

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

WHITEWING FINANCIAL GROUP, INC.,

CHRISTOPHER B. BADGER,

LYNDA J. BADGER, and

JON P. BADGER,

Defendants.

Case No.

**H 06 - 2102**

**CONSENT DECREE**

WHEREAS, plaintiff, the United States of America, has commenced this action by filing the Complaint herein; defendants Whitewing Financial Group, Inc., Christopher B. Badger, Lynda J. Badger, and Jon P. Badger have waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter, and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without defendants admitting liability for any of the matters alleged in the Complaint;

THEREFORE, on the joint motion of plaintiff and defendants, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. This Court has jurisdiction of the subject matter and of the parties.
2. The Complaint states a claim upon which relief may be granted against the defendants under Sections 5(a), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53b, and 56(a), and Section 814 of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692l.
3. Venue in this district is proper under 28 U.S.C. §§ 1391(b-c) and 1395(a) and 15 U.S.C. § 53(b).
4. The activities of defendants Whitewing Financial Group, Inc., Christopher B. Badger, Lynda J. Badger, and Jon P. Badger are in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. For purposes of this Consent Decree ("Decree"), the definitions set forth in the FDCPA, 15 U.S.C. § 1692a, shall apply.
6. Entry of this Decree is in the public interest.
7. Defendants stipulate to the entry of this Decree freely and without coercion. Defendants further acknowledge that they have read the provisions of this Decree and are prepared to abide by them.
8. All parties hereby waive all rights to appeal or otherwise challenge or contest the validity of this Decree.
9. The parties shall each bear their own costs and attorney's fees incurred in this action. Defendants have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412.

**I. CIVIL PENALTY AND RIGHT TO REOPEN**

A. Judgment in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) is hereby entered against defendants Whitewing Financial Group, Inc., Christopher B. Badger, Lynda J. Badger, and Jon P. Badger, jointly and severally, as a civil penalty, pursuant to Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A). Based upon defendants Whitewing Financial Group, Inc., Christopher B. Badger, Lynda J. Badger, and Jon P. Badger's sworn representations in financial statements, full payment of the foregoing civil penalty is suspended except for Thirty Thousand Dollars (\$30,000.00) until further order of the Court, contingent upon the accuracy and completeness of the financial statements, as set forth in Subparagraph C of this Paragraph.

B. Within ten (10) days of the defendants' execution of this Consent Decree, defendants Whitewing Financial Group, Inc., Christopher B. Badger, Lynda J. Badger, and Jon P. Badger shall transfer to the Commission Thirty Thousand Dollars (\$30,000.00), as a non-suspended civil penalty payment. The defendants' payment to the Commission under this Section shall be made by wire transfer in accord with directions provided by the Commission or by certified check or other guaranteed funds made payable to and delivered to the Commission and shall not accrue interest. By signing this Decree, defendants relinquish all dominion, control, and title to the monies transferred to the Commission, and agree that all legal and equitable title to said monies is vested in the Commission, for use according to the terms of this Consent Decree. In the event the Commission does not approve this Consent Decree or the Court does not enter this Consent Decree, the monies transferred to the Commission under this Section shall be returned to the Defendants (which monies shall not accrue interest).

C. Plaintiff's agreement to this Decree is expressly premised upon the truthfulness, accuracy, and completeness of the financial statements and supporting documents submitted to the Commission, namely those of Whitewing Financial Group, Inc. signed and dated March 29, 2005 and January 3, 2006, those of Christopher B. Badger signed and dated March 28, 2005 and December 29, 2005, those of Lynda J. Badger signed and dated March 30, 2005 and January 3, 2006, those of Jon P. Badger signed and dated March 29, 2005 and January 3, 2006, and those of the Badger Group L.L.C. signed and dated May 11, 2005 and January 3, 2006, which contain material information upon which plaintiff relied in negotiating and agreeing to the terms of this Decree. If, upon motion by plaintiff, this Court finds that defendants Whitewing Financial Group, Inc., Christopher B. Badger, Lynda J. Badger, and Jon P. Badger have failed to disclose any material asset or materially misstated the value of any asset in the financial statements and related documents described above, then this Decree shall be reopened and suspension of the judgment shall be lifted for the purpose of requiring payment of civil penalty in the full amount of the judgment (\$150,000.00), less the sum of all amounts paid pursuant to Subparagraph B of this Paragraph. *Provided, however,* that in all other respects this Decree shall remain in full force and effect, unless otherwise ordered by the Court.

D. In accordance with 31 U.S.C. § 7701, defendants are hereby required, unless they have done so already, to furnish to plaintiff and the Commission their respective taxpayer identifying numbers (Social Security numbers or employer identification numbers) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of defendants' relationship with the government.

E. This judgment represents a civil penalty owed to the United States Government and is not compensation for actual pecuniary loss. The defendants agree that the facts as alleged in the complaint filed in this action shall be taken as true, without further proof, in any subsequent litigation filed by or on behalf of the Commission to collect any unpaid amount or otherwise enforce its rights pursuant to this Order, including a nondischargeability complaint filed in any bankruptcy case.

F. Proceedings initiated under this Paragraph are in addition to, and not in lieu of, any other civil or criminal penalties that may be provided by law, including any other proceedings the plaintiff may initiate to enforce this Decree.

## **II. INJUNCTION**

Defendants Whitewing Financial Group, Inc., Christopher B. Badger, Lynda J. Badger, and Jon P. Badger, their officers, agents, servants, employees, and all other persons or entities within the scope of Federal Rule of Civil Procedure 65, and all persons or entities in active concert or participation with any of them who receive actual notice of this Decree by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, in connection with the collection of a "debt" from a "consumer," as those terms are defined in Section 803(5) and (3), respectively, of the FDCPA, 15 U.S.C. § 1692a(5) and (3), are hereby permanently restrained and enjoined from:

A. Using any false, deceptive, or misleading representations or means, in connection with the collection of any debt, in violation of Section 807 of the FDCPA, 15 U.S.C. §1692e, including, but not limited to:

1. Falsely representing the character, amount, or legal status of any debt, in violation of Section 807(2)(A) of the FDCPA, 15 U.S.C. §1692e(2)(A);
2. Threatening to take any action that cannot legally be taken or threatening to take any action that is not intended to be taken, in violation of Section 807(5) of the FDCPA, 15 U.S.C. § 1692e(5); and
3. Using false representations or deceptive means to collect or attempt to collect a debt or obtain information concerning a consumer, in violation of Section 807(10) of the FDCPA, 15 U.S.C. § 1692e(10);

B. Engaging in conduct that contradicts, obscures, or overshadows the validation notice required by Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a);

C. Communicating with a consumer at any unusual time or place or a time or place known or which should be known by defendants as inconvenient to the consumer, including, but not limited to, the consumer's place of employment, when defendants know or should know that such communications are inconvenient, in violation of Section 805(a)(1) of the FDCPA, 15 U.S.C. § 1692c(a)(1);

D. Engaging in any other act or practice that would violate the FDCPA, as amended, 15 U.S.C. § 1692;

E. Misrepresenting, expressly or by implication, the character or legal status of a debt, including:

1. That legal proceedings to collect the debt have already been instituted;
2. That there is no time limitation on filing a lawsuit to collect the debt; and

3. That defendants possess documentation demonstrating that the debt is a valid debt of the consumer;

F. Misrepresenting, expressly or by implication, any actions that the defendants intend to take if the debt is not paid, including:

1. That the debt will be reported to a credit bureau if the debt is not paid; and
2. That legal proceedings will be initiated against the consumer if the debt is not paid; and

G. Making any misrepresentation, expressly or by implication, to collect or to attempt to collect a debt or obtain information concerning a consumer.

### **III. NOTICE REQUIREMENTS**

A. For a period of five (5) years from the date of entry of this Decree, defendants Whitewing Financial Group, Inc., Christopher B. Badger, Lynda J. Badger, and Jon P. Badger, their officers, agents, servants, employees, and all other persons or entities within the scope of Federal Rule of Civil Procedure 65, and all persons or entities in active concert or participation with any of them who receive actual notice of this Decree by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, in connection with acting as a "debt collector" in the collection of a "debt" from a "consumer," as those terms are defined in Section 803(6), (5), and (3), respectively, of the FDCPA, 15 U.S.C. § 1692a (6), (5), and (3), shall make the following disclosure clearly and conspicuously on each written collection communication that is sent to a consumer:

This company must comply with a federal law that provides consumers with certain rights. One of these is the right to have us stop communicating with you

about this debt. If you write to us and ask us to stop communicating with you about this debt, we will. But if you owe this debt, you will still owe it and, under the law, we may still contact you for two reasons:

- To advise you that we intend to pursue specific remedies permitted by law; or
- To advise you that our efforts are being terminated.

You may contact us if you have a complaint about the way we are collecting this debt. Please direct your complaints to: Compliance Director, Whitewing Financial Group, Inc., 1701 S. Dairy Ashford, Suite 102, Houston, Texas 77077. You can also call us toll-free at 1-800- between 9:00 A.M. Central Time and 5:00 P.M. Central Time Monday - Friday.

This law is enforced by the Federal Trade Commission, Washington, D.C. 20580. You may write to the Federal Trade Commission, Southwest Region, 1999 Bryan Street, Suite 2150, Dallas, Texas 75201, to complain about the way we are collecting this debt. You can also file your complaint online at [www.ftc.gov](http://www.ftc.gov), or call the FTC at 1-877-FTC-HELP.

B. Defendants Whitewing Financial Group, Inc., Christopher B. Badger, Lynda J. Badger, and Jon P. Badger, their assigns, officers, agents, servants, employees, and all other persons or entities within the scope of Federal Rule of Civil Procedure 65, and all other persons or entities in active concert or participation with any of them who receive actual notice of this Decree by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, in connection with acting as a "debt collector" in the collection of a "debt" from a "consumer," as those terms are defined in Section 803(6), (5), and (3), respectively, of the FDCPA, 15 U.S.C. § 1692a(6), (5), and (3), shall provide

a copy of the following notice to all officers, servants, agents, and employees having responsibility with respect to the collection of debts, within thirty (30) days of the date of entry of this Decree, and to each employee hired for a period of five (5) years after that date, no later than the time the employee assumes responsibility with respect to the collection of debts, and shall secure from each such person a signed statement acknowledging receipt of a copy of the notice:

Debt collectors must comply with the federal Fair Debt Collection Practices Act, which limits your activities in trying to collect money from consumers. Section 805 of the Act prohibits you from contacting a consumer at work if you know or should know it is inconvenient for the consumer. In addition, Section 807 of the Act prohibits you from representing or implying that any action, including legal action, will be taken unless, at the time of the representation, the action is lawful and there is a clear intent to take the action. Further, Section 807 of the Act prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. Also, Section 809 prohibits you from contradicting, obscuring, or overshadowing the notification of consumer rights contained in the validation notice required by Section 809. Individual debt collectors may be financially liable for their violations of the Act.

#### **IV. DISTRIBUTION OF CONSENT DECREE AND THE FDCPA**

For a period of three (3) years from the date of entry of this Decree, defendants Whitewing Financial Group, Inc., Christopher B. Badger, Lynda J. Badger, and Jon P. Badger shall deliver copies of this Decree and FDCPA as directed below:

A. **Whitewing Financial Group, Inc.:** Defendant Whitewing Financial Group, Inc. must deliver copies of this Decree and the FDCPA to all of its principals, officers, directors, and managers. Defendant Whitewing Financial Group, Inc. also must deliver copies of this Decree

and the FDCPA to all of its employees, agents, and representatives who engage in conduct related to the subject matter of this Decree. For current personnel, delivery shall be within five (5) days of service of this Decree upon defendant. For new personnel, delivery shall occur prior to their assuming their responsibilities.

**B. Defendants Christopher B. Badger, Lynda J. Badger, and Jon P. Badger as control persons:** For any business which is engaged in the collection of “debts” from “consumers,” as those terms are defined in Section 803(5) and (3), respectively, of the FDCPA, 15 U.S.C. § 1692a(5) and (3), that defendant Christopher B. Badger, Lynda J. Badger, or Jon P. Badger controls, directly or indirectly, or in which such defendant has a majority ownership interest, such defendant must deliver copies of this Decree and the FDCPA to all principals, officers, directors, and managers of that business. Such defendant must also deliver copies of this Decree and the FDCPA to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of this Decree. For current personnel, delivery shall be within five (5) days of service of this Decree upon defendant. For new personnel, delivery shall occur prior to their assuming their responsibilities.

**C. Defendants Christopher B. Badger, Lynda J. Badger, and Jon P. Badger as employees or non-control persons:** For any business where defendant Christopher B. Badger, Lynda J. Badger, or Jon P. Badger is not a controlling person of a business but otherwise engages in conduct as a “debt collector” in the collection of a “debt” from a “consumer,” as those terms are defined in Section 803(6), (5), and (3), respectively, of the FDCPA, 15 U.S.C. § 1692a(6), (5), and (3), such defendant must deliver copies of this Decree and the FDCPA to all principals and managers of such business before engaging in such conduct.

D. Defendants Whitewing Financial Group, Inc., Christopher B. Badger, Lynda J. Badger, and Jon P. Badger must secure a signed and dated statement acknowledging receipt of this Decree and the FDCPA, within thirty (30) days of delivery, from all persons receiving copies of the Decree and the FDCPA pursuant to this Paragraph.

**V. RECORD KEEPING PROVISIONS**

For a period of six (6) years from the date of entry of this Decree, defendants Whitewing Financial Group, Inc., Christopher B. Badger, Lynda J. Badger, and Jon P. Badger, their officers, agents, servants, employees, and all other persons or entities within the scope of Federal Rule of Civil Procedure 65, and all persons or entities in active concert or participation with any of them who receive actual notice of this Decree by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, in connection with any business where any defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business involves the collection of debts from consumers, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the revenues generated in connection with the collection of debts, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts of debt owed, records of collection activity, and amounts collected;

D. For every consumer complaint, whether received directly, indirectly, or through a third party, records that include:

1. Any complaint and the date received, and the nature of any complaints as reflected in any notes, logs, or memoranda, including a description of the conduct alleged; and
2. The basis of the complaint, including the names of any debt collectors or supervisors complained about; the nature of any investigation conducted concerning the validity of any complaint; all documents relating to the disposition of the complaint, including records of all contacts with the consumer, defendants' response to the complaint and the response date, whether the complaint was resolved, the date of resolution; and any action taken to correct alleged conduct that violates the FDCPA;

E. Copies of all sales scripts, training materials, advertisements, or other promotional or marketing materials; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Decree, including, but not limited to, copies of acknowledgments of receipt of this Decree and the FDCPA, required by Paragraph IV, and all reports submitted to the FTC pursuant to Paragraph VI.

Provided, that the requirements of this Paragraph do not apply to documents in existence prior to the date of entry of this Decree by the Court.

