

Sealed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED by _____ D.C.
SEP 25 2017
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMERICAN STUDENT LOAN
CONSOLIDATORS, LLC, a Florida limited
liability company, d/b/a ASLC Processing;

BBND MARKETING, LLC, a Florida limited
liability company, d/b/a United Processing
Center, United SL Processing, and United
Student Loan Processing;

DANIEL UPBIN, individually and as owner,
officer, or manager of American Student Loan
Consolidators, LLC, and BBND Marketing,
LLC; and

PATRICK O'DEADY, individually and as
owner, officer, or manager of American
Student Loan Consolidators, LLC, and BBND
Marketing, LLC,

Defendants.

17-61862
Civil Action No. *CV Gayles*

MAGISTRATE JUDGE
SELTZER

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

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,

the 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 the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, in connection with their deceptive marketing and sale of student loan debt relief services.

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), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

4. 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 or deceptive acts or practices in or affecting commerce. The FTC also enforces the Telemarketing Act, 15 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices in or affecting commerce.

5. 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) and 56(a)(2)(A), 6102(c), and 6105(b).

DEFENDANTS

6. Defendant American Student Loan Consolidators, LLC (“ASLC”) is a Florida limited liability company with its principal place of business at 10 Fairway Drive, Suite 100, Deerfield Beach, Florida 33441. It sometimes operates under the name ASLC Processing. ASLC transacts or has transacted business in this district and throughout the United States. ASLC was incorporated in 2013. At all times material to this Complaint, acting alone or in concert with others, ASLC has advertised, marketed, promoted, distributed, or sold student loan debt relief services to consumers throughout the United States.

7. Defendant BBND Marketing, LLC (“BBND”) is a Florida limited liability company with its principal place of business at 10 Fairway Drive, Suite 100, Deerfield Beach, Florida 33441. BBND Marketing It sometimes operates under the names United Processing Center, United SL Processing, and United Student Loan Processing. BBND transacts or has transacted business in this district and throughout the United States. BBND was incorporated in 2014. At all times material to this Complaint, acting alone or in concert with others, BBND has advertised, marketed, promoted, distributed, or sold student loan debt relief services to consumers throughout the United States.

8. Defendant Daniel Upbin is one of two managing members of ASLC and BBND. 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 ASLC and BBND, including the acts and practices set forth in this Complaint. Defendant Daniel Upbin resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

9. Defendant Patrick O'Deady is the other managing member of ASLC and BBND. 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 ASLC and BBND, including the acts and practices set forth in this Complaint. Defendant O'Deady resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

10. Defendants started their operations as ASLC and have continued their operations as BBND.

COMMERCE

11. At all times material 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' DECEPTIVE STUDENT LOAN DEBT RELIEF OPERATION

12. Since at least 2013, Defendants have operated an unlawful debt relief enterprise that preys on consumers with student loan debt by falsely promising to reduce their student loan payments and interest rates or eliminate much of their debt through enrollment in student loan forgiveness programs. Defendants also have promised that consumers' fees paid to Defendants will be applied to their student loans. In many instances, however, consumers discover that Defendants have failed to enroll them in any payment reduction or debt forgiveness programs and have otherwise failed to reduce their payments or interest rates or eliminate their student loan debt. Further, consumers later learn none of their payments have gone towards paying down their student loan debt.

13. In exchange for the promised student loan debt relief services, Defendants have charged illegal upfront fees of as much as \$799.

14. Defendants have also claimed, directly or indirectly, that they work for or with, or are affiliated with, the U.S. Department of Education (“ED”), the government, or the student loan servicers.

Background on Student Loan Forgiveness and Repayment Programs

15. Student loan debt is the second largest class of consumer debt; more than 42 million Americans collectively owe nearly \$1.3 trillion. The student loan market shows elevated levels of distress relative to other types of consumer debt.

16. To address this mounting level of distressed debt, the ED and state government agencies administer a limited number of student loan forgiveness and discharge programs. Most consumers, however, are not eligible for these programs because of strict eligibility requirements. For example, one program requires the consumer to demonstrate a “total and permanent disability”; another applies only to consumers whose school closed while the consumer was still enrolled. A third program, the Borrower Defense to Repayment (“BDR”), may provide a loan discharge if the school, through an act or omission, violated state law directly related to the borrower’s federal student loan or to the educational services for which the loan was provided.

17. Other forgiveness programs require working in certain professions for a period of years. Teacher Loan Forgiveness applies to teachers who have worked full-time for five years in a low-income elementary or secondary school or educational service agency. Public Service Loan Forgiveness (“PSLF”) applies to employees of governmental units or non-profit

organizations who make timely monthly payments for a period of ten years while employed in the public sector.

18. The federal government also offers loan forgiveness through income-driven repayment (“IDR”) programs that enable borrowers to reduce their monthly payments and have portions of their loans forgiven. No loans have been forgiven yet under any of the IDR programs. IDR programs allow eligible borrowers to limit their monthly payments based on a percentage of their discretionary monthly income. To remain in an IDR program, borrowers must recertify their income and family size annually. Obtaining forgiveness through IDR programs requires a minimum of 20 or 25 years of qualifying payments.

19. Because a borrower’s income is likely to fluctuate over the life of the loan, monthly payments under the IDR programs can vary considerably from year to year. If a borrower’s income were to increase over the repayment period, for example, the monthly payment amount could correspondingly increase to the point where those payments would pay off the loan before any amount could be forgiven at the end of the repayment term.

20. Consumers can apply for BDR, PSLF, IDR, and other repayment and forgiveness or discharge programs through ED or their student loan servicers at no cost; these programs do not require the assistance of a third-party company or payment of application fees.

21. ED will grant forbearance while processing applications for an alternative repayment plan, and in some cases of hardship. During forbearance, unpaid interest is added to the principal balance and the loan amount increases.

Defendants' Deceptive Marketing and Sale of Student Loan Debt Relief Services

22. Defendants have promised to enroll consumers in student loan forgiveness or other programs to reduce their student loan payments and balances. Defendants have made these claims through inbound telemarketing calls from consumers responding to Defendants' Internet and social media advertising, and through outbound telemarketing calls to consumers. During these calls, Defendants have told consumers that ASLC can reduce their monthly payments and interest rates on their student loans or that the consumers are "approved" or "pre-approved" for student loan forgiveness.

23. In some instances, consumers view the Defendants' website or online advertisements and call Defendants' telemarketers for more information. In other instances though, Defendants make outbound telemarketing calls to consumers to offer their services and convince student loan borrowers to sign up with the company.

24. In numerous instances, Defendants' telemarketers have also told consumers that they are "approved" or "pre-approved" for student loan forgiveness.

25. In addition, Defendants' telemarketers have told or implied to consumers that Defendants are a part of or are affiliated with the consumers' loan servicers, the government, or ED.

26. Defendants tell consumers that their services require an initial fee, typically ranging from \$499 to \$799. Defendants' telemarketers have often told consumers that this fee is mandatory in order to get into a loan forgiveness program or other debt relief program, and even to get multiple loans of one consumer consolidated into one loan or into fewer loans. In some instances, Defendants' telemarketers have stated that these fees will be applied toward

consumers' loans. To induce customers to pay the advanced fees, Defendants' telemarketers have claimed that the student loan debt relief is guaranteed and, if Defendants were unable to secure the promised debt relief, they would refund fees charged to consumers.

27. Defendants' telemarketers have typically collected consumers' payment information on the initial phone call. Defendants have charged consumers advance fees for purported debt relief services before achieving any results, and, in many instances, have failed to achieve any results on behalf of the consumer. In fact, Defendants' contracts state that they will not perform services on the loans until payment has been received.

28. In numerous instances, Defendants' telemarketers have emailed consumers a link to a contract to sign electronically. Defendants' telemarketers have typically pressured consumers into quickly signing the contract electronically while the telemarketer is still on the phone.

29. Consumers frequently do not receive the services that Defendants promised them. In numerous instances, Defendants have failed to obtain the promised lower monthly payments or interest rates or to enroll students into student loan forgiveness programs. In some instances, consumers have discovered that Defendants had not contacted their loan servicers at all or failed to finish the consumer's application. In other instances, Defendants have contacted consumers' loan servicers, but only to place consumers' loans into forbearance. This simply delays consumers' discovery that their student loans are not being paid and that they have not been enrolled in a forgiveness program or other repayment plan, while Defendants continue to collect fees. As a result, many consumers have fallen behind on their student loan payments or have had additional interest accrue. Moreover, contrary to Defendants' representations, consumers'

payments to Defendants are not applied to their student loans; rather, Defendants keep them as fees.

30. In numerous instances, when consumers have contacted Defendants to cancel their enrollment and services with ASLC, consumers encounter difficulty requesting and obtaining refunds. Often, when consumers have requested a refund, Defendants do not provide any refund or they refund the consumers only a portion of their fees.

THE FTC ACT

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

32. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

VIOLATIONS OF THE FTC ACT

COUNT I

Deceptive Student Loan Debt Relief Representations

33. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of student loan debt relief services, Defendants have represented, directly or indirectly, expressly or by implication, that:

- a. Defendants are part of or affiliated with the government, government loan programs, the Department of Education, or consumers’ loan servicers;
- b. Consumers who purchase Defendants’ debt relief services generally will have their monthly payments reduced or their loan balances forgiven in whole or in part;

- c. A government loan repayment or loan forgiveness program requires consumers to pay a fee to enroll;
- d. Some or all of consumers' monthly payments to Defendants will be applied toward consumers' student loans; and
- e. Consumers can only obtain access to the debt reduction or loan forgiveness programs by going through Defendants.

34. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 33 of this Complaint, such representations were false or not substantiated at the time Defendants made them.

35. Therefore, Defendants' representations as set forth in Paragraph 33 of this Complaint are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE TELEMARKETING SALES RULE

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

37. Defendants are "seller[s]" or "telemarketer[s]" engaged in "telemarketing" as defined by the TSR, 16 C.F.R. § 310.2(dd), (ff), and (gg). A "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 a customer in exchange for consideration. 16 C.F.R. § 310.2(dd). A "telemarketer" means any person who, in connection with telemarketing, initiates or receives

telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(ff). “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. 16 C.F.R. § 310.2(gg).

38. Defendants are sellers or telemarketers of “debt relief services” as defined by the TSR, 16 C.F.R. § 310.2(o). Under the TSR, a “debt relief service” means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors, 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. 16 C.F.R. § 310.2(o).

39. The TSR prohibits sellers and telemarketers from requesting or receiving payment of any fees or consideration for any debt relief service until and unless:

- a. The seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer; and
- b. The customer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor; and to the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration either:

- i. Bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or
- ii. Is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the service and the amount actually paid to satisfy the debt. 16 C.F.R. § 310.4(a)(5)(i).

40. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, a seller's or telemarketer's affiliation with, or endorsement of sponsorship by, and person or government entity. 16 C.F.R. §310.3(a)(2)(vii).

41. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, any material aspect of any debt relief service, including, but not limited to, the amount of money or the percentage of the debt amount that a customer may save by using the service. 16 C.F.R. § 310.3(a)(2)(x).

42. 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).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT II

Advance Fee for Debt Relief Services

43. In numerous instances in connection with the telemarketing of student loan debt relief services, Defendants have requested or received payment of a fee or consideration for debt relief services before:

- a. Defendants have renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer; and
- b. The customer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor.

44. Defendants' acts or practices, as described in Paragraph 43 of this Complaint, are abusive telemarketing acts or practices that violate Section 310.4(a)(5)(i) of the TSR, 16 C.F.R. § 310.4(a)(5)(i).

COUNT III

Misrepresentation of Affiliation

45. In numerous instances, in connection with telemarketing, Defendants represented, directly or indirectly, expressly or by implication, that they are affiliated with, or endorsed or sponsored by, the government, government loan programs, the Department of Education, or consumers' loan servicers.

46. Defendants' acts and practices, as described in Paragraph 45 of this Complaint, are deceptive telemarketing acts or practices that violate Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii).

COUNT IV
Misrepresentations

47. In numerous instances, in connection with the telemarketing of student loan debt relief services, Defendants have misrepresented, directly or indirectly, expressly or by implication, material aspects of their debt relief services, including, but not limited to:

- a. Consumers who purchase Defendants' debt relief services generally will have their monthly payments reduced or their loan balances forgiven in whole or in part;
- b. A government loan repayment or loan forgiveness program requires consumers to pay a fee to enroll;
- c. Some or all of consumers' monthly payments to Defendants will be applied toward consumers' student loans; and
- d. Consumers can only obtain access to the debt reduction or loan forgiveness programs by going through Defendants.

48. Defendants' acts and practices, as described in Paragraph 47 of this Complaint, are deceptive telemarketing acts or practices that violate Section 310.3(a)(2)(x) of the TSR, 16 C.F.R. § 310.3(a)(2)(x).

CONSUMER INJURY

49. 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

50. 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.

51. 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' violations of the TSR, including the rescission or reformation of contracts and the refund of money.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, 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:

A. 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, preliminary injunctions, an order freezing assets, immediate access to Defendants' business premises, and the appointment of a receiver;

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

C. 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

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: September 25, 2017

Respectfully submitted,

DAVID C. SHONKA
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