

SEP 14 2004

FILED
LOGGED
ENTERED
RECORDED
AT BALTIMORE
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND
THURSDAY SEP 14 2004

SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** (this "Agreement") is made and entered into as of this 26 day of August, 2004, by and between **MLS NETWORK, INC.** ("MLS Network"), a South Carolina corporation, and **DAVID L. THERRIEN** ("Therrien"), a Maryland resident (collectively, the "Parties").

WHEREAS, Therrien has sued MLS Network in the United States District Court for the District of Maryland, Northern Division, Civil Case No. JFM-02-2200 (the "Maryland Litigation") alleging that, *inter alia*, in filing a Complaint with the National Arbitration Forum (Claim No. FA020400112582) (the "Underlying Action") to gain control of the MLS.BIZ domain name, MLS Network abused its registered trademarks for the acronym MLS (U.S. Registration Nos. 2,366,116 and 2,496,018) (collectively the "MLS Trademarks"), and setting out related claims;

WHEREAS, MLS Network denies Therrien's allegations; and

WHEREAS, MLS Network and Therrien desire to settle the Maryland Litigation and all other disputes between them arising prior to the Effective Date of this Agreement;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Settlement Payment.** As a condition precedent to settlement, MLS Network shall pay to Therrien the sum of twenty-five thousand dollars (\$25,000.00) (the "Settlement Payment"). The Settlement Payment shall be made by certified check or wire transfer payable to Gorman & Williams, as Escrow Agent, on or before the Effective Date. Disposition of the Settlement Payment shall be as stated below at paragraph 6.
2. **Effective Date.** The Effective Date of this Agreement shall be the date agreed upon by counsel as the date the parties shall have exchanged executed original counterparts of this Agreement and the Settlement Payment shall have been paid to Gorman & Williams, as Escrow Agent.
3. **Dismissal of the Maryland Litigation.** Promptly following the Effective Date, counsel for Therrien shall notify the Court in the Maryland Litigation that the suit has been settled, the settlement to become final twenty (20) days after the Effective Date, and shall file the Joint Motion Approving Settlement Agreement in the form attached as Exhibit A in order to request the entry of a Rule 41(a) Order Approving Settlement Agreement and For Dismissal in the form attached as Exhibit B, subject to a showing of good cause within thirty (30) days thereafter (the "Final Date").

4. **Vacation of National Arbitration Forum Award.** Within twenty (20) days after the Effective Date, MLS Network, by a duly authorized officer, shall take all reasonable actions that may be requested by Therrien to accomplish the following:
- a. To vacate the National Arbitration Award in the Underlying Action, and for that purpose MLS Network shall promptly execute and deliver to Therrien any and all papers necessary to evidence and vacate the National Arbitration Forum Award entered in the Underlying Action, which the parties hereby agree was erroneous. Such papers may include, but are not limited to, sworn and/or notarized papers. In the event that MLS Network incurs or will incur any fees or expenses associated with the vacation of the said Award, MLS Network agrees to pay all such reasonable fees or expenses;
 - b. To request or agree to the inclusion of a statement in any written decision, order, or opinion in the Maryland Litigation that the National Arbitration Forum Award is “of no effect and void” with respect to the respective rights of the Parties to the MLS.BIZ domain name and acknowledging Therrien’s ownership of the MLS.BIZ domain name as of the date of this Agreement; and
 - c. To execute a statement stating that MLS Network and any parent, subsidiary, or affiliated company of it, along with any of its officers, shareholders and directors, including but not limited to William Hicken (hereafter sometimes referred to collectively as the “MLS Network Entities”), does hereby forever covenant and agree not to, directly or indirectly: (i) claim any rights with respect to the National Arbitration Forum Award; or file, initiate or join in any lawsuit, arbitration proceeding, complaint, agency or administrative action or proceeding, and/or any other judicial or quasi-judicial action or proceeding, and/or to take any action whatsoever (including but not limited to any proceeding under the Start-Up Trademark Opposition Policy or ICANN’s Uniform Dispute Resolution Policy), against Therrien and any companies owned or controlled by him, as well as any of their parent, subsidiary, related and/or affiliated companies, and divisions, and/or the respective past and present officers, directors, shareholders, members, employees, agents, representatives, attorneys, predecessors, successors, and/or assigns of Therrien, relating to any rights with respect to the National Arbitration Forum Award or the subject matter of the Underlying Action (all such actions by MLS Network Entities hereafter collectively referred to as the “Prohibited Actions Regarding the NAF Award”);. and/or (ii) assist any other person or party in undertaking any of the Prohibited Actions Regarding the NAF Award.
5. **Domain Name Transfers.** Within twenty (20) days after the Effective Date, Therrien agrees to transfer the following three (3) domain names to MLS Network: MLSSnetworks.info, MLS-network.info, and MLS-networks.info, together with any necessary user names and passwords, and for that purposes agrees to promptly execute and deliver to MLS Network all such papers as are reasonably necessary for that purpose. In the event that Therrien incurs or will incur any fees or expenses associated with the transfer of the above-listed domain names, MLS Network agrees to pay all such reasonable fees or expenses.

6. **Reservation of Rights Under Motion for Default Judgment.** The Parties agree that all of Therrien's rights under his Motion for Default Judgment currently pending in the Maryland Litigation, and the claims and causes of action on which it is based, and any opposition filed thereto by Defendant, and the defenses on which it is based, shall be reserved and maintained and not affected or reduced under the settlement and this Agreement unless and until the settlement becomes final and binding under this Agreement or any applicable court order. If either party files a motion to enforce the settlement prior to the Final Date, or otherwise gives notice of the breach of this Agreement by the other party prior to the Final Date, then the Maryland Litigation shall not be dismissed and the Parties shall have all such rights under the Motion for Default Judgment as they had on August 16, 2004.

7. **Disbursement of Payment on Final Date.**
 - a. If no motion to enforce the settlement is filed on or before the Final Date, and no other notice of breach of this Agreement by either party is given pursuant to this Agreement prior to the Final Date, then counsel for Therrien, as escrow agent, shall disburse to Therrien, promptly following the Final Date, the full amount of the Settlement Payment.

 - b. If either party files a motion to enforce settlement agreement or otherwise gives notice of the other party's breach of this Agreement prior to the Final Date, then counsel for Therrien shall continue to hold the Settlement Payment funds as escrow agent subject to an order of the Court in the Maryland Litigation. In the event the Court enters an order enforcing the Settlement Agreement in favor of the party which files a motion to enforce settlement agreement (the "Moving Party"), the other party shall pay to the Moving Party the reasonable attorney fees incurred by the Moving Party within twenty (20) days of being advised of such attorney fees by the Moving Party. In connection with litigation concerning any such motion to enforce settlement agreement or other notice of breach of this Agreement, the Court shall have jurisdiction over the matter and may award to the prevailing party its costs and attorney's fees incurred in pursuing such litigation and motion.

 - c. All other aspects of the Escrow arrangement shall be subject to the terms of the Escrow Agreement, a copy of which is attached hereto as Exhibit C.

8. **Releases.**
 - a. Subject to the terms of this Agreement, Therrien shall execute the form of Release attached as Exhibit D concurrently with the execution of this Agreement, to take effect on the Final Date, such form of Release by Therrien to be delivered to MLS Network at the time the Settlement Payment is paid to Therrien.

 - b. Subject to the terms of this Agreement, MLS Network shall execute the form of Release attached as Exhibit E concurrently with the execution of this Agreement,

to take effect on the Final Date, such form of Release by MLS Network to be delivered to Therrien at the time the Settlement Payment is paid to Therrien.

9. **Acknowledgements by MLS Network Regarding Trademark Rights.**

- a. MLS Network agrees and acknowledges that Therrien's use or intended use of the MLS.BIZ domain name in connection with his real estate-related business does not cause any confusion with MLS Network's business, trademarks, or any services offered by MLS Network.
- b. MLS Network agrees and acknowledges that its "MLS" registered trademarks (U.S. Registration Nos. 2,366,116 and 2,496,018) do not confer upon MLS Network any rights of ownership in or use of the MLS.BIZ domain name.
- c. MLS Network agrees and acknowledges that Therrien's ownership and use of the MLS.BIZ domain name in connection with real estate-related services do not infringe upon either of MLS Network's "MLS" registered trademarks (U.S. Registration Nos. 2,366,116 and 2,496,018).
- d. MLS Network agrees that it and any parent, subsidiary, or affiliated company of it, along with any of its officers, shareholders and directors, including but not limited to William Hicken (hereafter sometimes referred to collectively as the "MLS Network Entities"), does hereby forever covenant not to, directly or indirectly: (i) file, initiate or join in any lawsuit, arbitration proceeding, complaint, agency or administrative action or proceeding, and/or any other judicial or quasi-judicial action or proceeding, and/or to take any action whatsoever (including but not limited to any proceeding under the Start-Up Trademark Opposition Policy or ICANN's Uniform Dispute Resolution Policy), against Therrien and any companies owned or controlled by him, as well as any of their parent, subsidiary, related and/or affiliated companies, and divisions, and/or the respective past and present officers, directors, shareholders, members, employees, agents, representatives, attorneys, predecessors, successors, and/or assigns of Therrien, relating to MLS Network's rights in and to its U.S. Trademarks (Registration Nos. 2,366,116 and 2,496,018) in respect of Therrien's ownership, use, or intended use of the MLS.BIZ domain name in connection with his real estate-related business (all such actions by MLS Network Entities hereafter collectively referred to as the "Prohibited Actions"); and/or (ii) assist any other person or party in undertaking any of the Prohibited Actions.

10. **Confidentiality.** The Parties shall not make any statement regarding the settlement of the Maryland Litigation inconsistent with this paragraph. If asked about the status of this controversy by unaffiliated third parties, the Parties may state only that the case was settled; except that the parties may, without assigning fault to either party, discuss the facts and circumstances of the Maryland Litigation and these terms of settlement, including any information contained in the public record, with any professional licensing authority or administrator (including but not limited to the Maryland bar and the National Association of Realtors). Nothing in this section shall

preclude either Party from disclosing information regarding this Agreement in response to a valid subpoena or other court order.

11. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof, and supersedes all prior agreements, negotiations and oral understandings, if any. This Agreement cannot be modified except in writing signed by the Parties. The Parties agree and acknowledge that they have completely read the terms of this Agreement and fully understand the terms and consequences of this Agreement. The Parties further acknowledge that they have been represented by counsel with respect to the negotiation and execution of this Agreement and that their counsel have explained the terms and significance of this Agreement.
12. **Construction.** All provisions of this Agreement shall be deemed to have been drafted jointly by the Parties and any rule of law that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is therefore waived.
13. **Costs and Fees.** Unless otherwise agreed in writing or specified in this Agreement, each Party shall bear its own costs and fees associated with the drafting and execution of this Agreement.
14. **Applicable Law.** This Agreement shall be governed by and resolved in accordance with the laws of the State of Maryland, without resort to its conflicts of laws provisions.
15. **Counterparts.** This Agreement may be executed in counterparts by the parties hereto, each of which, when taken together, shall constitute one agreement
16. **Enforcement.** The Parties agree that the Court in the Maryland Litigation shall have jurisdiction over the parties to enforce compliance with this Agreement. If either party becomes in breach of this Agreement by reason of a failure to timely perform its obligations under this Agreement as stated in the foregoing paragraphs, the other party may apply to the Court for appropriate relief. In any such proceedings for relief, the Court may award the prevailing party his or its costs and attorneys fees for such proceedings, and each party hereby IRREVOCABLY WAIVES TRIAL BY JURY as to any such proceedings.

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed as of the date first above written.

MLS NETWORK, INC.



By: William M. Hicken, President

Date: 8-26-04

DAVID L. THERRIEN



Date: 8/26/04