

[Filed Feb 8, 2006]

IN THE IOWA DISTRICT COURT
For Polk County Iowa

FILED
POLK COUNTY IOWA
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MICHAEL L. FITZGERALD,

Treasurer for the State of Iowa,

Plaintiff,

v.

**YOUNG AMERICA CORPORATION,
a Minnesota Corporation,**

Defendant.

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) **PETITION**
)
) **CIVIL ACTION**
) **NO. Cv 6030**
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PRELIMINARY STATEMENT

Michael L. Fitzgerald, the Treasurer of the State of Iowa (the "Treasurer"), brings this action against the defendant, Young America Corporation ("YAC"), pursuant to Iowa Code Section 556.23, seeking an Order to allow the Treasurer or his agents to examine all appropriate business records of YAC to determine whether YAC has complied with the Uniform Disposition of Unclaimed Property Act, Iowa Code Chapter 556.1 *et seq.* (2005) (the Act).

PARTIES

1. YAC is a business entity incorporated under the laws of the State of Minnesota and has its principal place of business located at 18671 Lake Drive East, Chanhassen, Minnesota 55317-9383.

2. The Treasurer maintains the principal offices at the State Capitol, Des Moines, Iowa 50319.

JURISDICTION

3. The Iowa District Court has jurisdiction over this action pursuant to Iowa Code §556.24.

RELEVANT FACTS

4. YAC provides a wide range of consumer interaction processing services to large consumer product and consumer service companies. Its client companies have included Hewlett-Packard, Sprint PCS, Anheuser-Busch, Best Buy, General Mills, R.J. Reynolds, Nestle, Target, McDonald's, and Pepsi-Cola, all of which do business in the State of Iowa.

5. Among the processing services that YAC offers to its client companies is the administration of promotional programs that its clients use to promote the sale of their products to consumers, including consumers in the State of Iowa. The primary promotional program that YAC administers is its clients' rebate programs. Rebate programs provide an incentive to Iowa consumers to try new or existing products or services, and also create an opportunity for consumer-oriented companies to gather information about Iowa consumers, including their buying behavior and preferences.

6. YAC's rebate services to its client companies are commonly known as "fulfillment" services, whereby YAC receives and processes rebate forms and issues the rebate payments in accordance with the rules of the program established by the client companies. These "fulfillment" services include the following:

A. YAC opens a post office box and sets up a computer program to process rebate requests from consumers, including Iowa consumers;

B. YAC verifies each rebate request against the client's instructions and records the consumer's name, address, and other pertinent information;

C. YAC provides support to consumers, including Iowa consumers, by responding to their inquiries, however received, and it operates two telephone call centers to respond to consumer inquiries, including inquiries from Iowa consumers; and

D. YAC prints and mails the rebate payment checks to consumers, including those in Iowa.

7. YAC offers its client companies at least two options for the payment of the rebates and its remuneration. In one option, the client company provides all of the funds to pay the rebates that consumers submit, and pays a service fee to YAC. Under this option, the client companies hold the sums corresponding to uncashed rebate checks. During the period between January 1, 1996 and June 30, 2002, the client companies held unclaimed rebate sums of approximately \$86 million, which they were required to report as abandoned property to the state of the last known address of the payee of the rebate check.

8. In the second option, the client company and YAC enter into a contractual agreement that provides YAC will receive a lower, discounted, service fee under circumstances where: (a) YAC funds the rebate program from its own working capital; (b) YAC bills the client company for the full face amount of the rebate checks; (c) YAC receives payment from the client companies for the full face amount of the rebate checks; and (d) YAC retains for itself the proceeds of any checks issued to consumers that are not cashed, a situation that is known in the business as “slippage.” In filings with the U.S. Securities and Exchange Commission and other public records, YAC has identified a certain portion of its annual revenue as slippage. During the period between January 1, 1995, and June 30, 2002, YAC took as its own revenue uncashed checks (“slippage”) totaling almost \$43 million as follows:

Calendar Year 1995	\$ 2,697,000
Calendar Year 1996	2,432,780
Calendar Year 1997	3,258,380
Calendar Year 1998	4,904,919

Calendar Year 1999	8,505,324
Calendar Year 2000	7,169,332
Calendar Year 2001	7,978,022
Calendar Year 2002, to June 30, 2002	<u>5,360,882</u>
Total	\$ 42,962,339

Included in this slippage taken into revenue were the proceeds of uncashed checks mailed to consumers in Iowa. Pursuant to the Act, YAC is the holder of these abandoned funds.

9. The Act governs the disposition of all forms of intangible property, which expressly includes checks and refunds. It provides that intangible property is presumed abandoned unless claimed by the person entitled thereto within three years after the date for payment or delivery. All property presumed abandoned on June 30 of each year shall be reported and paid to the Treasurer by November 1 of that year.

10. The slippage from uncashed rebate checks retained by YAC is a form of intangible property, and as such is subject to the Act. Because slippage results from rebate checks that YAC issues to consumers who have submitted rebate forms, YAC has a record of the name and last known address of the consumer and the amount due to the consumer for an uncashed rebate check, including rebate checks sent to consumers in Iowa. Although more than three years have expired from the date that YAC issued rebate checks and obtained from its client companies the full amount of all such rebates, YAC has never filed a report with the Treasurer and has never paid to the Treasurer the proceeds of those uncashed rebate checks owed to consumers whose last known address was in Iowa.

COUNT I

Request For Order Under Iowa Code Section 556.23

11. The Act provides that if the Treasurer has reason to believe that a person has failed to report property that should have been reported, the Treasurer may examine the records of any person to determine if that person has complied with that law.

12. On or about August 12, 2003, the Treasurer sent a letter to Mary Beth Fong, Vice President and Chief Financial Officer of YAC, announcing that the Treasurer, through the Treasurer's agents, was commencing an unclaimed property compliance examination of YAC.

13. Since August 2003, YAC has willfully failed and deliberately refused to permit the examination of its records, or to report to the Treasurer the amount that it owes as unclaimed property. Instead, on August 26, 2003, YAC commenced an action in the United States District Court for the District of Minnesota against the Treasurer's agents, but not against the Treasurer. That action, however, sought an injunction permanently restraining the agents and all persons acting in concert or cooperation with them, which includes the Treasurer, from demanding that YAC submit to an examination of its records for unreported abandoned property, including the property that should have been reported and paid into the protective custody of the Treasurer.

14. On September 21, 2004, the United States District Court for the District of Minnesota dismissed YAC's case, ruling that the Court did not have subject matter jurisdiction over the YAC's claims. In essence, the Court found that YAC did not, and could not, allege any actual or imminent injury flowing from the Treasurer's request for an audit. On October 14, 2004, YAC filed a notice of appeal to the United States Court of Appeals for the Eighth Circuit. On September 29, 2005, the Court of Appeals issued a decision affirming the dismissal of YAC's case. The Court of Appeals concluded that YAC had no standing to bring its action because: (1) it failed sufficiently to allege any injury in fact; (2) it failed to establish causation; and (3) it failed to establish redressability since it was speculative at best whether any judgment in the federal case would bind the States.

15. YAC's willful refusal to permit the unclaimed property examination continues.

16. The Act provides that if a person refuses to deliver property to the State Treasurer, the Treasurer shall bring action in a court of appropriate jurisdiction to enforce such delivery.

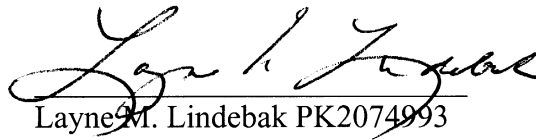
WHEREFORE, the Treasurer respectfully requests that the Court:

1. Enter an Order pursuant to Iowa Code § 556.23 directing YAC to allow the Treasurer or the Treasurer's agents to examine all appropriate business records to determine whether YAC has complied with the Act; and further to Order pursuant to Iowa Code Section 556.24 that any abandoned property subject to the Act held by the defendant which has not been previously reported be delivered to the Treasurer.

2. Grant such other and further relief as may be just and equitable.

Michael L. Fitzgerald,
Treasurer, State of Iowa

Dated: February 8, 2006



Layne M. Lindebak PK2074993
Assistant Attorney General
Iowa Department of Justice
2nd Floor Hoover Office Building
1305 East Walnut Street
Des Moines, IA 50319
Phone: (515) 281-7054
Fax: (515) 281-4902