

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

**TEMPORARY RESTRAINING ORDER
WITH ASSET FREEZE
AND ORDER TO SHOW CAUSE
WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

The plaintiff, the Federal Trade Commission (the “Commission”), sues the defendants pursuant to Sections 5(a), 13(b), and 19 of the FTC Act (the “FTC Act”), 15 U.S.C. §§ 45(a), 53(b), 57b, and the Commission’s Telemarketing Sales Rule (the “TSR”), 16 C.F.R. Part 310, and seeks preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement, and other equitable relief for the defendants’ alleged deceptive act or practice in connection with the marketing and sale of mortgage loan modification and foreclosure relief services.

The Commission filed a complaint and moves

4. Good cause exists to believe that immediate and irreparable damage to the court's ability to grant effective final relief for any consumer in the form of monetary restitution, rescission of contracts, or disgorgement will occur from the transfer, destruction, concealment, or other dissipation of any asset, document, record, or other evidence unless the defendants are immediately restrained and enjoined by order of this court.

5. Good cause exists for issuing a temporary restraining order pursuant to Rule 65(b), Federal Rules of Civil Procedure.

6. Weighing the equities and considering the Commission's likelihood of ultimate success on the merits, a temporary restraining order with an asset freeze and other equitable relief is in the public interest.

7. No security is required of any agency of the United States for the issuance of a temporary restraining order. See Fed. R. Civ. P. 65(c).

Accordingly, the Commission's "Motion for Temporary Restraining Order With Asset Freeze, Appointment of a Receiver, and Order to Show Cause Why a Preliminary Injunction Should Not Issue" (Doc. 2) is **GRANTED IN PART** as follows:

I. CONDUCT PROHIBITIONS

In connection with the advertising, marketing, promotion, offering for sale, or sale of any mortgage loan modification or foreclosure relief service, the defendants, each of the defendants' successors, assigns, members, officers, agents, servants, employees, and attorneys, and any person in active concert or participation with them who receives 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 temporarily restrained and enjoined from:

A. Falsely representing, or assisting others who are falsely representing, either orally or in writing, expressly or by implication, any of the following:

1. that any defendant or other person will (a) obtain or arrange a modification of any term of a consumer's home loan, deed of trust, or mortgage, including any recapitalization or reinstatement agreement; (b) obtain or arrange lower monthly mortgage payments for any consumer; (c) obtain or arrange affordable monthly mortgage payments for any consumer; (d) obtain or arrange lower interest rates on any home loan, deed of trust, or mortgage for any consumer; (e) stop, prevent, or postpone any home mortgage foreclosure sale; (f) save any consumer's residence from foreclosure; (g) prevent a notice of default from being filed with respect to any consumer's residence or home loan; (h) obtain or write a new home loan for any consumer; (i) obtain or arrange a forbearance from any mortgage loan holder or servicer; (j) obtain or arrange any agreement whereby any consumer's mortgage payments are deferred for any period of time; or (k) immediately or promptly contact any consumer's mortgage loan holder or servicer;

2. the degree of success that any defendant or any other person has had in performing any mortgage loan modification or foreclosure relief service;

3. the length of time that any defendant or any other person has been providing any mortgage loan modification or foreclosure relief service;



In connection with the telemarketing, advertising, marketing, promotion, offering for sale, or sale of any mortgage loan modification or foreclosure relief service, the defendants, each of the defendants' successors, assigns, members, officers, agents, servants, employees, and attorneys, and any person in active concert or participation with them who receives 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 temporarily restrained and enjoined from violating, or assisting others in violating, any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to, by (1) misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristic of any good or service, Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii); (2) misrepresenting, directly or by implication, affiliation with, or endorsement by, any government or third party organization, Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii).

In connection with the advertising, marketing, promotion, offering for sale or sale of any mortgage loan modification or foreclosure relief service, the defendants and each of the defendants' successors, assigns, members, officers, agents, servants, employees, and attorneys, and those persons 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 temporarily restrained and enjoined from requesting or receiving payment of any fee or consideration or any kind in advance of performing each and every mortgage loan modification or foreclosure relief service that any defendant contracted to perform or represented would be performed.

escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind;

B. Opening or causing to be opened any safe deposit box in the name of any defendant, or subject to access by any defendant;

C. Incurring any lien or other encumbrance on any asset in the name, singly or jointly, of any corporation, partnership, or other entity owned, managed, or controlled, directly or indirectly, by any defendant;

D. Incurring any charge or cash advance on any credit card or prepaid debit, credit or other bank card, issued in the name, singly or jointly, of any defendant or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any defendant;

The assets affected by this section shall include both existing assets and assets acquired after the effective date of this order.

III. DUTIES OF ASSET HOLDERS

Any financial or brokerage institution, business entity, or other person who

receives notice of this order that holds, controls, or maintains custody that holds, controls, or maintains custody of any assets of the defendant;

including any person who, directly or indirectly, controls, manages, or operates any such institution, entity, or person;

V. CONSUMER CREDIT REPORTS

Pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(1), any consumer reporting agency may furnish to the Commission a consumer report concerning any defendant.

VI. PROHIBITION ON DISCLOSURE OF CUSTOMER LISTS

The defendants, and each of their successors, assigns, members, officers, agents, servants, employees, and attorneys, and those persons 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 temporarily restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, billing information (any data that enables any person to access another person's account, such as a credit card, checking, savings, share or similar account, utility account, mortgage loan account, or debit card), e-mail address, or other identifying information of any person whose identifying information was acquired by any defendant, at any time prior to entry of this order, in connection with the purchase of any mortgage loan modification or foreclosure relief service;

B. Using or benefitting from, for commercial purposes, the name, address, telephone number, social security number, billing information (any data that enables any person to access another person's account, such as a credit card, checking, savings, share or similar account, utility account, mortgage loan account or debit card), e-mail address, or other identifying information of any person whose identifying information

was acquired by any defendant, at any time prior to entry of this order, in connection with the purchase of any mortgage loan modification or foreclosure relief service;

Provided, however, that any defendant may disclose such identifying information (1) with the express written consent of the person whose information is disclosed, (2) to

In light of the asset freeze, each individual defendant must give twenty-one (21) calendar days notice to the Commission and this court before filing, or causing to be filed, on behalf of that individual defendant, a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

IX. STAY OF ACTIONS

A. Except by leave of this court, the defendants and any other person or entity

such information by submitting a formal written request to the temporary receiver, and, if the request has not been responded to within thirty (30) calendar days of receipt by the temporary receiver, any person or entity may thereafter seek an order of this court with regard to the relief requested.

X. DISTRIBUTION OF ORDER BY THE DEFENDANTS

The defendants shall immediately provide a copy of this order to each affiliate, agent, partner, division, sales entity, successor, assignee, officer, director, employee, independent contractor, spouse, Internet web host or master, agent, attorney, or representative of any defendant, and shall, within ten (10) calendar days from the date of entry of this order, provide the Commission with a sworn statement that the defendants have complied with this provision of the order, which statement shall include the names and addresses of each person or entity who received a copy of this order.

XI. MONITORING

Any agent or representative of the Commission may contact the defendants or the defendants' agents or representatives directly and anonymously for the purpose of monitoring compliance with Section I of this order, and may tape record any oral communications that occur in the course of such contacts.

XII. CORRESPONDENCE

For purposes of this order, all correspondence and service of pleadings on the Commission shall be addressed to:

Jonathan Kessler, Esq.
Federal Trade Commission
1111 Superior Avenue, Suite 200
Cleveland, Ohio 44114-2507
Phone (216) 263-3436 / Fax (216) 263-3426

XIII. PRELIMINARY INJUNCTION HEARING

The parties shall appear on **November 16, 2009, at 2:00 p.m.** before Magistrate Judge Thomas B. McCoun, III, in Courtroom 12B, United States Courthouse, 801 N. Florida Avenue, Tampa, Florida, 33602, for a preliminary injunction hearing, at which the defendants shall show cause—why pending a final decision on the merits of the Commission’s complaint—a preliminary injunction should not issue enjoining the defendants from further violations of the FTC Act and the TSR, continuing the freeze of the defendants’ assets, and imposing such additional relief as may be appropriate.

XIV. RETENTION OF JURISDICTION

The court retains jurisdiction over this matter for all purposes.

ORDERED in Tampa, Florida, on November 13, 2009, at 12:10 p.m.

