

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

Case No. _____ -CIV- _____

00-6462

FEDERAL TRADE COMMISSION,

Plaintiff,

CIV-FERGUSON

v.

MAJESTRATE JUDGE
SHOW

FEDERAL DATA SERVICE, INC.,
STEPHEN G. TATE, and
SPENCER GOLDEN,

Defendants.

FILED BY _____
00 APR -3 09:25
J.C.

COMPLAINT FOR INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("Commission"), for its complaint alleges:

1. The Commission brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure preliminary and permanent injunctive and other equitable relief, including rescission, restitution and disgorgement, for Defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331(a), 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue in the Southern District of Florida is proper under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. § 53(b).

THE PARTIES

4. Plaintiff **Federal Trade Commission** is an independent agency of the United States government created by the FTC Act, 15 U.S.C. §§ 41-58. The Commission enforces the FTC Act, which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission may initiate federal district court proceedings to enjoin violations of the FTC Act, and to secure such equitable relief as is appropriate in each case, including restitution and disgorgement. 15 U.S.C. § 53(b).

5. Defendant **Federal Data Service, Inc.** ("FDS"), is a Florida corporation with its principal place of business at 5200 and 5210 Coconut Creek Parkway, Margate, Florida. FDS also has used a mailing address of 1404 North State Road 7, Margate, Florida. FDS also does business under the names Federal Data Services and Tate Stevens Agency. FDS transacts or has transacted business in this district.

6. Defendant **Stephen G. Tate** is the president, vice-president, secretary and treasurer of FDS. Individually or in concert with others, he directs, controls, formulates or participates in the acts and practices set forth herein. He resides, transacts, or has transacted business in this district.

7. Defendant **Spencer Golden** is a supervisor at FDS. Individually or in concert with others, he directs, controls, formulates or participates in the acts and practices set forth herein. He resides, transacts, or has transacted business in this district.

DEFENDANTS' BUSINESS PRACTICES

8. Since at least June 1997, Defendants have conducted a nationwide advertising and telemarketing scheme to sell purported employment goods and services to consumers residing throughout the United States.

9. Defendants place classified advertisements in the employment sections of local newspapers or community gazettes located throughout the United States. The advertisements announce the availability of postal and government wildlife jobs, with no experience necessary and with wages of up to \$18.35 per hour for postal jobs and \$21.60 per hour for government wildlife jobs. The advertisements invite readers to dial a toll-free telephone number for application and exam information. The following is illustrative of the advertisements placed by Defendants for postal jobs:

POSTAL JOBS TO \$18.35/HR

Inc. benefits. No experience. For app. and exam info, call 1-800-813-3585 Ext. 2834, 8am-9pm, 7 days. fds, inc.

The following is illustrative of the advertisements placed by Defendants for government wildlife jobs:

WILDLIFE JOBS TO \$21.60/HR

Inc. benefits. Game Wardens, Security, Maintenance, Park Rangers. No exp. needed. For app. and exam info, call 1-800-813-3585, ext. 2835, 8am-9pm, 7 days. fds, inc.

10. When consumers call Defendants' toll-free number for either postal or wildlife positions, Defendants' telemarketers ask consumers whether they are over 18, are a United States citizen, and have a valid credit card or checking account. The telemarketers then ask consumers to identify which positions interest them.

11. For postal positions, Defendants tell consumers that Defendants will send information on "available job descriptions." Defendants inform consumers that they must take a postal exam to obtain the postal positions and that Defendants will send 20 practice tests for the consumer "to get a high grade on the exam." Defendants assure consumers that the practice tests are the same type tests as those given on the actual examination. Defendants advise consumers that the postal exam is not given on a regular basis but state that Defendants will show consumers "when and where the exams are given and how to apply to take them," and send consumers the admissions card for the postal exam.

12. For government wildlife positions, Defendants inform consumers the positions have starting salaries between \$22,000 and \$45,000 per year and include federal benefits. Defendants advise consumers that they must pass the civil service exam to obtain some positions and that Defendants will send 20 practice tests for the consumer "to get a high grade on the exam." Defendants assure consumers that the practice tests are the same type tests as those given at the actual examination. Defendants inform consumers that Defendants will send information on "the available job descriptions," as well as hotline numbers that provide job listings that are updated weekly.

13. For both postal and wildlife positions, Defendants inform consumers that although there is no application or test fee, Defendants charge a one-time "service charge" of \$39.95 plus \$7 for shipping and handling, for a total of \$46.95. Defendants explain that the service charge is "fully refundable" under Defendants' written refund policy, which states that if the consumer does not obtain a position, he or she will receive a refund. The only condition disclosed is that the consumer "must apply in good faith" for a position.

14. In many instances, when a consumer decides to purchase either the postal or the wildlife packet, Defendants' telemarketers inform consumers that wildlife or postal jobs, respectively, are also available. Defendants' telemarketers attempt to persuade the consumer to purchase the other packet too (for a total of \$79.90).

15. In some instances, consumers who declined to purchase the additional packet have been charged by Defendants for both packets. In other instances, consumers who declined to purchase either packet have been charged by Defendants for one or both.

16. In many instances, consumers never receive any packets from Defendants. In instances in which consumers receive the postal materials from Defendants, the packet includes a welcome letter, a set of application cards to apply for postal positions and sign up for the exam, and an information booklet that describes Defendants' refund policy, the duties of different postal positions, and the postal exam and how it is scored. It also contains practice tests and study tips for the exam. In instances in which consumers receive the wildlife materials from Defendants, the packet includes a welcome letter, a set of applications and instructions (including copies of the U.S. Office of Personnel Management Optional Form 306 – Declaration for Federal Employment and Option Form 612 – Optional Application for Federal Employment), and an information booklet that describes Defendants' refund policy and positions available in the wildlife and conservation area. It also contains several practice exams. Neither the postal nor the wildlife materials contain listings of any actual job openings, available either locally or nationally.

17. Defendants' written refund policy sent in the packets is different from the refund policy Defendants represent to consumers in the telemarketed sales pitch. While Defendants told

consumers that to obtain a refund, they need only apply for a postal or government wildlife position and not receive it, the written refund policy also requires consumers to register and take either the postal or civil service exam and provide proof of the same. If no exam is offered, Defendants require consumers to wait one year before they are eligible to request a refund.

18. Consumers experience great difficulty receiving refunds. When consumers call Defendants' toll-free line to express dissatisfaction or ask questions, Defendants' telemarketers inform consumers that they will be transferred to Defendants' customer service department. Defendants' customer service department is an automated voice mail system that asks consumers to leave their name and telephone number. Defendants routinely fail to return the messages left by consumers on the voice mail system.

19. Defendants' course of trade is in or affecting commerce within the meaning of Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' VIOLATIONS OF THE FTC ACT

COUNT I

20. Defendants represent, expressly or by implication, that postal or government wildlife positions for which little or no experience is required are currently available in the geographic areas where Defendants place their classified advertisements.

21. In truth and fact, in most instances, postal or government wildlife positions for which little or no experience is required are not currently available in the geographic areas where Defendants place their classified advertisements.

22. Therefore, the representations set forth in paragraph 20 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

23. Defendants represent, expressly or by implication, that consumers who purchase Defendants' materials are likely to obtain permanent postal or government wildlife positions for which little or no experience is required.

24. In truth and fact, in most instances, consumers who purchase Defendants' materials are not likely to obtain permanent postal or government wildlife positions for which little or no experience is required.

25. Therefore, the representations set forth in paragraph 23 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

26. Defendants represent, expressly or by implication, that entry level postal positions for which little or no experience is required pay up to \$18.35 per hour, and that entry level government wildlife positions for which little or no experience is required pay up to \$21.60 per hour.

27. In truth and fact, entry level postal positions for which little or no experience is required do not pay up to \$18.35 per hour, and entry level government wildlife positions for which little or no experience is required do not pay up to \$21.60 per hour.

28. Therefore, the representations set forth in paragraph 26 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT IV

29. Defendants represent, expressly or by implication, that they pay refunds to each consumer who purchases their materials and does not obtain a job after applying in good faith.

30. In truth and in fact, Defendants do not pay refunds to each consumer who purchases their materials and does not obtain a job after applying in good faith.

31. Therefore, the representations set forth in paragraph 29 are false and misleading and constitute deceptive acts or practices in violation of section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT V

32. In numerous instances, in the course of billing, attempting to collect, and collecting from consumers, Defendants represent to consumers, expressly or by implication, that consumers have purchased or agreed to purchase goods or services from Defendants, and therefore owe money to Defendants.

33. In truth and fact, in numerous instances, consumers did not purchase or agree to purchase goods or services from Defendants, and therefore do not owe money to Defendants.

34. Therefore, the representations set forth in paragraph 32 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

35. Consumers have been injured and will continue to be injured by Defendants' violations of the FTC Act as set forth above, including but not limited to the payment of money for the employment programs sold by Defendants and the unauthorized charging or debiting of consumers' credit cards, debit cards, and checking accounts. Absent injunctive relief by this Court, consumers will continue to suffer substantial financial injury.

THIS COURT'S POWER TO GRANT RELIEF

36. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to issue injunctive and other relief to prevent violations of the FTC Act and, in the exercise of its equitable jurisdiction, to award redress to remedy the injury to consumers, to order disgorgement of monies resulting from defendants' unlawful acts or practices, and to order other ancillary equitable relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

(1) Award the Commission all temporary and preliminary injunctive and ancillary relief that may be necessary to avert the likelihood of consumer injury during the pendency of this action, and to preserve the possibility of effective final relief, including, but not limited to, temporary and preliminary injunctions, an order freezing each defendant's assets, and the appointment of an equity receiver;

(2) Enjoin defendants permanently from violating Section 5(a) of the FTC Act, including committing such violations in connection with the advertising, offering for sale, or other promotion of career advisory goods and services;

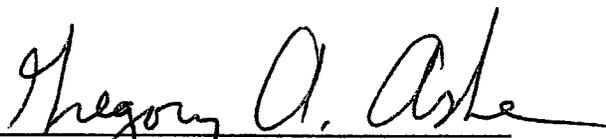
(3) Award such relief as the Court finds necessary to redress injury to consumers resulting from defendants' violations of Section 5(a) of the FTC Act, including, but not limited to, restitution, the rescission of contracts or refund of monies paid, and the disgorgement of unlawfully obtained monies; and

(4) Award plaintiff the cost of bringing this action as well as such additional equitable relief as the Court may determine to be just and proper.

Dated: April 3, 2000

Respectfully submitted,

DEBRA A. VALENTINE
General Counsel



GREGORY A. ASHE
LAURA J. DEMARTINO
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room S-4302
Washington, D.C. 20580
202-326-3719 (telephone)
202-326-2558 (facsimile)
GASHE@FTC.GOV (e-mail)
LDEMARTINO@FTC.GOV (e-mail)

Attorneys for Plaintiff