

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Civil No. HAR-96-2690
))
v.)	Judge Hargrove
)	
CHRISTOPHER EBERE NWAIGWE,)	
a/k/a CHRISTOPHER MAIGE,)	
a/k/a MICHAEL MORGE,)	
a/k/a MICHAEL NORGE,)	
)	
and)	
)	
UDOKA MADUKA,)	
a/k/a MICHAEL MANN,)	
)	
Defendants.)	

**STIPULATED FINAL JUDGMENT AND ORDER
FOR PERMANENT INJUNCTION AND OTHER RELIEF
AGAINST DEFENDANT UDOKA MADUKA**

WHEREAS plaintiff, the Federal Trade Commission ("Commission"), commenced this action by filing its complaint against defendant Christopher Ebere Nwaigwe ("Nwaigwe") on August 28, 1996 for an ex parte Temporary Restraining Order with Asset Freeze, Expedited Discovery, and Order to Show Cause Why a

Preliminary Injunction Should Not Issue ("TRO") and by filing an amended complaint against defendant Udoka Maduka ("Maduka") on September 17, 1996 seeking preliminary and permanent injunctive relief and thereafter serving defendant Maduka with the Complaint and Summons;

WHEREAS the Commission and defendant Maduka stipulated to a preliminary injunction with asset freeze entered by this Court on October 11, 1996; and

WHEREAS the Commission and Maduka hereby stipulate to the Court's findings below and to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Other Relief Against Udoka Maduka ("Order");

The Court finds:

1. This is an action by the Commission instituted under Sections 5 and 13(b) of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 53(b). The complaint seeks both permanent injunctive relief and consumer redress for alleged unfair or deceptive acts or practices by defendants in connection with the operation of scholarship service businesses.

2. The Commission has the authority under Section 13(b) of the FTC Act to seek the relief it has requested.

3. This Court has jurisdiction over the subject matter of this case and has jurisdiction over defendant Maduka. Venue in

the District of Maryland is proper, and the complaint states a claim upon which relief may be granted against defendant Maduka under Sections 5 and 13(b) of the FTC Act.

4. The activities of defendant Maduka are in or affecting commerce, as defined in 15 U.S.C. § 44.

5. Defendant Maduka neither admits nor denies the allegations set forth in the complaint.

6. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.

7. Entry of this Order is in the public interest.

IT IS THEREFORE ORDERED AS FOLLOWS:

DEFINITIONS

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

1. "Scholarship service business" shall mean any business activity that purports to assist consumers with obtaining scholarships or grants.

2. "Assisting others engaged in scholarship service businesses" means knowingly providing any of the following goods or services to any entity or person engaged in scholarship

service businesses: (1) providing names of, or assisting in the generation of, potential customers for an entity or individual engaged in scholarship service businesses; (2) formulating or providing, or arranging for the formulation or provision of, any solicitation letters, application forms or any other marketing material for an entity or individual engaging in scholarship service businesses; or (3) performing marketing services of any kind for an entity or individual engaged in scholarship service businesses.

3. "Mail drop" shall mean any commercial mail receiving or forwarding agency.

I. Practices Enjoined

IT IS HEREBY ORDERED that defendant Maduka, and his officers, agents, servants, employees, and attorneys, and all other persons or other entities in active concert or participation with him, who receive notice of this Order by personal service or otherwise, in connection with the advertising, promotion, offer for sale, or sale of any item, product, good, service, or investment interest of any kind, are hereby permanently restrained and enjoined from:

1. Falsely representing in any manner, directly or by implication, that defendant is connected with, affiliated with,

or administers a scholarship program or foundation that provides a stated amount in scholarship money directly to students;

2. Falsely representing in any manner, directly or by implication, that defendant provides a list of scholarships likely to yield a stated amount in scholarship money for the consumer;

3. Falsely representing in any manner, directly or by implication, that defendant will refund his fee to any consumer who engages defendant's services and does not obtain at least a stated amount of scholarship money resulting from his services.

4. Falsely representing in any manner, directly or by implication, that a mail box from the U.S. Postal Service or a mail drop, including but not limited to Mail Boxes, Etc., is a physical location from which defendant conducts a business, including but not limited to any scholarship service businesses;

5. Using any aliases or assumed names that are different from their legal names, or using names of unincorporated businesses or entities, including but not limited to names of unincorporated scholarship service businesses.

6. Falsely representing in any manner, directly or by implication, any other fact material to a consumer's decision to utilize scholarship service businesses.

7. Assisting others engaged in scholarship service businesses in making, directly or by implication, the false representations and prohibitions enumerated in Paragraphs 1-6 of this Section I.

II. Bond Provision

IT IS FURTHER ORDERED that defendant Maduka is permanently restrained and enjoined from either (1) engaging in scholarship service businesses, or (2) assisting others engaged in scholarship service businesses, unless he first obtains a performance bond in the principal sum of FIFTY THOUSAND DOLLARS (\$50,000):

1. This bond shall be conditioned upon compliance with Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and with the provisions of this Order. The bond shall be deemed continuous and remain in full force and effect as long as defendant Maduka continues to engage in scholarship service businesses or assists others engaged in scholarship service businesses and for at least three years after he has ceased to engage in such activity. The bond shall cite this Order as the subject matter of the bond, and shall provide surety thereunder against financial loss resulting from whole or partial failure of performance due, in whole or in part, to any violation of Section

5 of the Federal Trade Commission Act, the provisions of this Order, or to any other violations of law.

2. The performance bond required pursuant to this Section shall be an insurance agreement providing surety for financial loss issued by a surety company that is admitted to do business in each of the states in which defendant Maduka does business and that holds a Federal Certificate of Authority As Acceptable Surety On Federal Bond and Reinsuring. Each such performance bond shall be in favor of both: (1) the Federal Trade Commission for the benefit of any consumer injured as a result of any false or misleading representation made by defendant Maduka, his agents or any other persons acting in concert with him or under his authority, supervision or control, while engaged in scholarship service businesses or assisting others engaged in scholarship service businesses; and (2) any consumer so injured.

3. The bond required pursuant to this Section is in addition to, and not in lieu of, any other bond required by any other federal, state, or local law, or by any other court order not entered in this action.

4. At least ten days before the commencement of scholarship service business or assisting others engaged in scholarship service business, defendant Maduka shall provide a copy of the bond required by this Section to the Associate

Director for Service Industry Practices at the address specified in Section IV. of this Order.

5. Defendant Maduka shall disclose clearly and prominently to any consumer, or other purchaser or prospective purchaser of any product or service that is advertised promoted, offered for sale, sold, or distributed: (1) the existence of the performance bond and (2) the following disclosure: "AS REQUIRED BY ORDER OF THE U.S. DISTRICT COURT IN SETTLEMENT OF CHARGES OF FALSE AND MISLEADING REPRESENTATIONS IN THE PROMOTION AND SALE OF SCHOLARSHIP SERVICE BUSINESSES."

III. Record Keeping Provisions

IT IS FURTHER ORDERED that, for a period of five years from the date of entry of this Order, defendant Maduka, and his officers, agents, servants, employees, and attorneys, and all other persons or other entities in active concert or participation with him, are hereby restrained and enjoined from:

1. Failing to make and keep such books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipts ledgers, cash disbursements ledgers and sources documents, documents indicating title to real or personal property, and any other documents as may be required to reflect, in

- reasonable detail, accurately and fairly, all of defendant's business and financial transactions; and
2. Destroying, throwing away, mutilating, changing, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any books, records, tapes, discs, accounting data, checks (fronts and backs), correspondence, forms, advertisements, brochures, manuals, electronically stored data, banking records, consumer lists, files, invoices, telephone records, ledgers, payroll records, or other business or financial documents of any kind, including information stored in computer-maintained form, in the possession, custody, or control of defendant Maduka or any other person or entity in active concert or participation with defendant Maduka.

IV. Monitoring

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

1. Defendant Maduka shall notify the Commission in writing, within ten (10) days of the date of entry of this Order, of his current residential address, mailing address, business and

home telephone numbers, and employment status, including the names, telephone numbers, and business addresses of any current employers;

2. For a period of three (3) years from the date of entry of this Order, defendant Maduka shall notify the Commission in writing within thirty (30) days of any changes in his residential or mailing addresses, telephone numbers, or employment status;

3. For the purposes of this Order, all written notifications to the Commission shall be mailed to:

Associate Director for Service Industry Practices
Room H-200
Federal Trade Commission
Washington, D.c. 20580

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4. For the purposes of this Section, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any entity or individual for whom defendant Maduka performs services as an employee, consultant, or independent contractor.

V. Access

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, defendant Maduka shall

permit representatives of the Commission, within seven (7) business days of receipt of written notice from the Commission:

1. Access during normal business hours to any office, or facility storing documents, of any business where defendant Maduka is the majority owner of the business or otherwise directly or indirectly manages or controls the business. In providing such access, defendant Maduka shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and

2. To interview or depose the officers, directors, and employees of any business to which Paragraph (1) of this Section applies, concerning matters relating to compliance with the terms of this Order. The person interviewed or deposed may have counsel present. Provided that the Commission may otherwise monitor defendant Maduka's compliance with this Order by all lawful means available, including the use of compulsory process seeking production of documents and the use of investigators posing as consumers or suppliers.

3. For purposes of this Section V, written notice to defendant Maduka shall be deemed sufficient if mailed to his most recent residential address he has provided to the Commission.

VI. Monetary Relief

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:

1. Judgment is hereby entered against defendant Maduka in the amount of \$ 9,000.00. In addition, defendant forfeits the \$ 3,760.00 in consumer funds collected by the Commission from defendant Nwaigwe's mail drops pursuant to the stipulated preliminary injunction for equitable monetary relief. This judgment and the forfeited consumer funds are to be used for consumer redress and may be used to pay any attendant expenses of administering any redress fund.

2. If the Commission, in its sole discretion, determines that redress is wholly or partially impractical, any funds not so used shall be deposited in the United States Treasury. The Commission in its sole discretion may use a designated agent to administer consumer redress. Defendant Maduka acknowledges and agrees that this judgment for equitable monetary relief, as with all other relief provided in this Order, is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

3. Except as set forth in Section VI.4. below, each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action; provided, however, in the event the Commission initiates proceedings to enforce this

Order and provided further the Court determines that defendant Maduka has violated any term or provision of this Order, defendant Maduka shall pay the costs and attorneys' fees incurred by the Commission or its agents in connection with proceedings to enforce this Order.

4. Notwithstanding any other provision of this Order, defendant Maduka agrees that, if he fails to meet the payment obligations set forth in this Section VI, he shall pay the costs and attorneys' fees incurred by the Commission and its agents in any attempts to collect amounts due pursuant to this Order. Defendant Maduka further agrees that the facts as alleged in the complaint shall be taken as true in any subsequent litigation filed by the Commission pursuant to this Order, including but not limited to a non-dischargeability complaint in any subsequent bankruptcy proceeding.

VII. Right to Reopen

IT IS FURTHER ORDERED THAT:

The Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of defendant Maduka's financial condition as represented in defendant Maduka's February 21, 1997 financial statement, which contains material information relied upon by the Commission in

negotiating and agreeing to the terms of this Order. If, upon motion by the Commission, this Court finds that the above-referenced financial statement failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the Commission may request that this Order be reopened for the sole purpose of allowing the Commission to modify the monetary liability of defendant Maduka; provided, however, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court and that defendant Maduka has no right to contest any of the allegations in the Commission's complaint in this matter in any proceedings brought pursuant to this subparagraph; and, provided, further, that proceedings instituted under this provision would be in addition to and not in lieu of any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

VIII. Retention of Jurisdiction

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

IX. Entry of this Judgment

IT IS FURTHER ORDERED that there is no just reason for delay of entry of this judgment, and pursuant to Fed. R. Civ. P. 54(b), the Clerk shall enter this Order immediately.

IT IS SO ORDERED.

_____, 1997
(date)

UNITED STATES DISTRICT JUDGE

STIPULATED AND AGREED TO:

Udoka Maduka
Defendant

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Alice Saker Hrdy
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