

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.

06-61851

CIV-ZLOCH
MAGISTRATE JUDGE
SNOW

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

RANDALL L. LESHIN,
RANDALL L. LESHIN, P.A., also d/b/a EXPRESS
CONSOLIDATION,
EXPRESS CONSOLIDATION, INC.,
CONSUMER CREDIT CONSOLIDATION, INC.,
and MAUREEN A. GAVIOLA,

Defendants.

FILED BY: *[Signature]*
2006 DEC 11 AM 9:12
S.D. OF FLORIDA

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission (“FTC” or “the Commission”), for its complaint alleges:

1. Plaintiff FTC brings this action under Sections 5(a), 13(b), and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 57b; and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108 (“Telemarketing Act”), to secure temporary, preliminary, and permanent injunctive relief, rescission of contracts and restitution, disgorgement of ill-gotten gains, and other equitable relief for Defendants’ violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

2. As explained in detail below, Defendants use telemarketing and other methods to sell debt consolidation services in the name of Express Consolidation, Inc., a purported nonprofit

corporation directed by attorney Randall L. Leshin. Express Consolidation, however, is not a genuine nonprofit corporation. Rather, Express Consolidation, under Leshin's direction, solicits debt consolidation contracts for him and funnels revenue to defendant Randall L. Leshin, PA — a for-profit corporation that conducts business under the name "Express Consolidation" and is controlled by Leshin. Defendants also use Express Consolidation's ostensible nonprofit status to try to evade telemarketing rules from which bona fide nonprofits are exempt, including the FTC's National Do Not Call Registry, and Defendants have hired telemarketers to make millions of illegal telemarketing calls. Defendants' conduct violates: (a) the FTC Act's prohibition on deceptive practices; and (b) the provisions of the TSR that forbid (i) deceptive telemarketing practices, (ii) telemarketing calls that hang-up or play a recording when a consumer answers instead of connecting the consumer to a sales representative, and (iii) calling persons who have registered on the National Do Not Call Registry or who have told Defendants that they do not wish to receive telemarketing calls from Express Consolidation.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6105(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345.

4. Venue is proper in the United States District Court for the Southern District of Florida pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

PLAINTIFF

5. Plaintiff FTC is an independent agency of the United States Government created and given statutory authority and responsibility by the FTC Act, 15 U.S.C. §§ 41-58 (as amended). The Commission is charged with enforcing, among other things: (1) 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; and (2) rules promulgated under the Telemarketing Act, 15 U.S.C. §§ 6101-6108, including the TSR, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing acts or practices. The Commission may initiate federal district court proceedings, in its own name by its designated attorneys, to enjoin violations of any provision of law it enforces and to secure such other equitable relief as may be appropriate in each case, including, but not limited to, rescission of contracts, disgorgement and restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b, and 6105(b).

DEFENDANTS

6. Defendant RANDALL L. LESHIN, is the President, Treasurer, and Executive Director of Defendants Express Consolidation, Inc., and Randall L. Leshin, P.A. He is also a director of Defendants Express Consolidation, Inc., and Randall L. Leshin, P.A. He is a member of the Florida Bar and offers legal representation and debt consolidation services (without legal representation) under the name Randall L. Leshin, Esq. He resides in the Southern District of Florida.

7. Defendant RANDALL L. LESHIN, P.A. (“RLL Corporation”), is a Florida for-profit corporation with its principal place of business at 712 E. McNab Road, Pompano Beach, Florida 33062. Articles of incorporation for RLL Corporation were filed on April 18, 1994. Defendant Leshin has registered the fictitious business name “Express Consolidation” as a name under which RLL Corporation conducts business.

8. Defendant EXPRESS CONSOLIDATION, INC. (“Express Consolidation”), is a Florida corporation with its principal place of business at 413 N.E. 3rd Street, Delray Beach,

Florida 33483. Articles of incorporation representing that Express Consolidation is a nonprofit corporation were filed on October 12, 2000. Notwithstanding these incorporation papers, Express Consolidation is organized to carry on business for its own profit or that of its members within the meaning of Section 4 of the FTC Act. 15 U.S.C. § 44.

9. Defendant CONSUMER CREDIT CONSOLIDATION, INC. (“CCC”), is a Florida for-profit corporation with its principal place of business at 2201 W. Sample Road, Bldg. 9, Pompano Beach, Florida 33073. CCC solicits and procures consumers for Defendant Leshin in the name of Express Consolidation.

10. Defendant MAUREEN A. GAVIOLA is the President, Vice President, and Secretary/Treasurer of Defendant CCC. She resides in the Southern District of Florida.

**DEFENDANTS’ FOR-PROFIT OPERATION OF
EXPRESS CONSOLIDATION**

11. Defendant Express Consolidation’s articles of incorporation represent that the corporation is organized exclusively to engage in educational and/or charitable purposes, including consumer debt consolidation services, and that no part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its members, trustees, officers or other private persons.

12. The Internal Revenue Service has recognized Express Consolidation as an educational or charitable organization within the meaning of Section 501(c)(3) of the Internal Revenue Code based on representations by Defendant Leshin that Express Consolidation is a nonprofit entity, provides information and services that no for-profit organization would provide, and provides them for free.

13. Defendant Express Consolidation is not, in fact, operated in accordance with the representations in its articles of incorporation and the representations to the Internal Revenue Service described in Paragraphs 11 and 12.

14. Defendant Leshin controls both Defendant Express Consolidation and RLL Corporation and uses both corporations as his agents in soliciting for, collecting fees for, and distributing payments for debt consolidation services.

15. Defendant Leshin and RLL Corporation have transacted the business of RLL Corporation under the name "Express Consolidation," and Corporate Defendants Express Consolidation and RLL Corporation, under the direction of defendant Leshin, have conducted their business jointly or interchangeably.

16. Defendant Leshin created and uses the purportedly nonprofit Defendant Express Consolidation to secure contracts and fees for his own economic benefit. Defendant Leshin and the other Defendants use the name of Defendant Express Consolidation and its nonprofit status to solicit consumers for debt consolidation services, but give consumers who respond to these solicitations a contract for services from Defendant Leshin.

17. Fees that consumers pay for the debt consolidation services offered in the name of Express Consolidation are paid to and/or controlled by Defendants Leshin and RLL Corporation. Such fees have been regularly deposited in the accounts of RLL Corporation.

COMMON ENTERPRISE AND OFFICER PARTICIPATION

18. Corporate Defendants Express Consolidation and RLL Corporation have operated as a common business enterprise while engaging in the deceptive acts and practices and other violations of law alleged below. Because these Corporate Defendants have operated as a

common enterprise, each of them is jointly and severally liable for the deceptive acts and practices and violations of law alleged below.

19. Defendants Leshin and Gaviola are also jointly and severally liable for the conduct of the Corporate Defendants because they have had the authority to control and direct the activities of the Corporate Defendants, have had knowledge of the misrepresentations and other misconduct of the Corporate Defendants, and have participated in the misrepresentations and other misconduct of the Corporate Defendants.

COMMERCE

20. At all times relevant to this complaint, Defendants have maintained a substantial course of business in the advertising and marketing of debt consolidation programs, in or affecting commerce, including the acts and practices alleged herein, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS PRACTICES

21. Consumers participating in a debt consolidation program agree to pay off debts that are included in the program by making regular payments to an agency that agrees to distribute payments to the consumers’ creditors. Creditors may waive fees and/or lower interest rates for consumers who participate in debt consolidation programs.

22. Since at least August 2003, Defendants have solicited consumers to enroll in a debt consolidation program described as the “Express Consolidation Debt Consolidation Program” or the “Express Consolidation Program.” Defendants’ advertising materials identify Express Consolidation as “America’s Premier Debt Consolidation Company.”

Defendants' Voice Broadcasting Campaigns

23. In soliciting consumers for the Express Consolidation Program, Defendants have used computerized telemarketing services designed to deliver recorded messages to telephone answering machines or voice mail services. Delivery of recorded messages in this manner is known as "voice broadcasting."

24. Defendants use voice broadcasting to deliver recorded messages that state that the speaker represents Express Consolidation, a nonprofit agency, and is calling to offer services that will lower the consumer's payments and interest rates. For example, in 2004, Defendants delivered the following recorded message to answering machines:

Hi this is Jan Taylor with Express Consolidation. I'm just calling to let you know that we are a nonprofit agency that can consolidate your credit cards, lower your monthly payments dramatically and reduce your interest rates down to as low as 1.5%. This is not a loan, and you have already been approved by our certified nonprofit agency. But, in order to lower your payments and interest rates before your next billing cycle I do need to find out what your current balances are on your credit cards. So, if you can please have your statements ready when you call. My number is 1-800-689-9014 and again my name is Jan Taylor. You can reach me until 10:30 p.m. tonight. Thanks and goodbye.

25. Voice broadcasting services can be programmed so that if the call is answered by a person rather than an answering machine or voice mail system, the call is terminated, hanging-up on the person who answered the call without leaving any message. Voice broadcasting services also can be programmed so that if the call is answered by a person rather than an answering machine or voice mail system, a recording is played before the call is terminated.

26. The TSR, as amended in 2003, 68 Fed. Reg. 4580 (2003), restricts the use of voice broadcasting by providing that it is an abusive telemarketing act or practice and a violation

of this Rule for any seller or telemarketer to engage in “abandoning” outbound telephone calls covered by the TSR. 16 C.F.R. § 310.4(b)(1)(iv). An outbound telephone call is “abandoned” under the TSR if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person’s completed greeting. Outbound calls in which a telemarketer delivers a recorded message without connecting the call to a sales representative and outbound calls in which the telemarketer terminates the call without delivering any message are “abandoned calls” under the TSR.

27. In 2004, Defendants hired The Broadcast Team, Inc., a third-party vendor, to voice broadcast recorded messages soliciting for the Express Consolidation Program. Defendants directed The Broadcast Team to play a recorded solicitation message when answering machines or voice mail services answered the call, but to terminate calls answered by a person without delivering a message or connecting the person who answered to a sales representative.

28. The voice broadcasting services described in Paragraph 27 caused over 4.5 million telephone calls in which the call was terminated after a person answered the call without delivering a message or connecting the person who answered to a sales representative.

29. In 2005 and 2006, Defendants again hired The Broadcast Team to voice broadcast recorded messages soliciting for the Express Consolidation Program. Defendants directed The Broadcast Team to (i) play a recorded solicitation message when answering machines or voice mail services answered the call, and (ii) play a brief message that lasted less than ten seconds when a person answered the call and then terminate the call. None of these calls was connected to a sales representative.

30. The voice broadcasting services described in Paragraph 29 caused over 6.4 million telephone calls in which the calls answered by a person were terminated after playing a recording, and the call was not connected to a sales representative.

31. Defendants have hired other telemarketers to deliver recorded messages soliciting consumers in the name of Express Consolidation. Further investigation or discovery will show that, through these other telemarketers, Defendants have caused additional calls to be terminated without leaving a message when a person answered, or that Defendants have caused additional calls in which the person who answered was not connected to a sales representative within the first two seconds after the person answered the call.

32. The TSR, as amended in 2003, 68 Fed. Reg. 4580 (2003), establishes a “Do Not Call” registry, maintained by the Commission (the “National Do Not Call Registry” or “Registry”), 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 *donotcall.gov*. The TSR imposes fees on telemarketers and sellers for access to the Registry, but for calls made by legitimate nonprofits there is no fee for access.

33. Defendants have made, or have caused telemarketers working on their behalf to make, thousands of telemarketing calls to consumers whose telephone numbers are on the National Do Not Call Registry as part of Defendants' campaigns to solicit consumers for the Express Consolidation Program.

34. Persons who have received telemarketing calls soliciting for Express Consolidation have contacted Express Consolidation or its representatives and stated that they do not wish to receive such calls. Despite these requests, Defendants have made outgoing telemarketing calls or have caused telemarketers to make outgoing telemarketing calls to persons who have stated that they do not wish to receive any telemarketing calls soliciting for Express Consolidation.

35. Defendants have never paid the fees to support the National Do Not Call Registry but have represented that Express Consolidation is exempt from paying any fee because it is a nonprofit entity.

36. Since October 17, 2003, Defendant Express Consolidation or telemarketers acting on its behalf have accessed the Registry and identified Express Consolidation as an "Exempt Organization or Seller" on multiple occasions and have downloaded registered numbers associated with 282 area codes without paying fees for access to the Registry.

Defendants' Representations Concerning the Express Consolidation Program

37. In addition to voice broadcasting, Defendants also use mail and Internet websites to solicit consumers for the Express Consolidation Program. Defendants' mailings include a pamphlet entitled "An Introduction to Debt Consolidation" that urges consumers to call Express Consolidation to inquire about debt consolidation. Defendants maintain websites at *www.expressconsolidation.org* and *www.expressconsolidation.com* that urge consumers to contact Express Consolidation by telephone, e-mail, or mail, or complete a form to schedule a counseling session.

38. Defendants ask consumers who respond to their telephone, mail or web solicitations for the Express Consolidation Program to provide information about their debts. After receiving this information, Defendants give consumers a specific consolidated monthly payment that the consumers would be required to make to participate in the Express Consolidation Program. The monthly payment is typically several hundred dollars. The monthly payment includes funds to be forwarded to the consumers' creditors as monthly payments plus an administrative fee.

Representations Concerning Fees

39. In soliciting consumers for the Express Consolidation Program, Defendants represent that the cost of the Program is "a reasonable administrative fee" of no more than \$49 per month that is included in the consumer's monthly payment.

40. In soliciting consumers for the Express Consolidation Program, Defendants represent that there is no application fee for the Program.

41. In soliciting consumers for the Express Consolidation Program, Defendants represent that Express Consolidation is a nonprofit organization and represent, expressly or by implication, that the fees for the Program do not include profits.

42. Consumers who agree to enroll in the Express Consolidation Program are given a "Consolidation Services Agreement" that states that the consumer desires that Defendant Leshin provide debt consolidation services and that the Agreement is a contract between Defendant Leshin and the consumer. These Agreements provide that Defendant Leshin will collect monthly payments from the consumer to perform services described in the Agreements. The Agreements state that Defendant Leshin is not performing any legal services for the consumer.

43. Despite Defendants' representations about the cost of the Express Consolidation Program, the first monthly payment by consumers enrolled in the Express Consolidation Program is not used to make payments to creditors but is instead taken by Defendant Leshin as a fee that is in addition to the administrative fee included in each monthly payment. Defendant Leshin does not make payments to the creditors of a consumer who has enrolled in the Express Consolidation Program until after Defendant Leshin or another Defendant has collected a second monthly payment from the consumer.

44. In soliciting consumers for the Express Consolidation Program, Defendants have in numerous instances not disclosed that the first monthly payment is taken as a fee or have represented that the first monthly payment will be refunded to the consumer or used to make a final payment to creditors if the consumer completes the Express Consolidation Program.

