

STATE OF VERMONT
WASHINGTON COUNTY, SS.

FILED

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STATE OF VERMONT,)
Plaintiff)
)
v.)
)
PROVEN METHODS SEMINARS, LLC,)
and PROVEN METHODS CUSTOMER)
SERVICE, d/b/a NATIONAL GRANTS)
CONFERENCES, and JOHN/JANE DOE)
NOS. 1-10,)
Defendants)

SUPERIOR COURT
WASHINGTON COUNTY

Washington Superior Court
Docket No. 38-1-06

CONSUMER FRAUD COMPLAINT

I. Introduction

1. The Vermont Attorney General brings this suit under the Vermont Consumer Fraud Act in response to Defendants' failure to provide adequate notice of consumers' right to cancel their purchase of "government grants" training program materials costing \$999; Defendants' use of consumer testimonials to sell their program without proper disclosure of the atypical nature of those consumers' success in obtaining government assistance; Defendants' marketing of their government grants program without prior factual substantial that it works; and Defendants' refusal to comply with a duly-issued Civil Investigative Subpoena. The Attorney General seeks injunctive relief, restitution to purchasers, civil penalties, fees and costs, and other appropriate relief.

II. Parties

2. Defendant Proven Methods Seminars, LLC, is a Nevada limited liability company with offices at 2385 Executive Center Drive, Boca Raton, Florida 33431.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

3. Defendant Proven Methods Customer Service, LLC, is a Nevada limited liability company with offices at 803 West Avenue, Rochester, New York 14611.

4. Defendants Proven Methods Seminars, LLC, and Proven Methods Customer Service, LLC, do business as National Grants Conferences and together are referred to hereinafter as "NGC."

5. Defendants John/Jane Does nos. 1 through 10 (hereinafter "John Does") are individuals associated with NGC whose authority over and knowledge of the acts and practices described in this Consumer Fraud Complaint render them legally liable for the conduct of the other Defendants. Their identities will be established through the discovery process in this action.

6. The Vermont Attorney General is authorized under the Vermont Consumer Fraud Act, 9 V.S.A. § 2458(b), to sue to enforce the Act's prohibitions on unfair and deceptive acts and practices in commerce.

7. This Court has personal jurisdiction over Defendants and is the proper venue for this action, based on the marketing of NGC's program throughout Vermont, including in Washington County.

8. This action is in the public interest.

III. Facts

9. NGC purports to offer a program that shows how to obtain "free" money from the government, particularly the federal government.

10. NGC offers and sells this program at seminars throughout the United States.

11. Defendant Proven Methods Seminars, LLC, handles NGC's marketing and programs; Defendant Proven Methods Customer Service, LLC, services NGC's clients.

12. NGC has conducted at least ten seminars at various hotels in Vermont since 2001.

13. NGC's Vermont seminars were advertised through direct mail and infomercials on television.

14. The brochure handed out at NGC's seminars bore a large-print headline that summarized what NGC claimed to offer: "How To Get Free Money From the U.S. Government!" (Exhibit 1.)

15. The direct mail piece used to entice consumers to attend NGC's seminars contained a similar headline, also in large print: "How To Qualify For FREE Grant Money And Guaranteed Loans Backed By The U.S. Government!" (Exhibit 2.)

16. As one of the presenters at NGC's seminar in Burlington on March 22, 2005, stated,

The first word I would like you to write down is probably why all of you are here this afternoon. Is that word right there. And yes, that is free money. ... And we are going to talk about some fun ones. Loans you don't have to pay back, forgiven loans, low interest loans ...

17. Attendance at NGC's seminars was free. However, on information and belief, NGC sold "training" materials to consumers at the seminars for a "discounted" price of \$999.00.

18. NGC offered a three-day right to cancel with these materials. (Exhibit 3.) However, this right to cancel carried with it certain obligations and limitations, express or implied:

- a. The consumer was required to ship the product back to NGC.
- b. The materials had to be in "re-sellable condition."
- c. The consumer had to pay to ship the materials back to NGC.

- d. The consumer had no stated right to retain or dispose of the materials under any circumstances.
 - e. There was no option to notify NGC by mail of the consumer's intention to cancel the purchase.
 - f. The consumer had to contact NGC and obtain a "return authorization number."
19. NGC used consumer testimonials to market its program in Vermont.
20. These testimonials purported to be from individuals who had purchased NGC's program and who had, as a result, been successful in obtaining government assistance in the form of one or more grants and/or loans—for example, as the title of one consumer's testimonial stated, "Tim Fox Gets \$5,000 Grant & \$20,000 Free Interest Loan To Buy Duplex!" (Ex. 1 at 7.)
21. These testimonials were accompanied by the following small-print disclaimer:
- Availability, terms and amounts of grants and loans vary. You must meet eligibility requirements to qualify. Personal Experience, Yours may vary.
22. On information and belief, NGC did not know how typical or atypical it was for purchasers of its program to apply for, or to receive, a government grant or loan.
23. On March 22, 2005, the Vermont Attorney General's Office sent a Civil Investigative Subpoena under the authority of the Consumer Fraud Act, 9 V.S.A. § 2460(a), to NGC, in care of NGC's attorney in Florida. Under that statute, service would normally be effected by certified mail to the company itself, but counsel for NGC asked to have the Subpoena sent directly to him.

24. Among other things, the Subpoena sought information on Vermont customers of NGC, as follows:

State the name, address, and telephone number of every consumer in the State of Vermont from whom NGC has received money since January 1, 2001, and for each such consumer:

- a. state the date and amount of the charge (or bill or debit) and the medium of payment;
- b. if the medium of payment was a credit card charge, state whether there was a chargeback (return) by the consumer and the reason for the chargeback;
- c. if the medium of payment was a bank account debit, state whether the debit was returned, and if so, the reason for the return;
- d. state the date and amount of any refund paid and the reason for the refund;
- e. identify and produce all documents relating to the transaction, including, but not limited to, any receipt, notice of a right to cancel, correspondence and notes of telephone conversations.

25. NGC refused to provide the subpoenaed information and documents, despite repeated efforts by the Attorney General's Office to elicit that material from the company.

IV. First Count: Non-Compliance with Vermont's Right to Cancel Requirements

26. The allegations set forth above are realleged herein.

27. The Vermont Consumer Fraud Act requires that in any "home solicitation sale," a three-day right to cancel be disclosed both in writing, *see* 9 V.S.A. § 2454(b)(1) and (2), and orally, *see* 9 V.S.A. § 2454(b)(2)(D).

28. A sale at a transient location—for example, at a seminar conducted at a hotel—is a home solicitation sale within the meaning of the Act. 9 V.S.A. § 2451a(d).

29. In home solicitation sales, two written disclosures are required. First, a short-form statement is required in immediate proximity to the space reserved in the contract for the signature of the consumer or on the front page of the receipt if a contract is not used. Under 9 V.S.A. § 2454(b)(2), this disclosure must be in substantially the following form:

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation for an explanation of this right.

30. The "attached notice of cancellation" referred to above must be attached to the contract or receipt and easily detachable. It must also contain the six paragraphs of text printed in not less than ten point boldface type, as prescribed by 9 V.S.A. § 2454(b)(2)(A):

NOTICE OF CANCELLATION

You may cancel this transaction, without any penalty or obligation, within three business days of receiving this notice and a contract or receipt pertaining to the transaction.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to [name of seller] at [address of seller's place of business] no later than midnight of the third business day after you receive this notice and your contract or receipt.

31. Among other remedies for failure to provide the required notices is the contracting party's right to cancel the transaction and receive all of his or her money back. 9 V.S.A. § 2454(b)(3).

32. Sales of training materials at NGC's seminars in Vermont were subject to these right-to-cancel requirements.

33. In at least six respects, NGC's right to cancel did not comply with the statutory requirements in Vermont, except perhaps at the seminars in March 2005 (following notification by the Attorney General's Office that the company was out of compliance with the law):

- a. NGC's notice required the consumer to ship the product back to the company, whereas Vermont law allowed the consumer, at his option, to make the product available at his place of residence to be picked up (and the notice needs to state as much).
- b. NGC's notice required that the product be in "re-sellable condition," whereas Vermont law required only that the product be in "substantially as good condition as when received."
- c. NGC's notice suggested that the consumer must pay for the shipping, whereas the consumer's shipping option under Vermont law had to be at the seller's expense (and the notice needed to state that).
- d. NGC's notice did not state, as required by Vermont law, that if the product is not picked up by NGC within 20 days of cancellation, the consumer may retain or dispose of the product.
- e. NGC's notice did not contain a "cancel by mail" option, as required by Vermont law.

f. NGC's notice required an additional step not authorized by Vermont law, namely, obtaining a return authorization number, thus complicating the refund process beyond what was permitted.

34. For all of the foregoing reasons, NGC violated the Consumer Fraud Act and is obligated to offer consumers who purchased its materials an opportunity to cancel their purchase and receive a full refund.

V. Second Count: Failure to Include Proper Disclaimers for Testimonials

35. The allegations set forth above are realleged herein.

36. The Vermont Consumer Fraud Act states that in determining whether an act or practice is unfair or deceptive and thus violates the Act, the courts of this State "will be guided" by the construction of similar terms contained in the Federal Trade Commission Act "as from time to time amended by the Federal Trade Commission and the courts of the United States." 9 V.S.A. § 2453(b).

37. In 1980, the Federal Trade Commission (FTC) promulgated a set of guides on Endorsements and Testimonials in Advertising, 16 C.F.R. Part 255.

38. The term "endorsement" in the FTC Guides encompasses both endorsements and testimonials and includes "any advertising message ... which consumers are likely to believe reflects the ... experience of a party other than the advertiser." 16 C.F.R. § 255.0(b).

39. NGC's marketing materials made extensive use of such testimonials from consumers who had purportedly been successful in obtaining government assistance as a result of purchasing NGC's program materials.

40. The FTC Guides state,

An advertisement employing an endorsement reflecting the experience of an individual or a group of consumers on a central or key attribute of the product or service will be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product in actual, albeit variable, conditions of use. Therefore, unless the advertiser possesses and relies upon adequate substantiation for this representation, the advertisement should either clearly and conspicuously disclose what the generally expected performance would be in the depicted circumstances or limited applicability of the endorser's experience to what consumers may generally expect to achieve. [16 C.F.R. § 255.2(a).]

41. The FTC Guides give the following related example:

The mere disclosure that "not all consumers will get this result" is insufficient because it can imply that while all consumers cannot expect the advertised results, a substantial number can expect them.

42. The small-print disclaimer accompanying NGC's testimonials—"Availability, terms and amounts of grants and loans vary. You must meet eligibility requirements to qualify. Personal Experience, Yours may vary."—was no more than a restated articulation of "not all consumers will get this result."

43. Yet NGC did not possess adequate—or, on information and belief, any—prior substantiation of the typicality of the results described in its testimonials.

44. For that reason, NGC violated the Consumer Fraud Act.

VI. Third Count: Lack of Prior Factual Substantiation

45. The allegations set forth above are realleged herein.

46. Advertisers are required to have prior reasonable factual substantiation for any marketing claims they make.

47. NGC marketed its program materials using written and oral representations that those materials would help purchasers obtain government assistance, including "free money."

48. On information and belief, NGC did not know whether, or to what extent, purchasers of its materials had had success in obtaining such assistance.

49. For this reason, NGC violated the Consumer Fraud Act.

VII. Fourth Count: Non-Compliance with Civil Investigative Subpoena

50. The allegations set forth above are realleged herein.

51. The Consumer Fraud Act, 9 V.S.A. § 2460(a), authorizes the Attorney General to subpoena information relevant to a consumer fraud investigation as follows:

The attorney general or a state's attorney whenever he or she has reason to believe any person to be or to have been in violation of section 2453 of this title [prohibiting unfair and deceptive acts and practices in commerce] ... , may examine or cause to be examined by any agent or representative designated by him or her for that purpose, any books, records, papers, memoranda and physical objects of whatever nature bearing upon each alleged violation, and may demand written responses under oath to questions bearing upon each alleged violation.

52. According to 9 V.S.A. § 2460(b), compliance with such a subpoena is mandatory: "A person upon whom a notice is served pursuant to the provisions of [§ 2460] shall comply with the terms thereof unless otherwise provided by the order of a court of this state."

53. In this case, the Attorney General's Office had § 2460(a)'s requisite "reason to believe" that NGC had violated, and was violating, the Consumer Fraud Act.

54. The Attorney General's Office properly served a Civil Investigative Subpoena on NGC, sending it, by agreement, to the company's attorney in Florida.

55. The Attorney General's Subpoena requested, among other things, information and documents on NGC's Vermont customers, including the name, address, and telephone number of all Vermont residents from whom NGC had received money since January 1,

2001, and for each such consumer, information on the payment and on any refund made, and documents relating to the purchase.

56. However, Defendants have refused to furnish this information to the Attorney General.

WHEREFORE Plaintiff State of Vermont requests judgment in its favor and the following relief:

1. A permanent injunction prohibiting Defendants from engaging in any business activity in, into or from Vermont which violates the Consumer Fraud Act or related federal authorities.
2. Full restitution to all Vermont residents who bought goods or services from NGC.
3. Civil penalties of up to \$10,000.00 for each violation of the Consumer Fraud Act.
4. The award of investigative and litigation costs and fees to the State of Vermont.
5. Production of the information and documents on NGC's Vermont customers requested in the Attorney General's Civil Investigative Subpoena.
6. Such other relief as the Court deems appropriate.

Dated: 1/18/06

STATE OF VERMONT

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