for  
11 itself.

12 THE WITNESS: Sure does.

13 MR. HUNT: My only purpose was  
14 to point out that the court addressed specifically the  
15 language upon which the Complainants rely in their  
16 complaint.

17 MR. COCHRAN: I disagree with that,  
18 but I think the thing speaks for itself and what he  
19 says about it is not quite relevant.

20 MR. HUNT: I just wanted him to  
21 point it out. That's all.

22 THE EXAMINER: Let's move on.

23 MR. HUNT: Respondent's  
24 Exhibit 5, please, your Honor.

25 MR. COCHRAN: Thank you.

6 BY MR. HUNT:

7 Q. Handing you what's been marked for  
8 identification purposes, Mr. Linton, as Respondent's  
9 No. 5. I ask you if you can identify that document.

10           A.     This appears to be the agreement of the  
11     parties entered into at the hearing on the motion to  
12     show cause reduced to typewriting, together with the  
13     order of the court dismissing the case with prejudice.

14 Q. And it's the one that speaks about the  
15 intercept arrangement you spoke of before?

16           A.    Yes, it does. Right. It describes the  
17    language that the callers are to hear when they call  
18    the numbers. I called them a couple of times.

19 Q. All right. Mr. Linton, referring now to  
20 Complainants' Exhibit 2 sent to Tyrone Tartt.

21 Is Tyrone Tartt an employee of Ameritech Ohio?

22           A.    No. Mr. Tartt for some years has been  
23       employed by the Legal Department of Ameritech  
24       Publishing, Incorporated, which does business as  
25       Ameritech Advertising. He's in charge of their

1 litigation. He is not their general counsel. His  
2 offices are in Troy, Michigan.

3 Q. Handing you what's been marked for  
4 identification purposes as Complainants' Exhibit No. 3.  
5 I would ask you if you know Joanne Zivsak or Zivsak as  
6 an employee of Ohio Bell, Ameritech Ohio?

7 A. No. She's an employee of Ameritech  
8 Publishing, Incorporated.

9 Q. Handing you what's been previously marked for  
10 identification purposes as Complainants' Exhibit No. 5,  
11 and I ask you if you can identify Pat Andreatis as an  
12 employee of Ameritech Ohio or Ohio Bell?

13 A. Well, I don't know her personally, but I can  
14 tell you this phone number, this 838 exchange, is the  
15 phone number for the Ameritech Publishing offices in  
16 Independence, Ohio. Neither Ohio Bell nor Ameritech  
17 Ohio have any employees at that location, so I would  
18 say it's likely she is also an Ameritech Publishing  
19 employee.

20 Q. Handing you also what's been marked previously  
21 as Complainants' Exhibit No. 6, and I ask you if you  
22 can identify Ms. Paris as an employee of Ameritech Ohio  
23 or Ohio Bell?

24 A. On the same basis, I don't know Miss Paris,  
25 but this 838 number is an Ameritech Publishing,

1 Incorporated number, it's not an Ohio Bell or Ameritech  
2 Ohio number, so I would think she would not have been  
3 an employee of either of those organizations.

4 Q. Are you aware of any employee of Ameritech  
5 Ohio or Ohio Bell other than yourself who was  
6 communicated with regarding these issues or these  
7 listings by Mr. Zames?

8 A. Not that I know of; not directly. I know that  
9 some of the things that went to Ameritech Publishing  
10 eventually found their way to Ohio Bell, but I don't  
11 know when.

12 Q. Would it be fair to say that whenever they  
13 were received by Ohio Bell, it was certainly after and  
14 likely substantially after June 30th, 1995?

15 A. I'm sure that's true, because I was talking to  
16 them on July 3rd and 4th and they didn't seem to have  
17 any knowledge of anything else. They were relying on  
18 the information I was giving them and questioning me  
19 about what I made of this order.

20 Q. And to your understanding, that was after the  
21 last time to take out a White Pages listing for the  
22 Lake County directory?

23 A. That was sure after the official date, which  
24 was June 30th, and apparently you have a few days after  
25 that because there's a weekend in there to do

1 something, but some point pretty shortly after June  
2 30th it becomes physically impossible. The tape is  
3 sent off to the printer.

4 Q. What about inserting an advertisement? Was  
5 the last day for inserting an advertisement or a  
6 listing in the White Pages June 30th or some date  
7 before June 30th?

8 A. It would have been before. The deadline for  
9 insertions is before the deadlines for deletions. With  
10 the deletion you can put in a little public service  
11 message. Insertions are liable to screw up the whole  
12 order of the page, so your deadline for insertions is  
13 before. I mean, June 30th, by the way, is past the  
14 official close date for that directory. It's an August  
15 book.

16 Q. So if Mr. Zames, as we heard this morning,  
17 communicated with Ameritech Publishing on June 30th by  
18 fax -- by one or more faxes to insert an ad, that ad,  
19 to your understanding, was too late?

20 A. At least if you play by the rules. I'm not  
21 going to tell you that -- I mean, some things are  
22 possible if you break all the rules and spend lots of  
23 money and, you know, go off track, but I would think  
24 they would not have accepted that order. I'm  
25 embarrassed to hear they wouldn't have talked to



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1 Mr. Zames about it, but I don't know if that happened  
2 or why it happened.

3 MR. HUNT: May I have one  
4 minute, your Honor?

5 (Pause.)

6 Nothing further, your Honor. Thank you.

7 THE EXAMINER: Mr. Cochran.

8 - - -

9 CROSS-EXAMINATION

10 BY MR. COCHRAN:

11 Q. Good afternoon.

12 Mr. Linton, who is the director of operations  
13 for Ohio Bell?

14 A. There isn't any such title.

15 Q. Are you certain of that?

16 A. I'm pretty certain of that, sir.

17 Q. Are you pretty certain or are you absolutely  
18 certain?

19 A. I'm not absolutely certain of anything, sir.

20 Q. Isn't it a fact that you really don't know  
21 that much about the operations?

22 A. I know a good deal about the operations of  
23 Ohio Bell, sir; I've worked there since 1978.

24 Q. Who would know more -- When I say  
25 "operations," I mean things such as when is the book

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1 published, when do you have to get names in, how is it  
2 printed.

3           You're an attorney, correct?

4           A. That's correct, sir.

5           Q. Have you ever worked in the operations  
6 division?

7           A. I've not worked in the operations division,  
8 sir.

9           Q. Okay. Who would know more about the  
10 operations division, the director of operations or you?

11          A. There is no operations division. I've not  
12 worked in operations.

13          Q. Is there a director of operations?

14          A. As far as I know, there is no such title at  
15 Ohio Bell at the present time, nor has there been such  
16 a title since 1978.

17          Q. Are you positive? Any chance of a mistake?

18          A. I've already answered, sir, I'm not positive  
19 about anything except my oath.

20          Q. Do you know who Patrick Greene is?

21          A. I think Patrick Greene -- If I'm correct,  
22 Patrick Greene was an employee of Ameritech Network  
23 Services, a division of Ameritech Services,  
24 Incorporated, who was involved in the database  
25 operations that support the White Pages function at

1 Ohio Bell.

2 Q. Well, in other words, he works with the area  
3 of the White Pages?

4 A. I believe he's the supervisor of the people  
5 who do the keystroking to enter the data at Ameritech  
6 Network Services, a division of Ameritech Services,  
7 Incorporated, and he would be much more knowledgeable  
8 about that operation than I would be --

9 Q. I would think so.

10 A. -- because I've never worked for that company.

11 Q. In fact, isn't his title manager of  
12 operations?

13 A. His title might very well be manager of  
14 operations.

15 Q. Of Ohio Bell?

16 A. But not director of operations.

17 Q. Okay.

18 A. Directors are people who report directly to  
19 vice-presidents in the Ameritech world.

20 Q. I apologize.

21 A. There's no need. It's our jargon, not yours.

22 Q. There is a manager of operations, but there's  
23 no director of operations?

24 A. I believe that's possible.

25 Q. I assume the manager of operations would know

1 more than you about when the deadline is for getting  
2 deletions, et cetera, into the book?

3 A. Absolutely.

4 Q. And his testimony, in all likelihood, would be  
5 more accurate on that subject than yours?

6 A. In all likelihood, it would be more accurate,  
7 sir.

8 Q. Do you know who Charlotte Walter is?

9 A. I recognize the name but I don't know why.

10 Q. Okay.

11 A. I think I must have seen it on some documents.

12 Q. Did Mr. -- Strike that.

13 We all agree, don't we, that Mr. Tartt  
14 received this fax on June 30? You don't have any  
15 reason to believe that he didn't?

16 A. He told me that he received it when he got  
17 back from his weekend. I don't know exactly when that  
18 means, but that's what he told me.

19 Q. You mean on Monday, which would be the -- Did  
20 he tell you that he received it?

21 A. Yes, sir.

22 Q. But you don't know what date he received it?

23 A. He said he received it when he got back from  
24 his weekend. I'm pretty confident that's exactly what  
25 he told me, but I don't know if that means Monday or --

1 Q. Or Tuesday or whatever?

2 A. -- or whatever, yeah.

3 Q. June 30 was a Friday, wasn't it?

4 A. I think it was, yes.

5 Q. As I understand your testimony, you are saying  
6 that no one was advised of this order at Ohio Bell,  
7 let's say, in the first week of July, June 30, or a  
8 week thereafter, no one was informed at Ohio Bell  
9 except you, or those informed by you?

10 A. I don't know that.

11 Q. Okay.

12 A. I know that when I -- the minute I got it, as  
13 soon as I got done giving my, you know, plea to  
14 Mr. Silverstein not to expect a whole lot, I  
15 immediately called Carol Dove.

16 Q. Isn't it a fact that Tyrone Tarrt sent the  
17 order immediately on to Ohio Bell?

18 A. Not to my knowledge, he did not.

19 Q. Didn't send it to you, I understand that.

20 A. I'm telling you, sir, that I don't know that  
21 he sent it to Ohio Bell.

22 Q. Do you have any knowledge of this order being  
23 received by Ohio Bell by anyone other than yourself?

24 A. The order of June 30th?

25 Q. Yes.

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1 A. I don't remember whether I sent Carol Dove a  
2 fax copy for her file or not. Sometimes she asks me  
3 for copies of court orders.

4 Q. I'm talking about anyone other than Carol or  
5 anyone else you sent the order to, did anyone else --  
6 were you the only conduit of information about the  
7 entry of this order, or did it take place in conduits  
8 other than just Mr. Linton?

9 A. You mean did Mr. Silverstein communicate with  
10 anybody other than me?

11 Q. Or did anyone communicate the order to anyone  
12 at Ohio Bell.

13 A. I have no idea, sir.

14 Q. You really have no idea. The only testimony  
15 you're giving today is based upon your knowledge of  
16 your receipt of the order and what you did?

17 A. I can only testify to what I know.

18 Q. Do you know about Patrick Greene receiving the  
19 order?

20 A. I don't know if Mr. Greene --

21 MR. HUNT: I'm going to object  
22 to the form -- or, to the question on the basis there's  
23 no record evidence anybody other than --  
24 Mr. Silverstein communicated the order to anyone at  
25 Ohio Bell other than Mr. Linton.

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1                   MR. COCHRAN:           That's what I'm  
2     trying to get to.  
3     BY MR. COCHRAN:  
4         Q.     Aren't you aware that Patrick Greene received  
5     this order --  
6                   MR. HUNT:            Do you have any --  
7     BY MR. COCHRAN:  
8         Q.     -- or are you not aware of it?  
9         A.     I don't know whether --  
10                  THE EXAMINER:        Maybe we ought to put  
11     something in the record that Patrick Greene did --  
12                  MR. HUNT:            -- did, in fact,  
13     receive the order.  
14                  THE EXAMINER:        Was that part of  
15     your --  
16                  MR. COCHRAN:        Yes, Patrick -- I  
17     would really like to know what this --  
18                  THE EXAMINER:        Where in your case  
19     did you --  
20                  MR. COCHRAN:        I have a new exhibit.  
21                  THE EXAMINER:        What?  
22                  MR. COCHRAN:        I have an exhibit  
23     here.  
24                  THE EXAMINER:        Was that part of your  
25     case?

1 MR. COCHRAN: I'm entering an  
2 exhibit for this witness.

3 THE EXAMINER: Okay. Well, we  
4 can -- It's an exhibit for cross-examination.

5 Okay. Fine. This would be -- Might as  
6 well add it to Complainants' -- No. Let's keep it on  
7 the Respondent's side.

8 MR. COCHRAN: Respondent's. Okay.

9 MR. HUNT: He's sponsoring it.  
10 That's why I'm concerned.

11 THE EXAMINER: I want to keep a  
12 straight numerical record here.

13 Okay. We'll make it Complainants' then.

14 MR. HUNT: I have 9, I believe.

15 MR. COCHRAN: Sounds about right.

16 THE EXAMINER: Okay.

17 - - -

18 Thereupon, Complainants' Exhibit  
19 No. 9 was marked for purposes of  
20 identification.

21 - - -

22 BY MR. COCHRAN:

23 Q. Handing you what's been marked as  
24 Complainants' No. 9, consisting of one -- two pages  
25 plus a copy of the order.



1 Have you ever seen that before?

2 A. You know, I have, but I don't know why. It's  
3 not the order I got.

4 Q. My only question is have you seen it before?

5 A. You know, I think I have and I'm trying to  
6 figure out -- Oh, yes, I have, and I remember where.

7 Q. Okay. Where did you see it?

8 A. At the hearing Mr. Vary wanted to  
9 cross-examine --

10 Q. Right.

11 A. -- Mr. Tarrt based on that document which he  
12 says he received in production from --

13 Q. All I want to know --

14 MR. HUNT: May he finish his  
15 answer, please?

16 THE WITNESS: Whatever you want me  
17 to do.

18 THE EXAMINER: Okay. Go ahead and  
19 finish your answer.

20 BY MR. COCHRAN:

21 Q. Go ahead.

22 A. He said that the privilege had been waived  
23 because he received that in production from Ohio Bell.

24 Q. Okay. Now, the second page of this document,  
25 this is a fax from Tyrone Tarrt at Ameritech Publishing

1 to Charlotte Walter at Ameritech Publishing, which  
2 reads as follows, dated July 5, 1995: "Per our  
3 conversation (and that info conveyed by Sandy  
4 Garrison), please remove all white and yellow page  
5 advertising as ordered by the defendants, Elizabeth and  
6 Robert Zames. Removal should include all advertising,  
7 whether free or paid. Please call if you have any  
8 questions. If after hours, please call me at (810)  
9 707-6198," signed Tyrone Tartt.

10 A. Yes, that's what it says.

11 Q. Now, the first page of this exhibit, is it not  
12 the fax that Charlotte Walter then sent on to your  
13 company, Ohio Bell, the same day, reading as follows --  
14 Well, I won't bother with that. Isn't it the fact that  
15 she sent the order and the other memo?

16 A. No, sir. As I already testified, Mr. Greene  
17 does not work for Ohio Bell.

18 Q. Is that a fact?

19 A. To my knowledge, Mr. Greene does not work for  
20 Ohio Bell; to my knowledge, he works --

21 Q. I thought you said he was the manager of  
22 operations?

23 A. -- for the Ameritech Network Services, a  
24 division of Ameritech Services, Incorporated, which is  
25 a regional service arm of Ameritech, a wholly-owned

1 subsidiary of the five operating companies, but a  
2 separate legal entity.

3 Q. Do you know who Charlotte Walter is?

4 A. No, sir. I told you I recognize the name but  
5 I don't know why.

6 Q. She's a lady that deals with Mr. Greene all  
7 the time?

8 A. I would assume.

9 Q. I could go through the testimony.

10 A. Sir, do you want me to agree with her  
11 testimony?

12 Q. Do you know whether she -- whether Charlotte  
13 Walter and Mr. Greene communicate regularly on a daily  
14 basis in their respective jobs?

15 A. I would have no idea whatsoever.

16 Q. Are you aware that a deposition of Charlotte  
17 Walter was taken on November 1, 1995?

18 A. No, sir, I'm not aware of that.

19 Q. Did you attend that deposition? I assume not.

20 A. Not to my knowledge.

21 Q. Would you have any reason to disagree with the  
22 following testimony --

23 MR. HUNT: Objection.

24 BY MR. COCHRAN:

25 Q. -- by Charlotte Walter?

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1 MR. HUNT: Hearsay. I don't  
2 think he should be allowed to read into the testimony  
3 hearsay, clear hearsay, and just ask the witness if he  
4 has any reason to disagree with it or whatever.

5 MR. COCHRAN: Well, I mean, I think  
6 we have depositions of witnesses that are relevant --

7 MR. HUNT: It's an out of court  
8 statement being offered to prove the truth of the  
9 matters asserted.

10 MR. COCHRAN: It's under oath in --

11 MR. HUNT: It's an out of court  
12 statement being offered to prove the truth of the  
13 matters asserted.

14 THE EXAMINER: Okay. Here's the  
15 ruling. It does seem to be hearsay unless you've got a  
16 way of authenticating it here.

17 MR. COCHRAN: Well, I assume I can  
18 still cross-examine him on the testimony. Even if it's  
19 hearsay, I can cross-examine him.

20 THE EXAMINER: No. I mean, you're  
21 going to have to authenticate it. How can he --

22 MR. COCHRAN: How do you  
23 authenticate it? It's a deposition under oath of one  
24 of the employees of the company. Depositions are  
25 admissible under the Ohio Rules of Evidence.

1                   MR. HUNT:               I don't believe so,  
2     your Honor.

3                   MR. COCHRAN:        Besides which, the  
4     Rules of Evidence don't apply to this proceeding. It  
5     just seems only fair if I have -- I have the whole  
6     transcript here. It seems only fair rather than not  
7     having the testimony to having it. I mean, what's  
8     there to be afraid of? It's a better hearing to have  
9     the testimony of this person than not have it if it's  
10    unreliable or doesn't make sense, whatever, but to  
11    exclude it doesn't seem to be fair or be productive  
12    towards having the most informed hearing.

13                  It's here, properly transcribed, it's  
14    under oath, and the Rules of Evidence, you know, of  
15    course, don't apply to this hearing anyway.

16                  On hearsay, we've had other hearsay  
17    admitted today. Technically, some hearsay and some  
18    that borders. I mean, I just feel like it would be a  
19    shame if we have some testimony to add to the picture,  
20    and it's not that long, it's fairly brief, to have it  
21    in evidence. If it's unreliable, of course, you can  
22    choose to give it very little weight, or ignore it, or  
23    whatever. It's pretty straightforward, there's nothing  
24    too complicated being questioned about this exhibit --  
25    the witness being questioned about this exhibit.

1 THE EXAMINER: Well, my ruling  
2 stands. I think it's hearsay. I don't think you've  
3 done much to authenticate it. I don't know how you  
4 have knowledge about what you're about to ask him.

5 Well, you know, if you're going to admit  
6 that into evidence, you want to sponsor that as an  
7 exhibit. It doesn't seem -- Going to have to let the  
8 ruling stand; it is hearsay.

9 MR. COCHRAN: Well, can I at least  
10 be permitted to use it for cross-examination without  
11 admitting it as an exhibit?

12 THE EXAMINER: You can ask him if he  
13 has knowledge of that on cross-examination, but I don't  
14 see how -- if he's never seen it before, I don't know  
15 how he can authenticate anything. I mean, he can  
16 testify as to what went on.

17 Were you a party to that, sir, what he's  
18 talking about?

19 THE WITNESS: No.

20 MR. COCHRAN: He was the attorney  
21 for them in this case.

22 THE WITNESS: I was not present at  
23 the deposition, I was not noticed on the deposition,  
24 and I don't know what was said in the deposition.

25 BY MR. COCHRAN:

1 Q. Well, it's the case in which you represented  
2 your client.

3 A. Sir, you were not present at depositions that  
4 were taken in the case, too. I assume that was for  
5 good and sufficient reasons. I wasn't present because  
6 I didn't know the deposition was taken. I had no  
7 opportunity to be present.

8 Q. Well, I'm not saying you were, I'm saying this  
9 is a case in which you were counsel of record for a  
10 party.

11 A. Well, you want to make a legal argument, try a  
12 third time, give it a shot, not to me.

13 Q. Okay. Who is Patrick Greene?

14 A. Again, to my knowledge, Mr. Greene runs the  
15 operation over at 750 Huron Road where they keystroke  
16 in data that's used to compile the White Pages  
17 database. To my knowledge, he is a management employee  
18 of Ameritech Network Services, which is a division of  
19 Ameritech Services, Incorporated. I had one  
20 conversation with the man consisting of about 10 words.  
21 That's all I know about Mr. Greene.

22 Q. Do you have any reason to explain why  
23 Charlotte Walter would testify that he's the manager of  
24 operations for Ohio Bell?

25 A. Sir, I know nothing about what Miss Walter

1 said or why she would have said it. I can't get inside  
2 her head.

3 Q. You've already testified you weren't even  
4 aware of this fax until much later.

5 A. I saw the fax after. I can't remember how far  
6 after. Where I remember it from is Mr. Vary waving it  
7 around in the courtroom where you were present trying  
8 to convince Judge Brooks -- or, Judge Wells that this  
9 was a basis for him to cross-examine Mr. Tarrt about  
10 his advice to his clients. That's what I recall, sir.

11 Q. Would Charlotte Walter have knowledge of when  
12 the cut-off date for deletions -- the last possible  
13 date for deletions from the White Pages would be?

14 A. Sir, since I've told you that I recognize the  
15 name but don't know why, I can't tell you whether she'd  
16 have that knowledge or not. If you tell me to assume  
17 she worked for Ameritech Publishing, then there'd be  
18 some chance of that.

19 Q. Do you know what Ameritech Advertising  
20 Services is?

21 A. That is the registered trade name for  
22 Ameritech Publishing, Incorporated registered with the  
23 Secretary of the State of Ohio.

24 Q. And do you know that Charlotte is the director  
25 of operations for Ameritech Advertising Services?



1 A. I do not know that, sir.

2 Q. Wouldn't she have much knowledge about that  
3 cut-off date?

4 MR. HUNT: Objection; asked and  
5 answered and speculative.

6 THE WITNESS: I don't know.

7 MR. COCHRAN: Pardon me?

8 MR. HUNT: He's testified --

9 THE EXAMINER: That's sustained.

10 BY MR. COCHRAN:

11 Q. Do you have any reason to know why she would  
12 testify that the cut-off date was in late July, the  
13 last possible date, and that the memo she sent was in  
14 plenty of time to withdraw that ad?

15 A. Yes.

16 MR. HUNT: Your Honor, I object.  
17 I object. I believe you've ruled and Mr. Cochran is  
18 continuing to read from the deposition.

19 THE EXAMINER: Let's let him answer.  
20 What was your answer?

21 THE WITNESS: Yeah, I would. Based  
22 on the information given to me, that would be  
23 incorrect. I would have no other way of answering  
24 based on what I was told by Mr. Tartt, who's my  
25 counterpart, that would be incorrect. This is a book

1 that is distributed on the street in August. I can't  
2 imagine how a book that's actually distributed on the  
3 street in August could possibly be having things  
4 inserted late in July.

5 The close date for the Cleveland book,  
6 for example, is December and the book is distributed  
7 late in April. It doesn't sound reasonable to me, and  
8 that's all I can tell you.

9 BY MR. COCHRAN:

10 Q. Is July 5th too late?

11 A. No, sir, I know as a matter of fact it's not.

12 Q. Well, isn't that the date the memos were sent  
13 by Tyrone Tarrt to Charlotte Walter, Charlotte Walter  
14 on to Patrick Greene?

15 A. That's the date on the document you showed me,  
16 sir.

17 Q. And those memos instructed Ohio Bell to remove  
18 all listings ordered by Bob Zames.

19 MR. HUNT: Objection. The memos  
20 speak for themselves. This is a document that is not  
21 even admitted into evidence at this point in time. It  
22 has been marked.

23 MR. COCHRAN: None of the documents  
24 have been submitted into evidence yet. I presume we'll  
25 do that at the end of the hearing.

1 MR. HUNT: Well --

2 MR. COCHRAN: It's an exhibit --

3 I've got to ask him about an exhibit.

4 BY MR. COCHRAN:

5 Q. You're telling me that July 5th was not too  
6 late?

7 A. My understanding was that July 5th was not too  
8 late to remove a listing from the Lake County White  
9 Pages; that is my understanding.

10 Q. And in spite of this memo from the chief  
11 counsel of Ameritech Publishing to the director of  
12 operations, Ameritech Publishing, and then a subsequent  
13 memo on to Patrick Greene, the White Pages listing  
14 ordered by Zames still was not deleted. Do you know  
15 why not?

16 A. I believe it was because my client followed my  
17 advice and removed the 4333 listing and the listing  
18 that is associated Mr. Zames with RE/MAX. That is my  
19 belief, my client followed my advice.

20 Ohio Bell is not Mr. Tartt's client. I would  
21 hope that, however, advice that was conveyed from  
22 Mr. Tartt to them, directly or indirectly, through  
23 Mr. Greene or otherwise, that it would not have been  
24 followed. Mr. Greene is supposed to take instructions  
25 from Ohio Bell, not from Ameritech Publishing.

1 Q. Let's talk about Ameritech Publishing for a  
2 second.

3 Ohio Bell doesn't print or publish the White  
4 Pages itself, does it?

5 A. Ohio Bell publishes the White Pages. They are  
6 physically printed by the Donnelly Company through an  
7 arrangement between the Donnelly Company and Ameritech  
8 Publishing.

9 Q. Ameritech Publishing actually works with the  
10 Donnelly Company to get it published at the same time  
11 they're doing the Yellow Pages; isn't that true?

12 A. I believe that's true, sir. Yes, sir,  
13 absolutely.

14 Q. Ameritech Publishing does that for Ohio Bell?

15 A. Yes, sir.

16 Q. Ohio Bell doesn't do it itself, for whatever  
17 reason?

18 A. That's correct.

19 Q. Ohio Bell directs Ameritech Publishing to  
20 handle that job, correct?

21 A. The printing part, yes.

22 Q. Yes. And the printing does include the  
23 information that's to be printed, i.e., namely the  
24 names and phone numbers, correct? That's the job -- I  
25 gather you're saying that's the job of Ameritech

1 Publishing not Ohio Bell?

2 A. They take the information from the business  
3 office, it's turned into a database, that database goes  
4 on a tape, and that drives what appears in the book.

5 Q. And Ameritech Publishing is the division that  
6 puts together that database?

7 A. No, sir.

8 Q. Who does?

9 A. My understanding is just as I said, that the  
10 business office employees of Ameritech Ohio or Ohio  
11 Bell gather information, that that information is  
12 compiled in a database at that period of time by  
13 employees of Ameritech Network Services, a division of  
14 Ameritech Services, Incorporated, they pass that on in  
15 a tape to Ameritech Publishing, Ameritech Publishing  
16 takes that tape and other tapes that they have prepared  
17 of Yellow Pages information, that is sent to the  
18 Donnelly Company in the area of Chicago, and they  
19 physically print the book. That is my understanding of  
20 how it works.

21 Q. Well, why would the general counsel of  
22 Ameritech Publishing, the chief trial counsel for  
23 Ameritech Publishing, be issuing an order by memo to  
24 make changes in that database if that is not the job of  
25 Ameritech Publishing?

1           A.    Sir, you would have to ask him. That is not  
2   his authority to do. Those are not his clients. He  
3   isn't supposed to do that. You would have to ask  
4   Mr. Tartt.

5           Q.    Is it fair to say that that is a mistake?

6           A.    I would think it would be a mistake. It's not  
7   his client; it's my client.

8           Q.    And you're saying that Ameritech Publishing  
9   has no ability or power or authority to make any  
10  changes in the database that comprises the White Pages?

11          A.    No, sir. I'm saying they have no authority to  
12  do that. Whether it's physically possible for them to  
13  take that tape, put it on one of their machines and  
14  make changes, I couldn't say. They're not supposed to  
15  do that. That is a regulated activity. We try to keep  
16  as much as possible those two sides of the business  
17  separate because there are accounting and regulatory  
18  issues associated with it.

19          Q.    Why doesn't Ohio Bell deal directly with  
20  Donnelly? What's the purpose of having Ameritech  
21  Publishing there on the White Pages?

22          A.    Because you can get a much better printing  
23  rate if you're asking people to print every phone book  
24  in a five-state region than if you're having Ohio Bell  
25  come and ask them to print separate White Pages, plus

1 our customers want them co-bound in smaller communities  
2 where you can have them both bound in the same book.  
3 So there was a publishing services contract entered  
4 into in 1983 in contemplation of the break-up of the  
5 Bell system and the removal of Yellow Pages from the  
6 Ohio Bell entity that covers issues like that and  
7 covers payments back from Ameritech Publishing to Ohio  
8 Bell to compensate them for the Yellow Pages business  
9 going to API.

10 Q. Is there anyone else that performs this  
11 function for Ohio Bell other than Ameritech Publishing?

12 A. Which function, sir?

13 Q. The function of getting the White Pages  
14 printed.

15 A. Well, I've told you that Donnelly Company  
16 actually physically does the printing.

17 Q. I see.

18 But that's handled -- Ameritech Publishing  
19 achieves that with Donnelly?

20 A. They have the contract with Donnelly, yes.

21 Q. I see.

22 A. I think they hire companies to distribute the  
23 books, but at far as I know that's all the players.

24 Q. Do you have any explanation of why it is that  
25 these memos were floating around on July 5th ordering

1 that all listings placed by Zames be removed and yet  
2 you had no knowledge of it at that time?

3 A. Yes, sir, I do, because I wasn't told.

4 Q. One hand didn't know what the other was doing?

5 A. Absolutely. Of course, it would have been  
6 nicer if the people at Jones-Day had seen fit to get  
7 the order signed by Mrs. Zames into my hands.

8 Q. Uh-huh.

9 Do you know Tyrone Tartt?

10 A. Absolutely.

11 Q. Do you speak with him on a regular basis?

12 A. Maybe twice a month. There are lawsuits filed  
13 that name my client as a defendant, even though it's a  
14 Yellow Pages case and vice versa, so we do communicate  
15 about those things.

16 Plus, I handled all the Yellow Pages  
17 litigation up to 1984, about 400 directory cases,  
18 that's why I have some knowledge of how the thing  
19 works, and he occasionally questions me about the law  
20 in the area since I established some of it.

21 Q. Back on July 5, 1995, weren't you aware that  
22 Jones-Day had been communicating with Tyrone Tartt and  
23 discussing this for a considerable period of time?

24 A. I know that they had been discussing the  
25 Yellow Pages listings with him, yes.



1 Q. I see.

2 Well, did you know that they had faxed this  
3 order to Tyrone Tarrt on June 30?

4 A. No, I did not.

5 Q. So that happened completely without your  
6 knowledge?

7 A. I didn't know they'd faxed it until afterwards  
8 when he sent me a copy ultimately of what he'd been  
9 sent, and I remember calling him up and saying, "This  
10 is a different order than the one I got; why?"

11 Q. Just so I make absolutely sure I have this  
12 straight, July 5th was not too late to delete all  
13 orders for White Pages listings by Zames?

14 A. That's what I was told, that July 5th was not  
15 too late.

16 Q. Didn't you testify a half-an-hour ago on  
17 direct that July 3rd was too late?

18 A. No. I testified that I told Mr. Silverstein  
19 on July 3rd at some time after 3:00 o'clock that I had  
20 thought that June 30th was the deadline and I didn't  
21 know if anything could be done but that I would do my  
22 best.

23 Q. But now you know July 5th was, in fact, not  
24 too late?

25 A. Yes.

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1 Q. Okay.

2 A. But I didn't know it at the time.

3 Q. In fact, it could have been changed even later  
4 than July, couldn't it?

5 A. I don't know. That's possible. But I know  
6 July 5th was not too late.

7 Q. Now, when you received the order, did you read  
8 it?

9 A. Yes, I did.

10 Q. Do you recall the paragraph that required that  
11 listings ordered by Bob Zames be rescinded? Do you  
12 recall such a paragraph?

13 A. No, in fact, I don't. I recall a paragraph  
14 ordering him to rescind. I did not read the order as  
15 requiring my client to do anything. That was my  
16 understanding of that.

17 Q. Do you recall this language in the order --  
18 I'm sorry.

19 A. I'm done. I'm sorry, sir.

20 Q. Do you recall this language in the order:  
21 "Robert Zames" -- This is Paragraph A if you want to --  
22 Do you have it there?

23 A. Yes, I do. Go ahead.

24 Q. In Paragraph A, "Robert Zames and Elizabeth  
25 Zames, and any persons in active concert or

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1 participation with them, shall immediately rescind all  
2 orders that either of them placed with Ameritech, Inc.,  
3 Ameritech Publishing, Inc., Ameritech Advertising  
4 Services, or any Ameritech affiliate for publication of  
5 White Pages listings to appear in Ameritech's 1995 or  
6 subsequent directories, including but not limited to  
7 the directory for Lake County, Ohio, which listings  
8 refer in any way to RE/MAX or any of its federally-  
9 registered trademarks or its trade registered -- state-  
10 registered trademarks."

11 Do you recall that provision in the order?

12 A. Well, I've got it in front of me.

13 Q. Do you recall reading it?

14 A. Yes, I read the entire order, sir, several  
15 times, many times.

16 Q. Mr. Linton, doesn't that mean that any order  
17 that had been placed by Bob Zames should have been  
18 rescinded?

19 A. No, sir.

20 Q. And why not?

21 A. Because it says he shall rescind the order.

22 Q. Well, what about the -- Shall we go on to the  
23 next sentence?

24 "Service of a copy of this order by any party  
25 to this lawsuit shall be sufficient evidence or notice

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1 of the rescission and shall operate as an order to  
2 Ameritech to rescind, even in the absence of a  
3 directive from the defendants."

4 Now, those two sentences together -- I mean,  
5 Mr. Linton, isn't it clear that upon receipt of this  
6 order all listings that had been placed by Zames should  
7 have been revoked?

8 A. No, sir. In fact, the United States District  
9 Court has held in a case, in which your client is a  
10 party, where you did not appeal the final order, that  
11 that language operated in no ways to require Ameritech  
12 to do anything and, in fact, specifically that that  
13 language did not require Ameritech to do anything, and  
14 my understanding is that that is res judicata and you  
15 may not relitigate that issue in this forum --

16 Q. I understand.

17 A. -- as a matter of federal and state law.  
18 That's my understanding, sir.

19 Q. We're not saying here, and I'm not saying in  
20 my question, that this was a court order in which  
21 Ameritech was a party and they were bound by the order.

22 Did you, yourself, not admit that this  
23 language was sufficient consent and contractual  
24 agreement to remove those listings?

25 A. No, sir, because Betty Zames' name wasn't on

1 it and I was asked --

2 Q. Talking as to Robert Zames.

3 A. I was concerned -- First of all, sir,  
4 remember, I don't know what orders had been placed. I  
5 had no knowledge of what orders had been placed. As  
6 you, yourself, pointed out, I'm not on the operations  
7 side of the business. I'm the lawyer.

8 I get this order, I called up my client and I  
9 said, "4333 is out. Any listing that associates his  
10 name with RE/MAX is out." She called me back and  
11 specifically asked me about Mrs. Zames' listings with  
12 the knowledge that I thought I understood correctly  
13 from the lawyers for RE/MAX that Mrs. Zames had a  
14 relationship with a Youngstown franchisor called RE/MAX  
15 Masters. I didn't feel like on the basis of an order  
16 that specifically, specifically did not apply to her,  
17 that I could advise my client to take her listings out.  
18 I was concerned about my client being sued by the  
19 Zameses for taking their listings out. You were  
20 contesting this case. She hadn't signed the order. I  
21 asked Mr. Silverstein, "Why hasn't she signed?" He  
22 said, "They claim they don't know where she is."

23 The implication --

24 MR. COCHRAN: With all due respect,  
25 I don't know, we have that kind of hearsay and we have

1 a sworn deposition --

2 THE WITNESS: Sir, I'm not saying  
3 it's true, not for the truth of the matters asserted.

4 MR. COCHRAN: All I want to be is  
5 treated fair. I've got a sworn deposition here,  
6 there's a hearsay objection and not being admitted; yet  
7 there's hearsay flying all over the room, some objected  
8 to, some of it not.

9 THE WITNESS: I'm just trying to  
10 answer your question, sir.

11 MR. COCHRAN: Well, let me get --

12 THE WITNESS: I'll try to limit my  
13 comments.

14 MR. COCHRAN: Let's forget that for  
15 the moment and I'll quit complaining and go on with  
16 this question.

17 BY MR. COCHRAN:

18 Q. This listing right here, RE/MAX Masters Real  
19 Estate Appraisals, isn't it true that order was  
20 placed -- the order for that listing was placed by Bob  
21 Zames?

22 A. From the documents I've seen, apparently so.

23 Q. Not much doubt of that, is there?

24 A. No.

25 Q. Isn't it also true that this listing -- Does

1 this listing refer in any way to RE/MAX?

2 A. Yes, it does.

3 Q. Doesn't the order require that any listing,  
4 one, ordered by Bob Zames, and, two, referring in any  
5 way to RE/MAX, be rescinded?

6 A. No, sir, he's to do it as the federal court  
7 has held. It didn't require us to do anything.

8 Q. I'm not asking whether it required you to do  
9 it. Didn't Paragraph A require Zames to rescind --

10 A. Yes.

11 Q. We'll talk about Bob Zames --

12 A. Yes, sir, it did.

13 Q. Those were the two conditions, right; one,  
14 that it have been ordered by Zames, and, two, that it  
15 refer in any way to RE/MAX?

16 A. Yes, sir.

17 Q. Those are the only two conditions that  
18 describe the listings to be rescinded by Zames,  
19 correct?

20 A. Yes, sir.

21 Q. Isn't it also true, as you testified, that the  
22 language in this order, though it's not a court order  
23 as to Ameritech, is sufficient contractual consent and  
24 a sufficient request to rescind any order defined there  
25 in one and two? Isn't it? Let's forget for the

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1 moment, and I will admit to you -- I mean, the court's  
2 order is fairly clear, this is not a court order  
3 directed to Ameritech because you weren't a party,  
4 et cetera, et cetera.

5 But haven't you admitted, and isn't it true,  
6 that the language is sufficient contractual consent of  
7 Zames to do that which is required in Paragraph A; that  
8 is, rescind all listings that, A, were placed by Bob  
9 Zames, and, B, referred in any way to RE/MAX?

10 A. Am I to answer your last question, sir, or the  
11 two previous?

12 Q. I'm sorry. The last question.

13 A. The last one.

14 Contractual consent as between each party,  
15 sir?

16 Q. As between Zames and Ohio Bell.

17 A. I feel if Mr. Zames had sued us for removing  
18 that listing we would have had a good defense.

19 Q. Didn't you testify today that that was  
20 sufficient contractual consent, 45 minutes ago?

21 A. I said I thought it was sufficient for us to  
22 argue that we had complied with the tariff requirement  
23 as for transferring 4333 from Mr. Zames to RE/MAX. Our  
24 tariff requires that we cannot transfer a phone number  
25 from one customer to another without the consent of the



1 existing customer. That's what I testified, sir,  
2 because that's my understanding of the law.

3 Q. I thought you said that was sufficient consent  
4 by Bob Zames?

5 A. It is to transfer 639-4333 from one customer,  
6 Mr. Zames to another customer, the tariff absolutely --

7 Q. The language we're talking about is in  
8 Paragraph A, not C, that you're talking about.  
9 Paragraph A of --

10 A. I'm not talking about Paragraph C, sir, I'm  
11 talking about our tariff. Our tariff says that we  
12 cannot comply with this order and transfer a phone  
13 number. That was what I was asked about. That's what  
14 I testified about. My testimony was about that phone  
15 number.

16 Now, you've asked me a separate question that  
17 I've already answered. I believe that if Mr. Zames had  
18 sued -- if we had removed that last listing, the  
19 Appraisals listing, and Mr. Zames had sued us, I  
20 believe I could have defended that case before the  
21 Commission on the grounds that his signing of this  
22 order constitutes consent to remove that listing.

23 Q. All right. Let's try to get this out of the  
24 way.

25 If Mr. Zames wanted to do that which was

1 required by Paragraph A, i.e., rescind all listings  
2 ordered by him that refer to RE/MAX, is that language  
3 in the second sentence of Paragraph A sufficient  
4 consent from him to do that; "yes" or "no"?

5 A. If he had wanted to remove that --

6 Q. Yes.

7 A. -- would this have been sufficient consent?

8 Q. Yes.

9 A. Sure.

10 MR. HUNT: The second sentence?

11 THE WITNESS: Yes.

12 BY MR. COCHRAN:

13 Q. That's all I want to know. That was  
14 sufficient consent from him to remove that listing?

15 A. Yeah. Sure.

16 Q. In fact, didn't the judge rule that -- In the  
17 exhibit, doesn't the judge make the statement that  
18 service of the court order will operate as an order to  
19 Ameritech to rescind serves as a contractual directive  
20 to Ameritech not a court directive? Isn't that what  
21 the court ruled, or wasn't that your understanding?

22 A. My understanding was the court ruled that that  
23 order had no compulsive effect on Ameritech.

24 Q. That's a different issue.

25 On the issue of whether the second sentence of

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1 Paragraph A is sufficient contractual consent of Zames,  
2 did not the court -- was it not your understanding  
3 that, in fact, the court agreed with what I thought  
4 your earlier testimony was, that service of that order  
5 with that language was sufficient consent to revoke all  
6 listings that met one and two?

7 A. No, that's not my understanding. My  
8 understanding is the court ruled that the order had no  
9 compulsive effect, didn't give rise to any duty on  
10 behalf of Ameritech to do anything. She is saying, in  
11 my opinion, that -- If you're -- you're asking for a  
12 legal opinion, am I supposed to answer that? I'm  
13 willing. I'm willing. We're always free with our  
14 legal advice.

15 THE EXAMINER: Answer the question.

16 THE WITNESS: My understanding is  
17 the court was ruling that that would be sufficient as a  
18 contractual matter but wouldn't be sufficient to have  
19 any compulsive effect, and the court didn't have any  
20 record from which to determine such things, and those  
21 issues weren't before the court.

22 Remember what the context was. Mr. Vary  
23 was asking Mr. Zames and my client and Ameritech  
24 Publishing be held in contempt because those listings  
25 appeared, and the issue was whether or not that order

1 had any compulsive effect.

2 BY MR. COCHRAN:

3 Q. Didn't you assert in that litigation that the  
4 second sentence of Paragraph A was contractual consent  
5 by Zames and not a compulsory order? Isn't that why  
6 the judge ruled that way? That was your position that  
7 prevailed, was it not?

8 A. My position was and is that that language, if  
9 conveyed to us in a timely fashion, is sufficient  
10 consent to comply with the requirement of the Ohio  
11 regulatory law.

12 Q. Well, that being the case, if the second  
13 sentence was sufficient consent to do what the first  
14 sentence said, then why wasn't that second listing  
15 deleted?

16 A. As you know, because it was in the briefs in  
17 the case, I don't know why the listings came out  
18 exactly the way they did. I've given you an answer as  
19 to why I think the two things were eliminated, but I  
20 don't know why they came out -- In fact, they don't  
21 look like that. RE/MAX has the slash in it and no one  
22 can quite figure out exactly why these listings in  
23 every physical respect came out the way they did.

24 I know what I told Carol Dove. What happened  
25 after that, since I sit in my office, I don't know.

1 The book came out and everybody screams at us.

2 Q. Would you agree -- let's see if we can agree  
3 on this much -- that this listing is within those  
4 defined in the court order that should be rescinded,  
5 i.e., that was placed by Zames and refers to RE/MAX?

6 MR. HUNT: Objection; asked and  
7 answered. You know, we've done this before.

8 MR. COCHRAN: But he seems to  
9 change.

10 THE EXAMINER: Okay. I'll let him  
11 answer one more time.

12 THE WITNESS: Okay. My  
13 understanding, I think I said this before, is that I  
14 think that that language required Mr. Zames to cancel  
15 that listing, that being 639-4334. I think the  
16 language required him to do that.

17 BY MR. COCHRAN:

18 Q. I'm talking about the whole listing, the  
19 language --

20 A. Oh, yeah, right.

21 Q. -- talk about the same thing.

22 A. Yes, sir, absolutely. That's my  
23 understanding.

24 Q. And you're really not sure as you sit here  
25 today, in view of that fact, and in view of the consent

1 language in the second sentence, why that wasn't  
2 totally deleted?

3 A. I'll answer that again, sir. To my knowledge,  
4 what was deleted was deleted because of what I said to  
5 my client.

6 Q. I'm talking about that listing --

7 A. Sir --

8 Q. -- only that listing.

9 A. -- I don't know why that listing is there. I  
10 don't know why.

11 Q. That's all I want to know about that.

12 A. All right, sir. I thought you asked me about  
13 deletions.

14 Q. Apparently, Mr. Zames was requesting as of  
15 June 30 a new listing, by looking at these exhibits,  
16 correct?

17 A. Yes, sir.

18 Q. And, apparently, he was too late.

19 A. I would assume that that's so.

20 Q. Yeah.

21 In view of all these faxes and dozen phone  
22 calls and so forth, why was he never told that?

23 A. I have no idea, sir. I don't work for  
24 Ameritech Publishing.

25 Q. Is there any justification -- You're the only

1 witness here today for the Respondent. Is there any  
2 justification that you know of for the failure of Bob  
3 Zames to be informed of what you say is the truth  
4 today, i.e., that all those requests were too late? Do  
5 you know of any justification?

6 A. You're asking me to make a statement on behalf  
7 of Ameritech Publishing of why they ignored his  
8 communications?

9 Q. I'm asking you if you know of any reason that  
10 justifies it.

11 A. First of all, sir, I didn't even know that  
12 this had happened. I already told you I'm embarrassed  
13 to hear that any Ameritech employee would treat a  
14 customer that way. I don't know why Ameritech  
15 Publishing didn't react.

16 Q. Why do you consider it embarrassing?

17 A. Because all of the Ameritech industries strive  
18 for a high level of customer satisfaction and service.  
19 That's the only way to survive in an environment. It  
20 doesn't help our business at all to ignore our  
21 customers' communications. It makes them angry. It  
22 accomplishes nothing. And I'm a stockholder. I  
23 wouldn't want to think the company I own works that  
24 way.

25 Q. Now, in your direct testimony, I think you

1 said -- correct me if I'm wrong -- that in the week  
2 prior to June 30 that you'd been talking all week off  
3 and on to the Jones-Day attorneys concerning the  
4 intended injunction.

5 A. I had received a couple of phone calls from  
6 Mr. Silverstein, yes, telling me basically, you know,  
7 stand by. Where are you going to be? Are you going to  
8 be in your office? We're going to do something.

9 Q. When this order came down on June 30, it  
10 wasn't news to you, you were expecting something to  
11 come about that same --

12 A. It was news to me, sir. I didn't hear until  
13 July the 3rd.

14 Q. Well, didn't they tell you in the week prior  
15 to June 30 that they believed they were going to be  
16 getting you an injunction on or before June 30?

17 A. No, sir, they didn't. I didn't know about the  
18 June 30th date at that point.

19 Q. Did they tell you they were going to be  
20 obtaining an injunction?

21 A. They told me that they thought they were going  
22 to get a court order, yes.

23 Q. Did they tell you they were going to get it  
24 real soon?

25 A. That was my impression.



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1 Q. So when it came on June 30th or July 3rd, it  
2 wasn't a complete shock to you?

3 A. Not at all.

4 Q. Mr. Linton, you were counsel for Ohio Bell in  
5 the injunction litigation.

6 A. Yes, sir, I was.

7 Q. Did you not file a brief entitled "Memorandum  
8 of the Ohio Bell Telephone Company in Opposition to  
9 Motion of Plaintiff for Order to Show Cause"?

10 A. Yes, I sure did; more than one.

11 Q. Yes. Well, only one with this title.

12 MR. COCHRAN: Why don't we mark  
13 this. 10?

14 THE EXAMINER: Yes.

15

16 Thereupon, Complainants' Exhibit  
17 No. 10 was marked for purposes of  
18 identification.

19

20 BY MR. COCHRAN:

21 Q. Now, as a background question, as I understand  
22 it, your position is that Ohio Bell was not subject to  
23 the court order.

24 A. That's right.

25 Q. Okay. Is it fair to say they did not comply

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1 with the order if they weren't subject to it?

2 MR. HUNT: I'm going to object.

3 I really don't think it's relevant, the point of what  
4 his opinion is, as to whether Ohio Bell complied with  
5 the order. We've had lengthy discussion and  
6 cross-examination on what it meant, whether it applied  
7 to this listing or that listing; and, you know, the  
8 legal analysis has been provided by the federal judge  
9 as to what she meant. To say you complied with the  
10 order or didn't comply with the order really doesn't  
11 have any relevance to this proceeding at all.

12 THE EXAMINER: I disagree. I'll  
13 overrule your objection. His answer can stand.

14 BY MR. COCHRAN:

15 Q. Mr. Linton --

16 A. I don't understand.

17 Q. -- let me ask you another. Let me clear it  
18 up.

19 Did Ohio Bell comply with the court order in  
20 your understanding?

21 A. Well, the order wasn't directed to us, so we  
22 couldn't have -- we didn't comply or not comply.

23 Q. Okay. Did you state in your brief,  
24 Exhibit 10, on Page 6, "Ohio Bell complied with that  
25 order," or, more fully, the order of June -- Let me

1 read the whole sentence.

2 "Even given that presumption, Ohio Bell should  
3 not be held to have acted in concert with the  
4 defendants in their disobedience. Ohio Bell has only  
5 been served with one order and only had knowledge of  
6 that one order prior to October 6, 1995: The order of  
7 June 30, 1996, applicable by its terms only to Robert  
8 Zames. Ohio Bell complied with that order."

9 Are those your words?

10 A. Absolutely, Mr. Cochran.

11 What's the question?

12 Q. That's not true, is it? They didn't comply  
13 with the order.

14 A. No, I think we complied with the order.

15 Q. Why did you -- What did you do to comply with  
16 the order?

17 A. We removed the listing that related Mr. Zames'  
18 name to the RE/MAX trademark and we removed the listing  
19 4333. I don't accept the thesis that that listing  
20 violates the order. You asked me to agree if that  
21 order was sufficient consent by Mr. Zames to remove the  
22 listing, which is a totally separate question. I don't  
23 think Mr. Zames violated the court order.

24 Q. You don't think having this listing in that  
25 directory was a violation of the order?

1 A. I don't think so. That doesn't do you a lot  
2 of good; I'm not the federal judge.

3 Q. Why is it not a -- Why does the presence of  
4 this listing not violate Paragraph A?

5 A. Because if I was Mr. Zames' lawyer I would  
6 argue that that does not associate him improperly with  
7 the RE/MAX name, that that phone number is associated  
8 with a RE/MAX Masters Real Estate listing, which I  
9 understood was a relationship between Mrs. Zames and  
10 RE/MAX Masters, and she ought to be allowed to  
11 advertise as a RE/MAX Masters subagent. I don't think  
12 she would be violating the Lanham Act to do so. I  
13 would not have agreed that that order should be --  
14 listing should be removed.

15 Q. This order was placed by Bob Zames --

16 A. Well, he agreed.

17 Q. -- not Betty Zames. Wasn't it placed by Bob  
18 Zames?

19 A. Yes, sir.

20 Q. Doesn't the order refer to RE/MAX?

21 A. Bob Zames placed the other order, too.

22 Q. Let's talk about one thing at a time.

23 That was placed by Bob Zames; we agree with  
24 that. That refers to RE/MAX; we agree with that.

25 A. Uh-huh.

1 Q. Don't we also agree, therefore, that putting  
2 that listing in there violated Paragraph A -- the  
3 presence of that listing was a violation of  
4 Paragraph A? Maybe it was an accident, a mistake,  
5 maybe Zames made a mistake, maybe you made a mistake, I  
6 don't know, but can't we at least agree that that was a  
7 violation of Paragraph A which says that you have to  
8 remove all listings placed by him, period?

9 A. Okay. So what?

10 Q. How is it that you can say then that Ohio Bell  
11 complied with the order when they didn't remove that  
12 listing?

13 A. Because we did everything the order required  
14 us to do.

15 Q. Okay.

16 A. The order -- Paragraph A...

17 MR. COCHRAN: Exhibit 11.

18 MR. HUNT: I'm sorry, I didn't  
19 hear what that was. That was No. 10?

20 MR. COCHRAN: 11. You want to look  
21 at it?

22 MR. HUNT: Sure.

23 - - -

24 Thereupon, Complainants' Exhibit  
25 No. 11 was marked for purposes

1 of identification.

2 - - -

3 BY MR. COCHRAN:

4 Q. Handing you what's been marked as  
5 Complainants' Exhibit 11. Can you tell me what that  
6 is?

7 A. It's a memorandum I filed in federal court.

8 Q. In the injunction case?

9 A. In that case, yes.

10 Q. Did you state on Page 4 of that memorandum on  
11 behalf of your client, "On July 3, 1995, Ohio Bell  
12 received a copy of the June 30, 1995 Order requiring  
13 that Robert Zames cancel all White Pages listings that  
14 he had 'placed' and which referred in any way to  
15 RE/MAX"?

16 Are those your words?

17 A. Yeah.

18 Q. Further on on that page -- Didn't you indicate  
19 in this brief, the second paragraph, that Ohio Bell was  
20 unable to locate who had placed the Zames order which  
21 you described as the May 24th order?

22 A. We can't find a record that names the -- that  
23 identifies the individual who placed the order; we can  
24 only assume.

25 Q. Well, when records were subpoenaed of Ohio

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1 Bell, didn't they produce that fax? That's where I got  
2 that.

3 A. May 24th, sir?

4 Q. No, the fax of May 15th. That record was  
5 produced by Ohio Bell.

6 A. We have a May 24th. His fax was to Ameritech  
7 Publishing. If you want me to speculate as to what  
8 happened between the 15th and the 24th, I can do that.

9 Q. My question is this: Did not your client Ohio  
10 Bell produce that document? When subpoenaed from its  
11 own records for all records of listings produced by  
12 Zames, didn't Ohio Bell produce the May 15 fax? They  
13 had it in their own records?

14 A. We received that from Ameritech Publishing.

15 Q. Well, whoever you received it from.

16 A. Yeah, we had it, absolutely.

17 Q. You had it. It was in Ohio Bell's records?

18 A. Correct.

19 Q. Yet you're stating here in this brief you  
20 don't have any record of who placed that order.

21 A. We have an order of May the 24th.

22 Q. Where is an order of May 24th? I haven't seen  
23 an order of May the 24th.

24 A. Sir, I haven't seen the Grand Canyon.

25 Q. Is there an order of May 24th?

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1           A.   We have a record, a customer service record,  
2           which was produced in discovery in the federal court  
3           case to RE/MAX at least twice. That was an exhibit at  
4           the deposition of our people that took place in  
5           October. That indicates on that date we worked an  
6           order that changed Mr. Zames' listings and it looks a  
7           lot like the stuff that's up on the board on the left,  
8           the four listings.

9                   (Pause.)

10          Q.   I just had a little off the record  
11          conversation with your counsel.

12                Is it fair to say that when you say the May  
13          24th order, you are referring to the telephone company  
14          order that resulted from the May 15th fax?

15          A.   As I said, I think that's -- I was willing to  
16          speculate. I think that's what happened, that there  
17          was a delay between Troy and getting that order to us,  
18          and we assign it a date when we receive it.

19          Q.   But yet you had the fax to identify who  
20          requested the listing; came out of your records?

21          A.   I received that fax and didn't associate the  
22          two in my own mind and that was -- as I made it, was an  
23          honest statement. I didn't know the individual. I  
24          didn't think it mattered all that much. I mean, it  
25          came from somewhere -- someone at Zames Realty.



1 Q. Is it fair to say now that that paragraph on  
2 Page 4 of Complainants' 11, for whatever reason, you  
3 would agree is no -- it's not true, there is a record  
4 of that order?

5 A. The records that we have that --

6 MR. HUNT: Your Honor, I'm going  
7 to object. What possible relevance could it be as to  
8 what Mr. Linton said in a pleading in the federal court  
9 case?

10 THE EXAMINER: You want to respond  
11 to that?

12 MR. HUNT: And that it was  
13 wrong?

14 MR. COCHRAN: Well, this pleading  
15 is an admission of a party under the law of Ohio,  
16 therefore, Ohio Bell -- And it's also a statement to  
17 the court by an attorney for the company, as an officer  
18 of the court, stating that there is no record of the  
19 May 15th -- what they call the May 24th order to show  
20 who it was that ordered that, therefore, we couldn't  
21 revoke it because we didn't know that Bob Zames placed  
22 it.

23 THE WITNESS: No.

24 MR. COCHRAN: They're stating that  
25 in here when, obviously, in the records that is clearly

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1 not the case, that's my point, and we're talking --  
2 This is a question of gross negligence; is there gross  
3 negligence or not? Not only did they not revoke the  
4 listing, and all -- everything happened that happened  
5 in spite of the court order, but when we were all in  
6 court later about it, Ohio Bell goes so far as to say  
7 we don't know who placed that listing; how are we  
8 supposed to know it was Bob Zames?

9 THE WITNESS: Can I answer the  
10 question?

11 THE EXAMINER: Let's see if we can  
12 get an answer here.

13 THE WITNESS: You're asking me  
14 about an order to place listings, not an order to  
15 remove listings. We have never located a company --  
16 Ohio Bell record that shows the name of the individual  
17 who placed an order for those listings. That has  
18 nothing to do with who would have contacted us about  
19 eliminating listings.

20 BY MR. COCHRAN:

21 Q. I understand that.

22 I'm saying, you do have a record; you have the  
23 May 15th fax.

24 A. That's an Ameritech Publishing document that I  
25 didn't associate with --

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1 Q. You got it at your company, sir.

2 A. No, sir, absolutely incorrect.

3 Q. I can tell you, though, it was subpoenaed from  
4 your company.

5 A. That's terrific, sir. It's an Ameritech  
6 Publishing record that we got months later. By the  
7 time we're being deposed in October and producing  
8 documents in October, you better believe I've got a lot  
9 more than I had in June and July, because by then  
10 people are asking us for \$35,000.

11 Q. These pleadings were written on the 20th of  
12 October.

13 A. That's right.

14 Q. And that document was actually produced prior  
15 to that.

16 A. That's right. And we still --

17 Q. I'm sorry.

18 Okay. This pleading is dated October 20th, so  
19 the service is October 20th, 1995. You're saying  
20 there's no record of who ordered that listing, so how  
21 could we pull it, how do we know it's ordered by Bob  
22 Zames yet? There's already been a document produced --

23 A. We didn't make that argument that you just  
24 made, sir. That fact wasn't stated for that purpose.  
25 The fact was accurate at the time that I said it. It

1 is accurate as I sit here today. We do not have a  
2 record indicating the identity of the individual who  
3 placed the service order that caused those listings to  
4 appear as they do. I've said that several times today.  
5 The order that you showed of May 15th doesn't call for  
6 those listings. It doesn't call for those listings  
7 exactly.

8 Q. Well, very minor. I don't know if you wrote  
9 the listings right, but the May 15th fax calls for this  
10 listing.

11 A. More or less.

12 Q. Says May 15.

13 A. But not for those listings.

14 Q. That's fine.

15 I'm saying, you are representing the May 24th  
16 order is the May 15th fax. Are you backing off that?  
17 You suggested a minute ago that the May 24th order of  
18 service referred to in this pleading must be the May  
19 15th fax.

20 A. Most probably.

21 Q. And yet you're saying in this pleading after  
22 you produced that fax, that after searching all the  
23 records of Ohio Bell, you have no record of who ordered  
24 that listing --

25 A. We don't.

1 Q. -- to show it was or was not Bob Zames?

2 A. There's no Ohio Bell record that shows the  
3 order. We have a CSR which should be associated with a  
4 service order. We cannot find the service order. The  
5 service order should say where we got it. It should  
6 say it came from API. It should say Mr. Zames called  
7 or customer called. We don't have it. We can't find  
8 it.

9 Q. I see.

10 A. We have a CSR that refers to it as a 5-24  
11 order. The CSR has been the document that we have  
12 produced several times, early in October, before I  
13 wrote the brief, but we do not have that record; not  
14 then, not now.

15 Q. I see.

16 You wouldn't consider the May 15th fax any  
17 evidence of who placed the May 24th order?

18 A. Evidence, yes; an Ohio Bell record, no.

19 Q. This says, "Ohio Bell has continued to search  
20 its records in an effort to determine what individual  
21 placed the order." Doesn't say limited to a particular  
22 record. "Ohio Bell has not located such a record as of  
23 this date."

24 MR. HUNT: Your Honor, I'm going  
25 to object. I think this has gone on far too long.

1 THE EXAMINER: I think we've  
2 answered the question.

3 MR. COCHRAN: Okay.

4 BY MR. COCHRAN:

5 Q. Mr. Linton, wouldn't you agree, to be fair  
6 here, that the circumstances under which -- Strike  
7 that.

8 There are deletions requested routinely from  
9 the White Pages, are there not?

10 A. I believe that's true, yeah.

11 Q. I mean, there are mistakes that are sometimes  
12 made --

13 A. Yes.

14 Q. -- both in putting names in and taking names  
15 out.

16 A. That's correct.

17 Q. The normal procedure for that, I assume, is  
18 somebody calling his account rep, somebody at Ohio Bell  
19 you phone up, or you write a letter, correct?

20 A. The procedure for what, sir?

21 Q. For a person requesting a deletion, or  
22 requesting a new listing, either you phone up Ohio Bell  
23 or you communicate with Ohio Bell in some fashion.

24 A. It's typically done by telephone.

25 Q. Wouldn't you agree that the circumstances of

1 this deletion are grossly different from the hundreds  
2 or thousands of other examples of requested deletions?

3 A. Absolutely.

4 Q. Very unusual situation?

5 A. Very unusual.

6 Q. And this case -- First of all, the matter  
7 involved a federal court order, did it not?

8 A. Yes.

9 Q. Have you ever had any experience in your years  
10 at Ohio Bell where there was -- where you had notice of  
11 anything in a federal court order that might require a  
12 deletion, or was this the first time?

13 A. No, it's not the first time.

14 Q. How many other times has it occurred?

15 A. That I know of, about eight other times.

16 Q. I'm sorry?

17 A. That I know of, about eight other times.

18 Q. Eight other times.

19 Do you have any information with you today  
20 that would identify those eight times, or you just  
21 recall it?

22 A. Jesus.

23 Q. How is it that you know there are exactly  
24 eight?

25 A. I said about eight.

1 Q. I'm sorry, about.

2 Now, those other cases, was the deletion made?

3 A. No, not in all the cases; some cases it was  
4 too late.

5 Q. In all the cases where it was not too late,  
6 were the deletions made?

7 A. I believe, yes.

8 Q. Have you ever had another case of a requested  
9 deletion where the communication went directly to the  
10 chief counsel of Ameritech Publishing or the chief  
11 trial counsel of Ameritech Publishing, Tyrone Tarrt?

12 A. Not that I've worked on, no, because I only  
13 deal with the White Pages. If it's Yellow Pages,  
14 typically they're dealing with him about that, and he  
15 refers them to me.

16 Q. Have you ever had the attorney for a party  
17 give you notice of a requested deletion?

18 A. An attorney for a party saying, "Take my  
19 client's listing out"?

20 Q. Yes.

21 A. No.

22 Q. How about an attorney for another party, as in  
23 this case, advising you that a particular deletion  
24 should be made; ever happen before?

25 A. Are we back to talking about the court orders



1 in the federal court?

2 Q. No. Talking about has an attorney --

3 A. Yes.

4 Q. -- any attorney --

5 A. Yes.

6 Q. -- ever called you --

7 A. Yes.

8 Q. -- and put you on notice --

9 A. Yes.

10 Q. -- that a certain deletion has to be made for  
11 some legal reason?

12 A. Yes.

13 Q. Roughly how many cases has that occurred?

14 A. Oh, gee, that happens a lot.

15 Q. If there's time to make the deletion, do you  
16 normally make the deletion?

17 A. No.

18 Q. Why is that?

19 A. Because it would be illegal.

20 Q. I see.

21 Because you don't have the consent of the --

22 A. We require an order of the Public Utilities  
23 Commission or consent of the customer.

24 Q. I see.

25 Well, in this case you had the consent of the

1 customer, didn't you?

2 A. That's how I took the order to have any  
3 relevance at all was that at least Mr. Zames through  
4 you had said he agreed to this mess.

5 MR. COCHRAN: Okay. That's all I  
6 have.

7 I want to get you these exhibits. Would  
8 you have those two, or do I have them? You handed them  
9 back?

10 THE WITNESS: Sir, I have your 2,  
11 3, 5, 6 and 7.

12 THE EXAMINER: We've got three up  
13 here, so I need eight more.

14 MR. COCHRAN: I have 10 and 11. I  
15 think that's all I have.

16 THE WITNESS: I also have Joint 1.

17 MR. COCHRAN: Let's see what we  
18 have up here.

19 THE WITNESS: And Respondent's, I  
20 think.

21 MR. COCHRAN: That ends with 7. 2,  
22 3, 5, 6, 7, 10, 11. We'll have to compare it, I guess.

23 THE EXAMINER: This all you have?

24 MR. COCHRAN: Yeah, that's all the  
25 exhibits I have here. Are there some still missing?

1 THE EXAMINER: No, I meant  
2 cross-examination.

3 MR. COCHRAN: Oh, yes,  
4 cross-examination. I'm sorry.

5 THE EXAMINER: Anything on redirect?

6 MR. HUNT: No redirect, your  
7 Honor.

8 THE EXAMINER: Okay. You're  
9 excused.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 MR. HUNT: Your Honor, I would  
13 move my exhibits, Respondent's 1 through, I believe, 4,  
14 and Joint 1.

15 MR. COCHRAN: I would likewise move  
16 the admission of the Complainants' exhibits.

17 THE EXAMINER: I'll admit all  
18 exhibits into evidence at this time.

19 - - -

20 Thereupon, Respondent's Exhibit  
21 Nos. 1 through 4 were received  
22 into evidence.

23 - - -

24 Thereupon, Joint Exhibit No. 1  
25 was received into evidence.

2                               Thereupon, Complainants' Exhibit  
3                               Nos. 1 through 11 were received  
4                               into evidence.

6 THE EXAMINER: I'll hold off  
7 counting these for a moment and talk about our briefing  
8 schedule.

12 THE EXAMINER: Do you think it's  
13 necessary?

16 THE EXAMINER: I want briefs.

18 MR. HUNT: I would prefer to  
19 do -- You know, I have less than five minutes of  
20 comment to make. I would like to make that for the  
21 record --

23 MR. HUNT: -- and then whatever  
24 briefing schedule you prefer. My next two weeks  
25 through roughly the middle of August are pretty tied

1 up, but --

2 MR. COCHRAN: I'm sorry, less than  
3 five minutes of what?

4 MR. HUNT: Closing argument.

5 MR. COCHRAN: Could we each take  
6 five?

7 THE EXAMINER: Oh, that will be  
8 fine.

9 MR. COCHRAN: Want me to go first?

10 THE EXAMINER: Yes.

11 MR. COCHRAN: Make it even less  
12 than that.

13 I think the issue in the case is whether  
14 there is adequate service. The issue of whether there  
15 is adequate service, according to the opinions of this  
16 Commission, in turn depends upon whether there was  
17 gross negligence. It is true that the phone company  
18 has a big job on its hands in putting out White Pages,  
19 mistakes constantly made that are routine clerical  
20 errors of all sorts, I'm sure.

21 I think that this case is one which is  
22 set apart from that normal type of error for at least  
23 three reasons that I can think of, which make it gross  
24 negligence.

25 One, we have not just Mr. Zames calling

1 up, making a phone call and rescind his order, we have  
2 a United States District Court judge issuing an  
3 injunction on the subject, putting -- that says Zames  
4 is to remove any listings which, one, were placed by  
5 him; and, two, referred in any way to RE/MAX; and then  
6 goes on to say, "Service of this order is sufficient  
7 consent to do that," and, in fact, I believe Ohio Bell  
8 does not dispute that.

9                   So you have the rescission taking place  
10 by virtue of a court order. Even though Ohio Bell is  
11 not a party and, indeed, as the court ruled, cannot be  
12 held in contempt and so on and so forth, the  
13 contractual consent's a much different issue, it's as  
14 if Zames had written a letter or whatever, but I think  
15 it is an even more impressive notice that this is an  
16 important change that should be made pursuant to the  
17 court order of the United States District Court judge.

18                   The second reason is that the avenue of  
19 notice of this rescission did not go to a clerk at Ohio  
20 Bell, or Ameritech, or anywhere else, it went to the  
21 head attorney of Ameritech Publishing, and the head  
22 attorney, or at least the head trial attorney and the  
23 head attorney of Ohio Bell. This is the chief attorney  
24 for the two respective companies receiving notice of  
25 this situation.

1 I'm not disputing that they have all  
2 kinds of defenses they raise, that it was confusing, a  
3 misunderstanding, or whatever it was, but the point of  
4 it was, it wasn't issued to a clerk.

5 The third reason is that Zames himself  
6 made a number of requests, by his testimony over a  
7 dozen phone calls, seeking to make sure that his new  
8 listing that he had requested was in the phone book and  
9 not the old listing or some part of the old listing.  
10 He never got any response. He was never told by any of  
11 these people that you're too late. In fact, it appears  
12 there's a lot of evidence that suggests he wasn't too  
13 late, but if he was, no one ever told him that he was,  
14 it was never made an issue.

15 Those three factors combined together as  
16 they are described here today take this way out of the  
17 normal excusable situation, excusable error, excusable  
18 neglect, particularly in view of some of the side  
19 circumstances, such as the statement that we can't find  
20 any document which will identify for us who the author  
21 of this requested listing is, when, in fact, there's a  
22 fax that went out.

23 I also feel that to the extent that  
24 agency becomes an issue, that, hey, everything is on  
25 Ameritech Publishing, I don't think Ohio Bell should be

1 permitted to insulate itself from its obligation to see  
2 that its own White Pages are properly published. If a  
3 mistake is not gross negligence, that's one thing, but  
4 to say, even if it is gross negligence, it wasn't our  
5 gross negligence, it was Ameritech Publishing, because  
6 that's their -- you notified them, they're the ones  
7 that work with Donnelly, I don't think that a utility  
8 should be permitted to hide behind that. I think, in  
9 fact, Ameritech Publishing, I think the evidence shows,  
10 is the agent of Ohio Bell to work with Donnelly and get  
11 the thing published because Ohio Bell has advantageous  
12 reasons of doing it with them rather than themselves,  
13 lower costs, combined Yellow/White Pages, et cetera,  
14 et cetera.

15 But it's not as if Ameritech Publishing  
16 is some company we never heard of, they're brother and  
17 sister corporations, and I think to the extent it  
18 becomes relevant, which I don't think it is, they're  
19 responsible for the negligence of their agents.

20 Thank you.

21 THE EXAMINER: Mr. Hunt.

22 MR. HUNT: Your Honor, let me  
23 first address the factual situation.

24 What happened here? We've got a federal  
25 court order, okay, and at issue in this case are these



1 listings, which appear on a memorandum, which is faxed  
2 to Ameritech Publishing by Mr. Zames.

3 For the purposes of this federal court  
4 order, Mr. Zames said, on both direct and cross, "I  
5 relied upon the order and Jones-Day's communication of  
6 the order to Ohio Bell, Ameritech Publishing, to take  
7 care of this problem," but it's obvious a blind man  
8 could see it in a minute, Jones-Day doesn't know about  
9 all these listings or they would have mentioned them.  
10 It's a big law firm and they mention a lot of stuff,  
11 okay? What do they specifically mention? They mention  
12 this telephone number and this name. That order gets  
13 communicated to Tyrone Tartt at some point. Perhaps on  
14 June 30th is when it's sent to him. When it's actually  
15 received may well be July the 5th.

16 It is sent to Mr. Linton July 3rd.  
17 Neither Mr. Linton nor Mr. Tartt know all the listings  
18 that Mr. Zames has placed. How could they? Why would  
19 they? On cross-examination he said, "I placed these  
20 for Masters." "RE/MAX Masters? Are you RE/MAX  
21 Masters?" "No, I'm not RE/MAX Masters. I was doing my  
22 wife a favor, thought I'd do myself a favor, too; later  
23 changed my mind."

24 So what we have here is a communication  
25 by Jones-Day to take out these two listings,

1 specifically that order, and that's exactly what  
2 happened, those two came out, and what winds up in the  
3 book? The two that are left.

4 If Mr. Zames was that concerned about  
5 getting these listings out of the book in time, given  
6 we're right on the cusp of when it has to be done, he  
7 would have undoubtedly disclosed to Jones-Day, or  
8 disclosed directly to Ameritech, these are all the  
9 listings I put in and you ought to take out these two.

10 Mr. Linton is also armed with the  
11 information from Jones-Day that Betty Zames has some  
12 sort of relationship with Masters. He's never been  
13 told that that fell apart or that ceased to exist.  
14 How's he supposed to know what Appraisals means?  
15 Doesn't have Bob Zames in it.

16 So factually what happened is Jones-Day  
17 assumed the responsibility with Complainants' consent,  
18 and most probably instruction, send a copy of the order  
19 to the telephone company. Well, an order was sent to  
20 the telephone company and the company responded to it  
21 on the eve of the book coming out; they took out what  
22 they could see to do.

23 If this is a mistake to leave this in, is  
24 it gross negligence just because it's on a federal  
25 court order? I don't think so. A reasonable

1 interpretation of this was take this stuff out.  
2 Neither Mr. Linton nor Mr. Tartt had any way of knowing  
3 about these other listings and Mr. Zames wasn't sharing  
4 it at that point in time, he was still fighting with  
5 them as to whether he could use that number, as to  
6 whether Mrs. Zames was going to be associated with  
7 RE/MAX Masters or not.

8 The requests that Mr. Zames made on June  
9 30th and after with regard to the placement of  
10 advertising for Zames Realty went to Ameritech  
11 Publishing. He wanted Yellow Pages listings and White  
12 Pages, to be sure, but he was communicating with Yellow  
13 Pages. That's what he really wanted. Where they went  
14 wrong, whether they were really on time or not, I don't  
15 know, and this record doesn't know, and I would point  
16 out to the Commission that the burden is upon the  
17 Complainants to establish gross negligence, not a  
18 mistake, not an error. I personally don't think these  
19 facts suggest even an error, but certainly not gross  
20 negligence.

21 Thank you.

22 THE EXAMINER: Okay. Let's go off  
23 the record.

24 (Discussion held off the record.)

25 THE EXAMINER: Go back on the

1 record.

2 We've agreed that August 19th will be the  
3 date for submission of simultaneous briefs in this  
4 case.

5 Okay. I'll consider this case submitted  
6 on the record then.

7 Thank you.

8 MR. COCHRAN: Thank you.

9 MR. HUNT: Thank you.

10 - - -

11 (Thereupon, the hearing was  
12 concluded at 3:54 o'clock p.m.  
13 on Tuesday, July 16, 1996.)

14 - - -

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MC GINNIS & ASSOCIATES, INC.  
COLUMBUS, OHIO (614) 431-1344

C E R T I F I C A T E

- - -

State of Ohio,                    )  
                                  ) SS:  
County of Delaware,               )

- - -

I, Deborah J. Holmberg, Registered Merit  
Reporter and Notary Public in and for the State of  
Ohio, hereby certify that the foregoing is a true and  
correct transcript of the proceedings hereinbefore set  
forth, as reported in stenotype by me and transcribed  
by me or under my supervision.

Deborah J. Holmberg,  
Registered Merit Reporter  
and Notary Public in and for  
the State of Ohio.

My Commission Expires:  
October 07, 1996.

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1 I N D E X

2 - - -

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9	EXHIBITS	MARKED	RECEIVED
10	Complainants' Exhibit No. 1 -	9	176
11	Stipulated Order of Injunction		
12	Complainants' Exhibit No. 2 -	12	176
13	Two pages of facsimile transmission and Stipulated Order of Injunction		
14	Complainants' Exhibit No. 3 -	14	176
15	Fax transmittal form dated 5-15-95		
16	Complainants' Exhibit No. 4 -	15	176
17	Fax transmittal form dated 5-26-95 with five-page attachment		
18	Complainants' Exhibit No. 5 -	21	176
19	Fax transmittal form dated 6-3-95		
20	Complainants' Exhibit No. 6 -	23	--
21	(withdrawn)		
22	Complainants' Exhibit No. 6 -	24	176
23	Fax transmittal form dated 7-17-95		
24	Complainants' Exhibit No. 7 -	31	176
25	One page from the Business White Pages		
26	Complainants' Exhibit No. 8 -	34	176
27	Order to Show Cause and Order Regarding Discovery		

1 I N D E X  
2 (continued)

3	EXHIBITS	MARKED	RECEIVED
4			
5	Joint Exhibit No. 1 -	49	175
6	Letter dated 1-17-95		
7	Respondent's Exhibit No. 1 -	51	175
8	Answers to First Set of		
9	Interrogatories of Ameritech		
10	Ohio to Complainants		
11	Respondent's Exhibit No. 2 -	96	175
12	Letter dated 7-3-95 with		
13	Stipulated Order of Injunction		
14	Respondent's Exhibit No. 3 -	104	175
15	Order to Show Cause and Order		
16	Regarding Discovery		
17	Respondent's Exhibit No. 4 -	110	175
18	Order Granting Reconsideration		
19	Of Order To Show Cause And Denying		
20	Motion For Ameritech To Show Cause		
21	Why It Should Not Be Held In Contempt		
22	Respondent's Exhibit No. 5 -	113	176
23	Order of Dismissal of Motion		
24	to Show Cause		
25	Complainants' Exhibit No. 9 -	124	176
26	Handwritten memo dated 7-5-95		
27	with attachment		
28	Complainants' Exhibit No. 10 -	157	176
29	Memorandum Of The Ohio Bell		
30	Telephone Company In Opposition		
31	To Motion Of Plaintiff For Order		
32	To Show Cause		
33	Complainants' Exhibit No. 11 -	161	176
34	Reply Memorandum of the Ohio Bell		
35	Telephone Company in Opposition to		
36	Motion of Plaintiff for Order to		
37	Show Cause		

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# ***EXHIBITS***



Complaint's Ex. 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RE/MAX INTERNATIONAL, INC.,

Plaintiff,

v.

ELIZABETH ZAMES and  
ROBERT ZAMES,

Defendants.

) Case No. 1:95CV1453

) Judge Lesley Brook Wells

) STIPULATED ORDER OF  
) INJUNCTION

It is stipulated among the parties and it is therefore ORDERED,  
this 30th day of June 1995 that:

A. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately rescind all orders that either of them placed with Ameritech, Inc., Ameritech Publishing, Inc., Ameritech Advertising Services, or any Ameritech affiliate ("Ameritech") for publication of "white pages" listings to appear in Ameritech's 1995 or subsequent directories, including but not limited to the directory for Lake County, Ohio, which listings refer in any way to RE/MAX, or any of its federally-registered trademarks or its state-registered trademarks. Service of a copy of this order by any party to this lawsuit shall be

sufficient evidence or notice of the rescission and shall operate as an order to Ameritech to rescind, even in the absence of a directive from the defendants.

B. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately rescind all orders that either of them placed with Ameritech Publishing, Inc. or Ameritech Advertising Services or any Ameritech affiliate ("Ameritech") for publication of "yellow pages" listings to appear in Ameritech's 1995 or subsequent directories, including but not limited to the directory for Lake County, Ohio, which listings refer in any way to RE/MAX or any of its federally-registered trademarks or its state-registered trademarks. Service of a copy of this order by any party to this lawsuit shall be sufficient evidence or notice of the rescission and shall operate as an order to Ameritech to rescind, even in the absence of a directive from the defendants.

C. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately cease from any further conduct or advertising:

- (i) suggesting or tending to suggest an affiliation between the plaintiff or the brokerage services of plaintiff and its franchisees and Robert Zames;
- (ii) suggesting or tending to suggest sponsorship of the brokerage services of Robert Zames by plaintiff;
- (iii) suggesting or tending to suggest that the real estate brokerage services of Robert Zames are that of plaintiff and its franchised brokers and agents;

D. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately cease from any further use of the telephone number (216) 639-4333, and shall immediately take all steps necessary to transfer ownership of same to RE/MAX International, Inc. Service of a copy of this order by any party to this lawsuit shall be sufficient evidence or notice of the transfer and shall operate as an order to Ameritech to transfer the telephone number, even in the absence of a directive from the defendants;

E. Robert Zames shall immediately cease using any of RE/MAX's federal registered service marks, including, without limitation Reg. No. 1,139,014 ("RE/MAX" service mark), Reg. No. 1,173,586 (for hot air balloon service mark), Reg. No. 1,702,048 (for red over white over blue bar design service mark), and Reg. No. 1,158,371 (for "Above the Crowd!" service mark) and any confusingly similar variations thereof;

F. The instances of unauthorized conduct, as alleged in the complaint, are not subject matter to be resolved in the pending arbitration known as Robert Zames et al. and RE/MAX International, Inc. et al.; and

SENT BY:

6-30-95 : 2:18PM :

2165867900-

97515546:# 5/ 5

4

G. RE/MAX International, Inc. will file a notice of dismissal for the pending suit (1:95CV1453) without prejudice.

Stipulated To:

\_\_\_\_\_  
Michael W. Vary  
Ohio Bar No. 0033789  
Marc Alan Silverstein  
Ohio Bar No. 0043539  
Attorneys for Plaintiff  
RE/MAX International, Inc.

Date: \_\_\_\_\_

\_\_\_\_\_  
Edward W. Cochran  
Attorney for Defendant  
Robert Zames

Date: \_\_\_\_\_

\_\_\_\_\_  
Elizabeth Zames

Date: \_\_\_\_\_

It is So Ordered:

\_\_\_\_\_  
Judge  
United States District Court


Date: \_\_\_\_\_

H. Magistrate Judge Steepy is authorized to sign and enter this order, with the same force and effect as if it were signed and entered by a United States District Judge.

Stipulated To:

\_\_\_\_\_  
 Michael W. Vary  
 Ohio Bar No. 0033789  
 Marc Alan Silverstein  
 Ohio Bar No. 0043539  
 Attorneys for Plaintiff  
 RE/MAX International, Inc.

Date: \_\_\_\_\_

  
 \_\_\_\_\_  
 Edward W. Cochran  
 Attorney for Defendant  
 Robert Zames

Date: 8-30-95

\_\_\_\_\_  
 Elizabeth Zames

Date: \_\_\_\_\_

It is So Ordered:

\_\_\_\_\_  
 Judge  
 United States District Court

Date: \_\_\_\_\_



URGENT!! X-1's (ORDER) <sup>Complimentary Ex 2</sup>

### Facsimile Transmission

North Point, 901 Lakeside Avenue • Cleveland, OH 44114 • 216/586-3939  
Facsimile: 216/579-0212

Date: 6/30/95

Please hand deliver the following facsimile to:

Name: Tyrone Tarr  
Company: Ameritech Publishing  
Telephone No.: \_\_\_\_\_

Facsimile No.: 810-524-7227  
Number of Pages (including this page): 5

Send copies to: \_\_\_\_\_  
\_\_\_\_\_  
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From: Mark Alan Silverstein  
Telephone No.: 216/586-7125

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PAGES SENT : 05

\*\*\* SEND \*\*\*

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NOTE:

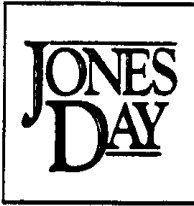
No = OPERATION NUMBER  
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EC = ERROR CORRECT  
G2 = CCITT G2 MODE

RS = RELAY SEND  
48 = 4800BPS SELECTED

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Facsimile: 216/579-0212

Date 6/30/95

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Facsimile No.: 810-524-7227

Company: Ameritech Publishing

Number of Pages (including this page): 5

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CAM No.: 533 700 - 010 - 002

Facsimile Operator's initials

NOTICE: This communication is intended to be confidential to the person to whom it is addressed, and it is subject to copyright protection. If you are not the intended recipient or the agent of the intended recipient or if you are unable to deliver this communication to the intended recipient, please do not read, copy or use this communication or show it to any other person, but notify the sender immediately by telephone at 216/586-3939 or the direct telephone number noted above.

Message: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please call us immediately if the facsimile you receive is incomplete or illegible. Our telephone number is 216/586-3939. Please ask for the facsimile operator. Ext. \_\_\_\_\_

### Jones, Day, Reavis & Pogue

Atlanta, Austin, Brussels, Chicago, Cleveland, Columbus, Dallas, Frankfurt, Geneva, Hong Kong, Irvine, London, Los Angeles, New York, Paris, Pittsburgh, Riyadh, Taipei, Tokyo, Washington, D.C.

FILED

JUN 1 1995 3:53

RECEIVED  
CLERK OF COURT  
NORTHERN DISTRICT OF OHIO  
COLUMBUS, OHIO

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RE/MAX INTERNATIONAL, INC.,	)	Case No. 1:95CV1453
	)	
Plaintiff,	)	Judge Lesley Brook Wells
	)	
v.	)	
	)	
ELIZABETH ZAMES and	)	STIPULATED ORDER OF
ROBERT ZAMES,	)	<u>INJUNCTION</u>
	)	
Defendants.	)	
	)	

It is stipulated among the parties and it is therefore ORDERED,  
this 30th day of June 1995 that:

A. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately rescind all orders that either of them placed with Ameritech, Inc., Ameritech Publishing, Inc., Ameritech Advertising Services, or any Ameritech affiliate ("Ameritech") for publication of "white pages" listings to appear in Ameritech's 1995 or subsequent directories, including but not limited to the directory for Lake County, Ohio, which listings refer in any way to RE/MAX or any of its federally-registered trademarks or its state-registered trademarks. Service of a copy of this order by any party to this lawsuit shall be



sufficient evidence or notice of the rescission and shall operate as an order to Ameritech to rescind, even in the absence of a directive from the defendants.

B. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately rescind all orders that either of them placed with Ameritech Publishing, Inc. or Ameritech Advertising Services or any Ameritech affiliate ("Ameritech") for publication of "yellow pages" listings to appear in Ameritech's 1995 or subsequent directories, including but not limited to the directory for Lake County, Ohio, which listings refer in any way to RE/MAX or any of its federally-registered trademarks or its state-registered trademarks. Service of a copy of this order by any party to this lawsuit shall be sufficient evidence or notice of the rescission and shall operate as an order to Ameritech to rescind, even in the absence of a directive from the defendants.

C. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately cease from any further conduct or advertising:

- (i) suggesting or tending to suggest an affiliation between the plaintiff or the brokerage services of plaintiff and its franchisees and Robert Zames;
- (ii) suggesting or tending to suggest sponsorship of the brokerage services of Robert Zames by plaintiff;
- (iii) suggesting or tending to suggest that the real estate brokerage services of Robert Zames are that of plaintiff and its franchised brokers and agents;

D. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately cease from any further use of the telephone number (216)639-4333, and shall immediately take all steps necessary to transfer ownership of same to RE/MAX International, Inc. Service of a copy of this order by any party to this lawsuit shall be sufficient evidence or notice of the transfer and shall operate as an order to Ameritech to transfer the telephone number, even in the absence of a directive from the defendants;

E. Robert Zames shall immediately cease using any of RE/MAX's federal registered service marks, including, without limitation Reg. No. 1,139,014 ("RE/MAX" service mark), Reg. No. 1,173,586 (for hot air balloon service mark), Reg. No. 1,702,048 (for red over white over blue bar design service mark), and Reg. No. 1,158,371 (for "Above the Crowd!" service mark) and any confusingly similar variations thereof;

F. The instances of unauthorized conduct, as alleged in the complaint, are not subject matter to be resolved in the pending arbitration known as Robert Zames et al. and RE/MAX International, Inc. et al.; and

G. RE/MAX International, Inc. will file a notice of dismissal for the pending suit (1:95CV1453) without prejudice.

212

H. Magistrate Judge Steepy is authorized to sign and enter this order, with the same force and effect as if it were signed and entered by a United States District Judge.

Stipulated To:

Michael W. Vary  
Michael W. Vary  
Ohio Bar No. 0033789  
Marco Alan Silverstein  
Ohio Bar No. 0043539  
Attorneys for Plaintiff  
RE/MAX International, Inc.

Date: 6/30/95

Edward W. Cochran  
Edward W. Cochran  
Attorney for Defendant  
Robert James

Date: 6-30-95

Elizabeth James

Date: \_\_\_\_\_

*As of June 30, 1995, this order applies only to Robert James.*

It is so Ordered:

Joseph M. Smith  
Judge  
United States District Court

Date: June 30, 1995

I hereby certify that this instrument is a true and correct copy of the original on file in my office.

Attest: Geri M. Smith, Clerk

U.S. District Court

Northern District of Ohio

By: Deborah Joseph Smith  
Deputy Clerk

06/26/85 15:59 FAX 1 810 524 7227

AAS LEGAL

Complainant: Ex.3 0002

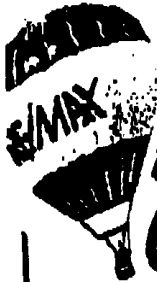
216 632 4040

API OR CUST SERV → LEGAL

005/011

PHONE No. : 216 639 4339

From :



**Above  
the  
Crowd!**

RE/MAX is  
Enhanced  
Bus

FAX #: 216-639-4339

No. of pages to follow 0

Vice-Tel.

FAX TRANSMITTAL FORM

TO: Joseph Zivack

DATE: May 15, 1985

COMPANY: American Advertising

FAX #: 642-4087

FROM: Bob Zemes

COMPANY: RE/MAX

The following is how we would like to have our listing appear in the white pages of the new Lake County Ohio phone directory.

RE/MAX Mentors. Real Estate  
Specialists.....639-4333  
Betsy Zemes.....975-0899  
Appraisals.....639-4334  
Bob Zemes.....975-5984

*Remove  
THIS shortly after  
white pages 5/15 By  
FAX*

Also, in conjunction with the display ed in the yellow pages, do we get bold print in black lettering for both the yellow and white pages? Thank you very much for your expert assistance.

CONFIDENTIALITY NOTICE:

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Thank you.

**RE/MAX** specialists in real estate  
2107 mentor avenue  
Painesville, OH 44077  
phone: (216) 639 - 4333



08/28/95

18:00 FAX 1 810 524 7227

13:09 216 842 4040

ASO LEGAL

API OR CUST SERV --- LEGAL

PHONE No. 1 216 639 4339

@ 010/011

From :



*Above  
the  
Crowd!*

FAX # 216-639-4330

No. of pages to follow three

FAX TRANSMITTAL FORM

TO: Joanna Zivsek

DATE: May 26, 1995

COMPANY: Ameritech Advertising

FAX #: 842-4087

FROM: Robert Zamec

COMPANY: Spec. in R.E.

Per your request I've transmitted signed agreements for our advertising in the new Lake County phone directory which comes out in August.

Could someone please fax me a proof of how our white page ad will appear as well as how our regular yellow page listing will appear. I simply wish to eliminate any chance for errors. Thank you.

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Thank you.

**RE/MAX** specialists in real estate  
2187 Mentor Avenue  
11111 44177

**GRAPHIC CENTER USE ONLY**

**CUSTOMER SIGNATURE**

08/28/95 18:01 FAX 1 510 524 1221  
12:52 216 642 4040

API OR CUST SERV

SALES COPY 0003

**Amentech**

**Advertising Order**

201 456 7925 - 03

P - ~~CHANGES~~ 2111 (PERM)

LCA CH 216 255-2111

UST ID: 4000 54 9471  
PRIM TN: (216) 255-2111  
CONT NR:  
CUSTOMER GRD: 3

006545-6565  
ESTB DT: 04/19/1990

02/08/95

DATE IN GRD: 06/07/1992

039-4332

RE-MAX SPECIALISTS IN REAL ESTATE  
9179 MENTOR AV.  
MENTOR, OH 44060

LISTING INFO  
TN: (216) 255-2111 (RCF)  
NR: Remax Specialists in Real Estate

(CAD) DO: 11/21/97 Mentor Av  
TV: Mentor, OH 44060  
B: 0001 (MAIN LISTING)

IN DATE	ITEM CODE	TYPE HEADINGS & DESCRIPTION	MONTHLY RATE	BLNG ID
		*** ADVERTISING IN ***		
		LAKE COUNTY AREA CH (August 1995)		
		DIRECTORY GRADE: 3 DATE IN GRADE: 08/19/1992		
		*** REAL ESTATE (C) <i>10/1/97</i>	<i>\$ 119.00</i>	(C)
08/01/92	<i>20CH/1AB</i>	SERVICE REFERENCE LISTING	0.00	RMC01
	<i>ABLR/100</i>	TOTAL FOR (216) 255-2111	0.00	
	<i>1/1</i>	<i>Real Estate Appraisal</i>		
		<i>Total</i>	<i>\$ 119.00</i>	

COUNT EXECUTIVE

ES LA CODE

SIGNATURE OF CUSTOMER

CUSTOMER NAME (PRINTED)

DATE

08/28/95 18:01 FAX 1 810 524 1221  
13:08 216 642 4040

AAA LEGAL  
API ON CUST SERV --- LEGAL  
PHONE No. : 216 639 4339

0009/011  
084-00 1773

From :

PUBLISHING COPY 1

**Ameritech**

Advertising Order

PAGE: 1

LCA ON: 216 255-2111

02/08/95

EOL: 408.7925 -03

P -CAIRNS, BILL (PERM)

CUST ID: 4000 54 9472  
PRIN TMT (216) 255-2111  
CONT NMS:  
CUSTOMER CRD: 3

006545

ESTB DT: 04/19/1990

DATE IN CRD: 04/07/1992

039-4333  
\*LISTING INFO:

TMT (216) 255-2111 (RCH)  
NMS: REALTY SPECIALISTS IN REAL  
ESTATE  
ADD: 13/2167: Monitor AS  
CITY: MONROE, LA 70002  
0001: (MAIN LISTING)

RE/MAX SPECIALISTS IN REAL ESTATE

2167-Monroe Ave  
PATRICKS OFF 4407 (CAD)

IN DATE	ITEM CODE	TYPE	HEADING & DESCRIPTION	RATE	PLG ID
			ADVERTISING: INTER		
			LAKE COUNTY AREA IDH (August 1995)		
			DIRECTORY GRADE: 3 DATE IN GRADE: 08/19/1992		
			GRADE REAL ESTATE (ID):		
			SOCH / FAS		
			SERVICE REFERENCE LISTING		
			ABIN / 100		
			TOTAL FOR: (216) 255-2111		
			SRL Real Estate Appraisers		
			Total		

Zusak

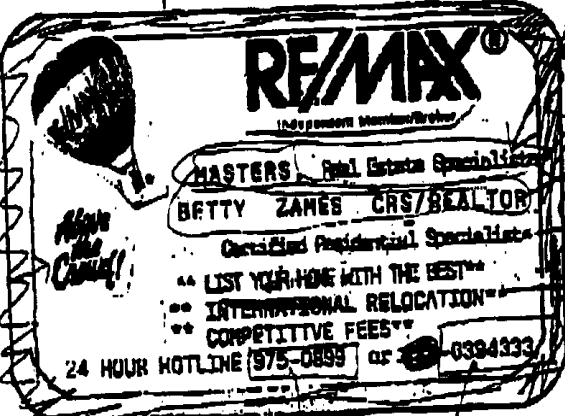
X PAMS

5/25/95



Date Submitted: 1/19/95 Real Estate  
Aries Cust. Name: Re-max Masters Specialist  
Address: 2167 Mentor AV  
City: Painesville State: OH Zip: 44067  
Main Listing Phone #: 216 UDAC: 100 Color Code: 216  
AE ID #: 6565 AE Name: Red  
Turnaround Time Requested: ☐ 5 days (check one) Other 10/10/95 Date Rec'd. Time Rec'd.  
Dir. Abbrev: 10/10/95 Year: 1995  
Heading: Real Estate  
Special Instructions:

Art Specifications (check one)  
☐ Follow Exact  
☐ Creative Spec  
Colors:  
☐ Red ☐ Blue ☐ Green  
☐ Yellow ☐ Black  
Stock Photo #: 1134904  
☐ AMEX ☐ Discover  
☐ Carte Blanche ☐ Mastercard  
☐ Coupon ☐ Senior Savings  
☐ Drivers Club ☐ Visa

WLO  
Position 1090 large in space available  
Bold Black Border  
PART OF NAME  
small BOLD MASTERS  
RECEIVED MAY 10 1995  
From : PHONE No. : 216 639 4333  
  
MASTERS Real Estate Specialist  
BETTY ZANES CRS/REALTOR  
Classified Residential Specialist  
LIST YOUR HOME WITH THE BEST  
INTERNATIONAL RELOCATION  
COMPETITIVE FEES  
24 HOUR HOTLINE 975-0899 or 639-4333  
BOLD NAME  
ITALICS  
EXPERT  
Should read  
Black Reverse  
Reverse order of #

639-4333 or 24 HR HOTLINE 975-0899



Compliments Ex 5

From

PHONE No. : 216 639 4339

Nov. 01 1995 11:10AM P09

SPECIALISTS

FAX # 216-639-4339

IN REAL ESTATE

No. of pages to follow \_\_\_\_\_

ZAMES REALTY, INC.

FAX TRANSMITTAL FORM

TO: Pat Andreatis

DATE: June 30, 1995

COMPANY: Ameritech

FAX #: 216-838 4236

FROM: Bob Zames

COMPANY: Zames Realty Inc., DBA

Specialists In Real Estate

I am relinquishing one of my phone numbers, 216-639-4333 which necessitates changing my white and yellow page ads. I am no longer affiliated with REMAX.

The White Page ad should be as follows:

ZAMES REALTY, INC. 639-<sup>5131</sup>~~4333~~ (In bold print please)  
2167 Mentor Avenue

Please do the same in the yellow pages in bold print also.

In the yellow pages, please do the following with one of my other numbers, 639-4339.

In the appraisal section:

DIVERSIFIED APPRAISERS 639-4339

Also in bold print. Thank you.

2167 Mentor Avenue

Please call if you have questions. 975-5964

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Thank you.

ZAMES REALTY, INC.

DBA specialists in real estate

2167 mentor avenue

Complainant's Ex. 6

PHONE No. : 216 639 4339

Nov. 01 1995 11:09AM P08

SPECIALISTS

FAX # 216-639-4339

IN REAL ESTATE

No. of pages to follow one

Bob Zamos, Broker  
216-975 5964  
216-639 4334

FAX TRANSMITTAL FORM

Pat Andreatis 216-838-4236 (FAX)

TO: Ms. Paris 216-838 3868 (FAX) DATE: July 17, 1995

COMPANY: Ameritech

FAX #: see above

FROM: Bob Zamos, Broker

COMPANY: Zamos Realty Inc., DBA  
(Spec. in Real Estate)

I have not received any response to my fax to you on June 30, 1995.

Because it is critical for my business to be listed in the Lake County directory coming up, please contact me right away to confirm everything is OK.

I have transmitted a copy of my previous FAX to your attention.

Thank you.

CONFIDENTIALITY NOTICE:

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Thank you.

specialists in real estate

2167 mentor avenue

USPS 714 Ohio Mailer Agreement Company

## BUSINESS WHITE PAGES

## RED G - RICHARDS

**Granum Gift Shop The**  
428-4777

**Grill The**  
354-4040

**Grill The**  
834-4019

**Grill The**  
946-6677

**Grill The**  
731-3300

**Grill The**  
259-3557

**Grill The**  
256-0716

**Grill The**  
256-3570

**Grill The**  
946-9872

**Grill The**  
800 843-7663

**Grill The**  
585-5923

**Grill The**  
834-0835

**Grill The**  
729-1001

**Grill The**  
765-0007

**Grill The**  
946-2000

**Grill The**  
255-2601

**Grill The**  
357-6111

**Grill The**  
354-8501

**Grill The**  
352-3949

**Grill The**  
357-6111

**Grill The**  
352-4805

**Grill The**  
975-5728

**Grill The**  
585-2168

**Grill The**  
286-9006

**Grill The**  
942-3388

**Grill The**  
942-4104

**Grill The**  
942-5005

**Grill The**  
942-7166

**Grill The**  
953-9446

**Grill The**  
255-1820

**Grill The**  
944-7700

**Grill The**  
951-3031

**Grill The**  
255-8825

**Grill The**  
942-6591

**Grill The**  
350-7200

**Grill The**  
942-7939

**Grill The**  
256-5329

**Grill The**  
753-3912

**Grill The**  
729-7444

**Grill The**  
286-9141

**Grill The**  
352-6520

**Grill The**  
257-6956

**Grill The**  
942-0138

**Grill The**  
546-5678

**Grill The**  
943-0037

**Grill The**  
256-3318

**Grill The**  
357-5753

**Grill The**  
352-6559

**Grill The**  
946-6723

**Reider's Stop-N-Shop**  
Supermarkets —  
Store No 5 — 944-8900

**Raighart Steel Products Corp —**  
Plant 37041 Elm St — 942-4700  
Ofc 37877 Elm St — 946-2100

**Reimers Electra-Steam Inc —**  
37195 Ben Hur Av — 942-2244

**Reinhart Wm J MO —**  
Willoughby Health Center — 946-1119  
4212 State Rte 306

**Reithoff John —**  
17711 Ravenna Rd Burton Ohio — 951-9280  
Willoughby Tel No —

**Reithoff John Ins —**  
17711 Ravenna Rd — 834-8000

**Relay Service —** See Ohio Relay Service

**Reliable Dodge —**  
7272 Mentor Av Mentor — 951-2900

**Leasing —**  
7272 Mentor Av Mentor — 269-3765

**Used Cars —**  
7272 Mentor Av Mentor — 269-3764

**Reliable Sprinkler Protection**  
Inc 1433 E 328 St — 946-6283

**RELIABLE SUPPLY CO INC —**  
186 Richmond St — 357-1005

**Reliance Mechanical Corp —**  
Lloyd Rd — 943-3860

**Remax Masters Real Estate —**  
Betty Zames — 975-0899

**REMAX Masters Real Estate —**  
Appraisals — 639-4334

**Remedy Staffing —** 7773 Mentor Av — 946-3131

**Fax —** 946-7774

**Remember When —**  
3328 Chillicothe Rd — 256-2562

**Remembrances quilting metris —**  
12570 Chillicothe Rd — 729-1650

**Renaissance Constr Co Inc —**  
834-1642

**Renaissance Financial Group —**  
8228 Mayfield Rd — 729-8285

**Renaissance International**  
Enterprises 2926 Bishop Rd — 943-4112

**Renaissance Janitorial Servs —**  
731-0177

**Rendina Paul A CPA —**  
29339 Euclid Av — 585-1090

**Rendina Paul A CPA —**  
29339 Euclid Av — 943-2274

**Rendina & Vitantonio Inc —**  
29339 Euclid Av — 585-1090

**Renewal Parts Maintenance —**  
4445 Glenbrook Rd — 946-0082

**Rent A Bus Inc —**  
39068 South St — 946-8638

**Garage —**  
315 Main St — 354-4014

**Rent-A-Center 1447 Mentor Av —**  
352-8090

**RENT-A-HEEP —**  
33601 Vine St — 942-1900  
33601 Vine St — 942-1900  
33601 Vine St — 951-0970  
33601 Vine St — 951-7036

**Rent-A-Home Services —**  
7464 Mentor Av — 946-1121

**Rent-A-Wreck Of Chardon —**  
11993 Ravenna Rd — 285-5068

**Rent-It Inc Painesville Ohio —**  
Cleveland Tel No — 951-0191

## RENTAL KING

1241 Mentor Av — 352-4101

**Renu USA Mentor Av & Fairgrounds Rd —**  
352-1289

**Reorganized Church Of Jesus**  
Christ Of Latter Day Saints —  
Kirtland Congregation — 256-8338  
9017 Chillicothe Rd — 256-1441

**Kirtland Stake 9017 Chillicothe Rd —**  
Kirtland Temple Historic  
Center — 256-3318

**9020 Chillicothe Rd —**  
Painesville Congregation — 357-5753

**300 Madison Av —**  
Repairs Unlimited 401 Chester St — 352-6559

**Repp LTD Big Tail & Athletic —**  
7900 Plaza Bl — 255-4713

**Republic Airlines —**  
See Northwest Airlines

## REPUBLIC SAVINGS BANK —

**Chesterland Office —**  
8389 Mayfield Rd Chesterland — 729-1636

**Republic Savings Bank —**  
8382 Mentor Av — 974-6555

**Republic Savings Bank Mentor Ohio —**  
Willoughby Tel No — 918-0800

**Republican Headquarters —**  
401 W Erie St — 352-0704

**ReReadables Books —**  
8674 Mentor Av — 255-4996

**RESASH INC —** Macedonia Oh — 467-0230

**Or —**  
Toll Free — 800 677-3300

**Research Abrasive Products Inc —**  
1400 E 286 St — 944-3200

**Reserve Auto Lease Inc —**  
8048 Mayfield Rd — 729-2277

**Reserve Hearing Service —**  
10845 Sherman Rd — 285-4327

**Reserve Industrial Supply Co —**  
4727 E 355 St — 269-8001

**Reserves Network Inc —**  
9429 Mentor Av — 951-1112

**RESERVES NETWORK INC —**  
THE —

**Mentor 9409 Mentor Av —**  
974-7171

**Residence Artists Inc 220 Fifth Av —**  
286-8822

**Residence Artists Inc —**  
220 Fifth Av Chardon Ohio — 946-8824

**Residential Electric —**  
36223 S Riverview Dr — 953-2984

**Residential Mortgage Co Of —**  
America — 354-2788

**56 Liberty St —**



## RESIDENTIAL SECURITY SYSTEMS INC —

7552 St Clair Av — 946-2715

**RESNICK MELVYN E atty —**  
153 E Erie St — 352-3391

**153 E Erie St —**  
946-7656

**Resource Information**  
Management Sys Inc — 585-3043

**Resource Optimized —**  
Investments 7784 Reynolds Rd — 946-6442

**Resource Technologies Corp —**  
35401 Euclid Av — 942-8541

**Resource Technologies Corp —**  
2794 Reynolds Rd — 946-8510

**Responsive Servs Inc —**  
25455 Beach Park Av — 953-1883

**Resthaven Azalea Farms Inc —**  
2575 Sateach Rd — 259-5276

**Restoration Church Of Jesus**  
Christ Kirtland Restoration — 256-3907

**Branch 9320 Chillicothe Rd —**  
Restoration Company — 974-1773

**Resultant Corp 12043 Bedford Dr —**  
285-2033

**RETINA ASSOCS OF**  
CLEVELAND INC — 831-5790

**25400 Cedar Rd Beachwood Ohio —**

**REYCO DRUG STORES —**

Continued From Last Column

**REYCO DRUG STORES —**

**Mentor —**  
8340 Mentor Av — 255-9159

**Painesville —**  
1623 Mentor Av — 354-5609

**1869 N Ridge Rd —**  
352-7051

**152 E Washington St —**  
354-4432

**Wickliffe —**  
29215 Euclid Av — 943-2170

**Willoughby —**  
34911 Euclid Av — 946-9363

**Willoughby Hills —**  
27433 Chardon Rd — 944-0038

**Willowick —**  
30940 Lake Shore Bl — 944-7650

**Revco Drug Stores —**  
6578 N Ridge Rd — 428-1191

**Revco Drug Stores 540 Water —**  
285-9445

**Revere Travel Inc —**  
38111 Apollo Pkwy — 942-3366

**Rex Neil & Son Plumbing —**  
2036 Mentor Av — 357-1111

**Rex-Poe Ins Agcy Inc —**  
12200 Sperry Rd — 729-4496

**Reyco Inc 7617 St Clair Av —**  
951-7217

**Reynolds Bill Heating & Air**  
Conditioning Inc 1374 E 345 St — 946-7863

**Rezaee M H MD —**  
150 Mentor Av — 352-6326

**Rezaee M H MD 38479 Lakeshore Bl —**  
946-9200

**Day & Night Serv Call —**  
150 Mentor Av — 352-6326

**Rezal M MD 701 N Lake St —**  
428-2571

**Rhay's Reggs sh 4129 Erie St —**  
942-6878

**Rhay's Treasures —**  
4128 Erie St — 942-6878

**RheoActive Inc 35555 Combs Bl —**  
953-3727

**Rhineland Paper Co —**  
8540 Mansion Bl — 974-1705

**Rhoa Albert J 9561 Mentor Av —**  
951-7180

**Rhoa Pollen & Rawlin Co LPA —**  
attys Midland Bldg Cleveland Ohio — 841-6056

**Rhodes Restoration & Antiques —**  
4069 Erie St — 951-5077

**Ribic Tool Co —**  
38198 Willoughby Pkwy — 953-5830

**Rice Charles —**  
14590 Hillview — 564-5065

**Rice John Pete —**  
Office Mentor A. S. Paine — 352-1289

**Rice Jos G 8759 East Av —**  
255-8229

**RICERCA INC —**  
Analytical Services — 357-3300

**Information Services —**  
357-3475

**Process Development —**  
357-3151

**Toxicology & Animal**  
Metabolism — 357-3743

**Rich Ed 621 N St Clair St —**  
357-8712

**Rich Recreation bowling —**  
437 High St — 357-7245

**Rich Reynolds Aluminum —**  
428-3794

**Rich Willis Power Furnace Cing**  
Willoughby Ohio — 942-4096

**Richard & Dennis Hair Design —**  
1209 E 405 St — 585-9119

**Richard Hair Stylists —**  
2601 N Main St — 428-3020

**Richard Johns Carpent**  
Consultants Inc — 639-9000

**Mentor Office —**  
Richard Stevens Hair &  
Cosmetic Studio 7470 Center St — 974-6744

**Richards Daniel F atty —**  
35000 Kaiser Ct — 942-5262

**RICHARDS DAVID J JR atty —**  
153 E Erie St — 352-3391

**153 E Erie St —**  
946-7656

**RICHARDS GEO L DR —**  
6841 Johnny McKee Dr — 354-6767

**Res 9841 Johnny McKee Dr —**  
357-5737

**Richards Hair Stylist —**  
12652 W Geary St — 729-1966

**Richards Lisa DDS —**

Complainant's Ex. 8

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RE/MAX INTERNATIONAL, INC.

Plaintiff

-vs-

ELIZABETH ZAMES and  
ROBERT ZAMES

Defendants

) JUDGE LESLEY BROOKS WELLS

) CASE NO. 1:95CV1453

) ORDER TO SHOW CAUSE

) AND ORDER REGARDING

) DISCOVERY

)

)

)

This case is before the Court on the motion to show cause and motion for expedited discovery filed by plaintiff Re/Max International, Inc.

On June 30, 1995 and July 14, 1995, the Court entered stipulated orders of injunction ordering defendants Robert Zames and Elizabeth Zames to:

... immediately rescind all orders that either of them placed with Ameritech, Inc., Ameritech Publishing, Inc., Ameritech Advertising Services, or any Ameritech affiliate for publication of "white pages" listings to appear in Ameritech's 1995 or subsequent directories, including but not limited to the directory for Lake County, Ohio, which listings refer in any way to RE/MAX or any of its federally-registered trademarks or its state-registered trademarks. . . .

Re/Max asserts an Ameritech "white pages" directory for Lake County, Ohio, was published with the following listing:

Remax Masters Real Estate --

Betty Zames ..... 975-0899

REMAX Masters Real Estate --

Appraisals ..... 639-4334

Re/Max requests a finding that Elizabeth and Robert Zames and Ameritech are in contempt of court for failing to obey the stipulated order. They further demand damages, attorney's fees, and costs.

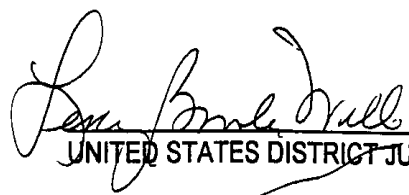
Ameritech was not a party to the prior proceeding, and hence cannot have violated the Court's order. Therefore, the motion to show cause is denied with respect to Ameritech.

Absent evidence of the circumstances surrounding the "white pages" listing, the Court cannot determine whether the stipulated order was violated. Therefore, defendants Robert Zames and Elizabeth Zames shall appear before United States District Judge Lesley Brooks Wells of the United States District Court for the Northern District of Ohio on November 21, 1995 at 9:30 a.m., in Courtroom 342, United States Court House, 201 Superior Avenue, N.W., Cleveland, Ohio, and show cause why they should not be held in contempt for failure to comply with the stipulated order.

It is further ordered that Robert Zames and Elizabeth Zames shall file and serve their written response to Re/Max's motion not later than ten (10) calendar days before the hearing.

Prior to the hearing, the parties may conduct limited discovery necessary and appropriate to support or defend the claim that the Zames' violated the stipulated injunction. Depositions may be taken on ten (10) days' notice; responses to interrogatories, requests for production of documents, and requests for admissions must be served within 14 days after service.

Plaintiff's motion for expedited discovery is denied. Expedited discovery will not ameliorate the alleged harm to Re/Max from the listing. There is no reason to believe evidence will be destroyed in the month before the hearing. Therefore, expedited discovery is not warranted.

  
UNITED STATES DISTRICT JUDGE



11-08-1995 09:54

07:05:95 16:26

216 329 3994

API - EXEC.

Complaint 359  
X-7 P.02 001

Pg 1 of 6

7-5-95

~~CDF~~

PATRICK GREENE,

PER OUR CONVERSATION, AMERITECH ATTORNEY,  
TJ TART, HAS REQUESTED THE FOLLOWING  
LISTINGS BE REMOVED FROM THE LAKE COUNTY,  
EUCLID, + LYNDHURST BOOKS, INCLUDING CLEVELAND  
BUS. TO BUS

take  
out

(216) 946-1168

Remax RESULTS Page # 74  
line # 726

take  
out

(216) 639-4333

Remax SPECIALISTS Page # 74  
IN REAL ESTATE line # 721

PLEASE SEE ATTACHED LETTER OF  
CONFIRMATION + CALL ME AT 328-3928  
TO CONFIRM RECEIPT.

CHARLOTTE WALSH



11-08-1995 09:55

P.03

07/05/95 16:28

216 328 3994

API - EXEC.

002

07/05/95

15:14

FAX 1 810 524 7227

AAS LEGAL

API - EXEC.

001

pg 2 of 6

**Ameritech**

advertising services

### Facsimile Cover Sheet

100 E. Big Beaver Road, Suite 1300  
Troy, Michigan 48063  
Fax #(810) 524-7227

TO: Charlotte Walter DATE: July 5, 1995

COMMENTS: Per our conversation (and that info. conveyed by Sandy Garrison), please remove all white and yellow page advertising as ordered by the defendants, Elizabeth and Robert Zames. Removal should include all advertising, whether free or paid. Please call if you have any questions. If after hours, please call me at 810-707-6198.

FROM: Tyrone C. Tarr (810) 524-7420

FAX NUMBER: 216-328-3994 NO. OF PAGES: 5

#### **IMPORTANT NOTICE**

The information contained in this facsimile message may be confidential and/or legally privileged information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any copying, dissemination, or distribution of confidential or privileged information is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and we will arrange for the return of the facsimile. Thank you.

11-08-1995 09:55

P.04

07/05/95 10:27

218 328 3894

API - EXEC.

0003

07/05/95 15:14

FAX 1 810 524 7227

AAS LEGAL

API - EXEC.

0002

SENT BY:

6-30-85 : 3:27PM :

12165790212-

1 810 524 7227;# 2

*pg 3 of 6*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RE/MAX INTERNATIONAL, INC.,

Plaintiff,

v.

ELIZABETH ZAMES and  
ROBERT ZAMES,

Defendants.

Case No. 1:95CV1483

Judge Lasley Brook Wells

STIPULATED ORDER OF  
INJUNCTION

It is stipulated among the parties and it is therefore ORDERED,  
this 30th day of June 1995 that:

A. Robert Zames and Elizabeth Zames, and any persons in  
active concert or participation with them, shall immediately  
rescind all orders that either of them placed with Ameritech, Inc.,  
Ameritech Publishing, Inc., Ameritech Advertising Services, or any  
Ameritech affiliate ("Ameritech") for publication of "white pages"  
listings to appear in Ameritech's 1995 or subsequent directories,  
including but not limited to the directory for Lake County, Ohio,  
which listings refer in any way to RE/MAX or any of its federally-  
registered trademarks or its state-registered trademarks. Service  
of a copy of this order by any party to this lawsuit shall be

11-08-1995 09:55

07/05/95 18:27

216 328 3994

API - EXEC.

P.05

004

07/08/95 18:14 FAX 1 810 524 7227

AAS LEGAL

--- API - EXEC.

003

SENT BY:

6-30-95 : 3:27PM :

12165780212-

1 810 524 7227:# 3

pg 4 of 6

2

sufficient evidence or notice of the rescission and shall operate as an order to Ameritech to rescind, even in the absence of a directive from the defendants.

B. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately rescind all orders that either of them placed with Ameritech Publishing, Inc. or Ameritech Advertising Services or any Ameritech affiliate ("Ameritech") for publication of "yellow pages" listings to appear in Ameritech's 1995 or subsequent directories, including but not limited to the directory for Lake County, Ohio, which listings refer in any way to RE/MAX or any of its federally-registered trademarks or its state-registered trademarks. Service of a copy of this order by any party to this lawsuit shall be sufficient evidence or notice of the rescission and shall operate as an order to Ameritech to rescind, even in the absence of a directive from the defendants.

C. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately cease from any further conduct or advertising:

- (i) suggesting or tending to suggest an affiliation between the plaintiff or the brokerage services of plaintiff and its franchisees and Robert Zames;
- (ii) suggesting or tending to suggest sponsorship of the brokerage services of Robert Zames by plaintiff;
- (iii) suggesting or tending to suggest that the real estate brokerage services of Robert Zames are that of plaintiff and its franchised brokers and agents;

11-08-1995 09:56

P.06

07:05:95 10:27

210 323 3894

API - EXEC.

0003

07/05/95

15:15

FAX 1 810 524 7227

AA5 LEGAL

API - EXEC.

0004

SENT BY:

6-30-96 : 3:28PM :

12165790212-

1 810 524 7227: 4

py 5/6

3

D. Robert Zanes and Elizabeth Zanes, and any persons in active concert or participation with them, shall immediately cease from any further use of the telephone number (216) 639-4333, and shall immediately take all steps necessary to transfer ownership of same to RE/MAX International, Inc. Service of a copy of this order by any party to this lawsuit shall be sufficient evidence or notice of the transfer and shall operate as an order to Ameritech to transfer the telephone number, even in the absence of a directive from the defendants;

E. Robert Zanes shall immediately cease using any of RE/MAX's federal registered service marks, including, without limitation Reg. No. 1,139,014 ("RE/MAX" service mark), Reg. No. 1,173,586 (for hot air balloon service mark), Reg. No. 1,702,048 (for red over white over blue bar design service mark), and Reg. No. 1,158,371 (for "Above the Crowd!" service mark) and any confusingly similar variations thereof;

F. The instances of unauthorized conduct, as alleged in the complaint, are not subject matter to be resolved in the pending arbitration known as Robert Zanes et al. and RE/MAX International, Inc. et al.; and

G. RE/MAX International, Inc. will file a notice of dismissal for the pending suit (1:95CV1453) without prejudice.

NOV 08 '95 09:56

PAGE.006

11-08-1995 09:56

P.07

07/05/95 16:23

218 328 3994

API - EXEC.

0008

07/05/95 15:15

FAX 1 810 524 7227

AAS LEGAL

API - EXEC.

0005

SENT BY:

6-30-95 : 3:28PM :

12185780212-

1 810 524 7227: # 5

6-30-95 : 2:04PM :

12185780212-

CITY 03: 3

*pg 6 of 6*

H. Magistrate Judge Steep is authorized to sign and enter this order, with the same force and effect as if it were signed and entered by a United States District Judge.

Stipulated To:

*Michael W. Vary*  
Michael W. Vary

Ohio Bar No. 0013789

Marco Alan Silverstein

Ohio Bar No. 0013839

Attorneys for Plaintiff

RE/MAX International, Inc.

Date: 6/30/95

*Edward W. Cochran*

Edward W. Cochran

Attorney for Defendant

Robert Lanes

Date: 6-30-95

Elizabeth Zanes

Date: \_\_\_\_\_

It is so ordered:

Judge  
United States District Court

Date: \_\_\_\_\_

Complaint 5 Ex. 10

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RE/MAX INTERNATIONAL, INC.,	)	
	)	CASE NO. 1:95 CV 1453
Plaintiff	)	
	)	Judge Lesley Brooks Wells
V.	)	
	)	
ELIZABETH ZAMES, et al.,	)	MEMORANDUM OF THE OHIO BELL
	)	TELEPHONE COMPANY IN
Defendants	)	OPPOSITION TO MOTION OF
	)	PLAINTIFF FOR ORDER TO SHOW
	)	CAUSE
	)	
	)	

**A. STATEMENT OF FACTS**

Relationship of the "Ameritech" Companies

The Ohio Bell Telephone Company, dba "Ameritech" and "Ameritech Ohio," is a subsidiary of Ameritech Corporation. The Ohio Bell Telephone Company ("Ohio Bell") is the regulated public utility which provides telephone service in the area in question — most of urban Lake County, Ohio (hereinafter, "Lake County"). Regulated telephone service includes the provision of "White Pages" listings for Ohio Bell customers. Therefore, Ohio Bell publishes the White Pages for those customers in Lake County.

Ameritech Publishing, Inc., dba "Ameritech Advertising Services," is a separate subsidiary of Ameritech Corporation. It is an unregulated company residing in Troy, Michigan, which publishes the "Yellow Pages," also called the "Ameritech Pages Plus," for Lake County.

By contract, the White Pages are physically printed by Ameritech Publishing, Inc. ("API").

Also by contract between Ohio Bell and API, the White Pages are co-bound in some areas with the Yellow Pages. This was the case for Lake County.

The above was explained to counsel for the plaintiff in May, 1995, when the undersigned was contacted in his role as attorney for Ohio Bell.

The undersigned does not represent API, and Ohio Bell does not have a place of business outside Ohio — specifically at the offices of API in Troy, Michigan.

Mr. Tyrone Tartt, staff attorney for API, does not represent Ohio Bell and has not represented Ohio Bell at any time relevant to the motion at bar.

Order Activity of Zames Realty, Inc.

Ohio Bell's customer at all relevant times and on all relevant occasions was Zames Realty, Inc.

The Zames Realty, Inc. has produced a relatively high level of orders and inquiries directed to Ohio Bell. The most relevant order would seem to be the order of May 24, 1995. Through that transaction,<sup>1</sup> Zames Realty, Inc. ordered two listings to

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<sup>1</sup>No. R6003006533-AV. The "AV" indicates that this was an "advance order," meaning that it was entered in advance of changes in telephone service that would be consistent with the listings ordered.



appear in the Lake County White Pages. Ohio Bell finds no record that the order was either canceled by Zames Realty, Inc. or superseded by a later order from Zames Realty, Inc.

The Lake County White Pages in question, were distributed in late August, 1995. As printed those White Pages contain no reference to Robert Zames by name and contain no listing for 216-639-4333 or 216-255-2111. They do contain the two listings for RE/MAX Masters at 216-639-4334 and 216-975-0899<sup>2</sup> which were ordered on May 24, 1995.

#### Prior Proceedings

Ohio Bell is not a party to this case. The following, therefore, is an account of the proceedings from the prospective of a non-party.

The plaintiff apparently secured an Order signed by Magistrate Judge Streepy in this case on June 30, 1995. At about 5:00 P.M. on Monday, July 3, 1995, the undersigned was served with a copy of that order, styled "Stipulated Order of Injunction." A copy thereof is affixed hereto as Exhibit A. This was the first notice to Ohio Bell that the plaintiff had obtained any court order in this case.<sup>3</sup>

The Court will please note that Exhibit A contains the following, handwritten language above the signature of the Magistrate Judge: "As of June 30, 1995, this order applies only to Robert Zames."

<sup>2</sup>Zames Realty, Inc. is the customer for 216-639-4334. 216-975-0899 is not in service.

\* <sup>3</sup>Since the order was signed by counsel for Robert Zames, Ohio Bell took the order to be consent by Zames Realty, Inc. to transfer 216-639-4333 to the plaintiff.

Some time prior to the receipt on July 3, 1995, of the Order on June 30, 1995,<sup>4</sup> Counsel for the plaintiffs represented to the undersigned that Elizabeth Zames had associated herself with a Youngstown, Ohio, RE/MAX franchisee, RE/MAX Masters. It was the belief of counsel for the plaintiff that Elizabeth Zames was acting as a front to allow Robert Zames to continue to benefit from the value of the RE/MAX mark. However, counsel for the plaintiffs neither represented nor suggested, that Elizabeth Zames could not lawfully represent herself to be an agent operating under the RE/MAX masters franchise authority.<sup>5</sup>

In accordance with those conversations with counsel for the plaintiff, the undersigned advised his client on or about July 6, 1995, that there was presently no order prohibiting Elizabeth Zames from being listed as an agent for RE/MAX Masters Real Estate. The business office records reflecting that advice were transmitted to counsel for the plaintiff in compliance with subpoena on July 11, 1995.

Apparently, this Court entered a subsequent order on July 14, 1995, which applied to defendant Elizabeth Zames. Ohio Bell has never been served with this order and had

\* There has been periodic communication between counsel for the plaintiff and the undersigned regarding the plaintiff's disputes with the defendants and the role of Ohio Bell and API in relationship to the subjects of those disputes from May 24, 1995, until last week.

— <sup>5</sup>Certainly, the position of the plaintiff that Elizabeth Zames could not lawfully represent herself to be affiliated with the plaintiff is set out in the June 30th Order; however, that Order is expressly inapplicable to anyone other than Robert Zames.

---

no knowledge of it prior to the service of plaintiff's present motion and memorandum at 5:30 P.M. on Friday, October 6, 1995.<sup>6</sup>

Presumably, the order of July 14, 1995, not only is expressly applicable to Elizabeth Zames but also lacks the limitation which made it applicable only to Robert Zames and, thereby, also applies to Ohio Bell (doing business as "Ameritech").

Since the memorandum recites that Ohio Bell has been "unwilling" to transfer 216-639-4334 or 216-975-0899 to the plaintiff, it should be noted that neither the plaintiff nor its counsel have made any request to, or demand on, Ohio Bell to transfer 216-639-4334 or 216-975-0899 to the plaintiff. However, in fairness, since transfer of active numbers to another customer without consent of the original customer is absolutely prohibited by Ohio law, Ohio Bell would have refused to transfer 216-639-4334 without the consent of Zames Realty, Inc.. Obviously, an order by a federal court in a case arising under federal law would compel such a transfer.

#### **B. CONCLUSION URGED**

Ohio Bell complied with the order of which it had notice.

#### **C. DISCUSSION**

For purposes of this discussion, Ohio Bell will indulge the presumption that the defendants disobeyed some order of this Court.

Even given that presumption, Ohio Bell should not be held to have acted in concert with the defendants in their disobedience. Ohio Bell has only been served with

---

<sup>6</sup>Nor was Ohio Bell served with the complaint in this case.

one order and only had knowledge of that one order prior to October 6, 1995: the order of June 30, 1995, applicable by its terms only to Robert Zames. Ohio Bell complied with that order.

If it was the intent of the plaintiff that Ohio Bell should be bound by the subsequent order of July 14, 1995, then that order should have been served on Ohio Bell. It was not.

Ohio Bell should not be held responsible for compliance with an order of which it had no notice.

Respectfully submitted,



Thomas A. Linton (0008549)  
Attorney for The Ohio Bell Telephone Company  
Room 1424  
45 Erieview Plaza  
Cleveland, Ohio 44114  
(216)822-3439

CERTIFICATE OF SERVICE

A copy hereof was mailed to all other counsel of record on the 16th day of October, 1995.



Thomas A. Linton

EXHIBIT A

JONES, DAY, REAVIS & POGUE

ATLANTA LONDON  
BRUSSELS LOS ANGELES  
CHICAGO NEW YORK  
COLUMBUS PARIS  
DALLAS PITTSBURGH  
FRANKFURT RIYADH  
GENEVA TAIPEI  
HONG KONG TOKYO  
IRVINE WASHINGTON

NORTH POINT  
901 LAKESIDE AVENUE  
CLEVELAND, OHIO 44114

TELEPHONE: 216-586-3939  
TELEX: 980389  
CABLE: ATTORNEYS CLEVELAND  
FACSIMILE: 216-579-0212  
WRITER'S DIRECT NUMBER:

(216) 586-7125

July 3, 1995

0992-rlk-6572  
553700-010-002

BY MESSENGER

Thomas Linton, Esq.  
Ameritech, Inc.  
Room 1424  
Erievue Plaza  
Cleveland, OH 44114

Re: RE/MAX International, Inc. v. Elizabeth Zames and  
Robert Zames; United States District Court for the  
Northern District of Ohio, Eastern Division;  
Case No. 1:95CV1453

Dear Tom:

Enclosed is a copy of the "Stipulated Order Of Injunction" that we obtained in the above-referenced case on Friday, June 30, 1995. As you can see from paragraph D of the Stipulated Order, the telephone number "(216)639-4333" is to be immediately transferred to RE/MAX International, Inc. I trust that this copy of the Stipulated Order should be sufficient to effectuate the transfer, but if you need anything further, please let me know.

Please contact Mike Evans of RE/MAX of Northern Ohio (642-1320) directly for instructions about post-transfer matters. It is my understanding, however, that he will want the transfer message for (216)639-4333 to be identical to the new transfer message being used now for (216)255-2111.

Thank you in advance for your continued cooperation in this matter.

Very truly yours,



Marc Alan Silverstein

Enclosure  
cc: Mr. Michael Evans (by telecopy)

FILED

JUN 23 1995

CLERK OF DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RE/MAX INTERNATIONAL, INC.,	)	Case No. 1:95CV1453
	)	
Plaintiff,	)	Judge Lesley Brook Wells
	)	
v.	)	
	)	
ELIZABETH ZAMES and	)	STIPULATED ORDER OF
ROBERT ZAMES,	)	<u>INJUNCTION</u>
	)	
Defendants.	)	

It is stipulated among the parties and it is therefore ORDERED,  
this 30th day of June 1995 that:

A. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately rescind all orders that either of them placed with Ameritech, Inc., Ameritech Publishing, Inc., Ameritech Advertising Services, or any Ameritech affiliate ("Ameritech") for publication of "white pages" listings to appear in Ameritech's 1995 or subsequent directories, including but not limited to the directory for Lake County, Ohio, which listings refer in any way to RE/MAX or any of its federally-registered trademarks or its state-registered trademarks. Service of a copy of this order by any party to this lawsuit shall be

sufficient evidence or notice of the rescission and shall operate as an order to Ameritech to rescind, even in the absence of a directive from the defendants.

B. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately rescind all orders that either of them placed with Ameritech Publishing, Inc. or Ameritech Advertising Services or any Ameritech affiliate ("Ameritech") for publication of "yellow pages" listings to appear in Ameritech's 1995 or subsequent directories, including but not limited to the directory for Lake County, Ohio, which listings refer in any way to RE/MAX or any of its federally-registered trademarks or its state-registered trademarks. Service of a copy of this order by any party to this lawsuit shall be sufficient evidence or notice of the rescission and shall operate as an order to Ameritech to rescind, even in the absence of a directive from the defendants.

C. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately cease from any further conduct or advertising:

- (i) suggesting or tending to suggest an affiliation between the plaintiff or the brokerage services of plaintiff and its franchisees and Robert Zames;
- (ii) suggesting or tending to suggest sponsorship of the brokerage services of Robert Zames by plaintiff;
- (iii) suggesting or tending to suggest that the real estate brokerage services of Robert Zames are that of plaintiff and its franchised brokers and agents;

D. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately cease from any further use of the telephone number (216)639-4333, and shall immediately take all steps necessary to transfer ownership of same to RE/MAX International, Inc. Service of a copy of this order by any party to this lawsuit shall be sufficient evidence or notice of the transfer and shall operate as an order to Ameritech to transfer the telephone number, even in the absence of a directive from the defendants;

E. Robert Zames shall immediately cease using any of RE/MAX's federal registered service marks, including, without limitation Reg. No. 1,139,014 ("RE/MAX" service mark), Reg. No. 1,173,586 (for hot air balloon service mark), Reg. No. 1,702,048 (for red over white over blue bar design service mark), and Reg. No. 1,158,371 (for "Above the Crowd!" service mark) and any confusingly similar variations thereof;

F. The instances of unauthorized conduct, as alleged in the complaint, are not subject matter to be resolved in the pending arbitration known as Robert Zames et al. and RE/MAX International, Inc. et al.; and

G. RE/MAX International, Inc. will file a notice of dismissal for the pending suit (1:95CV1453) without prejudice.



212  
H. Magistrate Judge Steepy is authorized to sign and enter this order, with the same force and effect as if it were signed and entered by a United States District Judge.

Stipulated To:

Michael W. Vary

Michael W. Vary

Ohio Bar No. 0033789

Maro Alan Silverstein

Ohio Bar No. 0043539

Attorneys for Plaintiff

RE/MAX International, Inc.

Date: 6/30/95

Edward W. Cochran

Edward W. Cochran

Attorney for Defendant

Robert James

Date: 8-30-95

Elizabeth James

Date: \_\_\_\_\_

*As of June 30, 1995, this order applies only to Robert James.*

It is so Ordered:

[Signature]  
Judge  
United States District Court

Date: June 30, 1995

I hereby certify that this instrument is a true and correct copy of the original on file in my office

Attest: Geri M. Smith, Clerk

U.S. District Court  
Northern District of Ohio

By: [Signature]  
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RE/MAX INTERNATIONAL, INC.,	)	
	)	CASE NO. 1:95 CV 1453
Plaintiff	)	
	)	Judge Lesley Brooks Wells
V.	)	
	)	REPLY
ELIZABETH ZAMES, et al.,	)	MEMORANDUM OF THE OHIO BELL
	)	TELEPHONE COMPANY IN
Defendants	)	OPPOSITION TO MOTION OF
	)	PLAINTIFF FOR ORDER TO SHOW
	)	CAUSE
	)	
	)	

This memorandum replies to the arguments raised in the plaintiff's "Reply" served on October 19, 1995.

1. Ohio Bell does not concede that a violation of any order of this court occurred since Ohio Bell, a non-party, is not privy to all of the relevant facts or the substance of all of the orders of this Court.

The Ohio Bell Telephone Company ("Ohio Bell")<sup>1</sup> is simply not in a position to "concede that a violation of the [sic] Order occurred." This is so because Ohio Bell never

---

<sup>1</sup>There was no "attempt" to distinguish Ohio Bell from Ameritech Publishing, Inc. They are two separate corporations - a point surely not lost on attorneys from Jones, Day, Reavis and Pogue, which has represented Ohio Bell.

---

received a copy of any order other than the Order of June 30, 1995, which is expressly limited to Robert Zames,<sup>2</sup> because Ohio Bell lacks knowledge of relevant facts, and because Ohio Bell does not know if this Court will rule that the subject listings in the 1995 Lake County White Pages suggest or tend to suggest a relationship between the plaintiff and Robert Zames (a matter which it understands from plaintiff's Reply to be disputed by the defendants).

**2. Ameritech Publishing, Inc. does not "publish" the Lake County White Pages.**

As Ohio Bell clearly stated in its original memorandum:

By contract, the White Pages are physically printed by Ameritech Publishing, Inc. ("API").

Also by contract between Ohio Bell and API, the White Pages are co-bound in some areas with the Yellow Pages. This was the case for Lake County.

The above was explained to counsel for the plaintiff in May, 1995, when the undersigned was contacted in his role as attorney for Ohio Bell.

Ohio Bell has not stated — and it is not the fact — that "Ameritech Publishing, by contract, publishes the White/Yellow PagesPlus directory at issue."

**3. The fact that Ohio Bell is a subsidiary of the same holding company does not make "efforts at compliance" by a separate subsidiary of the same holding company relevant evidence of contempt by Ohio Bell.**

Counsel for the plaintiff are sophisticated lawyers whose firm has doubtless had many opportunities to point out to courts that separate corporations are distinct legal entities. Here the separate corporations, Ohio Bell and Ameritech Publishing, Inc., are headquartered in separate states, not represented by the same lawyers, and have no

---

<sup>2</sup>"As of June 30, 1995, this order applies only to Robert Zames. It is so ordered."

common employees or records. Therefore, it is neither irrelevant nor "deficient" to point out that actions undertaken by Ameritech Publishing, Inc. on the advice of its legal department are irrelevant to the issues presented by the plaintiff's motion: 1) was there an order whose terms were violated by the subject listings in the Lake County White Pages? 2) was that order addressed to and binding on Ohio Bell? and 3) did Ohio Bell have notice of that order in time to prevent the publication of the subject listings in the Lake County White Pages?<sup>3</sup>

**4. Listings ordered on May 24, 1995, are timely as against a June 30, 1995 deadline.**

The plaintiff finds it "deficient" that Ohio Bell's memorandum "fails to address" how listings ordered on May 24, 1995, by Zames realty, Inc. (the listings about which the plaintiff complains here) could be published when Ameritech Publishing, Inc. has given an affidavit that June 30, 1995, was the last day for "removing, and presumably adding, any listings for publication."

Ohio Bell cannot reply to that "deficiency" argument except to observe that listings ordered on May 24, 1995, are certainly well in time against a June 30, 1995, deadline.

If Mr. Zames was required by the Order of June 30, 1995, to cause the listings ordered on May 24, 1995, to be removed from the White Pages, which is apparently in dispute between the plaintiff and Mr. Zames, then he should have done so.

<sup>3</sup>Ameritech Publishing, Inc. is in a vastly different position that Ohio Bell in deciding what listing to publish. Yellow Pages listings are a matter of private contract. White Pages listings are public utility service regulated by the Public Utilities Commission of Ohio. Unlawful exclusion of a White Pages listing could be deemed "inadequate Service," giving rise to statutory consequences serious even to a company with the assets of Ohio Bell.

5. Ohio Bell did not assume that Mr. Zames was not involved in the May 24, 1995, order placed by Zames Realty, Inc., or that the numbers in the listing ordered at that time were not connected to Mr. Zames.

On July 3, 1995, Ohio Bell received a copy of the June 30, 1995, Order requiring that Robert Zames cancel all White Pages listings that he had "placed" and which referred in any way to RE/MAX.<sup>4</sup>

Ohio Bell has continued to search its records in an effort to determine which individual, on behalf of Zames realty, Inc., placed the order of May 24, 1995, which resulted in the subject listings. Ohio Bell has not located such a record as of this date. *palmas*

However, Ohio Bell does not assume now, and did not assume at any relevant time, that Mr. Zames was uninvolved in the order of May 24, 1995, or that the numbers listed are not connected to Mr. Zames. Ohio Bell understood Mr. Zames to be the duly-authorized representative of Zames Realty, Inc. in its dealings with Ohio Bell, and the listed numbers were both numbers assigned to Zames Realty, Inc..

6. The May 24, 1995, order for listings placed by Zames Realty, Inc. was apparently "permissible" when placed, and Ohio Bell cannot determine if the Court's Order of June 30, 1995, required cancellation of the May 24, 1995, order by Zames Realty, Inc.

Certainly, the ordering by Zames Realty, Inc. of the subject Lake County White Pages listings on May 24, 1995, could not have been at that time in violation of an order of court yet to be issued. As explained above, Ohio Bell lacks the facts or authority to decide if the June 30, 1995, Order required that Zames Realty, Inc. cancel those listings.

---

<sup>4</sup>That Order also required that Mr. Zames cease use of 216-639-4333.

**7. 216-255-2111 was transferred from Zames Realty, Inc. to RE/MAX because Mr. Zames, President of Zames Realty, Inc., agreed to the transfer and signed the documents required by law to allow the transfer.**

The plaintiff points out (somewhat obliquely) that 216-255-2111 was transferred from Zames Realty, Inc. to the plaintiff some weeks before the Order of June 30, 1995.<sup>5</sup>

While Ohio Bell cannot understand what point the plaintiff attempts to make regarding the transfer of 216-255-2111 to the plaintiff, it was Ohio Bell's understanding at the time that Mr. Zames, President of Zames Realty, Inc., had agreed to the transfer, and Mr. Zames executed an Ohio Bell Transfer of Account Authority form which Ohio Bell, on the advice of counsel, determined was sufficient authorization for the transfer. That document was supplied to counsel for Ohio Bell by counsel for the plaintiff.<sup>6</sup>

**8. Ohio Bell incorrectly asserted that 216-975-0899 is not in service.**

Ohio Bell was incorrect in asserting that 216-975-0899, one of the numbers appearing in one of the subject White Pages listings, is not in service. In this case, empirical evidence (Calls to the number are answered by a recording for "Betty Zames.") contradicts Ohio Bell's records for Account 216-639-4339. Either the computer is simply in error, or 216-975-0899 (once assigned to 216-639-4333) has been transferred to yet another account. This issue is being investigated.

---

<sup>5</sup>"[O]wnership" never changed. All such numbers are solely owned by Ohio Bell as a matter of controlling Ohio law.

<sup>6</sup>Ohio Bell is not aware of any contention that Mr. Zames lacked the authority to bind or speak on behalf of Zames Realty, Inc.

---

**9. Ohio Bell does not regard the opinion of "anyone representing Plaintiff" as dispositive of the issues before this Court.**

The plaintiff observes that Ohio Bell did not communicate "with anyone representing Plaintiff to determine if the advertisement [sic] ultimately appearing . . . was permissible in view of this Court's June 30, 1995 Order."

Ohio Bell cannot honestly represent that its employees made an evaluation as to whether the listings ordered by Zames Realty, Inc. on May 24, 1995,<sup>7</sup> violated the Order of June 30, 1995. The record of that order was not located until this week. However, Ohio Bell does not concede that plaintiff's counsel, however distinguished, are the final arbiters of the meaning of the Order of June 30, 1995. That role is best left to the Court, which is neutral and has no agenda other than insuring obedience to its lawful orders.

**10. It has not been determined that anyone violated the Order of June 30, 1995, but it is clear that Ohio Bell could not have violated that Order since, by its terms, it was directed solely at Robert Zames.**

Having consistently implied, but never squarely stated, that Ohio Bell was subject to the Order of June 30, 1995, the plaintiff concludes its Reply by implying, but not stating, that Ohio Bell has some responsibility to "remedy the clear and apparent harm to Plaintiff flowing from the violation of the order" and demanding that Ohio Bell be called into court to explain its conduct.

---

<sup>7</sup>The system of receiving customer orders at Ohio Bell is that the customer contacts one of hundreds of Service Representatives by telephone and enters his order. That was apparently the method used by someone to place the Order for White Pages listings of May 24, 1995.

Having never been given notice of any order directed to Ohio Bell, Ohio Bell absolutely rejects the implication that it has any responsibility — legally, morally or ethically — for any violation of the Order of June 30, 1995, or for remedying an such violation.

If an Order of this Court entered subsequent to June 30, 1995 was, by its terms, binding on Ohio Bell, then the plaintiff's side might have served that document on Ohio Bell's counsel, who had been in communication with plaintiff's counsel for months. The failure of the plaintiff's Reply to address that fact is more eloquent than anything else said by the plaintiff's side to date about Ohio Bell's alleged "deficiencies."

Ohio Bell will, of course, continue to cooperate with its customers and their representatives in any way consistent with this Court's orders and the law.

Respectfully submitted,

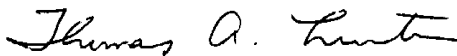


---

Thomas A. Linton (0008549)  
Attorney for The Ohio Bell Telephone Company  
Room 1424  
45 Erieview Plaza  
Cleveland, Ohio 44114  
(216)822-3439

CERTIFICATE OF SERVICE

A copy hereof was mailed to all other counsel of record on the 20th day of October, 1995.



---

Thomas A. Linton



BY:

5-24-95 : 4:25PM :

12165790212-

Joint Ex. 1

216 822 0240:# 2

JONES, DAY, REAVIS & POGUE

ATLANTA  
AUSTIN  
BRUSSELS  
CHICAGO  
COLUMBUS  
DALLAS  
FRANKFURT  
GENEVA  
HONG KONG  
IRVINE  
LONDON  
LOS ANGELES  
NEW YORK  
PARIS  
PITTSBURGH  
RIYADH  
TAIPEI  
TOKYO  
WASHINGTON

NORTH POINT  
801 LAKESIDE AVENUE  
CLEVELAND, OHIO 44114

TELEPHONE: 216-586-3939  
TELEX 880388  
CABLE ATTORNEYS CLEVELAND  
FACSIMILE 216-579-0212  
WRITER'S DIRECT NUMBER

January 17, 1995

(216) 586-7147

131348.1  
553700-010-002  
0302:BAJ

Edward W. Cochran, Esq.  
2872 Broxton Road  
Shaker Heights, Ohio 44120

Re: Arbitration Agreement Between Robert Zames, et al.  
and RE/MAX International, Inc.

Dear Ed:

This document memorializes the supplement to the agreement dated December 1, 1994 we reached on behalf of our respective clients to arbitrate the disputes among them pursuant to Chapter 2711 of the Ohio Revised Code.

RE/MAX International, Inc. ("RE/MAX") has agreed to modifications of the Mutual Covenant Not To Sue between the parties that Robert Zames and Zames Realty, Inc. ("Zames") have proposed, and those modifications are reflected in the final version attached hereto.

Zames and RE/MAX mutually agree that the franchise agreement between them is terminated effective January 16, 1995. Zames has elected not to cure in accordance with the termination letter from RE/MAX dated January 10, 1995. Zames disputes the allegations in said letter of January 10, 1995 and reserves the right to contest all allegations therein in the arbitration proceeding. During the pendency of the arbitration process, Zames will cease holding himself or itself out in any way as a franchisee or affiliate of RE/MAX and: (i) will not display any signage or use any stationery, documentation, or other material that incorporates any of the various RE/MAX trademarks, service marks, or commercial logos; (ii) will not answer the telephone with the word "RE/MAX"; (iii) will not cause to be run in any broadcast or print media any advertisement that incorporates any of the various RE/MAX trademarks, service marks, or commercial logos; (iv) will file the appropriate form to abandon or withdraw any assumed or fictitious name certificate or to change the name

JONES, DAY, REAVIS & POGUE

Edward W. Cochran, Esq.  
January 17, 1995  
Page 2

of any affiliate of Zames to eliminate any reference to RE/MAX; and (v) by not later than February 15, 1995, will cause the telephone company to change all "yellow pages" display ads and other telephone listings and assign the numbers listed for the formerly franchised real estate office to RE/MAX. In the event that Zames should violate any of the provisions of the previous sentence, Zames agrees that RE/MAX shall be entitled to an immediate hearing before the arbitrators and that the arbitrators shall have the power to enforce the provisions of the previous sentence by issuing a written award. Nothing in this paragraph shall preclude Zames from claiming at the final arbitration hearing that he is entitled to monetary relief on the grounds that RE/MAX wrongfully terminated Zames' franchise, but the provisions of the first sentence shall be enforceable during the pendency of the arbitration without regard to any such claim. RE/MAX reserves the right to seek all amounts it claims to be due and owing to it under the franchise agreement with Zames.

If your clients are in agreement with the foregoing, please sign both of the originals on their behalves and return one to me.

Very truly yours,

*Marc Alan Silverstein*

Marc Alan Silverstein

Agreed to and accepted  
on behalf of Robert Zames  
and Zames Realty, Inc.

By *Edward W. Cochran*  
Edward W. Cochran,  
Their Attorney

Agreed to and accepted on  
behalf of Dennis Falvey  
and DFI, Inc.

By *Lawrence R. Hupertz*  
Lawrence R. Hupertz,  
Their Attorney

For Plaintiff

*Respondents Ex. 1*

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

BOB ZAMES, et. al,	)	
Complainants	)	
	)	Case No. 96-289-TP-CSS
vs.	)	
	)	
AMERITECH OHIO	)	
Respondent.	)	

---

*ANSWERS TO*  
FIRST SET OF INTERROGATORIES  
OF AMERITECH OHIO TO COMPLAINANTS

---

Now comes Ameritech Ohio, Respondent herein, pursuant to Ohio Admin. Code §4901-1-19, and propounds its First Set of Interrogatories to Complainants. Each interrogatory shall be answered separately and fully, in writing and under oath, unless objected to. Complainants are directed to serve a copy of the answers or objections upon Respondent's Counsel within twenty days after the service hereof. Pursuant to Ohio Admin. Code §4901-1-16(D)(5) Complainants are requested to timely supplement their responses to these interrogatories any time prior to the commencement of the hearing.

1. With regard to the first sentence of the first paragraph of the complaint, please answer the following:

a. Provide the date and how you "ordered a listing in the Ameritech White Pages."

ANSWER: *May 15, 1996 by fax. See Exhibit 1.*

b. Describe specifically the listing form and content you ordered.

ANSWER: See Exhibit 1.

c. Was your order placed in writing? Was it confirmed in writing? If your answer to either of the foregoing is affirmative, please provide a copy of all such writings.

ANSWER: Yes. See Exhibit 1.

2. With regard to the federal court order referred to in the first unnumbered paragraph of the Complaint, please answer the following:

a. What was the date of the order? 6-30-95

ANSWER:

b. Please provide a copy of the Order and specify the precise language in the Order in which you contend "The Court Order provided that service of the Order on Ameritech would be sufficient authorization for Ameritech to withdraw said listing . . . ."

ANSWER: See Exhibit 2. See underlined language on p. 2 of Exhibit 2.

c. Please specify the precise language in the Order in which you contend the Court required Ameritech to withdraw the listing.

ANSWER: See underlined language on p. 2 of Exhibit 2.

d. Please specify the precise language in the Order which you contend makes the Order apply to the listing you identified in 1(b) above and refer to in your Complaint.

ANSWER: See paragraph A of Order. (Exhibit 2)

3. Please identify by name the "attorneys for Ameritech" who were "advised" of the Court order and "agreed to withdraw the listing upon receipt of the Federal Judge's Order.

ANSWER: Tyrona Tarrt and local counsel in  
Cleveland (name presently unknown).

4. Please provide the date when the Ameritech attorneys were "advised in advance?"

ANSWER: During the week prior to June 30, 1995.

5. When was the Order served on Ameritech?

ANSWER: June 30, 1995.

6. When did the "time for removal of the listing" expire?

ANSWER: Unknown. (Sometime after 6-30-95)

7. What evidence do you have that "Ameritech received the Order and blatantly failed to comply with it?"

ANSWER: The Order was faxed to Tyronne Tarratt  
on 6-30-95 at 4:20 P.M. See Exhibit 3

8. Is the listing that was placed, due to which you were "sued for contempt of court," the same listing identified in 1(b) above? If not, please specify by form and content the listing to which you are referring.

ANSWER: Yes. [unclear]

9. With regard to the "trial counsel" which you retained, referred to in the Complaint, please provide the following:

a. Name, address, and telephone number.

ANSWER: Edward W. Cochran  
216-751-5546

b. The date retained and the terms of the employment (i.e. hourly rate, retainer deposit, etc.).

ANSWER: *Objection. Irrelevant to the proceeding.*

*Said information will be provided if the matter proceeds to damages phase in Common Pleas Court.*

c. Specify the charges incurred by you as attorney fees. Or, if you prefer, attach a copy of each and every bill for services rendered to you.

ANSWER: *Objection. See 9(b)*

d. What portion of the attorney fees referred to in the Complaint have been paid?  
By whom?

ANSWER: *Objection. See 9(b).*



e. Have you sought recovery of these attorney fees from any other party? If so, please provide the details and outcome of that effort. Who, if anyone, represented you in that effort?

ANSWER: *Objection. See 9(b).*

10. With regard to the listing "to replace the listing which was enjoined," please answer the following:

a. When was the order placed and with whom?

ANSWER: *See Exhibit 4.*

b. Was the order placed in writing? Was the order confirmed in writing? If affirmative, please attach a copy of any such writings.

ANSWER: *Yes. See Exhibit 4.*

c. Why did your "business fail" if the "proscribed listing" did appear in the directory?

ANSWER: The number on the proscribed listing was now my competitor's.

11. What evidence do you have which you believe supports your allegation that Ameritech was guilty of "gross negligence?"

ANSWER: Failure to abide by a federal court order, involvement of Ameritech attorneys. Many letters boxed.

12. Please identify any expert witnesses you expect to call at hearing; providing for each: name, address, telephone number and subject matter of the expected testimony.

ANSWER: None.

13. Please identify any persons having personal knowledge of any matters which are the subject of this proceeding. For each provide name, address, telephone number and subject matter.

ANSWER: *Other than Amantia personnel:*

1. *Mike Vary - SP6-3939*
2. *Mark Silverstein - " "*
3. *Robert Zomes*

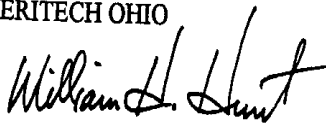
14. Please identify any documents in the Complainants' possession (or their attorney) which relate to the subject matter of this proceeding.

ANSWER: *Objection. Overly broad.*

Respectfully submitted,

AMERITECH OHIO

By




William H. Hunt, (Reg. No. 0008847)  
Trial Attorney

800 Bank One Center  
600 Superior Avenue East  
Cleveland, Ohio 44114  
(216) 566-8200

Jon F. Kelly  
Ameritech Ohio  
150 East Gay Street 19S  
Columbus, Ohio 43215  
(614) 223-7928

**CERTIFICATE OF SERVICE**

A copy of the foregoing First Set of Interrogatories of Ameritech Ohio, Respondent herein, has been served upon Edward W. Cochran, counsel for Complainants herein, 2872 Broxton Road, Shaker Heights, Ohio 44120 by regular U.S. mail, postage prepaid, this 11<sup>th</sup> day of April 1996.



William H. Hunt

Verification

I certify that the foregoing answers  
are true to the best of my knowledge.

Certificate of Service

A copy of the foregoing answers  
were mailed this 2<sup>nd</sup> day of July, 1996

To: Wm Hunt  
800 Bank One Center  
600 Superior Ave.  
Cleveland, O. 44114

From :

216 639 4040

API ON CUST SERV - LEGAL  
PHONE No. : 216 639 4339

005/011



*Above  
the  
Crowd!*

*Remax is  
Enhanced  
Bus*

FAX # 216-639-4339

No. of pages to follow 0

*Vice-Tel.*

FAX TRANSMITTAL FORM

TO: Joseph Zivnak DATE: May 15, 1995

COMPANY: American Advertising FAX #: 842-4087

FROM: Bob Zemes COMPANY: RE/MAX

The following is how we would like to have our listing appear in the white pages of the new Lake County Ohio phone directory.

RE/MAX Masters. Real Estate  
Specialists.....639-4333  
Betty Zemes.....975-0899  
Appraisals .....639-4334  
Bob Zemes.....975-5964

*White  
pages*

Also, in conjunction with the display ed in the yellow pages, do we get bold print in black lettering for both the yellow and white pages? Thank you very much for your expert assistance.

CONFIDENTIALITY NOTICE:

The documents accompanying this telecopy transmission contain confidential information belonging to the sender, which is legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action is prohibited. If you have received this telecopy in error, please immediately notify us by telephone to arrange for return of the original documents to us.

Thank you.

*Exhibit 1*

**RE/MAX** specialists in real estate  
2167 mentor avenue  
Painesville, OH 44077  
phone: (216) 639 - 4333



Exhibit 2

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RE/MAX INTERNATIONAL, INC.,	)	Case No. 1:95CV1453
	)	
Plaintiff,	)	Judge Lesley Brook Wells
	)	
v.	)	
	)	
ELIZABETH ZAMES and	)	STIPULATED ORDER OF
ROBERT ZAMES,	)	<u>INJUNCTION</u>
	)	
Defendants.	)	
	)	

It is stipulated among the parties and it is therefore ORDERED,  
this 30th day of June 1995 that:

A. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately rescind all orders that either of them placed with Ameritech, Inc., Ameritech Publishing, Inc., Ameritech Advertising Services, or any Ameritech affiliate ("Ameritech") for publication of "white pages" listings to appear in Ameritech's 1995 or subsequent directories, including but not limited to the directory for Lake County, Ohio, which listings refer in any way to RE/MAX or any of its federally-registered trademarks or its state-registered trademarks. Service of a copy of this order by any party to this lawsuit shall be

sufficient evidence or notice of the rescission and shall operate as an order to Ameritech to rescind, even in the absence of a directive from the defendants.

B. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately rescind all orders that either of them placed with Ameritech Publishing, Inc. or Ameritech Advertising Services or any Ameritech affiliate ("Ameritech") for publication of "yellow pages" listings to appear in Ameritech's 1995 or subsequent directories, including but not limited to the directory for Lake County, Ohio, which listings refer in any way to RE/MAX or any of its federally-registered trademarks or its state-registered trademarks. Service of a copy of this order by any party to this lawsuit shall be sufficient evidence or notice of the rescission and shall operate as an order to Ameritech to rescind, even in the absence of a directive from the defendants.

C. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately cease from any further conduct or advertising:

- (i) suggesting or tending to suggest an affiliation between the plaintiff or the brokerage services of plaintiff and its franchisees and Robert Zames;
- (ii) suggesting or tending to suggest sponsorship of the brokerage services of Robert Zames by plaintiff;
- (iii) suggesting or tending to suggest that the real estate brokerage services of Robert Zames are that of plaintiff and its franchised brokers and agents;



D. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately cease from any further use of the telephone number (216)639-4333, and shall immediately take all steps necessary to transfer ownership of same to RE/MAX International, Inc. Service of a copy of this order by any party to this lawsuit shall be sufficient evidence or notice of the transfer and shall operate as an order to Ameritech to transfer the telephone number, even in the absence of a directive from the defendants;

E. Robert Zames shall immediately cease using any of RE/MAX's federal registered service marks, including, without limitation Reg. No. 1,139,014 ("RE/MAX" service mark), Reg. No. 1,173,586 (for hot air balloon service mark), Reg. No. 1,702,048 (for red over white over blue bar design service mark), and Reg. No. 1,158,371 (for "Above the Crowd!" service mark) and any confusingly similar variations thereof;

F. The instances of unauthorized conduct, as alleged in the complaint, are not subject matter to be resolved in the pending arbitration known as Robert Zames et al. and RE/MAX International, Inc. et al.; and

SENT BY:

6-30-95 : 2:18PM :

2165867900-

97515546:# 5/ 5

4

G. RE/MAX International, Inc. will file a notice of dismissal for the pending suit (1:95CV1453) without prejudice.

Stipulated To:

\_\_\_\_\_  
Michael W. Vary  
Ohio Bar No. 0033789  
Marc Alan Silverstein  
Ohio Bar No. 0043539  
Attorneys for Plaintiff  
RE/MAX International, Inc.

\_\_\_\_\_  
Edward W. Cochran  
Attorney for Defendant  
Robert Zames

Date: \_\_\_\_\_

Date: \_\_\_\_\_

*Elizabeth Zames*  
Elizabeth Zames

Date: *July 5, 1995*

It is So Ordered:

\_\_\_\_\_  
Judge  
United States District Court

Date: \_\_\_\_\_

H. Magistrate Judge Steepy is authorized to sign and enter this order, with the same force and effect as if it were signed and entered by a United States District Judge.

Stipulated To:

\_\_\_\_\_  
Michael W. Vary  
Ohio Bar No. 0033789  
Marco Alan Silverstein  
Ohio Bar No. 0043539  
Attorneys for Plaintiff  
RE/MAX International, Inc.

Date: \_\_\_\_\_

\_\_\_\_\_  
Edward W. Cochran

Attorney for Defendant  
Robert Zames

Date: 8-30-95

\_\_\_\_\_  
Elizabeth Zames

Date: July 5, 1995

It is So Ordered:

\_\_\_\_\_  
Judge  
United States District Court

Date: \_\_\_\_\_



URGENT!!

Facsimile Transmission

North Point, 901 Lakeside Avenue • Cleveland, OH 44114 • 216/586-3939  
Facsimile: 216/579-0212

Please hand deliver the following facsimile to:

Date 6/30/95

Name: Tyrone Tart  
Company: Ameritech Publishing  
Telephone No.: \_\_\_\_\_

Facsimile No.: 810-524-7227

Number of Pages (including this page): 5

Send copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

From: Marc Alan Silverstein

Telephone No.: 216/586-7125

☐ Copies distributed \_\_\_\_\_  
Facsimile Operator's initials

CAM No.: 533700-060-002

NOTICE: This communication is intended to be confidential to the person to whom it is addressed, and it is subject to copyright protection. If you are not the intended recipient or the agent of the intended recipient or if you are unable to deliver this communication to the intended recipient, please do not read, copy or use this communication or show it to any other person, but notify the sender immediately by telephone at 216/586-3939 or the direct telephone number noted above.

Message: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please call us immediately if the facsimile you receive is incomplete or illegible. Our telephone number is 216/586-3939. Please ask for the facsimile operator. Ext. \_\_\_\_\_

Jones, Day, Reavis & Pogue  
Atlanta, Austin, Brussels, Chicago, Cleveland, Columbus, Dallas, Frankfurt, Geneva, Hong Kong,  
Irvine, London, Los Angeles, New York, Paris, Pittsburgh, Riyadh, Taipei, Tokyo, Washington, D.C.

TRANSMISSION REPORT

THIS DOCUMENT WAS SENT  
(REDUCED SAMPLE ABOVE)

\*\* COUNT \*\*  
PAGES SENT : 05

\*\*\* SEND \*\*\*

No	REMOTE STATION	START TIME	DURATION	#PAGES	MODE	RESULTS
1	1 810 524 7227	06-30-95 4:19 PM	2'28"	5		COMPLETED

NOTE:

No = OPERATION NUMBER  
S&F = STORE & FORWARD

EC = ERROR CORRECT  
G2 = CCITT G2 MODE

RS = RELAY SEND  
48 = 4800BPS SELECTED

Exhibit 3

XEROX Telecopier 7017

URGENT!!



## Facsimile Transmission

North Point, 901 Lakeside Avenue • Cleveland, OH 44114 • 216/586-3939  
Facsimile: 216/579-0212

Date 6/30/95

Please hand deliver the following facsimile to:

Name: Tyrone Tarr

Facsimile No.: 810-524-7227

Company: Ameritech Publishing

Number of Pages (including this page): 5

Telephone No.: \_\_\_\_\_

Send copies to: \_\_\_\_\_

From: Marc Alan Silverstein

Telephone No.: 216/586-7125

☐ Copies distributed \_\_\_\_\_  
Facsimile Operator's Initials

CAM No.: 533 700 - 060 - 002

NOTICE: This communication is intended to be confidential to the person to whom it is addressed, and it is subject to copyright protection. If you are not the intended recipient or the agent of the intended recipient or if you are unable to deliver this communication to the intended recipient, please do not read, copy or use this communication or show it to any other person, but notify the sender immediately by telephone at 216/586-3939 or the direct telephone number noted above.

Message: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please call us immediately if the facsimile you receive is incomplete or illegible. Our telephone number is 216/586-3939. Please ask for the facsimile operator. Ext. \_\_\_\_\_

**Jones, Day, Reavis & Pogue**

Atlanta, Austin, Brussels, Chicago, Cleveland, Columbus, Dallas, Frankfurt, Geneva, Hong Kong, Irvine, London, Los Angeles, New York, Paris, Pittsburgh, Riyadh, Taipei, Tokyo, Washington, D.C.

Exhibit 4

SPECIALISTS

FAX # 216-639-4339

IN REAL ESTATE

No. of pages to follow \_\_\_\_\_

ZAMES REALTY, INC.

FAX TRANSMITTAL FORM

TO: Pat Andreatis

DATE: June 30, 1995

COMPANY: Ameritech

FAX #: 216-838 4236

FROM: Bob Zames

COMPANY: Zames Realty Inc., DBA

Specialists In Real Estate

I am relinquishing one of my phone numbers, 216-639-4333 which necessitates changing my white and yellow page ads. I am no longer affiliated with REMAX.

The White Page ad should be as follows:

ZAMES REALTY, INC. 639-4334 (In bold print please)

2167 Mentor Avenue

Please do the same in the yellow pages in bold print also.

In the yellow pages, please do the following with one of my other numbers, 639-4339.

In the appraisal section:

DIVERSIFIED APPRAISERS 639-4339

2167 Mentor Avenue

Also in bold print. Thank you.

Please call if you have questions. 975-5964

CONFIDENTIALITY NOTICE:

The documents accompanying this telecopy transmission contain confidential information belonging to the sender, which is legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action is prohibited. If you have received this telecopy in error, please immediately notify us by telephone to arrange for return of the original documents to us.

Thank you.

ZAMES REALTY, INC.

DBA specialists in real estate

2167 mentor avenue

Painesville, OH 44077

phone: (216) 639 - 4333

each office independently owned and operated



Respondents Ex. 2  
EXHIBIT A

JONES, DAY, REAVIS & POGUE

ATLANTA LONDON  
BRUSSELS LOS ANGELES  
CHICAGO NEW YORK  
COLUMBUS PARIS  
DALLAS PITTSBURGH  
FRANKFURT RIYADH  
GENEVA TAIPEI  
HONG KONG TOKYO  
IRVINE WASHINGTON

NORTH POINT  
901 LAKESIDE AVENUE  
CLEVELAND, OHIO 44114

TELEPHONE: 216-586-3939  
TELEX: 980389  
CABLE: ATTORNEYS CLEVELAND  
FACSIMILE: 216-579-0212  
WRITER'S DIRECT NUMBER:

(216) 586-7125

July 3, 1995

0992-rlk-6572  
553700-010-002

BY MESSENGER

Thomas Linton, Esq.  
Ameritech, Inc.  
Room 1424  
Erievue Plaza  
Cleveland, OH 44114

Re: RE/MAX International, Inc. v. Elizabeth Zames and  
Robert Zames; United States District Court for the  
Northern District of Ohio, Eastern Division;  
Case No. 1:95CV1453

Dear Tom:

Enclosed is a copy of the "Stipulated Order Of Injunction" that we obtained in the above-referenced case on Friday, June 30, 1995. As you can see from paragraph D of the Stipulated Order, the telephone number "(216)639-4333" is to be immediately transferred to RE/MAX International, Inc. I trust that this copy of the Stipulated Order should be sufficient to effectuate the transfer, but if you need anything further, please let me know.

Please contact Mike Evans of RE/MAX of Northern Ohio (642-1320) directly for instructions about post-transfer matters. It is my understanding, however, that he will want the transfer message for (216)639-4333 to be identical to the new transfer message being used now for (216)255-2111.

Thank you in advance for your continued cooperation in this matter.

Very truly yours,



Marc Alan Silverstein

Enclosure  
cc: Mr. Michael Evans (by telecopy)

FILED

7 1 3:53

CLERK OF COURT  
U.S. DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RE/MAX INTERNATIONAL, INC.,	)	Case No. 1:95CV1453
	)	
Plaintiff,	)	Judge Lesley Brook Wells
	)	
v.	)	
	)	
ELIZABETH ZAMES and	)	STIPULATED ORDER OF
ROBERT ZAMES,	)	<u>INJUNCTION</u>
	)	
Defendants.	)	
	)	

It is stipulated among the parties and it is therefore ORDERED,  
this 30th day of June 1995 that:

A. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately rescind all orders that either of them placed with Ameritech, Inc., Ameritech Publishing, Inc., Ameritech Advertising Services, or any Ameritech affiliate ("Ameritech") for publication of "white pages" listings to appear in Ameritech's 1995 or subsequent directories, including but not limited to the directory for Lake County, Ohio, which listings refer in any way to RE/MAX or any of its federally-registered trademarks or its state-registered trademarks. Service of a copy of this order by any party to this lawsuit shall be



sufficient evidence or notice of the rescission and shall operate as an order to Ameritech to rescind, even in the absence of a directive from the defendants.

B. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately rescind all orders that either of them placed with Ameritech Publishing, Inc. or Ameritech Advertising Services or any Ameritech affiliate ("Ameritech") for publication of "yellow pages" listings to appear in Ameritech's 1995 or subsequent directories, including but not limited to the directory for Lake County, Ohio, which listings refer in any way to RE/MAX or any of its federally-registered trademarks or its state-registered trademarks. Service of a copy of this order by any party to this lawsuit shall be sufficient evidence or notice of the rescission and shall operate as an order to Ameritech to rescind, even in the absence of a directive from the defendants.

C. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately cease from any further conduct or advertising:

- (i) suggesting or tending to suggest an affiliation between the plaintiff or the brokerage services of plaintiff and its franchisees and Robert Zames;
- (ii) suggesting or tending to suggest sponsorship of the brokerage services of Robert Zames by plaintiff;
- (iii) suggesting or tending to suggest that the real estate brokerage services of Robert Zames are that of plaintiff and its franchised brokers and agents;

D. Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately cease from any further use of the telephone number (216)639-4333, and shall immediately take all steps necessary to transfer ownership of same to RE/MAX International, Inc. Service of a copy of this order by any party to this lawsuit shall be sufficient evidence or notice of the transfer and shall operate as an order to Ameritech to transfer the telephone number, even in the absence of a directive from the defendants;

E. Robert Zames shall immediately cease using any of RE/MAX's federal registered service marks, including, without limitation Reg. No. 1,139,014 ("RE/MAX" service mark), Reg. No. 1,173,586 (for hot air balloon service mark), Reg. No. 1,702,048 (for red over white over blue bar design service mark), and Reg. No. 1,158,371 (for "Above the Crowd!" service mark) and any confusingly similar variations thereof;

F. The instances of unauthorized conduct, as alleged in the complaint, are not subject matter to be resolved in the pending arbitration known as Robert Zames et al. and RE/MAX International, Inc. et al.; and

G. RE/MAX International, Inc. will file a notice of dismissal for the pending suit (1:95CV1453) without prejudice.

212

H. Magistrate Judge Steep is authorized to sign and enter this order, with the same force and effect as if it were signed and entered by a United States District Judge.

Stipulated To:

Michael W. Vary  
 Michael W. Vary  
 Ohio Bar No. 0033789  
 Marc Alan Silverstein  
 Ohio Bar No. 0043539  
 Attorneys for Plaintiff  
 RE/MAX International, Inc.

Date: 6/30/95

Edward W. Cochran  
 Edward W. Cochran  
 Attorney for Defendant  
 Robert Zames

Date: 6-30-95

Elizabeth Zames

Date: \_\_\_\_\_

*As of June 30, 1995, this order applies only to Robert Zames.*

It is so Ordered:

James H. Steep  
 Judge  
 United States District Court

Date: June 30, 1995

I hereby certify that this instrument is a true and correct copy of the original on file in my office.  
 Attest: Geri M. Smith, Clerk  
 U.S. District Court  
 Northern District of Ohio  
 By: [Signature]  
 Deputy Clerk

*Respondent's Ex. 3 mdu*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RE/MAX INTERNATIONAL, INC.

Plaintiff

-vs-

ELIZABETH ZAMES and  
ROBERT ZAMES

Defendants

) JUDGE LESLEY BROOKS WELLS

) CASE NO. 1:95CV1453

) ORDER TO SHOW CAUSE  
) AND ORDER REGARDING  
) DISCOVERY

This case is before the Court on the motion to show cause and motion for expedited discovery filed by plaintiff Re/Max International, Inc.

On June 30, 1995 and July 14, 1995, the Court entered stipulated orders of injunction ordering defendants Robert Zames and Elizabeth Zames to:

... immediately rescind all orders that either of them placed with Ameritech, Inc., Ameritech Publishing, Inc., Ameritech Advertising Services, or any Ameritech affiliate for publication of "white pages" listings to appear in Ameritech's 1995 or subsequent directories, including but not limited to the directory for Lake County, Ohio, which listings refer in any way to RE/MAX or any of its federally-registered trademarks or its state-registered trademarks. ...

Re/Max asserts an Ameritech "white pages" directory for Lake County, Ohio, was published with the following listing:

Remax Masters Real Estate --	
Betty Zames .....	975-0899
REMAX Masters Real Estate --	
Appraisals .....	639-4334

Re/Max requests a finding that Elizabeth and Robert Zames and Ameritech are in contempt of court for failing to obey the stipulated order. They further demand damages, attorney's fees, and costs.

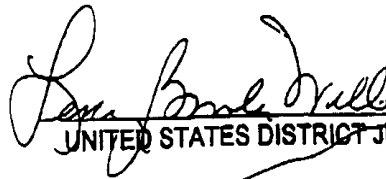
Ameritech was not a party to the prior proceeding, and hence cannot have violated the Court's order. Therefore, the motion to show cause is denied with respect to Ameritech.

Absent evidence of the circumstances surrounding the "white pages" listing, the Court cannot determine whether the stipulated order was violated. Therefore, defendants Robert Zames and Elizabeth Zames shall appear before United States District Judge Lesley Brooks Wells of the United States District Court for the Northern District of Ohio on November 21, 1995 at 9:30 a.m., in Courtroom 342, United States Court House, 201 Superior Avenue, N.W., Cleveland, Ohio, and show cause why they should not be held in contempt for failure to comply with the stipulated order.

It is further ordered that Robert Zames and Elizabeth Zames shall file and serve their written response to Re/Max's motion not later than ten (10) calendar days before the hearing.

Prior to the hearing, the parties may conduct limited discovery necessary and appropriate to support or defend the claim that the Zames' violated the stipulated injunction. Depositions may be taken on ten (10) days' notice; responses to interrogatories, requests for production of documents, and requests for admissions must be served within 14 days after service.

Plaintiff's motion for expedited discovery is denied. Expedited discovery will not ameliorate the alleged harm to Re/Max from the listing. There is no reason to believe evidence will be destroyed in the month before the hearing. Therefore, expedited discovery is not warranted.

  
UNITED STATES DISTRICT JUDGE

*Respondents Ex 4*

FILE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Case No. 1:95CV1453

RE/MAX INTERNATIONAL, INC.

Plaintiff

-vs-

ELIZABETH ZAMES and  
ROBERT ZAMES

Defendants

) JUDGE LESLEY BROOKS WELLS

) CASE NO. 1:95CV1453

) ORDER GRANTING

) RECONSIDERATION OF ORDER

) TO SHOW CAUSE AND DENYING

) MOTION FOR AMERITECH TO SHOW

) CAUSE WHY IT SHOULD NOT BE

) HELD IN CONTEMPT

This Court previously ordered defendants Elizabeth and Robert Zames to show cause why they should not be held in contempt of court for failure to obey the stipulated orders of injunction entered on June 30 and July 14, 1995. The Court denied plaintiff Re/Max International, Inc.'s ("Re/Max's") motion to show cause with respect to Ameritech, Inc., Ameritech Publishing, Inc., and Ameritech Advertising Services (collectively, "Ameritech"). Re/Max now asks the Court to reconsider its decision with respect to Ameritech, and consider whether Ameritech violated the injunctions.

Re/Max's motion for reconsideration is granted.

On June 30, 1995 and July 14, 1995, the Court entered stipulated orders of injunction ordering that:

Robert Zames and Elizabeth Zames, and any persons in active concert or participation with them, shall immediately rescind all orders that either of them placed with Ameritech, Inc., Ameritech Publishing, Inc., Ameritech Advertising

Services, or any Ameritech affiliate ("Ameritech") for publication of "white pages" listings to appear in Ameritech's 1995 or subsequent directories, including but not limited to the directory for Lake County, Ohio, which listings refer in any way to RE/MAX or any of its federally-registered trademarks or its state-registered trademarks. *Service of a copy of this order by any party to this lawsuit shall be sufficient evidence or notice of the rescission and shall operate as an order to Ameritech to rescind, even in the absence of a directive from the defendants.* (Emphasis added.)

Re/Max asserts an Ameritech "white pages" directory for Lake County, Ohio, was published with the following listing:

Remax Masters Real Estate –  
    Betty Zames ..... 975-0899  
REMAX Masters Real Estate –  
    Appraisals ..... 639-4334

The Court's order requires the Zames (and persons in active concert or participation with them) to rescind their order with Ameritech for certain listings, and provides that service of a copy of the court order on Ameritech will provide notice of the rescission, even absent a directive from the Zames.

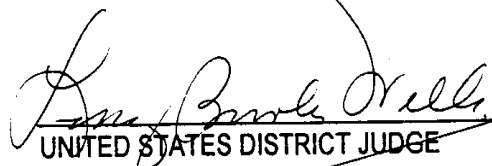
The statement that service of the court order will "operate as an order to Ameritech to rescind" serves as a contractual directive to Ameritech, not as a court directive, as the following language ("even in the absence of a directive from the defendants") makes clear. Therefore, this portion of the court order does not place any court-ordered obligation on Ameritech to comply with the directive to rescind.

Finally, Re/Max's assertion that Ameritech is a person "in active concert or participation with" the Zames is not supported by the record. The existence



of a contractual relationship between the Zames and Ameritech, even if shown, would not in itself make Ameritech an agent or servant of the Zames, or subject to their control. The mere fact that Ameritech was aware of the injunction does not mean that it was bound by it.

A court "cannot lawfully enjoin the world at large, no matter how broadly it words its decree. . . . It is not vested with sovereign powers to declare conduct unlawful; its jurisdiction is limited to those over whom it gets personal service, and who therefore can have their day in court." *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 833 (2d Cir. 1930) (Hand, J.). Here, Ameritech was not a party to the prior proceeding, and hence cannot have violated the Court's order. Therefore, the motion to show cause is denied with respect to Ameritech.

  
UNITED STATES DISTRICT JUDGE

Respondent's Ex. 5

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RE/MAX INTERNATIONAL, INC.

Plaintiff

-vs-

ELIZABETH ZAMES and  
ROBERT ZAMES

Defendants

) JUDGE LESLEY BROOKS WELLS

) CASE NO. 1:95CV1453

) ORDER OF DISMISSAL OF  
) MOTION TO SHOW CAUSE

Pursuant to the Stipulation and Order of Further Injunction and  
Order of Dismissal signed by the parties, entered on the record on November 21, 1995,  
and attached hereto and incorporated herein, plaintiff Re/Max International, Inc.'s  
motion to show cause filed October 6, 1995, is hereby dismissed, with prejudice.

Noted that this instrument is a true and correct copy of the original on file in my office.  
Court Clerk  
Clerk

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RE/MAX INTERNATIONAL, INC.	)	JUDGE LESLEY BROOKS WELLS
	)	
Plaintiff	)	CASE NO. 1:95CV1453
	)	
v.	)	
	)	
ELIZABETH ZAMES and	)	
ROBERT ZAMES	)	STIPULATION AND ORDER
	)	OF FURTHER INJUNCTION
Defendants	)	<u>AND OF DISMISSAL</u>

Pursuant to agreement between the parties, Plaintiff, RE/MAX International, Inc. ("RE/MAX"), in consideration of the undertakings set forth herein, hereby moves this Court for a dismissal with prejudice of its Motion to Show Cause, filed October 6, 1995.

Plaintiff RE/MAX and Defendants Robert Zames and Elizabeth Zames hereinafter agree to the following and the Court hereby orders:

1) The telephone numbers "(216) 639-4334" and "(216) 975-0899" shall be transferred or assigned to RE/MAX effective immediately. Defendants shall execute all authorizations necessary to effect such transfer or assignments. RE/MAX shall be responsible for all costs and charges of said numbers. RE/MAX shall reimburse Betty Zames any costs thereof that have been paid in advance, not to exceed \$125. The telephone numbers shall be answered by electronic means with the following messages:

For telephone number "(216) 639-4334":

"Hello. You have reached (216) 639-4334. If you wish to contact a RE/MAX Broker or Agent, please call [number to be inserted]. If you wish to reach Bob Zames' Broker, who is no longer affiliated with RE/MAX, please call [number to be inserted]."

For telephone number "(216) 975-0899":

"Hello. You have reached (216) 975-0899. If you wish to contact a RE/MAX Broker or Agent, please call [number to be inserted]. If you wish to reach Realtor Betty Zames, who is no longer affiliated with RE/MAX, please call [number to be inserted]."

2) Robert Zames and Elizabeth Zames shall cease either using or causing to have used, any signs, stationary, business cards, advertisements, brochures, or any other materials in furtherance of the business of Robert Zames, Elizabeth Zames, Zames Realty, Inc., and/or Specialists in Real Estate, which contain or refer to any of RE/MAX's federally registered service marks or trade marks, including, without limitation, Reg. No. 1,139,014 ("RE/MAX" service mark), Reg. No. 1,173,586 (hot air balloon service mark), Reg. No. 1,702,048 (red over white over blue design service mark) and Reg. No. 1,158,731 ("Above the Crowd!" service mark) (hereinafter "RE/MAX' marks") and any confusingly similar variation thereof.

Defendants shall cease using the colors, red, white and blue, together in any three color field on any sign, stationary, business cards, advertisements, or any other materials used in the furtherance of the business of Robert Zames, Elizabeth Zames, Zames Realty, Inc. and/or Specialists in Real Estate.

3) Mike Evans, a representative of RE/MAX, accompanied by counsel, shall inspect the premises of Zames Realty, Inc. for the purposes of confirming that no signs, stationary, business cards, advertisements, brochures, or other materials used in furtherance of the business of Robert Zames, Elizabeth Zames, Zames Realty, inc., and/or Specialists in Real Estate contain or refer to any of RE/MAX' marks, or any confusingly similar variation thereof.

Such inspection shall occur at a time to be mutually agreed upon by the parties hereto, but such inspection shall occur by December 15, 1995.

The Stipulated Order of Injunction, entered by this Court on June 30, 1995, and the Memorandum of Opinion and Order Entering Stipulated Order of Injunction and Dismissing case, entered by this Court on July 14, 1995, shall remain in full force and effect.

RE/MAX reserves the right to enforce the terms of the Court's June 30, 1995 and July 14, 1995 orders, and the terms set forth herein, for any and all violations occurring after this date.

Stipulated and agreed to:

Date: November 21, 1995

Date: November 21, 1995

s/Michael W. Vary  
Michael W. Vary  
Counsel for RE/MAX

s/Edward W. Cochran  
Edward W. Cochran  
Counsel for Robert and  
Elizabeth Zames

s/Robert Zames  
Robert Zames  
Date: Nov. 21, 1995

s/Elizabeth Zames  
Elizabeth Zames  
Date: 11-21-95

It is so ordered:

\_\_\_\_\_  
Judge United States District  
Court

Date: \_\_\_\_\_