ENTERED ON ACMS

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Plaintiffs

By: Jah-Juin Ho, #[redacted]
Deputy Attorney General
[redacted]

FILED

SEP 26 2013

STEPHAN C. HANSBURY
PRESIDING JUDGE
CHANCERY DIVISION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MORRIS COUNTY
DOCKET NO. MRS-C-38-11

JOHN J. HOFFMAN, Acting Attorney General of the State of New Jersey, and ERIC T. KANEFSKY, Director of the New Jersey Division of Consumer Affairs,

Plaintiffs,

v.

DAVID S. BROOKMAN, and CAPITAL ENTERPRISES, INC. d/b/a MAXWELL SCOTT ENTERPRISES, MAXWELL SCOTT, DAVID GATES ENTERPRISES and WARNER DANIEL, JANE and JOHN DOES 1-10, individually and as owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of DAVID S. BROOKMAN, CAPITAL ENTERPRISES, INC. d/b/a MAXWELL SCOTT ENTERPRISES, MAXWELL SCOTT, DAVID GATES ENTERPRISES and WARNER DANIEL, and XYZ CORPORATIONS 1-20,

Defendants.

Civil Action

FINAL CONSENT JUDGMENT

The parties to this Action and Final Consent Judgment ("Consent Judgment") are plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey, and Eric T. Kanefsky, Director of the New Jersey Division of Consumer Affairs (collectively, "Plaintiffs"),[1] and defendants David S. Brookman ("Brookman") and Capital Enterprises d/b/a Maxwell Scott Enterprises, Maxwell Scott, David Gates Enterprises, and Warner Daniel ("Capital Enterprises") (collectively, "Defendants"). As evidenced by their signatures below, the Plaintiffs and Defendants (collectively, "Parties") consent to the entry of this Consent Judgment and its provisions without trial or adjudication of any issue of fact or law, and without an admission by the Defendants of any liability or wrongdoing of any kind. The Parties consent to entry of this Consent Judgment to avoid the expenses and uncertainty associated with further investigation and/or litigation.

ADMISSIONS OF FACT

On February 24, 2011, Plaintiffs commenced this action, alleging that Defendants violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), and the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq. ("Advertising Regulations"), through their advertisement, offering for Sale and Sale of work-at-home programs to consumers in New Jersey and throughout the United States.

Defendants advertised and offered for sale an envelope-stuffing program, which promised in part:

GET PAID FOR MAILING OUR SPECIAL LETTERS
FROM HOME!
POTENTIAL EARNINGS OF UP TO $5000 OR MORE WEEKLY!
FREE POSTAGE, FREE CIRCULARS, FREE ENVELOPES.

[1] This action was commenced on behalf of Paula T. Dow, former Attorney General, and Thomas R. Calcagni, former Director. In accordance with R. 4:34-4, the caption has been revised to reflect the current Acting Attorney General and Director.

From:superior court [redacted] 09/30/2013 12:24 #372 P.002/013

Pay Checks Mailed Every Tuesday.
Don't Get Left Out! Give us a try and we'll send <u>you a check</u> in ten days!

Defendants' records indicate that: (1) only 45 out of approximately 13,000 (or 0.35%) consumers achieved more than 10 order forms returned per Defendants' instructions; (2) only approximately 0.35% of consumers ever made more than $100.00 from Defendants' envelope stuffing program; (3) approximately 11,000 consumers made no money at all from Defendants' programs; and (4) the most money any consumer ever made from Defendants' work-at-home programs was $520.00 over a 10 month period.

The Court has reviewed the terms of this Consent Judgment and based upon the Parties' agreement and for good cause shown:

IT IS HEREBY ORDERED, ADJUDGED AND AGREED AS FOLLOWS:

1. JURISDICTION

1.1 The Parties admit jurisdiction of this Court over the subject matter and over the Parties for the purpose of entering into this Consent Judgment. The Court retains jurisdiction for the purpose of enabling the Parties to apply to the Court at any time for such further orders and relief as may be necessary for the construction, modification, enforcement, execution or satisfaction of this Consent Judgment.

2. VENUE

2.1 Venue as to all matters between the Parties hereto relating to or arising out of this Consent Judgment shall lie exclusively in the Superior Court of New Jersey, Chancery Division, Morris County.

From:superior court [redacted] 09/30/2013 12:25 #372 P.003/013

3. EFFECTIVE DATE

3.1 This Consent Judgment shall be effective on the date that it is entered with the Court ("Effective Date").

4. DEFINITIONS

As used in this Consent Judgment, the following capitalized words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Judgment:

4.1 "Action" shall refer to the matter titled John J. Hoffman, Acting Attorney General of the State of New Jersey, and Eric T. Kanefsky, Director of the New Jersey Division of Consumer Affairs v. David S. Brookman and Capital Enterprises, Inc., etc., et al., Superior Court of New Jersey, Chancery Division, Morris County, Docket No. MRS-C-38-11, and all pleadings and proceedings related thereto, including the Complaint, filed February 24, 2011.

4.2 "Advertisement" shall be defined in accordance with N.J.S.A. 56:8-1(c). For purposes of the Advertising Regulations, "advertisement" shall be defined in accordance with N.J.A.C. 13:45A-9.1. These definitions apply to other forms of the word "advertisement" including, without limitation, "advertised" and "advertising."

4.3 "Attorney General" shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

4.4 "Consumer" shall refer to any Person who is offered Merchandise for Sale.

4.5 "Division" or "Division of Consumer Affairs" shall refer to the New Jersey Division of Consumer Affairs.

4.6 "Merchandise" shall be defined in accordance with N.J.S.A. 56:8-1(c).

From:superior court [redacted] 09/30/2013 12:26 #372 P.004/013

4.7 "New Jersey" and "State" shall refer to the State of New Jersey.

4.8 "Person[s]" shall be defined in accordance with N.J.S.A. 56:8-1(d).

4.9 "Sale" shall be defined in accordance with N.J.S.A. 56:8-1(e).

5. INJUNCTIVE RELIEF AND BUSINESS PRACTICES

5.1 Defendants shall not engage in any unfair or deceptive acts or practices in the conduct of any business in the State and shall comply with such State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA and the Advertising Regulations.

5.2 Defendants are permanently enjoined from engaging in the advertisement, offering for Sale and/or Sale of work-at-home, direct mail, referral, pyramid, envelope-stuffing, booklet assembly, or pre-formatted Advertising programs in the State or directed to a New Jersey resident.

5.3 Defendant Brookman is permanently enjoined from owing and/or operating any business or other entity in the State that is engaged in the advertisement, offering for sale and/or sale of work-at-home, direct mail, referral, pyramid, envelope-stuffing, booklet assembly, or pre-formatted Advertising programs.

5.4 Within 45 days of the Effective Date, Defendants shall arrange for the dissolution of Capital Enterprises, including, but not limited to, a winding down of the affairs of Capital Enterprises and filing of a certificate of dissolution with the New Jersey Secretary of State.

From:superior court [redacted] 09/30/2013 12:27 #372 P.005/013

6. FUTURE BUSINESS PRACTICES OF DEFENDANT BROOKMAN

6.1 For a period of ten years from the Effective Date, Defendant Brookman shall notify Plaintiffs of any plans to: (a) form a business in New Jersey or directed to New Jersey consumers; or (b) advertise or sell any merchandise to consumers in New Jersey.

6.2 Not later than 30 days prior to: (a) the formation of a business in New Jersey or directed to New Jersey consumers; or (b) the advertisement or sale of any merchandise to consumers in New Jersey, Defendant Brookman shall post a bond in favor of Plaintiffs in the amount of Two Hundred Fifty-Thousand and 00/100 Dollars ($250,000.00) or ten percent (10%) of the prior fiscal year gross revenues of any business formed in New Jersey by Brookman or directed by him to New Jersey consumers, whichever is greater. The bond shall be posted to secure any payments to be made by Defendant Brookman or any business formed by him in New Jersey, including but not limited to recovery under the CFA and/or the Advertising Regulations. Defendant Brookman shall contemporaneously provide Plaintiffs with a copy of the standard terms and conditions of the bank or other financial institution issuing the bond. Within the given time period of this section, Defendant Brookman shall further provide written notification of: (a) the type of entity formed; (b) a description of the nature of business; (c) the business entity name and all aliases or alternate business names; (d) all business addresses, telephone numbers, and e-mail addresses; (e) the names of all owners, officers and shareholders; and (f) a copy of the bond as described in this Section.

6.3 Defendant Brookman shall maintain the bond described in this Section for a period of ten years from the Effective Date or until such time as he no longer: (a) operates,

From:superior court [redacted] 09/30/2013 12:28 #372 P.006/013

owns, or manages a business in New Jersey or directed to New Jersey consumers; or (b) advertises or sells merchandise to consumers in New Jersey.

7. SETTLEMENT PAYMENT

7.1 The Parties have agreed to a settlement of the Action in the amount of One Hundred Thirty Thousand and 00/100 Dollars ($130,000.00) ("Settlement Payment").

7.2 The Settlement Payment comprises of Sixty-Six Thousand Seven Hundred Twelve and 00/100 Dollars ($66,712.00) in civil penalties, pursuant to N.J.S.A. 56:8-13, Forty Thousand One Hundred Thirty-Seven and 00/100 Dollars ($40,137.00) in reimbursement of Plaintiffs' attorneys' fees and Twenty Three Thousand One Hundred Fifty-One and 00/100 Dollars ($23,151.00) in reimbursement of Plaintiffs' investigative costs, pursuant to N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19.

7.3 Defendants shall make the Settlement Payment in the following manner:

a. Fifty Thousand Dollars ($50,000.00) shall be paid within ten days of the Effective Date; and

b. The remaining Eighty Thousand and 00/100 Dollars ($80,000.00) shall be paid in eight equal quarterly installments of Ten Thousand and 00/100 Dollars ($10,000.00). For purposes of this Consent Judgment, quarterly payments shall be paid on January 1, April 1, July 1, and October 1 of each year.

7.4 The Settlement Payment shall be made by bank check, attorney trust account check or other guaranteed funds made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to the undersigned:

Case Management Tracking
Division of Consumer Affairs
P.O. Box 45024
Newark, New Jersey 07101

From:superior court [redacted] 09/30/2013 12:28 #372 P.007/013

7.5 Upon making the Settlement Payment, Defendants shall immediately be fully divested of any interest in, or ownership of, the monies paid to Plaintiffs and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Plaintiffs pursuant to the terms herein.

8. FORBEARANCE ON EXECUTION AND DEFAULT

8.1 In the event Defendants fail to make any of the payments referenced in Section 7.3 within 15 days of their due date, Plaintiffs may move on notice or Order to Show Cause to have Judgment entered for all unpaid portions of the Settlement Payment, as well as interest calculated in accordance with R. 4:42-11 from the date of default. Defendants shall have a right to submit opposition to any motion or Order to Show Cause application by Plaintiffs and to contest same on any return date.

8.2 Defendants shall pay all reasonable attorneys' fees and costs including, but not limited to, Court costs, associated with any successful collection efforts by Plaintiffs pursuant to this Consent Judgment.

9. DISMISSAL OF ACTION

9.1 The entry of this Consent Judgment constitutes a dismissal with prejudice of the Action.

10. GENERAL PROVISIONS

10.1 This Consent Judgment is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Judgment.

From:superior court [redacted] 09/30/2013 12:29 #372 P.008/013

10.2 This Consent Judgment shall be governed by, and construed and enforced in accordance with, the laws of the State.

10.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Judgment and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Judgment.

10.4 This Consent Judgment contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Judgment shall be modified only by a written instrument signed by or on behalf of the Plaintiffs and Defendants.

10.5 Except as otherwise explicitly provided for in this Consent Judgment, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

10.6 If any portion of this Consent Judgment is held invalid or unenforceable by operation of law, the remaining terms of this Consent Judgment shall not be affected.

10.7 This Consent Judgment shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Judgment avoid compliance with this Consent Judgment.

10.8 This Consent Judgment is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Judgment nor any action taken hereunder shall constitute, or be construed as an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of Defendants. This Consent Judgment is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of

From:superior court [redacted] 09/30/2013 12:30 #372 P.009/013

the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms of this Consent Judgment; or (b) any action or proceeding involving a Released Claim (as defined in Section 11) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

10.9 Nothing contained in this Consent Judgment shall be construed to limit or otherwise affect the rights of any Persons who are not Parties to this Consent Judgment with respect to any of the matters contained herein.

10.10 The Parties represent and warrant that their signatories to this Consent Judgment have authority to act for and bind the respective Parties.

10.11 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Judgment may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Judgment.

11. RELEASE

11.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Judgment and conditioned on Defendants making the Settlement Payment in the manner referenced in Section 7, Plaintiffs hereby agree to release Defendants from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Plaintiffs could have brought prior to the Effective Date against Defendants for violations of the CFA and the Advertising Regulations as alleged in the Action, as well as the matters specifically addressed in this Consent Judgment ("Released Claims").

From:superior court [redacted] 09/30/2013 12:31 #372 P.010/013

11.2 Notwithstanding any term of this Consent Judgment, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Judgment; and (c) any claims against Defendants by any other agency or subdivision of the State.

12. PENALTIES FOR FAILURE TO COMPLY

12.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Judgment or to seek sanctions for violations hereof or both.

12.2 The Parties agree that any future violations of the injunctive provisions of this Consent Judgment, the CFA or the Advertising Regulations shall constitute a second or succeeding violation under N.J.S.A. 56:8-13 and Defendants may be liable for enhanced civil penalties.

13. COMPLIANCE WITH ALL LAWS

13.1 Except as provided in this Consent Judgment, no provision herein shall be construed as:

(a) Relieving Defendants of their obligations to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or

(b) Limiting or expanding any right the Plaintiffs may otherwise have to obtain information, documents or testimony from Defendants pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Defendants may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Plaintiffs to obtain such information, documents or testimony.

From:superior court [redacted] 09/30/2013 12:32 #372 P.011/013

14. NOTICES UNDER THIS CONSENT JUDGMENT

14.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Judgment shall be sent by the United States Mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Plaintiffs:

Jah-Juin Ho, Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

For the Defendants:

Jason LeBoeuf, Esq.
60 Park Place, Suite 703
Newark, New Jersey 07102

IT IS ON THE 26th DAY OF September 2013 SO ORDERED, ADJUDGED AND DECREED.

HON. STEPHAN C. HANSBURY, P.J.Ch.

From:superior court [redacted] 09/30/2013 12:32 #372 P.012/013

JOINTLY APPROVED AND SUBMITTED FOR ENTRY:

FOR THE PLAINTIFFS:

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By:_____ Dated: 9/26, 2013
Jah-Juin Ho
Deputy Attorney General

FOR DEFENDANTS:

LAW OFFICES OF JASON LeBOEUF
Attorney for Defendants

By:_____ Dated: 9/24, 2013
Jason LeBoeuf, Esq.

CAPITAL ENTERPRISES, INC.

By:_____ Dated: 9-24, 2013
David S. Brookman, sole owner

DAVID S. BROOKMAN

By:_____ Dated: 9-24, 2013
David S. Brookman, individually

From:superior court [redacted] 09/30/2013 12:33 #372 P.013/013