

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

E.M.A. NATIONWIDE, INC., et al.,

Defendants.

Case No. 1:12-cv-02394-JG

Judge James S. Gwin

Magistrate Judge McHargh

STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION
AND SETTLEMENT OF CLAIMS BETWEEN
PLAINTIFF AND DEFENDANT NISSIM N. OHAYON, A/K/A NESS N. OHAYON

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed ~~its~~ COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF ("Complaint"), for permanent injunction, and other equitable relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101, and

PERMANENT INJUNCTION AND SETTLEMENT OF CLAIMS BETWEEN PLAINTIFF AND NISSIM N.

OHAYON ("Order") to resolve all matters in ~~35~~ T,tdveeT0 Te

DEFINITIONS

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

1. "Assisting others" includes, but is not limited to:
 - 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 advertising or marketing material, including, but not limited to, any telephone sales script, direct mail solicitation, or the design, text, or use of images of any Internet website, email, or other electronic communication;
 - C. formulating or providing, or arranging for the formulation or provision of, any marketing support material or service, including but not limited to, web or Internet Protocol addresses or domain name registration for any Internet websites, affiliate marketing services, or media placement services;
 - D. providing names of, or assisting in the generation of, potential customers;
 - E. performing marketing, billing, or payment services of any kind; and
 - F. acting or serving as an owner, officer, director, manager, or principal of any entity.
2. "Competent and reliable evidence" means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
3. "Consumer" means any natural person.

4. "Customer" means any person who has paid, or may be required to pay, for products, services, plans, or programs offered for sale or sold by any other person.
5. "Debt relief product or service" means any product, service, plan, or program represented, expressly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt or obligation, between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.
6. "Document" is synonymous in meaning and equal in scope to the usage of the term in

consumer's dwelling) between a consumer and one or more secured creditors, servicers, or debt collectors.

9. "Material" means likely to affect a person's choice of, or conduct regarding, goods or services.
10. "Mortgage assistance relief product or service" means any product, service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:
 - A. stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer's dwelling, any repossession of the consumer's dwelling, or otherwise saving the consumer's dwelling from foreclosure or repossession;
 - B. negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;
 - C. obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan;
 - D. negotiating, obtaining, or arranging any extension of the period of time within which the consumer may (i) cure his or her default on a dwelling loan, (ii) reinstate his or her dwelling loan, (iii) redeem a dwelling, or (iv) exercise any right to reinstate a dwelling loan or redeem a dwelling;
 - E. obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or

F. negotiating, obtaining, or arranging (i) a short sale of a dwelling, (ii) a deed-in-lieu of foreclosure, or (iii) any other disposition of a dwelling loan other than a sale to a third party that is not the dwelling loan holder.

The foregoing shall include any manner of claimed assistance, including, but not limited to, auditing or examining a consumer's mortgage or home loan application.

11. "Person" means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.
12. "Telemarketing" means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call, whether inbound or outbound.

ORDER

BAN ON DEBT RELIEF AND MORTGAGE ASSISTANCE RELIEF PRODUCTS OR SERVICES

- I. IT IS THEREFORE ORDERED that Defendant, whether acting directly or through any other person, is permanently restrained and enjoined from:
 - A. Advertising, marketing, promoting, offering for sale, or selling any debt relief product or service, or mortgage assistance relief product or service; and

- B. Assisting others engaged in advertising, marketing, promoting, offering for sale, or selling any debt relief product or service, or mortgage assistance relief product or service.

PROHIBITED MISREPRESENTATIONS RELATING TO FINANCIAL RELATED
PRODUCTS OR SERVICES

- II. IT IS FURTHER ORDERED that Defendant and his agents, servants, and employees, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or

or financial stability program, public, non-profit, or other non-commercial

PROHIBITED TELEMARKETING ACTIVITIES

- V. IT IS FURTHER ORDERED that Defendant and his successors, assigns, officers, agents, servants, and employees, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the telemarketing, advertising, marketing, promotion, offering for sale, or sale of any good or service, are hereby permanently restrained and enjoined from:
- A. Misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristic of any good or service in violation of Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii);
 - B. Misrepresenting, directly or by implication, affiliation with, or endorsement by, any government or third-party organization in violation of Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii); and
 - C. Violating, or assisting others in violating, any other provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310.

PROHIBITION ON DISCLOSING CUSTOMER INFORMATION

- VI. IT IS FURTHER ORDERED that Defendant and his officers, agents, servants, and employees, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile transmission, email, or

otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are permanently restrained and enjoined from:

- A. Disclosing, using, or benefitting 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 Defendant obtained prior to the date of entry of this Order in connection with the marketing or promotion of debt relief, tax relief, or mortgage assistance relief products or services;
- B. Disposing of such customer information without written authorization from the Commission; and
- C. Failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after receipt of written authorization from the Commission. 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 a government agency or required by a law, regulation, or court order.

MONETARY JUDGMENT AND SUSPENSION

VII. IT IS FURTHER ORDERED that:

- A. Judgment in the amount of Seventy-Four Thousand Two Hundred Thirty-Nine Dollars and Forty-Three Cents (\$74,239.43) is entered in favor of the Commission against Defendant, provided, however, that subject to the provisions in Subsections B, C, and D below, this judgment shall be suspended. The suspension of this judgment is based on Defendant's inability to pay and is expressly conditioned on the truthfulness of Defendant's financial disclosures described in Subsection B, below.
- B. The Commission's agreement to the suspension of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendant's sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely the Financial Statement

subsequent action arising from the personal injury event(s) occurring during May 2011, in Miami-Dade County, Florida, and which gave rise to the Defendant's hospitalization at Jackson Memorial Hospital an amount exceeding One Hundred Fifty Thousand Dollars (\$150,000.00), through either settlement, judgment, or any other means, the suspension of the judgment will be lifted as to Defendant and the FTC will receive the first dollars, up to the balance of the FTC judgment entered Subsection A, above, once the receipt of funds equals \$150,000. If there is no recovery in excess of \$150,000, then the suspension will not be lifted under this subsection. If Defendant recovers in excess of \$150,000 but less than

- F. If the suspension of the judgment is lifted, the judgment becomes immediately due as to Defendant in the amount specified in Subsection A above, (which the parties stipulate for purposes of this Section represents disgorgement of Defendant's income from the deceptive enterprise underlying the allegations in the Commission's Complaint), less any payment previously made pursuant to this Section, plus if the suspension is lifted pursuant to Subsection D only statutory interest computed from the date of entry of this Order.
- G. Defendant relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- H. The facts alleged in the Complaint will be taken as true, without further proof, only in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.
- I. The facts alleged in the Complaint establish all elements necessary to sustain an action only by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.
- J. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the

administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendant's practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendant has no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

- K. Defendant acknowledges that his taxpayer identification number, which Defendant must submit to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.
- L. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

COOPERATION WITH FTC

- VIII. IT IS FURTHER ORDERED that Defendant must fully cooperate with representatives of the Commission in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Defendant must provide truthful and complete information, evidence, and testimony. Defendant must appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative may reasonably request upon 5 days written notice, or other

reasonable notice, at such places and times as a Commission representative may designate, without the service of a subpoena. If Defendant's presence is required beyond 100 miles of his residence, the FTC agrees to arrange and pay for Defendant's reasonable travel expenses. This Section does not preclude Defendant from invoking his Fifth Amendment privilege against self-incrimination.

ORDER ACKNOWLEDGMENTS

- IX. IT IS FURTHER ORDERED that Defendant obtain acknowledgments of receipt of this Order:
- A. Defendant, within seven (7) days of entry of this Order, must submit to the FTC an acknowledgment of receipt of this Order sworn under penalty of perjury.
 - B. For five (5) years after entry of this Order, Defendant for any business that such Defendant, individually or collectively with any other defendant, is the majority owner or controls directly or indirectly, must deliver a copy of this Order to:
(1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the marketing of any financial good or service, the telemarketing of any good or

- C. From each individual or entity to which Defendant delivered a copy of this Order, he must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

COMPLIANCE REPORTING

- X. IT IS FURTHER ORDERED that Defendant make timely submissions to the FTC:
 - A. One year after entry of this Order, Defendant must submit a compliance report, sworn under penalty of perjury.
 - 1. Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing and sales, and the involvement of any other defendant (which Defendant must describe if he knows or should know due to his own involvement), (d) describe in detail whether and how Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgement obtained pursuant to this Order, unless previously submitted to the Commission.
 - 2. Additionally, Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b)

identify all business activities, including any business for which Defendant performs services whether as an employee or otherwise and any entity in which Defendant has any ownership interest; and (c) describe in detail Defendant's involvement in each such business, including, title, role, responsibilities, participation, authority, control, and any ownership.

- B. For 20 years after entry of this Order, Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
 2. Additionally, Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which Defendant performs services whether as an employee or otherwise and any entity in which Defendant has any ownership interest, and identify its name, physical address, and any Internet address of the business or entity.

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- C. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the FTC; and
- E. A copy of each unique advertisement or other marketing material related to the marketing of any financial good or service, the telemarketing of any good or service, or the acquisition or sale of marketing leads for any good or service.

COMPLIANCE MONITORING

- XII. IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant's compliance with this Order, including the financial representations upon which the judgment was suspended:
- A. Within 14 days of receipt of a written request from a representative of the FTC, Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The FTC is also authorized to obtain discovery, without further leave of court, using any of the

procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

- B. For matters concerning this Order, the FTC is authorized to communicate directly with Defendant. Defendant must permit representatives of the FTC to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.
- C. The FTC may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendant or any individual or entity affiliated with Defendant, without the necessity of identification or prior notice. Nothing in this Order limits the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

RETENTION OF JURISDICTION

- XIII. IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO STIPULATED AND AGREED TO BY THE PARTIES.

FOR DEED

, Suite 1100
13-1448
office)

1660 West 2nd Street
Cleveland, Ohio 44115
(216) 583-7038
(216) 583-7038

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CHRISTOPHER D. FANEK (OF

16th

September, 2013

s/ James S. Gwin