

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN
AND FOR LEON COUNTY, FLORIDA

STATE OF FLORIDA
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

vs.

CASE NO. 2007CA _____

HOMEWARD BOUND SERVICES OF
NORTH AMERICA, INC., MARC ORTH
and THOMAS MULDOON,

Defendants.

**COMPLAINT FOR PERMANENT INJUNCTIVE RELIEF
AND OTHER STATUTORY RELIEF**

Plaintiff, State of Florida, Office of the Attorney General, Department of Legal Affairs (the "Attorney General"), sues Defendants, Homeward Bound Services of North America, Inc. ("Homeward Bound") f/k/a Homeward Bound Services, Inc., Marc Orth ("Orth"), and Thomas Muldoon ("Muldoon"), and alleges:

JURISDICTION AND VENUE

1. This is an action for damages, injunctive and other statutory relief, brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2006).
2. This Court has jurisdiction pursuant to the provisions of said statute.

3. Plaintiff, Attorney General, is an enforcing authority of Chapter 501, Part II, Florida Statutes (2006), and is authorized to seek penalties, damages, injunctive relief, and other statutory relief pursuant thereto.

4. The State has conducted an investigation of the matters alleged herein and Attorney General Bill McCollum has determined that this enforcement action serves the public interest, as required by Section 501.207(2), Florida Statutes (2006). (See attached Exhibit A.)

5. Defendant Homeward Bound, sold contracts for personal services to senior citizens throughout the State. These contracts have also been sold to senior citizens in a number of other states.

6. Homeward Bound is a foreign for-profit corporation which is authorized to do business in this state. Its address is 699 Burmont Road, Drexel Hill, PA 19026. It has designated Corporation Service Company, 1201 Hays Street, Tallahassee, Florida 32301-2525 as its registered agent for service of process.

7. Defendant Orth is the President and Treasurer of Homeward Bound, and is one of the individuals responsible for the service contracts it sold. He controlled and directed the sales practices and advertising of Homeward Bound. His address is 699 Burmont Drive, Drexel Hill, Pennsylvania, 19026.

8. Defendant Muldoon is the Vice President and Secretary of Homeward Bound, and is one of the individuals responsible for the service contracts it sold. He controlled and directed the sales practices and advertising of Homeward Bound. His address is 46 Mames Road, Broomall, Pennsylvania, 19008.

9. Homeward Bound, Orth and Muldoon are subject to jurisdiction of the courts of this state pursuant to section 48.193, Florida Statutes, because they engaged in business in this state. Homeward Bound is also subject to jurisdiction in this state because it breached contracts in this state.

10. The statutory violations and Defendants' activities alleged herein occurred in or affect more than one judicial circuit in the State of Florida, including the Second Judicial Circuit in Leon County.

11. All actions material to the complaint have occurred between May 15, 2003, and the present and are not precluded by the time limitations in Section 501.207(5).

**STATEMENT OF FACTS AND
DEFENDANTS' COURSE OF CONDUCT**

12. Homeward Bound sold home service contracts to senior citizens (defined in section 501.2077 to be persons 60 years of age or older). These contracts were designed to avoid regulatory oversight. Although they contain many similarities to insurance contracts, they are not contracts of insurance, thus avoiding the purview of the Department of Financial Services. In like manner, although they contain many similarities to home health care contracts, they are not health care contracts, thus avoiding the scrutiny of the Agency for Health Care Administration.

13. Homeward Bound solicits and sells these insurance-like products to senior citizens through independent insurance agents. These insurance agents are not regulated by the Department of Financial Services because, pursuant to section 626.112, insurance agents are only regulated when they are selling insurance products.

14. The Attorney General is currently aware of over 500 active consumer policies in Florida, and is aware that Homeward Bound has had a total of over 2,000 policies with Florida consumers since July of 2002.

15. Homeward Bound's business practices consist of collecting fees from senior citizens and agreeing to provide services upon request by separately contracting with local service providers. These home service contracts purport to cover services such as assistance with eating, bathing, dressing, shopping, laundry, cleaning and toileting.

16. The contracts contain a number of options. Consumers can choose between a number of different days of coverage, 30, 60, 180, 360, and a number of hours per day of coverage, 4, 8, or 24.

17. Homeward Bound places individuals into one of four categories (preferred, class 1, class 2, or class 3), depending on their medical conditions, with class 3 being the most expensive plan.

18. The annual fees for these contracts range from \$650.00 to over \$7,700.00.

19. Consumers are initially offered various payment options. For example, they can opt to pay the annual fee in one lump sum, make quarterly payments, or have a monthly payment taken out of their bank account.

20. For the preferred class, class 1, and class 2, Homeward Bound collects the fee from the consumer but requires a 6 (six) month waiting period before any services will be provided.

21. For class 3, Homeward Bound collects the fee, but requires 12 (twelve) month waiting period before the consumer will be provided with any services.

22. Senior citizens who are unable to pay in a lump sum, or those who choose the structured payment schedules, are refused services until the account is in "good standing," meaning that Homeward Bound requires the individual to pay the entire balance before services will be provided.

23. According to the home service contract, when a consumer calls Homeward Bound requesting service, Homeward Bound calls the local provider and authorizes services. Homeward Bound, according to the agreement, would then remit payment to the local provider.

24. Homeward Bound claims to have money in a national trust fund to guarantee payment for claims; however, the Attorney General is unaware of the existence of any such account.

25. Instead of paying all of the local provider's bills, Homeward Bound is slow in sending payments, and eventually stops making payments altogether. When Homeward Bound fails to remit payments for authorized services, the obligation to pay the local provider is transferred to the senior citizens.

26. Homeward Bound utilizes a local provider until that provider refuses to perform services because of non-payment. Rather than paying the past due balances, Homeward Bound switches to a different local provider.

27. Homeward Bound is delinquent in paying the bills for authorized services to numerous providers in Florida. As a short list of examples, Homeward Bound currently owes the following: over \$8,000.00 to Pharmacare, Inc. of Lake Worth; over

\$11,000.00 to Champion Home Healthcare, Inc. of Fort Lauderdale; over \$9,000.00 to Champion Home Healthcare, Inc. of Lake Worth; and over \$3,000.00 to Coast to Coast Healthcare Solutions of Miami.

28. Additionally, when a member dies during the policy period, no automatic refund is provided to the estate.

29. These Defendants knew or should have known that the conduct that each participated in was unfair or deceptive, and thus have knowingly used, a method, act or practice, declared unlawful under section 501.204, Florida Statutes. They have knowingly participated in the marketing of products that do not provide a benefit to the consumer purchaser.

COUNT I

VIOLATIONS OF CHAPTER 501, PART II, Fla. Stat. DECEPTIVE AND UNFAIR TRADE PRACTICES BY HOMEWARD BOUND

30. Plaintiff realleges paragraphs 1 through 29, as if fully set forth herein, and further alleges:

31. Chapter 501, Part II, Florida Statutes is entitled, "Florida Deceptive and Unfair Trade Practices Act." Section 501.204(1) of the Act provides that, "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

32. As set forth in paragraphs 1 through 29, Homeward Bound has engaged in representations and omissions which are material, and which had the tendency or capacity, or which were likely, to mislead consumers acting reasonably under the circumstances. Homeward Bound has also engaged in unfair competition and acts and

practices which are unconscionable, unfair or deceptive. Further, Homeward Bound has committed acts or practices in trade or commerce which offend established public policy and are unethical, oppressive, unscrupulous or substantially injurious to consumers. Thus, Homeward Bound has engaged in unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of section 501.204(1), Florida Statutes (2006).

33. It is *per se* unconscionable to offer contracts for service to senior citizens that require the payment of fees, but prohibit service for a period of six or twelve months.

34. Moreover, it is also *per se* deceptive to use insurance agents to solicit and sell insurance-like products to senior citizens.

35. The aforesaid acts and practices of Homeward Bound were to the injury and prejudice of the public.

COUNT II

VIOLATIONS OF CHAPTER 501, PART II, Fla. Stat. **DECEPTIVE AND UNFAIR TRADE PRACTICES BY ORTH**

36. Plaintiff realleges paragraphs 1 through 29, as if fully set forth herein, and further alleges:

37. Chapter 501, Part II, Florida Statutes is entitled, "Florida Deceptive and Unfair Trade Practices Act." Section 501.204(1) of the Act provides that, "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

38. As set forth in paragraphs 1 through 29, Orth has engaged in representations, omissions which are material, and which had the tendency or capacity, or which are likely, to mislead consumers acting reasonably under the circumstances. Orth has also engaged in unfair competition and acts and practices which were unconscionable, unfair or deceptive. Further, Orth has committed acts or practices in trade or commerce which offend established public policy and were unethical, oppressive, unscrupulous or substantially injurious to consumers. Thus, Orth has engaged in unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of section 501.204(1), Florida Statutes (2006).

39. It is *per se* unconscionable to offer contracts for service to senior citizens that require the payment of fees, but prohibit service for a period of six or twelve months.

40. Moreover, it is also *per se* deceptive to use insurance agents to solicit and sell insurance-like products to senior citizens.

COUNT III

VIOLATIONS OF CHAPTER 501, PART II, Fla. Stat. DECEPTIVE AND UNFAIR TRADE PRACTICES BY MULDOON

41. Plaintiff realleges paragraphs 1 through 29, as if fully set forth herein, and further alleges:

42. Chapter 501, Part II, Florida Statutes is entitled, "Florida Deceptive and Unfair Trade Practices Act." Section 501.204(1) of the Act provides that, "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

43. As set forth in paragraphs 1 through 29, Muldoon has engaged in representations, omissions which are material, and which had the tendency or capacity, or which are likely, to mislead consumers acting reasonably under the circumstances. Muldoon has also engaged in unfair competition and acts and practices which were unconscionable, unfair or deceptive. Further, Muldoon has committed acts or practices in trade or commerce which offend established public policy and were unethical, oppressive, unscrupulous or substantially injurious to consumers. Thus, Muldoon has engaged in unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of section 501.204(1), Florida Statutes (2006).

44. It is *per se* unconscionable to offer contracts for service to senior citizens that require the payment of fees, but prohibit service for a period of six or twelve months.

45. Moreover, it is also *per se* deceptive to use insurance agents to solicit and sell insurance-like products to senior citizens.

RELIEF REQUESTED

WHEREFORE, Plaintiff, Office of the Attorney General, Department of Legal Affairs, State of Florida, asks for judgment:

A. Permanently enjoining Orth, Muldoon and Homeward Bound and its officers, agents, servants, employees, attorneys and those persons in active concert or participation with it who receive actual notice of the injunction, from engaging in methods, acts or practices which are unfair methods of competition or deceptive or unfair acts and practices. More specifically, Plaintiff asks the court to enjoin Defendants as follows:

1. Prohibiting the sale of insurance-like products either by telephone, word of mouth, or through the Internet.
2. Issuing immediate refunds to all Florida consumers who purchased various products.
3. Awarding Plaintiff actual damages on behalf of consumers injured by the unfair competition or deceptive or unfair acts or practices of Defendants, in accordance with section 501.207(1)(c), Florida Statutes.
4. Assessing against Defendants civil penalties in the amount of ten thousand dollars (\$10,000) for each of the known violations of Chapter 501, Part II, pursuant to section 501.2075, Florida Statutes (2006); and assessing Defendants civil penalties in the amount of \$15,000 for method, act or practice willfully used in violation of Chapter 501, Part II, Fla. Stat. which method, act or practice victimized, or attempted to victimize a person who is 60 years of age or older, pursuant to section 501.2077, Florida Statutes.
5. Awarding reasonable attorney's fees and costs to Plaintiff, pursuant to sections 501.2105, and 501.2075, Florida Statutes.
6. Granting such other relief as this Honorable Court deems just and proper.

DEMAND FOR JURY TRIAL

The State demands a trial by jury for all issues so triable.

Respectfully Submitted,

BILL McCOLLUM
ATTORNEY GENERAL



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