

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

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

Defendants.

FILED by \_\_\_\_\_ D.C.

MAY 05 2008

STEVEN M. LARIMORE  
CLERK U. S. DIST. CT.  
S. D. of FLA. - MIAMI

**STIPULATED INJUNCTION AND ORDER AS TO DEFENDANTS RANDALL L. LESHIN, RANDALL L. LESHIN, P.A., EXPRESS CONSOLIDATION, INC., AND CHARLES FERDON**

This matter comes before the Court on the stipulation of Plaintiff Federal Trade Commission ("FTC" or "Commission") and Defendants Randall L. Leshin, Randall L. Leshin, P.A., Express Consolidation, Inc., and Charles Ferdon (hereinafter "Defendants").<sup>1</sup>

The Commission and Defendants submit the following Stipulated Injunction and Order to resolve the claims set forth in Plaintiff's Amended Complaint for Injunctive and Other Equitable Relief. The Commission and Defendants consent to the entry of this Order as a settlement of this

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<sup>1</sup> Two parties named as defendants in the Amended Complaint in this action, Maureen A. Gaviola and Consumer Credit Consolidation, Inc., 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.

action, and agree that entry of this Order shall constitute a full, complete and final settlement of all matters in dispute between the Commission and Defendants Randall L. Leshin, Randall L. Leshin, P.A., Express Consolidation, Inc., and Charles Ferdon arising from the Amended Complaint.

Upon the joint motion of the Commission and Defendants Randall L. Leshin, Randall L. Leshin, P.A., Express Consolidation, Inc., and Charles Ferdon, 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 the Defendants for purposes of this Stipulation, entry of this Order and any proceedings to enforce this Order.
2. The Commission and Defendants have agreed to this Order to settle all matters in dispute arising from the Amended Complaint in this action. This Order is for settlement purposes only and does not constitute and shall not be interpreted to constitute an admission by any of the Defendants of any violation of any law or regulation, or that Defendants engaged in unlawful or deceptive conduct alleged in the Amended Complaint. This Order does not constitute and should not be construed as approval or endorsement by the Commission of any practices of Defendants, past or prospective, nor construed as an admission by the Commission that (i) Defendants are qualified to provide debt consolidation services under state law; (ii) Express Consolidation, Inc. has been operated as a not-for-profit corporation; (iii) Express Consolidation, Inc. qualifies as a

tax-exempt organization under 26 U.S.C. § 501(c)(3); or (iv) that any of the claims alleged in the Amended Complaint lack merit.

3. The Commission and Defendants acknowledge that they have read the provisions of this Order and have agreed to abide by them. The Commission and Defendants consent freely and without coercion to entry of this Order in the interest of settling this litigation, and acknowledge that they understand the provisions of this Order and are prepared to abide by its terms. At all times, the Commission and Defendants have been represented by counsel, including during the negotiations that led to this Order.
4. The Commission and Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order.
5. 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.
6. 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.
7. This Order should not be construed as payment of a fine, penalty, punitive assessment or forfeiture, and the monetary judgment provided herein is based on the amount of money the Commission would have sought as restitution for consumers if the parties had not stipulated to this Order.
8. Entry of this Stipulation and Order is in the public interest.

**DEFINITIONS**

For the purpose of this Stipulation and Order, the following definitions shall apply:

- A. “Corporate Defendants” means Express Consolidation, Inc. and Randall L. Leshin, P.A., individually or collectively.
- B. “Individual Defendants” means Randall L. Leshin and Charles Ferdon, individually or collectively.
- C. “Defendants” means the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.
- D. “Application fee” means a fee that is charged in whole or in part for preparing, negotiating or securing a schedule of payments for a consumer and is charged even if the consumer declines, rejects or otherwise does not make any payments pursuant to this schedule of payments.
- E. “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.
- F. “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 person receiving assistance is engaged in an act or practice that is prohibited by this Order.

G. “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.

H. “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.

I. “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.

- J. “Debt management plan” means a schedule of payments that an individual has agreed to make to an intermediary as part of a plan to repay a creditor or group of creditors through an intermediary.
- K. “Documents” and “records” mean writings, drawings, charts, graphs, photographs, audio and video recordings, computer records, and any other data compilations from which information can be obtained, and are equal in scope and synonymous in meaning to the usage of the term documents in Federal Rule of Civil Procedure 34(a).
- L. “Defendants’ Financial Statements” means the financial disclosure questionnaire dated December 18, 2007, and signed by Charles Ferdon; the document entitled “Federal Trade Commission Financial Statement of Individual Defendant,” dated December 19, 2007, and signed by Randall L. Leshin; the document entitled “Federal Trade Commission Financial Statements of Corporate Defendant” (Randall L. Leshin, P.A.) dated December 19, 2007, signed by Defendant Randall L. Leshin; the documents entitled “Financial Statement of Corporate Defendant” (Express Consolidation, Inc.), dated February 22, 2007 and February 14, 2008, and signed by Randall L. Leshin; the Profit and Loss Statement and Balance Sheet for Express Consolidation, Inc., certified by David Culver and provided to the Commission on or about February 6, 2008; the List of Financial Institutions/Accounts of accounts of Randall L. Leshin and Randall L. Leshin, P.A. signed by Randall L. Leshin and dated January 24, 2008; the list of accounts of Randall L. Leshin, P.A. captioned “ATTACHMENT A” signed by Randall L. Leshin and dated January 24, 2008; 1099-MISC forms produced as EXPRESS-PROD-5TH-8th-002489-94; all documents that reaffirm or are identified as exhibits, addendums, supplements, or

attachments to these Financial Statements; and records of Sun Trust bank account disclosures provided through online access under the Stipulated Interim Injunction entered in this action on January 29, 2007.

- M. “Existing clients” means persons who: (i) have signed an agreement for debt consolidation services with Randall L. Leshin, Randall L. Leshin, P.A. (including contracts under the name “Debt Management Counseling Center”), or Debt Management Counseling Center, Inc.; (ii) have not notified Defendants that they are canceling such services; and (iii) have made a payment for such services to Randall L. Leshin, Randall L. Leshin, P.A., or Debt Management Counseling Center, Inc. during the sixty (60) days prior to the date this Order is entered.
- N. “Holding Account” means the SunTrust bank account in the name of Randall L. Leshin, P.A. with account number xxxxxxxxx8395, which is referenced in Paragraph VI.D.3 of the Stipulated Interim Injunction entered in this action on January 29, 2007.
- O. “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).
- P. “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.
- Q. “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.

- R. "Person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
- S. 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 this Order is entered, Express Consolidation, Inc. has fulfilled any requirements imposed by state law to provide 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 provide 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 state who are currently being serviced by Express Consolidation, Inc. for debt consolidation services based on the pending application.
- T. "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 Order by personal service or otherwise.

- U. “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.
- V. “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.
- W. “Telemarketer” means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.
- X. “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 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.

- Y. "Telemarketing Sales Rule" or "Rule" means the Rule promulgated by the FTC entitled "Telemarketing Sales Rule," 16 C.F.R. Part 310, the text of which is included as an Appendix to this Order.
- Z. "Unexpended trust money" means the sum of all money paid by or on behalf of a person who has contracted for debt consolidation services less any amounts that have already been paid to creditors on behalf of the client and less fees that are authorized by the client.

## **ORDER**

### **I.**

#### **PROHIBITION AGAINST DECEPTIVE MARKETING PRACTICES**

**IT IS HEREBY ORDERED** that, in connection with the advertising, promotion, offering, or sale of debt consolidation services, Defendants and their Representatives are hereby restrained and enjoined from making or assisting others in making any 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, including, but not limited to:

- 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 a monthly administrative fee;
- C. Falsely representing or assisting others in falsely representing that Defendants do not charge an application fee for debt consolidation services;
- D. 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;
- E. Falsely representing or assisting others in falsely representing the costs of or fees for debt consolidation services;
- F. Falsely representing or assisting others in falsely representing that the debt consolidation services will lower a consumer's monthly payment or total debt;
- G. Falsely representing or assisting others in falsely representing that purchasing debt consolidation services will result in savings or estimated savings to the purchaser;
- 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 is authorized by state law to

