

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3033
(Summary Calendar)

FEDERAL TRADE COMMISSION,

Plaintiff-Appellee,

versus

NATIONAL BUSINESS CONSULTANTS
and ROBERT NAMER,

Defendants-Appellants.

Consolidated with

No. 93-3104
(Summary Calendar)

FEDERAL TRADE COMMISSION,

Plaintiff-Appellee,

versus

NATIONAL BUSINESS CONSULTANTS,

Defendant,

ROBERT NAMER,

Defendant-Appellant.

Appeals from the United States District Court
for the Eastern District of Louisiana
(89-CV-1740)

(February 11, 1994)

Before JOLLY, WIENER and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

This appeal concerns the dissatisfaction of Defendants-Appellants National Business Consultants, Inc. (NBC) and its principal, Robert Namer, with six orders of the district court issued after that court had entered a permanent injunction and an award of monetary equitable relief in November 1991. To say that this appeal marks the latest^{SO}and presumably the last^{SO}episode in lengthy and rancorous litigation instigated by Plaintiff-Appellee, the Federal Trade Commission (FTC), and fought, tooth-and-nail, by Defendants-Appellants, is truly an understatement. We trust that today we write finis to the matter^{SO}and we caution Defendants-Appellants and their counsel to think long and hard about the consequences, including the full panoply of sanctions available to this court, before taking steps to prolong this litigation and keep it from dying the death it richly deserves.

Two of the six post-judgment orders at issue here--the Contempt Order and the Denial of the Motion to Recuse^{SO}were granted by the district court after Defendants-Appellants timely filed notices of appeal from the rulings of the district court. No new notices of appeal for those two orders have been filed since they were granted. Consequently, we have no jurisdiction to review

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

those two orders. The instant appeal is thus dismissed as to them.

After carefully reviewing the briefs of counsel and the arguments and citations contained therein, and reviewing record excerpts filed therewith, we are firmly convinced that, as to the remaining four orders of the district court appealed from herein, the positions advanced by Defendants-Appellants are frivolous, are wholly without merit, and are prosecuted solely for purposes of delay, harassment and vexation. We therefore dismiss this appeal as to those four remaining orders as well.

In connection with its opposition to the instant appeals on their "merits," the FTC has filed a motion with this court seeking imposition of sanctions in the form of double costs and attorney's fees against Defendants-Appellants and their counsel, James F. Quaid, for filing and prosecuting this frivolous appeal.¹ We find the FTC's invitation well taken, and accept it.

The declaration of counsel for the FTC, executed under penalty of perjury and filed with its motion, is sufficient in style and content to support an award of attorney's fees totaling \$4,310.38 and reproduction costs of \$22.97, for a total of \$4,333.35. Our examination of the Objection to Motion for Double Cost Attorney's Fees filed in response thereto on behalf of NBC is not persuasive. We therefore grant the motion of the FTC and award double costs of this appeal, plus attorney's fees and reproduction costs in the sum

¹ The FTC urges us to ground such sanctions in the provisions of F. R. App. P. 38 and 28 U.S.C. §§ 1912 and 1927, together with our earlier pronouncement in Coghlan v. Starkey, 852 F.2d 806, 815 (5th Cir. 1988), quoting Texas v. Gulf Water Benefaction Co., 679 F.2d 85, 87 n.1 (5th Cir. 1982).

of \$4,333.35 in favor of the FTC and in solido (jointly and severally) against Defendants-Appellants Robert Namer and National Business Consultants, Inc., and their counsel, James F. Quaid.

For the reasons set forth above, the consolidated appeals of NBC and Robert Namer are DISMISSED, and double costs are assessed in favor of the FTC plus attorney's fees and reproduction costs of \$4,333.35, jointly and severally against Namer, NBC and Quaid.

SO ORDERED.