

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 09-cv-61840 Seitz/O'Sullivan

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

1st GUARANTY MORTGAGE CORP., *et al.*,

Defendants.

**FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AGAINST
DEFENDANT MICHAEL PETROSKI**

This matter comes before the Court on Plaintiff's Motion for Summary Judgment against Defendants Stephen Lalonde, Amy Lalonde, and Michael Petroski. On November 17, 2009, Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), commenced this action by filing a Complaint pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, Section 410(b) of the Credit Repair Organizations Act ("CROA"), 15 U.S.C. § 1679h(b), and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108. The Complaint alleges that Defendants Stephen Lalonde, Amy Lalonde, Michael Petroski, 1st Guaranty Mortgage Corp., Spectrum Title, Inc., Crossland Credit Consulting Corp., and Scoreleaper, LLC, ("Defendants") engaged in unfair or deceptive acts or practices in connection with the sale and offering for sale, of mortgages, credit repair services, and loan modification services, in violation of Section 5(a) of

the FTC Act, 15 U.S.C. § 45(a), the CROA, 15 U.S.C. §§ 1679-1679j, and the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

Having considered the Complaint, Plaintiff's Motion for Summary Judgment, the Memorandum in support thereof, Plaintiff's Statement of Uncontroverted Material Facts, Plaintiff's Summary Judgment Exhibits, the records of this case, and any opposition thereto, The plaintiff is entitled to summary judgment against the defendants, Stephen Lalonde and Michael Petroski. The plaintiff is not entitled to summary judgment against the defendant, Amy Lalonde. The Court enters this Final Judgment and Order against Defendant Michael Petroski ("Defendant").

It is therefore **ORDERED, ADJUDGED, AND DECREED:**

FINDINGS

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).
2. The Complaint states a claim upon which relief may be granted against Defendant under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, Section 410(b) of the Credit Repair Organizations Act, 15 U.S.C. § 1679h(b), and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b).
3. The activities of Defendant charged in the Complaint are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. Defendant transacts or has transacted business in this district and throughout the United States.

5. No genuine issue of material fact exists that, in connection with the allegations of Counts 1-4, and 6 of Plaintiff's Complaint, Defendant made untrue or misleading representations in violation of the CROA; charged or received money or other valuable consideration for the performance of credit repair services before such services were fully performed, in violation of the CROA; requested or received an advance payment for a loan or other extension of credit, which he guaranteed or represented he could obtain with a high likelihood of success, in violation of the TSR; and made false and misleading, material representations to consumers, in violation of the FTC Act. The Plaintiff is therefore entitled to summary judgment as a matter of law.

6. Defendant formulated, directed, controlled, had the authority to control, or participated in the deceptive practices alleged in Counts 1-4, and 6 of the Complaint, and had knowledge of the deceptive practices.

7. Consumers have suffered and will continue to suffer substantial injury as a result of Defendant's violations of the FTC Act, the CROA, and the TSR. In addition, Defendant has been unjustly enriched as a result of his unlawful acts or practices. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

8. The equities weigh in favor of entering this Order, and entry of this Order is in the public interest.

9. This Order is remedial in nature and shall not be construed as the payment of a fine, penalty, punitive assessment, or forfeiture.

ORDER

Definitions

1. The terms “**and**” and “**or**” have both conjunctive and disjunctive meanings.
2. “**Assisting others**” includes, but is not limited to, providing any of the following goods or services to another person: (A) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (B) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material, including, but not limited to, the text of any Internet website, email, or other electronic communication; (C) providing names of, or assisting in the generation of, potential customers; (D) performing marketing services of any kind; or (E) acting or serving as an owner, officer, director, manager, or principal of any entity.
3. “**Credit**” means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.
4. “**Credit repair service**” means any service, in return for payment of money or other consideration, for the express or implied purpose of: (A) improving any consumer’s credit record, credit history, or credit rating; or (B) providing advice or assistance to any consumer with regard to any activity or service the purpose of which is to improve a consumer’s credit record, credit history, or credit rating.
5. “**Credit-related product, program, or service**” 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. “**Defendant**” means Michael Petroski.

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. **“Mortgage loan modification or foreclosure relief service”** means any good, service, plan, or program that is represented, expressly or by implication, to assist a consumer in any manner to (A) stop, prevent, or postpone any home mortgage or deed of trust foreclosure sale; (B) obtain or arrange a modification of any term of a home loan, deed of trust, or mortgage; (C) obtain any forbearance from any mortgage loan holder or servicer; (D) exercise any right of reinstatement of any mortgage loan; (E) obtain, arrange, or attempt to obtain or arrange any extension of the period within which the owner of property sold at foreclosure may cure his or her default or reinstate his or her obligation; (F) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained in that deed of trust; (G) obtain a loan or advance of funds that is connected to the consumer’s home ownership; (H) avoid or ameliorate the impairment of the consumer’s credit record, credit history, or credit rating that is connected to the consumer’s home ownership; (I) save the consumer’s residence from foreclosure; (J) assist the consumer in obtaining proceeds from the foreclosure sale of the consumer’s residence; (K) obtain or arrange a pre-foreclosure sale, short sale, or deed-in-lieu of foreclosure; (L) obtain or arrange a refinancing, recapitalization, or reinstatement of a home loan, deed of trust, or mortgage; (M) audit or

examine a consumer's mortgage or home loan application; or (N) obtain, arrange, or attempt to obtain or arrange any extension of the period within which the renter of property sold at foreclosure may continue to occupy the property. The foregoing shall include any manner of claimed assistance, including, but not limited to, debt, credit, budget, or financial counseling; receiving money for the purpose of distributing it to creditors; contacting creditors or servicers on behalf of the consumer; and giving advice of any kind with respect to filing for bankruptcy.

9. “**Servicer**” means any beneficiary, mortgagee, trustee, loan servicer, loan holder, or other entity that performs loan or credit account administration or processing services and/or its authorized agents.

10. “**Telemarketing**” means a plan, program or campaign (whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or services by means of the use of one or more telephones.

I.

**PERMANENT BAN REGARDING
MORTGAGE AND CREDIT RELATED PRODUCTS AND SERVICES**

IT IS THEREFORE ORDERED that Defendant is permanently restrained and enjoined from participating in any manner or capacity whatsoever, directly or indirectly, in concert with others, individually, or through any business entity or other device, in:

- A. the advertising, marketing, promoting, offering for sale, or selling any mortgage; credit repair service; credit-related product, program, or service; or mortgage loan modification or foreclosure relief service; and

- B. assisting others engaged in the advertising, marketing, promoting, offering for sale, or selling any mortgage; credit repair service; credit-related product, program, or service; or mortgage loan modification or foreclosure relief service.

II.

PERMANENT BAN ON TELEMARKETING

IT IS FURTHER ORDERED that Defendant is permanently restrained and enjoined from engaging or participating in telemarketing, directly or through any intermediary, including, but not limited to, by consulting, brokering, planning, investing, outsourcing, or advertising.

III.

INJUNCTION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defendant and his agents, servants, employees, and those persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, in connection with the advertising, marketing, promoting, offering for sale, or selling of any goods or services are hereby permanently restrained and enjoined from making or assisting others in making, expressly or by implication, any misrepresentation, including, but not limited to, misrepresenting:

- A. The benefit of any good or service;
- B. The cost of any good or service;
- C. Past success in providing goods or services;
- D. The amount of time it will take or is likely to take to obtain goods or services;
- E. Any aspect of the terms of a refund policy or service contract; or
- F. Any other material fact.

IV.

MONETARY JUDGMENT AND REDRESS

IT IS FURTHER ORDERED that:

- A. Judgment is entered in the amount of Five Hundred Thirty-Three Thousand One Hundred Sixty-Five dollars (\$533,165.00) against Defendant, as equitable monetary relief in favor of the Commission. This judgment is joint and several with any monetary judgment that may be entered against Defendants, Stephen Lalonde, Amy Lalonde, 1st Guaranty, Crossland, and Scoreleaper in this case;

- B. The judgment amount, less the sum of payments made pursuant to this Section and by any defendant with whom Defendant is jointly and severally liable, shall become immediately due and payable by Defendant, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance;
- C. Within ten (10) days of being served with a copy of this Order, any person or entity holding any of Defendant's assets shall transfer those assets to the FTC;
- D. All funds paid shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, restitution and any attendant expenses for the administration of such equitable relief, *provided, however*, that any person or entity having a perfected judgment lien against any funds collected toward payment of the monetary judgment in this Order shall not be precluded from asserting its rights to such funds as permitted by law. If the Commission determines, in its sole discretion, that direct redress of consumer injury is wholly or partially impracticable, or funds remain after the restitution 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 practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendant shall have no right to challenge the Commission's choice of remedies under this Section. This Judgment for equitable monetary

relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture;

- E. Defendant shall cooperate fully with the Commission and its agents in all attempts to collect the amounts due pursuant to this Section, including, upon request, providing the Commission with his federal and state tax returns for the preceding two (2) years, and completing new financial disclosure forms fully and accurately within ten (10) business days of receiving a request from the Commission to do so. Defendant further authorizes the Commission to verify all information provided on his financial disclosure forms with all appropriate third parties including, but not limited to, financial institutions;
- F. Upon request, Defendant is hereby required, in accordance with 31 U.S. § 7701, to furnish to the FTC his tax identification numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order; and
- G. Pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning Defendant to the FTC, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

V.

LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of Defendant's assets, pursuant to the Stipulated Preliminary Injunction entered on May 11, 2010, shall be lifted for the sole purpose of

effectuating the transfer of assets in partial satisfaction of the monetary judgment as provided in Section IV of this Order, and shall be of no further force or effect after transfer is completed.

**VI.
PROHIBITION ON RELEASE OF CUSTOMER INFORMATION
OR CUSTOMER LISTS**

IT IS FURTHER ORDERED that Defendant, and his agents, servants, employees, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from:

- A. disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person which any Defendant obtained prior to entry of this Order in connection with any mortgage, credit repair service, credit-related product, program, or service, or mortgage loan modification or foreclosure relief service; and
- B. failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

VII.

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 shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and 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 use all other lawful means, including but not limited to:
 - 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, 45, and 69;
 - 2. having its representatives pose as consumers and suppliers to Defendant, 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 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 and 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)).

VIII.

COMPLIANCE REPORTING

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 shall notify the Commission of the following:
 - a. Any changes in Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 - b. Any changes in Defendant's employment status (including self-employment), and any change in Defendant's ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of Defendant's duties and

responsibilities in connection with the business or employment;

and

c. Any changes in Defendant's name or use of any aliases or fictitious names within ten (10) days of the date of such change;

2. Defendant shall notify the Commission of any changes in structure of any business entity that 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: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any such change in the business entity about which 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 and annually thereafter for a period of five (5) years, Defendant shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, 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. Defendant's then-current residence address, mailing addresses, and telephone numbers;
 2. Defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of Defendant's duties and responsibilities in connection with the business or employment;
 3. A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;" and
 4. Any other changes required to be reported under Subsection A of this Section.
- C. Defendant shall notify the Commission of the filing of a bankruptcy petition by Defendant within fifteen (15) days of filing.
- D. For the purposes of this Order, Defendant shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier (not the U.S. Postal Service) all reports and notifications to the Commission that are required by this Order to:
- a. Associate Director for Enforcement
 - b. Bureau of Consumer Protection
 - c. Federal Trade Commission
 - d. 600 Pennsylvania Avenue, N.W.
 - e. Washington, D.C. 20580
 - f. RE: *FTC v. Michael Petroski (X010012)*

Provided that, in lieu of overnight courier, Defendant may send such reports or notifications by first-class mail, but only if Defendant contemporaneously sends an electronic version of such report or notification to the Commission at DEBrief@ftc.gov.

- E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendant.

IX.

RECORDKEEPING

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendant for any business for which he is the majority owner or directly or indirectly controls is hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services

purchased, to the extent such information is obtained in the ordinary course of business;

- D. Complaints and refund requests (whether received directly or indirectly, such as through a third party,) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including, but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

X.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendant shall deliver copies of the Order as directed below:

- A. Defendant as control person: For any business that Defendant controls, directly or indirectly, or in which Defendant has a majority ownership interest, Defendant must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current

personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

- B. Defendant as employee or non-control person: For any business where Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.
- C. Defendant must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

XI.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED, this 30th day of March, 2011.



JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE