

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, ex rel.)
RICHARD CORDRAY)
Attorney General of Ohio)
30 E. Broad St., 14th Floor)
Columbus, Ohio 43215)
)
Plaintiff,)
)
v.)
)
KIRKLAND YOUNG, LLC)
2915 NE Biscayne Boulevard, Suite 303)
Miami, FL 33137)
)
Defendant.)

CASE NO. 09CVH11-17495

JUDGE

**COMPLAINT AND REQUEST FOR
DECLARATORY RELIEF,
INJUNCTIVE RELIEF, RESTITUTION,
CIVIL PENALTIES, AND DAMAGES**

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Richard Cordray, having reasonable cause to believe that violations of Ohio's consumer laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by Ohio Revised Code (R.C.) 109.87, 1345.07, 4710.04, and 4719.12.
2. The primary place of business for Defendant Kirkland Young, LLC is located at 2915 NE Biscayne Boulevard, Suite 303, Miami, Florida, 33137.
3. The actions of Defendant, hereinafter described, have occurred in Franklin County and other counties in the State of Ohio, and as set forth below, the Telephone Solicitation Sales Act, R.C. 4719.01 et seq. ("TSSA"), the Consumer Sales Practices Act, R.C. 1345.01 et seq. ("CSPA") and its Substantive Rules, Ohio Adm. Code ("OAC") 109:4-3-01 et seq., and the Debt Adjuster Act, R.C. 4710.01 et. seq. ("DAA").
4. Defendant is a "supplier" as defined in R.C. 1345.01(C) since Defendant is, and was at all times relevant hereto, engaged in the business of effecting consumer transactions, either directly or indirectly by soliciting or selling goods or services to consumers for purposes that

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were primarily for personal, family or household use, within the meaning specified in R.C. 1345.01(A).

5. Defendant is a “telephone solicitor” as defined in R.C. 4719.01(A)(8) since Defendant is, and was at all times relevant hereto, engaged in telephone solicitations, within the meaning specified in R.C. 4719.01(A)(7).
6. Defendant is, and was at all times relevant hereto, engaged in “debt adjusting” as defined in R.C. 4710.01(B) in that Defendant held itself out as providing services in the management of debts by effecting the adjustment, compromise, or discharge of accounts, notes or other indebtedness of the debtors.
7. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the Ohio Consumer Sales Practices Act.
8. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3) in that the Defendant conducted activity which gave rise to the claims for relief in several counties in the State of Ohio, including Franklin County, and pursuant to Ohio Civ. R. 3(B)(6) in that some of the transactions complained of herein, and out of which the claims for relief arose, occurred in Franklin County.

NATURE OF DEFENDANT’S BUSINESS

9. Defendant is, and was at all times relevant hereto, engaged in the business of advertising, soliciting, offering for sale and/or selling its loan modification and loss mitigation services to Ohio consumers.
10. Defendant executes contracts with Ohio consumers to “negotiate or modify their loans” in a purported effort to make payments more manageable for consumers and prevent consumers’ homes from being lost in foreclosure.

STATEMENT OF FACTS

11. Defendant advertises its loan modification and loan mitigation services to Ohio consumers through telephone solicitations and its Internet web site located at www.kirklandyoung.com.
12. Defendant advertises its loan modification services to Ohio consumers through its Internet web site and invites consumers to call or fill out a form for assistance.
13. Defendant's Internet web site contains information about foreclosure, loan modification, and the mortgage industry.
14. Defendant initiates and makes unsolicited telephone calls to Ohio consumers offering modification of consumers' mortgage loans.
15. Defendant initiates and makes unsolicited telephone calls to Ohio consumers who are at risk of defaulting on their residential mortgage loans.
16. Defendant initiates and makes unsolicited telephone calls to Ohio consumers who are at risk of losing their homes in foreclosure.
17. Defendant is not registered with the Ohio Attorney General's office as a telephone solicitor.
18. After receiving telephone messages from the Defendant about its loan modification and loss mitigation services, Ohio consumers contact the Defendant by telephone.
19. When Ohio consumers speak with Defendant on the telephone, the Defendant makes misleading and false statements that it can get consumers lower monthly mortgage payments or get their payments "cut in half."
20. When Ohio consumers speak with Defendant on the telephone, the Defendant makes misleading or false statements to consumers about being able to get consumers into loans with lower interest rates.

21. When Ohio consumers speak with Defendant on the telephone, the Defendant makes misleading or false statements to consumers about being able to get the amounts of consumers' loans reduced.
22. When Ohio consumers speak with Defendant on the telephone, the Defendant makes misleading or false statements to consumers about being able to get consumers into fixed rate mortgages or loan modifications.
23. When Ohio consumers speak with Defendant on the telephone, the Defendant makes misleading or false statements to consumers about being able to get consumers into loan modifications in thirty to ninety days.
24. The Defendant's false or misleading statements induce Ohio consumers to purchase the Defendant's loan modification and loss mitigation services.
25. When Ohio consumers speak with Defendant on the telephone, the Defendant represents that it charges an initial payment between \$499 and \$750 for its loan modification and loss mitigation services.
26. Defendant instructs consumers to provide Defendant with the consumers' debit card numbers for immediate processing of initial payments.
27. Once the initial payment is made, Defendant provides the consumers with a copy of the contracts, escrow agreements, and hardship letters, which must be signed and returned to Defendant.
28. In accordance with the escrow agreement, consumers must make monthly payments to the escrow accounts to be used to pay the lender for costs of loan modifications.
29. The Defendant keeps any funds remaining in the escrow accounts once the lenders are paid.
30. Consumers must pay Defendant "closing costs" if they enter into a loan modification with their lender.
31. Defendant's oral representations during phone solicitations contradict the terms of its contract.

32. Defendant failed to make full refunds of the monies paid by consumers when consumers requested.
33. Defendant holds itself out as offering to effect the adjustment, compromise, or discharge of any account, note or other indebtedness of consumers who sign up for its loan modification and loss mitigation services.

CAUSES OF ACTION

VIOLATIONS OF THE TELEPHONE SOLICITATION SALES ACT

COUNT ONE

FAILURE TO REGISTER UNDER THE TSSA

34. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Thirty-three (1-33) of this Complaint.
35. Defendant engaged in telephone solicitations while failing to obtain a certificate of registration as a telephone solicitor from the Ohio Attorney General in violation of the TSSA, R.C. 4719.02(A) and 4719.14, an unfair and deceptive act or practice in violation of the CSPA, R.C. 1345.02.
36. Such acts and practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT TWO

MISREPRESENTATIONS MADE IN TELEPHONE SOLICITATIONS

37. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Thirty-three (1-33) of this Complaint.
38. Defendant engaged in telephone solicitations while making misrepresentations, including misrepresenting a material aspect of the nature or terms of its cancellation or refund policy, in violation of the TSSA, R.C. 4719.08(F) and 4719.14, an unfair and deceptive act or practice in violation of the CSPA, R.C. 1345.02.

39. Such acts and practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant committed said violations after the decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT THREE
FALSE OR MISLEADING STATEMENTS MADE IN TELEPHONE SOLICITATIONS

40. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Thirty-three (1-33) of this Complaint.

41. Defendant has made false or misleading statements, including representing that it can get consumers out of foreclosure, can get consumers into new loans with lower interest, can get consumers' loans reduced, and can get consumers into loan modifications with fixed rates, to induce consumers to pay for goods or services in violation of the TSSA, R.C. 4719.08(G), an unfair and deceptive act or practice in violation of the CSPA, R.C. 1345.02(A).

42. Such acts and practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

COUNT FOUR
UNFAIR AND DECEPTIVE ACTS OR PRACTICES

43. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Thirty-three (1-33) of this Complaint.

44. Defendant committed unfair and deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02(A) by making false and misleading statements.

45. Such acts and practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. Defendant committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT FIVE
UNCONSCIONABLE ACTS OR PRACTICES IN CONNECTION WITH CONSUMER TRANSACTIONS

46. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Thirty-three (1-33) of this Complaint.

47. Defendant committed unconscionable acts or practices in connection with consumer transactions in violation of R.C. 1345.03 and 1345.031(A) due to the inability of consumers to receive a substantial benefit from the subject of the consumer transactions; by entering into consumer transactions on terms the supplier knew were substantially one-sided in favor of the supplier; and by making misleading statements of opinions upon which consumers relied to their detriment.

48. Such acts and practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. Defendant committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

VIOLATIONS OF THE DEBT ADJUSTER'S ACT

COUNT SIX
CHARGING EXCESSIVE FEES

49. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs one through Thirty-three (1-33) of this Complaint.

50. Defendant engaged in debt adjusting activities, including holding out that it can effect the adjustment, compromise, or discharge of any account, note, or other indebtedness of debtors who sign up for its services, and engaged in acts prohibited by the DAA, R.C. 4710.02(A) and (B), including but not limited to charging Ohio residents a fee in excess of seventy-five

dollars for the initial set-up of its services, a violation of the DAA, R.C. 4710.02(F)(1). Pursuant to the DAA, R.C. 4710.04(A), a violation of 4710.02(F)(1) is an unfair and deceptive act or practice in violation of the CSPA, R.C. 1345.02.

51. Such acts and practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. DECLARE that each act or practice complained of herein violates the Telephone Solicitation Sales Act, R.C. 4719.01 et seq., the Consumer Sales Practices Act, R.C. 1345.01 et seq. and its Substantive Rules, Ohio Adm. Code 109:4-3-01 et seq., and the Debt Adjuster Act, R.C. 4710.01 et seq., in the manner set forth in the Complaint.
- B. ISSUE a permanent injunction enjoining Defendant Kirkland Young, LLC, doing business under the name Kirkland Young LLC or any other name(s), its agents, partners, servants, representatives, salespersons, employees, successors and assigns and all persons acting in concert and participation with it, directly or indirectly, through any corporate device, partnership or association, in connection with any consumer transaction, from committing any unfair, deceptive or unconscionable act or practice which violates the Telephone Solicitation Sales Act, R.C. 4719.01 et seq., the Consumer Sales Practices Act, R.C. 1345.01 et seq. and its Substantive Rules, Ohio Adm. Code 109:4-3-01 et seq., and the Debt Adjuster Act, R.C. 4710.01 et seq., including, but not limited to, violations of the specific statutes and rules alleged to have been violated herein.
- C. ORDER Defendant Kirkland Young LLC to pay actual and non-economic damages to all consumers injured by the conduct of the Defendant as set forth in the Complaint.

- D. ASSESS, FINE and IMPOSE upon Defendant Kirkland Young LLC a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein pursuant to R.C. 1345.07(D).
- E. ASSESS, FINE and IMPOSE upon Kirkland Young LLC a punitive damages award in an amount to be determined by the Court.
- G. ISSUE an Injunction prohibiting Defendant Kirkland Young LLC from engaging in business as a supplier in any consumer transaction in the State of Ohio until such time as they have satisfied all monetary obligations due hereunder.
- H. HOLD Defendant Kirkland Young LLC liable for all monetary amounts awarded herein.
- I. GRANT Plaintiff its costs in bringing this action.
- J. ORDER Defendant Kirkland Young to pay all court costs associated with this matter.
- K. GRANT such other relief as the court deems to be just, equitable and appropriate.

Respectfully submitted,

RICHARD CORDRAY
Ohio Attorney General



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