

Judge Thomas S. Zilly

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CANADA PREPAID LEGAL SERVICES, INC.,
D.B.A. BSI PREMIUM BONDS; *et al.*,

Defendants.

Civil No. C00-2080Z

**STIPULATED ORDER FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF AS TO JOSEPH
SHAWN PROULX AND
CANADA PREPAID LEGAL
SERVICES, INC., D.B.A. BSI
PREMIUM BONDS**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), has filed a complaint for permanent injunction and other equitable relief pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), charging defendants Canada Prepaid Legal Services Inc., d.b.a. BSI Premium Bonds; David John Edwin Hyde; Joseph Shawn Proulx; E.R.S. Holdings, Ltd.; Neil John Schuler; NAGG Holdings Ltd.; Wayne Weis; ITH Enterprises Ltd.; Kailey Lewis Babuin; Timothy Ryan Babuin; Fernando Villagran; 557631 B.C. Ltd., d.b.a. Guaranteed Capital Holdings; Martin Roy Lamb; and Calgary Concrete and Home Improvement Corp., d.b.a. Union Global Trading, with deceptive acts and practices in connection with the telemarketing of bogus savings bonds to consumers throughout the United States. The Commission’s complaint alleges that defendants’ deceptive acts and practices violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and

1 the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

2 The Commission and defendants Joseph Shawn Proulx ("Proulx") and Canada Prepaid Legal
3 Services, Inc., d.b.a. BSI Premium Bonds ("BSI") (hereinafter referred to collectively as
4 "defendants"), having been represented by counsel and acting by and through such counsel, have
5 consented to the entry of this Stipulated Order for Permanent Injunction and Other Equitable Relief as
6 to Joseph Shawn Proulx and Canada Prepaid Legal Services, Inc., d.b.a. BSI Premium Bonds
7 ("Stipulated Order") without a trial or adjudication of any issue of law or fact herein.

8 NOW, THEREFORE, the Commission and defendants having requested the Court to enter this
9 Stipulated Order, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

10 **FINDINGS**

11 1. This is an action by the Commission instituted under Section 13(b) of the FTC Act, 15
12 U.S.C. § 53(b). Pursuant to this section, the Commission has the authority to seek the relief contained
13 herein.

14 2. The Commission's complaint states a claim upon which relief may be granted against
15 defendants under Sections 5(a), 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15
16 U.S.C. §§ 45(a), 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention
17 Act ("Telemarketing Act"), 15 U.S.C. § 6101 *et seq.*

18 3. This Court has jurisdiction over the subject matter of this case and all parties hereto.
19 Venue in the Western District of Washington is proper.

20 4. The alleged activities of defendants are in or affecting commerce, as defined in Section
21 4 of the FTC Act, 15 U.S.C. § 44.

22 5. The parties shall each bear their own costs and attorney's fees incurred in this action
23 and have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to
24 seek judicial review, or otherwise to challenge the validity of this Stipulated Order.

25 6. Entry of this Stipulated Order is in the public interest.

26
27
28 **ORDER**

1 I.

2 PROHIBITED PRACTICES

3 IT IS THEREFORE ORDERED that defendants, as well as their successors and assigns,
4 directors, officers, agents, servants, employees, salespersons, independent contractors, corporations,
5 subsidiaries, affiliates and other persons directly or indirectly under their control or in active concert or
6 participation with them who receive actual notice of this Order by personal service, facsimile or
7 otherwise, whether acting directly or through any corporation, subsidiary, division or other device, are
8 hereby permanently restrained and enjoined from:

9 A. Promoting, offering for sale, selling, or participating in the sale of, directly or through
10 any agent, tickets, chances, interests, holdings, shares, or registrations in any foreign lottery or in any
11 bond program with a lottery feature, to any U.S. consumer.

12 B. In connection with promoting, offering for sale, selling, or participating in the sale of any
13 product or service in the U.S., or in the course of billing, attempting to collect, or collecting money from
14 any consumer in the U.S., misrepresenting or omitting any fact material to a consumer's decision to
15 purchase the product or service;

16 C. Charging consumers' credit card accounts without the consumers' express
17 authorization or charging in excess of the amount authorized by consumers;

18 D. Obtaining consumers' confidential credit card account information, including
19 consumers' credit card account numbers, and selling, renting, brokering, providing and/or otherwise
20 transmitting such information to others in connection with a transaction without the consumers'
21 authorization;

22 E. Failing to disclose, promptly and in a clear and conspicuous manner before a consumer
23 pays for any product or service, all material restrictions, limitations or conditions to purchase, receive or
24 use the product or service; and

25 F. Providing substantial assistance or support to sellers or telemarketers who defendants
26 know or consciously avoid knowing are engaged in acts or practices that violate the TSR.

1 **II.**

2 **DISCLOSURE OF CONSUMER LISTS**

3 **IT IS FURTHER ORDERED** that defendants, and their officers, agents, servants,
4 employees, and attorneys, and all other persons or entities in active concert or participation with them
5 who receive actual notice of this Stipulated Order by personal service or otherwise, are permanently
6 restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name,
7 address, telephone number, credit card number, bank account number, e-mail address, or other
8 identifying information of any person who paid any money to any defendant, at any time prior to entry
9 of this order, in connection with promoting, offering for sale, selling, or participating in the sale of,
10 directly or indirectly, any interests, holdings, or registrations in any foreign lottery or in any bond
11 program with a lottery feature. Provided, however, that defendants may disclose such identifying
12 information to a law enforcement agency or as required by any law, regulation, or court order.

13 **III.**

14 **CONSUMER REDRESS**

15 **IT IS FURTHER ORDERED** that:

- 16 A. Judgment is entered against defendants jointly and severally in the amount of
17 \$4,218,831.00 (USD). Judgment shall be suspended upon:
- 18 1. Release by defendants to the Director of Trade Practices (Director) of the
19 Ministry of Public Safety and Solicitor General of British Columbia, any and all
20 claims they may have to any assets frozen by the Director, including amounts
21 held in the name of Shawn Proulx at TD Financial Group, including but not
22 limited to account # 022-750369, account # 285-515409, and account # 556-
23 239989, and all Premium Savings Bonds held in the name of Joseph Proulx
24 and/or Dawn Tobin;
 - 25 2. The agreement by the defendants that these assets or their proceeds may be
26 transferred by the Director to the Commission, *and provided that* the Director
27 may deduct from this amount any costs of his action against defendants, and
28 any reasonable attorneys' fees incurred by the defendants' attorney or

1 attorneys as approved by the Director, and this Stipulated Order is premised
2 on payment by the Director to the Regional Director, Northwest Region,
3 Federal Trade Commission, of the remaining balance.

4 B. All funds paid to the Commission pursuant to this Paragraph shall be deposited into a
5 fund administered by the Commission or its agent to be used for equitable relief, including but not
6 limited to consumer redress and any attendant expenses for the administration of any redress fund. If
7 the Commission determines in its sole discretion that redress to consumers is wholly or partially
8 impracticable or funds remain after redress is completed, the Commission may apply any remaining
9 funds for such other equitable relief, including consumer information remedies, as it determines to be
10 reasonably related to the defendants' practices alleged in the complaint. Any funds not used for such
11 equitable relief shall be deposited in the United States Treasury as disgorgement. Defendants shall have
12 no right to challenge the Commission's choice of remedies under this Paragraph.

13 C. If defendants fail to abide by the agreements set forth in Paragraph III.A. of this
14 Stipulated Order within thirty (30) days of notification of such failure by the Federal Trade Commission
15 by overnight courier to defendants' attorney Rand Haddock, Jennings Strouss & Salmon, 2 N. Central
16 Ave., Ste. 1600, Phoenix, AZ 85004, the full judgment amount of \$4,218,831.00 (U.S.), less the sum
17 of any amount already paid to the Commission, to the Director, or for attorneys' fees approved by the
18 Director, shall immediately become due and payable by defendants to the Commission, and interest
19 computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to
20 accrue on the unpaid balance.

21 **IV. RIGHT TO REOPEN**

22 **IT IS FURTHER ORDERED** that, by agreeing to this Order, defendants reaffirm and attest
23 to the truthfulness, accuracy, and completeness of the Financial Disclosure Forms executed on March
24 14, 2001, as clarified during the deposition of defendant Proulx on August 9 and 10, 2001. Plaintiff's
25 agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of
26 defendants' financial condition as represented in the Financial Disclosure Forms and deposition
27 referenced above, which contain material information upon which plaintiff relied in negotiating and
28 agreeing to the terms of this Order. If, upon motion by the Commission, this Court finds that either

1 defendant failed to disclose any material asset, or materially misrepresented the value of any asset, or
2 made any other material misrepresentation in or omission from the Financial Disclosure Forms, the
3 Court shall enter judgment against defendants, in favor of the Commission, in the amount of
4 \$4,218,831.00 (U.S.), less any amount already paid to the Commission, to the Director, or for
5 attorneys' fees approved by the Director; *Provided, however*, that in all other respects this Stipulated
6 Order shall remain in full force and effect unless otherwise ordered by the Court; and provided further,
7 that proceedings instituted under this Paragraph are in addition to and not in lieu of any other civil or
8 criminal remedies as may be provided by law, including any other proceedings the Commission may
9 initiate to enforce this Stipulated Order. Solely for purposes of this Paragraph, the defendant waives
10 any right to contest any of the allegations in the Commission's complaint.

11 **V.**

12 **DISSOLUTION OF ASSET FREEZE**

13 **IT IS FURTHER ORDERED** that upon entry of this Stipulated Order, the freeze against all
14 of defendants' assets ordered by the Court on December 11, 2000, and extended thereafter, shall be
15 lifted.

16 **VI.**

17 **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

18 **IT IS FURTHER ORDERED** that, within five (5) business days after receipt by defendants
19 of this Stipulated Order as entered by the Court, defendants shall submit to the Commission a truthful
20 sworn statement, in the form shown on Attachment A, that shall acknowledge receipt of this Stipulated
21 Order.

22 **VII.**

23 **MONITORING COMPLIANCE OF SALES PERSONNEL**

24 **IT IS FURTHER ORDERED** that defendants, in connection with any business where (1)
25 either defendant is the majority owner of the business or directly or indirectly manages or controls the
26 business, and where (2) the business is engaged in telemarketing to U.S. residents, or in assisting others
27 engaged in said business, are hereby permanently restrained and enjoined from:

28 A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and

1 independent contractors engaged in sales or other customer service functions comply with Paragraph I
2 of this Stipulated Order. Such steps shall include adequate monitoring of sales presentations or other
3 calls with customers, and shall also include, at a minimum, the following: (1) listening to the oral
4 representations made by persons engaged in sales or other customer service functions; (2) establishing
5 a procedure for receiving and responding to consumer complaints; and (3) ascertaining the number and
6 nature of consumer complaints regarding transactions in which each employee or independent
7 contractor is involved; *provided* that this Paragraph does not authorize or require the defendant to take
8 any steps that violate any federal, state, or local laws;

9 B. Failing promptly to investigate fully any consumer complaint received by any business to
10 which this Paragraph applies; and

11 C. Failing to take corrective action with respect to any sales person whom defendant
12 Proulx determines is not complying with this Stipulated Order, which may include training, disciplining,
13 and/or terminating such sales person.

14 VIII.

15 DISTRIBUTION OF ORDER BY DEFENDANTS

16 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of
17 this Stipulated Order, defendants shall:

18 A. Provide a copy of this Stipulated Order to, and obtain a signed and dated
19 acknowledgment of receipt of same from, each officer or director, each individual serving in a
20 management capacity, all personnel involved in responding to consumer complaints or inquiries, and all
21 sales personnel, whether designated as employees, consultants, independent contractors or otherwise,
22 immediately upon employing or retaining any such persons, for any business where:

23 (1) either defendant is the majority owner of the business, or directly or indirectly manages or controls
24 the business, and where (2) the business is engaged in telemarketing to U.S. residents, or in assisting
25 others engaged in said business;

26 B. Provide a copy of this Stipulated Order to, and obtain a signed and dated
27 acknowledgment of receipt of same from, any U.S.-based business entity or person that provides any
28 of the following products or services to defendants in connection with any business where: (1) either

1 defendant is the majority owner of the business, or directly or indirectly manages or controls the
2 business, and (2) the business is engaged in telemarketing to U.S. residents, or in assisting others
3 engaged in said business:

- 4 1. Recording, assisting with recording or storing recordings of conversations with
5 consumers to verify or confirm that the consumers have agreed to purchase
6 products or services;
- 7 2. Providing, or arranging for the provision of, lists of consumers or potential
8 customers;
- 9 3. Processing, or arranging for the processing of, preauthorized fund transfers
10 from consumers' accounts; or
- 11 4. Processing or assisting in processing credit card charges to consumers' credit
12 card accounts; and,

13 C. Maintain for a period of three (3) years after creation, and upon reasonable notice,
14 make available to representatives of the Commission, the original signed and dated acknowledgments
15 of the receipt of copies of this Stipulated Order, as required in
16 Paragraphs VIII.A. and B. above.

17 IX.

18 COMPLIANCE REPORTING BY DEFENDANTS

19 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this
20 Stipulated Order may be monitored:

21 A. For a period of five (5) years from the date of entry of this Stipulated Order,
22 defendants shall notify the Commission of the following:

- 23 1. Any changes in defendant Proulx's residence, mailing addresses and telephone
24 numbers, within ten (10) days of the date of such change;
- 25 2. Any changes in defendant Proulx's employment status (including
26 self-employment) within ten (10) days of such change. Such notice shall include
27 the name and address of each business that such defendant is affiliated with or
28 employed by, a statement of the nature of the business, and a statement of such

1 defendant's duties and responsibilities in connection with the business or
2 employment; and

- 3 3. Any proposed change in the structure of defendant Canada Prepaid Legal
4 Services, Inc., or of any business entity owned or controlled by either
5 defendant, such as creation, incorporation, dissolution, assignment, sale,
6 merger, creation, dissolution of subsidiaries, or any other change that may affect
7 compliance obligations arising out of this Stipulated Order, thirty (30) days
8 prior to the effective date of any proposed change;

9 B. One hundred eighty (180) days after the date of entry of this Stipulated Order,
10 defendants shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in
11 detail the manner and form in which the defendants have complied and are complying with this
12 Stipulated Order. This report shall include, but not be limited to:

- 13 1. Defendant Proulx's then current residence address and telephone number;
14 2. Defendant Proulx's then current employment, business addresses and telephone
15 numbers, a description of the business activities of each such employer, and
16 defendant's title and responsibilities for each employer;
17 3. A copy of each acknowledgment of receipt of this Stipulated Order obtained
18 by defendant pursuant to Paragraphs VIII.A. and B.; and
19 4. A statement describing the manner in which defendants have complied and are
20 complying with (a) the injunctive provisions of this Stipulated Order, and (b) the
21 monetary relief provisions of this Stipulated Order;

22 C. Upon written request by a representative of the Commission, defendants shall submit
23 additional written reports (under oath, if requested) and produce documents on fifteen (15) days' notice
24 with respect to any conduct subject to this Stipulated Order;

25 D. For the purposes of this Stipulated Order, defendants shall, unless otherwise directed
26 by the Commission's authorized representatives, mail all written notifications to the Commission to:

1 Regional Director
2 Federal Trade Commission
3 915 Second Avenue, Room 2896
4 Seattle, WA 98174
5 Re: *FTC v. Canada Prepaid Legal Services, Inc., et al.*

6 E. For the purposes of this Paragraph, "employment" includes the performance of services
7 as an employee, consultant, or independent contractor; and "employers" include any individual or entity
8 for whom defendant performs services as an employee, consultant or independent contractor.

9 F. For purposes of the compliance reporting required by this Paragraph, the Commission
10 is authorized to communicate directly with defendants.

11 **X.**

12 **RECORD KEEPING**

13 **IT IS FURTHER ORDERED** that:

14 A. For a period of eight (8) years from the date of entry of this Stipulated Order,
15 defendants, and defendants' agents, employees, officers, servants, corporations, successors, and
16 assigns, and those persons in active concert or participation with them who receive actual notice of this
17 Stipulated Order by personal service or otherwise, in connection with any business where: (1) either
18 defendant is the majority owner of the business, or directly or indirectly manages or controls the
19 business, and (2) the business is engaged in telemarketing to U.S. residents, or in assisting others
20 engaged in said business, are hereby permanently restrained and enjoined from failing to create and
21 retain, unless otherwise specified:

- 22 1. Accounting records that reflect the cost of goods or services sold, revenues
23 generated and the disbursement of such revenues;
- 24 2. Personnel records accurately reflecting: the name, address, and telephone
25 number of each person employed in any capacity by such business, including as
26 an independent contractor; that person's job or position; the date upon which
27 the person commenced work; and the date and reason for the person's
28 termination, if applicable;
3. Customer files containing the names, addresses, telephone numbers, dollar

1 amounts paid, quantity of items or services purchased, and description of items
2 or services purchased, to the extent such information is obtained in the ordinary
3 course of business;

- 4 4. Complaints and refund requests (whether received directly, indirectly, or
5 through any third party) and any responses to those complaints or requests; and
6 5. Copies of all sales scripts, training materials, advertisements, or other marketing
7 materials.

8 **XI.**

9 **ACCESS TO BUSINESS PREMISES**

10 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of
11 this Stipulated Order, for the purpose of further determining compliance with this Stipulated Order,
12 defendants shall permit representatives of the Commission, within three (3) business days of receipt of
13 written notice from the Commission:

14 A. Access during normal business hours to any office or facility storing documents, of any
15 U.S.-based business where (1) either defendant is the majority owner of the business or directly or
16 indirectly manages or controls the business, and where (2) the business is engaged in telemarketing to
17 U.S. residents, or in assisting others engaged in said business. In providing such access, defendants
18 shall permit representatives of the Commission to inspect and copy all documents relevant to any matter
19 contained in this Stipulated Order; and shall permit Commission representatives to remove documents
20 relevant to any matter contained in this Stipulated Order for a period not to exceed five (5) business
21 days so that the documents may be inspected, inventoried, and copied; and

22 B. To interview the officers, directors, and employees, including all personnel involved in
23 responding to consumer complaints or inquiries, and all sales personnel, whether designated as
24 employees, consultants, independent contractors or otherwise, of any business to which Subsection (A)
25 of this Paragraph applies, concerning matters relating to compliance with the terms of this Stipulated
26 Order. The person interviewed may have counsel present.

27 *Provided* that, upon application of the Commission and for good cause shown, the Court may
28 enter an ex parte order granting immediate access to defendant's U.S.-based business premises for the

1 purposes of inspecting and copying all documents relevant to any matter contained in this Stipulated
2 Order.

3 **XII.**

4 **COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

5 **IT IS FURTHER ORDERED** that the Commission is authorized to monitor defendants'
6 compliance with this Stipulated Order by all lawful means including, but not limited to, the following
7 means:

8 A. The Commission is authorized, without further leave of court, to obtain discovery from
9 any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ.
10 P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of
11 monitoring and investigating defendants' compliance with any provision of this Stipulated Order;

12 B. The Commission is authorized to use representatives posing as consumers or suppliers
13 to defendants, defendants' employees, or any other entity managed or controlled in whole or in part by
14 either defendant, without the necessity of identification or prior notice; and

15 C. Nothing in this Stipulated Order shall limit the Commission's lawful use of compulsory
16 process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate
17 whether defendants have violated any provision of this Stipulated Order or Section 5 of the FTC Act,
18 15 U.S.C. § 45.

19 **XIII.**

20 **RETENTION OF JURISDICTION**

21 **IT IS FURTHER ORDERED** that this Court will retain jurisdiction of this matter for the
22 purpose of enabling any of the parties to this Stipulated Order to apply to the Court at any time for such
23 further orders or directives as may be necessary or appropriate for the interpretation or modification of
24 this Stipulated Order, for the enforcement of compliance therewith or the punishment of violations
25 thereof.

26 **SO ORDERED**, this _____ day of _____, 2001.
27
28 _____

Judge Thomas S. Zilly
United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

//

//

//

//

1 The parties, by their respective counsel, hereby consent to the terms and conditions of the Stipulated
2 Order as set forth above and consent to the entry thereof. Defendants waive any rights that may arise
3 under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat.
4 847, 863-64 (1996).

5
6 **FOR PLAINTIFF FEDERAL
TRADE COMMISSION:**

FOR DEFENDANTS:

7
8
9 _____
10 Mary T. Benfield, WSBA #18835
Eleanor Durham
Attorney for Plaintiff
Federal Trade Commission

Joseph Shawn Proulx, Individually

11
12 _____
13 Joseph Shawn Proulx, as Director of
Canada Prepaid Legal Services, Inc.,
d.b.a. BSI Premium Bonds

14
15 _____
16 Dean Robertson, WSBA # 14097
Rand Haddock
Attorneys for Defendants Joseph Shawn Proulx
and Canada Prepaid Legal Services, Inc.,
d.b.a. BSI Premium Bonds

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28