



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

April 6, 2005

VIA EMAIL, FACSIMILE AND EXPRESS MAIL

United FreshStart
c/o Edward L. Clabaugh, Esquire
10217 SW Burton Drive
Vashon, WA 98070

Re: *Request to the Full Federal Trade Commission to Review the Ruling Denying the Petition to Quash Filed by United FreshStart* (hereinafter "Petitioner" or "UFS"),
File No. 042 3195

Dear Mr. Clabaugh:

This letter advises you of the Commission's disposition of UFS's Request to the Full Federal Trade Commission to Review the Ruling Denying the Petition to Quash the Civil Investigative Demand¹ ("CID") issued in conjunction with an investigation of UFS by the Federal Trade Commission (hereinafter "FTC" or "Commission"). The Request to Review is denied for the reasons stated below. Pursuant to the provisions of 16 C.F.R. § 2.7(f), the dates for Petitioner to comply with the CID remain April 8, 2005, with respect to interrogatory answers and the production of documents, and April 15, 2005, with respect to oral testimony.

The Commission issued a CID to UFS on December 21, 2004 with return dates of January 20, 2005 and February 11, 2005. On January 19, 2005, counsel for UFS timely filed the Petition to Quash. On March 24, 2005, Commissioner Harbour, acting as the Commission's delegate, *see* 16 C.F.R. § 2.7(d)(2), directed the issuance of the decision denying UFS's Petition to Quash because UFS had not shown any facts which entitled UFS to relief from the commandment of the CID. On March 31, 2005, UFS filed its Request to Review.

UFS requested relief from the CID on the grounds that: (1) the resolution authorizing the investigation only covers bankruptcy and financial counseling services, not foreclosure avoidance services and, thus, all the information sought is beyond the scope of the investigation authorized by the Commission; (2) the information sought is overly broad and not sufficiently related to the


¹ The phrase "Request to Review" shall be used to refer to UFS's request for Commission review of the prior decision of Commissioner Harbour which denied UFS's Petition to Quash Civil Investigative Demand (hereinafter "Petition to Quash").

subject of the investigation to survive scrutiny under the Fourth Amendment; (3) UFS cannot be compelled to respond to the CID in violation of its rights against self-incrimination under the Fifth Amendment; and (4) tax returns and related information are statutorily privileged pursuant to 26 U.S.C. § 6103. The factual basis for the Petition to Quash was provided by unsupported assertions of counsel. The Petition to Quash was not accompanied by any affidavits or other materials under oath.² The Request to Review does not supply any additional facts or legal arguments.

The Commission has reviewed the record created by UFS in support of its Petition to Quash and its Request to Review. That record does not support any of the claims for relief advanced by UFS. Accordingly, UFS has not carried its burden of proof establishing its entitlement to relief from the CID. *See Securities and Exchange Commission v. Brigadoon Scotch Distributing Co.*, 480 F.2d 1047, 1056 (1973), *cert. denied*, 415 U.S. 915 (1974) (holding that the petitioner has “the burden of showing that an agency subpoena is unreasonable . . . and, where, as here, the agency inquiry is authorized by law and the materials sought are relevant to the inquiry, that burden is not easily met.”).

For the reasons set forth in the Commission’s ruling of March 24, 2005 denying UFS’s Petition to Quash, **IT IS ORDERED THAT** such ruling should be, and it hereby is, **AFFIRMED**. Pursuant to 16 C.F.R. § 2.7(f), the dates for Petitioner to comply with the subject CID remain: April 8, 2005, with respect to interrogatory answers and document production; and April 15, 2005, with respect to oral testimony.

By direction of the Commission.


Donald S. Clark
Secretary

² The “Statement of Counsel for United FreshStart” accompanying UFS’s Petition to Quash was neither certified nor did it contain any factual representations in support of any claim for relief set forth in the Petition to Quash.