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

JUDGE JOAN H. LEFKOW
MAGISTRATE JUDGE VALDEZ

FEDERAL TRADE COMMISSION, Plaintiff, v. DIRECT FINANCIAL MANAGEMENT INC., Ontario Corporation No. 2130181, an Ontario, Canada, corporation, 2194673 ONTARIO INC., an Ontario, Canada, corporation, d/b/a THE ELITE FINANCIAL GROUP, F&F PAYMENT PROCESSING INC., a New York corporation, BAJADA MANAGEMENT GROUP INC., a New York corporation, DAVID D. RICHARDS, individually and as an officer and/or director of DIRECT FINANCIAL MANAGEMENT INC., BAIRD B. FISHER, individually and as an officer and/or director of F&F PAYMENT PROCESSING INC. and BAJADA MANAGEMENT GROUP INC., JACQUELINE M. FISHER, individually, and JOSEPH B. FOLEY, individually, Defendants.	Case No. 10C 7194 **COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the FTC's "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. 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).

3. Venue is proper in this district under 28 U.S.C. § 1391(b), (c), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the Telemarketing Act, 15 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A)-(B), 57b, 6102(c), and 6105(b).

DEFENDANTS

6. Defendant Direct Financial Management Inc., Ontario Corporation No. 2130181, is an Ontario, Canada, corporation with its principal place of business at 1325 Eglinton Avenue East, Suite 207A, Mississauga, Ontario, Canada L4W 4L9. Direct Financial Management Inc. transacts or has transacted business in this district and throughout the United States.

7. Defendant 2194673 Ontario Inc., also doing business as The Elite Financial Group, is an Ontario, Canada, corporation with its principal place of business at 1100 Queens Avenue, #9, Oakville, Ontario, Canada L6H 2B5. 2194673 Ontario Inc. transacts or has transacted business in this district and throughout the United States.

8. Defendant F&F Payment Processing Inc. is a New York corporation with its principal place of business at 690 Hillside Avenue, Rochester, New York 14610. F&F Payment Processing Inc. transacts or has transacted business in this district and throughout the United States.

9. Defendant Bajada Management Group Inc. is a New York corporation with its principal place of business at 690 Hillside Avenue, Rochester, New York 14610. Bajada

Management Group Inc. transacts or has transacted business in this district and throughout the United States.

10. Defendant David D. Richards ("Richards") is an officer and/or director of Direct Financial Management Inc. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Richards, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

11. Defendant Baird B. Fisher is an officer and/or director of Bajada Management Group Inc., and F&F Payment Processing Inc. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Baird B. Fisher, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

12. Defendant Jacqueline M. Fisher has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Jacqueline M. Fisher, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

13. Defendant Joseph B. Foley ("Foley") has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint.

Defendant Foley, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

14. Defendants Direct Financial Management Inc., 2194673 Ontario Inc., F&F Payment Processing Inc., and Bajada Management Group Inc. (collectively, "Corporate Defendants") have operated as a common enterprise while engaging in the unlawful acts and practices alleged below. Defendants have conducted the business practices described below through an interrelated network of companies that have common managers, business functions, employees, office locations, and have commingled funds. Because Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Individual Defendants David D. Richards, Baird B. Fisher, Jacqueline M. Fisher, and Joseph B. Foley have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise.

15. In operating the common enterprise and engaging in the unlawful acts and practices described below, Defendants have also used at least the following business names: Direct Financial Savings, Direct Financial, AFL Financial Services, Elite Choice Financial, Elite-AFL Financial Services, First Choice Financial, Freedom Choice Financial, Affiliated Financial Services, Direct Services Group, AFS Services Ltd., CDC Management Services, and Insight Management Services.

COMMERCE

16. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

17. Since at least 2007, Defendants have telemarketed credit card interest rate reduction services to consumers nationwide in the United States. In many instances, Defendants' telemarketing calls are initiated using a telemarketing service that delivers prerecorded voice messages, known as "voice broadcasting" or "robocalling." The prerecorded messages often offer consumers the purported opportunity to secure substantially lower credit card interest rates and instruct consumers to press a number on their phone to be connected to a live representative. Defendants also market their program via the Internet on several websites, including www.directfinancialsavings.com, www.aflfinancial.com, www.fchoicefinancial.com, www.freedomchoiceservices.info, www.affiliatedservices.info, www.directservicesgrp.info, www.afsservicesltd.info, www.insight-management.net, and www.cdc-management.net.

18. During telemarketing calls, Defendants often identify themselves as representatives of "Card Services" or some other generic business name. Defendants claim to have the ability to reduce substantially consumers' credit card interest rates. Defendants also claim that their interest rate reduction services will provide substantial savings to

consumers, typically at least $2500, in a short period of time, and will enable consumers to pay off their debt much faster, typically three to five times faster.

19. Defendants charge consumers a fee for their services, typically $995. Defendants charge consumers' credit cards during or immediately following the telemarketing calls. Defendants represent that the amount of the fee will be offset quickly by savings achieved through reduced interest rates.

20. Defendants guarantee that they will provide a full refund of the cost of their services to consumers who do not save thousands of dollars in a short time, typically a minimum of $2500, because of reduced credit card interest rates.

21. After consumers pay Defendants' fee, Defendants typically send consumers forms to complete and to return listing all of the consumer's credit card account information and other sensitive personal information such as date of birth and Social Security Number.

22. The written materials that Defendants send to consumers include letters that purport to explain Defendants' program. Typical and representative statements in those materials include:

> Affiliated Financial Services guarantees you a minimal savings of $2,500.00. Most clients save twice as much and more. These savings you will no longer have to pay to your lenders due to the lowering of your interest rates, getting you out of debt 3-5 times faster!

23. In some instances, after consumers complete and return Defendants' forms, Defendants initiate three-way telephone calls with the consumers and the customer service departments of credit card companies that consumers listed on the forms. These three-way telephone calls merely consist of Defendants verbally requesting (or prompting consumers to

request verbally) that the credit card companies reduce the consumers' credit card interest rates. This is a task that consumers could easily perform themselves. The credit card companies typically decline the request, and the call ends. These three-way telephone calls are often the total extent of Defendants' credit card interest rate reduction services.

24. In numerous instances, Defendants fail to provide consumers with the significant reductions in credit card interest rates and minimum savings that were promised during the initial telephone calls, and they typically fail to provide any reduction in consumers' credit card interest rates at all. Consequently, consumers are not able to pay their credit card debts faster than they could have without Defendants' service.

25. Despite Defendants' failure to deliver the promised credit card interest rate reductions, and resulting savings, and their guarantee of a full refund if they fail to deliver those reductions, Defendants rarely refund the fees that they charge to consumers' credit cards.

26. While telemarketing their program, Defendants, acting directly or through one or more intermediaries, have made numerous calls to telephone numbers on the National Do Not Call Registry.

27. Defendants, acting directly or through one or more intermediaries, have made numerous outbound telemarketing calls in which they failed to connect the call to a sales representative within two (2) seconds of the call recipient's completed greeting. Instead of connecting the call to a sales representative, Defendants, acting directly or through their telemarketers, have delivered a prerecorded voice message to the call recipient.

28. In numerous instances, Defendants, acting directly or through one or more intermediaries, have initiated telemarketing calls that failed to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call: the identity of the seller; that the purpose of the call is to sell goods or services; or the nature of the goods or services. In numerous instances since December 1, 2008, Defendants, acting directly or through one or more intermediaries, have initiated prerecorded telemarketing calls to consumers that failed to make such disclosures promptly.

29. In numerous instances on or after September 1, 2009, Defendants, acting directly or through one or more intermediaries, made outbound prerecorded calls that delivered messages to induce the sale of goods or services when the persons to whom these telephone calls were made had not expressly agreed, in writing, to authorize the seller to place prerecorded calls to such person.

VIOLATIONS OF THE FTC ACT

30. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

31. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. 15 U.S.C. § 45(a).

COUNT ONE

Misrepresentations in Violation of Section 5

32. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of Defendants' credit card interest rate reduction

program, Defendants have represented, directly or indirectly, expressly or by implication, that:

A. Defendants will substantially lower consumers' credit card interest rates in all or virtually all instances;

B. Defendants will save consumers thousands of dollars in a short time in all or virtually all instances as a result of lowered credit card interest rates;

C. Defendants will enable consumers to pay off their debts much faster, typically three to five times faster, in all or virtually all instances, as a result of lowered credit card interest rates; and

D. Defendants will provide full refunds if consumers do not save thousands of dollars in a short time as a result of lowered credit card interest rates.

33. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 32 of this Complaint:

A. Defendants did not substantially lower consumers' credit card interest rates;

B. Defendants did not save consumers thousands of dollars in a short time as a result of lowered credit card interest rates;

C. Defendants did not enable consumers to pay off their debts much faster, typically three to five times faster, as a result of lowered credit card interest rates; and

D. Defendants did not provide full refunds when consumers did not save thousands of dollars in a short time as a result of lowered credit card interest rates.

34. Therefore, Defendants' representations as set forth in Paragraph 32 of this Complaint are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE TELEMARKETING SALES RULE

35. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. The FTC adopted the original Telemarketing Sales Rule in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.

36. Defendants are "seller[s]" or "telemarketer[s]" engaged in "telemarketing," and Defendants have initiated, or have caused telemarketers to initiate, "outbound telephone calls" to consumers, as those terms are defined in the TSR, 16 C.F.R. § 310.2(u), (z), (bb), and (cc).

37. The TSR prohibits telemarketers and sellers from misrepresenting, directly or by implication, in the sale of goods or services, any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

38. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services, any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies.
16 C.F.R. § 310.3(a)(2)(iv).

39. The TSR, as amended in 2003, established a "do-not-call" registry (the "National Do Not Call Registry" or "Registry"), maintained by the FTC, of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at www.donotcall.gov.

40. The TSR prohibits sellers and telemarketers from initiating an outbound telemarketing call to numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B).

41. The TSR also prohibits sellers and telemarketers from "abandoning" any outbound telephone calls. 16 C.F.R. § 310.4(b)(1)(iv). An outbound telephone call is "abandoned" if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person's completed greeting. *Id.*

42. The TSR requires telemarketers in an outbound telephone call to disclose truthfully, promptly, and in a clear and conspicuous manner, the following information:

A. The identity of the seller;

B. That the purpose of the call is to sell goods or services; and

C. The nature of the goods or services.

16 C.F.R. § 310.4(d)(1), (2), and (3).

43. Since December 1, 2008, the TSR has prohibited a telemarketer from engaging, and a seller from causing a telemarketer to engage, in initiating an outbound telephone call that delivers a prerecorded message unless the message promptly discloses:

A. The identity of the seller;

B. That the purpose of the call is to sell goods or services; and

C. The nature of the goods or services.

16 C.F.R. § 310.4(b)(1)(v)(B)(ii).

44. As amended, effective September 1, 2009, the TSR prohibits initiating a telephone call that delivers a prerecorded message to induce the purchase of any good or service unless the seller has obtained from the recipient of the call an express agreement, in writing, that evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller. The express agreement must include the recipient's telephone number and signature, must be obtained after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person, and must be obtained without requiring, directly or

indirectly, that the agreement be executed as a condition of purchasing any good or service. 16 C.F.R. § 310.4(b)(1)(v)(A).

45. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT TWO

Misrepresentations in Violation of the TSR

46. In numerous instances, in the course of telemarketing goods and services, Defendants have misrepresented, directly or by implication, that:

A. Defendants will substantially lower consumers' credit card interest rates in all or virtually all instances;

B. Defendants will save consumers thousands of dollars in a short time in all or virtually all instances as a result of lowered credit card interest rates; and

C. Defendants will enable consumers to pay off their debts much faster, typically three to five times faster, in all or virtually all instances, as a result of lowered credit card interest rates.

47. Defendants' acts and practices, as described in Paragraph 46 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT THREE

Refund Misrepresentations in Violation of the TSR

48. In numerous instances, in the course of telemarketing goods and services, Defendants have misrepresented, directly or by implication, that Defendants will provide full refunds if consumers do not save thousands of dollars in a short time as a result of lowered credit card interest rates.

49. Defendants' acts and practices, as described in Paragraph 48 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(iv).

COUNT FOUR

Violating the National Do Not Call Registry

50. In numerous instances, in connection with telemarketing, Defendants have engaged, or caused a telemarketer to engage, in initiating an outbound telephone call to a person's telephone number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

COUNT FIVE

Abandoning Calls

51. In numerous instances, in connection with telemarketing, Defendants have abandoned, or caused a telemarketer to abandon, an outbound telephone call by failing to connect the call to a sales representative within two (2) seconds of the completed greeting of the person answering the call, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iv).

COUNT SIX

Failing to Make Required Oral Disclosures

52. In numerous instances, in the course of telemarketing goods and services, Defendants have made or caused telemarketers to make outbound telephone calls in which the telemarketer failed to disclose promptly and in a clear and conspicuous manner to the person receiving the call:

A. The identity of the seller;

B. That the purpose of the call is to sell goods or services; or

C. The nature of the goods or services.

53. Defendants' practices, as alleged in Paragraph 52 above, are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.4(d).

COUNT SEVEN

Initiating Unlawful Prerecorded Messages on or after December 1, 2008

54. In numerous instances, on or after December 1, 2008, in the course of telemarketing goods and services, Defendants have initiated, or caused a telemarketer to initiate, outbound telephone calls delivering prerecorded messages that, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(v)(B)(ii), do not promptly disclose the identity of the seller, that the purpose of the call is to sell goods or services, or the nature of the goods or services.

COUNT EIGHT

Initiating Unlawful Prerecorded Messages on or after September 1, 2009

55. In numerous instances on or after September 1, 2009, Defendants have initiated outbound telephone calls delivering prerecorded messages to induce the purchase of goods or services when the persons to whom these telephone calls were made had not expressly agreed, in writing, to authorize the seller to place prerecorded calls to such person.

56. Defendants' acts or practices, as described in Paragraph 55 above, are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.4(b)(1)(v)(A).

CONSUMER INJURY

57. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the TSR. In addition, Defendants have been unjustly enriched as a result of their unlawful acts and practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

58. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

59. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the TSR, including the rescission or reformation of contracts, and the refund of money.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:

1. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to, temporary and preliminary injunctions, an order freezing assets, immediate access, and the appointment of a receiver;

2. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

4. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully Submitted,

WILLARD K. TOM
General Counsel

Dated: November 8, 2010

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