

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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<b>FEDERAL TRADE COMMISSION,</b>		)	
		)	
	Plaintiff,	)	Case No. 1:05 CV 0714
		)	
	v.	)	
		)	Judge Gordon J. Quist
<b>SUCCESS EXPRESS, INC., <i>et al.</i>,</b>		)	
		)	
	Defendants.	)	
<hr/>		)	

**STIPULATED FINAL ORDER FOR  
PERMANENT INJUNCTION AND SETTLEMENT OF  
MONETARY CLAIMS AS TO DEFENDANTS  
SUCCESS EXPRESS, INC., EXAM RESOURCE CENTER, INC.,  
OCCUPATIONAL ADVANCEMENT CENTER, INC.,  
AND EMPLOYMENT RESOURCE, LLC**

The Federal Trade Commission (“FTC”) commenced this civil action on October 18, 2005, by filing its Complaint against Success Express, Inc., also d/b/a Success Express; Exam Resource Center, Inc., also d/b/a Exam Resource; Occupational Advancement Center, Inc., also d/b/a Occupational Advancement and OAC; Employment Resource, LLC, also d/b/a Employment Resources, David James Daniell, a/k/a David James, Wanda J. Taugner, and Kathy L. Stafford (“Defendants”). The Complaint alleges that Defendants engaged in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, in connection with the advertising, marketing, and sale of employment goods or services.

Plaintiff FTC and Defendants Success Express, Inc., also d/b/a Success Express; Exam Resource Center, Inc., also d/b/a Exam Resource; Occupational Advancement Center, Inc., also d/b/a Occupational Advancement and OAC; and Employment Resource, LLC, also d/b/a Employment Resources (“Receivership Defendants”) hereby stipulate to the entry of this Final Order for Permanent Injunction and Settlement of Monetary Claims (“Order”).

### **FINDINGS**

By stipulation of the parties, the Court finds as follows:

1. This is an action by the FTC instituted pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). The Complaint seeks both permanent injunctive relief and consumer redress for Defendants’ alleged deceptive acts or practices in connection with the marketing and sale of employment goods or services programs.
2. The FTC has the authority pursuant to Section 13(b) of the FTC Act to seek the relief it has requested, and the Complaint states a claim upon which relief can be granted against Receivership Defendants.
3. This Court has jurisdiction over the subject matter of this case and has personal jurisdiction over Receivership Defendants. Venue in the Western District of Michigan is proper.
4. The activities of the Receivership Defendants, as alleged in the Complaint, are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
5. Receivership Defendants waive all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each party shall bear its own costs and attorneys’ fees. Receivership Defendants also waive all rights to seek judicial review of, or otherwise challenge or contest the validity of, this Order.

6. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.

7. Entry of this Order is in the public interest.

### DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

1. **“Receivership Defendants”** means Success Express, Inc., also d/b/a Success Express; Exam Resource Center, Inc., also d/b/a Exam Resource; Occupational Advancement Center, Inc., also d/b/a Occupational Advancement and OAC; and Employment Resource, LLC, also d/b/a Employment Resources.

2. **“Individual Defendants”** means David James Daniell, a/k/a David James, Wanda J. Taugner, and Kathy L. Stafford. Defendant Daniell owns 100% of Occupational Advancement Center, Inc., and Employment Resource, LLC. Defendant Taugner owns 100% of Success Express, Inc. Defendant Stafford owns 100% of Exam Resource Center, Inc.

3. **“Defendants”** means Success Express, Inc., also d/b/a Success Express; Exam Resource Center, Inc., also d/b/a Exam Resource; Occupational Advancement Center, Inc., also d/b/a Occupational Advancement and OAC; Employment Resource, LLC, also d/b/a Employment Resources, David James Daniell, a/k/a David James, Wanda J. Taugner, and Kathy L. Stafford.

4. ~~**“Employment goods or services”** means any item, product, good or service~~  
represented to assist consumers in obtaining employment—including, but not limited to, preparation or other training for any employment examination.

5. **“Assets”** means any legal or equitable interest in, right to, or claim to, any real and personal property—including, but not limited to, chattel, goods, instruments, equipment,

fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

6. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

7. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.

8. **“Person”** means a natural person, organization or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

9. **“Plaintiff”** means the Federal Trade Commission (“Commission” or “FTC”).

10. **“Receiver or Permanent Receiver”** means Phillip S. Stenger pursuant to the orders of appointment including the Stipulated Preliminary Injunction with Appointment of Permanent Receiver, Asset Freeze and Accounting dated November 28, 2005.

11. **“Record”** means any document, as document is defined in definition 6, above, relating to the business or business practices of any Defendant.

12. The terms **“and”** and **“or”** shall be construed conjunctively or disjunctively as necessary to make the applicable phrase or sentence inclusive rather than exclusive.

## **ORDER**

### **I. BOND REQUIREMENT**

**IT IS THEREFORE ORDERED** that the Receivership Defendants, whether acting directly or through any person or entity, are permanently restrained and enjoined from marketing or selling employment goods or services, unless they first obtain a performance bond in the principal sum of ONE MILLION DOLLARS (\$1,000,000).

A. The bond required by this Paragraph I shall be conditioned upon compliance with Section 5 of the FTC Act, 15 U.S.C. § 45(a), and with this Order. The bond shall be deemed continuous and remain in full force and effect as long as any Receivership Defendant continues to engage in conduct that requires the posting of the bond, and for at least three years after the Receivership Defendants have ceased to engage in such conduct. The bond shall cite this Order as the subject matter of the bond, and shall provide surety thereunder against financial loss resulting from whole or partial failure of performance due, in whole or in part, to any violation of Section 5 of the FTC Act, the provisions of this Order, or to any other violation of law.

B. The performance bond required pursuant to this Paragraph I shall be in the form of an insurance agreement providing surety for financial loss issued by a surety company that is admitted to do business in each of the states in which the Receivership Defendants do business and that holds a Federal Certificate of Authority As Acceptable Surety On Federal Bond and Reinsuring. Such performance bond shall be in favor of both: (1) the Federal Trade Commission for the benefit of any consumer injured as a result of any violation of Section 5 of the FTC Act or the provisions of this Order made by Receivership Defendants, their agents, or any persons acting in concert with them; and (2) any consumer so injured.

C. The bond required pursuant to this Paragraph I is in addition to, and not in lieu of, any other bond required by any other federal, state, or local law, or by any other court order not entered in this action.

D. At least ten business days before the commencement of any activity covered by subsection A above, Receivership Defendants shall provide the bond required by this Paragraph I to the Associate Director for Enforcement at the address specified in Paragraph X of this Order.

E. Receivership Defendants shall not disclose the existence of the performance bond required by this Paragraph I to any consumer without also disclosing clearly and prominently, at the same time, the following phrase: "This bond is required by order of the U.S. District Court, in the case *FTC v. Success Express, Inc., et al.*, Case No. 1:05CV0714 (W.D. Mich.), in settlement of allegations of false and misleading representations in the promotion and sale of employment goods or services." The disclosure shall be set forth in a clear and conspicuous manner, separated from all other text, in 100 percent black ink against a light background, in print at least as large as the main text of the sales material or document, and enclosed in a box containing only the required disclosure.

F. If, upon motion by the FTC, the Court finds that the Receivership Defendants or any business in which the Individual Defendants engage or participate, has violated Section 5 of the FTC Act or this Order, the FTC may execute against the performance bond required by this Paragraph I. Proceedings instituted under this subsection F are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings the FTC may initiate to enforce this Order.

## II. PROHIBITED BUSINESS ACTIVITIES

**IT IS FURTHER ORDERED** that the Receivership Defendants, and their officers, agents, employees, and all those persons or entities 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, or other device, in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any good or service, are hereby permanently restrained and enjoined from:

A. Misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact—including, but not limited to:

1. That Defendants are connected with or endorsed by the United States Postal Service (USPS).
2. That postal positions are currently available in the geographic areas where the Defendants' advertisements appear.
3. That Defendants assist consumers in registering for and obtaining employment with the USPS.
4. That consumers who obtain a score of 90 percent or above on the postal examination are assured a postal job.

## III. CONSUMER LISTS

**IT IS FURTHER ORDERED** that the Receivership Defendants and any person or entity through which they do business, and their successors, assigns, officers, agents, servants, employees, attorneys, and those other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone 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 bill, mortgage loan account, or debit card), e-mail address, or other identifying information of any person who submitted such information to any of the Defendants, at any time prior to entry of this Order, in connection with the purchase of any employment good or service.

B. Using or benefitting from, for commercial purposes, the name, address, telephone 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 bill, mortgage loan account, or debit card), e-mail address, or other identifying information of any person who submitted such information to any of the Defendants, at any time prior to entry of this Order, in connection with the purchase of any employment good or service.

C. *Provided, however*, that the Receiver or Receivership Defendants may disclose such identifying information (i) with the express written consent of the person whose information is disclosed, (ii) to a law enforcement agency, or (iii) as required or authorized by any law, regulation, or court order.

#### **IV. MONETARY RELIEF AS TO RECEIVERSHIP DEFENDANTS**

##### **IT IS FURTHER ORDERED** that:

A. Judgment is hereby entered in the amount of Seven Million Dollars (\$7,000,000) in favor of the FTC and against the Receivership Defendants, who are jointly and severally liable with the other Defendants, for the payment of equitable monetary relief – including, but not limited to, consumer redress and/or disgorgement, and for paying any attendant expenses of administration of any redress fund.

B. ***Provided, however,*** that the judgment described in Paragraph A shall be satisfied upon the timely transfer to the FTC or its designated agent of the following: (1) all assets received into the Receivership Estate, including, but not limited to, proceeds from the sale of Individual Defendant Taugner's property located at 5842 Diane Drive, Indian River, Michigan, 49749 and (2) the balance of all of the accounts identified in the "Receivership Defendants' Reference List" filed with the Court under seal.

C. Any monies collected under this Paragraph are subject to the conditions described in Paragraph VI.

## V. RECEIVERSHIP

**IT IS FURTHER ORDERED** that:

A. The Receivership imposed in the Preliminary Injunction entered in this proceeding shall be continued. The Receiver is authorized to submit interim requests for payment of compensation for the performance of Receivership duties.

B. After entry of this Order, the Receiver shall take all steps necessary to liquidate and dissolve the Receivership Defendants and marshal and liquidate receivership assets. The Receiver will cause the preparation of the final tax returns for the Receivership Defendants as part of the dissolution process and the Individual Defendants shall review and sign the tax returns. The Defendants shall cooperate with the Receiver in identifying and liquidating assets, dissolving the Receivership Defendants and filing the tax returns. The Receivership Defendants have all filed elections to be taxed as S corporations for federal income tax purposes and as a result taxable income and loss associated with the Receivership Defendants flows through to the Individual Defendants who are owners of the Receivership Defendants. The Individual Defendants shall pay all federal, state and local income taxes associated with the Receivership

Defendants according to their ownership percentage of each such Receivership Defendant as required by the Internal Revenue Code. The Receiver shall not be liable or responsible for the payment of federal, state or local income taxes of the Receivership Defendants. The Receiver may retain the services of an accountant and compensate such accountant in connection with tax filings and dissolving the Receivership Defendants.

C. Within thirty (30) days of completion of the requirements of Section B of this Paragraph, the Receiver shall move this Court to order termination of this Receivership. At such time the Receiver shall make a final request for payment of compensation for the performance of Receivership duties.

D. Within five (5) days of receipt of the Court's decision regarding final compensation for the Receiver, the Receiver shall transfer all remaining funds of the Receivership Defendants to the Federal Trade Commission, subject to the conditions set forth in Paragraph VI of this Order. Such payment shall be remitted to the Federal Trade Commission by (1) wire transfer to the account of the Federal Trade Commission, or (2) certified check delivered to the Federal Trade Commission, Eaton Center, Suite 200, 1111 Superior Avenue, Cleveland, Ohio 44114, Reference Information, *FTC v. Success Express, Inc.*, Matter Number X06 0001.

E. Within five (5) days of termination of the Receivership, the Receiver will promptly turn over to the FTC all records containing the customer information described in Paragraph III of this Order. The Receiver shall have no obligation to retain other records of the Receivership Defendants and, at his option, may return all such records to the Individual Defendants who own the respective Receivership Defendants, who shall be obligated to preserve and maintain the records for all purposes required by law.

