

United States District Court

MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Trade Practices Act (“FDUTPA”), Chapter 501, Part II, Florida Statutes (2013), and the

FINDINGS AS TO STIPULATING DEFENDANTS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Stipulating Defendants participated in deceptive or unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45; Sections 310.3(a)(4), 310.4(b)(1)(iii)(B), and 310.8 of the Telemarketing Sales Rule, 16 C.F.R. §§ 310.3(a)(4), 310.4(b)(1)(iii)(B), and 310.8; Section 501.204 of the FDUTA, Florida Statutes (2013); and Section 721.205(2) of the FTRAA, Florida Statutes (2013), in the advertising, marketing, promotion, offering for sale, or sale of Timeshare Resale Services.
3. Stipulating Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Stipulating Defendants admit the facts necessary to establish jurisdiction.
4. Stipulating Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.
5. Stipulating Defendants and Plaintiffs waive all rights to appeal or otherwise challenge or contest the validity of this Order.

FINDINGS AS TO DEFAULTING DEFENDANTS

1. This is an action instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b; the Telemarketing Act, 15 U.S.C. §§ 6101-6108; the TSR, 16 C.F.R. Part 310; the FDUTPA, Chapter 501, Part II, Florida Statutes (2013), and the Florida Timeshare Resale Accountability Act (“FTRRA”), Section 721.205, Florida Statutes (2013). Pursuant to these statutes and regulations, Plaintiffs have the authority

to seek the relief they have requested.

2. The complaint states a claim upon which relief may be granted against Defendants under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b; the Telemarketing Act, 15 U.S.C. §§ 6101-6108; the TSR, 16 C.F.R. Part 310; the FDUTPA, Chapter 501, Part II, Florida Statutes (2013); and the Florida Timeshare

throughout the United States in violation of Section 5 of the FTC Act, the TSR, the FDUTPA, and the FTRAA.

10. Based on the evidence presented to the Court, there is a substantial likelihood that Defaulting Defendants will engage in the same or similar activities as alleged in the complaint unless they are permanently enjoined from such acts and practices.

11. Thus, it is proper in this case to enter equitable monetary relief against Defaulting Defendants for the consumer injury caused by their violations of the FTC Act, the TSR, the FDUTPA, and the FTRAA.

12. From January 2009 to February 2013, Defaulting Defendants' revenues from the conduct alleged in the complaint, minus funds returned to consumers through refunds and chargebacks, was at least \$10,190,769.68. This amount was calculated using data from Visa and MasterCard, which processed consumer payments for Defaulting Defendants. See PX 36, pp. 6-12. The Defaulting Defendants are therefore liable for injunctive relief and are jointly and severally liable for monetary relief in the amount of \$10,190,769.68.

13. This Final Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

14. Entry of this Final Order is in the public interest.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

1. "Asset" or "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including, but not limited to, "goods," "instruments,"

“equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” or “notes,” (as these terms are defined in the Uniform Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located.

2. “Assisting Others” includes, but is not limited to, providing any of the following services to any Person or entity: (1) performing customer service functions including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any sales script, other marketing material, or marketing services of any kind; (3) providing names of, or assisting in the generation of, potential customers; (4) providing credit card merchant processing accounts, or otherwise providing access to a billing and collection system (such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card), or causing any charges to be made to such an account or utilizing such a system; or (5) acting as an officer or director of a business entity.

3. “Defendants” means the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

4. “Individual Defendants” means Sheldon Lee Cohen, also doing business

as Universal Timeshe Cess (i)6(nes)41-c4siion ornesTJ 0.0d Mnesc 0 G 0 c 0 Mnesc 0 4(e(e





18. "Timeshare" or "Timeshare Property" refers to the right of ownership or occupancy in any vacation property or properties (including, but not limited to, condominiums, resorts, campgrounds, and cruise ships) that provides rights-holders with certain periodic usage and/or occupancy rights. The term shall also include "points-based" programs that provide similar ownership and/or occupancy benefits.

19. "Timeshare Resale Service" means any good, service, plan, or program represented, expressly or by implication, to assist an individual in advertising, marketing, promoting, offering for sale or rent, or selling or renting the individual's timeshare.

ORDER

I. PERMANENT BAN ON TELEMARKETING

IT IS ORDERED that Defaulting Defendants, whether acting directly or through any Person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from Telemarketing, or Assisting Others engaged in Telemarketing.

II. PERMANENT BAN ON TIMESHARE RESALE SERVICES

IT IS FURTHER ORDERED that Defendants, whether acting directly or through any Person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from engaging in, participating in, or Assisting Others in the advertising, marketing, promoting, offering for sale, or sale of any Timeshare Resale Service.

III. PROHIBITED PRACTICES RELATING TO ANY GOODS OR SERVICES

IT IS FURTHER ORDERED that Defendants, and their officers, agents servants, employees, and attorneys, and all other Persons in active concert or participation with

any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any Person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, in connection with the advertising, marketing, promotion, offering for sale, or sale of any good or service, are hereby permanently restrained and enjoined from:

A. Misrepresenting, or Assisting Others in misrepresenting, directly or indirectly, expressly or by implication, any material fact including, but not limited to:

1. the total cost to purchase, receive or use the good or service;
2. any material restriction, limitation, or condition to purchase, receive or use the good or service;
3. any material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the good or service;
4. the income, profits or sales likely to be achieved from the good or service; and
5. any material aspect of the performance, efficacy, nature or central characteristic of the good or service;

B. Violating, or Assisting Others in violating, any provision of the TSR, including, but not limited to:

1. Section 310.3(a)(4) of the TSR, 16 C.F.R. § 310.3(a)(4), by making any false or misleading statement to induce any Person to pay for goods or services;
2. Section 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B),

by engaging in, or causing others to engage in, initiating an outbound telephone call to a Person's telephone number on the National Do Not Call Registry in connection with Telemarketing; and

3. Section 310.8 of the TSR, 16 C.F.R. § 310.8, by initiating or causing others to initiate, in connection with Telemarketing, an outbound telephone call to a telephone number within a given area code when Defendants have not, either directly or through another Person, paid the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry;

C. Violating, or Assisting Others in violating, any provision of:

1. the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2013); and
2. the Florida Timeshare Resale Accountability Act, Section 721.205, Florida Statutes (2013).

IV. PROHIBITIONS ON COLLECTING ON ACCOUNTS

IT IS FURTHER ORDERED that Defendants and their officers, agents, servants, employees, attorneys, and all other Persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any Person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, are permanently restrained and enjoined from attempting to collect, collecting, or assigning any right to collect payment from any consumer who purchased or agreed to purchase any Defendant's Timeshare Resale Service.

V. MONETARY JUDGMENT AND SUSPENSION AS TO STIPULATING
DEFENDANTS

IT IS FURTHER ORDERED that:

A.

attachments; and

4. the email from Stipulating D [(1 S)f

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

conclusion of the Receiver's duties, in partial satisfaction of the monetary judgment set forth in this Order.

C. Upon completion of the above tasks, the duties of the Receivership over the Receivership Defendants shall terminate, and the Receiver shall be discharged as to the Receivership Defendants.

C. Failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the Commission.

Provided, however, that customer information need not be disposed of, and may

business that such Defendant, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, and each Corporate Defendant 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 the telemarketing of any good or service and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

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

XV. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to Plaintiffs:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each 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 that Stipulating Defendant; (b) identify all of that 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 Individual Defendants must

describe if they know or should know due to their own involvement); (d)

(a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to Plaintiffs notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Stipulating Defendant within 14 days of its filing.

D. Any submission to Plaintiffs required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Plaintiff’s representative in writing, all submissions to Plaintiffs pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC and State of Florida, Office of the Attorney General v. Vacation Communications Group, LLC, et al.*, Matter No. X130048.

XVI. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 10 years after entry of the Order, and retain each such record for 5 years. Specifically, each

directly with each Defendant. Defendants must permit representatives of either Plaintiff 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. Plaintiffs may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or

DONE AND ORDERED in Chambers in Orlando, Florida, on June 12, 2014.