

WORLD SERVICE OFFICE, INC.,
a Charitable Corporation
Trustee of the Copyrights,
Trademarks and Service Marks
for the Fellowship of
Narcotics Anonymous,

[illegible]

1 Defendant's motion, styled as a MOTION TO ENFORCE OR VACATE ORDER, does not reference a Federal Rule of Civil Procedure, provides no governing standard or legal support, and otherwise fails to comply with the Federal Rules of Civil Procedure and the Local Rules of this Court. In view of the nature of this paper and the relief requested, plaintiff is assuming for the purpose of this response that defendant purports to move under Rule 60(b), F.R.Civ.P.

Consent Order of January 4, 1991.²

The January 4, 1991 Order and the accompanying Settlement Agreement ended a divisive and painful episode within the Fellowship of Narcotics Anonymous. The issues raised by Moorhead were fairly debated at the 1991 World Service Conference. After full debate, the Motions called for in the Settlement Agreement were voted upon and defeated. (See Hollahan Decl., ¶8; Hollahan Exh. B).

Having failed to achieve his ends through the duly authorized procedures which govern the over 400,000 members of Narcotics Anonymous, procedures of which Moorhead agreed to avail himself, Moorhead has filed the present Motion. The present Motion contains blatant misrepresentations and omissions, is groundless, and should accordingly be denied, based upon the following points and authorities.

II. Statement of Facts

On November 30, 1990, the plaintiff World Service Office (hereinafter "WSO") brought an action against Moorhead for copyright infringement and federal and common law trademark and service mark infringement and unfair competition based upon Moorhead's production and sale of approximately 9,000 infringing

² The present Motion was filed concurrently with a Motion for Preliminary Injunction and Expedited Discovery seeking to enjoin the consideration by the WSC, at its meeting in Dallas TX, of Motion No. 8, directed toward approval of a Fellowship Intellectual Property Trust. Moorhead's Preliminary Injunction Motion has been withdrawn in view of the fact that Motion No. 8 was committed for further review.

copies of the Narcotics Anonymous Basic Text. The matter was set down for a Preliminary Hearing on January 2, 1991.

Both sides presented testimony at the day long hearing. The WSO argued that it was legally charged with protecting Fellowship property, and as such, was compelled to enforce Fellowship intellectual property rights against infringers. Moorhead and his supporters argued that the Basic Text published by the WSO was not the approved Edition, and that the price charged by the WSO was beyond the reach of indigent addicts.

At the close of the day's testimony, the Honorable Louis H. Pollak, citing the larger spiritual purposes which bonded the litigants, called upon the parties to negotiate a settlement to this dispute. Throughout the evening of January 2, 1991 and during the entire day of January 3, 1991, the parties worked diligently towards a final settlement of the controversy. By the morning of January 4, 1991, the parties reached a mutually agreeable resolution which was embodied in two documents.

The first document, a Consent Order, permanently enjoined Moorhead from engaging in further acts of copyright infringement and federal and common law trademark infringement. The Consent Order imposed no injunctive prohibitions on the WSO.

The parties further entered into a Settlement Agreement in conjunction with the Consent Order. The Settlement Agreement included several clauses. Initially, it included a covenant and warrant by Moorhead regarding the number of copies of the allegedly infringing text he had printed; a covenant that he was no longer in

possession of any of said copies; and a covenant that he had destroyed all printing plates or other apparatus associated with the production of the text.

The second clause required the WSO to publish a statement over the signatures of Messrs. George Hollahan, Stuart Tooredman and Defendant Moorhead. The contents, to be agreed upon by all three of these individuals, was to reference the controversy, call for peace within the Fellowship, call for an adequate discussion of the issues, and include an admonishment against recrimination within the Fellowship as a result of the controversy.

Pursuant to the terms of the Settlement Agreement, WSO further agreed to place without comment, but with an introduction, three Motions in the 1991 World Service Conference Agenda Report specifically directed to the issues raised by Moorhead and his supporters throughout the Hearing. The Settlement Agreement also called for the publication of remarks by Judge Pollak in the Agenda Report. Having been placed in the Agenda Report, the Motions would be debated and voted upon by the World Service Conference (WSC), the governing body of the Fellowship in April, 1991.

The first Motion called upon the Fellowship to reconsider its decision on which Edition, or parts thereof, were to be produced and distributed by the WSO as the official and accepted text of Narcotics Anonymous. The second Motion was directed to whether the WSO should produce, at a reduced price, the edition of the text ratified by the WSC. Pursuant to this Motion, the actual price of this text would be determined in view of a series of factors

including its affordability; changes in the cost and quality of the materials used to produce the book; the responsibility of the WSO to provide services from income generated by sales of the Basic Text; and whether the Basic Text was to contain personal stories or only the first ten chapters. The third Motion was directed to whether the WSC should be directed to obtain a group by group tally of all groups registered with the WSO on Motions 1 and 2. This Motion further set forth a time for such a tally and defined the members of a committee to supervise the voting. The above represents the full and complete agreement of the parties. (See Settlement Agreement, paragraph 5; Moorhead Exhibit A).

Following the entry of this Court's Order and the execution of the Settlement Agreement, the joint statement executed by Messrs. Tooredman, Moorhead and Hollahan was prepared, executed and published. (See Moorhead's Motion to Enforce or Vacate Order, ¶10(a)). A copy of this statement entitled "Our Commitment to Unity", executed on January 15, 1991, is attached to Moorhead's Exhibit list as Exhibit E. (Hollahan Decl., ¶2).

Furthermore, the three motions, called for in the Settlement Agreement to be presented at the 1991 World Service Conference were placed in the 1991 Agenda Report as agreed. (See Hollahan Decl., ¶6; Hollahan Exh. A). All three motions were published explicitly as provided in the Settlement Agreement and included the requisite introduction and comments by Judge Pollak in

their entireties.³ (See Hollahan Decl., ¶6; Hollahan Exh. A). The Motions were duly considered by the WSC. There was an approximate two and one-half hour debate in which 25 to 30 conferees participated. (See Hollahan Decl., ¶8). After the full debate, the motions were denied by large majorities of the attending Conferees. (See Hollahan Decl., ¶8).

Although Motion No. 14, calling for a reduced price Basic Text was defeated as drafted, the concerns raised by Moorhead and his supporters were addressed by the WSC. In this regard, the WSC directed the WSO to produce an "Introductory Guide to Narcotics Anonymous". (See Hollahan Decl., ¶10). This Guide, which sells for \$2.50, includes approximately seven Fellowship pamphlets including "Am I an Addict" and "Welcome to NA", as well as Chapter 4 of the Basic Text, 5th Edition. This chapter explains the Twelve Steps to Recovery, the heart of the Narcotics Anonymous program. (See Hollahan Decl., ¶10).

Until April 22, 1992, Moorhead never formally charged the WSO with non-compliance with the Settlement Agreement. Moorhead, in fact, acknowledged the WSO's compliance in a telephone conference with members of the World Service Office wherein he stated:

BS: Don't leave it dangling. You've done your part. You haven't put out anymore Baby

³ WSO takes particular exception to Exhibit E contained in Moorhead's list of exhibits. This Exhibit is incomplete in that it does not include the Motions, and appears to have been edited to create the impression that the Motions called for in the Settlement Agreement were not included in the 1991 Conference Agenda Report. A complete copy of the 1991 Conference Agenda report is attached as Hollahan Exh. A.

Blues, right?

GD: I have honored my agreement to the letter.

BS: Has World Service Office honored their agreement?

GD: **Yeah.** ⁴

U: Yes.

BS: Well, that's wonderful to hear both of you say that. That's something to ponder. (Moorhead Exh. F at 30; See also Hollahan Decl., ¶7)

III. The Standard Under Rule 60(b)

Moorhead presumably seeks to "vacate or enforce" the Court's Order pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Rule 60(b) provides the Court with the power to open a judgment. However, a Motion under 60(b) must be brought within a "reasonable time". Further, absent exceptional and compelling circumstances, a party will not be granted relief from a judgment under Rule 60(b). See Ackermann v. United States, 340 U.S. 193, 198 (1950). Rule 60(b) is intended to be a means for accomplishing justice in exceptional situations, and so intended should not be used to violate the principle of the finality of judgments. Id.

IV. Argument

1. Moorhead Seeks to Renounce His Solemn Agreement and Challenge the Validity of the Fellowship's Copyrights and Trademarks

When Moorhead's Motion is closely examined, one clear theme emerges: an overriding desire by Moorhead to renounce the Consent Order; to vacate the permanent injunction; and to again challenge

⁴ GD refers to "Grateful Dave", the pseudonym used by Moorhead.

the Fellowship's copyrights and trademarks. This underlying purpose is perhaps best set forth at paragraph 8 of Moorhead's Motion to Enforce or Vacate Order which states:

8. The issue in dispute in this pending action involves a claim of ownership of literary rights that has been unresolved for in excess of ten (10) years on an ongoing and continuing basis of objection by the Defendant and other members of the Fellowship of Narcotics Anonymous, and the dispute needs to be judicially resolved in the best interest of all parties ... (Emphasis Added)

Plainly, the gravamen of this Motion is an attempt by Moorhead to again challenge the Fellowship's copyrights and trademarks, now under the guise of charges that the WSO violated the January, 1991 Settlement Agreement. From the WSO's standpoint, the settlement of this issue was the most pivotal issue resolved in January, 1991. The fundamental sine qua non for the WSO's acceptance of the Settlement Agreement was that Moorhead agree to be permanently enjoined from further acts of copyright infringement and trademark infringement and otherwise be barred from further legal challenge to the Fellowship's copyrights and trademarks. While the WSO did not insist upon admissions by Moorhead of any wrongdoing, or require a ritual pronouncement from Moorhead acknowledging the validity of the Fellowship's copyright registrations and trademarks, Moorhead freely consented to the entry of an Order imposing a permanent injunction against future illicit activities.

The parties never agreed to engage in a debate over the ownership of the Fellowship copyrights and trademarks, and this is clear from even the most cursory examination of the Settlement

Agreement. Nowhere in the Settlement Agreement is there any obligation to place into issue or debate the validity or ownership of the Fellowship's trademarks and copyrights. Nowhere is there an agreement to place this issue before the World Service Conference or the Fellowship. Nowhere is there even a call or commitment to discuss this issue. Finally, nowhere is there any mention of a Fellowship Intellectual Property Trust or a Trust Working Group.

As the record clearly reflects, the main thrust of Moorhead's concerns, and those of his supporters, was the dispute concerning which version of the Basic Text would be adopted by the Fellowship, and whether provision could be made for a reduced price Basic Text. The Court here, in denying Moorhead's Motion, should follow the well-reasoned view articulated by the United States Supreme Court in the Ackermann case that "there must be an end to litigation someday and free, calculated deliberate choices are not to be relieved from" 340 U.S. at 198.

Moorhead has attempted to couch the current motion in terms of an ongoing dispute regarding "the ownership of the name and literary works of Narcotics Anonymous." (Moorhead Motion, ¶10(c)). As discussed above, this issue was never on the table at Settlement. The issues presented by Moorhead at Settlement related to the creation of a reduced price Basic Text and the determination of the approved edition of the Basic Text.

As required by the Settlement Agreement, the joint Tooredman, Hollahan and Moorhead statement was prepared, executed and published. The three Motions called for in the Settlement

Agreement were published in the 1991 Conference Agenda Report, including the required introduction and comments of Judge Pollak. The Motions, which appeared as Motions Nos. 13, 14 and 15, were debated fully and fairly by the 1991 WSC and defeated by large majorities. (See Hollahan Decl., ¶8). Further, even though Moorhead's Motion regarding a reduced price Basic Text was not accepted by the WSC, the WSC directed the WSO to publish a low cost Introductory Guide. (See Hollahan Decl., ¶10).

2. Moorhead's Motions Are Untimely

Even assuming, arguendo, that any of the arguments raised by Moorhead in the present Motion contain so much as a scintilla of validity, the present motion is not "reasonably timely", as required by Rule 60(b). Moorhead's paper has charged, for example, that the three Motions called for in the Settlement Agreement were not presented in good faith. (See paragraph 14 of Moorhead's Motion). If true, the alleged breach occurred over one year ago. The filing of the present Motion on April 22, 1992 was the first official notice the WSO received of this charge.

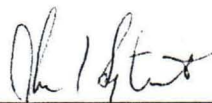
Further, even if issues involving Motion No. 8 were relevant to this case, these issues too should similarly have been brought to the Court's attention much sooner. Motion No. 8 was published in the 1992 Conference Agenda report and distributed in January, 1992. A dispute regarding this Motion could have been raised in February or as late as March of this year. The filing of the present Motion on April 22, 1992, three days before the start of the 1992 World Service Conference, appears to have been

deliberately timed to disrupt and harass the WSO and the WSC. For this reason, the present motion should be denied under Rule 60(b), as untimely.

V. Conclusion

Based upon the foregoing points and authorities, the present motion should be denied.

Respectfully submitted,



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