

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into this fourteenth day of January, 2004, by and between the States of New York, Maryland and California ("the Plaintiff States"), by their Attorneys General, and Stephen Osborne ("Mr. Osborne") (collectively "the Parties").

### 1. Introduction

- 1.1 The Attorney General of New York has carried out an investigation ("the New York Investigation") into claims that various persons or entities, acting in concert with Mr. Osborne and others, engaged in bid-rigging at public stamp auctions over a period lasting through 1997 (the "Alleged Illegal Conduct"). Based on information discovered during that investigation, the Plaintiff States have brought an action in the Southern District of New York, *New York, et al. v. Feldman, et al.*, No. 01-cv-6691 ("*New York v. Feldman*"), naming Mr. Osborne and others as Defendants. Mr. Osborne denies the allegations made by the Plaintiff States in their complaint.
- 1.2 On the basis of the New York Investigation and information obtained during *New York v. Feldman*, the Plaintiff States have concluded that the settlement set forth herein will confer substantial benefit on those individuals represented by the Plaintiff States, shorten proceedings in this case, and avoid the risks inherent in litigation. Mr. Osborne is also interested in shortening proceedings in this case and avoiding the risks inherent in litigation. His entry into this settlement agreement is not an admission of liability.
- 1.3 The Parties have entered into this Settlement Agreement, which they intend as a final and complete resolution of all claims available to the Parties arising out of the Alleged Illegal Conduct, the New York Investigation or the litigation of *New York v. Feldman*, including all claims made by Plaintiff States on behalf of those they represent as *parens patriae* or otherwise, to the extent permitted under, and in accordance with the procedures set forth in, 15 U.S.C. § 15c.
- 1.4 Therefore, in consideration of the terms of this Settlement Agreement and other good and valuable consideration, receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

### 2. Definitions

As used in this Settlement Agreement:

- 2.1 "Crossing Off" means any act whereby actual or potential bidders at Public Stamp Auctions (acting themselves or through an agent or other authorized representative)

in any way agree either not to bid against each other during a Public Stamp Auction, or to keep bids below a certain amount.

- 2.2 "Defendant" means any Defendant in *New York v. Feldman*, counsel for any such Defendant, any individual acting on one or more Defendants' behalf, and any employee of any Defendant.
- 2.3 "Effective Date" means the date as of which all of the Parties have executed this Settlement Agreement.
- 2.4 "Joint Purchasing Venture" means a purchasing arrangement among bidders in which the participants share the costs of a particular lot or lots. To qualify as a Joint Purchasing Venture, the participants must: a) all contribute to the purchase price of the lot or lots; b) disclose to the auctioneer their purchasing arrangement; and c) have as their purpose the pooling of funds, marketing skills or specialized knowledge, to purchase lots which would otherwise be beyond their means or ability. No Joint Purchasing Venture participant may refrain from bidding in exchange for anything of value. A Joint Purchasing Venture may not involve more than three bidders.
- 2.4 "Parties" mean the signatories of this Settlement Agreement.
- 2.5 "Person" means any individual, association, cooperative, partnership, corporation, or other business or legal entity.
- 2.6 "Public Stamp Auction" means any auction at which stamp(s) are offered for sale through the competitive bidding process, when the date, time and place of the auction is made known to the public.

### **3. Resolution of Claims**

- 3.1 The parties agree to compromise, settle and resolve fully and finally on the terms set forth in this Agreement any and all claims, actions and causes of action brought by the Plaintiff States against Mr. Osborne in *New York v. Feldman*, or available to the Parties against one another, or their respective employees, arising out of the Alleged Illegal Conduct, the New York Investigation or the litigation of *New York v. Feldman*. The parties agree that this Settlement Agreement shall not be deemed or construed as evidence or an admission of any issue of fact or law, nor a determination that a violation of the law occurred, or of the truth of any of the claims or matters alleged by the Plaintiff States.
- 3.2 Except as expressly provided, this Agreement shall not be construed to limit or restrict any legal right that otherwise might be available to the Plaintiff States or Mr. Osborne in relation to the Alleged Illegal Conduct. Nothing in this Agreement is intended to release the liability of, or in any way create a benefit in favor of, any

person who is not a Party to this Agreement, except as set forth in section 3.4.

- 3.3 This Settlement Agreement may be executed on separate signature pages, in counterparts or by facsimile, with the same effect as if all parties had signed the same physical page of this Agreement.
- 3.4 The Plaintiff States agree to dismiss all claims against Mr. Osborne in *New York v. Feldman*, with prejudice, upon: (a) payment by Mr. Osborne of the sum set forth below; and (b) entry of a final judgment entered in accordance with 15 U.S.C. § 15c and the terms of this Agreement.

#### **4. Monetary Payment**

- 4.1 Mr. Osborne shall pay by certified or bank check to the New York State Department of Law the sum of \$36,000 by March 26, 2004 (the "Settlement Amount"). This money shall be placed by the States into an escrow account, and shall be disbursed in accordance with order of the Court in *New York v. Feldman*.
- 4.2 If Mr. Osborne shall fail to make payment on the date provided for in paragraph 4.1, and if such failure shall not be cured within five calendar days after the Plaintiffs shall give Mr. Osborne written notice of such failure, then the Plaintiffs shall be entitled, at their sole discretion: (a) to declare the entire unpaid Settlement Amount due and owing ("a Payment Default") and to obtain a judgment from the Court in *New York v. Feldman* for 150% of the Settlement Amount; or (b) to declare this Agreement null and void and seek a judgment by default in *New York v. Feldman* against Mr. Osborne. Any election to declare a Payment Default shall be made in writing to Mr. Osborne. Upon the declaration of a Payment Default, interest shall accrue at the rate of 9% per annum, beginning as of the Effective Date, on the entire Settlement Amount.
- 4.3 In any action or proceeding brought against Mr. Osborne to enforce this Agreement or to obtain a judgment under paragraph 4.2, Plaintiff States shall be entitled as part of an award in their favor, to recover reasonable attorneys' fees and costs incurred by Plaintiff States to obtain such award.

#### **5. Subsequent Proceedings**

- 5.1 Mr. Osborne shall agree to be interviewed by assistant attorneys general or investigators employed by the Plaintiff States regarding the facts of this case during reasonable business hours whenever requested, by telephone upon five days notice, at the expense of the Plaintiff States. Any such interview may be recorded or transcribed at the sole discretion of the Plaintiff States. At the interview, Mr. Osborne shall answer all reasonable and relevant questions fully, fairly and truthfully, and may refuse to answer such questions only on the grounds of a valid assertion of

attorney-client privilege, work product immunity or Fifth Amendment privilege. Mr. Osborne may be represented by counsel at any such interview.

- 5.2 Mr. Osborne shall provide the Plaintiff States during the period of this agreement with written notice of any request or subpoena by the Defendants that he testify on any Defendant's behalf, any agreement regarding his testimony, or any request for documents including but not limited to a subpoena or discovery request, within seven days of such request or agreement.
- 5.3 Any failure by Mr. Osborne to comply with the provisions of section 5 shall constitute a material breach of this Agreement, and shall permit the Plaintiff States to declare this Agreement null and void for all purposes and to the same extent as if it were never executed.

## **6. Future Conduct**

- 6.1 Subject to section 6.2, from the Effective Date of this Agreement, and for five years following the entry of judgment in *New York v. Feldman*, Mr. Osborne shall refrain from the following conduct:
  - A. Directly, indirectly -- or through any corporation, joint venture, partnership, or other entity or device -- entering into, attempting to enter into, organizing or attempting to organize, implementing, or soliciting or attempting to implement or solicit any agreement, understanding, contract or combination, either express or implied, with any other person or competitor:
    - 1. To Cross Off bids to purchase any stamp(s) in a Public Stamp Auction held in the United States; or
    - 2. To act in concert with any other Person to set, establish, inflate, suppress or maintain the price or other terms and conditions of any bids for the acquisition of any stamp(s) in a Public Stamp Auction held in the United States.
  - B. Directly, indirectly -- or through any corporation, joint venture, partnership, or other entity or device -- communicating or inquiring about any intentions, decisions, or plans to bid or to refrain from bidding on any particular lot or lots, including any intentions, decisions, or plans regarding any actual or proposed bid amounts to purchase any stamp(s) in a Public Stamp Auction held in the United States, where such communication or inquiry is to:
    - 1. Any other Person who is known or reasonably should be known by Mr. Osborne to be an actual or a potential bidder to purchase stamp(s); or

2. Any other Person who has announced an intention to bid to purchase stamps(s).
- C. Directly, indirectly -- or through any joint venture, partnership or other entity or device -- requesting, suggesting, urging or advocating that any other Person not bid on, or suggesting that it would not be appropriate for any other Person to bid on, any particular lot or group of lots offered for sale at a Public Stamp Auction held in the United States.
- 6.2 Unless such communication otherwise facilitates a violation of section 6.1, nothing in this Agreement shall be construed to prohibit Mr. Osborne from: 1) bidding through an auction agent; 2) acting as an auction agent; 3) communicating with any customer regarding the price to be paid for any lot, or concerning the sale of all or any part of any lot; 4) communicating with any employee; 5) discussing the authenticity, or accuracy of description, of a lot with any other person; 6) purchasing stamps at auction in collaboration with another bidder pursuant to a legitimate Joint Purchasing Venture; or 7) placing a reserve on any lot or lots when acting as a vendor.
- 6.3 From the Effective Date, and for five years following the entry of judgment in *New York v. Feldman*, if requested by Plaintiff States in writing Mr. Osborne shall provide the New York Attorney General's Office, on a semi-annual basis on January 1 and July 1 of each year, with: 1) a list of all United States auctions at which he has bid during the previous six months, the identity of any agent that represented him, and the particular auctions at which that agent acted on his behalf; and 2) a sworn certification that his participation at those auctions was in conformity with the terms of this Agreement.
- 6.4 From the Effective Date and continuing for Five Years following the entry of judgment in *New York v. Feldman*, for the purpose of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, from time to time duly authorized representatives of the Plaintiff States, or anyone designated by them as such, may, upon written request and on reasonable notice, be permitted to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Mr. Osborne relating to Public Stamp Auctions, and to interview any employees of Mr. Osborne on matters relating to public stamp auctions. During any such inspection, Mr. Osborne may have counsel present.
- 6.5 Nothing in this Agreement shall be construed to provide that any of the prohibited conduct set forth in this section 6 will or would be permissible under any state or federal laws upon the expiration of this Agreement.

6.6 Mr. Osborne consents to the entry of a judgment in *New York v. Feldman* in accordance with the terms of this Agreement.

**7. Termination of Decree**

7.1 Unless otherwise ordered for good cause shown, at the end of five years from the entry of judgment in *New York v. Feldman*, this settlement agreement and any final judgment on which it is based shall automatically terminate, without any action by either party or the Court.

7.2 If any Plaintiff State determines that Mr. Osborne has violated the terms of the final Judgment, it shall, upon notice in writing by facsimile or express mail, give Mr. Osborne five days to respond in writing. If after such time the Plaintiff State believes that Mr. Osborne has not cured the violation, the State may apply to the Court for relief, including a finding of contempt.

**8. Choice of Law**

8.1 This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to an agreement negotiated, executed, entered into and performed solely within the State of New York.

**9. Enforcement**

9.1 All of the obligations of this Settlement Agreement that are binding on any Party or Parties shall be binding upon their successors, assigns and legal representatives.

**10. Integration**

10.1 This Settlement Agreement contains the entire agreement and complete understanding of the parties. There are no additional promises or terms of the Settlement Agreement other than those contained above. This Agreement shall not be modified except in writing, signed by all the parties or by their authorized representatives.

**11. Notice**

11.1 Any notice or other writing required or permitted to be given under this Agreement shall be sufficient if made as follows:

If to Mr. Osborne:

By express mail or fax to:

Stephen Osborne  
Ridgeways  
Georges Lane  
Storrington  
West Sussex  
RH20 3JH England  
Fax: 01903 741416

If to the Plaintiff States:

By hand or fax to:

David Weinstein  
Antitrust Bureau  
Office of the Attorney General  
120 Broadway  
26<sup>th</sup> Floor  
New York, NY 10271  
Fax: (212) 416-6015

Should Mr. Osborne change his address or fax from that listed above, he shall provide the Plaintiff States with written notice within three days of such change.

AGREED AND CONSENTED TO:

Stephen Osborne, pro se

By: Stephen Osborne  
Stephen Osborne



STATE OF NEW YORK  
ELIOT SPITZER  
Attorney General

By: 

JAY E. HIMES  
Bureau Chief  
Antitrust Bureau

BILL LOCKYER  
STATE OF CALIFORNIA  
Attorney General

By: Lindsay Bower 4/6/04  
LINDSAY BOWER  
Deputy Attorney General

STATE OF MARYLAND  
J. JOSEPH CURRAN  
Attorney General

By: \_\_\_\_\_  
JOHN TENNIS  
Assistant Attorney General