

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

THE COLLEGE ADVANTAGE, INC.,
also doing business as College Funding
Center,

ALAN E. BARON,

C FUNDING GROUP, LLC, also doing
business as College Funding Group, and

EDWARD F. JACOBS,

Defendants,

and **DONNA S. BARON** and **CLAUDIA L.
JACOBS,**

Relief Defendants.

Civil Action No. 4:03CV179

**STIPULATED FINAL JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION AND MONETARY RELIEF AS TO
DEFENDANTS C FUNDING GROUP, LLC, AND EDWARD F. JACOBS
AND RELIEF DEFENDANT CLAUDIA L. JACOBS**

Plaintiff, the Federal Trade Commission (“Commission”), commenced this action by filing its Complaint pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC

Act”), 15 U.S.C. § 53(b), charging the defendants with deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

Plaintiff, through its counsel, and defendants C Funding Group, LLC and Edward F. Jacobs and relief defendant Claudia L. Jacobs, through their counsel, have agreed to entry of this Final Judgment and Order by this Court in order to resolve all matters in dispute in this action. The Commission and defendants C Funding Group, LLC and Edward F. Jacobs and relief defendant Claudia L. Jacobs have consented to entry of this Final Judgment and Order without trial or adjudication of any issue of law or fact herein and without defendants C Funding Group, LLC and Edward F. Jacobs admitting liability for any of the violations alleged in the Complaint or for any wrongdoing whatsoever.

Being fully advised in the premises and acting upon the joint motion of the Commission and defendants C Funding Group, LLC and Edward F. Jacobs and relief defendant Claudia L. Jacobs to enter this Final Judgment and Order,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over defendants C Funding Group, LLC and Edward F. Jacobs and relief defendant Claudia L. Jacobs;

2. The Complaint states a claim upon which relief may be granted against the defendants C Funding Group, LLC and Edward F. Jacobs and relief defendant Claudia L. Jacobs under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b);

3. Venue in this district is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b);

4. The activities of defendants C Funding Group, LLC and Edward F. Jacobs and relief defendant Claudia L. Jacobs are in or affecting commerce as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;

5. Relief defendant Claudia L. Jacobs received, directly or indirectly from the defendants, certain funds and property which either are the proceeds or are traceable to the proceeds of the activities alleged in this suit. Relief defendant Claudia L. Jacobs waives any claim to the assets being transferred to the Commission pursuant to Paragraph IV(C) of this Final Judgment and Order;

6. Entry of this Final Judgment and Order is in the public interest; and

7. Defendants C Funding Group, LLC and Edward F. Jacobs and relief defendant Claudia L. Jacobs have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to seek judicial review or otherwise challenge the validity of this Final Judgment and Order.

DEFINITIONS

1. Misrepresenting, expressly or by implication, that defendants C Funding Group, LLC and Edward F. Jacobs will secure 100% of the funding necessary for consumers or consumers' children to attend college;
2. Misrepresenting, expressly or by implication, that defendants C Funding Group, LLC and Edward F. Jacobs will secure funding for consumers or consumers' children to attend college which will reduce the consumers' out-of-pocket expenses; and
3. Misrepresenting, expressly or by implication, that consumers will receive a 100% refund if defendants C Funding Group, LLC and Edward F. Jacobs do not secure 100% of the funding necessary for consumers or consumers' children to attend college.

C. **IT IS FURTHER ORDERED** that, with respect to the advertising, marketing, promoting, offering for sale, or sale of any good or service, defendants C Funding

promotion, offering for sale, or sale of college financial aid assistance programs, in or affecting commerce. Defendant Edward F. Jacobs shall maintain the Bond for a period of five (5) years after defendant provides notice to the Commission that defendant has ceased engaging in or assisting others engaged in the advertising, promotion, offering for sale, or sale of college financial aid assistance programs, in or affecting commerce. The Bond shall cite this Order as the subject matter of the Bond, and shall provide surety thereunder against financial loss resulting from whole or partial failure of performance due, in whole or in part, to any violation of Section 5(a) of the FTC Act, or the provisions of this Order, or to any other violation of law;

- B.** The Bond required pursuant to this Paragraph shall be an insurance agreement providing surety for financial loss issued by a surety company that is admitted to do business in each state in which defendant Edward F. Jacobs, or any entity directly or indirectly under defendant Edward F. Jacobs' control, is doing business and that holds a Federal Certificate of Authority As Acceptable Surety on Federal Bond and Reinsuring. The Bond shall be in favor of both: (1) the Federal Trade Commission for the benefit of any consumer injured as a result of any activities that required obtaining the Bond; and (2) any consumer so injured;

- C.** The Bond required pursuant to this Paragraph is in addition to the Bond required pursuant to 16 CFR 312.2(b)(1)(ii).

describing in reasonable detail said activities, and include in such notice a copy of the Bond obtained; and

- E.** Defendant Edward F. Jacobs shall not disclose the existence of the Bond to any consumer, or other purchaser or prospective purchaser, without simultaneously disclosing clearly and prominently the following: **THIS BOND IS REQUIRED BY ORDER OF THE U.S. DISTRICT COURT AS PART OF A FINAL ORDER AGAINST EDWARD F. JACOBS IN *FEDERAL TRADE COMMISSION V. THE COLLEGE ADVANTAGE, INC., ALAN E. BARON, C FUNDING GROUP, LLC, AND EDWARD F. JACOBS*, NO. 4:03CV179, IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, FOR ALLEGED FALSE AND DECEPTIVE ADVERTISING, PROMOTION, OFFERING FOR SALE, AND SALE OF COLLEGE FINANCIAL AID ASSISTANCE PROGRAMS.**

III. INJUNCTION AGAINST PROVIDING CUSTOMER LISTS

IT IS FURTHER ORDERED that defendants C Funding Group, LLC and Edward F. Jacobs are hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, or other identifying information of any person who purchased services from defendants The College Advantage, Inc, Alan E. Baron, C Funding Group, LLC, and Edward F. Jacobs at any time prior to the date this Final Judgment and Order is entered. Provided, however, that defendants C Funding Group, LLC and Edward F. Jacobs may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

IV. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A.** Judgment in the amount of FIFTEEN MILLION FIVE HUNDRED NINE THOUSAND FIVE HUNDRED SIXTY-FOUR DOLLARS (\$15,509,564.00) is entered against defendants C Funding Group, LLC and Edward F. Jacobs; provided, however, that upon the fulfillment of the payment obligations of Paragraph IV(B) and Paragraph IV(C) of this Final Judgment and Order by defendants, this judgment shall be suspended until further order of the Court, and provided further that this judgment shall be subject to the conditions set forth in Paragraph V of this Final Judgment and Order.
- B.** Defendants C Funding Group, LLC and Edward F. Jacobs shall be jointly and severally liable for payment of equitable monetary relief, including, but not limited to, consumer redress and/or disgorgement, and for paying any attendant expenses of administration of any redress fund, in the amount of ONE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$1,400,000.00). Relief defendant Claudia L. Jacobs is ordered to take all such action as is necessary to permit and cause the transfer of such sum to the plaintiff, including, but not limited to, cooperating in the transfer of such accounts over which she has control.
- C.** Within twenty (20) days of the entry of this Final Judgment and Order, defendants C Funding Group, LLC and Edward F. Jacobs and relief defendant Claudia L. Jacobs shall turn over the entire payment of ONE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$1,400,000.00) to the Commission in the form of a

wire transfer or certified or cashier's check made payable to the Commission, or such agent as the Commission may direct.

- D.** Time is of the essence for the payments specified above. In the event that defendants C Funding Group, LLC and Edward F. Jacobs and relief defendant Claudia L. Jacobs do not fulfill, or only partially fulfill, the payment obligations set forth in this Paragraph, defendants C Funding Group, LLC and Edward F. Jacobs shall be immediately liable for payment of FIFTEEN MILLION FIVE HUNDRED NINE THOUSAND FIVE HUNDRED SIXTY-FOUR DOLLARS (\$15,509,564.00), which is the entire amount of the judgment, plus interest, less any payments already made by any other defendant in this matter.
- Notwithstanding any other provision of this Final Judgment and Order, defendants C Funding Group, LLC and Edward F. Jacobs agree that, if they fail to meet the payment obligations set forth in this Paragraph, the facts as alleged in the Complaint filed in this matter shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Final Judgment and Order, including, but not limited to, a nondischargeability complaint in any subsequent bankruptcy proceeding.
- E.** All funds paid pursuant to this Final Judgment and 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 defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendants C Funding Group, LLC and Edward F. Jacobs and relief defendant Claudia L. Jacobs shall have no right to challenge the Commission's choice of remedies under this Paragraph.

- F.** Defendants C Funding Group, LLC and Edward F. Jacobs and relief defendant Claudia L. Jacobs 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

- A. IT IS FURTHER ORDERED** that the Commission's agreement to and the Court's approval of this Final Judgment and Order are expressly premised upon the truthfulness, accuracy, and completeness of the financial statements and information provided to the Commission by defendants C Funding Group, LLC and Edward F. Jacobs on or about July 28, 2003, and by relief defendant Claudia L. Jacobs on or about August 18, 2003, which contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Final Judgment and Order.
- B. IT IS FURTHER ORDERED** that 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 Final Judgment and Order for the sole purpose of allowing the Commission to modify the monetary liability of defendants C Funding Group, LLC and Edward F. Jacobs. If the Court finds that either defendant C Funding Group, LLC or Edward F. Jacobs 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 such defendant, in favor of the Commission, in the amount of FIFTEEN any material a 8.7(i)-lission, theother material mission, the statements and information, the Cou einstate the suspenrt shall riT judgment

otherwise ordered by the Court. Any proceedings instituted under this Paragraph shall be in addition to and not in lieu of any other proceedings the Commission may initiate to enforce this Final Judgment and Order. Solely for the purposes of reopening or enforcing this Paragraph, defendants C Funding Group, LLC and Edward F. Jacobs and relief defendant Claudia L. Jacobs waive any right to contest any of the allegations set forth in the Complaint filed in this matter.

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. For a period of eight (8) years, defendants C Funding Group, LLC and Edward F.

2. Posing as consumers and suppliers to: defendants' employees, or any other entity managed or controlled in whole or in part by defendants, 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, 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. Defendants C Funding Group, LLC and Edward F. Jacobs 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 which may violate the terms of this Final Judgment and Order. The person interviewed may have counsel present.

VII. COMPLIANCE REPORTING BY DEFENDANTS

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Final Judgment and Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Final Judgment and Order:

1. Defendant Edward F. Jacobs shall notify the Commission of the following:

- a. Any changes in defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
- b. 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 such defendant's duties and responsibilities in connection with the business; and
- c. Any changes in defendant's name or use of any aliases or fictitious names.

2. Defendants C Funding Group, LLC and Edward F. Jacobs shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Final Judgment and 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 Final Judgment and 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 defendants learn

less than thirty (30) days prior to the date such action is to take place, defendants 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 Final Judgment and Order, defendants C Funding Group, LLC and Edward F. Jacobs shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Final Judgment and Order. This report shall include, but not be limited to:

1. Any changes requirt notnesited to:

communicate through counsel, the Commission shall thereafter direct communication through counsel.

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, defendants C Funding Group, LLC and Edward F. Jacobs and each of their successors, assigns, agents, servants or employees, and those persons in active concert or participation with them who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, in connection with any business where any defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business involves the advertising, promotion, offering for sale, or sale of college financial aid assistance programs, 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.

Provided, however, that notwithstanding such eight (8) year general retention requirement, any records containing the information in Subparagraphs A through E of this Paragraph which are in the possession, custody, or control of defendants C Funding Group, LLC and Edward F. Jacobs at time of the entry of this Final Judgment and Order shall be maintained for a period of three (3) years from such date.

IX. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order,

- A.** Defendant C Funding Group, LLC shall deliver a copy of this Order to all of its 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 C Funding Group, LLC 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 Edward F. Jacobs shall deliver a copy of this Order to the principals, officers, directors, managers and employees or other persons engaged in activity covered by this Order, immediately upon employing or retaining any such person for any business where defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business involves the advertising, promotion, offering for sale, or sale of college financial aid assistance programs. Defendant Edward F. Jacobs 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.

X. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that defendants C Funding Group, LLC and Edward F. Jacobs and relief defendant Claudia L. Jacobs, 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. LIFT OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of defendants C Funding Group, LLC and Edward F. Jacobs and relief defendant Claudia L. Jacobs' assets, imposed in the Preliminary

Injunctions entered in this proceeding, shall be lifted upon the entry of this Final Judgment and Order. Upon receipt of a copy of this Final Judgment and Order, all persons or entities holding assets of defendants shall release such assets to the owner of the asset without the requirement of further documentation or order of this Court.

XIII. 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 Final Judgment and Order.

IT IS SO ORDERED.

Dated this _____ day of _____, 2004.

PAUL BROWN
UNITED STATES DISTRICT JUDGE

SO STIPULATED:

/s/Gary D. Kennedy

GARY D. KENNEDY

Attorney-in-Charge

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JUDITH A. SHEPHERD

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FEDERAL TRADE COMMISSION

/s/Edward F. Jacobs

C FUNDING GROUP, LLC

Defendant

/s/Edward F. Jacobs

EDWARD F. JACOBS

Defendant

/s/Claudia L. Jacobs

CLAUDIA L. JACOBS

Relief Defendant

/s/ Joseph O. Collins, Jr.

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