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Judge Thomas S. Zilly

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00-CV-02080-ORD

WESTERN DISTRICT COURT JUL 07 2003
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AT SEATTLE
CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON
DEPUTY

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 TIMOTHY
RYAN BABUIN**

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

1 The Commission and defendant Timothy Ryan Babuin ("defendant" or "defendant
2 Babuin"), having been represented by counsel and acting by and through such counsel, have
3 consented to the entry of this Stipulated Order for Permanent Injunction and Other Equitable
4 Relief ("Stipulated Order" or "Order") without a trial or adjudication of any issue of law or fact
5 herein.

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

8 FINDINGS

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

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

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

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

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

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

24 **ORDER**

25 **I.**

26 **PROHIBITED PRACTICES**

27 **IT IS THEREFORE ORDERED** that defendant, as well as his successors and assigns,
28 directors, officers, agents, servants, employees, salespersons, independent contractors,

1 corporations, subsidiaries, affiliates and other persons directly or indirectly under their control or
2 in active concert or participation with them who receive actual notice of this Order by personal
3 service, facsimile or otherwise, whether acting directly or through any corporation, subsidiary,
4 division or other device, are hereby permanently restrained and enjoined from:

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

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

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

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

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

21 F. Providing substantial assistance or support to sellers or telemarketers who
22 defendant knows or consciously avoids knowing are engaged in acts or practices that violate the
23 TSR.

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II.

DISCLOSURE OF CONSUMER LISTS

IT IS FURTHER ORDERED that defendant, and his officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Stipulated Order by personal service or otherwise, are 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 any defendant, at any time prior to entry of this Order, in connection with promoting, offering for sale, selling, or participating in the sale of, directly or indirectly, any interests, holdings, or registrations in any foreign lottery or in any bond program with a lottery feature. Provided, however, that defendant may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

III.

CONSUMER REDRESS

IT IS FURTHER ORDERED that Judgment is entered against defendant Babuin in the amount of \$7,201,098 (USD). Judgment shall be suspended upon:

A. Release by defendant Babuin to the Director of Trade Practices ("Director") of the Ministry of Public Safety and Solicitor General of British Columbia, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, any and all claims he may have to any assets frozen by the Director, including but not limited to:

1. \$85,000 (CDN) from the sale of #2003 - 1288 Alberni St., Vancouver, B.C. V0K 2E0. Legal Description: Lot 105, Plan LMS2472, District Lot 185, New Westminster Land District, UNDIV 844/229536 Share In Com Prop Therin;
2. #1988 - 2088 Barclay St., Vancouver, B.C. Legal Description: Lot 28, Plan VAS2827, District Lot 185, New Westminster Land District, UNDIV

1 75721/1000000 Share in Com Prop Therin;

2 3. NAGG Holdings Ltd. account at Bank of Montreal #812-8900362;

3 4. NAGG Holdings Ltd. account at CIBC # 6907814;

4 5. Lonestar Recreation Ltd. account at TD Financial Group #285-519114;

5 6. Timothy Babuin account at Bank of Montreal #27263001-689;

6 7. \$1,000,000 (USD) from defendant Joseph Shawn Proulx (already
7 released);

8 8. Viper motor vehicle (already released and converted);

9 9. \$75,000 (CDN) cash;

10 B. Transfer of the assets listed in subparagraph A. or their proceeds by the Director,
11 who may first deduct his investigation costs, to the Regional Director, Northwest Region, Federal
12 Trade Commission ("Commission"), 915 Second Avenue, Suite 2896, Seattle, Washington
13 98174;

14 C. Defendant Babuin's agreement that all funds paid to the Commission pursuant to
15 this Paragraph shall be deposited into a fund administered by the Commission or its agent to be
16 used for equitable relief, including but not limited to consumer redress and any attendant
17 expenses for the administration of any redress fund. If the Commission determines in its sole
18 discretion that redress to consumers is wholly or partially impracticable or funds remain after
19 redress is completed, the Commission may apply any remaining funds for such other equitable
20 relief, including consumer information remedies, as it determines to be reasonably related to the
21 defendant's practices alleged in the complaint. Any funds not used for such equitable relief shall
22 be deposited in the United States Treasury as disgorgement. Defendant shall have no right to
23 challenge the Commission's choice of remedies under this Paragraph.
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IV.

DISSOLUTION OF ASSET FREEZE

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

V.

RIGHT TO REOPEN

IT IS FURTHER ORDERED that, by agreeing to this Order, defendant reaffirms and attests to the truthfulness, accuracy, and completeness of the Financial Disclosure Forms executed on March 20 and March 24, 2003. Plaintiff's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of defendant's financial condition as represented in the Financial Disclosure Forms referenced above, which contain material information upon which plaintiff relied in negotiating and agreeing to the terms of this Order. If, upon motion by the Commission, this Court finds that defendant Babuin failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from the Financial Disclosure Forms, the Court shall enter judgment against defendant Babuin in favor of the Commission, in the amount of \$7,201,098 (USD); *Provided, however,* that in all other respects this Stipulated Order shall remain in full force and effect unless otherwise ordered by the Court; and provided further, that proceedings instituted under this Paragraph are in addition to and not in lieu of any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this Stipulated Order. Solely for purposes of this Paragraph, the defendant waives any right to contest any of the allegations in the Commission's complaint.

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VI.

MONITORING COMPLIANCE OF SALES PERSONNEL

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

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

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

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

VII.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating

1 compliance with any provision of this Order,

2 A. Within ten (10) days of receipt of written notice from a representative of the
3 Commission, defendant Babuin shall submit additional written reports, sworn to under penalty of
4 perjury; produce documents for inspection and copying; appear for deposition; and/or provide
5 entry during normal business hours to any business location in such defendant's possession or
6 direct or indirect control to inspect the business operation;

7
8 B. In addition, the Commission is authorized to monitor compliance with this Order
9 by all other lawful means, including but not limited to the following:

- 10 1. obtaining discovery from any person, without further leave of court, using
11 the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
12 2. posing as consumers and suppliers to defendant Babuin or his employees,
13 or any other entity managed or controlled in whole or in part by defendant
14 Babuin, without the necessity of identification or prior notice;

15
16 *Provided* that nothing in this Order shall limit the Commission's lawful use of compulsory
17 process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any
18 documentary material, tangible things, testimony, or information relevant to unfair or deceptive
19 acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

20
21 C. Defendant Babuin shall permit representatives of the Commission to interview
22 any employer, consultant, independent contractor, representative, agent, or employee who has
23 agreed to such an interview, relating in any way to any conduct subject to this Stipulated Order.
24 The person interviewed may have counsel present.
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VIII.

DISTRIBUTION OF ORDER BY DEFENDANT

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IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Stipulated Order, defendant Babuin shall deliver a copy of this Order to the principals, officers, directors, managers and employees under defendant Babuin's control for any business that (a) employs or contracts for personal services from defendant Babuin and (b) has responsibilities with respect to the subject matter of this Order. Defendant Babuin shall secure from each such person a signed and dated statement acknowledging receipt of the Order within thirty (30) days after the date of service of the Order or the commencement of the employment relationship.

IX.

COMPLIANCE REPORTING BY DEFENDANT

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

- A. For a period of five (5) years from the date of entry of this Order,
1. Defendant Babuin shall notify the Commission 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) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that defendant is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of

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

3 c. Any changes in defendant's name or use of any aliases or fictitious
4 names.
5

6 B. One hundred eighty (180) days after the date of entry of this Stipulated Order,
7 defendant Babuin shall provide a written report to the FTC, sworn to under penalty of perjury,
8 setting forth in detail the manner and form in which he has complied and is complying with this
9 Order. This report shall include, but not be limited to:

- 10 1. Any changes required to be reported pursuant to subparagraph A. above;
- 11 2. A copy of each acknowledgment of receipt of this Order obtained by
12 defendant pursuant to Paragraph V.
13

14 C. For the purposes of this Order, defendant shall, unless otherwise directed by the
15 Commission's authorized representatives, mail all written notifications to the Commission to:

16 Charles A. Harwood, Director
17 Northwest Region
18 Federal Trade Commission
19 915 Second Ave., Suite 2896
20 Seattle, WA 98174

21 Re: *FTC v. Canada Prepaid Legal Services, Inc., et al.*, Civil Action No. C00-2080Z

22 D. For purposes of the compliance reporting required by this Paragraph, the
23 Commission is authorized to communicate directly with defendant Babuin.

24 X.

25 RECORD KEEPING PROVISIONS

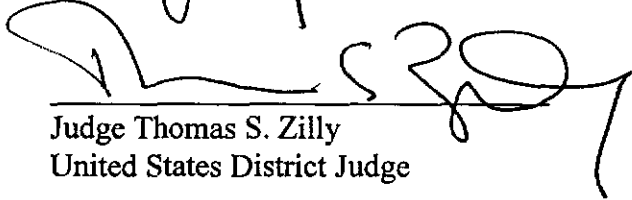
26 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry
27 of this Stipulated Order, defendant Babuin, and defendant's agents, employees, officers, servants,
28 corporations, successors, and assigns, and those persons in active concert or participation with

XII.

RETENTION OF JURISDICTION

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

SO ORDERED, this 7th day of July, 2003.

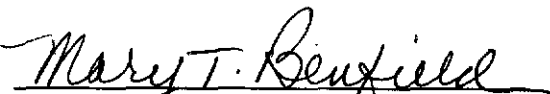


Judge Thomas S. Zilly
United States District Judge

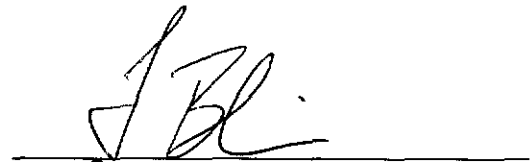
The parties, by their respective counsel, hereby consent to the terms and conditions of the Stipulated Order as set forth above and consent to the entry thereof. Defendant waives any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847,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

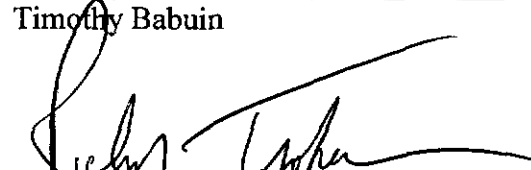
FOR PLAINTIFF FEDERAL
TRADE COMMISSION:

FOR DEFENDANT:



Mary T. Benfield, WSBA #18835
Eleanor Durham
Attorney for Plaintiff
Federal Trade Commission



Timothy Babuin


Richard Troberman
Attorney for Defendant Timothy Babuin