

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,

CASE NO. CACE 11-010804 (05)

Plaintiff,

vs.

JLF UNIVERSITY, INC., ADVANCE TRAINING
ACADEMY, INC., ALLIED HEALTH
COLLEGE AT JLF UNIVERSITY INC.,
GREEN CROSS SCHOOL OF NURSING, INC.,
JOSEPH LAFORTUNE, and
ALINE LAFORTUNE,

Defendants.

FINAL ORDER OF SUMMARY JUDGMENT

This matter coming to be heard by the Court on Plaintiff's Motion for Summary Judgment as to Damages, and the Court having considered the papers and having heard oral argument, the Court makes the following findings:

1. The Court has already entered summary judgment on February 27, 2012, against all Defendants as to liability on the stated cause of action under the Florida Deceptive and Unfair Trade Practices Act, Florida Statutes Section 501.201 *et seq.* Specifically the Court found that:

a. Defendants' acts and practices violated the Florida Deceptive and Unfair Trade Practices Act, Florida Statutes Section 501.201 *et seq.*, in that Defendants (a) misrepresented that graduates of the Defendants' nursing schools would be eligible for licensure by the Florida Board of Nursing, (b) misrepresented the schools accreditation; and (c) misrepresented the costs of the program.

b. The Court further found Green Cross to be a mere continuation of JLF University, Inc., Advance Training Academy, Inc., and Allied Health College at JLF University, Inc. (referred to collectively herein as the “JLF Schools”) the JLF Schools and liable for the obligations of the JLF Schools, and found Joseph LaFortune and Aline LaFortune individually liable for the acts and practices of the JLF Schools as they participated directly in the acts and practice at issue or possessed the authority to control them.

c. The Court had reserved ruling only upon the appropriate measure of damages.

2. The undisputed material facts as established by the affidavits submitted by Plaintiff and other evidence demonstrate at least 67 consumers that were each injured in the amount of at least \$7,000, for total monetary damages of \$469,000.

3. Attorneys’ fees and costs were incurred by Plaintiff in the amount of \$80,922,20 including an estimated 2 hours in connection with this motion and hearing, which the Court finds to be reasonable and appropriate incurred.

Having heard the parties’ argument and reviewed the evidence submitted, the Court finds there is no dispute of material fact and entry of final judgment is appropriate. Therefore, based upon the prior ruling of this Court and the foregoing factual findings, it is therefore

ORDERED AND ADJUDGED:

1. Final judgment is hereby entered on the stated cause of action under the Florida Deceptive and Unfair Trade Practices Act, Florida Statutes Section 501.201 in favor of the Office of the Attorney General, Department of Legal Affairs, State of Florida (the “Department”) and jointly and severally against Defendants Green Cross School of Nursing, Inc. and Aline LaFortune (“Defendants”). A separate consent judgment has been entered against the remaining

Defendants, namely JLF University, Inc., Advance Training Academy, Inc., Allied Health College At JLF University Inc., and Joseph Lafortune.

2. Plaintiff Office of the Attorney General, Department of Legal Affairs, State of Florida (the “Department”) is an agency of the state and the enforcing authority under the Florida Deceptive and Unfair Trade Practices Act, Florida Statutes Section 501.201 *et seq.*

3. Defendant Green Cross School of Nursing, Inc. (“Green Cross”) is a Florida corporation with its principal place of business registered as 15383 NW 7th Avenue, Miami, Florida 33169.

4. Defendant Aline Lafortune is an individual sui generis residing in the State of Florida at the address 12998 SW 33rd Street, Miramar, Florida 33027.

5. The purpose of FDUTPA is to “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.” Section 501.202(2). To that end, “reasonable restrictions upon the future activities of any defendant to impede her or him [sic] from engaging in or establishing the same type of endeavor” are permitted by the Act, and courts may “order any defendant to divest herself or himself of any interest in any enterprise.” Section 501.207(3). Prohibiting business activities is constitutional when the limitation is rationally related to the State’s objective of preventing deceptive practices. *Fraternal Order of Police v. Dept. of State*, 392 So. 2d 1296, 1302 (Fla. 1980) (upholding regulations in the Law Enforcement Funds Act even though they were not “the best possible means to eradicate the evils perceived” because they were not “wholly unrelated” to the legislature’s purpose). As such, a permanent injunction enjoining further violations of FDUTPA is appropriate.

4. The Court hereby permanently enjoins Defendants, as well as their officers, agents, servants, employees, and attorneys and on those persons in active concert or participation with them who receive actual notice of this Order, directly or indirectly, from the following:

a. Any acts or practices that violate or fail to comply with the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes;

b. Marketing, advertising, selling, providing, or offering any educational training or programs to any consumers in the State of Florida relating to nursing education unless such program is currently approved or accredited as a matter of record with the Florida Board of Nursing;

c. Misrepresenting or failing to fully and completely disclose in writing the tuition and all costs and fees associated with any educational program in advance of enrolling any student in a program or accepting payment from any consumer in the State of Florida;

d. Misrepresenting the qualifications and accreditation of any nursing, medical or other educational institution or program, including specifically any representation that the school or program is accredited, unless such representation clearly and conspicuously discloses both the accrediting agency and whether the accrediting agency is nationally recognized by the United States Secretary of Education to accredit such programs;

e. Marketing, enrolling students, or accepting payment for any program or school that is not accredited by an accrediting agency that is nationally recognized by the United States Secretary of Education to accredit such programs without clearly and conspicuously disclosing in writing that the accrediting agency is not recognized by the State of Florida or the United States Secretary of Education;

f. Marketing, enrolling students, or accepting payment for any academic, training or educational program that does not qualify the students for licensure or practice in the State of Florida without clearly and conspicuously disclosing in writing that the program will not qualify graduates for licensure or practice in the State of Florida;

g. Destroying, mutilating, concealing, altering, or disposing of, in any manner, any information which has any connection to Defendants' operations, including books, records, papers, consumer files and personal and financial information contained therein, computer disks, computer memory retention devices or the like, computers, documents, correspondence, obligations or other property of the Defendants herein;

5. FDUTPA also authorizes reimbursement to consumers who have been damaged by deceptive trade practices. Section 501.207(3). It also authorizes recovery of the actual damages caused by the deceptive practices. Section 501.207(1)(b). All consumers who paid money in response to a deceptive trade practice are entitled to their money back, and there is no need for an individualized inquiry into how each consumer reacted to the practice. *F.T.C. v. Wilcox*, 926 F. Supp. 1091, 1105 (S.D. Fla. 1995); *F.T.C. v. People's Credit First*, No. 8:03-CV-2353-T, 2005 WL 3468588 (M.D. Fla. Dec. 18, 2005).

6. The 67 injured consumers are entitled to restitution and/or disgorgement in the amount of \$7,000.00 each and monetary damages are therefore awarded against Defendants jointly and severally in the amount of **\$469,000.00** ("Restitution Amount"). The Restitution Amount shall be paid to the Department of Legal Affairs within 30 days of the date of this Order, which upon receipt shall be distributed by the Office of the Attorney General to the consumers suffering the losses.

7. While restitution serves the purpose of restoring an injured person to the financial position held before a defendant received an unlawful benefit, with a civil penalty “the law exacts payment of by way of punishment for doing some act which is prohibited....” *Sun Coast Intern. Inc. v. Dept. of Business Regulation*, 596 So. 2d 1118, 1121 (Fla. 1st DCA 1992) (internal citations omitted). Anyone who has used a trade practice found to be unlawful under the Act is liable for a civil penalty of up to \$10,000 per violation. § 501.2075, Fla. Stat. Each instance in which a deceptive representation is disseminated constitutes a violation. *U. S. v. Reader's Digest Ass'n, Inc.*, 662 F.2d 955, 966 (3d Cir. 1981).

8. In this case, at least 67 transactions of unfair or deceptive conduct occurred in which the Defendants violated FDUTPA. Given the willful nature of the violation and the egregiousness of the consumer harm, the appropriate penalty is at least \$1,000 per violation, for a total penalty of **\$67,000.00**. The Defendants are jointly and severally liable and ordered to pay civil penalties in the total amount of \$67,000 within 30 days of the date of this Judgment, which amount shall be payable to the Department of Legal Affairs Trust Fund and delivered to counsel for Plaintiff, René D. Harrod, 110 S.E. 6th Street, 10th Floor, Ft. Lauderdale, Florida within thirty (30) days of this judgment.

9. Section 501.2105 provides that the prevailing party may recover fees and costs from the non-prevailing party. *Humane Society of Broward County v. the Florida Humane Society*, 951 So. 2d 966, 969 (Fla. 4th DCA 2007); *Smith v. Bilgin*, 534 So. 2d 852, 854 (Fla. 1st DCA 1998). Plaintiff's counsel has submitted affidavits concerning time spent on the case and costs incurred, pursuant to Section 501.2105(2). The Court finds that the Office of the Attorney General is entitled to payment of its fees and costs in the amount of **\$80,922.20**. The Defendants therefore jointly and severally liable and are ordered to pay attorneys' fees and costs to Plaintiff

in the amount of \$80,922.20 within 30 days of the date of this Judgment. Payment shall be made by cashier's check or other certified funds payable to Department of Legal Affairs Revolving Trust Fund.

10. Defendants shall each complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney, within 45 days from the date of this Judgment, unless the Judgment is satisfied or post-judgment discovery is stayed.

11. Defendants shall not affect any change in the form of doing business, or the organizational identity of any of the existing business entities, or create any new business entities, as a method of avoiding the terms and conditions set forth in this Judgment, which shall be binding on any successors or assigns of Defendants.

12. This Judgment is not a waiver of any private rights of any person or release of any private rights, causes of action, or remedies of any person against Defendants or any other person or entity.

13. Any failure to comply with the terms and conditions of this Judgment is by statute prima facie evidence of a violation of Chapter 501, Part II, Florida Statutes, and will subject Respondents to any and all civil penalties and sanctions authorized by law, including attorney's fees and costs. In the event that a court of competent jurisdiction makes a determination that a violation of any condition of this Judgment has occurred, then Respondents shall be jointly and severally liable for an additional \$500,000.00 (Five Hundred Thousand Dollars) in penalties, attorneys' fees and costs, and other relief, as allowed by law. The Department reserves the right to seek Chapter 501 penalties for any future violation(s) of Chapter 501, Part II, Florida Statutes.

14. Notwithstanding any other provision of this Judgment, nothing herein shall be construed to impair, compromise or affect any right of any government agency other than the Office of the Attorney General for the State of Florida.

15. This Court retains jurisdiction of this case to enter further orders that are proper to compel compliance with this Judgment by contempt proceedings, civil and/or criminal.

FOR WHICH LET EXECUTION ISSUE.

SO ORDERED. Approved and Entered in Chambers in Broward County, Florida this ___ day of _____, 2012.

RICHARD D. EADE

JUL 27 2012

By: _____
Circuit Judge Richard D. Eade

TRUE COPY

Copies: Counsel of Record