

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05 C 5442
)	Judge Moran
Centurion Financial Benefits LLC, <i>et al.</i> ,)	Magistrate Denlow
)	
Defendants.)	
)	

**STIPULATED ORDER FOR PERMANENT INJUNCTION AND FINAL JUDGMENT
AGAINST DEFENDANT SYLVAIN CHOLETTE**

Plaintiff, the Federal Trade Commission (“FTC” or “the Commission”), commenced this action by filing its Complaint, followed by a First Amended Complaint, for injunctive and other equitable relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101, *et seq.*, charging that the defendants engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Trade Regulation Rule entitled “Telemarketing Sales Rule,” 16 C.F.R. Part 310.

The FTC and Defendant Sylvain Cholette, having been represented by counsel and acting by and through such counsel, have consented to the entry of this Stipulated Order for Permanent Injunction and Final Judgment (“Stipulated Order” or “Order”) without a trial or adjudication of any issue of law or fact herein.

NOW, THEREFORE, the Commission and Defendant Sylvain Cholette, having requested the Court to enter this Stipulated Order, and the Court, having considered the Stipulated Order reached among the parties and for other cause appearing, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This is an action by the Commission instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101, *et seq.*, and the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310. Pursuant to these statutes and regulations, the Commission has the authority to seek the relief contained herein.

2. The Commission's First Amended Complaint states a claim upon which relief may be granted against Defendant Sylvain Cholette under Sections 5, 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45, 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101, *et seq.*, and the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310.

3. This Court has jurisdiction over the subject matter of this case and all parties hereto.

4. Venue in the United States District Court for the Northern District of Illinois is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b), (c), and (d).

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

6. Defendant Sylvain Cholette, without admitting the allegations set forth in Plaintiff's First Amended Complaint or any liability in connection therewith, agrees to entry of this Stipulated Order.

7. The parties shall each bear their own costs and attorneys' fees incurred in this action and have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to seek judicial review, or otherwise to challenge the validity of this Stipulated Order.

8. This Order is in addition to and not in lieu of any other civil or criminal remedies that may be provided by law.

9. Entry of this Stipulated Order is in the public interest.

DEFINITIONS

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

1. "Defendant" means the Defendant Sylvain Cholette.
2. "Asset" or "assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), and all cash, wherever located.
3. "Assisting others" means providing any of the following goods or services: (1) providing for or arranging for the provision of mail or telephone lists that contain, incorporate, or utilize consumers' account numbers; (2) preparing or providing, or causing to be prepared or provided, telephone sales scripts or other materials for use in connection with the promotion of products or services to consumers; (3) providing, mailing or shipping, or arranging for the provision, mailing or shipping, of fulfillment products or services; (4) providing or arranging for the provision of telemarketing or computer processing services; (5) providing or facilitating the means of obtaining payment from consumers, by providing or facilitating access to the credit

card or bank account payment and collection system; and (6) providing marketing or customer service support.

4. "Consumer" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

5. "Credit-related products, programs, or services" means any product, program, or service which is advertised, offered for sale, or sold to consumers as a method by which consumers may establish or obtain any extension of credit or credit device, including, but not limited to, credit cards, loans, or financing, or as a method to consolidate or liquidate debts.

6. "Customer" means any person who has paid, or may be required to pay, for goods or services offered for sale or sold by Defendant.

7. "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.

8. "Material" means likely to affect a person's choice of, or conduct regarding, goods or services.

9. "Person" means a natural person, organization, or other legal entity, including, but not limited to, a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

10. "Telemarketing" means a plan, program, or campaign (whether or not covered by

the Telemarketing Sales Rule, 16 C.F.R. Part 310) which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones.

ORDER

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that, in connection with the advertising, marketing, promoting, offering for sale, or sale of any product, program, or service, Defendant Sylvain Cholette, and his officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from:

A. Making, or assisting others in making, any express or implied representation or omission of material fact that is false or misleading, in any manner, including, but not limited to, any false or misleading statement:

1. That Defendant will provide consumers with, or arrange for consumers to receive, a major credit card, such as a Visa or MasterCard;

2. Concerning the Defendant's ability to provide consumers with any credit-related product, program, or service; and

3. Concerning any fact material to a consumer's decision to purchase any product, program or service;

B. Violating or assisting others to violate any provision of the Telemarketing Sales

Rule, 16 C.F.R. Part 310, *et seq.*, including, but not limited to:

1. Violating Section 310.3(a)(2) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2), by misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer, 16 C.F.R. § 310.3(a)(2)(iii);

2. Violating Section 310.4(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(4), by requesting or receiving payment of any fee or consideration in advance of obtaining or arranging an extension of credit when they have guaranteed or represented a high likelihood of success in obtaining or arranging an extension of credit;

3. Violating Section 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), by engaging in or causing others to engage in initiating an outbound telephone call to a person's telephone number on the National Do Not Call Registry; and

4. Violating Section 310.8 of the TSR, 16 C.F.R. § 310.8, by initiating, or causing others to initiate, an outbound telephone call to a telephone number within a given area code without Defendants first paying the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; and

C. Assisting others who violate any provision of Subsections A and B of this Section.

II.

MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. Judgment in the amount of \$9,894,514 (USD) is hereby entered in favor of the Commission against Defendant Sylvain Cholette, jointly and severally, as equitable monetary

restitution for consumer injury relief; *provided, however*, that this judgment shall be suspended until further Order of the Court pursuant to Section III of this Order (Right to Reopen), and provided further that this judgment shall be subject to the conditions set forth in Section V.

B. All funds paid pursuant to Section II and/or Section III shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of such equitable relief. Defendant Sylvain Cholette shall cooperate fully to assist the Commission in identifying consumers who may be entitled to redress pursuant to this Order. In the event that direct redress is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendant Sylvain Cholette's practices alleged in the First Amended Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendant Sylvain Cholette shall have no right to challenge the Commission's choice of remedies under this Section;

C. The judgment entered pursuant to Paragraph A of this Section for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture;

D. In the event of any default on any obligation to make payment under this Section, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment, and shall immediately become due and payable;

E. For purposes of any subsequent proceedings to enforce payments required by this Section, including, but not limited to, a non-dischargeability complaint filed in a bankruptcy

proceeding, Defendant Sylvain Cholette waives any right to contest any allegations in Plaintiff's First Amended Complaint; and

F. Nothing herein shall be deemed or construed to prevent the Commission from initiating any appropriate proceedings to enforce the provisions of this Order.

III.

RIGHT TO REOPEN; ACCURACY OF FINANCIAL STATEMENT

IT IS FURTHER ORDERED that within five (5) business days after the date of entry of this Stipulated Order, Defendant Sylvain Cholette shall submit to the Commission a truthful sworn statement that shall reaffirm and attest to the truthfulness, accuracy, and completeness of the Financial Statement of Individual Defendant executed by Defendant Sylvain Cholette on November 18, 2005. The Commission's agreement to this Stipulated Order is expressly premised upon the financial condition of Defendant Sylvain Cholette, as represented in his financial statement, which contains material information upon which the Commission relied in negotiating and agreeing upon this Stipulated Order.

If, upon motion of the Commission, the Court finds that Defendant Sylvain Cholette failed to submit the sworn statement required by this Section, or that Defendant failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from the financial statement, the Court shall enter judgment against him, in favor of the Commission, in the amount of \$9,894,514 (USD) (the approximate total amount of consumer injury in this matter during the time that Defendant Sylvain Cholette was actively involved in the alleged activities set forth in Plaintiff's First Amended Complaint), and the entire amount of the judgment shall become immediately due and payable, less any

amount already paid.

Provided, however, that in all other respects, this judgment shall remain in full force and effect, unless otherwise ordered by the Court; and *provided further,* that proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including, but not limited to, contempt proceedings, or any other proceedings that the Commission or the United States might initiate to enforce this Stipulated Order.

IV.

CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendant Sylvain Cholette, and his officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, are permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to or received any credit-related product, program, or service from Defendant, or whose identifying information was obtained for the purpose of soliciting them to pay money to or receive services from Defendant at any time prior to the date this Order is entered, in connection with the sale or rendition of the products, programs, or services referenced in the First Amended Complaint.

Provided, however, that Defendant Sylvain Cholette, and his officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, may provide such information to a law enforcement agency either voluntarily, or as required by any law, regulation, or court order.

V.

COOPERATION WITH FTC COUNSEL

IT IS FURTHER ORDERED that Defendant Sylvain Cholette shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's First Amended Complaint, cooperate in good faith with the FTC and appear, or cause his officers, employees, representatives, or agents to appear, at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendant Sylvain Cholette shall appear, or cause his officers, employees, representatives, or agents to appear, and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the First Amended Complaint, without the service of a subpoena.

VI.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant Sylvain Cholette shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including, but not limited to, the following:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and

2. posing as consumers and suppliers to: Defendant Sylvain Cholette, his employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice; and

C. Defendant Sylvain Cholette shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or

deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

VII.

COMPLIANCE REPORTING BY DEFENDANT

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of five (5) years from the date of entry of this Order,

1. Defendant Sylvain Cholette shall notify the Commission of the following:

a. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

b. Any changes in his employment status (including self-employment), and any change in the ownership of the Defendant in any business entity, within ten (10) days of the date of the such change. Such notice shall include the name and address of each business that the Defendant is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of the Defendant's duties and responsibilities in connection with the business or employment; and

c. Any changes in the Defendant's name or use of any aliases or fictitious names; and

2. Defendant Sylvain Cholette shall notify the Commission of any changes in corporate structure of any business entity that the Defendant directly or indirectly controls, or has an ownership interest in; that may affect compliance obligations arising under this Order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would

result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, Defendant Sylvain Cholette shall provide a written report to the FTC, sworn to under penalty of perjury under the laws of the United States, setting forth in detail the manner and form in which he has complied and is complying with this Order. This report shall include, but not be limited to:

1. The then-current residence address, mailing addresses, and telephone numbers of Defendant Sylvain Cholette;
2. The then-current employment and business addresses and telephone numbers of Defendant Sylvain Cholette, a description of the business activities of each such employer or business, and the title and responsibilities of Defendant Sylvain Cholette, for each such employer or business; and
3. Any other changes required to be reported under subsection A of this Section.
4. A copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Section X of this Order; and

C. For the purposes of this Order, Defendant Sylvain Cholette shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the

