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NOTE: ^{Plaintiff} This order is to be mailed
by ~~noon~~ to all counsel and
pro se litigant immediately
upon receipt.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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

Civ. No. CV-02-4500
Platt, J.
Wall, M.J.

STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION

Plaintiff, the Federal Trade Commission ("Commission"), filed its complaint on August 14, 2002 for a permanent injunction and other relief, including restitution to consumers, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57(b), and Section 6(b) of the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6105(b), charging Defendant Star Credit Services, Inc., and

Defendant James Shovak ("Defendants") with violating Section 5 of the FTC Act and the FTC's Trade Regulation Rule entitled the "Telemarketing Sales Rule," 16 C.F.R. Part 310. On September 24, 2002, the Court entered a Stipulation and Order of Preliminary Injunction:

Upon the consent of the parties, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and all parties hereto;
2. Venue is proper as to all parties in the Eastern District of New York;
3. The activities of Defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44;
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 57(b), and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b);
5. Defendants have entered into this Order freely and without coercion. Defendants further acknowledge that they have read the provisions of this Order and are prepared to abide by them;
6. Defendants waive all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996);
7. Defendants waive all rights to seek judicial review or otherwise to challenge or contest the validity of this Order, and further waive any claim Defendants may have against the Commission, or its employees and agents;
8. Entry of this Order is in the public interest; and

9. This Order is remedial in nature and shall not be construed as the payment of a fine, penalty, punitive assessment or forfeiture.
10. The parties have conferred through counsel, and have agreed to settle this action without adjudication or admission of any issue of fact or law and without Defendants admitting fault or liability or any wrongdoing whatsoever in connection with the violations alleged in the Complaint.

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Credit-related goods or services" means any good or service which is advertised, offered for sale, or sold to consumers as a method by which consumers may establish or obtain any extension of credit, including but not limited to, credit cards, loans, or financing; or as a method to restore, repair, or improve derogatory information contained in consumers' credit reporting files; or as a method to consolidate or liquidate debts.
2. "Telemarketing," "telemarketer," and "seller" are defined as in Section 310.2 of the Telemarketing Sales Rule, 16 C.F.R. § 310.2.
3. "Defendants" means corporate Defendant Star Credit Services, Inc. and individual Defendant James Shovak and each of them, and their successors, assigns, directors, officers, agents, servants, employees, salespersons, corporations, subsidiaries, affiliates, and other persons directly or indirectly under the control of any Defendant or in active concert or participation with any Defendant who receive actual notice of this Order by personal service, facsimile or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device.

4. "Plaintiff" means the Federal Trade Commission.

ORDER

I. PROHIBITED BUSINESS PRACTICES

IT IS FURTHER ORDERED that in connection with the advertising, marketing, promoting, offering for sale, or sale of credit-related goods and services, or assisting others engaged in the advertising, marketing, promoting, offering for sale, or sale of credit-related goods or services, Defendants are hereby permanently restrained and enjoined from:

- A. Misrepresenting, directly or indirectly, or expressly or by implication, either orally or in writing:

1. That, after payment of a fee to Defendants, consumers are guaranteed or are highly likely to be approved for a loan or an extension of credit in a specified amount;
2. That, after payment of a fee to Defendants, consumers are guaranteed to receive a refund if they fail to be approved for a loan or an extension of credit;
3. The nature or terms of Defendants' refund or cancellation policies; and
4. Any other fact material to a consumer's decision to pay for any credit-related goods or services;

- B. Violating, directly or indirectly, the FTC's Telemarketing Sales Rule, including but not limited to:

1. Misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;
2. Requesting or receiving payment of a fee in advance of consumers obtaining a loan or an extension of credit when Defendants have guaranteed or represented a high likelihood of success in obtaining or arranging for the acquisition of a loan or an extension of credit for such consumers; and
3. Misrepresenting any material aspect of the nature or terms of their refund, cancellation, exchange, or repurchase policies.

II. USE OF ALIASES

IT IS FURTHER ORDERED that in connection with telemarketing, except as authorized under the Telemarketing Sales Rule, Defendant Shovak is hereby permanently restrained and enjoined from using any aliases, pen names, pseudonyms, or assumed business names that misrepresent his true identity in the course of business dealings or in publicly filed documents.

III. CUSTOMER LISTS

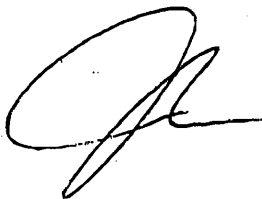
IT IS FURTHER ORDERED that Defendants are hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, Social Security Number, or other identifying information of any person who paid any money to Defendants, at any

time prior to the date this Order is entered, in connection with the purchase of the credit-related goods and services referenced in the 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.

IV. CONSUMER REDRESS

IT IS FURTHER ORDERED that:

- A. Defendants shall pay to the Commission consumer redress in the amount of all funds which are currently frozen pursuant to the "Stipulated Preliminary Injunction Order with Asset Freeze and Other Relief" entered on September 24, 2002, which totals approximately, One Hundred and Twenty Thousand Dollars (\$120,000.00). Said payment shall be effected pursuant to the terms of Section VI ("Assets Held by Third Parties") of this Order.
- B. All funds paid pursuant to this Section shall be deposited into a fund administered by the Commission or its designated agent to be used for equitable relief including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress 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 the Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement.



Defendants shall have no right to challenge the Commission's choice of remedies under this Section;

- C. The Commission and Defendants acknowledge and agree that no portion of this judgment for equitable monetary relief shall be deemed a fine, penalty, punitive assessment or forfeiture; and
- D. For purposes of any subsequent proceedings to enforce payments required by this Section IV or Section VII of the Order including, but not limited, a non-dischargeability complaint filed in a bankruptcy proceeding, defendants waive any right to contest any allegations in the Commission's Complaint, dated August 14, 2002;
- E. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they have done so already, to furnish to the Commission their respective taxpayer identifying numbers (social security numbers or employer identification numbers) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government;
- F. Defendant Shovak is further required, unless he has done so already, to provide the Commission with clear, legible and full-size photocopies of all valid driver's licenses he possesses, which will be used for collection, reporting and compliance purposes, within 10 days of the Court's entry of this order.



V. LIFT OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze on the assets of Defendants instituted as ordered by pursuant to the "Stipulated Preliminary Injunction Order with Asset Freeze and Other Relief," entered by the Court on September 24, 2002, will be lifted on entry of this Order.

VI. ASSETS HELD BY THIRD PARTIES

IT IS FURTHER ORDERED that the Long Island Commercial Bank which holds, controls, or maintains custody of Defendants' assets, shall transfer all funds held in account number 0710000206 (account of James Shovak) and account number 0730000299 (account of Star Credit Services, Inc.) to the Commission by electronic fund transfer in accordance with the instructions provided by the Commission to effectuate such transfer, within ten (10) business days of receiving a copy of this Order.

VII. RIGHT TO REOPEN

IT IS FURTHER ORDERED that, by agreeing to the Order, Defendants reaffirm and attest to the truthfulness, accuracy and completeness of the financial statements that were prepared by defendants and provided to the Commission on August 20, 2002 (designated the "Financial Statements"). The Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' financial conditions as represented in their Financial Statements referenced above, which contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Order. If, upon notice and motion by the Commission, this Court finds that any Defendant failed to disclose any material asset the

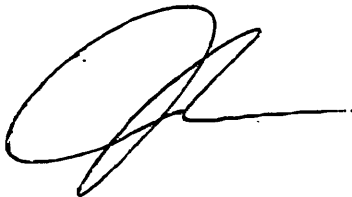


value of which exceeds \$1,000, materially misrepresented the value of any asset, or made any other material misrepresentation or omission from the Financial Statements, the Court shall enter a judgment against defendants in favor of the Commission in the amount of NINE HUNDRED AND FIFTY THOUSAND DOLLARS (\$950,000.00), and the entire amount, less any redress amounts previously paid, shall become immediately due and payable. *Provided, however,* that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court; and, *provided further,* that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

VIII. MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that Defendant Shovak, in connection with any business where he is the majority owner of the business or directly or indirectly manages or controls the business, and where the business is engaged in the sale of goods or services to consumers, is hereby permanently restrained and enjoined from:

- A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Paragraph I of this Order. Such steps shall include, at a minimum, the following: (1) listening to a representative sample of the oral representations made by persons engaged in sales or other customer service functions;
- (2) establishing a procedure for receiving and responding to consumer complaints;
- and (3) ascertaining the number and nature of consumer complaints regarding



transactions in which each employee or independent contractor is involved;
provided that this Paragraph does not authorize or require Defendants to take any steps that violate any federal, state, or local laws;

- B. Failing promptly to investigate fully any consumer complaint received by any business to which this Paragraph applies; and
- C. Failing to take corrective action with respect to any sales person whom any Defendant or representative determines is not complying with this Order, which may include training, disciplining, and/or terminating such sales person;

Provided, however, that this Paragraph VIII does not authorize or require a Defendant to take any action that violates any federal, state, or local law.

IX. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

- A. Within ten business (10) days of receipt of written notice from a representative of the Commission, Defendant Star Credit Services, Inc., and Defendant James Shovak each shall submit additional written reports, 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 such Defendant's possession, or under such Defendant's direct or indirect control, to inspect the business operations;



B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures proscribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
2. Posing as consumers and suppliers to: Defendant Star Credit Services, Inc., Defendant Shovak, or to their employees, or any other entity managed or controlled in whole or in part by Defendant Star Credit Services, Inc. and/or Defendant Shovak, without the necessity of identification or prior notice;

Provided 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)).

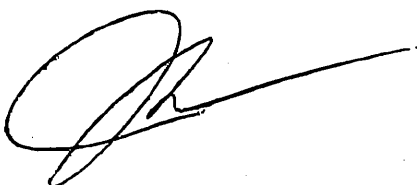
C. Defendant Star Credit Services Inc. and Defendant Shovak shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

X. COMPLIANCE REPORTING BY DEFENDANT

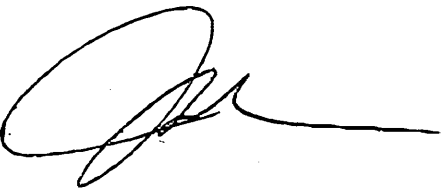
IT IS FURTHER ORDERED that, in order that compliance with the provisions of this

Order may be monitored:

A. For a period of three (3) years from the date of entry of this Order,



1. Defendant Shovak shall notify the Commission of the following:
 - a. Any changes in Defendant's residence, mailing addresses, and telephone numbers, within ten business (10) days of the date of such change;
 - b. Any changes in Defendant's employment status (including self-employment) within ten business (10) days of the date of such change. Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of Defendant's duties and responsibilities in connection with the business;
 - c. Any changes in Defendant's name or use of any aliases or fictitious names; and
2. Defendant Star Credit Services, Inc., and Defendant Shovak shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the defendant learns less than thirty (30) days prior to the date such



action is to take place, 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, Defendant Star Credit Services Inc., and Defendant Shovak each shall provide a written report to the Commission 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. Any changes required to be reported pursuant to subparagraph (A) above;
2. A copy of each acknowledgment of receipt of this Order obtained by Defendants pursuant to Paragraph XIII;

- C. For the purposes of this Order, Defendant Shovak shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Barbara Anthony
Regional Director, Northeast Region
Federal Trade Commission
One Bowling Green, Suite 318
New York, NY 10004

Re: FTC v. Star Credit Services, Inc., Civil Action No. CV-02-4500 (TCP)

- D. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with Defendant Shovak.

XI. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order, Defendant Shovak, in connection with any business where Defendant Shovak is the majority owner of the business or directly or indirectly manages or controls the business, and where the business is engaged in the sale of products or services to consumers, his agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and 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; and



- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

XII. DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order:

- A. Defendant Star Credit Services, Inc. shall deliver a copy of this Order to all principals, officers, directors, managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Defendant Star Credit Services, Inc. shall deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.
- B. Defendant Shovak shall deliver a copy of this Order to the principals, officers, directors, managers and employees under Defendant Shovak's control for any business that (a) employs or contracts for personal services from Defendant Shovak and (b) has responsibilities with respect to the subject matter of this Order. Defendant Shovak shall secure from each such person a signed and dated statement acknowledging receipt of the Order within thirty (30) days after the date of service of the Order or the commencement of the employment relationship.

XIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

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.

XIV. INDEPENDENCE OF OBLIGATIONS

IT IS FURTHER ORDERED that the expiration of any requirements imposed by this Order shall not affect any other obligation arising under this Order.

XV. COSTS AND ATTORNEY'S FEES

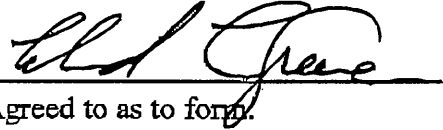
The parties, by their respective counsel, hereby consent to the terms and conditions of the Order as set forth above and consent to the entry thereof. Each party shall bear its own costs and attorney's fees.



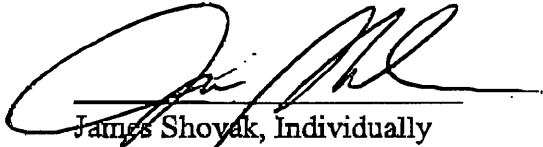
XVI. RETENTION OF JURISDICTION

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

FOR DEFENDANTS:

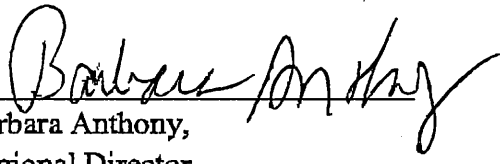


Agreed to as to form.
Leland Greene, Esq.
Goldweber & Hershkowitz
1565 Franklin Avenue
Mineola, New York 11501

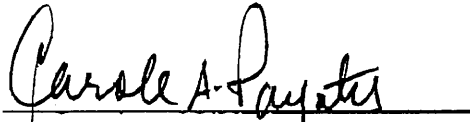


James Shoyak, Individually
and as a Corporate Officer,
Star Credit Services, Inc.
321 Dante Court
Holbrook, New York 11741-3840

FOR PLAINTIFF:

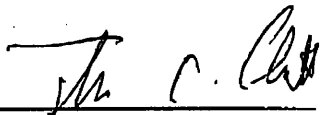


Barbara Anthony,
Regional Director



Carole A. Paynter (CP4091)
Ann F. Weintraub (AW 3080)
Federal Trade Commission
Northeast Region
One Bowling Green, Suite 318
New York, New York 10004
(212) 607-2813

SO ORDERED, this 30th day of July, 2003.



Thomas C. Platt
UNITED STATES DISTRICT JUDGE

