

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 06-81101-Civ-Hurley/Hopkins

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

FIDELITY ATM, INC., et al.,

Defendants.

**[PROPOSED]
CONSENT JUDGMENT AND PERMANENT INJUNCTION
AS TO DEFENDANT STEPHEN DUFFIE**

THIS CAUSE came before the Court upon the joint stipulation of Defendant Stephen Duffie (“Defendant”) and Plaintiff Federal Trade Commission (“FTC” or “Commission”).

On December 12, 2006, Plaintiff filed an Amended Complaint for Injunctive and Other Equitable Relief against Defendant pursuant to Sections 13(b) and 19(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b(a). Plaintiff alleged in its Amended Complaint that Defendant, along with other named defendants, engaged in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), and the Commission’s Trade Regulation Rule entitled Disclosure Requirements and Prohibitions Concerning Franchise and Business Opportunity Ventures (the “Franchise Rule”), 16 C.F.R. Part 436.

AND NOW, Plaintiff and Defendant having decided to settle this litigation and having stipulated that this Consent Judgment and Permanent Injunction (“Judgment”) may be entered without the taking of evidence or adjudication of any issue of fact or law, and the Court being otherwise fully advised in the premises and good cause appearing, **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and jurisdiction over Defendant.
2. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b).
3. Defendant's activities, as alleged in the Amended Complaint, are in or affecting "commerce," as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Amended Complaint states a claim upon which relief may be granted against Defendant under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, and the Franchise Rule, 16 C.F.R. Part 436.
5. Defendant has stipulated to the entry of this Judgment freely and without coercion. Defendant has acknowledged that he has read the provisions of this Judgment and is prepared to abide by them.
6. Plaintiff and Defendant have agreed that the entry of this Judgment resolves all matters of dispute between them arising from the Amended Complaint in this action, up to the date of entry of the Judgment.
7. Defendant has waived all rights to seek appellate review or otherwise challenge or contest the validity of this Judgment. Defendant has further waived and released any claims he may have against the Commission, its employees, representatives, or agents.
8. Defendant is not entitled to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, and Defendant has further waived any rights to attorneys' fees that may arise under said law, or any other federal or state law.
9. This Judgment is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.
10. Except as expressly provided herein, no provision of this Judgment shall be construed as an admission that Defendant has engaged in violations of the FTC Act or the Franchise Rule.
11. Entry of this Judgment is in the public interest, and there being no just reason for delay, the Clerk is directed to enter judgment immediately.

DEFINITIONS

1. “Assets” means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, inventory, checks, notes, leaseholds, effects, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located, whether in the United States or abroad;
2. “Business Venture” means any written or oral business arrangement, however denominated, regardless of whether covered by the Franchise Rule or Business Opportunity Rule, which consists of the payment of any consideration in exchange for:
 - a. the right or means to offer, sell, or distribute goods or services (regardless of whether identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and
 - b. more than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business;
3. “Franchise Rule” means the FTC Trade Regulation Rule titled “Disclosure Requirements and Prohibitions Concerning Franchising,” codified at 16 C.F.R. Part 436, or as it may be amended;
4. “Business Opportunity Rule” means the FTC Trade Regulation Rule titled “Disclosure Requirements and Prohibitions Concerning Business Opportunities,” codified at 16 C.F.R. Part 437, or as it may be amended;
5. “Defendant” means Stephen Duffie;
6. “Document” is synonymous in meaning and equal in scope to the usage of the term in Fed. R. Civ. P. 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term; and

7. “Receiver” shall mean Carl F. Schoepl, Esq., the Receiver appointed by the Court in this matter over Fidelity ATM, Inc., and Steinberg Group, Inc.

ORDER

**I. PROHIBITION AGAINST VIOLATION OF SECTION 5
OF THE FEDERAL TRADE COMMISSION ACT**

IT IS THEREFORE ORDERED that, in connection with the offering for sale or selling of any business venture, Defendant and his agents, employees, officers, corporations, successors, assigns, and all those persons in active participation with them who receive actual notice of this Judgment by personal service or otherwise, are hereby restrained and enjoined from making any material misrepresentation or assisting others in making any material misrepresentation, either expressly or by implication, to any prospective purchaser of a business venture, including, but not limited to, the following:

- A. Misrepresenting that consumers who purchase a business venture are likely to earn substantial income;
- B. Misrepresenting that retail locations have already been secured, or will be secured subsequent to purchase, for consumers who purchase a business venture;
- C. Misrepresenting that a business venture, once purchased, will be operational and generating income within a stated period of time; or
- D. Misrepresenting that business venture purchasers will receive substantial and continuous assistance and support.

**II. PROHIBITION AGAINST VIOLATION OF THE FRANCHISE RULE
OR BUSINESS OPPORTUNITY RULE**

IT IS FURTHER ORDERED that Defendant and his agents, employees, officers, corporations, successors, assigns, and all those persons in active participation with them who receive actual notice of this Judgment by personal service or otherwise, are hereby restrained and enjoined from violating or assisting others to violate any provisions of the Franchise Rule or Business Opportunity Rule, including, but not limited to:

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- A. Failing to provide a prospective franchisee or business opportunity purchaser with a complete, accurate, and up-to-date disclosure document as prescribed by the Franchise Rule or Business Opportunity Rule;
- B. Failing to provide each prospective franchisee or business opportunity purchaser with complete and accurate documentation for any earnings or financial performance representations, as required by the Franchise Rule or Business Opportunity Rule;
- C. Failing to have a reasonable basis for any earnings or financial performance representation at the time such representation is made, as required by the Franchise Rule or Business Opportunity Rule; or
- D. Failing to disclose in a clear and conspicuous manner, in immediate conjunction with any earnings or financial performance representation, that material which constitutes a reasonable basis for the earnings or financial performance representation is available to a prospective franchisee or business opportunity purchaser, as required by the Franchise Rule or Business Opportunity Rule.

**III. PROHIBITION AGAINST OTHER MISREPRESENTATIONS
VIOLATING SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT**

IT IS FURTHER ORDERED that, in connection with the offering for sale or sale of any good or service, Defendant and his agents, employees, officers, corporations, successors, assigns, and all those persons in active participation with them who receive actual notice of this Judgment by personal service or otherwise, are hereby permanently restrained and enjoined from:

- A. Misrepresenting, directly or by implication, to any potential purchaser of goods or services, any material fact, including, but not limited to:
 - 1. The sales or transaction volume, income, or profit likely to be achieved from the purchase of any goods or services;
 - 2. The total cost to purchase, receive, or use, and the quantity or nature of, any goods or services that are subject to the sales offer;
 - 3. Any material restrictions, limitations, or conditions to purchase, receive, or use the goods or services; or

4. Any material aspect of the nature or terms of a refund, cancellation, exchange or repurchase policy for the goods or services; and
- B. Providing substantial assistance to any third party to make any material misrepresentation, including, but not limited to, those misrepresentations prohibited by Paragraph III.A, above.

IV. EQUITABLE MONETARY RELIEF

IT IS FURTHER ORDERED that:

- A. Judgment is hereby entered in favor of Plaintiff Federal Trade Commission and against Defendant in the amount of \$4,250,000 (four million two hundred fifty thousand dollars), which the FTC alleges is the amount of injury suffered by consumers. Upon Defendant's compliance with the provisions of Paragraph IV.B of this Judgment, the payment requirements of this Judgment shall be suspended subject to the conditions set forth in Paragraphs IV.D and IV.E of this Judgment.
- B. This Judgment shall be partially satisfied by Defendant's transfer of the following assets to the Commission:
 1. For each bank or brokerage account listed in Appendix A of this Judgment, Defendant shall, within five (5) days of entry of this Judgment, remit the entire balance of each account to the Commission by certified check(s) or other guaranteed funds payable to the Federal Trade Commission, Financial Management Office, or by wire transfer in accordance with directions provided by the Commission. In no event shall the sum of all balances remitted by Defendant pursuant to this Paragraph IV.B.1 be less than \$13,500 (thirteen thousand five hundred dollars). The check(s) or written confirmation of the wire transfer(s) shall be delivered to: Associate Director, Division of Marketing Practices, 600 Pennsylvania Avenue, NW, H-286, Washington, DC 20580;
 2. In addition to the funds remitted pursuant to Paragraph IV.B.1, Defendant shall, within five (5) days of entry of this Judgment, remit an additional \$17,000.00 (seventeen thousand dollars) to the Commission by certified check

or other guaranteed funds payable to the Treasurer of the United States, or by wire transfer in accordance with directions provided by the Commission. The check or written confirmation of the wire transfer shall be delivered to: Associate Director, Division of Marketing Practices, 600 Pennsylvania Avenue, NW, H-286, Washington, DC 20580; and

3. For all other assets listed in Appendix A, Defendant shall, within ten (10) days of entry of this Judgment, execute and record such documents as necessary to transfer title of those assets to the Commission or its designated transferee, and Defendant shall, within five (5) days of entry of this Judgment, deliver physical custody of such assets to the Receiver. The Receiver shall, as soon as practicable upon receipt of such assets and transfer of title, commence their liquidation, and Defendant shall have no right to challenge said liquidation. Any transfer fees, taxes, or other payments mandated from the transferor under state law shall be paid from the proceeds of each sale at the time each such asset is sold. Following liquidation of such assets, the Receiver shall forward the net proceeds to the Commission within 30 days, as the Commission may direct.
- C. Any and all funds or assets transferred or paid pursuant to this Part IV shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that redress to consumers is wholly or partially impracticable, or any funds remain after redress is completed, the Commission may apply any remaining funds to such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendant's practices alleged in the Amended Complaint. Any funds not used for such equitable relief shall be deposited in the United States Treasury as disgorgement. Defendant shall have no right to contest the manner of distribution or other disposition of funds chosen by the Commission. The Commission in its sole discretion may use a designated agent to administer consumer redress.

- D. In the event of any default in the transfer of assets required by Paragraph IV.B, which default continues for ten (10) days beyond the due date of transfer, the entire unpaid monetary judgment of \$4,250,000, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable, and in that event, Plaintiff is hereby authorized to execute judgment for such amount against Defendant. Provided, however, that in all other respects this Judgment shall remain in full force and effect.
- E. Plaintiff's agreement to this Judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendant's sworn financial statements dated December 13 and 18, 2006, and supporting documents, as well as the sworn deposition testimony given by Defendant on July 24, 2007, all of which include material information upon which Plaintiff has relied in negotiating and agreeing to this Judgment. If, upon motion by Plaintiff, this Court finds that Defendant has failed to disclose any material asset or materially misstated the value of any asset in the financial statements, related documents, or testimony described above, or has made any other material misstatement or omission in the financial statements, related documents, or testimony described above, then the Court shall lift the suspension of the judgment and require payment of the full amount of the judgment described in Paragraph IV.A, less the net value of all assets transferred pursuant to Paragraph IV.B of this Judgment. This amount shall be immediately due and payable, together with interest computed at the rate prescribed under 28 U.S.C. § 1961. Provided, however, that in all other respects this Judgment shall remain in full force and effect.
- F. In accordance with 31 U.S.C. § 7701, Defendant is hereby required, unless he has done so already, to furnish the Commission his taxpayer identification numbers (Social Security numbers and employer identification numbers), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendant's relationship with the government.

- G. Defendant is further required, unless he has done so already, to provide the Commission with clear, legible and full-size photocopies of all valid driver's licenses he possesses, which will be used for reporting and compliance purposes.
- H. Defendant agrees that the facts as alleged in the Amended Complaint filed in this action shall be taken as true, without further proof, for the purpose of any action to collect the judgment, including, but not limited to, a nondischargeability complaint in any bankruptcy case.
- I. Any proceedings instituted under this Part IV are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings Plaintiff may initiate to enforce this Judgment.

V. LIFTING OF THE ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of Defendant's assets pursuant to the Stipulated Preliminary Injunction signed by the Court on January 6, 2007, and entered on January 10, 2007, shall be lifted to the extent necessary to transfer assets pursuant to Paragraph IV.B of this Judgment. Once all such assets have been transferred, the freeze of Defendant's remaining assets shall be lifted permanently.

VI. ACKNOWLEDGMENT OF RECEIPT OF JUDGMENT

IT IS FURTHER ORDERED that, within five (5) business days of receipt of this Judgment as entered by the Court, Defendant must submit to the Commission a truthful sworn statement acknowledging receipt of this Judgment.

VII. DISTRIBUTION OF JUDGMENT BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Judgment, Defendant shall deliver copies of this Judgment as directed below:

- A. Defendant as Control Person: For any business that Defendant controls, directly or indirectly, or in which he has a majority ownership interest, Defendant must deliver a copy of this Judgment to all principals, officers, directors and managers of that business. Defendant must also deliver copies of this Judgment to all employees, agents and representatives of the business who engage in the offer or sale of opportunities, goods, or services for investment or income-production. For current

personnel, delivery shall be within five (5) days of service of this Judgment upon Defendant. For new personnel, delivery shall occur prior to their assumption of their responsibilities;

- B. Defendant as Employee or Non-Control Person: For any business where Defendant is not a controlling person of the business but otherwise engages in the offer or sale of opportunities, goods, or services for investment or income-production, Defendant must deliver a copy of this Judgment to all principals and managers of such business before engaging in such conduct; and
- C. Defendant must secure a signed and dated statement acknowledging receipt of the Judgment within thirty (30) days of delivery from all persons receiving a copy of the Judgment pursuant to this Part VII.

VIII. COMPLIANCE REPORTING BY DEFENDANT

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Judgment may be monitored:

- A. For a period of five (5) years from the date of entry of this Judgment:
 - 1. Defendant shall notify the Commission in writing of the following:
 - a. Any changes in Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 - b. Any changes in Defendant's employment status (including self-employment), and any change in the ownership of Defendant in any business entity, within ten (10) days of such change. Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of Defendant's duties and responsibilities in connection with the business or employment; and
 - c. Any changes in Defendant's name, and any aliases or fictitious names adopted or used by Defendant.
 - 2. Defendant shall notify the Commission of any changes in the corporate structure of any business entity that Defendant directly or indirectly controls,

or has a majority ownership interest in, that may affect compliance obligations arising under this Judgment including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Judgment; the filing of a bankruptcy petition; or a change in the corporate name or address at least 30 days prior to such change; provided that, with respect to any proposed change in such a business entity about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

- B. One hundred eighty (180) days after the date of entry of this Judgment, Defendant shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Judgment. This report shall include, but not be limited to:
1. The then-current residence address, mailing addresses, and telephone numbers of Defendant;
 2. The then-current employment and business addresses and telephone numbers of Defendant, a description of the business activities of each such employer or business, and the title and responsibilities of Defendant, for each such employer or business;
 3. A copy of each acknowledgment of receipt of this Judgment, obtained pursuant to Part VII of this Judgment; and
 4. Any other changes required to be reported under Paragraph VIII.A of this Judgment.
- C. For the purposes of this Judgment, Defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the FTC to:

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Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580
Re: *FTC v. Fidelity ATM, Inc.*, No. 06-81101 (S.D. Fla.)

- D. For the purposes of this Part VIII, “employment” includes, but is not limited to, the performance of services as an employee, consultant, or independent contractor; and “employers” include any individual or entity for whom Defendant performs services as an employee, consultant, or independent contractor.
- E. For purposes of the compliance reporting required by this Part VIII, the Commission is authorized to communicate directly with Defendant.

IX. RECORD-KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Judgment, in connection with any business that Defendant directly or indirectly manages, controls, or has a majority ownership interest in, Defendant is hereby permanently restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person’s job title or position; the date upon which the person commenced work; and the date and reason for the person’s termination, if applicable;
- C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of items or services purchased, and a description of the items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;

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- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials disseminated by Defendant to any person, including e-mail and Internet web sites or web pages, relating to any good, service, company, or web site of the business or Defendant; and
- F. All records and documents necessary to demonstrate fully Defendant's compliance with each provision of this Judgment.

X. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Judgment,

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in Defendant's possession or direct or indirect control for inspection of the business operation;
- B. In addition, the Commission is authorized to monitor compliance with this Judgment by all other lawful means, including, but not limited to, the following:
 - 1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and
 - 2. Posing as consumers or suppliers to: Defendant, his employees, or any entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice; and
- C. Defendant shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Judgment. The person interviewed may have counsel present.

Provided, however, that nothing in this Judgment shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information

relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

XI. PROHIBITIONS INVOLVING CONSUMER LISTS

IT IS FURTHER ORDERED that Defendant is hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to Fidelity ATM, Inc., or Steinberg Group, Inc., at any time prior to entry of this Judgment, in connection with the advertising, promotion, marketing, offering for sale, or sale of any good or service; provided, however, that Defendant may disclose such identifying information to a law enforcement agency, or as required by any law, regulation or court order.

XII. COOPERATION WITH RECEIVER

IT IS FURTHER ORDERED that, so long as the Receivership remains in effect, Defendant shall cooperate fully with the Receiver in: (a) pursuing any and all claims by the Receivership against third parties; (b) assisting the Receiver in defending any and all actions or claims brought against the Receivership by third parties; and (c) executing any documents necessary to transfer assets or ownership interests to the Receiver pursuant to the terms of this Judgment.

XIII. FEES AND COSTS

IT IS FURTHER ORDERED that each party to this Judgment hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

XIV. DUTY TO COOPERATE WITH COMMISSION

IT IS FURTHER ORDERED that Defendant shall cooperate fully, truthfully and completely with the Federal Trade Commission in any litigation related to this matter. This cooperation includes, but is not limited to, maintaining all documents relevant to the litigation and assisting in the preparation of testimony and testifying fully, truthfully and completely at any trial related to this matter, if called upon to do so.

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XV. SEVERABILITY

IT IS FURTHER ORDERED that the provisions of this Judgment are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

XVI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this action for purposes of construction, modification and enforcement of this Judgment.

XVII. ENTRY OF ORDER

IT IS FURTHER ORDERED that, there being no just reason for delay, the Clerk of Court is hereby directed to enter this Judgment immediately.

SO ORDERED, this ____ day of _____, 2007.

DANIEL T.K. HURLEY
UNITED STATES DISTRICT JUDGE

APPENDIX A

Description of Asset	Identifying Information
Washington Mutual Bank Account in the name of Stephen Duffie	Acct. No. [REDACTED]0033
Wachovia National Bank, N.A. Account in the name of Duffie Developing & Consulting Group, LLC Account in the name of Duffie Developing & Consulting Group, LLC	Acct. No. [REDACTED]1246 Acct. No. [REDACTED]1343
Men's Watch	Identified in Deposition of Stephen Duffie