UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION, Plaintiff, v. PHLG ENTERPRISES LLC, a limited liability company, and JOEL S. TREUHAFT, individually and as an officer or manager of PHLG ENTERPRISES LLC, Defendants.	**Case No. _____________** **COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF** **<u>Injunctive Relief Sought</u>**

Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. 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), 6102(c), and 6105(b).

3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(1), (b)(2), (c)(1), (c)(2), (d), and 15 U.S.C. § 53(b).

SUMMARY OF THE CASE

4. Defendants provided substantial support and assistance to Indian call centers that placed outbound telemarketing calls to cash-strapped consumers in the United States and made false representations to induce those consumers to pay for bogus goods and services. Defendants collected consumers' payments made via cash money transfers and then arranged for the cash eventually to be transferred to the Indian call centers. Defendants knew, consciously avoided knowing, or should have known that the telemarketers obtained consumer payments based on misrepresentations. Defendants' acts and practices were essential in allowing the telemarketers to deceive consumers and accept fraudulently induced consumer payments in a manner that made it difficult for consumers to trace or obtain a refund of their money.

PLAINTIFF

5. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce. The FTC also enforces the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices.

6. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR, and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 6102(c), and 6105(b).

DEFENDANTS

7. Defendant PHLG Enterprises LLC ("PHLG Enterprises") is a Florida limited liability company with its principal place of business at 2997 Alt 19, Suite B in Palm Harbor, Florida. PHLG Enterprises transacts or has transacted business in this district.

8. Defendant Joel S. Treuhaft ("Treuhaft") is the managing member of PHLG Enterprises. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of PHLG Enterprises, including the acts or practices set forth in this Complaint. Defendant Treuhaft resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district.

COMMERCE

9. At all times relevant to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS PRACTICES

10. Since at least July 2015, Defendants have provided substantial support and assistance to numerous telemarketing scams. Telemarketers operating call centers in India placed outbound calls that targeted consumers in the United States and made misrepresentations to induce those consumers to pay for phony goods and services via cash money transfers such as those provided by The Western Union Company ("Western Union") and Money Gram International, Inc. ("MoneyGram") retail outlets.

11. Defendants employed numerous individuals to collect consumers' cash money transfers. Defendants referred to these individuals as "runners."

12. Defendants' runners collected those fraudulently obtained payments at retail outlets in Florida that offer Western Union or MoneyGram money transfer services, such as

grocery stores and pharmacies. In turn, Defendants and their runners transferred the payments to various individuals and companies as part of a scheme to deliver the funds to the India-based telemarketers without attracting scrutiny from law enforcement or banks.

13. In less than eight months, from July 2015 to February 2016, Defendants collected more than $1.5 million from approximately 3,000 consumers throughout the United States.

14. The telemarketers compensated Defendants and their runners by permitting them to retain seven percent of the consumers' payments that they collected.

The Telemarketers' False Representations

15. The India-based telemarketers made a variety of false representations to consumers.

16. In numerous instances, the telemarketers stated that they were calling on behalf of, or were affiliated with, the United States government or some other government entity. In fact, these telemarketers were not affiliated with any government entity in the United States.

17. In numerous instances, the telemarketers stated that consumers owed taxes and had to send a payment to the Internal Revenue Service ("IRS"). In fact, these telemarketers were not affiliated with the IRS, the consumers did not owe taxes, and their payments were not used to pay taxes.

18. In numerous instances, the telemarketers stated that consumers qualified for a grant from the federal government and had to pay fees or taxes in order to receive the grant. In fact, the telemarketers were not affiliated with the federal government, the consumers were not approved for a grant from the federal government, and their payments were not used for fees or taxes for a government grant.

19. In numerous instances, the telemarketers stated that consumers qualified for a

loan and had to pay advance fees in order to obtain the loan. In fact, the consumers did not receive a loan and their payments were not used to pay fees for the loan.

20. In numerous instances, the telemarketers did not provide consumers with any goods or services.

21. Many consumers paid hundreds—even thousands—of dollars based on the false representations made by the telemarketers.

Defendants' Collection of Consumers' Fraudulently Induced Payments

22. The India-based telemarketers directed consumers to make payments for deceptively marketed goods and services through cash money transfer services operated by Western Union or MoneyGram. During a typical call, the telemarketer provided the consumer with the name of a specific individual who would receive the cash money transfer and the state where that person would pick up the funds. The consumer then provided the Western Union or MoneyGram retail outlet with the money, the name of the person who would receive the money, and the location of the receiver. After Western Union or MoneyGram transferred the funds, the consumer provided the reference number for the transaction to the telemarketer.

23. A person located in India coordinated between several of these call centers and Defendants. This coordinator used an instant messaging application to communicate with Defendants and their runners and provided the following information: the name of the assigned runner who would retrieve the funds, the consumer's name and location, the amount of the payment, and the reference number for the transaction. In order to obtain the cash money transfer, Defendants' runner provided the cashier at the MoneyGram or Western Union retail outlet with the consumer's name and the transaction reference number. Defendants monitored and participated in these communications between the runners and the call center coordinator.

24. Defendants and the call center coordinator insisted that the runners retrieve the payments as quickly as possible. This process ensured that most consumers did not have time to cancel their transaction because consumers could not cancel or reverse the cash money transfer once the runner picked up the money.

25. Defendants and the runners knew that they were collecting funds on behalf of call centers located in India. Defendants and some of the runners knew that the call centers made outbound telephone calls to consumers in the United States.

26. In order to circumvent monetary transaction limits imposed by Western Union, MoneyGram, and stores offering cash money transfer services, Defendants' runners went to various stores every day, for eight to ten hours each day, to retrieve consumers' funds. Defendants' runners frequently went to the same stores in several cities in Florida.

27. Sometimes, multiple runners would be in the same stores at the same time picking up cash money transfers from the same consumers.

28. Because Defendants' runners repeatedly picked up cash money transfers at the same retail locations, store employees who processed Western Union and MoneyGram money transfers sometimes questioned Defendants' runners about their activities. In those instances, the runners lied about their relationship with the consumers responsible for sending the funds. The runners also lied about their relationship with other runners.

29. When questioned, Defendants' runners told store employees who processed Western Union and MoneyGram cash money transfers that they were friends or relatives of consumers. In fact, the runners were not friends or relatives of the consumers.

30. In some instances, Defendants' runners told store employees who processed Western Union and MoneyGram cash money transfers that they did not know the other runners. In fact, the runners did know the other runners.

31. The runners told these lies to ensure that the store employees would permit

them to retrieve the funds consumers had sent. The runners believed that the store employees might not have allowed them to pick up the consumers' funds if they thought that the runners did not know the consumers or that the runners were working in tandem.

32. In the beginning of the operation, some of Defendants' runners used false names in order to retrieve consumers' funds from Western Union and MoneyGram. Defendants and the runners knew that if consumers transferred funds below certain dollar amounts imposed by the retail stores, they would not have to show identification. In these instances, the runners only had to answer a test question to verify that they were allowed to retrieve the funds. Defendants and the runners used this practice to avoid showing identification and to allow any runner to retrieve the funds under that name.

33. Several of Defendants' runners were blacklisted by MoneyGram and Western Union, meaning those companies did not allow them to pick up funds for the remainder of the calendar year.

34. Defendants asked the runners to use variations of their names to pick up funds after MoneyGram and Western Union blacklisted them.

35. Typically, when Defendants' runners were blacklisted, Defendants would recruit new runners to continue retrieving consumers' money transfers.

36. After Defendants and the runners found out that retail stores that offered MoneyGram and Western Union services decreased the dollar amount in which an individual could retrieve funds without identification, the runners could no longer easily pick up funds without identification.

37. Defendant Treuhaft offered to obtain false identification cards for some of Defendants' runners to assist them in retrieving consumers' funds from Western Union and MoneyGram retail outlets. The runners, however, decided to use legitimate identification to retrieve money transfers.

38. Store employees who processed Western Union and MoneyGram money transfers sometimes told Defendants' runners that they were not allowed to retrieve a consumer's funds due to "suspicious activities."

39. Defendants knew, consciously avoided knowing, or should have known about the runners' suspicious and deceitful activities and practices while retrieving consumers' funds. Indeed, Defendants supervised and directed the runners' suspicious and deceitful activities.

Defendants' Monetary Transfers to Telemarketers

40. Once collected from retail outlets, Defendants transferred consumers' payments to the India-based telemarketers through a complex series of transactions designed to avoid law enforcement detection.

41. After Defendants' runners retrieved the consumers' payments, the runners then handed the money directly to the call center coordinator or one of his associates when they were physically in Florida. Alternatively, the call center coordinator or his associate directed Defendants and their runners to make daily deposits into three to four different bank accounts. The names of the companies or individuals that owned the bank accounts changed on a weekly basis.

42. Multiple banks have shut down several of Defendants' bank accounts due to Defendants' activities depositing and transferring funds on behalf of the call center coordinator and his associates.

43. After a runner notified Defendants that a consumer complained to him through his social media account that she did not receive what the telemarketers promised her, Defendants ignored this complaint and continued the money collection operation. Defendants told the runner to change his last name on his social media account so that consumers could not contact the runner.

44. Many consumers complained to Western Union, MoneyGram, or the FTC. However, due to the fraudulent nature of the telemarketing scheme, the use of cash money transfers, and the collection practices of Defendants, consumers were unable to obtain refunds from Western Union or MoneyGram.

45. Defendants did not verify the purpose of the consumers' payments before collecting consumers' cash money transfers on behalf of the telemarketers.

46. Defendants deliberately ignored numerous indicators of fraud in order to continue collecting consumers' payments and retain a portion of the money collected.

47. Defendants knew, consciously avoided knowing, or should have known about the misrepresentations made by the telemarketers who induced the cash payments that Defendants' runners retrieved.

VIOLATIONS OF THE FTC ACT

48. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

49. Acts or practices are unfair under Section 5 of the FTC Act if they cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

COUNT I

Unfair Collection of Consumers' Funds

50. In numerous instances, as described in paragraphs 13 and 22-47 of this Complaint, Defendants:

a. Collected consumers' fraud-induced cash money transfers in a manner designed to ensure that consumers could not cancel their transactions or obtain refunds; and

b. Ignored numerous indicators of fraud.

51. Defendants' actions caused or were likely to cause substantial injury to consumers that consumers could not reasonably avoid themselves and that was not outweighed by countervailing benefits to consumers or competition.

52. Therefore, Defendants' practices as described in Paragraph 50 of this Complaint, in combination, constitute unfair acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

VIOLATIONS OF THE TELEMARKETING SALES RULE

53. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices under the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in 1994. The FTC adopted the original TSR in 1995, extensively amended it in 2003, and amended certain sections thereafter. 16 C.F.R. Part 310.

54. Defendants have provided substantial assistance or support to persons who are "sellers" or "telemarketers" engaged in "telemarketing" as defined by the TSR, 16 C.F.R. § 310.2(dd), (ff), and (gg).

55. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services, any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

56. The TSR also prohibits sellers and telemarketers from making a false or misleading statement to induce any person to pay for goods or services. 16 C.F.R. § 310.3(a)(4).

57. The TSR prohibits a person from providing substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates Section 310.3(a) of the

Rule. 16 C.F.R. § 310.3(b). Such conduct constitutes a deceptive act or practice and is a violation of the TSR. 16 C.F.R. § 310.3(b).

58. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

Assisting and Facilitating TSR Violations

59. In numerous instances, Defendants have provided substantial assistance or support, including accepting consumers' cash money transfers, to sellers or telemarketers whom Defendants knew or consciously avoided knowing:

a. Misrepresented, directly or by implication, in the sale of goods or services, the material aspects of the performance, efficacy, nature, or central characteristics of goods or services that were the subject of a sales offer, in violation of Section 310.3(a)(2)(iii) of the TSR; or

b. Induced consumers to pay for goods and services by making false or misleading statements in violation of Section 310.3(a)(4) of the TSR.

60. Defendants' acts or practices, as alleged in Paragraph 59 of this Complaint, constitute deceptive telemarketing acts or practices that violate Section 310.3(b) of the TSR and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

61. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the TSR. In addition, Defendants have

been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

62. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

63. Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorizes this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violation of the TSR, including rescission and reformation of contracts, and the refund of money.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. §§ 53(b), and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:

1. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including, but not limited to, temporary and preliminary injunctions and limited expedited discovery;

2. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;

3. Award such relief as the Court finds necessary to redress injury to consumers

resulting from Defendants' violations of the FTC Act and the TSR, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

4. Award Plaintiff the costs of bringing this action, as well as any other equitable relief that the Court may determine to be just and proper.

Respectfully submitted,

DAVID C. SHONKA
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Dated: January 26, 2017

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