

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

FILED
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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

THE DEBT ADVOCACY CENTER, LLC,
a limited liability company,

SMITH, GROMANN & DAVIDSON, P.A.,

EDWARD J. DAVIDSON,
individually and as Chief Executive Officer of
The Debt Advocacy Center, LLC and as an
owner of Smith, Gromann & Davidson, P.A.,

JOHN W. SMITH,
individually and as an owner of Smith,
Gromann & Davidson, P.A.,

GLEN E. GROMANN,
individually and as an owner of Smith,
Gromann & Davidson, P.A., and

KEVIN MCCORMICK,
individually,

Defendants.

Case No. 1:09CV2712

Judge

JUDGE BOYKO

Magistrate

MAG. JUDGE VECCHIARELLI

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), 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), to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, the 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) in connection with the marketing and sale of mortgage loan modification and foreclosure 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) and 53(b), and

3. Venue is proper in this District under 28 U.S.C. § 1391(b) and ©, 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.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act 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).

DEFENDANTS

6. Defendant The Debt Advocacy Center, LLC (DAC), is a Delaware limited liability company with its principal place of business located at 614 W. Superior Ave., Suite 815, Cleveland, Ohio 44113. It has also used the address 14000 Military Trail, Suite 200, Delray Beach, Florida 33484. Defendant DAC transacts or has transacted business in this District and throughout the United States.

7. Defendant Smith, Gromann, & Davidson, P.A. (SG&D) purports to be a “partnership of professional associations.” On information and belief, SG&D has no formal legal status in any state. Its principal place of business is located at 614 W. Superior Ave., Suite 815, Cleveland, Ohio 44113. It also uses the address 14000 Military Trail, Suite 200, Delray Beach, Florida 33484. Defendant SG&D transacts or has transacted business in this District and throughout the United States.

8. Defendant Edward J. Davidson (Davidson), is or has been an owner, manager, officer or director of DAC and SG&D. Davidson is an attorney whose registered business address is P.O. Box 1206, Ridgefield, Connecticut 06877. At 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 DAC and SG&D, including the acts and practices set forth in this Complaint. Defendant Davidson, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

9. Defendant John W. Smith (Smith) is an owner, manager, officer or director of SG&D. Smith is an attorney whose registered business address is 2201 N.W. Corporate

Boulevard, Suite 200, Boca Raton, Florida 33431. He has also used the address 5295 Town Center Road, Suite 201, Boca Raton, Florida 33486. At 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 SG&D, including the acts and practices set forth in this Complaint. Defendant Smith, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

10. Defendant Glen E. Gromann (Gromann) is an owner, manager, officer or director of SG&D. Gromann is an attorney whose registered business address is 2201 N.W. Corporate Boulevard, Suite 200, Boca Raton, Florida 33431. At 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 SG&D, including the acts and practices set forth in this Complaint. Defendant Gromann, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

11. Defendant Kevin McCormick, (McCormick) is or has been the general manager of DAC and SG&D. McCormick resides in Delray Beach, Florida and his business addresses are the same as those of DAC and SG&D. At 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 DAC and SG&D, including the acts and practices set forth in this Complaint. Defendant McCormick, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

12. Since at least November 2007 until approximately August 2009, acting alone or in concert with others, DAC advertised, marketed, offered for sale, or sold loan modification and

foreclosure relief services to consumers throughout the United States. In or around August 2009, SG&D took over operation of DAC and since that time has advertised, marketed, offered for sale, or sold those same services to other consumers throughout the United States.

COMMERCE

13. 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.

AVAILABILITY OF FREE LOAN MODIFICATION AND FORECLOSURE RELIEF SERVICES

14. Numerous mortgage lenders and servicers have instituted free programs to assist financially distressed homeowners by offering them the opportunity to modify loans that have become unaffordable. Many of these “loan modification” programs have expanded as lenders have increased participation in the federal government’s “Making Home Affordable” program, a plan to stabilize our housing market and help up to 7 to 9 million Americans reduce their monthly mortgage payments to more affordable levels. The Making Home Affordable program includes the Home Affordable Modification Program, in which the federal government has committed \$75 billion to keep up to 3 to 4 million Americans in their homes by preventing avoidable foreclosures. Moreover, numerous major mortgage lenders and servicers, non-profit and community-based organizations, the federal government, and the news media have helped publicize the availability of these free mortgage loan modification programs. Lenders often notify consumers of the availability of these programs, or of consumers’ eligibility, through their “loss mitigation” departments. Defendants divert consumers from these free programs and

induce them to spend thousands of dollars on their mortgage loan modification and foreclosure relief services.

DEFENDANTS' BUSINESS PRACTICES

15. From at least January 1, 2008, and until the date of filing of this Complaint, Defendants have engaged in a course of conduct to advertise, market, offer to sell, and sell to consumers mortgage loan modification and foreclosure relief services. Defendants have marketed their services through Internet websites, including www.thedebtadvocacycenter.com, sgdandd.com, and www.foreclosurefish.com, to homeowners who are behind in their mortgage payments or who are in danger of losing their homes to foreclosure.

16. Defendants' websites contain statements intended to induce consumers to purchase Defendants' mortgage loan modification and foreclosure relief services, including the following:

a. **MODIFY YOUR LOAN PAYMENTS TO WHAT YOU DESIRE
– OR WE PAY YOU!**

b. At the Debt Advocacy Center we can help you stop foreclosure and keep your home, with a much lower payment and, often, a fixed interest rate.

c. . . . we have penetrated the Senior levels of most servicers and have negotiators for the lender, generally unavailable to the public.

d. How certain are we? For our negotiation service, if we do not obtain the payment your have agreed you can afford we pay you a penalty of a minimum of \$1500 or more.

e. If you are facing foreclosure, or don't know how you're going to make future payments, then it's time to act now. Don't miss out on this chance to get a modified payment, without needing perfect credit to refinance. This is not a refinance, it's a loan modification and we're seeing some of the lowest interest rates ever. The lenders are tired of losing money and, with a properly underwritten plan proposed to the right negotiator, they're making unheard of deals on loan modifications. We have special arrangements with 90% of the top lenders, so if you can afford a new lower payment, we can get you approved for

our program today! These options may not last forever, so please act while help is still available. Other qualification do apply, so please use the form on the left to request your free evaluation and make sure you qualify today.

f. With a 90% success rate, we're constantly receiving testimonial letters. We always appreciate hearing from you and hope to receive 1000's more!

17. Defendants' websites also contain numerous purported customer testimonials touting Defendants' ability to arrange loan modifications and/or stop foreclosures. As an example:

First of all, I want to say that The Debt Advocacy Center definitely lives up to its name and guarantee. You are truly an advocate on behalf of the consumer. The DAC staff is understanding and compassionate to your dilemma. Unlike, other companies DAC works with you and for you. The negotiator assigned to my case hit the ground running from day one. My family home was in jeopardy of being foreclosed with a date set. She contacted me informing me that she was pleased that my lender was Saxon whom she had previously worked with. That information and her reassurance lifted a heavy burden off my shoulders and gave me hope and relief. The professionalism, efficiency, promptness and communication which she exhibited were remarkable. When I received the call with the resolution of my modification, she asked me was I sitting down. Well, I was until I heard the results. Then I jumped up for joy thanking the LORD. The words: Thank You does not justify the true feeling of my gratitude, but: "Thank you, Thank you, THANK YOU!!!" This was truly money well spent!

18. The Internet websites invite consumers to call Defendants' toll-free number for more information. Consumers who call the toll-free number or provide contact information in response to Defendants' websites speak with Defendants' "consultants." In numerous instances, the consultants state that Defendants have a success rate of over 90% in obtaining satisfactory loan modifications. In numerous instances, the consultants state that Defendants have special relationships with mortgage lenders and/or servicers that enable them to arrange loan modifications where others cannot. In numerous instances, Defendants' consultants state that if they are unable to obtain a loan modification for the consumer, the consumer will receive their money back and/or receive a penalty payment of at least \$1500.

19. In numerous instances, Defendants' consultants tell consumers that a lawyer will be working on their case and that they are a reputable firm whose owner has ties to prominent politicians and government officials.

20. In numerous instances, Defendants' consultants obtain consumers' bank account or credit card information by telling consumers that these accounts or credit cards will not be debited or charged, but that the information is needed before a contract can be sent for review. Then, in numerous instances, Defendants debit the consumer's account for their fee even though they have no contract or authorization.

21. Those consumers who do sign Defendants' contracts pay an up-front fee of \$1500. Some pay an additional fee of \$1500. In numerous instances, Defendants have told consumers who engage their services to stop making their mortgage payments.

22. In numerous instances, Defendants fail to obtain the promised mortgage loan modifications that will make consumers' mortgage payments more affordable. In numerous instances, Defendants provide consumers a do-it-yourself kit containing "educational materials" about how consumers should act when the consumer attempts to negotiate a loan modification with their lender. These "educational materials" also provide the consumer a fill-in-the-blanks form: "ANSWER TO COMPLAINT FOR FORECLOSURE."

23. When consumers complain and ask for their money back as Defendants guaranteed, in numerous instances, Defendants refuse. In these instances, Defendants claim that the initial \$1500 payment was only for advice and educational materials. Defendants have even refused to return the payments that Defendants took from consumers who had not signed a contract.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

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

26. 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 and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

COUNT I

27. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of mortgage loan modification or foreclosure rescue services, Defendants have represented, directly or indirectly, expressly or by implication, that Defendants will obtain for consumers mortgage loan modifications, in all or virtually all instances, that will make their mortgage payments substantially more affordable.

28. In truth and in fact, Defendants do not obtain for consumers mortgage loan modifications, in all or virtually all instances, that will make their mortgage payments substantially more affordable.

29. Therefore, Defendants’ representation as set forth in Paragraph 27 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S. C. § 45(a).

COUNT II

30. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of mortgage loan modification or foreclosure rescue services, Defendants have represented, directly or indirectly, expressly or by implication, that Defendants have helped over 90% of their clients obtain a mortgage loan modification.

31. In truth and in fact, the material representation set forth in paragraph 30 is false or was not substantiated at the time the representation was made.

32. Therefore, the making of the representation as set forth in Paragraph 30 of this Complaint constitutes a 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 III

33. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of mortgage loan modification or foreclosure rescue services, Defendants have represented, directly or indirectly, expressly or by implication, that if they are unsuccessful at arranging a loan modification or other foreclosure relief for a consumer, Defendants will refund the consumers' money and/or pay a penalty.

34. In truth and in fact, in numerous instances, Defendants have not given refunds or paid a penalty to consumers for whom Defendants failed to obtain a loan modification or other foreclosure relief.

35. Therefore, Defendants' representation as set forth in Paragraph 33 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S. C. § 45(a).

COUNT IV

36. In numerous instances, as described in Paragraph 20 above, Defendants have withdrawn funds from consumers' bank accounts or charged consumers' credit cards without first obtaining the consumer's agreement to purchase and pay for Defendants' services.

37. Defendants' actions 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.

38. Therefore, Defendants' practice as described in Paragraph 36 above constitutes an unfair act or practice in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

CONSUMER INJURY

39. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. 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

40. 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.

PRAYER FOR RELIEF

Wherefore, Plaintiff, the Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(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, temporary and preliminary injunctions, an order freezing assets, and appointment of a receiver over the corporate Defendants;

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

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

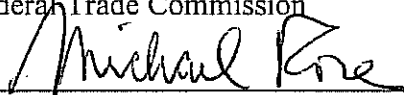
D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Date: Nov. 18 2009

Respectfully submitted,

WILLARD K. TOM, General Counsel
Federal Trade Commission, Washington, D.C.

JON MILLER STEIGER
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