

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202	EFILED Document CO Denver County District Court 2nd JD Filing Date: Sep 20 2011 4:02PM MDT Filing ID: 39928652 Review Clerk: Ashley Landis ^COURT USE ONLY^
STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL, Plaintiff, v. RMI (RECOVERMYINVESTMENT) INC., DAILY DEAL 360, INC AND RUSSELL BRYANT III, AND DAMON SMITH, INDIVIDUALLY Defendants.	
	Case No.: 11CV5975 Ctrm: 269
PRELIMINARY INJUNCTION ORDER	

This Court, having considered *Plaintiff's Motion for Preliminary Injunction*, reviewed the pleadings and appropriate case law, and having conducted a full day evidentiary hearing (September 16, 2011), hereby issues the following Findings of Fact, Conclusions of Law, and Order.

I. FINDINGS OF FACT

1. This Court has jurisdiction in this matter and is expressly authorized to issue a preliminary injunction pursuant to the Colorado Consumer Protection Act ("CCPA") by Colo. Rev. Stat. § 6-1-110(1):

Whenever the attorney general or a district attorney has cause to believe that a person has engaged in or is engaging in any deceptive trade practice listed in section 6-1-105 or part 7 of this article, the attorney general or district attorney may apply for and obtain, in an action in the appropriate district court of this state, a temporary restraining order or injunction, or both, pursuant to the Colorado rules of civil procedure, prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice or which may be necessary to completely compensate or restore to the original position of any person injured by means of any such practice or to prevent any

unjust enrichment by any person through the use or employment of any deceptive trade practice.

Colo. Rev. Stat. § 6-1-110(1).

2. The evidence presented at the September 16, 2011 hearing (which included testimony from five consumer witnesses, testimony from Defendants Russell Bryant III and Damon Smith, email solicitations prepared by Defendants and Internet webpage copy prepared by Defendants) proves that Defendants engaged in numerous violations of the Colorado Consumer Protection Act from the inception of RMI in June of 2011 up to the date of this Court's temporary restraining order of August 26, 2011. Defendants' violations include the following;

- a. Misrepresenting Defendants' association with the Federal Trade Commission and the Colorado Attorney General;
- b. Misrepresenting the availability of funds for restitution to consumers by misrepresenting that funds had been "seized," or "frozen" or "confiscated" or words to that effect;
- c. Misrepresenting the existence of a deadline by which consumers must act or not be included in any eventual restitution;
- d. Misrepresenting that Defendants would "represent" consumers in obtaining restitution;
- e. Misrepresenting that Defendants had a track record of success in obtaining restitution for consumers;
- f. Misrepresenting that Defendants "specialized" in consumer restitution recovery;
- g. Misrepresenting that Defendants would "file" documents with the court;
- h. Misrepresenting that Defendants would attend court hearings;
- i. Misrepresenting that Defendants had filed a class action lawsuit or that attorneys working on their behalf had done so;
- j. Misrepresenting that Defendants would "file" all consumer complaints with the Colorado Attorney General's Office;

k. Misrepresenting that Defendants' services would increase the consumers' chances of recovery or would put their complaint "at the front of the line" for recovery; and

l. Misrepresenting that Defendants had a "network" of attorneys that would assist RMI consumers.

II. CONCLUSIONS OF LAW

3. This Court concludes that Defendants would suffer no undue hardship by entry of a preliminary injunction since Defendants have no right to engage in deceptive trade practices in Colorado and no right to unjustly benefit from such deceptive trade practices. Without the entry of a reasonable temporary injunction, Plaintiff would be unable to adequately protect the public from such deceptive trade practices.

4. The Court finds that there is a reasonable probability of success on the merits of Plaintiff's Complaint.

5. There is a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief. There is no plain, speedy, or adequate remedy at law. The granting of a preliminary injunction will serve the public interest. The balance of equities favors the entry of an injunction, and that the injunction will preserve the status quo (an absence of deceptive sales practices) pending trial on the merits.

III. INJUNCTIVE ORDER

6. Wherefore, THIS COURT ENTERS a preliminary injunction requiring Defendants to:

a. Within three (3) days of this Order turn over to the Colorado Attorney General copies of all materials, emails, other papers, and correspondence with victims of the Dalbey Education Institute and any related Dalbey entity (collectively, "Dalbey").

b. Reactivate the RMI website only after its web content has been replaced with the web content presented to this Court on September 16, 2011.

c. Issue a written statement by email to (or if an email address is unavailable, by some other bona fide effort to contact) every RMI customer in existence as of the date of this Court's Order no later than Tuesday, September 27, 2011, advising them of this Court's Order following this hearing, as well as the refunds described below.

d. Provide to the Colorado Attorney General a full accounting of all RMI sales to Dalbey victims and proof that RMI has refunded all monies paid to RMI by Dalbey victims;

- e. Immediately cease from using any aliases.
- f. File and serve a certification of Defendants' compliance with these terms by October 20, 2011.

8. This Court further ORDERS the Defendants to Post a \$25,000 bond to cover potential future consumer harm within sixty (60) days of the date of this Order, and file with the Court proof that bond has been posted.

9. This Court further ORDERS the Attorney General to provide RMI's counsel with copies of all inquiries and complaints concerning RMI within ten (10) calendar days of receipt of the same.

10. This Court ORDERS that Defendants are enjoined from making any representation or claim (verbal or written) that:

- a. RMI has a track record of having obtained consumer restitution or refunds;
- b. RMI has obtained any refunds for any Dalbey consumers;
- c. RMI employs any attorneys or has attorneys on staff;
- d. Any payments made to RMI will be for legal services;
- e. RMI employees have any legal education or experience working within the legal profession;
- f. RMI has any experience in collections and or success to date collecting on any judgments obtained against deceptive businesses;
- g. RMI has any "specialists" or "experts" in collections or in consumer restitution recovery;
- h. A consumer complaint is a prerequisite to consumer restitution and that consumer restitution is often distributed based on customer lists obtained from company records;
- i. The mere fact of a lawsuit against a company is a guarantee of consumer restitution, even when a judgment has been obtained against a company.
- j. The customary time from the filing of a lawsuit until an actual trial on the merits usually takes more than one year and can take as long as two years or more.

THE COURT FURTHER ORDERS;

That Defendants, and anyone associated with them, are enjoined from:

9. Representing that funds have been “seized,” “frozen,” “set aside,” “locked up,” “confiscated,” or any words to that effect;
10. Representing that RMI is working with, or on the behalf of, any governmental agency including the Federal Trade Commission and the Colorado Attorney General;
11. Using the word “represent” in describing their services;
12. Representing that anyone employed by RMI is an attorney or that RMI has attorneys on staff, or attorneys working on RMI’s behalf;
13. Representing that a deadline exists for consumers to file their complaints or that consumers must act by a certain date to be included in any eventual recovery, without verifiable proof that a deadline has been set.
14. Representing that RMI has “specialists” or “experts” in collections or in consumer restitution recovery.

THIS COURT FURTHER ORDERS;

That Defendants are enjoined from:

15. The use of graphics or logos depicting gavels, scales of justice, a court house, or legal books, so as to falsely imply they are attorneys or associated with attorneys;
16. Using the word “associates” in their name.

Dated this 20th day of September, 2011.

BY THE COURT:



Ann B. Frick
District Court Judge