

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**INTEGRITY FINANCIAL
ENTERPRISES, LLC**, a limited liability
company, also d/b/a **INFINITE FINANCIAL**
and **NATIONAL BENEFIT EXCHANGE,**

**NATIONAL BENEFIT EXCHANGE,
INC.**, a corporation, and

ROBERT JAMES FISCHBACH,
individually and as an officer of **INTEGRITY
FINANCIAL ENTERPRISES, LLC** and
NATIONAL BENEFIT EXCHANGE, INC.,

Defendants.

Case No. 8:08-cv-914-T-27 MSS

**DEFAULT JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AND
MONETARY RELIEF AGAINST DEFENDANTS INTEGRITY FINANCIAL
ENTERPRISES, LLC AND NATIONAL BENEFIT EXCHANGE, INC.**

BEFORE THE COURT is Plaintiff's Motion for Default Judgment against Defendants Integrity Financial Enterprises, LLC and National Benefit Exchange, Inc. (Dkt. 33), to which no Defendant has responded.

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), commenced this

action on May 13, 2008 by filing its 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, and 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, and the FTC’s “Telemarketing Sales Rule,” 16 C.F.R. Part 310.

On May 14, 2008, this Court issued a Temporary Restraining Order against all Defendants. (Dkt. 9). On May 28, 2008, this Court granted the parties’ Joint Motion to Enter Stipulated Preliminary Injunction, and entered a Consent Order with a preliminary injunction. (Dkts. 17-20).

On June 23, 2008, the Clerk entered defaults against Defendants Integrity Financial Enterprises, LLC, also doing business as Infinite Financial and National Benefit Exchange (“IFE”) and National Benefit Exchange, Inc. (“NBE”) pursuant to Federal Rule of Civil Procedure 55(a). (Dkt. 26, 27). The FTC has now moved this Court for entry of a judgment by default and permanent injunction against Defendants Integrity Financial Enterprises, LLC and National Benefit Exchange, Inc. pursuant to Federal Rule of Civil Procedure 55(b)(2).¹ Having considered the memoranda and exhibits filed in support of said motion, it is **ORDERED AND ADJUDGED** that Plaintiff’s Motion for Default Judgment against Defendants Integrity Financial Enterprises, LLC and National Benefit Exchange, Inc. (Dkt.

¹ The parties have reached a settlement in principle with Defendant Fischbach (Dkt. 35).

33) is **GRANTED** as follows:

FINDINGS

1. This action by the Commission is 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 ("TSR"), 16 C.F.R. Part 310. Pursuant to these statutes and regulations, the Commission has the authority to seek the relief contained herein.
2. This Court has jurisdiction over the subject matter and the parties.
3. Venue in the United States District Court for the Middle District of Florida is proper as to all parties.
4. The Complaint states a claim upon which relief may be granted under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57b, the Telemarketing Act, 15 U.S.C. § 6101, *et seq.*, and the TSR, 16 C.F.R. Part 310.
5. The activities of the Defendants are or were in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
6. Defendants Integrity Financial Enterprises, LLC and National Benefit Exchange, Inc. (collectively, "Defendants") have been properly served with the Summons and Complaint, as required by Federal Rule of Civil Procedure 4.
7. Defendants have failed to file an Answer to the Complaint within the time set forth in Federal Rule of Civil Procedure Rule 12(a), or to otherwise defend this action. The Clerk of the Court entered defaults against these Defendants on June 23, 2008. (Dkts. 26, 27).

8. Defendants, directly or through their telemarketer, have made false or misleading statements in connection with the telemarketing of advance-fee credit cards, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the TSR, 16 C.F.R. Part 310.
9. Defendants have requested and received payment of a fee in advance of consumers obtaining a credit card when Defendants have guaranteed or represented a high likelihood of success in obtaining or arranging for the acquisition of a general purpose credit card, such as a MasterCard, in violation of the TSR, 16 CFR § 310.4(a)(4).
10. As alleged in Paragraph 8 of the Complaint, which is deemed to be admitted for the purposes of this motion, Defendants operated as a common enterprise while engaging in the false and deceptive acts and practices that are the basis of the Complaint, and therefore are jointly and severally liable for said acts and practices. *See F.T.C. v. Atlantex Assocs.*, 872 F.2d 966, 968 (11th Cir. 1989) (affirming award of joint and several liability).
11. Defendants' total net sales amounted to \$2,461,574 from the conduct alleged in the FTC's Complaint during the period from January 1, 2005 until March 31, 2008. This amount is readily ascertainable pursuant to the financial records submitted in connection with the instant motion. (Dkt. 33-3, Weintraub Aff. ¶¶ 11-13).
12. The Commission is therefore entitled to equitable monetary relief against Defendants, jointly and severally, in the amount of \$2,461,574, which is the amount of consumer injury from January 1, 2005 until March 31, 2008. *See F.T.C. v. Gem Merchandising*

Corp., 87 F.3d 466, 468 (11th Cir. 1996) (court's broad equitable powers under section 13(b) include ordering restitution and disgorgement);

13. Defendants are likely to continue to engage in the activities alleged in the Complaint unless they are permanently enjoined from such acts and practices.
14. Entry of this Order is in the public interest.

DEFINITIONS

1. **“Plaintiff,” “Commission,” or “FTC”** means the Federal Trade Commission.
2. **“Defendants”** mean Defendants Integrity Financial Enterprises, LLC, also d/b/a “Infinite Financial” and “National Benefit Exchange,” and National Benefit Exchange Inc., and their successors and assigns, individually, collectively, or in any combination.
3. **“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, and shall include both existing assets and assets acquired after the date of entry of this Order.
4. **“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 “document.”

5. **“Person”** means a natural person, an organization, or other legal entity, including, but not limited to, a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or other group or combination acting as an entity.
6. The terms **“and”** and **“or”** shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.
7. **“Telemarketing,” “telemarketer,” “seller,”** and **“material”** are defined as in Section 310.2 of the TSR, 16 C.F.R. Part 310.

ORDER

I. PROHIBITED BUSINESS ACTIVITIES

IT IS HEREBY ORDERED that in connection with the advertising, promoting, offering for sale, or sale of any product or service, the Defendants, whether acting directly or through fictitious business names, and their officers, agents, employees, corporations, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from:

- A. Misrepresenting, or assisting others in misrepresenting, expressly or by implication, that:
 1. After a consumer pays a fee, Defendants will or are likely to provide the consumer with a general-purpose credit card, such as a MasterCard or Visa;
 2. After a consumer pays a fee, consumers are likely or guaranteed to

- receive a general-purpose credit card, such as a MasterCard or Visa;
3. Consumers may cancel or change their order and avoid the debiting of their bank accounts; or
 4. Consumers' cancellation requests will be honored;
- B. Making or assisting others in making, expressly or by implication, any false or misleading statement or representation of material fact in connection with any offer of any good or service, including, but not limited to:
1. The total cost to purchase, receive, or use, and the quantity of, any goods or services that are subject to the sales offer;
 2. Any material restrictions, limitations, or conditions to purchase, receive, or use the goods or services; or
 3. Any material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the goods or services;
- C. Violating, or assisting others in violating, any provision of the TSR, 16 C.F.R. Part 310, including, but not limited to:
1. Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii), by misrepresenting, directly or by implication, material aspects of the performance, efficacy, nature, or central characteristics of any product or service Defendants sell, including, but not limited to, any false claim that a credit card is a general-purpose credit card;
 2. Section 310.3(a)(2)(iv) by misrepresenting, directly or by implication, material aspects of the nature or terms of the seller's refund,

cancellation, exchange, or repurchase policies, and

3. Section 310.4(a)(4) of the TSR, 16 C.F.R. § 310.4(a)(4), by requesting or receiving payment of a fee or consideration in advance of consumers obtaining a credit card when the Defendants have guaranteed or represented a high likelihood of success in obtaining or arranging the acquisition of a credit card for such consumers.

II. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A. Judgment is hereby entered against Defendants, jointly and severally, in the amount of **TWO MILLION FOUR HUNDRED SIXTY ONE THOUSAND FIVE HUNDRED SEVENTY FOUR DOLLARS (\$2,461,574)** as equitable monetary relief to redress consumer injury. This monetary judgment shall become immediately due and payable by Defendants upon entry of this Order, and interest computed at the rate prescribed under 28 U.S.C. § 1961(a), as amended, shall immediately begin to accrue on the unpaid balance.
- B. All payments under this Section shall be made by certified check or other guaranteed funds payable to and delivered to the Commission, or by wire transfer in accordance with directions provided by the Commission.
- C. All funds paid pursuant to this Section 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. 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 Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants 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.

- D. Defendants IFE and NBE are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the FTC their tax identification numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of the Order.

III. TURNOVER OF ASSETS HELD BY THIRD PARTIES

IT IS FURTHER ORDERED that in order to partially satisfy the monetary judgment set forth in Section II above, any law firm, financial or brokerage institution, escrow agent, title company, commodity trading company, automated clearing house, network transaction, business entity, or person served with a copy of this Order, that holds, controls, or maintains custody of any account or asset of, on behalf of, or for the benefit of, either Defendant, or has held, controlled, or maintained custody of any account or asset of, on behalf of, or for the benefit of, either Defendant, shall turn over such asset or all funds in

such account to the Commission within ten (10) business days of receiving notice of this Order by any means, including, but not limited to, via facsimile. Such turnover or payment shall be made by the methods specified in Subsection II.B. above.

Provided further, that NBE's payment processor, United Check Services, LLC, shall identify the name, address, any other contact information in its possession, and amount of all chargebacks and refunds made to IFE's or NBE's customers since May 14, 2008.

IV. LIFTING OF THE ASSET FREEZE

IT IS FURTHER ORDERED that the freeze on IFE's and NBE's assets shall remain in effect until the Commission has received all payments required by Sections II and III above.

V. PROHIBITION ON DISCLOSING CUSTOMER LISTS

IT IS FURTHER ORDERED that the Defendants, whether acting directly or through fictitious business names, and their officers, agents, employees, corporations, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from:

- A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, Social Security number, credit card number, debit card number, bank account number, e-mail address, or other identifying information of any person who submitted such information to Defendants in connection with the activities alleged in the FTC's Complaint; and
- B. Benefitting from or using the name, address, telephone number, Social Security number, credit card number, debit card number, bank account

number, e-mail address, or other identifying information of any person who submitted such information to Defendants in connection with the activities alleged in the FTC's Complaint.

Provided, however, that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order. *Provided further,* that Defendants shall turn over any electronic customer lists in their possession, custody, or control to the Commission for purposes of effectuating redress of consumer injury.

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, Defendants each 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/or provide entry during normal business hours to any business location in each such 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. posing as consumers and suppliers to Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and
- C. Defendants each 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 DEFENDANTS

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, Defendants shall notify the Commission of any changes in structure of any Corporate Defendant or any business entity that any 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 proposed change in the business entity about which a Defendant learns less than thirty (30) days prior to the date such action is to take place, such 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, Defendants each 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 they have complied and are complying with this Order. This report shall

include, but not be limited to:

1. A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;" and
 2. Any other changes required to be reported under Subsection A of this Section.
- C. Each Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defendant within fifteen (15) days of filing.
- D. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Order to the Commission, to the following address:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room NJ-2122
Washington, DC 20580
Re: FTC v. Integrity Financial Enterprises, LLC,
Civil Action No. 8:08-CV-914-T-27 MSS (M.D. Fla.).

Provided, that, in lieu of overnight courier, Defendants may send such reports or notifications by first-class mail, but only if Defendants contemporaneously send 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 each Defendant.

VIII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendants and their agents, employees, officers, corporations, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, where engaged in or assisting others engaged in the advertising, promotion, offering for sale, distribution or sale of any credit-related product, service, or program, are hereby restrained and enjoined from failing to create and/or 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, indirectly, or through any 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.”

IX. DISTRIBUTION OF ORDER

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

- A. Each Defendant must deliver a copy of this Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives 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 of the Section titled “Compliance Reporting.” For current personnel, delivery shall be within five (5) days of service of this Order upon such 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 of the Section titled “Compliance Reporting,” delivery shall be at least ten (10) days prior to the

change in structure.

- B. Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

X. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that each 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.

XI. RETENTION OF JURISDICTION

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

XII. SCOPE OF ORDER

IT IS FURTHER ORDERED that this Order resolves only claims against Defendants IFE and NBE, and does not preclude the Commission from initiating further action or seeking any remedy against any other persons or entities, including, without limitation, persons or entities who may be subject to portions of this Order by virtue of actions taken in concert or participation with Defendants, and persons or entities in any type of indemnification or contractual relationship with Defendants.

XIII. ENTRY OF THIS DEFAULT JUDGMENT

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 54(b), that there is no just reason for delay, and the Clerk of the Court immediately shall enter this

Default Judgment in the amount of **\$2,461,574** against Defendants Integrity Financial Enterprises, LLC and National Benefit Exchange, Inc., jointly and severally.

DONE AND ORDERED in chambers this 14th day of October, 2008.



JAMES D. WHITTEMORE
United States District Judge

Copies to:
Counsel of Record
Defendants