

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	
)	
THOMAS GREGG HOLLOWAY, individually and as an officer in First Freedom Financial Corporation and Southern Telmark Inc.,)	
)	
FIRST FREEDOM FINANCIAL CORPORATION, a South Carolina corporation, and)	CIVIL ACTION NO.
)	
SOUTHERN TELMARK INC., a Florida Corp.,)	3:02-cv-343-J20TEM
)	
Defendants.)	

**STIPULATED JUDGMENT AND FINAL ORDER
FOR PERMANENT INJUNCTION AGAINST DEFENDANTS
THOMAS GREGG HOLLOWAY, FIRST FREEDOM FINANCIAL CORP.
AND SOUTHERN TELMARK, INC.**

On April 9, 2002, Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed its Complaint For A Permanent Injunction And Other Relief in this matter, pursuant to Sections 13(b) and 19(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b(a), and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6105(b), charging Defendants Thomas Gregg Holloway,

57b, and under Section 6(b) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6105(b);

3. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b);

4. Entry of this Final Judgment is in the public interest;

5. The acts and practices of Defendants were in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;

6. Defendants waive all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and waive all rights to seek judicial review or otherwise challenge or contest the validity of this Final Judgment, and have further waived and released any claim they may have against the Commission, its employees, and agents; and

7. Except as provided in Paragraph V of this Final Judgment, the Final Judgment does not constitute and shall not be interpreted to constitute either an admission by Defendants or a finding by the Court that Defendants have engaged in violations of the FTC Act, the Telemarketing Sales Rule, or any other law.

DEFINITIONS

For purposes of this Final Judgment, the following definitions shall apply:

1. "Defendants" means Thomas Gregg Holloway, First Freedom Financial Corporation, and Southern Telmark Inc., and each of them and their officers, agents, directors, employees, salespersons, independent contractors, subsidiaries, affiliates, successors, assigns and all other persons or entities in active concert or participation with them who receive actual

notice of this Final Judgment by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device.

2. "Assets" means any legal or equitable interest in, right to, claim to, or expectation to receive, any real and personal property, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mai

5. "Assisting others" means knowingly providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints, receiving and identifying financial information from consumers, and communicating with consumers about extensions of credit; (2) formulating or providing, or arranging for the formulation or provision of, any sales script or other marketing material; (3) providing names of, or assisting in the generation of, potential customers; or (4) performing marketing services of any kind.
6. "Advance Fee Credit Cards" means the advertisement, promotion, offering for sale, or sale of any product or service represented to register credit or debit accounts in exchange for a fee or similar payment by the purchaser prior to the issuance of a credit or debit account.
7. "Credit-related goods or services" means any good or service which is advertised, offered for sale, or sold to consumers as a method by which consumers may establish or obtain any credit or credit device, including but not l

offering for sale or selling any advance fee credit card or any credit-related goods or services, or assisting others in the same. Nothing in this Final Judgment shall be read as an exception to this Paragraph I.

II.

PROHIBITION AGAINST VIOLATING THE FTC ACT

IT IS FURTHER ORDERED that Defendants, in connection with the advertising, offering for sale, sale, or distribution of any good or service, are hereby permanently restrained and enjoined from violating, in any manner, Section 5 of the FTC Act, 15 U.S.C. § 45, including but not limited to:

- A. Misrepresenting the total costs to purchase, receive, or use any goods or services that are the subject of a sales offer;
- B. Failing to disclose in a clear and conspicuous manner, the total costs and all material restrictions, limitations, or conditions to purchase, receive, or use any goods or services that are the subject of a sales offer before the customer pays for the goods or services offered; and
- C. MakETeM,upls or smisearing bsatie iods or

IT IS FURTHER ORDERED that Defendants are hereby permanently restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, or as the Telemarketing Sales Rule may hereafter be amended, including but not limited to:

- A. Requesting or receiving payment of any fee or consideration from any person in advance of that person obtaining a loan or other extension of credit while guaranteeing or representing a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person, as prohibited by the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(4);
- B. Misrepresenting the total costs to purchase, receive, or use any goods or services that are the subject of a sales offer, as prohibited by the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(i);
- C. Failing to disclose in a clear and conspicuous manner, the total costs and all material restrictions, limitations, or conditions to purchase, receive, or use any goods or services that are the subject of a sales offer before the customer pays for the goods or services offered, as prohibited by the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(i) and (ii);
- D. Making a false or misleading statement to induce any person to pay for goods or services, as prohibited by the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(4); and
- E. Providing substantial assistance or support to any seller or telemarketer while knowing or consciously avoiding knowing that the seller or telemarketer is

engaged in any act or practice that violates Sections 310.3(a) or (c), or 310.4 of the Telemarketing Sales Rule, 16 C.F.R. §§ 310.3(a) and (c), and 310.4.

IV.

CONSUMER REDRESS

IT IS FURTHER ORDERED that:

- A. Defendant Holloway shall relinquish any claims to and transfer to the Receiver, his rights, title, and interest in the assets and properties listed on Appendix A, as is and where is, attached hereto. The Receiver shall liquidate the assets and properties and pay the attendant expenses of the estate. Thereafter, the remaining proceeds will be transferred to the Commission. The transfer of assets shall be coordinated through Defendant's counsel.
- B. All funds paid pursuant to this paragraph shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the

Tr

including but not limited to, any financial institution or credit reporting bureau. The Commission's agreement to, and the Court's approval of, this Final Judgment are expressly premised upon the truthfulness, accuracy, and completeness of Defendants' financial conditions as represented in their financial statements referenced above, which contain material information upon which the Commission relied in negotiating and agreeing to the terms of this Final Judgment.

If, upon motion by the Commission, this Court finds that Defendants failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from the financial statement provided to Plaintiff, Plaintiff may request that the judgment herein be reopened against such Defendant to reflect the entire consumer injury of \$30,000,000 (Thirty Million Dollars) less any payments made pursuant to Paragraph IV of this Final Judgment and such amount shall be rendered immediately due and payable by the Defendants. Interest computed at the rate prescribed in 28 U.S.C. § 1. § 1be

remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce the Final Judgment

Preliminary Injunction entered by this Court on May 8, 2002, is hereby dissolved, except as to the assets set forth in Appendix A. The freeze placed on the assets of corporate Defendants First Freedom Financial Corporation and Southern Telmark pursuant to the Stipulated Preliminary Injunction entered by this Court on May 8, 2002, as modified, remains in effect until such time as the Receiver, pursuant to Paragraph VI of this Final Judgment, receives payment of all Court-approved fees and expenses, transfers any remaining funds to the Commission, and is discharged by the Court.

VIII.

IX.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, in connection with any business operated by Defendants, or where any of the Defendants is or are a majority owner of the business or directly or indirectly manages or controls the business and where the business is engaged in or assisting others engaged in telemarketing, Defendants are hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps to monitor and ensure that all employees and independent contractors engaged in the sale or offering for sale of any good or service or other customer service functions comply with Paragraphs II and III of this Final Judgment. Such steps shall include adequate monitoring of sales presentations or other communications with customers, and also shall include, at a minimum, the following:

1. Providing employees and independent contractors with scripts guidelines, and other sales material that comply with this Final Judgment;
2. Listening to the oral representations made by persons engaged in sales or other customer service functions;
3. Establishing a procedure for receiving and responding to consumer complaints; and

4. Ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved;
- B. Failing to promptly and fully investigate any and all consumer complaints received by any business to which this Paragraph applies; and
- C. Failing to take corrective action with respect to any salesperson whom any such Defendant determines is not complying with this Final Judgment, which may include training, disciplining, and/or terminating such salesperson.

X.

PLAINTIFF'S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendants' compliance with this Final Judgment by all lawful means, including, but not limited to the following:

- A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of compulsory process pursuant to Rule 45, Fed. R. Civ. P. 45, for the purpose of monitoring and investigating Defendants' compliance with any provision of this Final Judgment;
- B. The Commission is authorized to use representatives posing as consumers and suppliers to Defendants, Defendants' employees, or any other entity managed

or controlled in whole or in part by Defendants, without the necessity of identification or prior notice; and

- C. Nothing in this Final Judgment shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate whether Defendants have violated any provision of this Final Judgment or Section 5 of the FTC Act, 15 U.S.C. § 45.

XI.

RECORD KEEPING

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Final Judgment, in connection with any telemarketing business operated by Defendants, or where any of Defendants is or are a majority owner of the business or directly or indirectly manages or controls a business engaged in telemarketing, Defendants and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, are hereby restrained and enjoined from failing to create, and from failing to retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursements of such revenues;
- B. Personnel records accurately reflecting the name, address, and telephone number of each person employed in any capacity by such business, including as an independent

contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable.

- C. Customer files containing names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and a description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly or indirectly or through any third party) and any responses to those complaints or requests; and

matter contained in this Final Judgment; and shall permit Commission representatives to remove documents relevant to any matter contained in this Final Judgment for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

- B. To interview officers, directors, and employees, including any personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, agents, independent contractors or otherwise, of any business to which Subsection (A) of this Paragraph applies, concerning matters relating to compliance with the terms of this Final Judgment. The person interviewed may have counsel present.

Provided that upon application of the Commission and for good cause shown, the Court may enter an *Ex Parte* Order granting immediate access to the business premises of any Defendant for the purposes of inspecting and copying all documents relevant to any matter contained in this Final Order.

XIII.

RETENTION OF RECORDS BY REDRESS ADMINISTRATOR

IT IS FURTHER ORDERED that the redress administrator shall destroy all records relating to this matter six (6) years after the transfer of any remaining redress funds to the FTC Treasury account or the closing of the account from which such funds were disbursed, whichever is earlier, provided that no records shall be destroyed unless and until a representative of the Commission has received and approved the administrator's final

accounting report. Record

creation, incorporation, dissolution, assignment, sale, merger, creation or dissolution of subsidiaries, proposed filing of a bankruptcy petition, change in the corporate name or address, or any other change that affects compliance obligations arising out of this Final Judgment, thirty (30) days prior to the effective date of any proposed change provided, however, that, with respect to any proposed corporate change about which Defendants learns less than thirty (30) days prior to the date such action is to take place, Defendants shall notify the Commission as soon as is practicable after learning of such proposed change.

- B. One hundred eighty (180) days after the date of entry of this Final Judgment, Defendants shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendants have complied and are complying with this Final Judgment. This report shall include, but not be limited to, the following:
1. Defendant Thomas Gregg Holloway's then current residence address and telephone number;
 2. Defendant Thomas Gregg Holloway's then current employment, business address and telephone numbers, a description of the business activities of such employer, and Defendant's title and responsibilities for each employer;
 3. Defendant First Freedom Financial Corporation's then current business address and telephone numbers, a description of its business activities;

4. Defendant Southern Telmark Inc.'s then current business address and telephone numbers, a description of its business activities;
 5. A copy of each acknowledgment of receipt of this Final Judgment obtained by Defendants pursuant to Paragraph XVI; and
 6. A statement describing the manner in which the Defendants have complied and are complying with this Final Judgment, including the payment of monies and transfer of assets and properties, as required by Paragraph IV.
- C. Upon written request by a representative of the Commission, Defendants shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days notice with respect to compliance with the terms of this Final Judgment;
- D. For the purposes of this Final Judgment, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Director
Southeast Region
Federal Trade Commission
Suite 1500
225 Peachtree Street
Atlanta, Georgia 30303
Re: FTC v. Thomas Gregg Holloway

- E. For the purposes of this Paragraph, "employment" includes the pres

performs services for which he is paid as an employee, consultant, or independent contractor.

XV.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, within five (5) business days after receipt by Defendants of the Final Judgment as entered by the Court, each Defendant shall submit to the Commission a truthful sworn statement, in the form shown in Appendix C, that shall acknowledge receipt of this Final Judgment.

XVI.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Final Judgment, each Defendant shall:

- A. Provide a copy of this Final Judgment to, and obtain a signed and dated acknowledgment of receipt from:
1. Each officer and director;
 2. Each individual serving in a management capacity;
 3. All personnel involved in responding to consumer complaints or inquiries; and
 4. All sales personnel whether designated as employees, consultants, independent contractors or otherwise,

immediately upon employing or retaining any such persons, for any business where any Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business is engaged in telemarketing or assisting other engaged in telemarketing.

- B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of this Order, as required in Subsection (A) of this Paragraph.

XVII.

OTHER CIVIL AND CRIMINAL REMEDIES

IT IS FURTHER ORDERED that this action and the relief awarded herein is in addition to, and not in lieu of, other remedies as may be provided by law including administrative, civil, and criminal remedies.

XVIII.

CONTINUING JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes, including, but not limited to, the enforcement of compliance with this Final Judgment, or the punishment of violations thereof.

SO ORDERED, this _____ day of _____, 2002.

Honorable Harvey E. Schlesinger
United States District Judge

The parties hereby stipulate and agree to the terms and conditions set forth above and consent to the entry of this Final Judgment, dated this _____ day of _____, 2002.

FOR THE PLAINTIFF

RONALD E. LAITSCH
CINDY A. LIEBES
FEDERAL TRADE COMMISSION
Atlanta Regional Office
225 Peachtree Street NE
Suite 1500
Atlanta, Georgia 30303
(404) 656-1358

FOR THE DEFENDANTS

Thomas Gregg Holloway, individually
and as President of
First Freedom Financial Corp., and
Southern Telmark, Inc.

ATTORNEYS FOR DEFENDANTS

Michael R. Freed
Smith Hulsey & Busey
1800 First Union National Bank Tower
225 Water Street
Jacksonville, FL 32201

Lawrence J. Friedman
Friedman & Feiger, LLP
5301 Spring Valley Road
Suite 200
Dallas, TX 75254

Appendix B

UNITED STATES DISTRICT COURT

Appendix C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	
)	
THOMAS GREGG HOLLOWAY, individually and)	
as an officer in First Freedom Financial)	
Corporation and Southern Telmark Inc.,)	
)	
FIRST FREEDOM FINANCIAL CORPORATION,)	CIVIL ACTION NO.
a South Carolina corporation, and)	
)	3:02-cv-343-J20TEM
SOUTHERN TELMARK INC.,)	
a Florida Corp.,)	
)	
Defendants.)	

Thomas Gregg Holloway, being duly sworn, hereby states and affirms as follows:

1. My name is Thomas Gregg Holloway. My current residence address is _____ . I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.
2. I am a defendant in Federal Trade Commission v. Thomas Gregg Holloway, et al (United States District Court for the Middle District of Florida - Jacksonville Division).
3. On _____, I received a copy of the Stipulated Final Judgment for Permanent Injunction Against Defendants, which was signed by the Honorable Harvey E.

Schlesinger and entered by the Court on _____. A true and correct copy of the Final Judgment I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on _____, at _____

Thomas rde

11. Monies previously obtained from consumers and remaining in the possession of Check Assist (including any monies due Prime National and Mid-South);
12. All monies, as of the date this action was filed, and remaining in First Union Bank Accounts 2000010915688 (Southern Telmark and Prime National);
13. All monies, as of the date this action was filed, and remaining in Defendant Holloway's account No. 101316511 in Wachovia Bank, Charleston, S.C., as of the date this document is fully executed;
14. All monies, as of the date of this action was filed, and remaining in Lauren Acres's account No. 2000002425364 in First Union, Charleston, S.C., as of the date this document is fully executed;
15. Defendant Holloway's, First Freedom's, Southern Telmark's and Sarah Holloway's interest and rights in all other property previously obtained by the Receiver in this action;
16. 1951 La France Aerial Ladder Fire Truck (Serial No. 7J7930); and
17. Any cash proceeds remaining from the sale of the 2002 Lexus 470, the Toyota Camry, the Horse and the Trailer and any other assets sold or monies received during the pendency of this case.

Should for any reason the VIN Numbers, account numbers, serial numbers, or descriptions identified herein be incomplete or inaccurate, the monies, assets or other properties identified herein must nevertheless be transferred by Defendant Holloway to the Receiver in accordance with the terms of the Final Order.