

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**FEDERAL TRADE COMMISSION**

**CIVIL ACTION**

**VERSUS**

**No. 89-1740**

**NATIONAL BUSINESS  
CONSULTANTS ET AL.**

**SECTION I**

**ORDER**

Before the Court is a motion<sup>1</sup> by defendant-debtor, Robert Namer (“Namer”), to strike the affidavit submitted by plaintiff, the Federal Trade Commission, on the basis that it is inaccurate.<sup>2</sup> In his motion, Namer also argues, in essence, that judicial estoppel bars plaintiff from collecting post-judgment interest.<sup>3</sup> Plaintiff has filed an opposition,<sup>4</sup> to which Namer has replied.<sup>5</sup>

Namer first seeks to strike the affidavit on the basis that it is inaccurate.<sup>6</sup> He asserts that the affidavit fails to account for the seizure and sale of certain assets, although he identified only one such asset, which was sold for \$578,100.00 in 2007.<sup>7</sup> Plaintiff’s opposition explains why those proceeds were not included in the affidavit,<sup>8</sup> and Namer has not challenged the accuracy of that explanation in his reply.<sup>9</sup>

Namer also argues that judicial estoppel bars plaintiff from taking any position inconsistent with the position taken in its July 12, 2002 motion.<sup>10</sup> In that motion, plaintiff noted that it was a

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<sup>1</sup>R. Doc. No. 1601.

<sup>2</sup>R. Doc. No. 1601-1, at 2.

<sup>3</sup>R. Doc. No. 1601-1, at 4.

<sup>4</sup>R. Doc. No. 1610.

<sup>5</sup>R. Doc. No. 1613.

<sup>6</sup>R. Doc. No. 1601.

<sup>7</sup>R. Doc. No. 1601-1, at 2.

<sup>8</sup>R. Doc. No. 1610, at 2-3.

<sup>9</sup>R. Doc. No. 1613.

<sup>10</sup>R. Doc. No. 160-1, at 4.

judgment creditor of National Business Consultants, Inc. and Robert Namer, “jointly and severally, for the sum of \$3,019,3770.00, representing the relief/damages awarded for consumer redress, plus pre-judgment interest from date of judicial demand and attorneys’ fees and costs, as fully set forth in judgment rendered on November 8, 1991.”<sup>11</sup> The sum referenced in that motion reflects the judgment entered on November 8, 1991, but it does not include the subsequent accrual of interest.<sup>12</sup> Similarly, the Court’s findings of fact and conclusions of law as well as amended judgment relative to the motion note that plaintiff is a judgment creditor in the sum of \$3,019,377.00, by virtue of the November 8, 1991 judgment, but those documents do not address the accrual of interest after that date.<sup>13</sup>

As plaintiff has previously explained to Namer, “Post-judgment interest on a civil judgment under 28 U.S.C. § 1961 is mandatory.”<sup>14</sup> The fact that plaintiff has not always reiterated the interest requirement relative to Namer’s judgment does not constitute waiver, and it does not support a judicial estoppel claim. *See Meaux Surface Prot., Inc. v. Fogleman*, 607 F.3d 161, 173 (5th Cir. 2010) (quoting *Reeves v. Int’l Tel. & Tel. Corp.*, 705 F.2d 750, 752 (5th Cir. 1983)).

Accordingly,

**IT IS ORDERED** that the motion is **DENIED**.

New Orleans, Louisiana, March 14, 2014.

  
LANCE M. AFRICK  
UNITED STATES DISTRICT JUDGE

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<sup>11</sup>R. Doc. No. 796, at 1-2.

<sup>12</sup>*See* R. Doc. No. 548 (entering judgment in the sum of \$3,019,377.00).

<sup>13</sup>R. Doc. No. 832; R. Doc. No. 851.

<sup>14</sup>R. Doc. No. 1579, at 2.