

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 09-cv-61840 Seitz/O'Sullivan

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

1st GUARANTY MORTGAGE CORP. et al.,

Defendants

Having considered the Complaint, Plaintiff's Motion for Summary Judgment, the Memorandum in support thereof, Plaintiff's Statement of Uncontroverted Material Facts, Plaintiff's Summary Judgment Exhibits, the records of this case, and any opposition thereto, the Court granted in part and denied in part the Plaintiff's Motion for Summary Judgment. The plaintiff is entitled to summary judgment against the defendants, Stephen Lalonde and Michael Petroski. The plaintiff is not entitled to summary judgment against the defendant, Amy Lalonde. The Court enters this Final Judgment and Order against Defendant Stephen Lalonde ("Defendant").

It is therefore ORDERED, ADJUDGED, AND DECREED:

FINDINGS

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a) and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c) and 6105(b).
2. The Complaint states a claim upon which relief may be granted against Defendant under Sections 5(a), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57b, Section 410(b) of the Credit Repair Organizations Act, 15 U.S.C. § 1679h(b), and Section 6 of the Telemarketing Act, 15 U.S.C. § 6105(b).
3. The activities of Defendant bargained in the Complaint are in affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. Defendant transacts or has transacted business in this district and throughout the United States.
5. No genuine issue of material fact exists that, in connection with the allegations of Counts 1-6 of Plaintiff's Complaint, Defendant made untrue or misleading representations in

violation of the CROA; charged or received money or other valuable consideration for the performance of credit repair services before such services were fully performed, in violation of the CROA; requested or received an advance payment for a loan or other extension of credit, which he guaranteed or represented he could obtain with a high likelihood of success, in violation of the TSR; and made false and misleading, material representations to consumers, in violation of the FTC Act. The plaintiff is therefore entitled to summary judgment as a matter of law.

6. Defendant formulated, directed, controlled, had the authority to control, or participated in the deceptive practices alleged in Counts 1-6 of the Complaint, and had knowledge of the deceptive practices.

7. Consumers have suffered and will continue to suffer substantial injury as a result of Defendant's violations of the FTC Act, the CROA, and the TSR. In addition, Defendant has been unjustly enriched as a result of his unlawful acts or practices. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers, perpetuate unjust enrichment, and harm the public interest.

8. The equities weigh in favor of entering this Order, and entry of this Order is in the public interest.

9. This Order is remedial in nature and shall not be construed as the payment of a fine, penalty, punitive assessment, or forfeiture.

ORDER

Definitions

2. "Assisting others" includes, but is not limited to, providing any of the following goods or services to another person: (A) performing customer service functions, including but not limited to, receiving or responding to consumer complaints; (B) formulating or providing or arranging for the formulation or provision of, any telephone sales script or any other marketing material, including, but not limited to, the text of any Internet website, email, or other electronic communication; (C) pre.0000 TD

photographs, audio and video recordings, 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.

8. "Mortgage loan modification or foreclosure relief service" means any good, service, plan, or program that is represented, expressly or by implication, to assist a consumer in any manner to (A) stop, prevent, or postpone any home mortgage or deed of trust foreclosure sale; (B) obtain or arrange a modification of any term of a home loan, deed of trust, or mortgage; (C) obtain any forbearance from any mortgage loan holder or servicer; (D) exercise any right of reinstatement of any mortgage loan; (E) obtain, arrange, or attempt to obtain or arrange any extension of the period within which the owner's property sold at foreclosure may cure his or her default or reinstate his or her obligation; (F) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained in that deed of trust; (G) obtain a loan advance of funds that is connected to the consumer's home ownership; (H) avoid or ameliorate the impairment of the consumer's credit record, credit history or credit rating that is connected to the consumer's home ownership; (I) save the consumer's residence from foreclosure; (J) assist the consumer in obtaining proceeds from the foreclosure sale of the consumer's residence; (K) obtain or arrange a pre-foreclosure sale, short sale, or deed-in-lieu of foreclosure; (L) obtain or arrange a refinancing,

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foreclosure may continue to occupy the property. The foregoing shall include any manner of claimed assistance, including, but not limited to, debt, credit, budget, or financial counseling; receiving money for the purpose of distributing it to creditors; contacting creditors or servicers on behalf of the consumer; and giving advice of any kind with respect to filing for bankruptcy.

9. "Servicer" means any beneficiary, mortgagee, trustee, loan servicer, loan holder or other entity that performs loan or credit account administration or processing services and/or its authorized agents.

10. "Telemarketing" means a plan, program or campaign (whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or services by means of the use of one or more telephones.

I.

PERMANENT BAN REGARDING
MORTGAGE AND CREDIT RELATED PRODUCTS AND SERVICES

IT IS THEREFORE ORDERED that Defendant is permanently restrained and enjoined from participating in any manner or capacity whatsoever, directly or indirectly, in concert with others, individually or through any business entity or other device, in:

- A. the advertising, marketing, promoting, offering for sale, or selling any mortgage; credit repair service; credit-related product, program, or service; or mortgage loan modification or foreclosure relief service and
- B. assisting others engaged in the advertising, marketing, promoting, offering for sale, or selling any mortgage; credit repair service; credit-related product, program, or service; or mortgage loan modification or foreclosure relief service.

II.

PERMANENT BAN ON TELEMARKETING

IT IS FURTHER ORDERED that Defendant is permanently restrained and enjoined from engaging or participating in telemarketing, directly or through any intermediary, including, but not limited to, by consulting, brokering, planning, investing, outsourcing, or advertising.

III .

INJUNCTION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defendant and his agents, servants, employees, and those persons in active concert or participation with any of them who receive actual notice of this

Order by personal service

IV.

MONETARY JUDGMENT AND REDRESS

IT IS FURTHER ORDERED that:

- A. Judgment is entered in the amount of Two Million Six Hundred Sixty-Three Thousand Five Hundred Fifteen dollars (\$2,663,515.00) against Defendant, as equitable monetary relief in favor of the Commission. This judgment is joint and several with any monetary judgment that may be entered against Defendants, Amy Lalonde, Michael Petroski, 1st Guaranty, Spectrum, Crossland, and Scoreleaper in this case;
- B. The judgment amount, less the sum of payments made pursuant to this Section by any defendant with whom Defendant is jointly and severally liable, and pursuant to the Criminal Monetary Penalties provisions of the Judgment in a Criminal Case in U.S. v. Stephen Lalonde No. 0:09CR60181-COHN-1 (S.D. Fla., Dec 23,

- F. Upon request, Defendant is hereby required, in accordance with 31 U.S. § 7701, to furnish to the FTC his tax identification numbers, which shall be for the purposes of collecting and reporting on any delinquent amount arising out of this Order; and
- G. Pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning Defendant to the FTC, which shall be used for the purpose of collecting and reporting on any delinquent amount arising out of this Order

V.

LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of Defendant's assets, pursuant to the Stipulated Preliminary Injunction entered on December 16, 2009, shall be lifted for the purpose of effectuating the transfer of assets in partial satisfaction of the monetary judgment as provided in Section IV of this Order, and shall be of no further force or effect after transfer is completed.

VI.

PROHIBITION ON RELEASE OF CUSTOMER INFORMATION OR CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendant, and his agents, servants, employees, and all other persons in active contact or participation with any of them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from:

- A. disclosing, using or benefiting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person which any Defendant obtained prior to entry of this Order in connection with any mortgage, credit repair service, credit-related product, program, or service, or mortgage loan modification or foreclosure relief service; and
- B. failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

Provided however, that customer information need not be disposed of, and may be disclosed, to the extent requested by government agency or required by a law, regulation, or court order.

VII.

COMPLIANCE MONITORING

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

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant shall submit additional written reports, which shall be true and accurate and sworn to under penalty of perjury; produced documents for

inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in Defendant's possession or direct or indirect control to inspect the business operations;

B. In addition, the Commission is authorized to use any other lawful means, including but not limited to:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45, and 69;
2. having its representatives pose as consumers and suppliers to Defendant, his employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice; and

C. Defendant 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 subject to this Order. The person interviewed may have counsel present.

Provided however, that nothing in this Order shall limit the Commission's lawful use of

VIII.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that c

ownership interest in, that may affect compliance obligations arising under this Order, including, but not limited to: reincorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, provided that, with respect to any such change in the business entity about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant 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 Order and annually thereafter for a period of five (5) years, Defendant shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Order. This report shall include, but not be limited to:

1. Defendant's then-current residence addresses, mailing addresses, and telephone numbers;
2. Defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a table

description of Defendant's duties and responsibilities in connection with the business or employment;

3. A copy of each acknowledgment of receipt of this Order obtained pursuant to the Section titled "Distribution of Order" and
4. Any other changes required to be reported under Subsection A of this Section.

C. Defendant shall notify the Commission of the filing of a bankruptcy petition by Defendant within fifteen (15) days of filing.

D. For the purposes of this Order, Defendant shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier (not the U.S. Postal Service) all reports and notifications to the Commission.

Provided, however, the time periods set forth in this Section shall be tolled in connection with Defendant during any period in which he is incarcerated.

IX.

RECORDKEEPING

IT IS FURTHER ORDERED that, for a

- E. Copies of all sales slips, training materials, advertisements, or other marketing materials; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including, but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

Provided, however, the time periods set forth in this Section shall be tolled in connection with Defendant during any period in which he is incarcerated.

X.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendant shall deliver copies of the Order as directed below:

- A. Defendant a control person: For any business that Defendant controls, directly or indirectly, or in which Defendant has a majority ownership interest, Defendant must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting" For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their

responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting" delivery shall be at least ten (10) days prior to the change in structure

- B. Defendant a employee or non-control person: For any business where Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.
- C. Defendant must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

Provided, however, the time periods set forth in this Section shall be tolled in connection with Defendant Lalonde during any period in which he is incarcerated.

XI.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

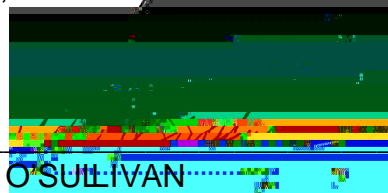
IT IS FURTHER ORDERED that Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XII.

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 Order

IT IS SO ORDERED, this 30th day of March, 2011.



JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

Copies provided to:
All Counsel of Record

Copies provided by chambers to:

Amy Lalonde
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P.O. Box 1600
Washington, MS 30190

Michael Petroski