



WILLIAM E. KOVACIC
General Counsel

BARBARA ANTHONY
Regional Director
Northeast Region

CAROLE A. PAYNTER (CP4091)
Attorney for Plaintiff
Federal Trade Commission
One Bowling Green, Suite 318
New York, New York 10004
212.607.2813 (phone)
212.607.2822 (facsimile)

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CV 02 4500

PLATT, J.

WALL, M.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,)
)
Plaintiff,)
)
v.)
)
STAR CREDIT SERVICES, a New York corporation,)
and James Shovak,)
)
Defendants.)

Civ. No.

**COMPLAINT FOR PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("FTC" or "the Commission") for its
complaint against **STAR CREDIT SERVICES** and **James Shovak**, (collectively,
"Defendants"), 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 secure preliminary and permanent injunctive relief, restitution, rescission or reformation of contracts, disgorgement, and other equitable relief for Defendants’ deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Trade Regulation Rule, entitled “Telemarketing Sales Rule” (the “Telemarketing Sales Rule”), 16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.
3. Venue in the Eastern District of New York is proper under 15 U.S.C. § 53(b).

PLAINTIFF

4. Plaintiff Federal Trade Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58, as amended. The Commission is charged, *inter alia*, with enforcement of 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 Commission also enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing acts or practices. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the Telemarketing Sales Rule, and to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

DEFENDANTS

5. Defendant **James Shovak** is an officer, or has held himself out as an officer, of Star Credit Services. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Star Credit Services. He transacts or has transacted business in the Eastern District of New York.

6. Defendant **Star Credit Services** is a New York corporation, with its principal place of business at 321 Dante Court, Holbrook New York and a mail drop address of 10 East Main Street, East Islip, New York. Star Credit Services transacts or has transacted business in the Eastern District of New York.

COMMERCE

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

COURSE OF CONDUCT

8. Since at least June 2000, Defendants have advertised their services in newspapers with significant circulations, including the *New York Daily News*, *San Francisco Chronicle*, and the *Jersey Journal*, as well in local consumer publications, including *Pennysaver*. Defendants also maintain a website, www.starcreditservices.com, where they advertise their services and where consumers can apply for loans.

9. The company's website states in relevant part:

Star Credit Services has been helping people get loans and lines of credit since February, 1998. When a customer follows our instructions, they will ALWAYS (*emphasis in original*) get approved for something. Typical approval amounts are between \$4,000 and \$10,000 but can be higher as well....When you receive an approval, you may be able to have money in your hands within a week if you apply over the phone or the website...

and

If you have no credit, bad credit, bankruptcies, delinquencies, collections, liens, etc., Star Credit Services can help.

10. Defendants also claim to have a **"GUARANTEE/REFUND POLICY"**, specifically:

In our opinion, you will be approved for the amount you seek from these lenders. It is possible that not every one of them will approve you, but some definitely will. We guarantee it.

11. Defendants provide consumers with an "800" number that consumers can call to apply for the loan service. When consumers call the "800" number, they are asked to leave their contact information and the amount of loan they are seeking. Some time after that, Defendants send consumers a list of lenders from which they are allegedly qualified to receive either a cash loan or a line of credit. The qualifying letter also sets forth a fee that the consumer must pay to Defendants to obtain the loan. The fee ranges between \$100 and \$600 depending on the amount of the loan sought by the consumer. Defendants typically offer the consumer an "early bird fee" or discount rate, typically 50% off the regular rates stated above, if the consumer pays within a certain number of days. As intended by Defendants, many consumers, anxious not to lose such an offer, respond to this high pressure sales tactic and pay the "early bird fee" in order to get a better deal

12. After consumers pay the fee, Defendants send them a packet of materials providing details on the list of lenders and Defendants instruct consumers to apply for loans or lines credit.

13. Consumers have found that the list of lenders provided by Defendants typically contains names of large lenders such as Citibank, as well as small unknown companies offering secured lines of credit or offering a line of credit from their merchandise catalog. Many consumers who pay the advance fee for a loan have poor credit due to bankruptcies, delinquencies and similar problems, factors which Defendants claim on their website, will not hinder consumers efforts to obtain a loan. When they apply to the lenders on the Defendants' list, however, consumers find that they are rejected because of these very same credit problems.

14. Finally, when consumers seek a refund after failing to obtain a loan, they learn that Defendants' guaranteed refund is also a sham. When consumers apply for the refund they are told, for the first time, that they can only obtain a refund by providing a rejection letter from each and every lender on Defendants' list. Some consumers refuse to go through the process and cease contact with Defendants. Other consumers go through the process required by Defendants and submit their rejection letters to them. Even then, however, Defendants do not refund the consumers' fees, as they had guaranteed.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

16. Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT ONE

17. In numerous instances, in connection with the marketing of their advance fee loan service, Defendants or their employees or agents have represented, expressly or by implication, that after paying Defendants a fee, consumers are guaranteed to be approved for a loan or an extension of credit in a specified amount.

18. In truth and in fact, in numerous instances, after paying Defendants a fee, consumers are not approved for a loan or an extension of credit in a specified amount.

19. Therefore, the representation set forth in Paragraph 17 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

20. In numerous instances, in connection with the marketing of Defendants' advance fee loan service, Defendants or their employees or agents have guaranteed that consumers will receive a refund if they fail to be approved for a loan or a line of credit.

21. In truth and in fact, in numerous instances, Defendants do not issue refunds to consumers who fail to be approved for a loan or a line of credit, as guaranteed.

22. Therefore, the representation set forth in Paragraph 20 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE FTC'S TELEMARKETING SALES RULE

23. The Commission promulgated the Telemarketing Sales Rule pursuant to Section 3(a) of the Telemarketing Act, 15 U.S.C. § 6102(a). The Rule became effective on December 31, 1995.

24. The Telemarketing Sales Rule prohibits telemarketers and sellers from misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

25. The Telemarketing Sales Rule also prohibits telemarketers and sellers from, among other things, requesting or receiving payment of any fee or consideration in advance of obtaining or arranging a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit. 16 C.F.R. § 310.4(a)(4).

26. The FTC's Telemarketing Sales Rule additionally prohibits telemarketers and sellers from misrepresenting 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).

27. 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), violations of the Telemarketing

Sales Rule constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

28. Defendants are “sellers” or “telemarketers” engaged in “telemarketing,” as those terms are defined in the FTC Telemarketing Sales Rule. 16 C.F.R. §§ 310.2(r), (t) & (u).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT THREE

29. In numerous instances, in connection with the telemarketing of advance fee loans and lines of credit, Defendants or their employees or agents have misrepresented, directly or by implication, that after paying Defendants a fee, consumers will, or are highly likely to, receive a loan or an extension of credit.

30. Defendants have thereby violated Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT FOUR

31. In numerous instances, in connection with the telemarketing of advance fee loans and lines of credit, Defendants or their employees or agents have requested and received payment of a fee in advance of consumers obtaining a loan or a line of a credit when Defendants have guaranteed or represented a high likelihood of success in obtaining or arranging for the acquisition of a loan or a line of credit for such consumers.

32. Defendants have thereby violated Section 310.4(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(4).

COUNT FIVE

33. In numerous instances, in connection with telemarketing offers to arrange loans or extensions of credit, Defendants have misrepresented material aspects of the nature or terms of their refund, cancellation, exchange, or repurchase policies.

34. Defendants have thereby violated Section 310.3(a)(2)(iv) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iv).

CONSUMER INJURY

35. Consumers throughout the United States have suffered, and continue to suffer, substantial monetary loss as a result of Defendants' unlawful acts and practices. In addition, Defendants have been unjustly enriched as a result of their unlawful acts and practices. Absent injunctive relief, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public.

THIS COURT'S POWER TO GRANT RELIEF

36. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to issue a permanent injunction against Defendants' violations of the FTC Act and, in the exercise of its equitable jurisdiction, to order such ancillary relief as temporary and preliminary injunctions, consumer redress, rescission, restitution and disgorgement of profits resulting from Defendants' unlawful acts or practices, and other remedial measures.

37. 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 the Court to grant to the FTC such relief as the Court finds necessary to redress injury to consumers or other persons resulting from

Defendants' violations of the Telemarketing Sales Rule, including the rescission and reformation of contracts and the refund of money.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, 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, appointment of a receiver, and an order freezing assets;
2. Permanently enjoin Defendants from violating the FTC Act and the Telemarketing Sales Rule, as alleged herein;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the Telemarketing Sales Rule, including, but not limited to, rescission or reformation of contracts, restitution, refund of monies paid, and disgorgement of ill-gotten monies; and

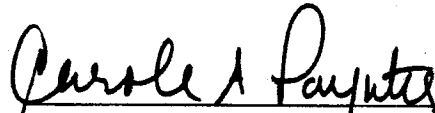
4. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: August 12, 2002

Respectfully Submitted,

WILLIAM E. KOVACIC
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Regional Director



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Attorney for Plaintiff
Federal Trade Commission
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