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U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

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

CV 12 -

2187

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONMAZ LTD.,

a New York corporation, d/b/a Blair-Mazzarella
Funeral Home, and

JAMES DONOFRIO,

individually and as an officer of the corporation,

Defendants.

Civil Action No.

COGAN, J.

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE AND OTHER RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("Commission"), for its Complaint alleges that:

1. Plaintiff brings this action under Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 56(a), to obtain monetary civil penalties, a permanent injunction, and other equitable relief for

Defendants' violations of the Commission's Trade Regulation Rule Concerning Funeral Industry Practices ("Rule" or "Funeral Rule"), 16 C.F.R. Part 453.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a). This action arises under 15 U.S.C. § 45(a)(1).

3. Venue is proper in this district under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b-c) and 1395(a).

PLAINTIFF

4. This action is brought by the United States of America on behalf of the Federal Trade Commission pursuant to 15 U.S.C. § 56. The Commission is an independent agency of the United States government given statutory authority and responsibility by the FTC Act, as amended, 15 U.S.C. §§ 41-58. The Commission is charged, inter alia, with enforcing Section 5 of the FTC Act, 15 U.S.C. § 45, which prohibits unfair and deceptive acts or practices in or affecting commerce. The Commission also is authorized by 15 U.S.C. § 57a(a)(1)(B) to issue trade regulation rules that "define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce (within the meaning of such section 5(a)(1))," and may obtain civil penalties for rule violations pursuant to 15 U.S.C. § 45(m)(1)(A).

DEFENDANTS

5. Defendant Donmaz Ltd. ("Donmaz") is a New York corporation with its principal place of business located within the Eastern District of New York at 723 Coney Island Avenue, Brooklyn, NY 11218. At all relevant times, Donmaz has done business as the Blair-Mazzarella

Funeral Home. In connection with the matters alleged herein, Donmaz is located in or transacts business in this District.

6. Defendant James Donofrio (“Donofrio”) is the President and the owner of Donmaz. His business address is the same as that of the corporate defendant. At all times material to this complaint, acting alone or in concert with others, Defendant Donofrio has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Defendant Donmaz, doing business as the Blair-Mazzarella Funeral Home, including the acts and practices set forth in this complaint. In connection with the matters alleged herein, Defendant Donofrio transacts or has transacted business in this District.

THE FUNERAL RULE

8. The Funeral Rule, promulgated by the Commission under Section 18 of the FTC Act, 15 U.S.C. § 57a, became effective in its entirety on April 30, 1984, and since that date has remained in full force and effect. Amendments to the Funeral Rule were promulgated by the Commission under Section 18 of the FTC Act, 15 U.S.C. § 57a, and became effective on July 19, 1994. The Funeral Rule is codified at 16 C.F.R. Part 453.

VIOLATIONS OF THE FUNERAL RULE

9. At all times material herein, Defendants have been a “funeral provider” as that term is defined in Section 453.1(i) of the Rule, 16 C.F.R. § 453.1(i), and have sold or offered to sell “funeral goods” and “funeral services,” as those terms are defined in Sections 453.1(h) and 453.1(j) of the Rule, 16 C.F.R. §§ 453.1(h) and 453.1(j).

10. In 2003, in connection with selling or offering to sell funeral goods and funeral services, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15

U.S.C. § 44, Defendants violated the Funeral Rule by, among other things, failing to provide to each person who inquires in person about the offerings or prices of caskets or alternative containers a printed or typewritten casket price list, upon beginning discussion of, but in any event before showing, caskets or alternative containers, in violation of 16 C.F.R. § 453.2(b)(2). After these violations occurred, Donofrio enrolled Donmaz in the Funeral Rule Offenders Program (“FROP”) in 2003 and received FROP training in how to comply with the Funeral Rule.

11. In June and September 2010, in connection with selling or offering to sell funeral goods and funeral services, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, Defendants violated the Funeral Rule by failing to provide to each person who inquires in person about the offerings or prices of caskets or alternative containers a printed or typewritten casket price list, upon beginning discussion of, but in any event before showing, caskets or alternative containers, thereby violating 16 C.F.R. § 453.2(b)(2).

CIVIL PENALTIES AND INJUNCTION

12. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), authorizes the Court to award monetary civil penalties of not more than \$16,000 for each such violation of the Funeral Rule.

13. Defendants have violated the Funeral Rule as described above with knowledge as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

14. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Funeral Rule constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

15. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that “unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful.”

16. Defendants sell and offer to sell funeral goods and funeral services in or affecting commerce as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

17. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction enjoining Defendants from violating the FTC Act.

PRAYER

WHEREFORE, Plaintiff requests that this Court, pursuant to 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), and 53(b), and pursuant to its own equitable powers:

(1) Enter judgment against Defendants and in favor of Plaintiff for the violations of the Funeral Rule and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), alleged in this Complaint;

(2) Award Plaintiff monetary civil penalties from Defendants for the violations of the Funeral Rule alleged in this Complaint;

(3) Enjoin Defendants from violating the Funeral Rule and Section 5 of the FTC Act, 15 U.S.C. § 45; and

(4) Award Plaintiff such additional relief as the Court may deem just and proper.

Dated: May 3, 2012

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

FOR THE FEDERAL TRADE COMMISSION:

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