

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

RECEIVED

Handwritten initials

2013 MAR 14 PM 4:10

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL,

MAR 20 2013

CITIZEN SERVICE CENTER
KANAWHA COUNTY CIRCUIT COURT

ATTORNEY GENERAL'S OFFICE

Plaintiff,

v.

CIVIL ACTION NO. 09-C-852

JAMES R. ARMSTRONG; FAMILY CREDIT
COUNSELING CORPORATION; DEBT SOLUTIONS
FOUNDATION, INC.; TOP FINANCIAL SALES &
MARKETING, INC.; CONSUMER FINANCIAL
MARKETING, INC.; CONSUMER DEBT MANAGEMENT
& EDUCATION, INC.; JRA PROPERTY & LAND
MANAGEMENT, LLC; VEGGA CORPORATION and
AMERICAN DEBT COUNSELING, INC.,

Defendants.

JUDGMENT ORDER

On the 7th day of March, 2013, came the Plaintiff, State of West Virginia ex rel. Patrick Morrissey, Attorney General ("The State" or "Attorney General"), by counsel, Norman Googel, Senior Assistant Attorney General, for the hearing on the State's Motion for Summary Judgment duly scheduled for this date and time. Whereupon, the Court instructed the bailiff to call the case both inside and outside of the courtroom and, after doing so, the bailiff reported that Defendants James R. Armstrong and Family Credit Counseling Corporation did not appear in person or by counsel for the hearing.

Thereupon, the Court proceeded to hear and consider the oral arguments by the State in support of its motion for summary judgment, the affidavit attached thereto, and the State's supporting memorandum of law, upon the basis of which the Court makes the following findings of fact and conclusions of law:

1. Defendant James R. Armstrong ("Armstrong") is and was the sole owner and principal officer of the now-defunct Defendant Family Credit Counseling Corporation ("FCCC"), which was a federally tax-exempt nonprofit corporation with offices previously located in Lauderdale Lakes, Florida and Charlotte, North Carolina.

2. FCCC was engaged in the business of administering debt management plans ("DMPs") for consumers in various states, including West Virginia.

3. A DMP is a plan to repay credit card debt typically negotiated by nonprofit credit counseling agencies. The agency proposes payment arrangements to each creditor and, once all creditors have accepted the plan, the consumer commences making monthly payments to the agency, which then distributes the agreed upon amount to each creditor in accordance with the plan.

4. FCC marketed its DMPs through a series of for-profit companies that were also owned, controlled by, or acting in concert with Armstrong. These companies included some of the now-defunct corporations named as Defendants herein.

5. After soliciting and enrolling consumers for services, the marketing companies established the DMP and then referred it to FCCC for administration.

6. The provision of debt management and other debt relief services in West Virginia is governed by W. Va. Code § 61-10-23 ("Debt Pooling Statute"), which provides in pertinent part as follows:

"Debt pooling" shall mean the rendering in any manner of advice or services of any and every kind in the establishment or operation of a plan pursuant to which a debtor would deposit or does deposit funds for the purpose of distributing such funds among his creditors. It shall be unlawful for any person to solicit in any manner a debt pooling. It shall further be unlawful for any person, except licensed attorneys, to make

any charge for a debt pooling by way of fee, reimbursement of cost, or otherwise, in excess of an amount equal to 2% of the total amount of money actually deposited pursuant to a debt pooling: Provided, That any nonprofit firm, corporation or voluntary association may make an additional charge not exceeding 5% of the total amount of money actually deposited pursuant to a debt pooling, to defray costs of counseling services furnished for the benefit of its clientele of debtors generally with respect to personal money management.

(Emphasis added.)

7. Defendant Armstrong and FCCC were engaged in the provision of “debt pooling” as defined by the Debt Pooling Statute.

8. The Debt Pooling Statute governs the nature and amount of fees that may be charged for the provision of debt pooling services to West Virginia consumers.

9. The Debt Pooling Statute prohibits any person, except licensed attorneys, from charging an upfront fee for debt pooling services.

10. The Debt Pooling Statute permits a nonprofit corporation, such as FCCC, to charge a monthly service fee for administration of the DMP of up to seven percent of the monthly payment amount paid by the consumer pursuant to the DMP.

11. Prior to commencing the above civil action the Attorney General issued an investigative subpoena as authorized by W. Va. Code § 46A-7-104(1) to Armstrong and FCCC requiring that they produce the records of their provision of debt pooling services to West Virginia consumers. Armstrong and FCCC did produce the records in compliance with the subpoena.

12. The data produced by Armstrong and FCCC in response to the pre-complaint subpoena was analyzed by Angela B. White, paralegal, who made the following findings:

(a) FCCC administered DMPs for 250 West Virginia consumers.

(b) The marketing companies that solicited and enrolled West Virginia consumers to receive DMPs services from FCCC collected total upfront fees of \$95,737 from them.

(c) FCCC collected a total of \$126,764 in monthly service fees from West Virginia consumers for administration of their DMPs.

13. Based upon the Debt Pooling Statute, which permits a for-profit tax-exempt corporation to charge a monthly service fee of seven percent of the monthly payment amount, FCCC overcharged West Virginia consumers a total of \$30,348.22 in monthly service fees for administration of the DMPs.

14. The findings and analysis of data by Ms. White, including a detailed report containing the underlined data, are contained in the Affidavit of Angela B. White ("White Affidavit") attached to the State's Motion for Summary Judgment as Plaintiff's Exhibit A and Exhibit A-1.

15. Based upon the White Affidavit, Armstrong and FCCC charged unlawful upfront fees of \$95,737 for enrolling West Virginia consumers into DMPs.

16. Based upon the White Affidavit, Armstrong and FCCC overcharged West Virginia consumers a total of \$30,348.22 in monthly service fees for administration of the DMPs.

17. Based upon the allegations in the Complaint, FCCC, a foreign corporation, transacted business in West Virginia without first obtaining a certificate of authority from the West Virginia Secretary of State as required by W. Va. Code § 31D-15-1501; such failure constitutes an unfair or deceptive act or practice, in violation of W. Va. Code § 46A-6-104.

18. Based upon the allegations in the Complaint as further supported by the White Affidavit, all of which is not disputed by the Defendants, the Court finds that there is no genuine issue as to any material facts relative to the State's Second and Third Causes of Action (charging unlawful upfront fees and excessive monthly service fees for establishment and administration of DMPs).

19. The State is entitled to summary judgment as a matter of law against Armstrong and FCCC, as authorized by Rule 56(c) of the West Virginia Rules of Civil Procedure, for the unlawful upfront fees and overcharge of monthly service fees for establishment and administration of DMPs as alleged in the State's Second and Third Causes of Action.

Accordingly, it is therefore **ORDERED** as follows:

1. The State is awarded summary judgment against Defendants James R. Armstrong and Family Credit Counseling Corporation in the total amount of \$126,085.22, said amount consisting of \$95,737 in unlawful upfront fees and \$30,348.22 in excess charges of monthly service fees.

2. The State is awarded a permanent injunction prohibiting James R. Armstrong and Family Credit Counseling Corporation from engaging in the business of debt pooling and any other debt relief services in West Virginia without first obtaining a certificate of authority from the West Virginia Secretary of State and from charging any fees for such services in excess of the amounts permitted by the Debt Pooling Statute.

3. All of the State's remaining claims and all remaining parties, with the exception of James R. Armstrong and Family Credit Counseling Corporation, are **DISMISSED** with prejudice.

4. The Clerk is directed to forward a certified copy of this order to Defendants James R. Armstrong and Family Credit Counseling Corporation, care of James Armstrong at 2901 Rose Meade Drive, Monroe, North Carolina 28110.

5. The Clerk is further directed to omit this civil action from the active docket of this Court.

ENTER this 13 day of March, 2013.

James C. Stucky
JAMES C. STUCKY, JUDGE
Circuit Court of Kanawha County

Prepared By:

Norman Googel
NORMAN GOOGEL, WV Bar #1438
SENIOR ASSISTANT ATTORNEY GENERAL
Consumer Protection/Antitrust Division
Post Office Box 1789
Charleston, West Virginia 25326-1789
nag@wvago.gov

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 19th
DAY OF March 2013
Cathy S. Gatson CLERK
COURT OF KANAWHA COUNTY, WEST VIRGINIA TC