STATE OF INDIANA)
) SS:
COUNTY OF PORTER)

IN THE PORTER CIRCUIT COURT

CAUSE NO. 64D02-0804-PL-3332

STATE OF INDIANA,

Plaintiff,

v.

FRANK J. MONAHAN III and ERROL GERSTLER, individually, MORTGAGE CONSULTANTS GROUP AND CREDIT REPAIR, INC., AMERICA'S CREDIT REPAIR, INC., and LAKE COUNTY RECOVERY, INC.,

Defendants.

FILED
IN OPEN COURT
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COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS, AND CIVIL PENALTIES

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Amber Degenhart, petitions the Court pursuant to the Indiana Credit Services Organizations Act, Indiana Code § 24-5-15-1 *et seq.*, and the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 *et seq.*, for injunctive relief, restitution, civil penalties, investigative costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code § 24-5-15-11.

2. Defendant, Mortgage Consultants Group and Credit Repair, Inc. (MCG), is a domestic corporation that has regularly provided services to Indiana consumer in the form of

credit repair and debt services with a principal place of business located at 650 Morthland Drive, Suite C, Valparaiso, Indiana 46385.

3. Defendant America's Credit Repair, Inc. (ACR) was a domestic corporation that provided credit repair and debt services to Indiana consumers, with a principal place of business located at 650 Morthland Drive, Suite C, Valparaiso, Indiana 46385. ACR was incorporated on May 18, 2006 and voluntarily dissolved on March 20, 2007.

4. Defendant Lake County Recovery, Inc. (LCR) is a domestic corporation providing credit repair and debt services to Indiana consumers, with a principal place of business located at 650 Morthland Drive, Suite C, Valparaiso, Indiana 46385.

5. Defendant Frank J. Monahan III is an employee of MCG and owned and operated ACR and LCR. As owner, Monahan has controlled and directed the affairs of these corporations, including representations to consumers, and has used the defendant corporations for the purpose of deceiving and defrauding Indiana consumers as set forth herein.

6. Defendant Errol Gerstler is the registered agent and president of MCG, and owned and incorporated ACR. In these capacities, Gerstler has also controlled and directed the affairs of these corporations, including representations to consumers, and has used the defendant corporations for the purpose of deceiving and defrauding Indiana consumers as set forth herein.

7. When, in this Complaint, reference is made to any act of Defendants, such allegations shall be deemed to mean that the principals, agents, or employees of Defendants did or did not authorize such acts to be done while actively engaged in the management, direction, or control of the affairs of Defendants and while acting within the scope of their duties, employment, or agency.

FACTS

8. At least since February 25, 2006, the Defendants have solicited and entered into contracts with Indiana consumers to assist consumers in correcting their credit reports and protecting and improving their credit ratings.

9. On or about February 25, 2006, the Defendants (operating as Lake County Recovery, Inc.) entered into a contract with Shandar Bridges, formerly of Michigan City, Indiana, wherein the Defendants represented that they would assist Bridges in performing a driving record expungement, repairing his credit report, and improving his credit rating. A true and correct copy of Defendants' contract with Bridges is attached and incorporated by reference as Exhibit "A".

10. On or about September 14, 2006, Bridges paid One Thousand Dollars ($1,000.00) to the Defendants pursuant to the contract referred to in paragraph seven (7).

11. The Defendants failed to provide Bridges with a written statement, containing the following provisions as required under Indiana Code § 24-5-15-6, prior to executing the contract referred to in paragraph seven (7) above:

> (a) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of services;
> (b) A statement explaining the buyer's right to proceed against the bond or surety account;
> (c) The name and address of the surety company that issued a bond or depository and the trustee of a surety account and the account number of the surety account required under Indiana Code § 24-5-15-8;
> (d) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency as provided under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);
> (e) A statement that the buyer's file is available for review at no charge on request made to the consumer reporting agency within thirty (30) days after the date of receipt of a notice that credit has been denied, and for a minimal charge at any other time;

(f) A complete and accurate statement of the buyer's right to dispute the completeness or accuracy of an item contained in a file on the buyer maintained by a consumer reporting agency; and

(g) A complete and accurate statement of the availability of nonprofit credit counseling services.

12. The contract referred to in paragraph five (5) failed to include two (2) copies of a Notice of Cancellation form as required under Indiana Code § 24-5-15-7.

13. The Defendants did not obtain a surety bond in the amount of Twenty-Five Thousand Dollars ($25,000.00), as required by Indiana Code § 24-5-15-8, prior to engaging in business as a credit services organization in the state of Indiana.

14. The Defendants failed to complete performance of the services described in the contract referred to in paragraph nine (9).

15. On or about October 30 2006, Defendant Monahan promised to make a full refund to Bridges, but only refunded Five Hundred Dollars ($500.00).

16. On or about January 25, 2007, the Defendants (operating as America's Credit Repair, Inc.) entered into a contract with Herb and Joan Friske of Petoskey, Michigan, wherein the Defendants represented that they would assist the Friskes in repairing their credit reports, eliminating their credit card and mortgage debt, and handling financial issues with the Internal Revenue Service. A true and correct copy of Defendants' contract with the Friskes is attached and incorporated by reference as Exhibit "B".

17. On or about January 25, 2007, the Friskes gave Defendant Monahan Five Thousand Dollars ($5,000.00) in cash for the work he was to do for them.

18. On or about January 26, 2007, the Friskes sent two money orders to the Defendants, one for One Thousand Dollars ($1,000.00) and the other for Five Hundred Dollars ($500.00).

19. On or about January 26, 2007, the Friskes wired Thirty-Four Thousand Dollars ($34,000.00) to the account held in the name of Defendant America's Credit Repair, Inc. pursuant to the contract referred to in paragraph sixteen (16).

20. On or about February 7, 2007, the Friskes' attorney wired Sixty-Five Thousand Five Hundred Dollars ($65,000.00) to the account held in the name of Defendant America's Credit Repair, Inc. pursuant to the contract referred to in paragraph sixteen (16).

21. The Defendants failed to provide the Friskes with a written statement, containing the following provisions as required under Indiana Code § 24-5-15-6, prior to executing the contract referred to in paragraph sixteen (16) above:

> (a) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of services;
> (b) A statement explaining the buyer's right to proceed against the bond or surety account;
> (c) The name and address of the surety company that issued a bond or depository and the trustee of a surety account and the account number of the surety account required under Indiana Code § 24-5-15-8;
> (d) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency as provided under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);
> (e) A statement that the buyer's file is available for review at no charge on request made to the consumer reporting agency within thirty (30) days after the date of receipt of a notice that credit has been denied, and for a minimal charge at any other time;
> (f) A complete and accurate statement of the buyer's right to dispute the completeness or accuracy of an item contained in a file on the buyer maintained by a consumer reporting agency; and
> (g) A complete and accurate statement of the availability of nonprofit credit counseling services.

22. The contract referred to in paragraph sixteen (16) failed to include two (2) copies of a Notice of Cancellation form as required under Indiana Code § 24-5-15-7.

23. The Defendants did not obtain a surety bond in the amount of Twenty-Five Thousand Dollars ($25,000.00), as required by Indiana Code § 24-5-15-8, prior to engaging in business as a credit services organization in the state of Indiana.

24. The Defendants failed to complete performance of the services described in the contract referred to in paragraph sixteen (16).

25. On or about October 24, 2007, Defendant Gerstler told the Friskes that he and Defendant Monahan would refund the Friskes' money. No refund has been provided.

26. On or about October 3, 2007, the Defendants (operating as MCG & Credit Repair) entered into a contract with Harland and Yong Lancaster of Valparaiso, Indiana, wherein the Defendants represented that they would assist the Lancasters in repairing their credit reports and eliminating credit card debt. A true and correct copy of Defendants' contract with the Lancasters is attached and incorporated by reference as Exhibit "C".

27. On or about October 10, 2007, the Lancasters paid Fifteen Thousand Dollars ($15,000.00) in cash to Defendants pursuant to the contract referred to in paragraph twenty-six (26). Nine Thousand Dollars ($9,000.00) of that amount was for a business account, while Six Thousand Dollars ($6,000.00) was for personal credit card debt.

28. The Defendants failed to provide the Lancasters with a written statement, containing the following provisions as required under Indiana Code § 24-5-15-6, prior to executing the contract referred to in paragraph twenty-six (26) above:

> (a) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of services;
> (b) A statement explaining the buyer's right to proceed against the bond or surety account;
> (c) The name and address of the surety company that issued a bond or depository and the trustee of a surety account and the account number of the surety account required under Indiana Code § 24-5-15-8;

(d) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency as provided under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);

(e) A statement that the buyer's file is available for review at no charge on request made to the consumer reporting agency within thirty (30) days after the date of receipt of a notice that credit has been denied, and for a minimal charge at any other time;

(f) A complete and accurate statement of the buyer's right to dispute the completeness or accuracy of an item contained in a file on the buyer maintained by a consumer reporting agency; and

(g) A complete and accurate statement of the availability of nonprofit credit counseling services.

29. The contract referred to in paragraph five (5) failed to include two (2) copies of a Notice of Cancellation form as required under Indiana Code § 24-5-15-7.

30. The Defendants did not obtain a surety bond in the amount of Twenty-Five Thousand Dollars ($25,000.00) as required by Indiana Code § 24-5-15-8, prior to engaging in business as a credit services organization in the state of Indiana.

31. The Defendants failed to complete performance of the services described in the contract referred to in paragraph twenty-six (26).

COUNT I: VIOLATIONS OF THE CREDIT SERVICES ORGANIZATIONS ACT

32. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through thirty-one (31) above.

33. By contracting to perform the services referred to in paragraphs nine (9), sixteen (16), and twenty-six (26), the Defendants are "credit services organizations" as defined by Indiana Code § 24-5-15-2.

34. By failing to obtain a surety bond in the amount of Twenty-Five Thousand Dollars ($25,000.00) prior to engaging in business in Indiana as a credit service organization, the Defendant violated the Credit Services Organizations Act, Indiana Code § 24-5-15-8.

35. By receiving One Thousand Dollars ($1,000.00) from Shandar Bridges before the complete performance of the services under the contract referred to in paragraph nine (9), the Defendants violated the Credit Services Organizations Act, Indiana Code § 25-5-15-5(1).

36. By receiving One Hundred Five Thousand and Five Hundred Dollars ($105,500.00) from the Friskes before the complete performance of the services under the contract referred to in paragraph sixteen (16), the Defendants violated the Credit Services Organizations Act, Indiana Code § 25-5-15-5(1).

37. By receiving Fifteen Thousand Dollars ($15,000.00) from the Lancasters before the complete performance of the services under the contract referred to in paragraph twenty-six (26), the Defendants violated the Credit Services Organizations Act, Indiana Code § 25-5-15-5(1).

38. By failing to provide each consumer with a written statement containing each of the following provisions, as required by Indiana Code § 25-5-15-6, prior to executing a contract or receiving valuable consideration, the Defendants violated the Credit Services Organizations Act, Indiana Code § 25-5-15-6:

> (a) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of the services.
> (b) A statement explaining the buyer's right to proceed against the bond or surety account required under Ind. Code § 25-5-15-8.
> (c) The name and address of the surety company that issued a bond; or the depository and the trustee of a surety account and the account number of the surety account required under Ind. Code § 25-5-15-8..
> (d) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency as provided under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).
> (e) A statement that the buyer's file is available for review at no charge on request made to the consumer reporting agency within thirty (30) days after the date of receipt of a notice that credit has been denied and for a minimal charge at any other time.
> (f) A complete and accurate statement of the buyer's right to dispute the completeness or accuracy of an item contained in a file on the buyer maintained

by a consumer reporting agency.

(g) A statement that accurate information cannot be permanently removed from the files of a consumer reporting agency.

(h) A complete and accurate statement indicating when consumer information becomes obsolete and when consumer reporting agencies are prevented from issuing reports containing obsolete information.

39. By failing to include in the contracts referred to in paragraphs nine (9), sixteen (16), and twenty-six (26) two (2) copies of a form captioned "NOTICE OF CANCELLATION" as required by Indiana Code § 24-5-15-7(b), the Defendants violated the Credit Services Organizations Act, Indiana Code § 24-5-15-7.

COUNT II: VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

40. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through thirty-nine (39) above.

41. The transactions referred to in paragraphs nine (9), sixteen (16), and twenty-six (26) are "consumer transactions" as defined by Indiana Code § 24-5-0.5-2(a)(1).

42. The Defendants are "suppliers" as defined by Indiana Code § 24-5-0.5-2(a)(3).

43. The violations of the Indiana Credit Services Organizations Act referred to in paragraphs thirty-four (34) through thirty-nine (39) constitute deceptive acts pursuant to Indiana Code § 24-5-15-11.

44. Defendant Monahan and Gerstler's representations to Bridges and the Friskes, respectively, that they would provide a refund, when they knew or reasonably should have known that they would not, constitute violations of the Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-3(a)(8).

COUNT III: KNOWING AND INTENTIONAL VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

41. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through forty-four (44) above.

28. The misrepresentations and deceptive acts set forth above were committed by the Defendants with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants, enjoining the Defendants from the following:

a. In the course of performing services as a credit services organization, failing to obtain a surety bond in the amount of Twenty-Five Thousand Dollars ($25,000.00) prior to engaging in business in Indiana as a credit services organization;

b. in the course of performing services as a credit services organization, charging or receiving money or other valuable consideration before the complete performance of services on behalf of a consumer, unless the Defendants have obtained a surety bond issued by a surety company admitted to do business in Indiana or established an irrevocable letter of credit under Indiana Code §24-5-15-8;

c. in the course of performing services as a credit services organization, failing to provide the consumer with a written statement containing each of the provisions required by Indiana Code § 25-5-15-6 prior to executing a contract or receiving valuable consideration;

d. in the course of performing services as a credit services organization, failing to include in contracts with consumers the statement required by Indiana Code § 24-5-15-7(a)(1) and two (2) copies of the notice of cancellation form required by Indiana Code § 24-5-15-7(b);

e. representing expressly or by implication that a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the Defendants know or should reasonably know it does not have;

f. representing, expressly or by implication, that a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the Defendants know or should reasonably know that the representation is false; and

g. representing, expressly or by implication, that the Defendants are able to deliver or complete the subject of the consumer transaction within a stated (or reasonable) period of time, when the Defendants know or should reasonably know they will not.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendants for the following relief:

a. cancellation of the Defendants' unlawful contracts with consumers, including but not limited to, Shandar Bridges, Herb and Joan Friske, and Yong and Harland Lancaster, pursuant to Ind. Code § 24-5-0.5-4(d);

b. costs pursuant to Indiana Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

c. restitution payable to the Office of the Attorney General for the benefit of the following consumers:

    i. Shandar Bridges, in the amount of Five Hundred Dollars ($500.00);

    ii. Herb and Joan Friske, in the amount of One Hundred Five Thousand Five Hundred Dollars ($105,500).

    iii. Yong Lancaster, in the amount of Fifteen Thousand Dollars ($15,000.00).

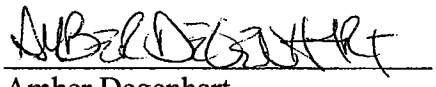
d. on Count III of the Plaintiff's complaint, civil penalties pursuant to Indiana Code § 24-5-0.5-4(g) for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars ($5,000.00) per violation, payable to the State of Indiana;

e. on Count III of the Plaintiff's complaint, civil penalties pursuant to Indiana Code § 24-5-0.5-8 for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars ($500.00) per violation, payable to the State of Indiana; and

f. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
INDIANA ATTORNEY GENERAL
Attorney No. 4150-64

By: 
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