

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FILED - GR  
05 OCT 18 AM 11:19  
CLERK  
U.S. DISTRICT COURT  
WESTERN DISTRICT MICH  
BY \_\_\_\_\_

FEDERAL TRADE COMMISSION, )  
)  
Plaintiff, )  
)  
v. )  
)  
SUCCESS EXPRESS, INC., a Michigan )  
corporation, also d/b/a Success Express, )  
)  
EXAM RESOURCE CENTER, INC., a Michigan )  
corporation, also d/b/a Exam Resource, )  
)  
OCCUPATIONAL ADVANCEMENT CENTER, )  
INC., a Michigan corporation, also d/b/a )  
Occupational Advancement and OAC, )  
)  
EMPLOYMENT RESOURCE, LLC, )  
a Michigan Limited Liability Company, also )  
d/b/a Employment Resources, )  
)  
DAVID JAMES DANIELL, a/k/a David James, )  
individually and as an officer of Occupational )  
Advancement Center and Employment Resource, )  
)  
WANDA J. TAUGNER, individually and )  
as an officer of Success Express, )  
)  
KATHY L. STAFFORD, individually and as )  
and officer of Exam Resource Center, Inc., )  
)  
Defendants. )  
)

Case Number: 1:05 CV 0714  
Judge: Gordon J. Quist  
U.S. District Judge

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("Commission"), for its complaint alleges:

1. The Commission brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure preliminary and permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for Defendants’ deceptive acts or practices in connection with the selling of employment goods or services in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. §§ 1331(a), 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue in the United States District Court for the Western District of Michigan, Southern Division is proper under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. § 53(b).

### **THE PARTIES**

4. Plaintiff Federal Trade Commission is an independent agency of the United States government created by the FTC Act, 15 U.S.C. §§ 41-58. The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission, through its own attorneys, may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such equitable relief, including rescission of contracts and restitution, and the disgorgement of ill-gotten gains caused by Defendants’ law violations, as may be appropriate in each case. 15 U.S.C. § 53(b).

5. Defendant Success Express, Inc. (“SE”), is a Michigan corporation with its principal place of business at 7321 Ridge Road, Harbor Springs, Michigan 49740. SE also does business under the name Success Express. SE promotes and sells employment goods or services. SE transacts or has transacted business in this district.

6. Defendant Exam Resource Center, Inc. (“ERC”), is a Michigan corporation with its principal place of business at 1520 Bridge Street, Charlevoix, Michigan 49720. ERC has also used the mailing address of 3394 Childs Trail, Central Lake, Michigan 49622 and P.O. Box 119, Charlevoix, Michigan 49720. ERC also does business under the name Exam Resource. ERC promotes and sells employment goods or services. ERC transacts or has transacted business in this district.

7. Defendant Occupational Advancement Center, Inc. (“OAC”), is a Michigan corporation with its principal place of business at 480 West Mitchell Street, Petoskey, Michigan 49770. OAC also has used a mailing address of P.O. Box 527 or P.O. Box 825, Petoskey, Michigan 49770. OAC also does business under the name Occupational Advancement. OAC promotes and sells employment goods or services. OAC transacts or has transacted business in this district.

8. Defendant Employment Resource, LLC (“ER”), is a Michigan limited liability company with its principal place of business at 480 West Mitchell Street, Petoskey, Michigan 49770. ER has used the mailing address of P.O. Box 328, Petoskey, Michigan 49770 or P.O. Box 17445, Nashville, Tennessee 37217. ER also does business under the name Employment Resources. ER promotes and sells employment goods or services. ER transacts or has transacted business in this district.

9. Defendant David James Daniell, also known as David James, is the president of Defendants OAC and ER. He is an active participant in the operations of Defendant SE. Individually or in concert with others, he directs, controls, formulates or participates in the acts and practices described herein. He resides, transacts, or has transacted business in this district.

10. Defendant Wanda J. Taugner is the owner of Defendant SE and is an active participant in the operations of Defendants SE, ERC and OAC. Individually or in concert with others, she directs, controls, formulates or participates in the acts and practices described herein. She resides, transacts, or has transacted business in this district.

11. Defendant Kathy L. Stafford is the president and owner of Defendant ERC. Individually or in concert with others, she directs, controls, formulates or participates in the acts and practices described herein. She resides, transacts, or has transacted business in this district.

### **COMMERCE**

12. The acts and practices of Defendants, alleged in this complaint, are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### **DEFENDANTS' BUSINESS PRACTICES**

13. Since at least June 2003, Defendants have conducted a nationwide advertising campaign to sell purported employment goods or services to consumers.

14. Defendants place classified advertisements in employment guides and publications across the country. The advertisements announce that postal jobs with wages of a specified amount, e.g., \$15.20-\$39.00/hr., with full federal benefits and paid training are available. The advertisements have indicia of official government employment postings, and contain public announcement numbers and images of the American flag and bald eagle. The advertisements invite readers to call a toll-free number for more information. The advertisements lead consumers to believe that Defendants are now hiring for postal jobs and therefore are connected with or endorsed by the United States Postal Service. The following are illustrative of the advertisements placed by Defendants:

**POSTAL JOBS** ~ SORTERS, CLERKS, CARRIERS ~ \$16.20 - \$39.00 per hour ~ Entry Level/No Exp. Req. ~ Full Federal Benefits ~ Call 1-866-592-3964 ~ Announcement 9PDJ

NOW HIRING ~ **POSTAL JOBS** ~ \$16.20 - \$39.00 ~ GREEN CARD OK ~ \*FULL FEDERAL BENEFITS ~ \*PAID TRAINING—NO EXPERIENCE NEEDED ~ \*ACCEPTING CALLS 7 DAYS ~ 1-877-265-2181 ~ PUBLIC ANNOUNCEMENT J4000

15. When consumers call the toll-free number provided in the written advertisement, Defendants, or their employees or agents, introduce themselves as “here to assist you in registering and obtaining employment with the United States Postal Service.” Defendants question consumers about their age, education, citizenship, ability to pass a drug screen and criminal background check and then tell consumers that they are “qualified.” Once “qualified,” Defendants tell consumers that positions such as sorters, clerks and mail carrier positions are available in the consumers’ geographic area. Defendants assure consumers that once employed with the Postal Service, consumers will receive full pay and benefits even during the training period.

16. Next, Defendants explain that consumers must take and pass a postal employment examination before they can be hired by the Postal Service. Defendants stress the importance of preparing for the postal examination in order to obtain a score of 90 percent or higher. Defendants tell consumers that a score of 90 percent or better on the postal examination assures the consumer a postal job.

17. Defendants tell consumers that they will help the consumer achieve the desired score by providing the consumer with the current U.S. exam guide, 12 practice tests and answer sheets. Defendants tell consumers that the study materials and tests will cover the same or similar information as the actual postal examination. Defendants state that as long as consumers

study the materials, they should have no problem obtaining a score of 90 percent or above on the examination. Defendants also promise to send detailed instructions that explain when and where the exam is being given and how to take it in the city in which the consumer lives.

18. Defendants tell consumers there is no application or test fee. However, Defendants do charge as a one-time administrative fee for the study course and registration \$139.90 (SE and ERC) or \$129.90 (OAC), plus a shipping and handling fee of \$19.99. Once the consumer provides payment information, Defendants tell consumers they are “registered.” In many instances, Defendants expressly state that consumers are registered for the postal employment examination. Defendants assure consumers that they will refund the consumer’s money, less shipping and handling, if the consumer fails to score 90 percent or above on the postal exam.

19. After the sale is complete, Defendants send consumers a compact disk (“CD”) titled “2005© Battery Guide & Mock 460/473,” and a registration form. In bold type on the face of the CD are the words “Score 90-100% on the current exams!” Defendants fail to inform consumers that Defendants’ study materials will come in CD format. Defendants also fail to inform consumers that they will be unable to access the study materials on the CD, because a code – not included in the package – is needed to activate the CD. The consumer must sign the registration form and fax it or mail it to Defendants in order to receive the code. Regardless of the method the consumer uses to send the registration form to Defendants, Defendants send the code by first-class mail.

20. Defendants use the registration form as an opportunity to offer additional goods or services. For example, consumers may order written study materials for an additional \$10.

Consumers are encouraged to sign up for unlimited technical support for a one-time fee of \$2.99. At the bottom of the registration form, Defendants notify consumers for the first time that they will charge the consumer an additional \$25 “restocking fee” for returning the materials should the consumer choose not to take the postal exam.

21. Consumers who ultimately access the CD or obtain the written materials receive general examination instructions, an overview of the Postal Service, mock tests and answer sheets. The materials also include a chapter titled Registering for the Exam which directs the consumer to the Postal Service’s actual website for information on when the examinations are offered and how to obtain employment. Neither the CD nor the book contain a list of actual job openings that are available locally or nationally. Nor do Defendants provide a list of when and where postal examinations are given.

#### **DEFENDANTS’ VIOLATIONS OF SECTION 5 OF THE FTC ACT**

22. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce.

23. Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

24. As set forth below, Defendants have engaged and continue to engage in violations of Section 5(a) of the FTC Act in connection with the advertising, marketing and sale of employment goods or services.

## COUNT I

25. Defendants represent, expressly or by implication, that they are connected with or endorsed by the United States Postal Service.

26. In truth and in fact, Defendants are not connected with or endorsed by the United States Postal Service.

27. Therefore, the representations set forth in paragraph 25 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

## COUNT II

28. Defendants represent, expressly or by implication, that postal positions are currently available in the geographic areas where Defendants' advertisements appear.

29. In truth and in fact, in many instances, postal positions are not currently available in the geographic areas where Defendants' advertisements appear.

30. Therefore, the representations set forth in paragraph 28 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

## COUNT III

31. Defendants represent, expressly or by implication, that Defendants will assist consumers in registering for and obtaining employment with the United States Postal Service.

32. In truth and in fact, Defendants do not assist consumers in registering for and obtaining employment with the United States Postal Service.



33. Therefore, the representations set forth in paragraph 31 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### **COUNT IV**

34. Defendants represent, expressly or by implication, that consumers who score 90 percent or above on the postal examination are assured employment with the United States Postal Service.

35. In truth and in fact, consumers who score 90 percent or above on the postal examination are not assured employment with the United States Postal Service.

36. Therefore, the representations set forth in paragraph 34 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### **CONSUMER INJURY**

37. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of the Defendants' violations of the FTC Act as set forth above. In addition, the Defendants have been unjustly enriched as a result of their unlawful acts and practices. Absent injunctive relief by this Court, the Defendants are likely to continue to injure consumers, reap unjust enrichment and harm the public interest.

#### **THIS COURT'S POWER TO GRANT RELIEF**

38. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other

ancillary relief, including but not limited to, rescission of contracts and restitution, and the disgorgement of ill-gotten gains, to prevent and remedy injury caused by Defendants' law violations.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's equitable powers, requests that this Court:

(1) Award Plaintiff such preliminary and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including, but not limited to temporary and preliminary injunctions, including an order freezing each Defendant's assets, and the appointment of an equity receiver;

(2) Permanently enjoin Defendants from violating Section 5(a) of the FTC Act as alleged herein, including committing such violations in connection with the advertising, offering for sale or other promotion of employment goods or services;

(3) Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of Section 5(a) of the FTC Act, including, but not limited to, rescission of contracts, restitution and the disgorgement of ill-gotten gains by the Defendants; and

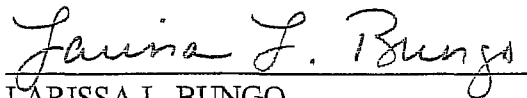
(4) Award Plaintiff the cost of bringing this action, and such other equitable relief as the Court may determine to be just and proper.

---

Dated: \_\_\_\_\_, 2005

Respectfully submitted,

WILLIAM BLUMENTHAL  
General Counsel



LARISSA L. BUNGO  
DANA C. BARRAGATE  
Attorneys for Plaintiff  
Federal Trade Commission  
1111 Superior Avenue, Suite 200  
Cleveland, OH 44114  
216-263-3403 (telephone)  
216-263-3426 (facsimile)  
lbungo@ftc.gov (e-mail)  
dbarragate@ftc.gov (e-mail)

Local Counsel:

JENNIFER L. MCMANUS  
Assistant U.S. Attorney  
Western District of Michigan  
P.O. Box 208  
Grand Rapids, MI 49501-0208  
(616) 456-2404 (tel)  
(616) 456-2510 (fax)  
Jennifer.McManus@usdoj.gov