

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. — **03-60852**
CIV-MARRA

FEDERAL TRADE COMMISSION,

Plaintiff

v.

COMMUNITY AFFAIRS, INC.,
a/k/a POWERTEL and MOUNTAINEER
TELESERVICES,
CHRISTOPHER HEINS, and
LUIS FERREIRA,

Defendants

MAGISTRATE JUDGE
SELTZER

NIGHT BOX
FILED

MAY -7 2003

CLARENCE MADDOX
CLERK, USDC/SDFL/FTL

COMPLAINT FOR INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "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 obtain a permanent injunction and preliminary injunctive relief against the defendants to prevent them from engaging in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and to obtain other equitable relief, including rescission, restitution and disgorgement as is necessary to redress injury to consumers and the public interest resulting from defendants' violations of the FTC Act.

JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a) and 53(b) and by 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in the Southern District of Florida is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

THE PARTIES

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. § 41 *et seq.* The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits deceptive acts or practices in or affecting commerce. The Commission may initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act, and to secure such equitable relief as is appropriate in each case, including consumer redress and disgorgement. 15 U.S.C. § 53(b).

5. Defendant Community Affairs, Inc., ("CAI"), is a for-profit subchapter S corporation incorporated in New Jersey in 1995 and in Florida in 2001. CAI, directly and through its agents, solicits donations to non-profit organizations via telemarketing and the mail. CAI maintains a corporate office at 150 East Sample Road, Suite 220, Pompano Beach, FL. CAI conducts its telemarketing campaigns at call centers in: Morgantown, WV; Phillippi, WV; Keyser, WV; and Belmar, NJ. CAI has done business as, or is known as, PowerTel and Mountaineer Teleservices. CAI contacts consumers nationwide, soliciting donations for dozens of non-profit organizations. CAI transacts or has transacted business in the Southern District of Florida.

6. Defendant Christopher Heins is a 50% owner of defendant CAI. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed,

controlled, or participated in the acts and practices of CAI, including the acts and practices set forth in this Complaint. He resides, transacts or has transacted business in the Southern District of Florida.

7. Defendant Luis Ferreira is a 50% owner of defendant CAI. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of CAI, including the acts and practices set forth in this Complaint. He resides, transacts or has transacted business in the Southern District of Florida.

COMMERCE

8. At all times relevant to this complaint, defendants have maintained a substantial course of conduct in or affecting commerce, as "commerce" is defined in Section 4 of the FTC, 15 U.S.C. § 44.

DEFENDANTS' COURSE OF CONDUCT

9. Since at least 1997, defendants have operated as for-profit professional fundraisers, contracting with non-profit organizations to solicit donations on their behalf. Defendants have contracts with at least 75 non-profit client organizations nationwide. Representative organizations include the Virginia Firefighters Foundation, Texas Fraternal Order of Police, and Children's Cancer Assistance Network. For its services, CAI typically charges its clients between 75% and 90% of donations that it collects. In some instances, CAI guarantees a fixed amount of money to the client. CAI's gross revenues for the period January 2000 through September 2002 were over \$28 million.

10. Defendants develop the form and content of telephone solicitation scripts used by their telemarketers, as well as solicitation materials they mail to donors on behalf of their clients.

Defendants promise their clients that defendants will supervise and train defendants' telemarketers to conduct solicitations in a lawful manner, monitor their activities, and insure that employees or agents follow approved scripts. Defendants' contracts acknowledge that "incidental misrepresentations" may occur.

11. Although based principally in Florida and West Virginia, defendants rent private mail boxes in the states where they are soliciting donations. To consumers who agree to donate, defendants send a pledge package containing an envelope with the client organization's name and the private mail box address set up for the client's campaign. In some instances, defendants use the same private mail box for multiple clients. Defendants instruct donors to send their donations directly to the mail boxes. Employees of the private mail box facility collect and forward the envelopes containing donations to defendants weekly. Defendants then deposit the donations into the client organization's bank account, which account the client organization has opened according to defendants' instructions. The client organization retains the contracted percentage amount and is required to remit the remainder to defendant CAI on a weekly basis.

12. Defendants' telemarketing call centers each have between 24 and 48 calling stations and operate 12 to 18 hours per day. Defendants conduct a highly automated and sophisticated business. Defendants' telemarketers are seated at computer terminals that are connected to telephone dialing machines. When a consumer answers the telephone, that person's name, address, and other information appear on the computer screen along with the solicitation script for the client organization on whose behalf defendants and their agents are currently soliciting. If the consumer has previously donated to the organization, or to other organizations, that information appears on the computer screen, and scripts tailored to previous donors ("taps"

or “cross taps”) may be used by the telemarketer. Donors who gave in the past to the organization on whose behalf defendants and their agents are currently soliciting are called “taps”; donors who gave in the past to another organization are called “cross taps.” This information is important to the telemarketer, since taps and cross taps donors are more likely to agree to donate than consumers who have not previously donated.

13. While soliciting donations for defendants’ clients, including, but not limited to defendants’ law enforcement, police or firefighter clients, defendants’ telemarketers frequently state, expressly or by implication, that they are members of, or belong to, the client organization.

14. While soliciting donations for defendants’ clients, defendants’ telemarketers frequently tell potential donors that the donors previously contributed to the organization for which they are raising funds.

15. While soliciting donations for defendants’ clients, defendants’ telemarketers frequently tell potential donors that the donors previously contributed to other organizations.

16. While soliciting donations for defendants’ clients, defendants frequently mail pledge packages, including letters or receipts, to consumers who did not agree to make a donation, requesting prompt payment of pledges.

17. While soliciting donations for defendants’ clients, defendants’ telemarketers frequently describe how donations will be used by the client organization (*e.g.*, for scholarships, death benefits, medical equipment, or toys for children). Defendants’ pledge packages, including letters and receipts, also describe how donations will be used by the client organization, such as for scholarships, death benefits, medical equipment, or toys for children.

18. While soliciting donations for defendants’ clients, defendants’ telemarketers

frequently state, expressly or by implication, that all or a substantial portion of the donations will go into the client's bank account to fund and administer charitable or non-profit programs.

19. While soliciting donations for defendants' clients, defendants' telemarketers frequently tell consumers to "make their check payable to [the client organization] and write for deposit only on the back of you [sic] check. That way you know exactly where your money is going."

VIOLATIONS OF THE FTC ACT

20. Section 5(a) of the FTC Act prohibits unfair or deceptive acts and practices in or affecting commerce.

COUNT I

21. In numerous instances, in connection with soliciting donations from consumers, defendants or their agents represent, expressly or by implication, that the caller is a member of, or belongs to, a law enforcement, police or firefighters' organization.

22. In fact, the caller is not a member of a law enforcement, police or firefighters' organization.

23. Therefore, defendants' representation as set forth in Paragraph 21 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

24. In numerous instances, in connection with soliciting donations from consumers, defendants or their agents represent, expressly or by implication, that the consumer has a relationship to the organization for which they are soliciting funds, by representing that the

consumer agreed to make a donation, but had not remitted the donation to defendants or their client organization, or by representing that the consumer previously contributed to the organization.

25. In fact, the consumer does not have a relationship as represented by defendants or their agents because the consumer did not agree to make a donation or previously contribute to the organization.

26. Therefore, defendants' representations as set forth in Paragraph 24 are false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

27. In numerous instances, in connection with soliciting donations from consumers, defendants or their agents represent, expressly or by implication, that all, or substantially all, of the donations will be used for charitable purposes or to fund the programs described to the consumer.

28. In fact, all, or substantially all, of the donations will not be used for charitable purposes or to fund the programs described to the consumer.

29. Therefore, defendants' representations as set forth in Paragraph 27 are false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

30. Consumers in many areas of the United States have suffered monetary loss as a result of defendants' unlawful acts or practices. In addition, defendants have been unjustly

enriched as a result of their unlawful practices. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

31. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement, and restitution, to prevent and remedy any violations of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the Commission, requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

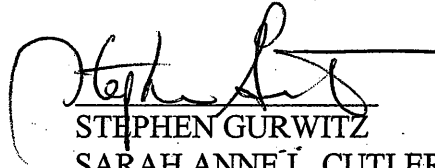
1. Award plaintiff such preliminary injunctive and other ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;
2. Permanently enjoin defendants from violating the FTC Act, as alleged herein or hereafter required;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from violations of the FTC Act by defendants, including, but not limited to, the rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies; and

4. Award plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

William E. Kovacic
General Counsel

DATED: May 6, 2003



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