

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into this 23 day of April 2002, by and between the States of New York, Maryland and California ("the Plaintiff States"), by their Attorneys General, and Lewis Berg and Lewis Berg Rarities, Inc. ("Mr. Berg") (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. Berg 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. Berg and others as Defendants.
- 1.2 On the basis of the New York Investigation, 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. Berg has concluded that the settlement set forth herein will benefit him by avoiding the legal costs, stress and uncertainty of litigation.
- 1.2 The Parties have entered into this Settlement Agreement, which they intend as a final and complete resolution of all claims by the Plaintiff States against Mr. Berg arising out of the Alleged Illegal Conduct, 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.
- 1.3 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 that is known or should be known to be such by Mr. Berg.
- 2.3 "Effective Date" means the date by which all of the Parties have executed this Settlement Agreement.

- 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. Berg in *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 right that otherwise might be available to the Plaintiff States 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 by counsel for the parties, and will become effective on the Effective Date. Each counsel who executes this document shall, by his or her signature, expressly represent that he or she is fully authorized by the Party he or she represents to execute this Settlement Agreement. 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. Berg in *New York v. Feldman*, with prejudice, upon the 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 Upon execution of this Agreement, Mr. Berg shall pay by certified or bank check to the New York Attorney General's Office the sum of \$40,000. 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 Except as otherwise set forth in this Agreement, the Parties are to bear their own costs relating to this Agreement or the Alleged Illegal Conduct, except to the extent payment of costs is required by 28 U.S.C. § 1825 or other applicable law.

5. Subsequent Proceedings

- 5.1 Mr. Berg shall fully, fairly and truthfully disclose, to the best of his recollection, all information and produce all records and other evidence in his possession, custody or control relevant to all inquiries concerning the Alleged Illegal Conduct or relevant to *New York v. Feldman* made by the Plaintiff States concerning the Alleged Illegal Conduct, for a period not to exceed five years after the Effective Date herein. Mr. Berg will not challenge any such inquiry except on the basis of his privilege against self-incrimination or attorney-client privilege. Mr. Berg may decline to provide such information to the States on the basis of his privilege against self-incrimination only prior to June 30, 2002 (the "Cut-off Date"), unless: (1) prior to the Cut-off Date, he has been criminally charged by a governmental body for actions arising out of the Alleged Illegal Conduct, and those criminal charges are still pending on the date that Mr. Berg seeks to assert the privilege against self-incrimination; or (2) there is an ongoing, active criminal investigation into the Alleged Illegal Conduct of which Mr. Berg is a subject or target.
- 5.2 In *New York v. Feldman*, or any case arising out of the Alleged Illegal Conduct brought by the Plaintiff States, service by any State of any subpoena or discovery request on Mr. Berg may be made by mailing to his home address, or to the address of his undersigned counsel unless Mr. Berg has notified the States that he has retained new counsel, or is no longer represented. Mr. Berg's consent to such service by mailing is in addition to, and not in lieu of, service by any other means authorized by law. Mr. Berg will not challenge any subpoena or discovery request by the Plaintiff States seeking relevant documents, or deposition, trial or other testimony concerning the Alleged Illegal Conduct, except on grounds of attorney-client privilege or work product, or his privilege against self-incrimination, as limited in section 5.1. If Mr. Berg asserts his privilege against self-incrimination in response to a request by the States for information, he must give the States seven days notice if he intends to provide information on the same subject matter to any Defendant in *New York v. Feldman*, or disclose such information in testimony at deposition or trial. Mr. Berg will make himself available, during that seven day period, for an interview conducted in accordance with this section. If he does not provide such notice, the provision of such information or testimony will constitute a material breach of this agreement.
- 5.3 Mr. Berg shall agree to be interviewed by assistant attorneys general or investigators employed by the Plaintiff States regarding the facts of this case whenever requested upon reasonable notice, by telephone or, at the States' discretion, in person at a location of Mr. Berg's choosing, within five years of the Effective Date. Mr. Berg may have counsel present. Any such interview may be recorded or transcribed at the sole discretion of the Plaintiff States. At the interview, Mr. Berg will answer all questions fully, fairly and truthfully, to the best of his recollection. Except as provided in paragraphs 5.1 and 5.2, Mr. Berg shall not object to testifying concerning the Alleged Illegal Conduct on the ground of any constitutional, statutory or common law privilege.
- 5.4 Mr. Berg will fully, fairly and truthfully testify, to the best of his recollection, at any trial or other proceeding concerning the Alleged Illegal Conduct. Except as provided in paragraphs 5.2 and 5.3, Mr. Berg shall not object to testifying concerning the Alleged Illegal Conduct on the ground of any constitutional, statutory or common law privilege, except that he may invoke his privilege against self-incrimination if he is identified by a government

enforcement official as a target of a criminal investigation concerning the Alleged Illegal Conduct, or if he has been charged with a criminal offense concerning such matters.

- 5.5 Mr. Berg shall provide the Plaintiff States with written notice of any written or oral communication that he or his counsel or other representative have, on or after the Effective Date of this Agreement, with any Defendant regarding *New York v. Feldman* or the Alleged Illegal Conduct, within five days of any such communication, except that no notice need be provided regarding: 1) communications between counsel covered by any joint defense privilege in any criminal investigation or proceeding brought by the New York Office of the United States Department of Justice Antitrust Division concerning the Alleged Illegal Conduct; and 2) communications between counsel concerning non-confidential information about the procedural status of *New York v. Feldman*. Mr. Berg shall provide the Plaintiff States 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 three days of such request or agreement. Mr. Berg will provide the Plaintiff States with any correspondence or other documents sent to or received from any Defendant, except correspondence falling within the exceptions delineated above, or regarding dealings in the ordinary course of business that do not violate the conduct provisions of section 6.
- 5.6 Mr. Berg need not comply with Sections 5.1 - 5.6 within the time specified by the States if he can show, as soon before the date of the requested compliance as is feasible, documentation of a medical condition sufficiently severe as would preclude his compliance in the manner requested by the States.
- 5.7 Any failure by Mr. Berg to comply with the provisions of section 5 shall constitute a material breach of this Agreement. The States may, in their sole discretion, exercise any rights they may have to remedy such breach, including but not limited to: (1) enforcing this Agreement by separate action; (2) seeking to hold Mr. Berg in contempt of court; and/or 3) declaring this Agreement null and void for all purposes and to the same extent as if it were never executed, and prosecuting their claims against Mr. Berg in *New York v. Feldman*. If the States exercise option (3), they shall return to Mr. Berg any payments he has made to them pursuant to this Agreement within ten business days less only (a) the fees and costs of administration; (b) any accrued tax liability; and (c) the costs incurred in giving Court-approved notice.

6. Future Conduct

From the Effective Date of this Agreement, and for five years thereafter, Mr. Berg shall refrain from the following conduct:

- 6.1 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 solicit any agreement, understanding, contract or combination, either express or implied, with any other person or competitor:
- A. To Cross Off bids to purchase any stamp(s) in a Public Stamp Auction held in the United States; or

- B. 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.
- 6.2 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:
- A. Any other Person who is known or reasonably should be known by Mr. Berg to be an actual or a potential bidder to purchase stamp(s); or
- B. Any other Person who has announced an intention to bid to purchase stamps(s).
- 6.3 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.
- 6.4 For five years following the Effective Date, Mr. Berg shall provide the New York Attorney General's Office, on a semi-annual basis, with: 1) a list of all 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.
- 6.5 For the purpose of determining or securing compliance with this Agreement, within five years from the Effective Date of 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. Berg relating to Public Stamp Auctions. During any such inspection, Mr. Berg may have counsel present.
- 6.6 Mr. Berg consents to the entry of a consent decree in *New York v. Feldman* incorporating the terms set forth in section 6 of this Agreement.
- 6.7 Nothing in this Agreement shall be construed to indicate that any of the prohibited conduct set forth in this section will be permissible under any state or federal laws upon the expiration of this Agreement.

7. Choice of Law

- 7.1 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.

8. Enforcement

8.1 All of the obligations of this Settlement Agreement that are binding on Mr. Berg shall be binding upon his successors, assigns and legal representatives.


9. Integration

9.1 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 hereto or by their authorized representatives.

AGREED AND CONSENTED TO:

LEWIS BERG AND LEWIS
BERG RARITIES, INC.

By


Lewis Berg

STATE OF NEW YORK
ELIOT SPITZER
Attorney General

By: _____

JAY L. HIMES
Bureau Chief
Antitrust Bureau

BILL LOCKYER
STATE OF CALIFORNIA
Attorney General

By: _____
LINDSAY BOWER
Deputy Attorney General

STATE OF MARYLAND
J. JOSEPH CURRAN
Attorney General

By: 
JOHN TENNIS
Assistant Attorney General