

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NATIONAL PROCESSING COMPANY,

Plaintiff,

DECISION AND ORDER
09-CV-123A

v.

KAZ ELECTRONICS, LLC,
TRIAD MARKETING GROUP, LLC, and
JOHN ZARZECKI,

Defendants.

On December 11, 2009, defendant Triad Marketing Group, LLC (“Triad Marketing”) filed a motion to clarify the Court’s ruling yesterday at the oral argument on the pending motion to vacate the default judgment. Yesterday, the Court agreed at oral argument to extend the temporary injunctive relief in this case (see Dkt. No. 22) by an additional 30 days to allow for a hearing on factual issues central to Triad Marketing’s pending motion to vacate the default judgment.

In consideration of the motion for clarification, the Court has considered the motion papers that Triad Marketing filed on December 11, 2009, along with the oral arguments presented by Triad Marketing in support of the motion and by plaintiff in opposition. The Court notes that plaintiff’s restraining notice of November 30, 2009 has affected two of Triad Marketing’s bank accounts. Each

of these accounts has been frozen in an amount equal to twice the amount of the default judgment in this case. Since the amount frozen in each account is more than enough to cover the amount of the default judgment, only one account need to be frozen. As demonstrated in Triad Marketing's motion papers, escrow account No. 9845068254 is the account whose restraint will cause the most harm, since the funds therein do not even belong to Triad Marketing.

Accordingly, the Court grants Triad Marketing's motion for clarification to the extent that it seeks a vacation of the restraining notice as against the escrow account, but otherwise denies it. Plaintiff's restraining notice of November 30, 2009 against M&T Bank account No. 9845068254 is hereby vacated. The restraining notice against Triad Marketing's other M&T Bank account will remain in effect pending the outcome of the motion to vacate the default judgment. Additionally, the temporary injunctive relief that the court granted in its Order of December 2, 2009 (Dkt. No. 22) is hereby extended and will expire at **5:00 p.m. on January 8, 2010** unless otherwise directed by the Court.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: December 11, 2009