

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 06-61851-CIV-UNGARO/O'SULLIVAN

FILED by _____ D.C.
MAY 05 2008
STEVEN M. LARMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

RANDALL L. LESHIN,
RANDALL L. LESHIN, P.A., also d/b/a EXPRESS CONSOLIDATION,
EXPRESS CONSOLIDATION, INC.,
CHARLES FERDON,
CONSUMER CREDIT CONSOLIDATION, INC.,
and MAUREEN A. GAVIOLA,

Defendants.

STIPULATED INJUNCTION AND JUDGMENT AS TO DEFENDANTS CONSUMER CREDIT CONSOLIDATION, INC. AND MAUREEN GAVIOLA

This matter comes before the Court on the stipulation of Plaintiff Federal Trade Commission ("FTC" or "Commission") and Defendants Consumer Credit Consolidation, Inc. and Maureen Gaviola (hereinafter "Defendants").¹

The Commission and Defendants submit the following Stipulated Judgment to resolve this action with respect to Consumer Credit Consolidation, Inc. and Maureen Gaviola. The

¹ The remaining four defendants named in the Amended Complaint, Randall L. Leshin, Randall L. Leshin, P.A., Express Consolidation, Inc., and Charles Ferdon, are not parties to this Stipulated Injunction and Order and, with the exception of the caption, references to Defendants herein do not include these parties.

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Commission and Defendants consent to the entry of this Stipulated Injunction and Judgment (“Stipulated Judgment”) as a settlement of this action, and agree that entry of this Stipulated Judgment shall constitute a full, complete and final settlement of all claims that were or could have been brought by the Commission against Defendants Consumer Credit Consolidation, Inc. and Maureen Gaviola arising from the conduct alleged in the Amended Complaint. Defendants deny any wrongdoing or liability.

Upon the joint motion of the Commission and Defendants Consumer Credit Consolidation, Inc. and Maureen Gaviola, the Court makes the following findings and enters judgment in this action as follows:

FINDINGS OF FACT

1. This Court has jurisdiction over the subject matter of this case and Defendants Consumer Credit Consolidation, Inc. and Maureen Gaviola admit that this Court has subject matter jurisdiction of this action.
2. The activities of Defendants, as alleged in the Amended Complaint, are in or affecting commerce within the meaning of the FTC Act, 15 U.S.C. §§ 44, 45.
3. The Amended Complaint states a claim upon which relief may be granted against Defendants under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108.
4. No provision of this Stipulated Judgment should be construed as an admission that any Defendant engaged in unlawful or deceptive conduct alleged in the Amended Complaint or that Defendants’ conduct violated the FTC Act, 15 U.S.C. §§ 45(a), or the

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Telemarketing Sales Rule, 16 C.F.R. Part 310. No provision of this Stipulated Judgment should be construed as an admission by the Commission that Defendants Consumer Credit Consolidation, Inc., Maureen Gaviola, Randall L. Leshin, Randall L. Leshin, P.A., Express Consolidation, Inc., or Charles Ferdon are qualified to provide debt consolidation services under state law, that Express Consolidation, Inc. has been operated as a not-for-profit corporation or that it qualifies as a tax-exempt organization under 26 U.S.C. § 501(c)(3), or that any of the claims alleged in the Amended Complaint lack merit.

5. Defendants acknowledge that they have read and understand the provisions of this Stipulated Judgment, and are prepared to abide by them. At all times, Defendants have been represented by counsel, including during the negotiations that led to this Stipulated Judgment. Defendants voluntarily consent to entry of this Stipulated Judgment in the interest of settling this litigation.
6. The Commission and Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Stipulated Judgment.
7. Defendants waive and release any claim they may have against the Commission and its employees, representatives or agents arising from this action to date. The Commission waives and releases any claim it may have against the Defendants and their employees, representatives or agents arising from this action to date.
8. Each party shall bear its own costs and attorneys' fees. Defendants waive all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, arising from the Amended Complaint.

9. This Stipulated Judgment should not be construed as payment of a fine, penalty, punitive assessment or forfeiture, and the monetary judgment the Commission would have sought as restitution for consumers if the parties had not stipulated to this Stipulated Injunction and Judgment exceeds the monetary judgment provided herein.
10. Entry of this Stipulated Judgment is in the public interest.

DEFINITIONS

For the purpose of this Stipulated Judgment, the following definitions shall apply:

- A. "Assets" means all real and personal property of any Defendant, or held for the benefit of any Defendant, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes," and "securities" (as these terms are defined in the Uniform Commercial Code), lines of credit, and all cash, wherever located.
- B. "Assisting others" means providing any of the following goods or services to another person: (i) serving as an officer, director, or consultant; (ii) performing customer service functions, including, but not limited to, receiving or responding to customer complaints; (iii) formulating or providing, or arranging for the formulation or provision of, any script or any other material for communicating with customers or potential customers; (iv) providing names of, or assisting in the generation of contacts to, potential customers, including, but not limited to, arranging for the automated delivery of messages to potential customers; (v) performing marketing services of any kind; or (vi) providing any other substantial help or aid, while knowing or consciously avoiding knowing that the

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person receiving assistance is engaged in an act or practice that is prohibited by this Stipulated Judgment.

- C. "Billing information" means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card account.
- D. "Clear and conspicuous" means the required disclosures are:
- (1) not accompanied by other communications that are contrary to, are inconsistent with, or mitigate the required disclosures;
 - (2) made in the same language as that principally used in any accompanying advertisement;
 - (3) readily noticeable and, if conveyed through an interactive medium, not conveyed through avoidable hyperlinks or similar methods; and
 - (4)
 - (a) if conveyed through text (e.g., printed publications or words displayed on the screen of an electronic device), in a type of a size, weight, and color that contrasts with the background, is readable and draws attention to the disclosures;
 - (b) if conveyed through oral or audio communications (e.g., telephone, radio or streaming audio), delivered at a cadence and audible level that is intelligible to the receiving audience and, in any event, is no faster than the cadence principally used in the accompanying oral or audio communications and at least the same audible level as that principally used in the accompanying oral or audio communications;
 - (c) if conveyed through video communications (e.g., television, streaming video,

online services), in text that is consistent with Subparagraph (4)(a) of this definition and appears on the screen for a duration sufficient for an ordinary consumer to read and comprehend the disclosures.

E. "Debt consolidation service" means:

- (1) receiving money from a consumer for the purpose of distributing one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligation;
- (2) arranging or assisting a consumer to arrange for the distribution of one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligation;
- (3) exercising direct or indirect control, or arranging for the exercise of such control, over funds of a consumer for the purpose of distributing payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligation; or
- (4) acting or offering to act as an intermediary between a consumer and one or more creditors of the consumer for the purpose of altering the terms of payment of the consumer's obligation.

F. "Defendants" means Maureen Gaviola and Consumer Credit Consolidation, Inc.

G. "Defendants' Financial Statements" means the document entitled Attachment "A", Federal Trade Commission Financial Statement of Individual Defendant, signed by Maureen Gaviola and dated March 27, 2008; the document entitled Attachment "B", Federal Trade Commission Financial Statements of Corporate Defendant signed by

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Maureen Gaviola and dated March 27, 2008; all documents that are identified as addendums or attachments to those Financial Statements; the Statement of Assets, Liabilities and Stockholders' Equity and Statement of Revenues and Expenses for Consumer Credit Consolidation, Inc., for the two (2) Months that ended February 29, 2008, and the Statement of Income and Balance Sheet for Travel Opportunities Surfside, Inc. for the two (2) Months that ended February 29, 2008.

- H. "Document" means writings, drawings, charts, graphs, photographs, audio and video recordings, computer records, and any other data compilations from which information can be obtained and is equal in scope and synonymous in meaning to the usage of the term in Federal Rule of Civil Procedure 34(a).
- I. "National Do Not Call Registry" means the National Do Not Call Registry maintained by the Federal Trade Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).
- J. "Nonprofit entity" means an entity that does not distribute any part of its income or profit to members, directors, or officers, or is described as being "nonprofit," "not-for-profit" or dedicated primarily or exclusively to charitable, religious or educational purposes. This definition shall be construed consistent with applicable state law where the nonprofit entity is incorporated or organized.
- K. "Outbound telephone call" means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.
- L. "Person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

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- M. "Representatives" means Defendants' successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with Defendants who receive actual notice of this Stipulated Judgment by personal service or otherwise.
- N. "Savings or estimated savings" means a representation, directly or by implication, that agreeing to purchase services will save a consumer time or money, including but not limited to a representation that purports to describe the difference or estimated difference between the cost or duration of payments if services are purchased and the cost or duration of payments if the purchaser adopts an alternative to the services that is identified directly or by implication.
- O. "Seller" means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.
- P. "Telemarketer" means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.
- Q. "Telemarketing" is defined by the Telemarketing Sales Rule, 16 C.F.R. § 310.2(cc), and means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not

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solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

- R. "Telemarketing Sales Rule" or "Rule" means the FTC Rule entitled "Telemarketing Sales Rule," 16 C.F.R. Part 310, the text of which is included as an Appendix to this Stipulated Judgment.

ORDER

I.

PROHIBITED PRACTICES IN MARKETING DEBT CONSOLIDATION SERVICES

IT IS HEREBY ORDERED that, in connection with the advertising, promotion, offering, or sale of debt consolidation services, the Defendants and their Representatives are hereby restrained and enjoined from:

- A. Falsely representing or assisting others in falsely representing that Defendants offer, sell or provide contracts for debt consolidation services with a nonprofit entity; that the debt consolidation services that Defendants offer, sell or provide are services of a nonprofit entity; or that fees for the debt consolidation services that Defendants offer, sell or provide are collected or controlled by a nonprofit entity;
- B. Falsely representing or assisting others in falsely representing that the only fee charged for debt consolidation services is an administrative fee or a monthly fee;



- C. Falsely representing or assisting others in falsely representing that fees for debt consolidation services represent a deposit or are refunded upon completion of the debt consolidation services;
- D. Falsely representing or assisting others in falsely representing the costs of or fees for debt consolidation services;
- E. Falsely representing or assisting others in falsely representing that debt consolidation services will lower a consumer's monthly payment or total debt;
- F. Falsely representing or assisting others in falsely representing that purchasing debt consolidation services will result in savings or estimated savings to the purchaser;
- G. Falsely representing or assisting others in falsely representing that interest charges will be reduced to as low as zero percent;
- H. Falsely representing or assisting others in falsely representing that debt consolidation services include services that will improve a consumer's credit record, history, or rating;
- I. Falsely representing or assisting others in falsely representing that debt consolidation services include services that will protect against deterioration of a consumer's credit rating, against negative credit history or against derogatory credit information;
- J. Falsely representing or assisting others in falsely representing the benefits that consumers will receive from debt consolidation services;
- K. Falsely representing or assisting others in falsely representing that Defendants or any entity on whose behalf Defendants offer debt consolidation services adjusts or has adjusted fees for the debt consolidation services they offer to comply with state requirements; and

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L. Making or assisting others in making any other express or implied representation or omission of material fact that is false or misleading, in any manner, orally or in writing, to any consumer or entity.

For purposes of this Paragraph, "material" means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

II.

PROHIBITION AGAINST DECEPTIVE TELEMARKETING PRACTICES

IT IS FURTHER ORDERED that, in connection with telemarketing, Defendants and their Representatives are hereby restrained and enjoined from engaging in, or assisting others in engaging in:

- A. Falsely representing, expressly or by implication, that Defendants offer, sell or provide contracts with a nonprofit entity; that the services that Defendants offer, sell or provide are services of a nonprofit entity; or that fees for the services that Defendants offer, sell or provide are collected or controlled by a nonprofit entity;
- B. Falsely representing, expressly or by implication, that fees represent a deposit or are refunded upon completion of a payment schedule;
- C. Falsely representing, expressly or by implication, the costs of or fees for services;
- D. Falsely representing, expressly or by implication, that purchasing services will result in savings or estimated savings to the purchaser;
- E. Falsely representing, expressly or by implication, that Defendants or any entity on whose behalf Defendants offer services adjusts or has adjusted fees for the services they offer to comply with state requirements; and

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F. Making any other false or misleading statements to induce consumers to pay for services or to induce a charitable contribution in violation of the deceptive practices prohibitions of the Telemarketing Sales Rule, 16 C.F.R. § 310.3, including, but not limited to, the misrepresentations listed in Paragraph I.A-K.

**III.
PROHIBITION ON FAILING TO PROVIDE CLEAR AND CONSPICUOUS DISCLOSURES IN
TELEMARKETING SALES**

IT IS FURTHER ORDERED that

In connection with telemarketing, Defendants and their Representatives are hereby restrained and enjoined from directly or indirectly receiving payment from a consumer for goods or services, or causing billing information to be submitted for payment, unless and until the following information has been disclosed to the consumer truthfully, in a clear and conspicuous manner:

- A. The total costs to purchase, receive, or use, and the quantity of, any goods or services for which payment is sought;
- B. All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer; and
- C. If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy;
- D. If the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy; and

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