

1. This is an action by the FTC instituted pursuant to Section 13(b) of the FTC Act, 15 U.S.C. §§ 53(b). The Complaint seeks both permanent injunctive relief and consumer redress for Defendants' alleged deceptive acts or practices in connection with the marketing and sale of employment goods or services programs.

2. The FTC has the authority pursuant to Section 13(b) of the FTC Act to seek the relief it has requested, and the Complaint states a claim upon which relief can be granted against Defendant Daniell.

3. This Court has jurisdiction over the subject matter of this case and has personal jurisdiction over Defendant Daniell. Venue in the Western District of Michigan is proper.

4. The activities of Defendant Daniell, as alleged in the Complaint, are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.

5. Defendant Daniell waives all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each party shall bear its own costs and attorneys' fees. Defendant Daniell also waives all rights to seek judicial review of, or otherwise challenge or contest the validity of, this Order.

6. By entering into this Order, Defendant Daniell does not admit to the allegations set forth in the Complaint, other than the jurisdictional facts.

7. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.

8. Entry of this Order is in the public interest.

DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

1. **"Defendants"** means Success Express, Inc., also d/b/a Success Express; Exam Resource Center, Inc., also d/b/a Exam Resource; Occupational Advancement Center, Inc., also d/b/a

Occupational Advancement and OAC; Employment Resource, LLC, also d/b/a Employment Resources; David James Daniell a/k/a David James; Wanda J. Taugner; and Kathy L. Stafford.

2. **“Receivership Defendants”** means Success Express, Inc., also d/b/a Success Express; Exam Resource Center, Inc., also d/b/a Exam Resource; Occupational Advancement Center, Inc., also d/b/a Occupational Advancement and OAC; and Employment Resource, LLC, also d/b/a Employment Resources.

3. **“Defendant Daniell”** means David James Daniell, a/k/a David James.

4. **“Employment goods or services”** means any item, product, good or service represented to assist consumers in obtaining employment—including, but not limited to, preparation or other training for any employment examination.

5. **“Assets”** means any legal or equitable interest in, right to, or claim to, any real and personal property—including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

6. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

7. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.

8. **“Person”** means a natural person, organization or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

9. **“Plaintiff”** means the Federal Trade Commission (“Commission” or “FTC”).

10. **“Receiver or Permanent Receiver”** means Phillip S. Stenger pursuant to the orders of appointment including the Stipulated Preliminary Injunction with Appointment of Permanent Receiver, Asset Freeze and Accounting dated November 28, 2005.

11. **“Record”** means any document, as document is defined in definition 6, above, relating to the business or business practices of any Defendant.

12. The terms **“and”** and **“or”** shall be construed conjunctively or disjunctively as necessary to make the applicable phrase or sentence inclusive rather than exclusive.

O R D E R

I. BOND REQUIREMENT

IT IS THEREFORE ORDERED that Defendant Daniell, whether acting directly or through any person or entity, is permanently restrained and enjoined from marketing or selling employment goods or services, unless Defendant Daniell first obtains a performance bond in the principal sum of ONE MILLION DOLLARS (\$1,000,000).

A. The bond required by this Paragraph I shall be conditioned upon compliance with Section 5 of the FTC Act, 15 U.S.C. § 45(a) and with this Order. The bond shall be deemed continuous and remain in full force and effect as long as Defendant Daniell continues to engage in conduct that requires the posting of the bond, and for at least three years after Defendant Daniell has ceased to engage in such conduct. The bond shall cite this Order as the subject matter of the bond, and shall provide surety thereunder against financial loss resulting from whole or partial failure of

performance due, in whole or in part, to any violation of Section 5 of the FTC Act, the provisions of this Order, or to any other violation of law.

B. The performance bond required pursuant to this Paragraph I shall be in the form of an insurance agreement providing surety for financial loss issued by a surety company that is admitted to do business in each of the states in which Defendant Daniell does business and that holds a Federal Certificate of Authority As Acceptable Surety On Federal Bond and Reinsuring. Such performance bond shall be in favor of both: (1) the Federal Trade Commission for the benefit of any consumer injured as a result of any violation of Section 5 of the FTC Act, or the provisions of this Order made by Defendant Daniell, his agents, or any persons acting in concert with his; and (2) any consumer so injured.

C. The bond required pursuant to this Paragraph I is in addition to, and not in lieu of, any other bond required by any other federal, state, or local law, or by any other court order not entered in this action.

D. At least ten business days before the commencement of any activity covered by subsection A above, Defendant Daniell shall provide the bond required by this Paragraph I to the Associate Director for Enforcement at the address specified in Paragraph XII of this Order.

E. Defendant Daniell shall not disclose the existence of the performance bond required by this Paragraph I to any consumer without also disclosing clearly and prominently, at the same time, the following phrase: "This bond is required by order of the U.S. District Court, in the case *FTC v. Success Express Inc., et al.*, Case No. 1:05CV0714 (W.D. Mich.), in settlement of allegations of false and misleading representations in the promotion and sale of employment goods or services." The disclosure shall be set forth in a clear and conspicuous manner, separated from all other text, in 100 percent black ink against a light background, in print at least as large as the main text of the sales material or document, and enclosed in a box containing only the required disclosure.

F. If, upon motion by the FTC, the Court finds that Defendant Daniell or any business in which Defendant Daniell engages or participates, has violated Section 5 of the FTC Act or this Order, the FTC may execute against the performance bond required by this Paragraph I. Proceedings instituted under this subsection F are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings the FTC may initiate to enforce this Order.

II. PROHIBITED BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that Defendant Daniell, and his officers, agents, employees, and all those persons or entities in active concert or participation with his who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any good or service, are hereby permanently restrained and enjoined from:

A. Misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact—including, but not limited to:

1. That Defendants are connected with or endorsed by the United States Postal Service (USPS).
2. That postal positions are currently available in the geographic areas where the Defendants' advertisements appear.
3. That Defendants assist consumers in registering for and obtaining employment with the USPS.
4. That consumers who obtain a score of 90 percent or above on the postal examination are assured a postal job.

III. CONSUMER LISTS

IT IS FURTHER ORDERED that Defendant Daniell and any person or entity through which he does business, and his successors, assigns, officers, agents, servants, employees, attorneys, and those other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, billing information (any data that enables any person to access another person's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card), e-mail address, or other identifying information of any person who submitted such information to any of the Defendants, at any time prior to entry of this Order, in connection with the purchase of any employment good or service.

B. Using or benefitting from, for commercial purposes, the name, address, telephone number, billing information (any data that enables any person to access another person's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card), e-mail address, or other identifying information of any person who submitted such information to any of the Defendants, at any time prior to entry of this Order, in connection with the purchase of any employment good or service.

C. ***Provided, however,*** that Defendant Daniell may disclose such identifying information (i) with the express written consent of the person whose information is disclosed, (ii) to a law enforcement agency, or (iii) as required or authorized by any law, regulation, or court order.

IV. MONETARY RELIEF AS TO DEFENDANT DANIELL

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered in the amount of Seven Million Dollars (\$7,000,000) in favor of the FTC and against Defendant Daniell, who is jointly and severally liable with the other named Defendants, for the payment of equitable monetary relief—including, but not limited to, consumer redress and or/disgorgement, and for paying any attendant expenses of administration of any redress fund.

B. *Provided, however*, that the judgment described in Paragraph A shall be suspended:

1. Upon the timely transfer of the following assets to the FTC or its designated agent and taking the following actions:

a. Bank One, or J.P. Morgan Chase shall, within ten (10) business days of the date of entry of this Order, transfer to the FTC or its designated agent all assets held in Account #1 and Account #2, identified in the “Daniell Reference List” filed with the Court under seal.

b. Defendant David James Daniel shall deliver to the FTC or its designated transferee or agent, at a location in Charlevoix, Michigan, possession of the following vehicles listed in Defendant Daniell’s financial disclosure statement of October 27, 2005: (1) GMC Yukon, model year 2005 and (2) Victory Vegas motorcycle, model year 2004. Defendant Daniell shall promptly transfer title to each of these vehicles to the FTC or its designated transferee. Any transfer fees, taxes, or other payments mandated from transferor under Michigan law shall be paid from the proceeds of each sale at the time each vehicle is sold. Defendant Daniell waives any interest therein. Defendant Daniell shall file all required tax returns for Occupational Advancement, Inc., within fourteen (14) days after entry of this Order and provide copies of such returns to the Commission. The proceeds of the sale set forth above will be held by the Receiver and may be used to satisfy tax obligations owing for Occupational Advancement, Inc. No other funds described in this Order shall

be used to pay Occupational Advancement's or Defendant Daniell's tax liability. If Occupational Advancement's tax liability exceeds the amount received from proceeds of the sale of the vehicles described in this subsection b., Defendant Daniell is liable for the balance owed. Defendant Daniell shall provide to the Commission copies of all instruments used to pay such owed taxes, interest, and penalties within ten (10) days of each such payment.

Provided however, in the event that the amount paid in final satisfaction of Occupational Advancement's owed taxes, interest, and/or penalties is less than the proceeds of the sale of the vehicles described in this subsection c., all remaining funds shall be transferred to the Commission pursuant to Paragraph IV of this Order. Provided further, if any tax refund is received, said refund shall be transferred to the Commission pursuant to Paragraph IV of this Order.

c. To secure the payment of the amounts as set forth in this Paragraph IV.B, Defendant Daniell and his spouse, Jane Libby, shall execute a security and pledge agreement, in a form acceptable to counsel for the FTC, (1) relinquishing Jane Libby's rights to or claim of title to any of the property or assets contemplated by this Paragraph IV. B, and (2) giving the FTC a lien in the property located at 3933 Quick Road, Harbor Springs, Michigan 49740, to be effective as of the date of entry of this Order. The security and pledge agreement shall be attached to this Order as Appendix A. Within ten days of the final payment required by this Paragraph IV. B, the FTC shall cancel and return to Defendant Daniell and Jane Libby the security and pledge agreement.

d. Defendant Daniell and Jane Libby shall be responsible for any federal, state or local income tax on the sale or transfer of the property as set forth in this Paragraph IV, and

2. As long as the Court makes no finding, as provided in Paragraph VI of this Order, that Defendant Daniell (a) materially misrepresented or omitted the nature, existence, or value of any asset, or (b) fail to make the payments required by Paragraph IV.B. within the time periods specified therein.

C. Any monies collected under this paragraph are subject to the conditions described in Paragraph VIII.

V. ASSET FREEZE

IT IS FURTHER ORDERED that, (1) upon entry of this Order the asset freeze of Defendant Daniell's assets pursuant to Paragraphs II and III of the Preliminary Injunction shall be lifted to permit the transfer of assets and property as contemplated by Paragraph IV. B above, and (2) upon payment of the amount set forth in Paragraph IV.B above, the freeze of the Defendant Daniell's assets pursuant to Paragraphs II and III of the Preliminary Injunction shall be dissolved.

VI. RIGHT TO REOPEN

IT IS FURTHER ORDERED that the Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy and completeness of the financial statement and all attachments and supplemental financial records, including income tax returns, provided by Defendant Daniell to the Commission on October 27, 2005. Said financial statements contain material information upon which the FTC has relied in negotiating and agreeing to the terms of this Order. The Commission is authorized to verify all information provided in the financial statement and with all appropriate third parties—including, but not limited to, financial institutions. If, upon motion by the Commission to the Court, the Court finds that Defendant Daniell failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from his financial statement, the suspension of the monetary judgment will be terminated as to Defendant Daniell and the entire judgment amount of Seven Million Dollars (\$7,000,000), less any amounts paid to the Commission by Defendant Daniell pursuant to Paragraph IV of this Order and any amounts paid to the Commission by the receiver pursuant to Paragraph VII of this Order, will be immediately due and payable by Defendant Daniell. For purposes of this Paragraph, and any subsequent proceedings to enforce payment—including, but

