

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: CV 12-2187
)	
DONMAZ LTD.,)	(Cogan, J.)
a New York corporation, d/b/a Blair-Mazzarella)	
Funeral Home, and)	
)	
JAMES DONOFRIO)	
individually and as an officer of the corporation,)	
)	
)	
Defendants.)	
)	

CONSENT DECREE

WHEREAS, Plaintiff, the United States of America ("Plaintiff"), has commenced this action by filing the Complaint herein; Defendants Donmaz Ltd. and James Donofrio have waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without Defendants admitting liability for any of the matters charged in the Complaint other than jurisdictional facts;

ORDER

THEREFORE, on the joint motion of the Plaintiff and Defendants, it is **ORDERED**, **ADJUDGED**, and **DECREED** as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter and of the parties.
2. The Complaint states a claim upon which relief may be granted against the Defendants under Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 56(a).
3. Venue in this district is proper under 28 U.S.C. §§ 1391(b)-(c) and 1395(a) and 15 U.S.C. § 53(b).
4. The activities of Defendants are in or affecting commerce as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. Entry of this Consent Decree is in the public interest.
6. Defendants stipulate to the entry of this Consent Decree freely and without coercion. Defendants further acknowledge that they have read the provisions of this Consent Decree and are prepared to abide by them.
7. All parties waive all rights to appeal or otherwise challenge or contest the validity of this Consent Decree.
8. The parties shall each bear their own costs and attorneys’ fees incurred in this action. Defendants waive any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412.

DEFINITIONS

1. "Individual Defendant" means James Donofrio.
2. "Corporate Defendants" means Donmaz Ltd. and its successors and assigns.
3. "Defendants" means the Individual Defendant and the Corporate Defendants, individually, collectively, or in any combination.
4. "Funeral Rule" or "Rule" means the Trade Regulation Rule Concerning Funeral Industry Practices issued by the Federal Trade Commission ("FTC" or "Commission"), 16 C.F.R. Part 453. Copies of the Funeral Rule and the FTC publication, "Complying with the Funeral Rule," are attached hereto as Exhibits A and B, respectively, and incorporated in this Consent Decree as if fully set forth verbatim.

I. INJUNCTION

IT IS THEREFORE ORDERED that Defendants and their officers, agents, servants, employees, successors and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Consent Decree by personal service or otherwise, are permanently enjoined from violating, directly or through any corporation, subsidiary, division, or other device, any provision of the Funeral Rule, including, but not limited to, the Rule's prohibitions against:

- A. Failing to give consumers who inquire in person a general price list they can keep upon beginning discussion of the overall type of funeral service or disposition, specific funeral goods or services offered, or the prices of such goods or services, as required by 16 C.F.R. § 453.2(b)(4);

B. Failing to show consumers who inquire in person about the offerings or prices of caskets or alternative containers a casket price list upon beginning discussion of caskets, but in any event before showing any caskets, models, or pictures of caskets, as required by 16 C.F.R. § 453.2(b)(2);

C. Failing to show consumers who inquire in person about outer burial container offerings or prices an outer burial container price list upon beginning discussion of outer burial containers, vaults or grave liners, but in any event before showing any outer burial containers, models or pictures thereof, as required by 16 C.F.R. § 453.2(b)(3);

D. Failing to tell any person who asks by telephone about Defendants' offerings or prices any accurate information from Defendants' price lists and any other readily available information that reasonably answers the question, as required by 16 C.F.R. § 453.2(b)(1);

E. Failing to give each person who arranges a funeral or other disposition of human remains an itemized written statement to keep at the conclusion of the discussion of arrangements, as required by 16 C.F.R. § 453.2(b)(5); and

F. Conditioning the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service contrary to 16 C.F.R. § 453.4(b)(i), charging any fee as a condition to furnishing any funeral goods or funeral services except as permitted by 16 C.F.R. § 453.4(b)(ii), or failing to make the disclosures required by 16 C.F.R. § 453.4(b)(2).

II. CIVIL PENALTY AND RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

A. Judgment in the amount of Thirty-Two Thousand Dollars (\$32,000) is entered against Defendants Donmaz Ltd. and James Donofrio, jointly and severally, as a civil penalty, pursuant to Section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A).

B. Defendants are ordered to pay to the Plaintiff Seven Thousand Dollars (\$7,000), which, as Defendants stipulate, their undersigned counsel holds in escrow for no purpose other than payment to the Treasurer of the United States after entry of this Consent Decree by the Court. Such a payment shall be made within 7 days of entry of this Consent Decree by electronic fund transfer in accordance with instructions previously provided by a representative of the Consumer Protection Branch, Civil Division, U.S. Department of Justice, Washington, D.C. 20530. Upon such payment, the remainder of the judgment shall be suspended subject to the Subsections below.

C. The Plaintiff and the Commission's agreement to, and the Court's approval of the suspension of \$25,000 of the judgment, is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely:

1. the Financial Statement of Individual Defendant, James Donofrio signed on March 31, 2011 and updated on April 25 and April 27, 2011, including the accompanying copies of federal tax returns for 2008 through 2010;

2. the Financial Statement of Corporate Defendant Donmaz Ltd. signed on April 12, 2011, including the accompanying copies of federal tax returns for 2008 through 2010;
3. the declaration of James Donofrio sworn to on August 27, 2011, including attachments.

D. The suspension of the judgment shall be lifted as to any Defendant, if, upon motion by the Commission, the Court finds that Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

E. If the suspension of the judgment is lifted, the judgment shall become immediately payable, and the amount due shall be calculated as follows: the judgment amount specified in Subsection A above, minus any payments previously made pursuant to this Section.

F. In the event of any default in payment required to be made under this Consent Decree, the entire unpaid penalty, together with interest from the date of default to the date of payment, as computed pursuant to 28 U.S.C. § 1961, shall immediately become due and payable.

G. Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendants shall make no claim to or demand return of the funds, directly or indirectly, through counsel or otherwise.

H. Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true, without further proof, in any subsequent civil litigation filed by or on behalf of the Commission to enforce its rights to any payment or money judgment pursuant to this Consent Decree.

I. Defendants agree that the judgment represents a civil penalty owed to the United States Government, is not compensation for actual pecuniary loss, and, therefore, as to the Individual Defendant, it is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7).

J. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they have done so already, to furnish to Plaintiff and the Commission their taxpayer identifying numbers (social security number or employer identification number) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government.

III. CONSENT DECREE ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Consent Decree:

A. Each Defendant, within 7 days of entry of this Consent Decree, must submit to the Commission an acknowledgment of receipt of this Consent Decree sworn under penalty of perjury.

B. For 5 years after entry of this Consent Decree, the Individual Defendant for any business that such Defendant, individually or collectively with the Corporate Defendant, is the majority owner or directly or indirectly controls, and the Corporate Defendant, must deliver a copy of this Consent Decree to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Consent Decree, including, but not limited to, all personnel who have contact with the public; and (3) any business entity resulting from any change in structure as set forth in the Section titled

Compliance Reporting. Delivery must occur within 7 days of entry of this Consent Decree for current personnel. To all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Defendant delivered a copy of this Consent Decree, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Consent Decree.

IV. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

A. One year after entry of this Consent Decree, each Defendant must submit a compliance report, sworn under penalty of perjury.

1. Each Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission and Plaintiff may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendant must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Consent Decree; and (e) provide a copy of each Consent Decree Acknowledgment obtained pursuant to this

Consent Decree, unless previously submitted to the Commission.

2. Additionally, the Individual Defendant must: (a) identify all telephone numbers and all email, Internet, physical, and postal addresses, including all residences; (b) identify all titles and roles in all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 20 years following entry of this Consent Decree, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Consent Decree, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Decree.
2. Additionally, Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in

which such Defendant has any ownership interest, and identify its name, physical address, and Internet address, if any.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Consent Decree to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service): to Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *United States v. Donmaz Ltd., doing business as Blair-Mazzarella Funeral Home and James Donofrio*, Case No. _____

V. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 20 years after entry of the Consent Decree, and retain each such record for 5 years. Specifically, the Corporate Defendant and the Individual Defendant for any business in which that Defendant, individually or collectively with the other Defendant, is a majority owner or directly or indirectly controls, must maintain the following records:

- A. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- C. Customer files showing the names, addresses, telephone numbers, dollar amounts paid, and the quantity and description of goods or services purchased;
- D. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- E. All records necessary to demonstrate full compliance with each provision of this Consent Decree, including all submissions to the Commission; and
- F. Copies of all price lists, sales scripts, training materials, advertisements, or other marketing materials.

VI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Consent Decree, including any failure to transfer any assets as required by this Consent Decree:

- A. Within 14 days of receipt of a written request from a representative of the Commission or Plaintiff, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The Commission and Plaintiff are also authorized to obtain discovery, without further leave of court, using any of the procedures

prescribed by Federal Rules of Civil Procedure 29, 30 (including telephone depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Consent Decree, the Commission and Plaintiff are authorized to communicate directly with each Defendant. Defendants must permit representatives of the Commission and Plaintiff to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission and Plaintiff may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Consent Decree limits 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.

VII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Consent Decree.

JUDGMENT IS THEREFORE ENTERED in favor of Plaintiff and against Defendants, pursuant to all the terms and conditions recited above.

ENTERED: this ____ day of _____, 2012.

HONORABLE BRIAN M. COGAN
United States District Judge, E.D.N.Y.

The parties, by their respective counsel, consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof.

FOR THE FEDERAL TRADE COMMISSION:

WILLARD K. TOM
General Counsel

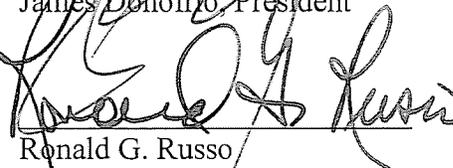
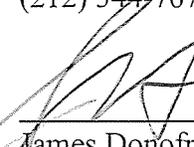
LEONARD L. GORDON
Regional Director



Robin E. Eichen
Northeast Region
Federal Trade Commission
One Bowling Green, Suite 318
New York, NY 10004
(212) 607-2829 (Office)
(212) 607-2822 (Facsimile)

FOR THE DEFENDANTS:

DONMAZ LTD., d/b/a
Blair-Mazzarella Funeral Home


James Donofrio, President
Ronald G. Russo
Scalam Stone & Dolan LLP
26 Broadway
New York, NY 10004
(212) 344-5400 (Office)
(212) 344-7677 (Facsimile)
James Donofrio, individually

FOR THE UNITED STATES OF AMERICA:

STUART F. DELERY
Acting Assistant Attorney General
Civil Division
United States Department of Justice

LORETTA E. LYNCH
United States Attorney
Eastern District of New York

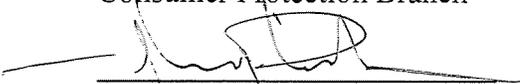


Assistant United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201
Phone: 718-254-7000

MAAME EWUSI-MENSAH FRIMPONG
Acting Deputy Assistant Attorney General
Civil Division

MICHAEL S. BLUME
Director
Consumer Protection Branch

KENNETH L. JOST
Deputy Director
Consumer Protection Branch



ALAN PHELPS
Trial Attorney
Consumer Protection Branch
U.S. Department of Justice
PO Box 386
Washington, D.C. 20044
Phone: 202-307-6154
alan.phelps@usdoj.gov