

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE
COMMISSION, et al.,

Plaintiffs,

v.

CASE NO. 8:15-cv-1417-T-23AEP

E.M. SYSTEMS
& SERVICES, LLC., et al.,

Defendants.

ORDER

The Federal Trade Commission and the Florida Attorney General sue (Doc. 58) sixteen defendants under the FTC Act, the Florida Deceptive and Unfair Trade Practices Act, and the Telemarketing and Consumer Fraud and Abuse Prevention Act. On June 14, 2016, the clerk entered a default (Doc. 110) against Kenneth Sallies, and the FTC moves (Doc. 120) for a default judgment.

DISCUSSION

A serial scammer, Kenneth Sallies peddled a purported debt-reduction service to consumers, but the fraudulent service — which cost between \$695 and \$1,495 — increased a buyer's debt.¹ In this action, the FTC and the Florida Attorney General

¹ Several orders find Sallies liable for defrauding a consumer and for violating the Telemarketing Sales Rule. *E.g.*, *State of Arkansas ex rel. Dustin McDaniel, Attorney General, v. Sallies*, 4:12-cv-497 (W.D. Ark. Sept. 4, 2013). Plainly to no avail, those orders permanently bar Sallies from telemarketing and from selling a debt-relief product. *E.g.*, *Sallies*, 4:12-cv-497, Doc. 110 at 3.

allege that Sallies' company, One Easy Solution, promised to reduce the interest rate on a consumer's credit card debt but failed to secure an interest-rate reduction. By defaulting, Sallies admits a well-pleaded allegation in the complaint. *Nishimatsu Const. Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206–07 (5th Cir. 1975).

1. One Easy Solution violated the FTC Act and the Florida Deceptive and Unfair Trade Practices Act.

Section 5 of the FTC Act prohibits an unfair or deceptive act that affects commerce, and a material misrepresentation that likely would mislead a reasonable consumer is deceptive. *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003). An express representation, which inherently misleads a consumer, is presumptively material.² *FTC v. Transnet Wireless Corp.*, 506 F.Supp.2d 1247, 1267 (S.D. Fla. 2007) (Marra, J.) (citing *In the Matter of Thompson Med. Co., Inc.*, 1984 WL 656377 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986) (Mikva, J.)).

In telemarketing calls, One Easy Solution expressly represented that the company would reduce the interest rate on the consumer's credit card debt. (Doc. 58 at ¶¶ 47, 92) Also, One Easy Solution projected that the interest-rate reduction would save the consumer a "significant" amount, typically between \$2,500 and \$5,000. (Doc. 58 at ¶ 49) But One Easy Solution, which lacked a relation with credit card issuers, failed to reduce the consumer's interest rate and failed to deliver the promised savings. (Doc. 58 at ¶ 93) Likely to mislead a reasonable consumer and

² An express representation conveys a putative fact directly, while an implied representation conveys a putative fact obliquely. *Kraft, Inc. v. FTC*, 970 F.2d 311, 318 n.4 (7th Cir. 1992) (Flaum, J.).

presumptively material, One Easy Solution's claims are deceptive under the FTC Act. Because the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.204, mirrors the FTC Act and adopts as precedent "the interpretations of the [FTC] and the [federal courts] relating to [Section 5 of the FTC Act]," One Easy Solution's conduct violates the Florida Deceptive and Unfair Trade Practices Act.

2. One Easy Solution violated the Telemarketing Sales Rule.

The Telemarketing Sales Rule, 16 C.F.R. § 310.3, bans deceptive telemarketing.³ Identical principles of deception from Section 5 of the FTC Act apply to the TSR, and a violation of the TSR amounts to both a deceptive act or practice and a violation of the FTC Act. *FTC v. Washington Data Res.*, 856 F.Supp.2d 1247, 1273 (M.D. Fla. 2012), *aff'd*, 704 F.3d 1323.

The FTC proves three violations of the TSR by One Easy Solution. First, as explained in Section I, the company's representations about reducing the interest rate on a consumer's credit-card debt likely would mislead a reasonable consumer. The representations violate 16 C.F.R. § 310.3(a)(2)(x). Second, One Easy Solution expressly promised a refund if the company failed to secure an interest-rate reduction. Despite failing to reduce a consumer's interest rate, the company refunded no money. (Doc. 58 at ¶¶ 49, 56) The company's representations about the availability of a refund, which likely would mislead a reasonable consumer, violate 16 C.F.R.

³ Because One Easy Solution's deceptive conduct harmed Florida citizens (*See, e.g.*, Doc. 4-1), 15 U.S.C. § 6103 confers on the Florida Attorney General standing to sue the defendant for violating the TSR.

§ 310.3(a)(2)(iv). Third, One Easy Solution requested payment from a consumer before the company renegotiated the consumer's debt and the consumer paid at least one month's payment in accord with the renegotiated contract. (Doc. 58 at ¶¶ 49, 51–52, 109) One Easy Solution's request for pre-payment violates 16 C.F.R.

§ 310.4(a)(5)(i).

3. Sallies is liable for One Easy Solution's deceptive conduct.

To prove an individual's liability for a corporation's conduct, the FTC must show that the individual knew about the corporation's deceptive conduct and that the individual either participated in, or controlled, the conduct. *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 470 (11th Cir. 1996) (citing *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564 (7th Cir. 1989) (Harlington Wood, J.)). The "degree of [an individual's] participation in business affairs is probative of [the individual's] knowledge." *Amy Travel Serv.*, 875 F.2d at 574.

An owner and a manager of One Easy Solution, Sallies presumptively knew about and controlled the corporation's deceptive conduct. (Doc. 58 at ¶ 32) Sallies is liable for One Easy Solution's deceptive conduct.

4. Sallies must disgorge \$2,567,174.

Section 13(b) of the FTC Act permits the awarding of monetary relief equal to the defendant's unjust gain, which is measured by the defendant's net revenue (gross receipts less refunds). *FTC v. Washington Data Res.*, 704 F.3d 1323, 1326 (11th Cir.

2013). Sallies must disgorge \$2,567,174, the amount received by Sallies' company from the fraudulent debt-reduction scheme. (*See* Doc. 4-23 at 30–31)

The FTC and the Florida Attorney General must use the money collected from the judgment for consumer redress, if practicable. If impracticable, the FTC and the Florida Attorney General must divide the money equally. The FTC must deposit its half in the U.S. Treasury, and the Florida Attorney General must deposit its half in the Department of Legal Affairs' Revolving Trust Fund.

5. Sallies must not offer for sale a debt-relief product or service and must not engage in telemarketing.

Section 13(b) permits the entry of a permanent injunction that bars the defendant from a practice similar to the illegal conduct alleged in the complaint. *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 394–95 (1965). Sallies' repeated violations of the FTC Act warrant the entry of a permanent injunction.

Sallies must not engage in telemarketing, i.e., call a person to induce the purchase of a good or service. Also, Sallies must not sell or offer for sale a debt-relief product or service, i.e., a plan that purportedly reduces, re-negotiates, or otherwise alters the terms of payment for a debt between a consumer and an unsecured creditor or debt collector.⁴

⁴ This order declines to impose the proposed "standard record-keeping, reporting, and order acknowledgment requirements" (Doc. 120-2 at 8–14), which the FTC's proposed order apparently copies verbatim from the typical consent judgment.

CONCLUSION

In telemarketing calls, One Easy Solution misrepresented to consumers that the company would reduce the interest rate on a consumer's credit card debt, misrepresented the company's refund policy, and unlawfully requested payment before providing a debt-relief service. An owner and a manager of One Easy Solution, Kenneth Sallies is individually liable for the company's deceptive conduct. The plaintiffs' motion (Doc. 120) for a default judgment is **GRANTED**.

The clerk is directed (1) to enter a judgment in the amount of \$2,567,174 for the Federal Trade Commission and the Office of the Attorney General, State of Florida, Department of Legal Affairs and against Kenneth A. Sallies, (2) to terminate any pending motion, and (3) to close the case.

ORDERED in Tampa, Florida, on January 17, 2017.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE