
EXHIBIT B

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS,
STATE OF FLORIDA,

Plaintiff,

vs.

Case No. 08-007686-08

LAURA L. HESS, ESQ.,
LAURA HESS & ASSOCIATES, P.A.,
HESS KENNEDY CHARTERED LLC, and
THE CONSUMER LAW CENTER, LLC.

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S EMERGENCY
MOTION FOR APPOINTMENT OF RECEIVER AND INJUNCTIVE RELIEF
WITHOUT NOTICE

Plaintiff, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL
AFFAIRS, STATE OF FLORIDA, by and through the undersigned attorney, files this
Memorandum of Law in Support of Motion for Appointment of Receiver and Injunctive Relief
Without Notice regarding Defendants, LAURA L. HESS, ESQ., LAURA HESS &
ASSOCIATES, P.A., HESS KENNEDY CHARTERED LLC, and THE CONSUMER
LAW CENTER, LLC (hereinafter referred to as "Defendants"), and in support thereof states as
follows.

INTRODUCTION

Initial Misrepresentations to Consumers

Defendants' scheme starts with the solicitation and procurement of distressed consumers from across the United States as clients. Defendants obtain clients by representing their expertise in the practice of debt settlement and by claiming the ability "to negotiate the repayment of the consumer's unsecured debt for significantly less than the full amount." [Ex. 2, bate stamp pp. 0124-0127]

Defendants' counsel represents that the "only representations made by the law firm are those contained in its retainer agreement, welcome letter and world-wide websites." [Ex. 3] Relevant representations from the Defendants' internet websites have been set forth above. Three versions of the Defendants' retainer agreement have been produced to the Plaintiff. [Ex. 2, bate stamp pp. 093-095; 0101-0103; 0104-0105] None of the agreements informs consumers that the Defendants' legal strategy of issuing 60-day dispute letters under the Fair Credit Billing Act may not be effective to toll or relieve the consumers' liability for payments to creditors. In fact, recent federal district court decisions and one federal court of appeals opinion have dismissed the legal strategy as advocated by the Defendants. Esquibel v. Chase Manhattan Bank USA, N.A., 487 F. Supp. 2d 818 (S.D. Tex., 2007); Esquibel v. Chase Manhattan Bank USA, N.A., 2008 U.S. App. LEXIS 9273 (5th Cir., April 29, 2008); Cunningham v. Bank One, 487 F. Supp. 2d 1189 (W.D. Wash., 2007); Eicken v. USAA Federal Savings Bank, 498 F. Supp. 2d 954 (S.D. Tex., 2007); Carmack v. Chase Manhattan Bank (USA) N.A., 521 F. Supp. 2d 1017 (N.D. Cal., 2007).

Counsel for Attorney Hess before the Florida Bar has also represented that in the Defendants' retainer agreements "clients acknowledge that legal fees are paid first and that only

after legal fees are paid does the client start paying money towards the actual settlement of debts". [Ex. 5, bates stamp pp. 1911] Plaintiff has reviewed various versions of the Defendants' retainer agreements, especially the three above referenced, and finds no such language in the Defendants' retainer agreements.

Two versions of the Defendants' welcome letter to clients have also been produced to the Plaintiff. [Ex. 2, bates stamp pp. 0114-0115] Neither version of welcome letter informs consumers that Defendants' legal strategy may not be effective to toll or relieve liability to creditors nor that legal fees are paid first and that only after legal fees are paid does the client start paying money towards settlement of the debt owed to creditors.

Accordingly, the foregoing nondisclosures and/or misrepresentations constitute deceptive trade practices under the Florida Deceptive and Unfair Trade Practices Act. However, the foregoing nondisclosures and/or misrepresentations are only the tip of the iceberg as Plaintiff's investigation has uncovered conduct that may constitute fraud, as hereinafter set forth.

STATEMENT OF FACTS

1. *Defendants' Business Plan.* Defendants' business has two components for debt settlement: law firms for legal work and a payment processing company. [Ex. 31, Cherry dep. 46] Laura L. Hess is the attorney who operates the law firms and a non-lawyer named Edward Cherry operates the payment processing company. [Ex. 30, Hess dep. 10-11, 69; Ex. 31, Cherry dep. 50-51] Laura L. Hess putatively has a law partner named Edward Thomas Kennedy who is not admitted in Florida but, according to Ms. Hess, spends most of his time in the Florida headquarters office in Coral Springs. [Ex. 30, Hess dep. 14-15] In contrast, Mr. Cherry says that Mr. Kennedy has not been at the Coral Springs headquarters office. [Ex. 31, Cherry dep. 41] The Defendants' misrepresentations do not hide that Edward Cherry is Edward Thomas Kennedy. [Ex. 36]

Defendants have organized myriad legal entities and registered numerous fictitious names in conjunction with their operations. Accordingly, the Defendants have utilized the multiple names as hereinafter set forth:

| | |
|--------------------------------|--|
| HESS KENNEDY CHARTERED LLC | CAPITAL ONE |
| HESS KENNEDY COMPANY CHARTERED | CHASE CARD SERVICES |
| THE CONSUMER LAW CENTER, LLC | CONSUMER RECOVERY TEAM |
| HESS KENNEDY HOLDINGS LTD. | LEGAL DEBT CENTER |
| HESS KENNEDY COMPANY | LAURA HESS, INC. |
| HESS KENNEDY | LEGAL DEBT CENTER, LLC |
| HESS KENNEDY FLORIDA | DISCOVER FINANCIAL |
| HESS KENNEDY CHARTERED | HESS KENNEDY, LLC |
| HESS KENNEDY PAYMENT | LAURA HESS & ASSOCIATES, PA |
| HESS KENNEDY TRUST COMPANY | THE CONSUMER LAW CENTER, LC |
| HESS KENNEDY FLORIDA | HESS KENNEDY TRUST ACCOUNT |
| GLOBAL PAYMENT PROCESSING, LLC | CAMPOS CHARTERED LAW FIRM ¹ |

[Ex. 17, 18, 24, 26]

Edward Cherry justifies the use of multiple corporate identities by saying that “whenever you see the company or the Inc., or an LLC, it’s supposed to denote the payment processing company because there’s a – you know, there’s a payment processing company, and then there’s a law firm. The law firm would have been, like I said, just a Hess, Kennedy. So if you see a company or an Inc., or an LLC, in any of the filings, those would have been the payment processing business.” [Ex. 31, Cherry dep. 45-46]

The Defendants have implemented a bifurcated business plan. Edward Cherry enunciated the crux of the plan as follows: “the gist of the business was, there’s a law firm that

¹ This entity was organized by Jeffrey S. Campos on 8/24/06 using his residence as a place of business. [Ex. 18] In November of 2006, Mr. Campos began working for the Defendants. [Ex. 32, Campos dep. 7, 13-15, 21] Defendants have used this entity as another name through which to conduct their activities as this entity’s payroll, operating and trust accounts show no activity from 11/1/07 to 3/7/08 except for 9 deposits and 7 wire transfers from Westchester Marketing Consultants, LLC, a company related to the Defendants as hereinafter explained. [Ex. 29B] This entity’s payroll, operating and trust accounts were not opened until 12/4/06, that is after Mr. Campos started working for the Defendants. [Ex. 29B]

handles the legal work, and there's a payment processing company handling the payment processing." [Ex. 31, Cherry dep. 46] Furthermore, Defendants' counsel has confirmed that the payment processing company "Hess Kennedy Chartered, LLC f/k/a Hess Kennedy Company, f/k/a Hess Kennedy Chartered is a Florida C-Corp, responsible for processing consumer payments on behalf of the law firm." [Ex. 3]

Once a consumer has signed a services contract with the Defendants, the consumer commences to make monthly payments to the Defendants. Attorney Hess has been clear that the consumer 'is required to pay its flat fee up front and is broken down into monthly payments.' [Ex. 4] Attorney Hess has reiterated to the Florida Bar that the fee is taken as the monthly payments are made and before any settlement is made with creditors. [Ex. 30, Hess dep. 43] Finally, Attorney Hess represented to the Florida Bar that consumer money beyond the Defendants' legal fee "goes into an escrow account. And once they've built up sufficient funds, and once we've received a settlement that corresponds with what they have in their escrow account, we released funds to the debt -- the creditor." [Ex. 30, Hess dep. 42]

Defendants' counsel has succinctly described the source of the Defendants' business referrals or clients: "Other than word of mouth, the Law Firms generate business by entering into Advertising Contracts with not-for-profit and for profit Credit Counseling Companies that direct clients to the law firm that do not qualify for a 'consolidation loan', a 'consolidation plan', or 'formal bankruptcy.' None of these Credit Counseling Companies share ownership, operation, or control of any entity owned, operated and controlled by the law firm or the law firm's payment processing company." [Ex. 3]

Attorney Hess confirmed to the Florida Bar in deposition testimony that the Defendants

do not pay referral fees to credit counseling companies that refer consumers to the Defendants.

[Ex. 30, Hess dep. 30] In her correspondence to the Florida Bar, Attorney Hess represented that the two credit counseling companies identified in complaints to the Florida Bar, namely Consumer Credit Counseling of America (CCCOA) and The Credit Exchange (TCE), "received no portion of the legal fees collected from [the complainants] for ... handling of the financial analysis that concluded with the independent decision by [the credit counseling companies that the complainants] did not qualify for a consolidation loan, a consolidation plan, or bankruptcy under the amended [bankruptcy] Act." [Ex. 4]

Counsel for Attorney Hess also represented to the Florida Bar that the Defendants do not pay referral fees to credit counseling companies that refer consumers to the Defendants. In correspondence dated October 12, 2007, counsel stated the following:

"The Bar mentions several companies that have referred at least one client to Ms. Hess' law firm and alleges that these firms should be considered lawyer referral services. These firms are: 1. First Consumer Debt Consolidation (FCDC); 2. Consumer Credit Counseling of America (CCCA); 3. Consumer Credit Counseling (CCC); and 4. The Credit Exchange (TCE). As is stated by my client in her letter to the Bar, my client and the law firm have no interest in any of these entities and have no control over how they conduct their affairs. Further, *as their name implies they are each a credit counseling company*. ... One of the law firms they refer to is the Hess Kennedy law firm. We are unaware of who else these companies refer business to. *The law firm does not pay for these referrals in any manner.*" (emphasis added) [Ex. 5, bate stamp pp. 1920, 1921]

Defendants Business Practices. During the course of discovery, Defendants produced to Plaintiff records for multiple bank accounts of the Defendant entities, but not of Laura L. Hess, which records consisted of approximately 10,000 pages of account statements from Bank Atlantic and Bank of America and the front and back of checks written on these accounts. In reviewing these banks records and other documents that Plaintiff has obtained during its

investigation, Plaintiff has uncovered the following facts.

In contrast to their professed business plan, Defendants business practices are substantially different. A cursory review of the records from only two accounts has discovered significant illicit payments. The two accounts are Bank Atlantic account no. 0059893048 and Bank of America account no. 5564384034.

On May 16, 2007, Defendant Laura L. Hess' deposition was taken by the Florida Bar in regard to disciplinary proceedings that have been initiated against Attorney Hess. Attorney Hess testified that Edward Cherry is the business manager for her law firm Hess Kennedy Chartered. [Ex. 30, Hess dep. 11-12, 67-69]. Edward Cherry is the principal signatory of the checks of the Defendants which Plaintiff has reviewed. [Ex. 1] Edward Cherry has signed thousands of checks written from the Defendants' aforesaid Bank Atlantic and Bank of America accounts. [Ex. 1]

Money from consumers is wired or otherwise deposited on a monthly basis into the Defendants' Bank Atlantic and Bank of America accounts ostensibly to pay the consumers' credit card debts to creditors or the Defendants' legal fees. [Ex. 1; Ex. 30, Hess dep. 41-42; Ex. 31, Cherry dep. 70-73] However, from early 2006 to November, 2007, checks totaling approximately \$12 million from Bank Atlantic account no. 0059893048 have been issued to the following persons and entities who are neither lawyers nor creditors:

| | |
|--|-------------------------------------|
| The Attorney Network; | Monster Media Delray, Inc.; |
| Consumer Credit Counseling of America; | Palm Beach Marketing Partners, LLC; |
| Consumer Debt Solutions; | Raquel Sabio-Cherry; |
| Consumer Recovery Team; | Rescue Debt, Inc.; |
| Hess Kennedy Holdings; | Barbara Roussin; |
| Jessica Jacucci; | Self Made, LLC; |
| Joseph Jacucci; | Corey Tyler; and |
| | Westchester Marketing Consultants. |

The Attorney Network received \$3,342,856.00 during the foregoing period. [Ex. 1] The

Attorney Network is ostensibly an attorney referral service. A number of complaints made to the Plaintiff state that the complainant was referred to the Defendants by The Attorney Network.

[Ex. 1]

Consumer Credit Counseling of America received \$1,927,333.00 during the foregoing period. [Ex. 1] Consumer Credit Counseling of America is ostensibly a credit counseling referral service. Consistent with the Defendants' admissions as aforesaid, a number of complaints made to the Plaintiff state that the complainant was referred to the Defendants by Consumer Credit Counseling of America. [Ex. 1]

Consumer Debt Solutions received \$199,316.00 during the foregoing period. [Ex. 1] Consumer Debt Solutions is ostensibly a credit counseling referral service which is consistent with the Defendants' admissions as aforesaid as to the source of Defendants' business referrals. None of the complaints made to the Plaintiff mentions Consumer Debt Solutions. [Ex. 1]

Consumer Recovery Team received \$132,696.00 in October and November of 2007. [Ex. 1] Consumer Recovery Team is a fictitious name entity registered on September 10, 2007 and owned by Edward Cherry. [Ex. 22]

Hess Kennedy Holdings received \$798,000.00 during the foregoing period. [Ex. 1] Hess Kennedy Holdings is one of the Defendants' entities and its manager is Edward Cherry. [Ex. 21] Attorney Hess testified to the Florida Bar that Hess Kennedy Holdings "is really the division that we operate under our payroll company." [Ex. 30, Hess dep. 13]

Jessica Jacucci received \$418,534.55 during the foregoing period. [Ex. 1] Jessica Jacucci is the maiden name of Edward Cherry's wife. [Ex. 6]

Joseph Jacucci received \$130,455.00 during the foregoing period. [Ex. 1] Joseph

Jacucci is related by marriage to Edward Cherry and was the minister who performed the marriage of Edward Cherry and Jessica Jacucci. [Ex. 6] Joseph Jacucci is also employed by the Defendants with a hire date of 4/23/07. [Ex. 7, bate stamp 1161]

Monster Media Delray, Inc. received \$905,243.00 during the foregoing period; Palm Beach Marketing Partners, LLC received \$163,241.00 during the foregoing period; and Westchester Marketing Consultants, LLC received \$349,393.00 during the foregoing period. [Ex. 1] The principals of these three entities, Jeff Gombos, Neil Carlsen and Joel Carlsen, all have connections to Edward Cherry. [Ex. 19, 20, 23]

Raquel Sabio-Cherry received \$226,915.00 during the foregoing period. [Ex. 1] Raquel Sabio-Cherry is the former wife of Edward Cherry. [Ex. 8]

Barbara Roussin received \$90,000 during the foregoing period. [Ex. 1] Barbara Roussin is connected to Edward Cherry and was a witness at the marriage of Edward Cherry and Jessica Jacucci. [Ex. 6] In addition, Barbara Roussin and Edward Cherry were the witnesses at the marriage of Eric Siverson and Rebakah Jacucci. [Ex. 9] Eric Siverson was employed by the Defendants as an accountant. [Ex. 33, Rebecca Valentine dep. 23-24]

Self Made, LLC received \$3,262,089.49 during the foregoing period. [Ex. 1] Self Made, LLC had its registered address at the Defendants' offices in Coral Springs and was an entity organized and controlled by Eric Siverson which Mr. Siverson dissolved on April 21, 2008. [Ex. 24] Attorney Hess' assistant testified to the Florida Bar that Eric Siverson was employed by the Defendants as an accountant. [Ex. 33, Rebecca Valentine dep. 23-24]

Eric Siverson, together with another company of his called Home Plate Consultants, LLC and Global Payment Processing, LLC, an Edward Cherry organized LLC, are all titled on

account no. 0579002101 at BankUnited. [Ex. 29C; Ex. 24] On October 19, 2007, Defendants, through a check signed by Edward Cherry, issued a check for \$45,000 payable to Global Payment Processing. [Ex. 1] From 11/9/07 to 2/4/08, the sum of \$1,108,912.00 was also transferred or otherwise deposited into said account no. 0579002101 at BankUnited. [Ex. 29C]

Corey Tyler received \$96,000.00 from March 2, 2007 to October 12, 2007. [Ex. 1] Corey Tyler is employed by the Defendants and his hire date is September 10, 2007. [Ex. 7, bate stamp p. 1165]

Rescue Debt, Inc. received \$89,795.02 during the foregoing period. [Ex. 1] Rescue Debt, Inc. is ostensibly a credit counseling referral service which is consistent with the Defendants' admissions as aforesaid as to the source of Defendants' business referrals. None of the complaints made to the Plaintiff mentions Rescue Debt, Inc. [Ex. 1]

In addition to the foregoing, the Defendants made wire transfers from Bank of America account no. 5564384034 to The Credit Exchange Corp. and Coastal Credit Solutions. The Credit Exchange (TCE) received approximately \$7,500,000.00 from May, 2006 through April 9, 2008. [Ex. 1] Coastal Credit Solutions received approximately \$800,000.00 from December 15, 2006 through April 9, 2008. [Ex. 1] The Credit Exchange (TCE) and Coastal Credit Solutions are ostensibly credit counseling referral services which would be consistent with the Defendants' admissions as aforesaid as to the source of Defendants' business referrals. Moreover, Attorney Hess' correspondence and her counsel's correspondence to the Florida Bar confirm that The Credit Exchange Corp. (TCE) is a credit counseling company. [Ex. 4; Ex. 5, bate stamp pp. 1920-1921]

Defendants also entered into a contract purportedly for advertising with Debt Settlement of America (DSA). The contract calls for DSA to advertise the services of the Defendants but not the Defendants' name and specifies monthly payments of \$18,000.00 from the Defendants to DSA. [Ex. 10] Debt Settlement of America was a registered fictitious name entity owned by Hess | Kennedy, LLC and Consumer Credit Counseling of America, Inc. [Ex. 25]

On September 30, 2007, Edward Cherry registered three fictitious names with the Florida Department of State, Division of Corporations, which names mimic established and well known national banks. The three fictitious names Edward Cherry registered are CAPITAL ONE, CHASE CARD SERVICES and DISCOVER FINANCIAL. [Ex. 26]

On and after September 30, 2007, Defendants, through checks signed by Edward Cherry, issued numerous checks payable to CAPITAL ONE which checks were deposited into account no. 0579001970 at BankUnited, F.S.B. [Ex. 1; Ex. 29D] Capital One Financial Corporation is a national bank chartered under the laws of the United States of America. Capital One Financial Corporation does not maintain any accounts or have any relationship with BankUnited, F.S.B. for the deposit of checks payable to Capital One for payment of credit card bills of customers of Capital One Financial Corporation. [Ex. 34, Affidavit of Steven A. Mikita]

On and after September 30, 2007, Defendants, through checks signed by Edward Cherry, issued numerous checks payable to CHASE CARD SERVICES which checks were deposited into account no. 0579001954 at BankUnited, F.S.B. [Ex. 1; Ex. 29D] Chase Bank USA, N.A. is a national bank chartered under the laws of the United States of America. Chase Bank USA, N.A. does not maintain any accounts or have any relationship with BankUnited, F.S.B. for the deposit of checks payable to Chase for payment of credit card bills of customers of

Chase Bank USA, N.A. [Ex. 35; Affidavit of Keith W. Schuck]

The total amount that has been deposited into these two aforesaid accounts plus three other accounts at BankUnited, F.S.B. through checks issued by Defendants and signed by Edward Cherry is in excess of \$4 million. [Ex. 29D] The five aforesaid accounts at BankUnited, F.S.B. are titled in the name of Edward Cherry. [Ex. 29D]

In addition to the foregoing five accounts at BankUnited, F.S.B. titled to Edward Cherry, Defendants, through checks signed by Edward Cherry, issued eight checks payable to BANK UNITED to be credited to account no.0531129160. [Ex. 1] The total amount of these checks during the year 2007 is \$122,438.45. [Ex. 1] Bank United account no. 0531129160 is the account for the mortgage held by BankUnited on 10985 NW 71st Court, Parkland, Florida which is Edward Cherry's residence. [Ex. 11]

ARGUMENT

1. *Legal Standards.* The Office of the Attorney General, Department of Legal Affairs, State of Florida is prosecuting the Defendants for violations of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501 Part II, Florida Statutes (2007), hereinafter referred to as "the Act" or "FDUTPA". Defendants' business activities with consumers are acts within the purview of Chapter 501, Part II, Florida Statutes (2007). The Act is to be "construed liberally" to, *inter alia*, "protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." § 501.202(2), Florida Statutes (2007).

The Defendants are engaged in "trade or commerce", defined by the Act as "the advertising, soliciting, providing, offering or distributing...of any good or service, or any

property... or thing of value". F.S. § 501.203(8). Consumers are defined as "an individual; ... business; firm; association; joint venture; partnership; ... or any other group or combination."

F.S. § 501.203(7). The purpose of the Act is to "protect the consuming public ... from those who engage in ... unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." F.S. § 501.202(2). Violations of the Act may be based on violations of "any law, statute, rule, regulation, or ordinance which proscribes...unfair, deceptive, or unconscionable acts or practices." F.S. § 501.203(3)(c).

Florida Rules of Civil Procedure, Rules 1.610 and 1.620, authorize the appointment of a receiver under appropriate circumstances. The Plaintiff is statutorily authorized to seek appointment of a receiver pursuant to Section 501.207(3), Florida Statutes (2007).

Generally, "injunctive relief is an extraordinary remedy to preserve the status quo, pending a final hearing, which ordinarily should not be granted absent a showing of irreparable harm; a clear legal right to the relief requested or substantial likelihood of success on the merits; an inadequate remedy at law; and considerations of the public interests. ... (citations omitted) ... However, because section 501.207... expressly authorizes the Department to seek injunctive relief on behalf of the state, the Department does not have to establish irreparable harm, lack of an adequate legal remedy or public interest. ... (citations omitted) ... The Department's sole burden at a temporary injunction hearing under FDUTPA is to establish that it has a clear legal right to a temporary injunction." Millennium Communs. & Fulfillment, Inc. v. Office of the AG, Dep't of Legal Affairs, 761 So. 2d 1256, 1260 (Fla. Dist. Ct. App. 3rd Dist. 2000).

The foregoing principles expressly refer to injunctive relief but the principles are equally applicable to the appointment of a receiver. Florida Rule of Civil Procedure, Rule 1.620(a).

("The provisions of rule 1.610 as to notice shall apply to applications for the appointment of

receivers.”) In Insurance Management, Inc. v. McLeod, 194 So.2d 16, 17 (Fla. Dist. Ct. App. 3rd Dist. 1967), the court stated that the “power to appoint a receiver is inherent in equity jurisdiction and its exercise lies in the sound discretion of the chancellor to be granted or withheld according to the facts and circumstances of the particular case.” The McLeod court further acknowledged that “a temporary receiver is appointed only to preserve the property and to protect the rights of all parties therein.” Id. at 18.

In State v. Beeler, 530 So. 2d 932 (1988), the Supreme Court reviewed both the issuance of a temporary injunction and the appointment of a receiver. In its opinion the Court enunciated the following standard:

“A temporary injunction without notice is an extraordinary remedy and should be granted sparingly. ... (citations omitted) ... The allegations verified by the presenter must be strong and clear, and the trial judge should raise in his or her own mind all possible responses a defendant could raise if present. Because the incursion upon precious due process rights is facilitated by issuance of ex parte orders, trial courts should issue them only where an immediate threat of irreparable injury ‘which forecloses opportunity to give reasonable notice’ exists. ... (citation omitted) ... In such circumstances the trial court must balance the harm sought to be prevented against the rights of notice and hearing.” Id. at 933-934.

The Supreme Court in Beeler felt “compelled to mention the sufficiency of the allegations” in language which is germane to the instant application. The Court said:

“The state’s complaint is replete with averments of fraud and misrepresentations against Beeler, including the creation of bogus mortgage paper, concealing funds, and inflating property values. Sworn affidavits reveal that Beeler had to continuously seek out new investors to avoid the collapse of his scheme. In light of the evidence of an ongoing course of fraud and deception the trial court did not abuse its discretion when it issued the temporary injunction. ... (citation omitted) ... The legislature enacted chapters 517 and 494 to protect the public from fraud and deceit in the investment in securities. The laws are especially concerned with inexperienced investors who may be duped by unscrupulous brokers. Because of the statutes’ public importance, the state should not be unduly restricted in its attempt to enforce them.” Id. at 934.

2. *Additional Deceptive Trade Practices.* Plaintiff has uncovered facts establishing that Defendants have engaged in conduct that constitutes deceptive trade practices under the Florida Deceptive and Unfair Trade Practices Act, Chapter 501 Part II, Florida Statutes (2007).

First, in regard to the Defendants' deceptive trade practices under FDUTPA, the court in State v. Beeler, supra, discusses the defendant's continuously seeking new investors [consumers] to avoid the collapse of the scheme in an ongoing course of fraud and deception. Id. at 934. Similarly, the Defendants herein have consumers continuously sign up for debt settlement services and make monthly payments into the Defendants' Bank Atlantic and Bank of America accounts. [Ex. 30, Hess dep. 41-42; Ex. 31, Cherry dep. 70-73] In order to keep the scheme going, Defendants undoubtedly make some payments to various creditors of their "clients".

Consumers become clients of the Defendants to avail themselves of Defendants' advertised expertise in debt settlement (also called "debt negotiation"). [Ex. 2, bate stamp 0124-0127] Defendants represent that money of consumers beyond the Defendants' legal fee "goes into an escrow account. ... and once we've received a settlement that corresponds with what they have in their escrow account, we released funds to the debt - the creditor." [Ex. 30, Hess dep. 42] Thus, Defendants' bank accounts should reflect only two types of disbursements from the funds that consumers transfer to the Defendants for debt settlement: money to the Defendants for legal services and money to creditors to pay the consumers' indebtedness. Edward Cherry confirmed this in response to a question about how the law firm gets its fee: "Some of the moneys are legal fees, and then some of the moneys are earmarked for escrow." [Ex. 31, Cherry dep. 73]

Notwithstanding their representations, the Defendants have devised an unscrupulous scheme to divert funds. Defendants have diverted millions of dollars to themselves and a coterie

of family and associates who were not creditors of consumers. Any costs of doing business that Defendants incurred should have been paid from an operating account into which the legal fees went after the fees were separated from the commingled escrow funds of the consumers. Edward Cherry confirmed this as follows: "a report would come out identifying what the total escrows would be versus legal fees, and then the escrows would be separated." [Ex. 31, Cherry dep. 75] Accordingly, it is submitted that the Defendants diversion of millions of dollars to themselves and a coterie of family and associates who were not creditors of consumers as hereinafter set forth constitutes deceptive trade practices.

Plaintiff submits that the following disbursements from Bank Atlantic account no. 0059893048 are illicit diversions of consumer money to entities and individuals who are not creditors and who had no right to the disbursement.

Attorney Network. The Attorney Network received at least \$3,342,856.00. The Attorney Network is ostensibly an attorney referral service operated by various individuals, including Attorney Michael Parks. [Ex. 27] Attorney Parks has represented Edward Cherry on various matters, including the transfer of ownership of Mr. Cherry's residence to Mr. Cherry through a trust using Mr. Cherry's brother, Eric, as trustee. [Ex. 11] Despite Defendants' aforesaid representations that they do not pay referral fees for debt settlement clients, the facts establish the falsity of those statements as to the Attorney Network. Moreover, the facts establish a violation of F.S. § 877.02 which makes it a misdemeanor of the first degree for both the Defendants and the principals of the Attorney Network to solicit or procure legal business, either directly or indirectly, or to make it a business to solicit or procure legal business.

Consumer Credit Counseling of America. Consumer Credit Counseling of America received at least \$1,927,333.00. Eric Nabydoski, the principal of Consumer Credit Counseling

of America, has a connection to Attorney Hess, Edward Cherry and the Hess Kennedy entities as evidenced by the joint registration and ownership of the fictitious entity named Debt Settlement of America, notwithstanding Attorney Hess' denial in testimony to the Florida Bar. [Ex. 25; Ex. 28; Ex. 30, Hess dep. 15] Despite Defendants' aforesaid representations that they do not pay referral fees for debt settlement clients, the facts establish the falsity of those statements as to Consumer Credit Counseling of America. Moreover, the facts establish a violation of F.S. § 877.02 which makes it a misdemeanor of the first degree for both the Defendants and the principals of Consumer Credit Counseling of America to solicit or procure legal business, either directly or indirectly, or to make it a business to solicit or procure legal business.

Consumer Debt Solutions. Consumer Debt Solutions received at least \$199,316.00. Despite Defendants' aforesaid representations that they do not pay referral fees for debt settlement clients, the facts establish the falsity of those statements as to Consumer Debt Solution. Moreover, the facts establish a violation of F.S. § 877.02 which makes it a misdemeanor of the first degree for both the Defendants and the principals of Consumer Debt Solutions to solicit or procure legal business, either directly or indirectly, or to make it a business to solicit or procure legal business.

Consumer Recovery Team. Consumer Recovery Team received at least \$132,696.00. Consumer Recovery Team is a fictitious entity owned by Edward Cherry and is the named payee on one of the accounts, namely account no. 0579001962, at Bank United controlled by Edward Cherry. [Ex. 22; Ex. 29D]

Hess Kennedy Holdings. Hess Kennedy Holdings received at least \$798,000.00. While Attorney Hess testified to the Florida Bar that Hess Kennedy Holdings "is really the division that we operate under our payroll company" [Ex. 30, Hess dep. 13], the Defendants operating

expenses should be paid from the Defendants' independent operating account into which its fees are separated per Edward Cherry's admission. [Ex. 31, Cherry dep. 75]

Jessica Jacucci. Jessica Jacucci received at least \$418,534.55. As Edward Cherry's wife, Jessica Jacucci is certainly not a creditor and thus not entitled to any of the consumers' funds. Moreover, Defendants attempt to hide the payments through notations on the checks such as PIP, pain and suffering, refund, etc. [Ex. 12, checks numbered 2038, 2137, 2650, 2826, 2902, bate stamp pp. HK.FL.AG. 03810, 03791, 03666, 03631, 03612]

Joseph Jacucci. Joseph Jacucci received at least \$130,455.00. As Joseph Jacucci is the brother-in-law of Edward Cherry and an employee of Defendants, he is certainly not a creditor and thus not entitled to any of the consumers' funds. Moreover, Defendants attempt to hide the payments through notations on the checks such as PIP, reimbursement, etc. [Ex. 13, checks numbered 2257, 2281, 2300, 2980; bate stamp pp. HK.FL.AG. 03759, 03747, 03753, 03748, 03593, 03595]

Monster Media Delray, Inc., Palm Beach Marketing Partners, LLC and Westchester Marketing Consultants, LLC. Monster Media Delray, Inc., Palm Beach Marketing Partners, LLC and Westchester Marketing Consultants, LLC received at least \$1,417,847.00. The principals of these three entities, Jeff Gombos, Neil Carlsen and Joel Carlsen, all have connections to Edward Cherry and the Defendants.

Jeff Gombos and Joel Carlsen are the principals of Monster Media Delray, Inc. which was incorporated on June 9, 2004. Jeff Gombos and Joel Carlsen are also principals of First Consumer Debt Consolidation, Inc. with Edward Kennedy. [19] In addition, HESS | KENNEDY, LLC registered the fictitious name First Consumer Debt Consolidation on August 23, 2004 with the same business address in Delray Beach, FL as First Consumer Debt

Consolidation, Inc. [20] Attorney Hess testified to the Florida Bar that First Consumer Debt Consolidation is a principal source of referrals to Defendants. [Ex. 30, Hess dep. 30]

Joel Carlsen organized Palm Beach Marketing Partners, LLC on 5/23/06 using the same business address in Delray Beach, FL as First Consumer Debt Consolidation, Inc. (n.b. 2006 Annual Report changes address to 4257 East Main Street, Jupiter, FL). [Ex. 23]

Neil Carlsen and Joel Carlsen organized Westchester Marketing Consultants, LLC on 3/8/07 using the business address of Palm Beach Marketing Partners, LLC (4257 East Main Street, Jupiter, FL). [Ex. 23] Neil Carlsen is also the Director of Business Development for Defendants' Consumer Law Center. [Ex. 14, Letter dated 2/8/08]

The Defendants' disbursement of such substantial sums to associates for putative marketing cannot be justified, in view of Jeff Gombos', Joel Carlsen's and Neil Carlsen's involvement in generating business for the Defendants. Moreover, any disbursements to Monster Media Delray, Inc., Palm Beach Marketing Partners, LLC and Westchester Marketing Consultants, LLC for advertising should be paid from the Defendants' independent operating account into which its fees are separated per Edward Cherry's admission. [Ex. 31, Cherry dep. 75]

Despite Defendants' aforesaid representations that they do not pay referral fees for debt settlement clients, the facts establish the falsity of those statements as to Monster Media Delray, Inc., Palm Beach Marketing Partners, LLC and Westchester Marketing Consultants, LLC. Moreover, the facts establish a violation of F.S. § 877.02 which makes it a misdemeanor of the first degree for both the Defendants and the principals of Monster Media Delray, Inc., Palm Beach Marketing Partners, LLC and Westchester Marketing Consultants, LLC to solicit or

procure legal business, either directly or indirectly, or to make it a business to solicit or procure legal business.

Raquel Sabio-Cherry. Raquel Sabio-Cherry received at least \$226,915.00. As the former wife of Edward Cherry, Raquel Sabio-Cherry is certainly not a creditor and thus not entitled to any of the consumers' funds.

Barbara Roussin. Barbara Roussin received at least \$90,000.00. As an acquaintance of Edward Cherry, Barbara Roussin is certainly not a creditor and thus not entitled to any of the consumers' funds.

Eric Siverson. Eric Siverson, through his companies (Self Made, LLC and Home Plate Consultants, LLC) received at least \$4.3 million. Eric Siverson is connected to Attorney Hess, Edward Cherry and the Defendants through his employment as their accountant. Accordingly, Eric Siverson is certainly not a creditor and thus not entitled to any of the consumers' funds. Moreover, Moreover, Defendants attempt to hide the payments by making the transfers payable to Eric Siverson's entities but one transfer on 2/16/07 for \$34,500.00 was inadvertently issued with the payee named as "Eric Siverson". [Ex. 15, bates stamp p. HK.FL.AG. 03180] This transfer was returned on 2/21/07 and a new transfer for the same amount was issued on 2/21/07 to Self Made, LLC. [Ex. 15, bates stamp p. HK.FL.AG. 03181]

Corey Tyler. Corey Tyler received at least \$96,000.00. As Corey Tyler is employed by the Defendants, he is certainly not a creditor and thus not entitled to any of the consumers' funds. Moreover, Defendants attempt to hide the payments through notations on the checks such as PIP, recoupment, etc. [Ex. 16, checks numbered 2280, 2298, bates stamp pp. HK.FL.AG. 03754, 03748]

Rescue Debt, Inc. Rescue Debt, Inc. received at least \$89,795.02. Despite Defendants' aforesaid representations that they do not pay referral fees for debt settlement clients, the facts establish the falsity of those statements as to Rescue Debt, Inc. Moreover, the facts establish a violation of F.S. § 877.02 which makes it a misdemeanor of the first degree for both the Defendants and the principals of Rescue Debt, Inc. to solicit or procure legal business, either directly or indirectly, or to make it a business to solicit or procure legal business.

The Credit Exchange Corp. (TEC) and Coastal Credit Solutions. The Credit Exchange Corp. and Coastal Credit Solutions received substantial sums from Bank of America account no. 5564384034. The Credit Exchange (TCE) received at least \$7,500,000.00 and Coastal Credit Solutions received at least \$800,000.00. Despite Defendants' aforesaid representations that they do not pay referral fees for debt settlement clients, the facts establish the falsity of those statements as to The Credit Exchange Corp. and Coastal Credit Solutions. Moreover, the facts establish a violation of F.S. § 877.02 which makes it a misdemeanor of the first degree for both the Defendants and the principals of The Credit Exchange Corp. and Coastal Credit Solutions to solicit or procure legal business, either directly or indirectly, or to make it a business to solicit or procure legal business.

Second, on and after September 30, 2007, Defendants, through checks signed by Edward Cherry, issued numerous checks payable to CAPITAL ONE and CHASE CARD SERVICES which checks were deposited into two accounts (account nos. 0579001970 and 0579001954) at BankUnited, F.S.B.

CAPITAL ONE and CHASE CARD SERVICES. Capital One Bank and Chase Bank issue credit cards to consumers. Capital One Bank and Chase Bank are federally chartered banks. Capital One Bank and Chase Bank do not maintain any accounts or have any relationship with

BankUnited, F.S.B. for the deposit of checks payable to Capital One Bank and Chase Bank for payment of credit card bills of customers. A sampling of checks has disclosed deposits since September 30, 2007 to the two aforesaid accounts at BankUnited, F.S.B. in a total amount in excess of \$150,000.00. On September 30, 2007, Edward Cherry registered the fictitious names CAPITAL ONE and CHASE CARD SERVICES with the Florida Department of State, Division of Corporations for use in establishing the two aforesaid accounts which are titled to him. [Ex. 29D]

It is submitted that Defendants and Edward Cherry have no legitimate reason to register the fictitious names CAPITAL ONE and CHASE CARD SERVICES. Moreover, officers from the two banks, Capital One Bank and Chase Bank, have affirmed that their financial institutions do not have any interest in the two accounts controlled by Edward Cherry at BankUnited, F.S.B. standing in the name of CAPITAL ONE and CHASE CARD SERVICES. Finally, Defendants attempt to hide the diversion of money into accounts controlled by Edward Cherry through the ruse of issuing checks that appear intended for Capital One Bank and Chase Bank to pay consumer credit card debts when the money is really destined for the personal accounts of Edward Cherry, Attorney Hess and their associates. This conduct constitutes deceptive trade practices under FDUTPA.

Third, Defendants, through checks signed by Edward Cherry, issued at least eight checks payable to BANK UNITED to be credited to BankUnited account no.0531129160, the BankUnited mortgage account on Edward Cherry's residence.

Payment of Edward Cherry's mortgage. Payment of Edward Cherry's mortgage held by BankUnited should have been made from Edward Cherry's personal account with his personal funds, not from the funds of consumers reportedly earmarked for creditors. [Ex. 31, Cherry

dep.73] The issuance of these checks to pay the BankUnited mortgage loan on Edward Cherry's residence at 10985 NW 71st Court, Parkland, Florida constitutes deceptive trade practices. In addition, the use of funds reportedly earmarked for creditors of the Defendants' clients to pay Edward Cherry's mortgage constitutes "fraudulently secreting ... property" to the detriment of Defendants' clients. F.S. § 76.05. Thus, this conduct uses the proceeds of fraud to purchase, invest in or improve real property.

CONCLUSION

Plaintiff's exhibits filed in support of this motion clearly present prima facie evidence of violations of Chapter 501, Part II, Florida Statutes (2007). The language of the United States District Court for the Southern District of Florida in U.S. v. Sene X Eleemosynary Corp., Inc., 479 F.Supp. 970 (S.D.Fla., 1979) is germane to the Plaintiff's request for appointment of a receiver: "Where an injunction is authorized by statute, it is proper to issue such an order to restrain violations of the law if the statutory conditions are satisfied." Id. at 980. "Proof of irreparable harm . . . need not be established . . ." and "... the government is not bound to prove the absence of an adequate remedy at law where a statute authorizes an injunction." Id. at 981.

A statutorily created right to equitable relief exists in this case. Therefore, the appointment of a receiver and injunctive relief without notice regarding **LAURA L. HESS, ESQ., LAURA HESS & ASSOCIATES, P.A., HESS KENNEDY CHARTERED LLC, and THE CONSUMER LAW CENTER, LLC** is clearly in the public interest based upon the allegations contained in the motion and instant memorandum as supported by the exhibits filed herewith.

IT IS HEREBY CERTIFIED that a true and correct copy of this Memorandum of Law and accompanying Exhibits will be served with the Emergency Motion for Appointment of Receiver and Injunctive Relief Without Notice.

Dated this 17th day of July, 2008

Respectfully Submitted,

BILL McCOLLUM

Attorney General

By: Fulvio Joseph Gentili


Assistant Attorney General

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