



UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BAY AREA BUSINESS COUNCIL, INC.,

a Florida corporation, *et al.*,

Defendants.

02cv5762

Civil Action No. 02 C 5762

Judge John W. Darrah

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SAFE HARBOUR FOUNDATION OF FLORIDA,

INC., a Florida corporation, *et al.*,

Defendants.

Civ. No. 08 C 185

**STIPULATED ORDER FOR PERMANENT INJUNCTION AND
FINAL JUDGMENT AS TO DEFENDANT CHRISTOPHER TOMASULO**

Plaintiff Federal Trade Commission ("Commission" or "FTC"), has filed a Complaint for Injunctive and Other Equitable Relief ("Complaint") against Defendants Safe Harbour Foundation of Florida, Inc., Silverstone Lending, LLC, Silverstone Financial LLC, Keystone Financial, LLC, Southeast Advertising, Inc., MT25 LLC, Peter J. Porcelli, II, Bonnie A. Harris, and Christopher Tomasulo, for acts and practices in connection with a mortgage foreclosure rescue scheme. The Complaint alleges that these deceptive acts and practices violated the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601-1666j (including the Home Ownership and Equity Protection Act of 1994 ("HOEPA"), 15 U.S.C. § 1639), an implementing regulation of TILA

entitled Regulation Z, 12 C.F.R. Part 226, and Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a).

In conjunction with the filing of its Complaint, the Commission also moved this Court for entry of an order holding certain Defendants in contempt of the Order for Permanent Injunction with Monetary Judgment and Other Relief Against Bay Area Business Council, Inc., Bay Area Business Council Customer Service Corp., American Leisure Card Corp., Bay Memberships, Inc., Sr. Marketing Consultants, Inc., Special Technologies, Inc., Peter J. Porcelli, II, and Bonnie A. Harris (the "Porcelli/Harris Order"), entered by this Court on April 14, 2004, and the Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief Against Defendant Christopher Tomasulo (the "Tomasulo Order"), entered by this Court on February 2, 2005, in connection with the case *FTC v. Bay Area Business Council, Inc., et al.*, No. 02 C 5762.

The Commission and Defendant Christopher Tomasulo have stipulated to the entry of the following Stipulated Order For Permanent Injunction And Final Judgment As To Defendant Christopher Tomasulo ("Order") in settlement of the Commission's Complaint and contempt action.

NOW, THEREFORE, the Commission and Tomasulo, having requested the Court to enter this Order, and the Court having considered the Order and being fully advised in the premises, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

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

2. The Commission's Complaint states a claim upon which relief may be granted against Tomasulo under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).

3. This Court has jurisdiction over the subject matter of this case and contempt action and the parties hereto. Venue in the Northern District of Illinois is proper. Tomasulo has been properly served with process.

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

5. Tomasulo, without admitting the allegations set forth in the Commission's Complaint, agrees to entry of this stipulated Order.

6. Tomasulo waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Tomasulo further waives and releases any claims he may have against the Commission, its employees, representatives, or agents.

7. Tomasulo agrees that this Order does not entitle him to seek or obtain attorney's fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended; and Tomasulo further waives any right to attorney's fees that may arise under said provision of law. The parties shall each bear their own costs and attorney's fees incurred in this action.

8. Any voluntary bankruptcy petition filed by Tomasulo does not automatically stay this action, which the Court finds is the "commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's . . . police or regulatory power," as set forth in 11 U.S.C. § 362(b)(4).

9. Any voluntary bankruptcy petition filed by Tomasulo does not divest this Court of jurisdiction to enter this Order against Tomasulo.

10. This Order is in addition to, and not in lieu of, any other civil or criminal

remedies that may be provided by law.

11. As to Tomasulo only, Sections V through VIII below supersede Sections VI through IX of the Tomasulo Order. All other Sections of the Tomasulo Order shall remain in full effect as to Tomasulo.

12. Entry of this Order is in the public interest.

ORDER

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Plaintiff," "Commission," or "FTC" means the Federal Trade Commission.
2. "Defendants" means Safe Harbour Foundation of Florida, Inc., Silverstone Lending, LLC, Silverstone Financial LLC, Keystone Financial, LLC, Southeast Advertising, Inc., MT25 LLC, Peter J. Porcelli, II, Bonnie A. Harris, and Christopher Tomasulo, individually, collectively, or in any combination, by whatever names each may be known.
3. "Tomasulo" means Christopher Tomasulo, by whatever names he may be known.
4. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), and all cash, wherever located.
5. "Assisting others" means providing services to any person or entity that include, but are not limited to: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any sales script or any other marketing material; (3) providing,

or arranging for the provision of, potential customers; or (4) performing marketing services of any kind.

6. "Consumer" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

7. "Credit-Related Product" means any product, program, or service which is advertised, offered for sale, or sold as a method by which persons may establish or obtain any extension of credit or credit device, including, but not limited to credit cards, loans, or financing, or as a method to consolidate or liquidate debts.

8. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 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.

9. "Person" means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

I. EQUITABLE MONETARY RELIEF

IT IS THEREFORE ORDERED that:

A. Judgment is hereby entered in favor of the Commission, and against Tomasulo, in the amount of Two Million, Seven Hundred Ninety-One Thousand, Forty Dollars and Forty Cents (\$2,791,040.40), the estimated minimum total consumer injury from the Defendants' mortgage foreclosure rescue scheme, as equitable monetary relief for consumer injury; *provided*

however, that this judgment shall be suspended subject to the conditions set forth in Section II of this Order;

B. All funds paid pursuant to this Order 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 such equitable relief. Tomasulo shall cooperate fully to assist the Commission in identifying consumers who may be entitled to redress pursuant to this Order. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Tomasulo shall have no right to challenge the Commission's choice of remedies under this Part. Tomasulo relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Tomasulo shall make no claim to or demand return of the funds, directly or indirectly, through counsel or otherwise. Tomasulo shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment;

C. In accordance with 31 U.S.C. § 7701, as amended, Tomasulo is hereby required, unless he has already done so, to furnish to the Commission his taxpayer identifying numbers (social security numbers or employer identification numbers), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Tomasulo's relationship with the government. Tomasulo is further required, unless he already has done so, to provide the Commission with clear, legible and full-size photocopies of all valid driver's licenses that he

possesses, which will be used for reporting and compliance purposes;

D. Tomasulo agrees that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy case. Tomasulo further stipulates and agrees that the facts alleged in the Complaint establish all elements necessary to sustain an action pursuant to, and that this Order shall have collateral estoppel effect for purposes of, Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A); and

E. Proceedings instituted under this Section 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 the Commission may initiate to enforce this Order.

II. RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

A. By agreeing to this Order, Tomasulo reaffirms and attests to the truthfulness, accuracy, and completeness of the financial statement signed by him (dated October 10, 2008), and provided to the Commission, including all attachments and subsequent amendments and corrections thereto. Plaintiff's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of his financial condition, as represented in the financial statement referenced above, which contains material information upon which Plaintiff relied in negotiating and agreeing to the terms of this Order;

B. If, upon motion of the FTC, the Court finds that Tomasulo failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material

misrepresentation in or omission from his financial statement or supporting documents, the suspended judgment entered in Section I.A shall become immediately due and payable (less any amounts already paid). Provided, however, that, in all other respects, this Order shall remain in full force and effect, unless otherwise ordered by the Court; and

C. Any proceedings instituted under this Section shall be in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including but not limited to, contempt proceedings, or any other proceedings that the Commission or the United States might initiate to enforce this Order. For purposes of this Section, Tomasulo waives any right to contest any of the allegations in the Commission's Complaint.

III. PROHIBITIONS REGARDING CONSUMER INFORMATION

IT IS FURTHER ORDERED that Tomasulo and his officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, trust, corporation, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, Social Security number, account number, e-mail address, or other financial or identifying information of any person about whom any Defendant obtained such information in connection with the activities alleged in the Complaint; and

B. Benefitting from or using the name, address, telephone number, Social Security number, account number, e-mail address, or other financial or identifying information of any person about whom any Defendant obtained such information in connection with the activities alleged in the Complaint;

Provided, however, that Tomasulo may disclose identifying information to a law enforcement agency or as required by any law, regulation, or court order.

IV. CEASE COLLECTION ON ACCOUNTS

IT IS FURTHER ORDERED that Tomasulo and his officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, trust, corporation, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from attempting to collect, collecting, or assigning any right to collect payment from any consumer for any credit-related product sold by any Defendant, under any name, including, but not limited to, any mortgage loan payments, interest, or fees, on any account established prior to entry of this Order.

V. MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that, in connection with any business where (1) Tomasulo is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business is engaged in, or is assisting others engaged in, the promotion, offering for sale, or sale of any product or service to consumers, Tomasulo and his officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, trust, corporation, subsidiary, division, or other device, or any of them, 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 Sections I and II of the Tomasulo Order. These steps shall include adequate

monitoring of sales presentations or other calls with consumers, 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;

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

C. Failing to take adequate corrective action with respect to any employee or independent contractor whom Tomasulo determines is not complying with this Order or the Tomasulo Order. This corrective action may include training, disciplining, and/or terminating such employee or independent contractor.

VI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of (i) monitoring and investigating compliance with any provision of this Order or the Tomasulo Order, and (ii) investigating the accuracy of any of Tomasulo's financial statements upon which the Commission's agreement to this Order is expressly premised:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Tomasulo shall submit additional written reports, which are true and accurate and 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 Tomasulo's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including but not limited to:

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, 45 and 69;
2. posing as consumers and suppliers to Tomasulo, his employees, or any other entity managed or controlled in whole or in part by Tomasulo, without the necessity of identification or prior notice; and

C. Tomasulo 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 Order or the Tomasulo Order. The person interviewed may have counsel present.

Provided however, that nothing in this Order 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)).

VII. COMPLIANCE REPORTING

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

- A. For a period of ten (10) years from the date of entry of this Order,
 1. Tomasulo shall notify the Commission of the following:
 - a. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 - b. Any changes in his employment status (including self-employment), and any change in his ownership in any business

entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that he is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of his duties and responsibilities in connection with the business or employment; and

c. Any changes in his name or use of any aliases or fictitious names;

2. Tomasulo shall notify the Commission of any changes in structure of any business entity that he directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order or the Tomasulo Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order or the Tomasulo Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the business entity about which Tomasulo learns less than thirty (30) days prior to the date such action is to take place, Tomasulo 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 Order and annually thereafter for a period of ten (10) years, Tomasulo shall provide a written report to the Commission, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Order and the

Tomasulo Order. This report shall include, but not be limited to:

1. His then-current residence address, mailing addresses, and telephone numbers;
2. His then-current employment status (including self-employment), including the name, addresses and telephone numbers of each business that Tomasulo is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of Tomasulo's duties and responsibilities in connection with the business or employment; and
3. Any other changes required to be reported under Paragraph A of this Section; and
4. A copy of each acknowledgment of receipt of this Order or the Tomasulo Order, obtained pursuant to the Section titled "Distribution of Order."

C. Tomasulo shall notify the Commission of the filing of a bankruptcy petition within fifteen (15) days of filing.

D. For the purposes of this Order, Tomasulo shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Order to the Commission, to the following address:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room NJ-2122
Washington, D.C. 20580

Re: FTC v. Safe Harbour Foundation of Florida, Inc., et al., Civil Action No. 08 C 1885 (N.D. Illinois); and FTC v. Bay Area Business Council, Inc., et al., Civil Action No. 02 C 5762 (N.D. Illinois)

Provided, that, in lieu of overnight courier, Tomasulo may send such reports or

notifications by first-class mail, but only if Tomasulo contemporaneously sends an electronic version of such report or notification to the Commission at: DEBrief@ftc.gov.

E. For purposes of the compliance reporting and monitoring required by this Order or the Tomasulo Order, the Commission is authorized to communicate directly with Tomasulo.

VIII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of fifteen (15) years from the date of entry of this Order, for any business that Tomasulo controls, directly or indirectly, or in which he has a majority ownership interest, Tomasulo and his officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and/or to 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, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of 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;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing

materials; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order and the Tomasulo Order, including but not limited to, copies of each acknowledgment of receipt of this Order or the Tomasulo Order, required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order," and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

IX. DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date of entry of this Order, Tomasulo shall deliver copies of the Order as directed below:

A. *Tomasulo as Control Person:* For any business that Tomasulo controls, directly or indirectly, or in which he has a majority ownership interest, he must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business, (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order or the Tomasulo Order, and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon Tomasulo. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

B. *Tomasulo as employee or non-control person:* For any business where Tomasulo is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order or the Tomasulo Order, he must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct; and

C. Tomasulo must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

X. ACKNOWLEDGMENT OF RECEIPT OF ORDER

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

XI. COOPERATION WITH FTC

IT IS FURTHER ORDERED that Tomasulo shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear, at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Tomasulo shall appear, and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

XII. SEVERABILITY

IT IS FURTHER ORDERED that the provisions of this Order 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.

XIII. 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.

The Commission and Tomasulo hereby stipulate and agree to entry of the foregoing Order, which shall constitute a final judgment in this action.

IT IS SO ORDERED.

Dated: 4-27-09

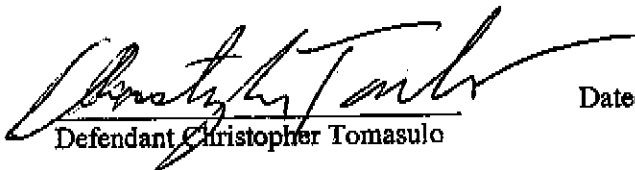

United States District Judge

STIPULATED AND AGREED TO BY:



Dated: 4/23/09

David A. O'Toole
Guy G. Ward
Marissa J. Reich
Federal Trade Commission
55 W. Monroe St., Suite 1825
Chicago, IL 60603
(312) 960-5634
Attorneys for Plaintiff Federal Trade Commission


Defendant Christopher Tomasulo

Dated: JANUARY 30, 2009