

NO. 2003-41689

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|---------------------------------|---|---|
| STATE OF TEXAS, | § | IN THE DISTRICT COURT OF |
| Plaintiff | § | |
| | § | |
| | § | |
| E-TELEMATION, INC. d/b/a | § | HARRIS COUNTY, TEXAS |
| U.S. CREDIT, MICHAEL C. | § | |
| CORBELL, & ROBERT F. | § | |
| LEAUMONT, JR., | § | |
| Defendants | § | 215th JUDICIAL DISTRICT |

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION AS ROBERT F. LEAUMONT, JR.

On this day came on to be considered the above-entitled and numbered cause in which the State of Texas is Plaintiff and Robert F. Leaumont, Jr. is Defendant. The parties, appearing pro se and by and through its attorneys of record, wish to make the following stipulations and agree to the entry of this Final Judgment and Permanent Injunction.

It is stipulated that the parties have compromised and settled all claims stated by Plaintiff in this cause. It is further stipulated that Plaintiff and Defendant Leaumont agree to and do not contest the entry of this judgment.

The Court then proceeded to read the pleadings and stipulations of the parties, and it appears to the Court that the parties agree to the entry of this judgment and that they have approved entry of this judgment.

The Court makes and the parties agree upon the following Findings of Facts: Defendant Robert F. Leaumont, Jr. has obtained money and/or property, by false pretenses, false representations, and/or actual fraud. Defendant Leaumont made false representations and committed actual fraud by committing knowing and fraudulent falsehoods, as described below, which described past or current facts that were relied upon to the detriment of the injured consumers. Defendant

Leaumont knowingly made false representations with intent to deceive consumers who relied on these false representations, and who therefore sustained loss and damages. Specifically, Defendant Leaumont placed advertisements all across the U.S. which guaranteed approval of an unsecured Visa or Mastercard, irrespective of the consumers' credit history or previous bankruptcies. Consumers would call the 800 number listed in the advertisements and were told by Defendant's telemarketers that they would receive a credit card as long as they had a valid bank account. Once bank account information was received by Defendant, monies were debited from consumers' accounts without authorization. Thousands of consumers across the U.S. thereby suffered monetary injuries. None of the consumers ever received a credit card from Defendant Leaumont or anyone else associated with Defendant Leaumont. Consumers instead received a credit card *kit*, which gave them a list of banks to which they could *apply* for a credit card.

IT IS THEREFORE ORDERED that Defendant Robert F. Leaumont, Jr., his officers, agents, servants, employees, attorneys and any other persons in active concert or participation with him, who receive actual notice of this order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other devise, shall be restrained from engaging in the following acts or practices:

A. Soliciting bank account numbers or bank account routing information from consumers or persons;

B. Withdrawing money from consumers' bank accounts unless Defendant has a signed, dated, written consent and authorization form, from each consumer who owns the account, authorizing such funds to be withdrawn in a specific amount, on a specific date, and from a specific bank account;

C. Representing, expressly or by implication, that Defendant is affiliated with, endorsed

by, authorized by, supported by, associated with or in any way related to Visa, MasterCard, American Express, or any other credit card provider unless Defendant is in fact affiliated, associated with or endorsed by such company, and has written documentation of such association/affiliation at the time such representation is made;

D. Representing to consumers, expressly or by implication, that Defendant will provide consumers with a credit card or that Defendant will assist consumers in obtaining a credit card;

E. Representing to consumers, expressly or by implication, that they have been approved for a credit card and/or will receive a credit card within a specified time;

F. Representing to consumers, expressly or by implication, that they have been approved for a credit card with a particular credit limit;

G. Representing to banks and financial institutions, expressly or by implication, that a particular consumer has authorized or agreed to an ACH withdrawal or debit from their bank account, when in fact there is no such authorization or agreement from said consumer;

H. Advertising in any manner for guaranteed approval, or any approval of, a Visa, MasterCard, or other credit card;

I. Failing to fully inform and affirmatively disclose to consumers in all advertisements and in any form of oral or written solicitation or communication that Defendant does not provide credit cards to consumers unless Defendant actually does directly provide credit cards to consumers;

J. Representing to consumers, expressly or by implication, that there are tape recordings which depict the consumer consenting to or authorizing some action, when in fact such tape recordings do not exist or do not exist in the format or form represented by Defendant;

K. Failing to fully advise and disclose to consumers in all oral or written solicitations the complete terms and conditions of any refund policy, including, the fact that refunds will not be

given if that is the case;

L. Engaging in telephone solicitation without filing a full and complete registration statement with the Secretary of State pursuant to §38.102 of the Texas Business and Commerce Code;

M. Engaging in telephone solicitation without first filing a complete registration statement with the Texas Secretary of State which discloses:

- 1) the seller's name and the name under which the seller is doing or intends to do business, if it is different from the seller's name pursuant to TEX. BUS. & COM. CODE §38.151(1);
- 2) the name of each parent and affiliated organization of the seller that will engage in business transactions with purchasers relating to sales solicited by the seller or accepts responsibility for statements made by, or acts of, the seller relating to sales solicited by the seller pursuant to TEX. BUS. & COM. CODE §38.151(2)(a)(b);
- 3) the seller's business form and place of organization and if the seller is a corporation or partnership, a copy of its articles of incorporation and bylaws or a copy of the partnership agreement pursuant to TEX. BUS. & COM. CODE §38.151(3)-(5);
- 4) the location where any assumed name has been registered pursuant to TEX. BUS. & COM. CODE §38.151(6);
- 5) for any parent or affiliated organization, the applicable information that is required of a seller under the two immediately preceding subsections above, pursuant to TEX. BUS. & COM. CODE §38.151(7);
- 6) the complete street address of each location of the seller, designating the principal

location from which the seller will be conducting business pursuant to TEX. BUS. & COM. CODE §38.151(8);

- 7) a listing of each telephone number to be used by the seller and the address where each telephone using the number is located pursuant to TEX. BUS. & COM. CODE §38.151(10);
- 8) the name, title, complete address of principal residence, date of birth, number and state of issuance of the drivers license of each of the seller's officers, directors, trustees, general and limited partners, sole proprietors and owners, as applicable, and the name of each of those persons who has management responsibilities in connection with the seller's business activities pursuant to TEX. BUS. & COM. CODE §38.151(11) & (12);
- 9) the name and principal residence address of each person the seller leaves in charge at each location from which the seller does business in this state and the business location at which each of these persons is or will be in charge pursuant to TEX. BUS. & COM. CODE §38.151(13);
- 10) the name and principal residence address of each salesperson who solicits on behalf of the seller or a copy of the "Employer's Quarterly Report" for employee wages the seller files with the Texas Workforce Commission and the name the salesperson uses while soliciting pursuant to TEX. BUS. & COM. CODE §38.151(14);
- 11) the name and address of the seller's agent in this state, other than the Secretary of State, authorized to receive service of process pursuant to TEX. BUS. & COM. CODE §38.151(15); and

12) the name and address of each financial institution with which banking or similar monetary transactions are made by the seller and the identification number of each of the seller's accounts in each institution pursuant to TEX. BUS. & COM. CODE §38.151(16).

N. Failing to complete a registration statement, pay the registration fee and post the required security as required by TEX. BUS. & COM. CODE §§38.103, 38.104 and 38.107 prior to engaging in telephone solicitation;

O. Misrepresenting the character, extent, or amount of a consumer debt, in violation of TEX. FIN. CODE ANN. §392.304(a)(8);

P. Falsely representing the status or nature of the services rendered by the debt collector or the debt collector's business, in violation of TEX. FIN. CODE ANN. §392.304(a)(14); and

Q. Engaging in telephone solicitation unless and until Defendant or his employer have fully complied with Chapter 38 of the Texas Business and Commerce Code as existing or hereinafter amended.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, as used in this Judgment, the following terms are defined as follows:

A. "Consumer" means an individual, partnership, corporation, or entity of any kind, including this state, or a subdivision or agency of this state who seeks or acquires, by purchase or lease, any goods or services;

B. "Defendant" means Robert F. Leumont, Jr., his successors, assigns, officers, agents, subcontractors, servants, present and former employees, corporations, employers, and any other persons in active concert or participation with him;

C. "Item" means property or service and includes the type of "credit card kit" Defendant

sometimes sent to consumers;

D. “Owner” means a person who has any control of or is entitled to, by ownership or other claim, at least a percent of the net income of a seller;

E. “Person” means an individual, sole proprietorship, firm, partnership, corporation, association, joint venture or other group, or business entity, however organized;

F. “Purchaser” means a person who either is solicited to become or becomes obligated for the purchase or rental of an item, or is offered the opportunity to claim or receive an item.

G. “Salesperson” means a person employed or authorized by a seller to make a telephone solicitation;

H. “Seller” means a person who makes a telephone solicitation on the person’s own behalf;

I. “Solicits” or “solicited” means any type of contact with a person or entity for the purpose of requesting, persuading, or seeking any type of contribution, sponsorship, compensation, or anything of value from said person or entity for any reason whatsoever;

J. “Telemarketer” or “paid solicitor” means a person employed or authorized by a seller to make telephone solicitations; and

K. “Telephone solicitation” and “engaging in telephone solicitation” means engaging in any type of business or being employed by or for any type of business that makes telephone calls initiated by a seller or salesperson to or from a person or entity for the purpose of inducing the person or entity to purchase, rent, claim, or receive an item. The term includes a call made by a consumer or contributor in response to a solicitation sent by mail or made by any other means. The term also includes any use of the Internet for any type of solicitation purposes; and

L. “Trade” and “Commerce” mean the advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed,

and any other article, commodity, or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state.

IT IS FURTHER ORDERED that the State of Texas have judgment and recover from Defendant Robert F. Leumont the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for payment of restitution to consumers who had money withdrawn from their bank accounts, which constitutes consumer deposits for goods or services for personal or household use and which do not constitute an antecedent debt with respect to this litigation. The State of Texas shall disburse any collected restitution herein to consumers as it deems advisable and necessary. In the event any portion of this collected restitution judgment is not able to be distributed to consumers of Plaintiff's choosing, within a reasonable time period, such amounts shall revert to Plaintiff, State of Texas, as additional attorney fees.

IT IS FURTHER ORDERED that the State of Texas have judgment and recover from Defendant Robert F. Leumont, Jr., the sum of Fifty Thousand and No /100 Dollars (\$50,000.00) for civil fines and penalties to or for the benefit of the State of Texas, a governmental unit, which is not compensation for any actual or pecuniary loss.

IT IS FURTHER ORDERED that the State of Texas have judgment and recover from Defendant, Robert F. Leumont, Jr., the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for reimbursement of the State's attorney fees and investigative costs incurred in this case, which are for the benefit of the State of Texas, a governmental unit, and which is not compensation for any actual or pecuniary loss.

IT IS ALSO ORDERED that the following accounts in the following financial institutions or brokerage firms be completely released from the asset freeze previously ordered by this court:

| <u>Bank</u> | <u>Account No.</u> | <u>Name of Depositor</u> |
|-------------|---|--------------------------|
| Bank One |  | Robert F. Leumont, Jr. |

The clerk of the court is hereby directed to issue a Writ of Permanent Injunction to each of the Defendants and to issue such writs of execution or other process necessary to enforce this Agreed Final Judgment and Permanent Injunction.

IT IS FURTHER ORDERED that all other costs of court expended or incurred in this cause be borne by the party incurring the same.

All relief not expressly granted herein as to Robert F. Leumont, Jr., is denied.

Signed this _____ day of _____, 2004.

JUDGE PRESIDING

AGREED:

JOHN OWENS

Assistant Attorney General

808 Travis, Suite 300

Houston, Texas 77002

TBN: 15379200

(713) 223-5886, ext. 218

(713) 223-5821 - FAX

Attorney for the State of Texas, Plaintiff

ROBERT F. LEAUMONT, JR.

Defendant (Pro Se)