

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CASE NO.: 8:09-cv-2309-T-23TBM

WASHINGTON DATA RESOURCES, INC.,
a Florida corporation,

OPTIMUM BUSINESS SOLUTIONS, LLC,
a Nevada limited liability company a/k/a
Attorney Finance Services, LLC, d/b/a
Attorney Finance Services,

CROWDER LAW GROUP, P.A.,
a Florida corporation, f/k/a Jackson, Crowder
& Associates, P.A., d/b/a Legal Support
Services,

RICHARD A. BISHOP, individually and as a
member of Optimum Business Solutions, LLC,

BRENT McDANIEL, individually and as an
officer of Washington Data Resources, Inc.,

TYNA CALDWELL, individually,

DOUGLAS A. CROWDER, individually and as
an officer of Crowder Law Group, P.A.,

BRUCE MELTZER, individually and as an
officer of Crowder Law Group, P.A.,

KATHLEEN LEWIS, a/k/a Kathy Lewis,
individually and as a member of Optimum
Business Solutions, LLC,

Defendants.

**TEMPORARY RESTRAINING ORDER
WITH ASSET FREEZE
AND ORDER TO SHOW CAUSE
WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

The plaintiff, the Federal Trade Commission (the “Commission”), sues the defendants pursuant to Sections 5(a), 13(b), and 19 of the FTC Act (the “FTC Act”), 15 U.S.C. §§ 45(a), 53(b), 57b, and the Commission’s Telemarketing Sales Rule (the “TSR”), 16 C.F.R. Part 310, and seeks preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement, and other equitable relief for the defendants’ alleged deceptive act or practice in connection with the marketing and sale of mortgage loan modification and foreclosure relief services.

The Commission filed a complaint and moves (Doc. 2) for a temporary restraining order with an asset freeze, appointment of a receiver, and issuance of an order to show cause why a preliminary injunction should not issue under Rule 65, Federal Rules of Civil Procedure. The court considered the complaint, the supporting memorandum, and each exhibit and finds that:

1. This court has jurisdiction over the subject matter of this case, and good cause exists to believe that the court has jurisdiction over each party.
2. Good cause exists to believe venue lies properly in this court.
3. Good cause exists to believe that the defendants have engaged in and are likely to engage in an act or practice that violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the TSR, 16 C.F.R. Part 310, and that the Commission is likely to prevail on the merits of this action.

4. Good cause exists to believe that immediate and irreparable damage to the court's ability to grant effective final relief for any consumer in the form of monetary restitution, rescission of contracts, or disgorgement will occur from the transfer, destruction, concealment, or other dissipation of any asset, document, record, or other evidence unless the defendants are immediately restrained and enjoined by order of this court.

5. Good cause exists for issuing a temporary restraining order pursuant to Rule 65(b), Federal Rules of Civil Procedure.

6. Weighing the equities and considering the Commission's likelihood of ultimate success on the merits, a temporary restraining order with an asset freeze and other equitable relief is in the public interest.

7. No security is required of any agency of the United States for the issuance of a temporary restraining order. See Fed. R. Civ. P. 65(c).

Accordingly, the Commission's "Motion for Temporary Restraining Order With Asset Freeze, Appointment of a Receiver, and Order to Show Cause Why a Preliminary Injunction Should Not Issue" (Doc. 2) is **GRANTED IN PART** as follows:

I. CONDUCT PROHIBITIONS

In connection with the advertising, marketing, promotion, offering for sale, or sale of any mortgage loan modification or foreclosure relief service, the defendants, each of the defendants' successors, assigns, members, officers, agents, servants, employees, and attorneys, and any person in active concert or participation with them who receives actual notice of this order by personal service or otherwise, whether acting directly or

through any entity, corporation, subsidiary, division, affiliate, or other device, are hereby temporarily restrained and enjoined from:

A. Falsely representing, or assisting others who are falsely representing, either orally or in writing, expressly or by implication, any of the following:

1. that any defendant or other person will (a) obtain or arrange a modification of any term of a consumer's home loan, deed of trust, or mortgage, including any recapitalization or reinstatement agreement; (b) obtain or arrange lower monthly mortgage payments for any consumer; (c) obtain or arrange affordable monthly mortgage payments for any consumer; (d) obtain or arrange lower interest rates on any home loan, deed of trust, or mortgage for any consumer; (e) stop, prevent, or postpone any home mortgage foreclosure sale; (f) save any consumer's residence from foreclosure; (g) prevent a notice of default from being filed with respect to any consumer's residence or home loan; (h) obtain or write a new home loan for any consumer; (i) obtain or arrange a forbearance from any mortgage loan holder or servicer; (j) obtain or arrange any agreement whereby any consumer's mortgage payments are deferred for any period of time; or (k) immediately or promptly contact any consumer's mortgage loan holder or servicer;

2. the degree of success that any defendant or any other person has had in performing any mortgage loan modification or foreclosure relief service;

3. the length of time that any defendant or any other person has been providing any mortgage loan modification or foreclosure relief service;

4. the nature, expertise, position, or job title of any employee, agent, representative, contractor, independent contractor, or any other person who provides any service to any defendant or any other person, including, but not limited to, that any person has more legal knowledge or training than the typical individual, including that any person is a paralegal or legal assistant;

5. the terms that any mortgage loan holder or servicer will or is likely to offer or accept to cure any delinquency or default on, or to reinstate, any mortgage, deed of trust, or other home loan;

6. the amount of time it will take or is likely to take for any defendant or any other person to obtain or arrange a modification of any term of a consumer's home loan, deed of trust, or mortgage, including any recapitalization or reinstatement agreement;

7. the nature of any defendant's or any other person's relationship with any mortgage loan holder or servicer, or other lender;

8. that any defendant or any other person is affiliated with, endorsed or approved by, or otherwise connected to the United States Government or any federal homeowner relief or financial stability program; or

9. any other material fact.

B. Representing, or assisting others who are representing, expressly or by implication, any degree or rate of success that any defendant or any other person has had in performing any mortgage loan modification or foreclosure relief service, unless, at the time of making the representation, the defendant has a reasonable basis supporting a representation,

In connection with the telemarketing, advertising, marketing, promotion, offering for sale, or sale of any mortgage loan modification or foreclosure relief service, the defendants, each of the defendants' successors, assigns, members, officers, agents, servants, employees, and attorneys, and any person in active concert or participation with them who receives actual notice of this order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are hereby temporarily restrained and enjoined from violating, or assisting others in violating, any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to, by (1) misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristic of any good or service, Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii); (2) misrepresenting, directly or by implication, affiliation with, or endorsement by, any government or third party organization, Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii).

In connection with the advertising, marketing, promotion, offering for sale or sale of any mortgage loan modification or foreclosure relief service, the defendants and each of the defendants' successors, assigns, members, officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined from requesting or receiving payment of any fee or consideration or any kind in advance of performing each and every mortgage loan modification or foreclosure relief service that any defendant contracted to perform or represented would be performed.

II. ASSET FREEZE

The defendants and each of the defendants' successors, assigns, members, officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined from:

A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any asset, wherever located, including outside the United States, that are:

1. owned or controlled by, or in the actual or constructive possession of, any defendant, in whole or in part;
2. held, directly or indirectly, for the benefit of any defendant, in whole or in part;
3. held by an agent of any defendant as a retainer for the agent's provision of services to any defendant; or
4. owned or controlled by, in the actual or constructive possession of, or otherwise held for the benefit of, any corporation, partnership, or other entity that is owned, managed, or controlled, directly or indirectly, by any defendant, including, but not limited to, any asset held by, for, or subject to access by, any defendant at any bank or savings and loan institution, or with any credit card processing agent, automated clearing house processor or other payment processor, or with any broker-dealer,

escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind;

B. Opening or causing to be opened any safe deposit box in the name of any defendant, or subject to access by any defendant;

C. Incurring any lien or other encumbrance on any asset in the name, singly or jointly, of any corporation, partnership, or other entity owned, managed, or controlled, directly or indirectly, by any defendant;

D. Incurring any charge or cash advance on any credit card or prepaid debit, credit or other bank card, issued in the name, singly or jointly, of any defendant or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any defendant;

The assets affected by this section shall include both existing assets and assets acquired after the effective date of this order.

III. DUTIES OF ASSET HOLDERS

Any financial or brokerage institution, business entity, or other person who receives notice of this order that holds, controls, or maintains custody of any account or asset of any defendant, or has held, controlled, or maintained custody of any account or asset at any time since January 1, 2008, shall:

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset except by further order of this court;

B. Deny the defendants access to any safe deposit box that is titled in the name of any defendant, either individually or jointly; or otherwise subject to access by any defendant;

C. Provide the Commission, within five (5) business days of receiving a copy of this order, a sworn statement setting forth:

1. the number of each account or asset held on behalf of, or for the benefit of, any defendant;

2. the balance of each such account, or a description of the nature and value of each asset as of the close of business on the day on which this order is received, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and

3. the identification of any safe deposit box that is either titled, individually or jointly, in the name of any defendant, or is otherwise subject to access by any defendant; and

IV. INTERFERENCE

The defendants are hereby temporarily restrained and enjoined from taking any action, directly or indirectly, that may result in the encumbrance or dissipation of foreign assets, including but not limited to:

A. Sending or causing to be sent any statement, letter, fax, e-mail, or wire transmission, or telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a “duress” event has occurred under the terms of a foreign trust agreement; and

B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this order or of the fact that repatriation may be required pursuant to a court order, until such time as all assets have been fully repatriated pursuant to the order.

V. CONSUMER CREDIT REPORTS

Pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(1), any consumer reporting agency may furnish to the Commission a consumer report concerning any defendant.

VI. PROHIBITION ON DISCLOSURE OF CUSTOMER LISTS

The defendants, and each of their successors, assigns, members, officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are temporarily restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, billing information (any data that enables any person to access another person's account, such as a credit card, checking, savings, share or similar account, utility account, mortgage loan account, or debit card), e-mail address, or other identifying information of any person whose identifying information was acquired by any defendant, at any time prior to entry of this order, in connection with the purchase of any mortgage loan modification or foreclosure relief service;

B. Using or benefitting from, for commercial purposes, the name, address, telephone number, social security number, billing information (any data that enables any person to access another person's account, such as a credit card, checking, savings, share or similar account, utility account, mortgage loan account or debit card), e-mail address, or other identifying information of any person whose identifying information

was acquired by any defendant, at any time prior to entry of this order, in connection with the purchase of any mortgage loan modification or foreclosure relief service;

Provided, however, that any defendant may disclose such identifying information (1) with the express written consent of the person whose information is disclosed, (2) to a law enforcement agency, or (3) as required or authorized by any law, regulation, or court order.

VII. PRESERVATION AND MAINTENANCE OF BUSINESS RECORDS

The defendants and each of their successors, assigns, members, officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined from:

A. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any document or record of any kind that relates to the business practices or business or personal finances of any defendant, individually or jointly; or

B. Failing to create and maintain documents or records that, in reasonable detail, accurately, fairly, and completely reflect the defendants' incomes, disbursements, transactions, and disposition of their assets.

VIII. BANKRUPTCY PETITIONS

In light of the asset freeze, the defendants are prohibited from filing, or causing to be filed, on behalf of any receivership defendant, a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, without permission from this court.

In light of the asset freeze, each individual defendant must give twenty-one (21) calendar days notice to the Commission and this court before filing, or causing to be filed, on behalf of that individual defendant, a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

IX. STAY OF ACTIONS

A. Except by leave of this court, the defendants and any other person or entity (except the Commission) are stayed from taking any action to establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the name of a defendant or any asset of a defendant.

B. Sub-section (A) of this section does not stay:

1. the commencement or continuation of a criminal action or proceeding;
2. the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;
3. the enforcement of a judgment, other than a monetary judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;
4. the commencement of any action by the Secretary of the United States Department of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units; or
5. the issuance to any receivership defendant a notice of tax deficiency.

C. Except as otherwise provided in this order, any person or entity in need of documentation from the temporary receiver shall in all instances first attempt to secure

such information by submitting a formal written request to the temporary receiver, and, if the request has not been responded to within thirty (30) calendar days of receipt by the temporary receiver, any person or entity may thereafter seek an order of this court with regard to the relief requested.

X. DISTRIBUTION OF ORDER BY THE DEFENDANTS

The defendants shall immediately provide a copy of this order to each affiliate, agent, partner, division, sales entity, successor, assignee, officer, director, employee, independent contractor, spouse, Internet web host or master, agent, attorney, or representative of any defendant, and shall, within ten (10) calendar days from the date of entry of this order, provide the Commission with a sworn statement that the defendants have complied with this provision of the order, which statement shall include the names and addresses of each person or entity who received a copy of this order.

XI. MONITORING

Any agent or representative of the Commission may contact the defendants or the defendants' agents or representatives directly and anonymously for the purpose of monitoring compliance with Section I of this order, and may tape record any oral communications that occur in the course of such contacts.

XII. CORRESPONDENCE

For purposes of this order, all correspondence and service of pleadings on the Commission shall be addressed to:

Jonathan Kessler, Esq.
Federal Trade Commission
1111 Superior Avenue, Suite 200
Cleveland, Ohio 44114-2507
Phone (216) 263-3436 / Fax (216) 263-3426

XIII. PRELIMINARY INJUNCTION HEARING

The parties shall appear on **November 16, 2009, at 2:00 p.m.** before Magistrate Judge Thomas B. McCoun, III, in Courtroom 12B, United States Courthouse, 801 N. Florida Avenue, Tampa, Florida, 33602, for a preliminary injunction hearing, at which the defendants shall show cause—why pending a final decision on the merits of the Commission’s complaint—a preliminary injunction should not issue enjoining the defendants from further violations of the FTC Act and the TSR, continuing the freeze of the defendants’ assets, and imposing such additional relief as may be appropriate.

XIV. RETENTION OF JURISDICTION

The court retains jurisdiction over this matter for all purposes.

ORDERED in Tampa, Florida, on November 13, 2009, at 12:10 p.m.



**STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE**