

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

FILED
POLK COUNTY, IA
11 MAR 31 AM 8:28
CLERK DISTRICT COURT

STATE OF IOWA ex rel.
THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA,
99AG25112

Plaintiff,

v.

ASSOCIATED COMMUNITY SERVICES,
INC., a Michigan corporation;

Defendant.

Equity No. CE 66172

CONSENT JUDGMENT

On this 31st day of March, 2011, the Court, having been presented by

Assistant Attorney General Steve St. Clair with this Consent Judgment and having reviewed the file in this matter, determines that final judgment should be entered herein, and finds as follows:

1. Plaintiff State of Iowa ex rel. Thomas J. Miller, Iowa Attorney General, has filed a Petition in Equity against the above-captioned defendant ("Defendant") pursuant to Iowa Code § 714.16 (2009), the Iowa Consumer Fraud Act, and this Consent Judgment, which has been approved by Plaintiff and Defendant, is intended to resolve this litigation.

2. The Court has jurisdiction of the parties and subject matter.

3. Defendant denies wrongdoing or liability of any kind, but has agreed to entry of this Consent Judgment in order to resolve the dispute with Plaintiff. This Consent Judgment represents the signatories' settlement of a disputed claim, and the Court has made no finding of wrongdoing on the part of Defendant.

4. The Court finds that this Consent Judgment should be entered.

5. This Consent Judgment constitutes a full and final resolution of any and all claims by the Iowa Attorney General against Defendant for alleged violations of the CFA that occurred prior to the effective date of this Consent Judgment in connection with the acts and practices addressed in the Petition in this cause.

For purposes of this Consent Judgment:

"Advertisement" (including other forms of the word *"advertise"*) has the meaning set forth at Iowa Code § 714.16 (1) (a) (2009).

"Consumer" includes each person who is contacted by a representative of Defendant and is solicited to provide material support to a donee organization by donating funds, becoming a sponsor, buying advertising, making a purchase, or otherwise; *"consumer"* includes any person from whom such support is solicited, whether or not the person in fact provides any support.

"Donee organization" means any entity for which Defendant engages in fundraising.

"Fundraising" means any and all forms of soliciting donations and/or raising funds for a donee organization, pursuant to an arrangement that provides *inter alia* for how the proceeds of fundraising are to be divided between Defendant and the donee organization; *"fundraising"* includes without limitation the sale of advertising, sponsorships, event tickets, or other merchandise in connection with supporting a donee organization. *"Fundraiser"* means one who engages in fundraising.

"Merchandise" has the meaning set forth at Iowa Code § 714.16 (1)(i) (2009).

"TSR" stands for Telephone Sales Representative, and includes each person who acts for Defendant, whether as an employee, as an independent contractor, or as an employee of an independent contractor, in using the telephone to raise funds through direct contact with Iowa residents (including businesses).

IT IS THEREFORE ORDERED that Defendant, whether through principals, employees, agents, servants, representatives, subsidiaries, affiliates, successors, assigns, or any other persons, shall refrain from engaging, directly or indirectly, in acts or practices that violate the Iowa Consumer Fraud Act, Iowa Code § 714.16, and from violating the commitments to

which it agreed in the lettered paragraphs below in connection with the solicitation of contributions for charitable purposes, either directed to Iowa residents or from an Iowa location.

A. Defendant agrees to refrain from stating or implying that a TSR is a member of, an employee of, or a volunteer for a donee organization, or is otherwise associated with such organization in any manner other than as a professional fundraiser or a representative of a professional fundraiser.

B. Defendant agrees in the course of each fundraising contact, prior to any description of the cause for which funds are being raised, any description of the donee organization, or any actual solicitation, to state clearly: the full name of the company or business acting as the professional fundraiser or an alternative legally-filed name, and the fact that such entity is a professional fundraiser.

C. Defendant agrees to refrain from stating or implying that a substantial portion of a donation will go to the donee organization, or for a charitable or other purpose for which funds are solicited, if in fact less than 50% of donated funds go to such entity or purpose after the fundraiser has received its share. Without limiting the foregoing, a representation by a TSR that a donor's check or donation will be sent directly to the donee organization, or that the donee organization controls the funds, is prohibited by this subparagraph unless such statement is true and is accompanied by such additional explanation of the actual distribution of donated funds as is necessary to state clearly how the funds are divided.

D. Defendant agrees to refrain from stating or implying that a TSR is calling from some location other than the location from which the TSR in fact is calling.

E. Defendant agrees to refrain from stating or implying that a donation will provide more of a benefit to the consumer's own community, region, or state than is in fact the case.

F. Defendant agrees to refrain from making any false representation of a material fact in the course of fundraising.

G. Defendant agrees to refrain from stating or implying that a fundraising contact is part of a periodic drive or campaign, whether annual or otherwise, if in fact the fundraising for the donee organization in question is substantially continuous year around.

H. Defendant agrees to refrain from stating or implying that registration pursuant to state law, whether pursuant to Iowa Code Ch. 13C or otherwise, constitutes any form of endorsement or approval by the authorities, or exaggerating the extent to which any such registration in and of itself protects against deception, abuse, or unfair practices.

I. Defendant agrees to refrain from providing to TSRs, or any employee who directly supervises TSRs, any form of performance bonus, such as a pay boost, periodic bonus, or other financial incentive, based on the number of donations or dollar volume of donations pledged, or

the number or dollar volume of donations received, unless the provision of such performance bonus is also expressly contingent on compliance by the TSR or supervisor receiving the bonus with the requirements of this Consent Judgment, company policies, procedures and practices established pursuant to this Consent Judgment, and the laws of Iowa.

J. Upon receipt of a bona fide complaint alleging a violation of Iowa law that is submitted to the Iowa Attorney General, Defendant agrees to provide to the office of the Iowa Attorney General, within ten business days of receipt of a written request which includes a copy of the complaint and the complainant's name, address and telephone number from that office sent by certified mail, the name of the TSR who made the telephone call which generated the complaint, and the beginning date and (where applicable) ending date of the TSR's employment. Defendant agrees to work diligently in cooperation with the Iowa Attorney General in any such complaint investigation as well as to work toward an amicable resolution of the complaint.

K. Defendant agrees to establish procedures, policies and practices reasonably designed to ensure that no fewer than 5 % of all telephone calls made to Iowa residents are recorded, that such recordings are clearly audible, and that such recordings are preserved intact for at least forty-five (45) days. Defendant shall not intentionally delete any recordings and all of its recording shall be conducted in such a manner that no representative whose calls are or may be recorded has any information bearing on which calls are being recorded and/or saved, and which are not.

L. Defendant agrees to establish procedures, policies and practices reasonably designed to ensure that a TSR responding to a consumer's question about the percentage or proportion of donations that are ultimately provided for the use of the donee organization, and/or the percentage or proportion of donations that are directed to the entity engaged in professional fundraising, provides an accurate and informative response and does not claim a lack of knowledge or refer the consumer to a website or other potential source of information.

M. Defendant agrees to refrain from implying, through the use of a mailing address other than an address of an office of Defendant or the address of a donee organization, that Defendant or the donee organization has more of a connection to a community, region, or state than is in fact the case. This provision does not preclude Defendant from using a Private Mail Box Service in Iowa to the extent that such use is reasonably required to attain legitimate business objectives (e.g., administrative efficiency or cost savings) and Defendant makes such disclosures as are reasonably necessary to ensure that such use is not misleading as to the above-referenced connection.

N. Defendant agrees within thirty (30) days of entry of this Consent Judgment to implement hiring, training, supervision, monitoring, compensation, and subcontracting policies and practices reasonably designed to ensure that employees, subcontractors, and other agents under the control or supervision of Defendant are in full compliance with the injunctive provisions of this Consent Judgment that apply or may apply to their conduct.

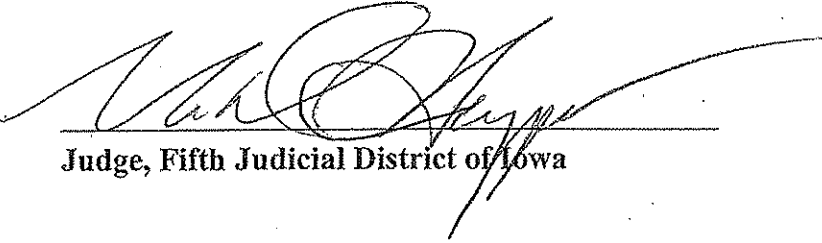
O. Defendant agrees to include content in its new employee and current employee training program which ensures that employees receive instruction regarding how to conform their conduct to the requirements of this Consent Judgment.

IT IS FURTHER ORDERED that, in addition to whatever other legal remedies may be available, a violation of this Consent Judgment constitutes a violation of the Iowa Consumer Fraud Act, Iowa Code § 714.16 (2009), and each violation by Defendant of this Consent Judgment, if established by a preponderance of the evidence in a Consumer Fraud Act action by the Attorney General, gives rise to a civil penalty in an amount to be determined by the court. In any such action by the Attorney general, Defendant may seek to rebut the presumptive civil penalty by establishing that the violation(s) were isolated and occurred despite the implementation of procedures reasonably designed to avoid such violation(s).

IT IS FURTHER ORDERED that, pursuant to Iowa Code § 714.16, Defendant pay to the Attorney General, on or before the execution of this Consent Judgment, \$20,000.00, and, within one year from entry of this Consent Judgment, another \$15,000.00, both payments to be deposited in the consumer fraud enforcement fund referred to in Iowa Code § 714.16C.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction for purposes of enforcement of this Consent Judgment, and that Defendant shall pay court costs.

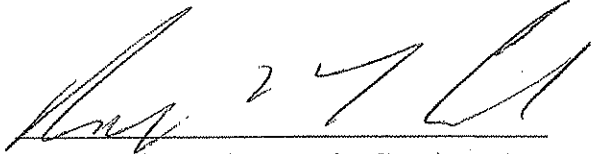
SO ORDERED.




Judge, Fifth Judicial District of Iowa

Approved:


Date: 3-11-11


For Associated Community Services, Inc.

Date: 3-20-10


Gordon Fischer AS TO FORM ONLY
Attorney for Defendant

Date: 3-31-11


Steve St. Clair
Assistant Iowa Attorney General