

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division

FEDERAL TRADE COMMISSION

and

**STATE OF NORTH CAROLINA *ex rel.*
MICHAEL F. EASLEY,**

Plaintiffs,

v.

**RESORT SALES GROUP, INC.,
a Georgia Corporation,**

**CRUISE LINK TRAVEL, INC.,
a Georgia Corporation,**

**DESIGN TRAVEL OF ALTAMONTE SPRINGS,
INC.,
a Florida Corporation,**

**MARGARET KATHERINE ALEXANDER,
individually and as a former officer of
Resort Sales Group, Inc.,**

**SETH MILLER, a.k.a. SETH CARRIGAN,
individually and as an officer of Resort
Sales Group, Inc., Design Travel of
Altamonte Springs, Inc., and Check
America Corporation,**

and

**STEVEN BREWER, individually and as an
officer of Resort Sales Group, Inc.,
Design Travel of Altamonte Springs, Inc.,
and Check America Corporation,
Defendants.**

Plaintiffs, the Federal Trade Commission, ("FTC" or "the Commission"), and the State of North Carolina, for their complaint, allege:

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

6102(c), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

4. Venue in the Western District of North Carolina is proper under 15 U.S.C. §§ 53(b) and 6103(a) and 28 U.S.C. § 1391(b) and (c).

PLAINTIFFS

5. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* 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, including assisting and facilitating deceptive practices. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and violations of the Telemarketing Sales Rule, in order to secure such equitable relief as may be appropriate in each case, and to obtain consumer redress. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

6. Plaintiff, the State of North Carolina, is one of fifty sovereign states of the United States. Michael Easley is the duly elected Attorney General acting for plaintiff, and brings this action in his official capacity. The State of North Carolina is authorized to initiate federal district court proceedings to enjoin telemarketing that violates the Commission's Telemarketing Sales Rule, and in each such case, to obtain damages, restitution, and other compensation on behalf of residents of the State of North Carolina, and to obtain such further relief as the court may deem appropriate. 15 U.S.C. § 6103(a).

DEFENDANTS

7. Defendant Resort Sales Group, Inc. ("RSG") is a Georgia corporation with its principal place of business at 5801 Executive Center Drive, Suite 219, Charlotte, North Carolina 28212. Its previous address was 4822 Albemarle Road, Charlotte, North Carolina 28205. RSG transacts or has transacted business in the Western District of North Carolina and elsewhere.

8. Defendant Cruise Link Travel, Inc. ("Cruise Link") is a Georgia corporation. Its principal

place of business is or was at 736 Johnson Ferry Road, Suite C-250, Marietta, Georgia 30067. Cruise Link transacts or has transacted business in the Western District of North Carolina and elsewhere.

9. Defendant Design Travel of Altamonte Springs, Inc. ("DT-Altamonte") is a Florida corporation with its principal place of business at 258 East Altamonte Road, Altamonte Springs, Florida 32701. It is a subsidiary of defendant RSG. DT-Altamonte transacts or has transacted business in the Western District of North Carolina and elsewhere.

10.

North Carolina and elsewhere.

14. Defendant Steven Brewer resides at 944 Charing Cross Circle West, Lake Mary, Florida 32746. He is an officer, director, or owner of defendants RSG, DT-Altamonte, and CAC. 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 defendants RSG, Cruise Link, DT-Altamonte, and CAC. He transacts or has transacted business in the Western District of North Carolina and elsewhere.

COMMERCE

15. At all times relevant to this complaint, the defendants have maintained a substantial course of trade or business in the offering for sale and sale of vacations to the Bahamas and Florida over the telephone, through the mail, and via facsimile, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' COURSE OF CONDUCT

16. Since at least 1995, the defendants have operated a single business enterprise to defraud consumers throughout the United States and abroad through the deceptive telemarketing of vacations. In operating their single business enterprise, defendants share officers, employees, offices, and a common goal

account; answering consumers' questions; mailing vacation packages with reservation forms to consumers who have purchased the vacation; and making reservations for customers who have paid the required amounts for their travel and accommodations. Defendants' assistance enables their telemarketing clients to sell defendants' vacations to consumers.

18. Defendants and their client telemarketers contact consumers in several ways: 1) "cold calling" i.e., a salesperson from a telemarketing boilerroom calls consumers and tells them they have "won" a vacation; 2) direct mail solicitations inform consumers that they have been selected to receive a "World Class Florida/Caribbean Vacation" including a "luxury" cruise, or a "Spectacular Cruise Vacation" and 3)

arrange for the processing of the "front end" fees through various merchant accounts to which they have access, if consumers make the initial payment by credit card. In the alternative, defendant Check America Corporation creates bank checks with which the defendants debit the consumers' checking accounts.

22. Consumers do not receive a vacation for the money charged to their credit cards or debited from their bank accounts. Instead, defendants send them a confirmation package containing a short video, some advertisements, and "reservation request forms" for the Bahamas Cruise and the central Florida vacation. In order to book the cruise or visit central Florida, consumers learn they must pay \$198 or \$298 to defendants in order to take the vacation for which they thought they had already paid. Consumers send the required additional payment, or the "back end" fee as it is known in the travel certificate industry, to defendants. The reservation forms falsely state that the "back end" fee is for "port charges, reservation fees, service charges and taxes." In fact, the "back end" fee pays for transport to the Bahamas and accommodations in the Bahamas and Florida.

23. Upon discovering that they must pay more to take the vacation they thought they had already purchased, many consumers attempt to cancel their vacation and return their package to defendants.

24. Those consumers who actually take the vacation after paying the unexpected "back end" fee discover that the vacation is not the "World Class" vacation they were promised. Consumers discover

travel and accommodations for which they have already paid the defendants.

THE FEDERAL TRADE COMMISSION ACT

26. 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.”

VIOLATION OF SECTION 5 THE FTC ACT

COUNT I

(By Plaintiff Federal Trade Commission)

27. In numerous instances since at least 1995, in connection with the telemarketing of vacations, defendants, have represented, expressly or by implication, that consumers who pay defendants the amount specified in the initial sales call will receive a vacation.

28. In truth and fact, in numerous instances, consumers who pay defendants the amount specified in the initial sales call do not receive a vacation. All consumers receive for the payment is the option to purchase a vacation. In order to receive the vacation, the consumer must pay an additional amount to defendants.

29. Therefore, defendants' representation as set forth in Paragraph 27 is false and misleading and constitutes a deceptive act or practice in violation of which they have already paid the defendants.

. ." 16 C.F.R. § 310.3(a)(1)(i).

33. The Telemarketing Sales Rule also prohibits sellers and telemarketers from "[m]isrepresenting, directly or by implication, . . . [a]ny material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of the sales offer" 16 C.F.R. § 310.3(a)(2)(iii).

34. The Telemarketing Sales Rules also prohibits any person from providing substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice in violation of the Telemarketing Sales Rule, such as the acts or practices described in Paragraphs 32-33. 16 C.F.R. § 310(b).

35. 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).

VIOLATIONS OF THE FTC TELEMARKETING SALES RULE

COUNT II

(By Plaintiffs Federal Trade Commission and State of North Carolina)

36. In numerous instances, in connection with telemarketing vacations to the Bahamas and Florida, defendants have failed to disclose in a clear and conspicuous manner, before a customer pays, the total costs of the telemarketed vacation, in violation of Section 310.3(a)(1)(i) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(i).

COUNT III

(By Plaintiffs Federal Trade Commission and State of North Carolina)

37. In numerous instances, in connection with telemarketing vacations to the Bahamas and Florida, defendants have represented, directly or by implication, that consumers would receive a vacation worth much more than they were paying. In fact, in numerous instances, consumers did not receive a

vacation worth much more than they were paying, and actually received a vacation worth much less than they paid, or did not receive a vacation at all.

38. Therefore, defendants have misrepresented, directly or by implication, material aspects of the performance, efficacy, nature or central characteristics of the offered vacations in violation of Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT IV

(By Plaintiffs Federal Trade Commission and State of North Carolina)

39. In numerous instances, in connection with telemarketing vacations to the Bahamas and Florida, defendants' telemarketing clients: 1) have failed to disclose, in a clear and conspicuous manner before the customer pays, the total costs of the vacation; and 2) have misrepresented that consumers will receive a vacation worth much more than they are paying. Defendants' telemarketing clients have thereby violated Sections 310.3(a)(1)(i) and 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. §§ 310.3(a)(1)(i) and 310.3(a)(2)(iii).

40. In numerous instances, in connection with telemarketing vacations to the Bahamas and Florida, defendants' telemarketing clients: 1) have failed to disclose, in a clear and conspicuous manner before the customer pays, the total costs of the vacation; and 2) have misrepresented that consumers will receive a vacation worth much more than they are paying. Defendants' telemarketing clients have thereby violated Sections 310.3(a)(1)(i) and 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. §§ 310.3(a)(1)(i) and 310.3(a)(2)(iii).

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

42. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to grant to the FTC injunctive and other equitable relief, including consumer redress, rescission of contracts, restitution, and disgorgement, to prevent and remedy any violations of any provision of law enforced by the Commission.

43. 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.

44. Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), authorizes the Court to grant to the State of North Carolina, on behalf of its residents, injunctive and other equitable relief, including damages, restitution, other compensation, and such further and other relief the Court deems appropriate.

45. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by defendants' law violations.

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(h) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, and plaintiff State of North Carolina pursuant to Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), and the Court's own equitable powers, request that the Court:

1. Award plaintiffs 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 each defendants' assets;

2. Permanently enjoin the 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 the 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 plaintiffs the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully Submitted,

STEPHEN CALKINS
General Counsel

Collot Guerard
Elizabeth Grant
Room 238
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
(202) 326-3338 (o)
(202) 326-3395 (fax)
Attorneys for Plaintiff
Federal Trade Commission

MICHAEL F. EASLEY
Attorney General of North Carolina

Harriet F. Worley
State Bar No. 16901
North Carolina Department of Justice
114 West Edenton Street
PO Box 629
Raleigh, North Carolina 27602
919-716-6014
Attorney for Plaintiff
State of North Carolina

Date: