

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 06-61851-CV-UNAGRO

FEDERAL TRADE COMMISSION  
Plaintiff

v.

RANDALL L. LESHIN et. al.  
Defendants

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OMNIBUS ORDER

THIS CAUSE is before the Court upon the Defendants' Randall L. Leshin, Randall L. Leshin, P.A., Express Consolidation, Inc., and Charles Ferdon's Emergency Motion for Relief From Final Judgment filed with the Court on June 30, 2008, and the Court-Appointed Monitor's Revised Motion for Guidance and Clarification filed with the Court on July 14, 2008. (D.E. 325, 330.) On July 21, and 22, of 2008 the Court held a hearing on the motion. For the purposes of this Order, the Court incorporates by reference the transcript of the hearing and, with respect to the Court Appointed Monitor's Revised Motion for Guidance and Clarification, the specific findings made on a state by state basis by the Court during the hearing.

BACKGROUND

On June 30, 2008, Defendants filed an Emergency Motion for Relief From Final Judgment. On July 1, 2008, the Court-Appointed Monitor filed a Motion for Guidance and Clarification regarding execution of his duties pursuant to the parties' Stipulated Injunction and Order. (D.E. 326.) On July 2, 2008, the Federal Trade Commission, (FTC) filed a response to

Defendant's Emergency Motion for Relief. (D.E. 327.)

In Defendants' emergency motion for relief from judgment, Defendants requested the Court to modify the Stipulated Injunction and Order to provide Defendants an additional one hundred and twenty (120) days before the Court Appointed Monitor issues self-executing notice and transfer of ECI's clients. Defendants claimed that there were unforeseen obstacles that made the timetable for compliance under the Stipulated Injunction and Order pursuant to Paragraph IX C<sup>1</sup> and D<sup>2</sup> unworkable. Specifically, Defendants argued that (i) dissemination of the Stipulated Injunction and Order to the States caused the FTC to get more involved in the application process, and that, in turn, had slowed the processing of applications; (ii) the FTC's direct communication with the states where ECI was attempting to obtain licenses or otherwise obtain authority to operate were intended to bias state officials, stall the regulatory processes, and prevent ECI from obtaining the authority to operate in various states; (iii) the agreed upon

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<sup>1</sup> Section IX, subsection C of the May 5, 2008 order states:

Sixty-one (61) days after the date that this Order is entered, the Monitor shall send a notice to existing clients who have signed agreements with Randall L. Leshin or Randall L. Leshin, P.A. for debt consolidation services and reside in states in which Express Consolidation, Inc., is not qualified to provide debt management services. The notice shall inform these existing clients of the settlement and state that the existing clients may (a) cancel their Consolidation Services Agreement immediately; or (b) agree to a contract with a debt consolidation services provider identified by the Commission, by sending a form to the Monitor indicating their preference on or before the 120<sup>th</sup> day following the date [of] this Order. The notice shall also state that if the existing clients do not send such a form to the Monitor on or before the 120<sup>th</sup> day following the date this Order is entered, their debt management plan will be transferred to the debt consolidation services provider identified by the Commission.

<sup>2</sup> Section IX, subsection D, of the May 5, 2008 order states:

Sixty-one (61) days after the date that this Order is entered, the Monitor shall send a notice to existing clients who have signed agreements with Randall L. Leshin or Randall L. Leshin, P.A. for debt consolidation services and reside in states in which Express Consolidation, Inc., is qualified to provide debt management services. The notice shall inform these existing clients of the settlement and state that the existing clients may (a) cancel their contract for debt consolidation services immediately; (b) agree to contract with a debt consolidation services provider identified by the Commission; or (c) agree to a contract with Express Consolidation, Inc. by sending a form to the Monitor indicating their preference on or before the 120<sup>th</sup> day following the date of this Order. The notice shall also state if the existing clients do not send such a form to the Monitor on or before the 120<sup>th</sup> day following the date this Order is entered, their debt management plan will be transferred to Express Consolidation, Inc.

deadline for licensure or other regulatory compliance were unrealistic from the outset; and (iv) that as a matter of public policy and equity, ECI ought to be permitted to service its clients in states where the FTC allegedly impeded ECI's applications even though ECI had not yet succeeded in becoming licensed or otherwise complied with the law regarding its authority to conduct business in particular states.

In response the FTC contended that the Defendants were seeking to evade the consequences of the commitments Defendants made in the Stipulated Injunction and Order. In sum, the FTC argued that the unforeseen obstacles Defendants identified were a combination of false, unsubstantiated accusations and foreseeable circumstances that could have been accounted for prior to Defendants entry into the settlement. Moreover, the FTC argued that the obstacles identified by the Defendants did not satisfy the legal requirements for modifying a consent decree under the *Rufo*<sup>1</sup> standard and that public interests is not served by relieving defendants from deadlines contained in the Stipulated Injunction and Order since ECI, instead of an alternative and unquestionably licensed debt management service, would be then permitted to service many of Defendants existing customers.

The Court ordered the parties to meet on July 10, 2008 to resolve certain questions posed in the Court-Appointed Monitor's motion and all other outstanding issues precluding implementation of the Stipulated Injunction and Order. On July 14, 2008, the Court-Appointed Monitor filed a Revised Motion for Guidance and Clarification based on the discussion July 10, 2008 meeting. Paragraphs 14a, b, and c of the Court-Appointed Monitor's Revised Motion for Guidance and Clarification were as follows:

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<sup>1</sup> See *Rufo v. Inmates of Suffolk county Jail*, 502 U.S. 367 (1992)(setting forth standard for modifying a consent decree.)

- (a) Under Definition S<sup>1</sup> on page 9, of the May 5, 2008 Order, is Express Consolidation, Inc., qualified to provide debt management services in the states of Florida, Georgia, Kentucky, Nevada, New Mexico, Michigan, North Dakota, Ohio, Tennessee, Teas and Wisconsin?
- (b) Under Definition S on page 9 of the May 5, 2008 Order, is Express Consolidation exempt from the licensure laws, and therefore qualified to provide debt management services for those clients who contracted with Defendants in advance of passage of each respective state's licensure law in the states of Colorado, Delaware, Indiana, Iowa, Kansas, Minnesota, New Hampshire, Rhode Island, South Carolina and Virginia?
- (c) Are Defendants entitled to an extension of time beyond the time provided by Definition S(2) on page 9 of the May 5, 2008 Order, to obtain a license or written permission to provide debt consolidation services while an application for licensure is pending in the states of California, Connecticut, Illinois, Indiana, Iowa, Maine, Maryland, New Hampshire, New Jersey, Oregon, South Carolina, and Virginia?

The Court-Appointed Monitor submitted the above questions for the Court's determination due to the parties conflicting representations with respect to which states ECI is licensed to perform debt management services or otherwise possessed authority to conduct business. Resolution of these questions would enable the Court-Appointed Monitor to ascertain the states in which customers were to receive the subparagraph C notice and the states which customers were to

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<sup>1</sup> Definition S of the Stipulated Injunction and Order states:

Express Consolidation, Inc. is "qualified to provide debt management services" in a state as that phrase is used in this Order if:

- (1) The state does not issue licenses for entities that offer or provide debt consolidation services and, thirty (30) days after the date his Order is entered, Express Consolidation, Inc. has fulfilled any requirements imposed by state law to provided such services including any registration, reporting, audit, insurance, escrow account or trust account requirement; or
- (2) The state issues licenses for entities that offer or provide debt consolidation services, and sixty (60) days after this Order is entered, Express Consolidation, Inc., (a) has a valid, current license from the state authority that issues licenses for entities that offer or provided debt consolidation services; or (b) Express consolidation, Inc. has a pending application and the state has unambiguously stated in writing that it will permit Express Consolidation, Inc. to offer debt consolidation services to residents of that stat who are currently being serviced by Express Consolidation, Inc. for debt consolidation services based on the pending application.

receive the subparagraph D notice pursuant to Section IX of the Stipulated Injunction and Order.

On July 16, 2008 the parties filed responses to the Court-Appointed Monitor's Revised Motion for Guidance and Clarification. On July 21, and 22, the Court held an evidentiary hearing with the parties to dispose of the Defendants' emergency motion for relief from final judgment and the questions posed in the Court-Appointed Monitor's Revised Motion for Guidance and Clarification.

#### EMERGENCY MOTION FOR RELIEF FROM JUDGMENT

With respect to the Defendant's emergency motion for relief from final judgment the Court finds that the Defendants presented no substantial evidence supporting their contention that the FTC purposefully communicated with state agencies to frustrate ECI's attempts to obtain licenses or otherwise to bring itself into compliance with local laws. The Court notes that the some of the documentation Defendant claims the FTC voluntarily provided to state authorities appears to have been solicited by the states themselves and, in any event is available for public record. Moreover there is no evidence tending to show that any of the documentation the FTC furnished to state officials was false or misleading or that such information incited state regulatory agencies to stall or deny ECI's applications or requests. The Court also finds that Defendant, who have long engaged in the business of providing of consumer debt management, are sophisticated with respect to the regulatory requirements and processes in the various states and knew that the FTC's enforcement action would impact the willingness of some state agencies to authorize ECI to conduct business. Therefore, despite Mr. Ferdon's testimony regarding the telephone inquiries he made to various state agencies to determine how long it would take to

process an applications “under ordinary circumstances,” Defendants should and could have reasonably anticipated from the attendant publicity to the original FTC action against Defendants, the publicity that surrounded the settlement itself in the debt management industry, and the protracted and complicated settlement negotiations that led to the resolution of this matter, that circumstances likely would arise which would protract the regulatory process. In light of the foregoing, the Court finds no equitable basis for modifying or extending the deadlines to which Defendant previously agreed in the Stipulated Injunction and Order. Accordingly Defendant’s motion for emergency relief from final judgment is DENIED.

REVISED MOTION FOR GUIDANCE AND CLARIFICATION

As to the questions raised in the Court-Appointed Monitor’s Revised Motion for Guidance and Clarification, the undersigned incorporates by reference her findings at and the transcript of the hearing. Based on those findings, it is hereby,

ORDERED and ADJUDGED as follows:

1. Pursuant to Definition S of the Stipulated Injunction and Order, the applicable state statutes and regulations, and the evidence submitted, the Court finds Defendants are not qualified to conduct debt management services in Florida, Georgia, Kentucky, Ohio, Texas, Tennessee, California, North Dakota, Nevada, New Mexico, and California. The Court-Appointed Monitor shall send a subparagraph C notice to Defendants’ clients in these states.

2. Pursuant to Definition S of the Stipulated Injunction and Order, the applicable state statutes and regulations, and the evidence submitted, the Court finds Defendant is qualified to conduct debt management services in the states of Nebraska, Michigan, Wisconsin, and New

Mexico. The Court-Appointed Monitor shall send a subparagraph D notice to Defendants' clients in these states.

3. The Court finds Defendants are not qualified to perform debt management services to clients, in Colorado, Delaware, Indiana, Iowa, Kansas, Minnesota, New Hampshire, Rhode Island, South Carolina and Virginia since Defendants have failed to obtain licenses in these states within the timetable set by the Stipulated Injunction and Order. The Court-Appointed Monitor shall send a subparagraph C notice to Defendants' clients in these states.

4. The Court-Appointed Monitor shall issue all self-executing notice and transfer of ECI's clients by Friday, July 25, 2008.

5. The response deadline for all notices the Court-Appointed Monitor issues shall be sixty days from the date of mailing.

DONE AND ORDERED in chambers at Miami, Florida, this 4th day of August, 2008  
*nunc pro tunc* for July 22d, 2008.

  
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URSULA UNGARO  
UNITED STATES DISTRICT JUDGE