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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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FEDERAL TRADE COMMISSION,

Plaintiff,

v.

RESORT SOLUTION TRUST, INC.
a Florida corporation,

LINCOLN RENWICK II, individually and as
owner, officer, or manager of Resort
Solution Trust, and

ANTHONY TALAVERA, individually and as
owner, officer, or manager of Resort
Solution Trust,

Defendants.

Case No. 8:13 CV 1329 T 33 TBM

[FILED UNDER SEAL]

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

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

- The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, 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

w.v

Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled "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), 57b, 6102(c), and 6105(b).

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

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 maybe 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), 56(a)(2)(B), 57b, 6102(c) and 6105(b).

DEFENDANTS

6. Defendant Resort Solution Trust, Inc. ("RST"), is a Florida corporation with its

principal place of business located in Largo, Florida. Resort Solution Trusts transacts or has transacted business in this district and throughout the United States.

7. Defendant Lincoln Renwick II is an owner, officer, and/or manager of Defendant RST. 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 set forth in this Complaint, including, for example, having signatory authority over the corporate bank account and signing most of the corporate checks. Defendant Lincoln Renwick II 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.

8. Defendant Anthony Talavera is an owner, officer, and/or manager of Defendant RST. 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 set forth in this Complaint, including, for example, running the day-to-day operations, including supervision of the sales staff. Defendant Anthony Talavera 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.

COMMERCE

9. 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' BUSINESS ACTIVITIES

10. Since at least 2008, and continuing thereafter, Defendants have engaged in a plan, program, or campaign to deceptively advertise, market, promote, offer for sale, or sell timeshare resale services through, among other means, interstate telephone calls to consumers throughout the United States.

11. Defendants, directly or through their agents, contact consumers through unsolicited telemarketing calls. Defendants target consumers who own timeshare properties. In contacting these consumers, Defendants often already have information about the consumers' timeshare properties, such as the properties' names and locations.

12. In numerous instances, the consumers who received the Defendants' unsolicited telemarketing calls had registered their telephone numbers on the National Do Not Call Registry prior to receiving the call.

13. In numerous instances, Defendants begin the telemarketing call by representing that they have a buyer for the consumer's timeshare property. In many instances, Defendants tell the consumer that they have a buyer who is willing to pay a specified price for the timeshare property. The consumer either agrees to the price or negotiates a different price that is acceptable to the consumer.

14. Once the consumer confirms that he or she is interested in proceeding with the sale, Defendants then inform the consumer that he or she must pay a fee associated with the sale of the timeshare property, generally ranging from \$800-\$3400, in order to secure the deal.

15. In numerous instances, Defendants also tell the consumer that the closing of his or her

timeshare property will occur within a specific timeframe, ranging from a few days to 90 days.

16. After Defendants tell consumers that they have buyers for their timeshare properties, many consumers agree to proceed with the sale and to pay Defendants' fee.

17. Consumers are asked for their credit card, debit card, or bank account information so that Defendants can charge consumers the amount of the up-front fee. The charges are posted almost immediately thereafter by Defendants.

18. At or close to the time of getting the financial account information from the consumer, Defendants also tell consumers that they will be receiving a contract from Defendants that they should immediately sign and return.

19. Consumers who agree to pay Defendants' fee are typically transferred to another of Defendants' representatives for purposes of verifying the agreement to pay Defendants' fee. Defendants tell consumers that they are recording these verification calls.

20. After getting the consumers' financial account information and verifying the agreement to pay as well as the financial account information, Defendants send consumers a contract, each of which includes identifying information about a consumer and the consumer's timeshare property. Defendants instruct consumers to sign and return the contracts immediately. By the time consumers receive the contracts, Defendants have already posted the charge to consumers' credit cards or bank accounts.

21. The contract that a consumer receives from Defendants, however, does not relate to a pending sale of the consumer's timeshare property, as Defendants had represented in the

telemarketing call. Instead, the contract provides only that Defendants will advertise the consumer's timeshare property for sale or rent.

22. Upon receiving Defendants' contract, many consumers sign and return it, after having been told by Defendants that the contract is for the sale of their timeshare properties as Defendants had represented in the telemarketing call. In numerous other instances, however, consumers realize upon reviewing Defendants' contract that it is only an advertising contract, not a contract for the sale of their timeshare properties.

23. Consumers who then call Defendants to question the contract are usually told that the contract is a formality that consumers must sign and return in order to proceed with the sale. These consumers are reassured that Defendants' buyers are ready to proceed with the sales. Relying on Defendants' representations, many of these consumers then sign and return Defendants' contract. Even those consumers who do not sign the contract still have the charge made against their credit cards or bank accounts.

24. Consumers who pay Defendants' fee do not receive what they are promised. Consumers' timeshare properties are not sold within a short period of time or for the specified price. Indeed, consumers' timeshares are not sold at all.

25. Instead, in many instances, Defendants string along consumers with additional false promises, including promises that a sale is imminent, that they will receive sales proceeds shortly, or that consumers' refunds, if they have requested refunds, are being processed and will soon be received.

26. Defendants routinely and flatly deny consumers a return of their money. In these

instances, Defendants argue that they have fulfilled their agreement by placing consumers' timeshare information on their website, for example, www.rstsite.com, and that is all that they are required to do. Consumers are left with nothing more than a small advertisement for their timeshares on an obscure website, if they receive anything at all.

VIOLATIONS OF THE FTC ACT

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

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

COUNT I

Misrepresentations in Violation of Section 5 of the FTC Act

29. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of their timeshare resale services, Defendants have represented, directly or indirectly, expressly or by implication, that Defendants have a buyer for the consumer's timeshare property who will pay a specified price, or that Defendants will quickly sell the consumer's timeshare.

30. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 29 of this Complaint, Defendants do not have a buyer for the consumer's timeshare property who will pay a specified price, or any price, and do not quickly sell the consumer's timeshare.

31. Therefore, Defendants' representations as set forth in Paragraph 29 of this

Complaint are false and 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

32. 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, in 1994. The FTC adopted the original Telemarketing Sales Rule in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.

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

34. Among other things, amendments made to the TSR in 2003 established a “do-not-call” registry (the “National Do Not Call Registry” or “Registry”), maintained by the FTC, of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at www.donotcall.gov.

35. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or over the Internet at www.donotcall.gov, or by otherwise contacting law enforcement authorities.

36. The FTC allows sellers, telemarketers, and other permitted organizations to access the Registry over the Internet at telemarketing.donotcall.gov, to pay the fee(s) if required, and to download the numbers not to call.

37. The TSR prohibits sellers and telemarketers from calling any telephone number

within a given area code unless the seller on whose behalf the call is made has paid the annual fee for access to the telephone numbers within that area code that are included in the Registry. 16 C.F.R. § 310.8.

38. Under the TSR, an “outbound telephone call” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution. 16 C.F.R. § 310.2 (v).

39. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call to telephone numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B).

40. 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).

Defendants’ Disregard for Do Not Call Rules

41. Defendants are “sellers” or “telemarketer[s]” engaged in “telemarketing,” as defined by the TSR. 16 C.F.R. §310.2.

42. Defendants are sellers of timeshare resale services to consumers. Defendants have called consumers in the United States to induce the purchase of Defendants’ services.

43. Defendants are also telemarketers that initiate outbound telephone calls to consumers in the United States to induce the purchase of Defendants’ services.

44. Defendants have engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of goods or services by use of one or more telephones and

which involves more than one interstate call.

45. Defendants have called consumers' telephone numbers that are on the National Do Not Call Registry without limiting such calls to persons who previously purchased or inquired about Defendants' goods or services.

46. Defendants have called telephone numbers in various area codes without first paying the annual fee for access to the telephone numbers within such area codes that are included in the National Do Not Call Registry.

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT II

Misrepresentations to induce consumers to pay for goods or services, in violation of the TSR (16 C.F.R. § 310.3(a)(4)).

47. In numerous instances, in the course of telemarketing their goods and services, Defendants have made false or misleading statements, directly or by implication, to induce consumers to pay for goods or services, including, but not limited to, misrepresentations that Defendants have a buyer for the consumer's timeshare property who will pay a specified price, or that Defendants will quickly sell the consumer's timeshare.

48. Defendants' acts or practices, as described in Paragraph 47 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(4).

COUNT III

Violating the National Do Not Call Registry

49. In numerous instances, in connection with telemarketing, Defendants have initiated,

or caused others to initiate, an outbound telephone call to a person's telephone number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

COUNT IV

Failing to Pay National Registry Fees

50. In numerous instances, in connection with telemarketing, Defendants have initiated, or caused others to initiate, an outbound telephone call to a telephone number within a given area code when Defendants had not, either directly or through another person, paid the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.8.

CONSUMER INJURY

51. 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

52. 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.

53. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize 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 Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, 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, temporary and preliminary injunctions, an order freezing assets, immediate access, 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: May 20, 2013

Respectfully Submitted,
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