

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 13cv6420
)	
v.)	Judge James B. Zagel
)	
AFD ADVISORS, LLC, a Wisconsin limited liability company, also d/b/a AFD MEDICAL ADVISORS, et al,)	Magistrate Judge Maria Valdez
)	
Defendants.)	
)	

**DEFAULT JUDGMENT AND ORDER FOR PERMANENT
INJUNCTION AND MONETARY RELIEF AS TO DEFENDANTS
AFD ADVISORS, LLC; AMG ASSOCIATES, LLC; AND PARK 295 CORP.**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its 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, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108.

The Court, having found Defendants AFD Advisors, LLC; AMG Associates, LLC; and Park 295 Corp. (hereinafter referred to as “Defaulting Defendants”) in default, and the Commission, having moved for entry of default judgment on all counts of the Complaint against Defaulting Defendants, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This is an action by the Commission 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, and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310. Pursuant to these Sections of the FTC Act and the Telemarketing Act, the Commission has the authority to seek the relief contained herein.

2. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over Defaulting Defendants.

3. The Commission's Complaint states claims upon which relief may be granted under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b).

4. Venue in the United States District Court for the Northern District of Illinois is proper pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b)(2), (b)(3), (c)(2), (c)(3), and (d).

5. The activities of Defaulting Defendants are "in or affecting commerce" as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Defaulting Defendants were properly served with process in this matter. Defaulting Defendants thereafter failed to file any responsive pleading as required by Rule 12(a) of the Federal Rules of Civil Procedure. On March 11, 2014, the Court entered an order of default as to Defaulting Defendants. The Commission now is entitled to a default judgment, pursuant to Rule 55(b) of the Federal Rules of Civil Procedure, as to Defendants AFD Advisors, LLC; AMG Associates, LLC; and Park 295 Corp.

7. The factual allegations in the Commission's Complaint are taken as true against Defaulting Defendants. Those allegations and the evidence supporting them establish that

Defaulting Defendants violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the TSR, 16 C.F.R. Part 310.

8. The Court now finds that, in connection with the advertising, marketing, promotion, offering for sale, or sale of medical discount plans, Defaulting Defendants have violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by falsely representing, directly or indirectly, expressly or by implication, that they are calling from, calling on behalf of, or are otherwise affiliated with, a government program such as Medicare or Social Security, or the consumer's medical insurance provider.

9. The Court further finds that, in connection with the advertising, marketing, promotion, offering for sale, or sale of medical discount plans, Defaulting Defendants have violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by falsely representing, directly or indirectly, expressly or by implication, that their medical discount plan will provide consumers with substantial discounts on prescription drugs.

10. The Court further finds that, in connection with the telemarketing of goods and services, Defaulting Defendants have violated the TSR, 16 C.F.R. § 310.3(a)(2)(vii), by misrepresenting, directly or by implication, that they are calling from, calling on behalf of, or are otherwise affiliated with, a government program such as Medicare or Social Security, or the consumer's medical insurance provider.

11. The Court further finds that, in connection with the telemarketing of goods and services, Defaulting Defendants have violated the TSR, 16 C.F.R. § 310.3(a)(2)(iii), by misrepresenting, directly or by implication, that their medical discount plan will provide consumers with substantial discounts on prescription drugs.

12. The Court further finds that, in connection with telemarketing, Defaulting Defendants have violated the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), by engaging, or causing a telemarketer to engage, in initiating an outbound telephone call to a person's telephone number on the National Do Not Call Registry.

13. The Court further finds that, in the course of telemarketing goods and services, Defaulting Defendants have violated the TSR, 16 C.F.R. § 310.4(d), by making, or causing a telemarketer to make, outbound telephone calls in which the telemarketer fails to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call: (i) the identity of the seller; (ii) that the purpose of the call is to sell goods or services; and (iii) the nature of the goods or services.

14. It is proper in this case to enter a permanent injunction to prevent a recurrence of Defaulting Defendants' violations of the FTC Act, 15 U.S.C. § 45, and the TSR, 16 C.F.R. Part 310, and to enter equitable monetary relief against Defaulting Defendants.

15. Defaulting Defendants' net sales (total sales minus refunds, returns, and chargebacks) amounted to at least eight-hundred eighty-seven thousand, eight-hundred forty-one dollars and sixty-eight cents (\$887,841.68) from the conduct alleged in the Commission's Complaint.

16. The Commission is therefore entitled to equitable monetary relief against Defaulting Defendants in the amount of eight-hundred eighty-seven thousand, eight-hundred forty-one dollars and sixty-eight cents (\$887,841.68), for which Defaulting Defendants are jointly and severally liable.

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

offer discounts, savings, or benefits on healthcare, or access to such discounts, savings, or benefits.

6. “Individual Defendants” means Aaron F. Dupont; Charles A. Lamborn, III; Stephane Scebba; and Fawaz Sebai, also known as Frank Sebag, and by whatever other names each may be known.

7. “Insurance” means any good or service that (a) has the effect of transferring or spreading risk; (b) is an integral part of the policy relationship between the insurer and the insured; and (c) is limited to entities within the insurance industry.

8. “National Do Not Call Registry” means the National Do Not Call Registry, which is the “do-not-call” registry maintained by the Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

9. “Outbound Telephone Call” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

10. “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.

11. “Seller” means any Person who, in connection with a Telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration whether or not such Person is under the jurisdiction of the Commission.

12. “Telemarketer” means any Person who, in connection with Telemarketing, initiates or receives telephone calls to or from a customer or donor.

13. “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.

ORDER

I.

BAN ON HEALTHCARE-RELATED
BENEFITS OR DISCOUNT PROGRAMS

IT IS ORDERED that Defaulting Defendants are permanently restrained and enjoined from advertising, marketing, promoting, offering for sale, or selling, or assisting in the advertising, marketing, promoting, offering for sale, or selling, of any Healthcare-Related Benefits or Discount Programs.

II.

PROHIBITED MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defaulting Defendant s, Defaulting Defendants’ 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, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, offering for sale, or selling of any good or service, are permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication, any material fact, including, but not limited to:

A. That Defendants are calling from, calling on behalf of, or are otherwise affiliated with, a government program such as Medicare or Social Security, the consumer’s medical insurance provider, or any other Person or government entity;

- B. That purchase of the good or service will result in substantial savings to the consumer;
- C. That the good or service is affiliated with, or endorsed or sponsored by, any Person or government entity;
- D. That the good or service is Insurance;
- E. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy for the good or service;
- F. The total costs to purchase, receive, or use, or the quantity of, the good or service;
- G. Any material restriction, limitation, or condition on purchasing, receiving, or using the good or service; or
- H. Any material aspect of the performance, efficacy, nature, or central characteristics of the good or service.

III.

PROHIBITION AGAINST DECEPTIVE AND ABUSIVE TELEMARKETING ACTS OR PRACTICES

IT IS FURTHER ORDERED that Defaulting Defendant s, Defaulting Defendants' 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, whether acting directly or indirectly, in connection with Telemarketing, are permanently restrained and enjoined from engaging in, causing other Persons to engage in, and assisting other Persons to engage in, the following:

- A. Misrepresenting, directly

1. A Seller's or Telemarketer's affiliation with, or endorsement or sponsorship by, any Person or government entity; and

2. Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

B. Initiating any Outbound Telephone Call to any Person at a telephone number on the National Do Not Call Registry unless the Seller proves that:

1. The Seller has obtained the express agreement, in writing, of such Person to place calls to that Person. Such written agreement shall clearly evidence such Person's authorization that calls made by or on behalf of a specific party may be placed to that Person, and shall include the telephone number to which the calls may be placed and the signature of that Person; or

2. The Seller has an Established Business Relationship with such Person and that Person has not previously stated that he or she does not wish to receive Outbound Telephone Calls made by or on behalf of the Seller; and

C. Failing to disclose truthfully, promptly and in a clear and conspicuous manner the identity of the Seller, that the purpose of the call is to sell goods or services, and the nature of the goods or services.

D. Violating the Telemarketing Sales Rule, 16 C.F.R. Part 310, a copy of which is attached.

IV.

MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment in the amount of eight-hundred eighty-seven thousand, eight-hundred forty-one dollars and sixty-eight cents (\$887,841.68) is entered in favor of the Commission against Defaulting Defendants, jointly and severally, as equitable monetary relief.

B. Defaulting Defendants are ordered to pay to the Commission eight-hundred eighty-seven thousand, eight-hundred forty-one dollars and sixty-eight cents (\$887,841.68). Such payment must be made within seven (7) days of entry of this Order by electronic funds transfer in accordance with instructions to be provided by a representative of the Commission.

C. 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 Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defaulting Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

V.

TURNOVER OF ASSETS HELD BY THIRD PARTIES

account or asset of any Defaulting Defendant frozen pursuant to (a) the Ex Parte Temporary Restraining Order with Asset Freeze and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue (“TRO”), entered in this matter on September 10, 2013, and/or (b) the Preliminary Injunction with Asset Freeze and Other Equitable Relief as to Defendants AFD Advisors, LLC; AMG Associates, LLC; Park 295 Corp.; CAL Consulting, LLC; 9262-2182 Québec Inc.; 9210-7838 Québec Inc.; and Charles A. Lamborn, III (“Preliminary Injunction”), entered in this matter on October 3, 2013, shall turn over such account or asset to the Commission, by wire transfer pursuant to directions provided by counsel for the Commission, or as otherwise agreed to in writing by counsel for the Commission, within ten (10) days of receiving notice of this Order by any means, including, but not limited to, via facsimile.

The accounts and assets to be turned over to the Commission pursuant to this Section include, without limitation, the following: (1) the balance in the “AFD Advisors LLC, dba Medical Advisors” account (xxxx7690) at Associated Banc-Corp; (2) the balance in the “AFD Advisors LLC/AFD Medical Advisors” account (xxxx7923) at River Valley Bank; (3) the balance in the “AFD Advisors LLC” account (xxxx7931) at River Valley Bank; (4) the balance in the “AFD Advisors LLC/AFD Medical Advisors” account (xxxx7127) at River Valley Bank; (5) the balance in the “AFD Advisors LLC dba AFD Medical Advisors LLC” account at The Bank of Kentucky, Inc.; and (6) the balance in the “AFD Advisors, LLC” account (xxxx9448) at U.S. Bancorp.

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VI.

DISPOSITION OF MAIL HELD BY THE COMMISSION

VII.

PROHIBITIONS REGARDING CONSUMER INFORMATION

IT IS FURTHER ORDERED that Defaulting Defendant s, Defaulting Defendants' 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, are permanently restrained and enjoined from directly or indirectly:

A. Failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, Defaulting Defendants must provide it, in the form prescribed by the Commission, within fourteen (14) days;

B. 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), that any Defendant obtained prior to entry of this Order in connection with the adv()0.855, or benion, ant rketr bene imo

VIII.

PROHIBITION ON COLLECTING ON ACCOUNTS

IT IS FURTHER ORDERED that Defaulting Defendant s, Defaulting Defendants' 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, whether acting directly or indirectly, are permanently restrained and enjoined from attempalls0263 m 9directly or

members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of this Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Order for current personnel.

4. Describe in detail whether and how that Defaulting Defendant is in compliance with each Section of this Order; and

5. Provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

B. For twenty (20) years after entry of this Order, each Defaulting Defendant must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:

1. Any designated point of contact; or

2. The structure of Defaulting Defendant or any entity that Defaulting 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.

C. Each Defaulting Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defaulting Defendant within fourteen (14) days of its filing.

D. Any submission to the Commission 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 Commission representative in writing, all submissions to the Commission 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 v. AFD Advisors, LLC, et al. FTC Matter No. X130058.

XI.

RECORDKEEPING

IT IS FURTHER ORDERED that Defaulting Defendants must create certain records for twenty (20) years after entry of the Order, and retain each such record for five (5) years. Specifically, each Defaulting Defendant, in connection with the advertising, marketing, promoting, offering for sale, or selling of any good or service, must create and retain the following records:

- 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, 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 Commission; and
- E. A copy of each unique advertisement or other marketing material.

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XII.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defaulting Defendants' compliance with this Order and any failure to transfer any asse

XIII.

LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze on the assets of Defaulting Defendants shall remain in effect until the Commission has received the total amount required by Section IV above, provided, however, that Defaulting Defendants may transfer funds to the extent necessary to make all payments required by Section IV. Upon payment to the Commission of the total amount required by Section IV above, the freeze against the assets of Defaulting Defendants shall be lifted permanently.

XIV.

RETENTION-46219-57. IS FURTHER ORDERED