

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 3-02CV 0702P
)	
MEDICAL-BILLING.COM, INC.,)	
a corporation, d/b/a Professional)	
Management Consultants, and)	
)	
MICHELE GRAHAM,)	
)	
Defendants.)	
)	

**STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT
INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“Commission”), commenced this action on April 5, 2002, by filing its Complaint for Injunctive and Other Equitable Relief (“Complaint”) pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), charging that defendants Medical-Billing.Com, Inc. and Michele Graham were engaged in

4. The Commission's Complaint states claims upon which relief may be granted against defendant under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).

5. The Commission has the authority under Section 13(b) of the FTC Act to seek the relief it has requested.

6. The activities of defendant, as alleged in the Complaint, are in or affecting interstate commerce and (of the FTC Act, 44s requested.)

them.

9. The Commission and defendant stipulate and agree to this Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute between them arising from the Complaint up to the date of entry of this Order and without the defendant admitting liability for any of the violations alleged in the complaint or for any wrongdoing whatsoever.

10. Defendant waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendant further waives and releases any claim she may have against the Federal Trade Commission, its employees, agents or representatives.

11. Defendant has agreed that this Order does not entitle defendant to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, and defendant further waives any claim that she may have under said provision of law.

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

DEFINITIONS

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

8. “Work-At-Home Opportunity” means any program, plan, product, or service represented to enable or assist a participant or purchaser to earn money while working at home.

9. “Assisting others” means providing any of the following goods or services to any person or entity: (a) formulating or providing, or arranging for the formulation or provision of,

photographs, audio and video recordings, electronic mail (“e-mail”), computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

13. “Material” means likely to affect a person’s choice of, or conduct regarding, goods or services.

ORDER

I. PROHIBITED BUSINESS ACTIVITIES

IT IS ORDERED that defendant Michele Graham whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, is hereby permanently restrained and enjoined from the advertising, promoting, telemarketing, offering for sale, or sale of any Work-At-Home Opportunity. Nothing in this Order shall be read as an exception to this Paragraph I.

II. INJUNCTIVE PROVISIONS

IT IS FURTHER ORDERED that:

A. Defendant and her assigns, agents, servants, employees, 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, whether acting directly or through any entity, corporation,

subsidiary, division, affiliate, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of a Franchise or Business Venture, are hereby permanently restrained and enjoined from:

1. Failing to provide a complete and accurate disclosure document containing all of the information required by Section 436.1(a)(1) - (24) of the Franchise Rule, in the manner and within the times specified by the Franchise Rule;
2. Failing to provide an earnings claim document or other disclosures required by Section 436.1(b) - (e) of the Franchise Rule, in the manner and within the times specified by the Franchise Rule;
3. Making any earnings claim or projection without having a reasonable basis for each claim or projection at the time the claim or projection is made, as required by Section 436.1(b) - (e) of the Franchise Rule; and
4. Engaging in any other act or practice prohibited by Section 436.1(f) - (h) of the Franchise Rule, or failing to fulfill any other obligation imposed by the Franchise Rule;

provided, however, that the defendant may choose to comply with the disclosure requirements of the Franchise Rule by fully and completely complying with all of the disclosure requirements set forth in the UFOC format. If defendant chooses to comply with the Franchise Rule by using the UFOC format, defendant and her successors, assigns, directors, officers,

agents, servants, employees, 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, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently enjoined from failing to comply with any provision of the UFOC. In the event the Franchise Rule is hereafter amended or modified, or the UFOC is amended or modified and such UFOC amendment or modification is accepted by the Commission for use in lieu of the Franchise Rule's disclosure format, defendant's compliance with the Franchise Rule as so amended or modified, or the UFOC as amended or modified and accepted by the Commission, shall not be deemed a violation of this Order.

B. Defendant and her assigns, agents, servants, employees, 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, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any item, product, good, service, Franchise, Business Venture, Work-At-Home Opportunity or employment opportunity, are hereby permanently restrained and enjoined from:

1. Misrepresenting, expressly or by implication, that they will furnish consumers with clients or the names and addresses of clients who are likely to use the consumers' services;
2. Misrepresenting, expressly or by implication, that they have established

relationships with any potential employers;

3. Misrepresenting, expressly or by implication, that consumers are likely to earn a specific level of earnings;
4. Misrepresenting, expressly or by implication, that consumers can readily obtain refunds upon request;
5. Misrepresenting, expressly or by implication, the terms and conditions of any refund or guarantee policy;
6. Failing to disclose in a clear and conspicuous manner, prior to charging a consumer for any good or service, all material terms, conditions, and limitations of any refund or guarantee policy, or any policy of non-refundability; and
7. Misrepresenting, expressly or by implication, any material fact regarding any item, product, good, or service sold or offered for sale.

III. PROHIBITIONS REGARDING CONSUMERS

IT IS FURTHER ORDERED that defendant and her assigns, agents, servants, employees, 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, whether acting directly or

through any entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, Social Security number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to defendant, at any time prior to entry of this Order; *provided*,

including, but not limited to, a nondischargeability complaint in any bankruptcy case.

F. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its 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 defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendant Michele Graham shall have no right to challenge the Commission's choice of remedies under this Section.

G. Defendant Michele Graham shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

V. FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that:

A. The Commission's agreement to and the Court's approval of this Order are expressly premised upon the truthfulness, accuracy, and completeness of the financial statements and information of defendant Michele Graham provided to the Commission by defendant Michele Graham, dated May 28, 2002, which contain material information relied upon by the

Commission in negotiating and agreeing to the terms of this Order.

B. If the Commission should have evidence that the above-referenced financial statements and information 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, the Commission may move that the Court reopen this Order for the sole purpose of allowing the Commission to modify the monetary liability of defendant Michele Graham. If the Court finds that the defendant failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in the above-referenced financial statements and information, the Court shall reinstate the suspended judgment against the defendant Michele Graham, in favor of the Commission, in the amount of THREE MILLION TWO HUNDRED FIFTY EIGHT THOUSAND FORTY NINE DOLLARS (\$3,258,049.00), which defendant Michele Graham and the Commission stipulate is the amount of consumer injury caused by the defendant, as set forth in Paragraph IV

or enforcing this Paragraph V(B), defendant Michele Graham waives any right to contest any of the allegations set forth in the Complaint filed in this matter. Nothing in this Paragraph V or elsewhere in this Order shall be read to modify the obligations of defendant Michele Graham under Paragraph IV(C) to stipulate and agree to the nondischargeability of the Judgment, including the conditions set forth in this Paragraph V, pursuant to Section 523 of the Bankruptcy Code, 11 U.S.C. § 523.

VI. COMPLIANCE MONITORING

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

- A.** Within ten (10) days of receipt of written notice from a representative of the Commission, defendant 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 defendant's possession or direct or indirect control to inspect the business operation;

- B.** In addition, the Commission is authorized to monitor compliance with this Final Judgment and 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's, defendant's employees, or any other entity managed or controlled in whole or in part by defendant, without the necessity of identification or prior notice;

Provided that nothing in this Final Judgment and 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 and 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 shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, d s(Bal hc5(a)T.d)T615 53.21 TD

2. Any changes in defendant's employment status (including self-employment) within ten (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; and
 3. Any changes in defendant's name or use of any aliases or fictitious names.
- B.** One hundred eighty (180) days after the date of entry of this Final Judgment and Order, defendant shall provide a written report to the FTC, sworn to under penalty

Regional Director
Southwest Region
Federal Trade Commission
Suite 2150, 1999 Bryan Street
Dallas, Texas 75201
Re: FTC v. Medical-Billing.Com, Inc., Civil Action No. 3-02CV1727-G.

- D.** For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with defendant Michele Graham.

VIII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Final Judgment and Order, defendant Michele Graham, in connection with any business where the defendant Michele Graham is the majority owner of the business or directly or indirectly manages or controls the business, and where the business involves the promotion, offering for sale, or sale of Franchises or Business Ventures or assisting others engaged in the promotion, offering for sale, or sale of Franchises or Business Ventures, is 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

X. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that defendant, within five (5) business days of receipt of this Final Judgment and Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Final Judgment and Order.

XI. ATTORNEYS' FEES

IT IS FURTHER ORDERED that each party to this Final Judgment and Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

XII. RETENTION OF JURISDICTION

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

XIII. EXECUTION IN COUNTERPARTS

This Order may be executed in counterparts and each such counterpart shall be deemed to be an original executed agreement.

XIV. ENTRY OF THIS FINAL JUDGMENT

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 54(b), that there is no just reason for delay and the Clerk of Court immediately shall enter this Order as a final judgment as to defendant.

SO STIPULATED:

Dated: _____.

THOMAS B. CARTER

Texas Bar No. 03932300

GARY KENNEDY

Oklahoma Bar No. 4961

1999 Bryan Street, Suite 2150

Dallas, Texas 75201

(214) 979-9372 (Voice)

(214) 953-3079 (Facsimile)

SO ORDERED, this ____ day of _____, 200__.

JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

Presented by:

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