

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

_____)	
FEDERAL TRADE COMMISSION,)	
)	
and	)	CIVIL ACTION NO.
)	
STATE OF NEVADA <u>ex rel.</u>)	
FRANKIE SUE DEL PAPA,	)	STIPULATED FINAL
Attorney General,	)	JUDGMENT AND ORDER
	)	FOR PERMANENT INJUNCTION
Plaintiffs,	)	AND CONSUMER REDRESS
	)	AS TO CONSUMER MONEY
v.	)	MARKETS, INC. AND
	)	ANA S. MILLER
CONSUMER MONEY MARKETS, INC., et al.)	
)	
Defendants.)	
_____)	

Plaintiffs, the Federal Trade Commission and the State of Nevada ("Plaintiffs"), have filed their complaint pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC

Order for Permanent Injunction and Consumer Redress ("Order") by this Court in order to resolve all matters of dispute between them in this action.

NOW, THEREFORE, Plaintiff and Defendants having requested the Court to enter this Order, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and of the parties consenting hereto.
2. Venue is proper as to all parties in the District of Nevada.
3. The activities of the defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. This is an action by Plaintiffs instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, TILA, 15 U.S.C. §§ 1601-1666j, as amended, and the Nevada Deceptive Trade Practices Act, NRS § 598. Pursuant to these sections of the FTC Act, the Telemarketing Act, TILA, and the Nevada Deceptive Trade Practices Act, Plaintiffs have the authority to seek the relief they have requested.
5. The Complaint states a claim upon which relief may be granted against Defendants under Sections 5 and 19 of the FTC Act, 15 U.S.C. §§ 45 and 57b, the Telemarketing Sales Rule, 16 C.F.R. Part 310, TILA and its implementing Regulation Z, 12 C.F.R. §226, and the Nevada Deceptive Trade Practices Act, NRS § 598.
6. Plaintiffs, by and through their counsel, and Defendants, by and through their counsel, have agreed to entry of this Order by this Court, without trial or adjudication of any issue of fact or law. Defendants declare that, prior to, and in connection with, the execution of this Order, they have been apprised of sufficient information, either through experts, legal counsel or

other sources of their own selection, so as to exercise their judgment intelligently in deciding whether to execute this Order. This Order does not and shall not be interpreted to constitute an admission by Defendants that they have violated the FTC Act, the Telemarketing Act, the Truth in Lending Act, or any regulations implemented thereunder.

7. The parties agree that this Order resolves all matters of dispute between them arising from the allegations in the Complaint in this matter, up to the date of entry of this Order. Plaintiffs, however, retain the right to enforce the terms of the Order. For purposes of N.R.S. § 598.0999, this Order shall be deemed an Order of the Court. This Court retains jurisdiction of this matter for purposes of construction, modification and enforcement of this Order. Defendants have waived all rights to seek appellate review of, or otherwise challenge or contest the validity of this Order.

8. Defendants have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412.

9. Entry of this Order is in the public interest.

DEFINITIONS

A. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes,

telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee or independent contractor in an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any item, good, service, partnership interest, trust interest or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing. Provided, however, that the term “telemarketing” shall not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumers solicited.

PROHIBITED BUSINESS ACTIVITIES

This Order having been reviewed by the Court and having been found to have been entered into in good faith and to be in all respects just, reasonable, equitable, and adequate to protect the public from the occurrence in the future of the conduct alleged in the Complaint,

I.

CONDUCT PROHIBITIONS

IT IS THEREFORE ORDERED that Defendants and their officers, agents, servants, employees, salespersons, attorneys, corporations, subsidiaries, affiliates, successors, assigns, and other entities or persons directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained

and enjoined from:

A. Falsely representing, in any manner, expressly or by implication, that Consumer Money Markets, Inc. ("CMM") or any other entity provides a general purpose credit card or other form of credit that can be used without restriction for general purchasing.

B. Falsely representing, in any manner, expressly or by implication, that consumers can obtain cash advances with respect to any credit card, charge card, revolving credit line, or other credit offering;

C. Falsely representing, in any manner, expressly or by implication, that cash advances can be taken in the same or similar manner as cash advances on a general purpose credit card or other revolving credit line.

D. Falsely representing, in any manner, expressly or by implication, any aspect of any cash advance offer, including but not limited to, (1) misrepresenting the amount of money consumers typically may receive per cash advance, (2) misrepresenting the number of cash advances that may be taken at any one time in a given month or other relevant time period, (3) misrepresenting the number or percentage of customers who actually receive or are permitted to receive cash advances of various amounts, whether through the misleading use of such phrases as "up to X dollars," "maximum X dollars," or other means, (4) misrepresenting the amount of interest, finance charges, or other fees per cash advance, and (5) misrepresenting when cash advances must be repaid.

E. Failing to comply with the requirements of the Truth in Lending Act, 15 U.S.C. §§ 1601-1666j, as amended, and its implementing Regulation Z, 12 C.F.R. §226, as amended, including but not limited to, advertising, promoting, or extending payday loans or other consumer credit and failing to disclose the applicable annual percentage rate ("APR"), finance charges,

amounts financed, and total payments, as required thereunder. *Provided further*, that Defendants, when advertising, promoting, or extending payday loans in connection with prepaid memberships or prepaid credit offerings, shall disclose the APR and finance charges clearly and prominently immediately adjacent to the most prominent reference to the payday loans, however described (e.g., “cash on demand,” “cash advance”).

F. Falsely representing, in any manner, expressly or by implication, the price, quality, quantity, or other material attributes of catalog products or of other goods and services that may be purchased by consumers upon buying a prepaid membership or prepaid credit offering.

G. Failing to disclose, clearly and prominently, in connection with the advertising, promotion, or extension of any prepaid membership or prepaid credit offer, the following information: (1) the membership fee, annual fee, or other fee that must be paid to use the membership privileges or credit offer, (2) any material purchasing restrictions, including but not limited to, requirements that credit be used only for purchasing catalog goods, (3) any down payment requirements to purchase goods or services with any offered credit, and (4) material differences between any cash advance offered and cash advances typically available on general credit cards or charge cards, including but not limited to, the numbers of loans available per month or other relevant period, the duration of each loan, the proportion of the loan that must be repaid before taking out new loans, and associated fees.

H. Violating the Telemarketing Sales Rule, 16 C.F.R. Part 310, including but not limited to (1) misrepresenting, directly or by implication, any material aspect of the nature or central characteristics of services that are the subject of the sales offer, 16 C.F.R.

§ 310.3(a)(2)(iii); (2) failing to disclose in a clear and conspicuous manner, before payment is received, all material restrictions, limitations, or conditions to purchase, receive, or use the goods

or services that are the subject of the sales offer, 16 C.F.R. § 310.3(a)(1)(ii); (3) if the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, failing to disclose in a clear and conspicuous manner, before payment is received, a statement informing the consumer that this is the seller's policy, 16 C.F.R. § 310.3(a)(1)(iii); and (4) obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's "express verifiable authorization" as that term is defined in section 310.3(a)(3) of the TSR, 16 C.F.R. § 310.3(a)(3).

I. Operating as a telemarketer without duly registering and posting a bond or other security with the Nevada Consumer Affairs Division, to the extent required by the Nevada Deceptive Trade Practices Act, NRS Chapters 598 and 599.

J. Misrepresenting any material fact in connection with the offer or sale of any goods, services, or investments.

II. REDRESS AND PAYMENT OF COSTS

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered against defendants Consumer Money Markets, Inc. and Ana S. Miller, jointly and severally, in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

B. Defendants shall pay this judgment to the Commission or its designees within five days of notice of entry of this Order. In the event of any default on any obligation to make payment under this Part, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. The funds paid by Defendants to Plaintiffs pursuant to this Part shall be deposited into a redress fund, administered by Plaintiffs, to be used for equitable relief,

including but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. Plaintiffs in their sole discretion may use a designated agent to administer consumer redress. If Plaintiffs determine, in their sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury or to the Office of the Attorney General of Nevada in lieu of redress, or shall be used to educate consumers affected by the practices in the Commission's Complaint in this matter. Plaintiffs and Defendants acknowledge and agree that this judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture. Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Federal Trade Commission their taxpayer identifying numbers (social security number or employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of such persons' relationship with the government.

III. RIGHT TO REOPEN

IT IS FURTHER ORDERED that Plaintiffs' agreement to this Order is expressly premised upon the truthfulness, accuracy and completeness of the Financial Statement for Consumer Money Markets, Inc. signed by Ana S. Miller on March 29, 1999; 1998 federal tax return for Consumer Money Markets, Inc. (Form 1120S) signed by Ana S. Miller on March 3, 1999; and Financial Statement for Ana S. Miller dated July 6, 1999. The foregoing statement contains material information upon which Plaintiffs relied in negotiating and agreeing to this Order. If, upon motion by Plaintiffs, this Court finds that this financial statement failed to disclose any material asset, or materially misrepresented the value of any asset, or contained any other material misrepresentation or omission, Plaintiffs may request that the Order herein be reopened

for the purpose of providing for the payment by Defendants of redress and/or disgorgement of \$12,000,000 in the case of Defendant Consumer Money Markets, Inc., and of \$468,000 in the case of Ana S. Miller. *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 Part are in addition to and not in lieu of any other civil or criminal remedies as may be provided by law, including any other proceedings Plaintiff may initiate to enforce this Order. Solely for the purposes of reopening and enforcing this Order under this Part, Defendants

- (2) The business is engaged in the sale to consumers of any product, service, charity, or investment.

Defendants, at their option, may redact from such copies of the Order the specific dollar amounts of the redress owed (Part II), and of the potential judgments if the judgment is reopened due to material misrepresentations regarding Defendants' finances (Part III).

B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of Plaintiffs, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in Subsection (A) of this Part.

VI.

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complaints.

Provided that this Part 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 Part applies; and

C. Failing to take corrective action with respect to any sales person whom defendant determines is not complying with the requirements of Part I of this Stipulated Order, which may include training, disciplining, and/or terminating such sales person.

the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. 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. The businesses subject to this Part shall retain

Order may be monitored:

A. For a period of two (2) years from the date of entry of this Order, each Defendant shall notify Plaintiffs of the following:

(1) Any changes in Defendant's residences, mailing addresses, and telephone numbers, within thirty (30) days of the date of such change;

(2) Any changes in that Defendant's employment status (including self-employment) within thirty (30) days of such change. Such notice shall include the name and address of each business that Defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of that Defendant's duties and responsibilities in connection with the business or employment.

B. For a period of two (2) years from the date of entry of this Order,

(1) Defendants shall notify Plaintiffs of any proposed change in the structure of Defendant Consumer Money Markets, Inc., or any other business entity owned or controlled by Defendants, such as the creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate names or addresses, or any other change that may affect compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any proposed change; *provided*, however, that, with respect to any proposed change in the corporation about which Defendants learn less than thirty (30) days prior to the date such action is to take place, Defendants shall notify Plaintiff as soon as is practicable after learning of such proposed change;

C. One hundred eighty (180) days after the date of entry of this Order, Defendants shall provide a written report to Plaintiffs, sworn to under penalty of perjury, setting forth in detail

amounts; and the number of those persons who used the cash advance service and the total dollar amount.

D. Upon written request by a representative of either Plaintiff, Defendants shall submit additional written reports (under oath, if requested) and produce documents on thirty (30) days' written notice with respect to any conduct subject to this Order;

E. For the purposes of this Order, Defendants shall, unless otherwise directed by Plaintiff's authorized representatives, mail all written notifications to Plaintiff to:

Tracey J. Brierly, Esq.
The Office of the Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101
re: FTC and State of Nev. v. Consumer Money Markets, Inc. et al.

Regional Director
Federal Trade Commission
Western Region Office
901 Market Street, Suite 570
San Francisco, California 94103
re: FTC and State of Nev. v. Consumer Money Markets, Inc. et al.

F. For the purposes of this Part, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom Defendants perform services as an employee, consultant, or independent contractor; and

G. For purposes of the compliance reporting required by this Part, Plaintiff is authorized to communicate directly with Defendants.

IX. PLAINTIFF'S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that Plaintiffs are authorized to monitor Defendants' compliance with this Order by all lawful means, including but not limited to the following means:

A. Plaintiffs are authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating Defendants' compliance with any provision of this Order;

B. Plaintiffs are authorized to use representatives posing as consumers and suppliers to Consumer Money Markets, Inc. or Ana S. Miller, or any other entity managed or controlled in whole or in part by such Defendants, without the necessity of identification or prior notice; and

C. Nothing in this Order shall limit the Federal Trade 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 investigate whether Defendants have violated any provision of this Order, Section 5 of the FTC Act, 15 U.S.C. § 45, the Telemarketing Sales Rule, 16 C.F.R. Part 310, or the Truth in Lending Act, 15 U.S.C. §§ 1601-1666j or its implementing Regulation Z, 12 C.F.R. § 226.

X. ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, each Defendant, as applicable, shall permit representatives of Plaintiffs, within five (5) business days of receipt of written notice from either Plaintiff:

(1) Access during normal business hours to any office, or facility storing documents, of Consumer Money Markets, Inc., or its successors or assigns, or any other business where

(a) Any Defendant owns at least 50% of the business or directly or indirectly manages or controls the business, and where

(b) the business is engaged in telemarketing or assisting others engaged in the

not be deemed to be in violation of this provision if, subsequent to the entry of this Order, they purchase from independent sources, and later resell, information on specific individuals who also were previous customers of Defendants.

XII. MISCELLANEOUS PROVISIONS

Each party to this Order hereby agrees to bear its own costs and attorney fees incurred in connection with this action, with the exception of any costs agreed to be paid by Defendants to the State of Nevada for the cost of bringing this action.

XIII.

XIV.

The parties agree and stipulate to entry of the foregoing Order as a Final Judgment in this action.

FEDERAL TRADE COMMISSION

STATE OF NEVADA

By: _____
Dean C. Graybill
Jerome M. Steiner
Attorneys for Plaintiff
Federal Trade Commission

By: _____
Tracey J. Brierly
Attorney for Plaintiff
State of Nevada

Dated:

Dated:

HALL DICKLER KENT FRIEDMAN & WOOD LLP

By: _____
Jeffrey M. Tamarin, Esq.
Attorney for Defendants

Dated:

Ana S. Miller, individually
and as owner of Consumer
Money Markets, Inc.

Dated:

IT IS SO ORDERED, this ____ day of _____, 1999.

United States District Judge

APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,)	
)	
and)	
)	
STATE OF NEVADA <u>ex rel.</u>)	
FRANKIE SUE DEL PAPA,	)	CIVIL ACTION NO.
Attorney General,)	
)	
Plaintiffs,	)	AFFIDAVIT OF
	)	DEFENDANT
v.	)	ANA S. MILLER
)	
CONSUMER MONEY MARKETS, INC., et al.)	
)	
Defendants.)	
)	

Ana S. Miller, individually and as sole shareholder of Consumer Money Markets, Inc., being duly sworn, hereby states and affirms as follows:

1. My name is Ana S. Miller. I am sole shareholder of Consumer Money Markets, Inc., whose last known business address was 1050 E. Sahara Avenue, Las Vegas, Nevada. My current residence address is _____. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am an individual defendant, and I am the sole owner of the corporate defendant, Consumer Money Markets, Inc., in FTC v. Consumer Money Markets, Inc., et al. (United States District Court for the District of Nevada).

3. On [date], I received, individually and as owner of Consumer Money Markets, Inc.,
Stip. Perm. Injunction and Order

a copy of the Stipulated Final Order for Permanent Injunction and Consumer Redress, which was signed by the Honorable [*name of U.S. District Judge*] and entered by the Court on [*date of entry of Order*]. A true and correct copy of the Order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on [*date*], at [*city and state*].

CONSUMER MONEY MARKETS, INC.

By: _____
Ana S. Miller

ANA S. MILLER, individually and as
owner of the corporation

State of _____, City of _____

Subscribed and sworn to before me
this ____ day of _____, 2000

Notary Public
My Commission Expires: