

FILED

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

2016 DEC 12 PM 3:35

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FL

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

J. WILLIAM ENTERPRISES, LLC, a Florida limited liability company, also d/b/a PRO TIMESHARE RESALES;

PRO TIMESHARE RESALES OF FLAGLER BEACH LLC, a Florida limited liability company;

JESS KINMONT, individually and as an officer of J. WILLIAM ENTERPRISES, LLC and PRO TIMESHARE RESALES, LLC;

and

JOHN P. WENZ, JR., individually and as an officer of PRO TIMESHARE RESALES OF FLAGLER BEACH, LLC;

Defendants.

Case No. 6:16-cv-2123-ORL-31-DCI

[FILED UNDER SEAL]

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission (“FTC”) for its Complaint alleges the following:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, to obtain temporary,

preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of 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.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over the FTC's claims pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57(b), 6102(c), and 6105(b).
3. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), (b)(2), (b)(3), (c)(2), and (d), 15 U.S.C. § 53(b), and 15 U.S.C. § 6103(e).

PLAINTIFF

4. Plaintiff **FTC** is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC 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 FTC also enforces the Telemarketing Act, 15 U. S. C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C.

§§ 53(b), 56(a)(2)(A), 6102(c) and 6105(b).

DEFENDANTS

6. **Defendant J. William Enterprises, LLC d/b/a Pro Timeshare Resales (“JWE”),** is a Florida limited liability company with its principal place of business located in DeLand, Florida. JWE transacts or has transacted business in this district and throughout the United States.

7. **Defendant Jess Kinmont (“Kinmont”)** is an owner, officer, and/or manager of Defendant JWE. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint.

8. **Defendant Pro Timeshare Resales of Flagler Beach, LLC (“PTR of Flagler Beach”)**, is a Florida limited liability company with its principal place of business located in Bunnell, Florida. PTR of Flagler Beach transacts or has transacted business in this district and throughout the United States.

9. **Defendant John P. Wenz, Jr. (“Wenz”)** is an owner, officer, and/or manager of Defendant PTR of Flagler Beach. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint.

COMMON ENTERPRISE

10. Defendants JWE and PTR of Flagler Beach LLC (collectively, “Corporate Defendants”) have operated as a common enterprise while engaging in the deceptive acts and

practices alleged below. The Corporate Defendants have conducted the business practices described below through interrelated companies that have common ownership, officers, managers, business functions, employees, and/or office locations; that have commingled funds; and/or that have shared one another's marketing materials. Because these Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts or practices alleged below. Defendants Kinmont and Wenz have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise.

COMMERCE

11. At all times material to this Complaint, Defendants JWE, PTR of Flagler Beach, Kinmont, and Wenz ("Defendants") have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

12. Since at least November 2011 to the present, Defendants, through a common enterprise, have engaged in a plan, program, or campaign to deceptively advertise, market, promote, offer for sale, or sell timeshare resale or rental services through, among other means, interstate telephone calls or electronic mail to consumers, many of whom are older adults, throughout the United States.

13. Defendants, directly or through their agents, contact consumers who own timeshare properties through unsolicited telemarketing calls. In contacting these consumers, Defendants already have information about the consumers' timeshare properties.

14. In numerous instances, the consumers who received the Defendants' unsolicited telemarketing calls registered their telephone numbers on the National Do Not Call Registry prior to receiving the call.

15. In numerous instances, Defendants begin the telemarketing call by representing that they can sell or rent the timeshare property, including sometimes stating that they already have a buyer or renter for the consumer's timeshare property who will pay a specified price for the timeshare property.

16. In numerous other instances, Defendants tell the consumer that the sale or rental of his or her timeshare property will occur quickly, usually within a few days to a few months.

17. Once the consumer confirms that he or she is interested in selling or renting their timeshare property, Defendants then inform the consumer that he or she must pay an up-front fee generally ranging from \$500-\$2,500, and sometimes more, in order to sell or rent his or her property. Defendants then obtain consumers' financial account information.

18. At or close to the time of getting the financial account information from the consumer in order to charge the up-front fee, Defendants also tell consumers that they will be receiving a contract from Defendants that they should immediately sign and return. When consumers receive the contract from Defendants, the contract generally comes to them through email and consumers sign the contract electronically. Defendants then charge the consumer the up-front fee.

19. The contract that consumers receive from Defendants, however, does not relate to the sale or rental of the consumer's timeshare property, as Defendants had represented

in the telemarketing call. Instead, the contract provides only that Defendants will advertise the consumer's timeshare property for sale or rent.

20. Consumers who pay Defendants' up-front fee do not receive what Defendants promised. Defendants do not sell or rent the consumer's timeshare property within the time specified by Defendants, within a short amount of time, or for the specified price. Indeed, Defendants do not sell or rent consumers' timeshares properties at all.

21. In numerous instances, Defendants string along consumers with additional false promises, including promises that a sale or rental is imminent, or that the consumer will receive sales or rental proceeds shortly. After making these additional promises, Defendants often request additional monies for closing costs or other fees. In numerous instances, consumers pay these additional costs or fees.

22. In numerous instances, consumers request a refund of their money because Defendants have not sold or rented their timeshare properties, as Defendants promised. Defendants routinely deny such requests for refund.

VIOLATIONS OF THE FTC ACT

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

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

COUNT I **Misrepresentations in Violation of Section 5 of the FTC Act**

25. In numerous instances, in connection with the advertising, marketing, promotion,

offering for sale, and sale of their timeshare resale or rental services, Defendants have represented, directly or indirectly, expressly or by implication, that Defendants have a buyer or renter for the consumer's timeshare who will pay a specified price, or that Defendants quickly will sell or rent the consumer's timeshare.

26. In truth and in fact, in numerous instances, Defendants do not have a buyer or renter for the consumer's timeshare who will pay a specified price, or Defendants do not quickly sell or rent the consumer's timeshare.

27. Therefore, Defendants' representations as set forth in Paragraph 25 of this Complaint 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).

THE TELEMARKETING SALES RULE

28. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in 1994. The FTC adopted the original Telemarketing Sales Rule in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.

29. The TSR prohibits sellers and telemarketers from making any false or misleading statement to induce any person to pay for goods or services. 16 C.F.R. § 310.3(a)(4).

30. Among other things, amendments made to the TSR in 2003 established a "do not call" registry (the "National Do Not Call Registry" or "Registry"), maintained by the FTC, of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free

telephone call or on the internet at www.donotcall.gov.

31. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or on the internet at www.donotcall.gov, or by otherwise contacting law enforcement authorities.

32. The FTC allows sellers, telemarketers, and other permitted organizations to access the Registry over the Internet at telemarketing.donotcall.gov, to pay the fee(s) if required, and to download the numbers not to call.

33. The TSR prohibits sellers and telemarketers from calling any telephone number within a given area code unless the seller on whose behalf the call is made has paid the annual fee for access to the telephone numbers within that area code that are included in the Registry. 16 C.F.R. § 310.8.

34. Under the TSR, an “outbound telephone call” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution. 16 C.F.R. § 310.2 (v).

35. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call to telephone numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B).

36. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Defendants' Disregard for Do Not Call Rules

37. Defendants are “sellers” or “telemarketer[s]” engaged in “telemarketing,” as defined by the TSR. 16 C.F.R. §310.2.

38. Defendants are sellers of timeshare resale services to consumers. Defendants have called consumers in the United States to induce the purchase of Defendants’ services.

39. Defendants are also telemarketers that initiate outbound telephone calls to consumers in the United States to induce the purchase of Defendants’ services.

40. Defendants have engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate call.

41. Defendants have called consumers’ telephone numbers that are on the National Do Not Call Registry without limiting such calls to persons who previously purchased or inquired about Defendants’ goods or services.

42. Defendants have called telephone numbers in various area codes without first paying the annual fee for access to the telephone numbers within such area codes that are included in the National Do Not Call Registry.

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT II
Misrepresentations to Induce Consumers to Pay for Goods or Services

43. In numerous instances, in connection with telemarketing, Defendants have made false or misleading statements, directly or by implication, to induce consumers to pay for goods and services, including, but not limited to, representations that Defendants have a buyer or renter for the consumer’s timeshare who will pay a specified price, or that Defendants

quickly will sell or rent the consumer's timeshare.

44. In truth and in fact, in numerous instances, Defendants do not have a buyer or renter for the consumer's timeshare who will pay a specified price, or Defendants do not quickly sell or rent the consumer's timeshare.

45. Defendants' acts or practices, as described in Paragraph 43 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(4).

COUNT III
Making Calls in Violation of the National Do Not Call Registry

46. In numerous instances, in connection with telemarketing, Defendants have initiated, or caused others to initiate, an outbound telephone call to a person's telephone number on the National Do Not Call Registry, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

COUNT IV
Failing to Pay National Registry Fees

47. In numerous instances, in connection with telemarketing, Defendants have initiated, or caused others to initiate, an outbound telephone call to a telephone number within a given area code when Defendants had not, either directly or through another person, paid the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry, in violation of the TSR, 16 C.F.R. § 310.8.

CONSUMER INJURY

48. Consumers throughout the United States have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the TSR. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or

practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

49. 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 any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

50. Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorizes this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the TSR, including the rescission or reformation of contracts, and the refund of money.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. §§ 53(b), Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, request that the Court:

A. Award Plaintiff such preliminary injunctive 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, an order freezing assets, immediate access, and appointment of a

receiver;

B. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;

C. Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

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

Dated: December 12, 2016

Respectfully submitted,

FEDERAL TRADE COMMISSION

DAVID C. SHONKA
Acting General Counsel


GIDEON SINASOHN, Trial Counsel
Special Florida Bar No. A55001392
HAROLD E. KIRTZ, Trial Counsel
Special Florida Bar No. A5500743
Federal Trade Commission
225 Peachtree Street, Suite 1500
Atlanta, Georgia 30303
Telephone: (404) 656-1366 (Sinasohn)
Telephone: (404) 656-1357 (Kirtz)
Facsimile: (404) 656-1379
E-mail: gsinasohn@ftc.gov
hkirtz@ftc.gov