

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

BRETT and LINDA DAVIS, husband
and wife, individually and on behalf of
a Class of persons similarly situated,

Plaintiffs,

v.

GLOBAL CLIENT SOLUTIONS, LLC,
an Oklahoma limited liability
company; GHS SOLUTIONS, L.L.C., a
Florida limited liability corporation;
ROCKY MOUNTAIN BANK & TRUST,
a Colorado financial institution; JOHN
AND JANE DOES A-K,

Defendants.

NO. 3:10-cv-322-H

CLASS ACTION COMPLAINT
AND JURY DEMAND

Electronically Filed

I. INTRODUCTION

1. Defendants are engaged in a continuing class-wide predatory business scheme to financially enrich themselves and defraud Kentucky Class members by violating Kentucky's Debt Adjusting statute, Chapter 380; by the commission of unfair and deceptive practices in violation of Kentucky's Consumer Protection Act, Chapter 367; and, by aiding and abetting in and conspiring to violate Chapters 367 and 380.

2. This action is brought on behalf of a Class of Kentucky families who have fallen victim to Defendants' business wrongdoing for purposes of enjoining Defendants from further misconduct and for purposes of recovering damages for loss suffered.

II. PARTIES

3. Plaintiffs Brett Davis and Linda Davis: Plaintiffs Brett Davis and Linda Davis ("the Davises") are husband and wife, domiciled in the state of Kentucky

and residents of Jefferson County. The Davises are members of the proposed Class and victims of wrongdoing alleged in this Complaint.

4. Defendant Global Client Solutions, LLC: Defendant Global Client Solutions, LLC ("GCS") is a domestic limited liability company organized under the laws of Oklahoma. GCS has its principal offices in Tulsa, Oklahoma. GCS does business throughout the United States, including the state of Kentucky. GCS is not registered as a debt adjuster as required by K.R.S. 380.040.

5. Defendant GHS Solutions, L.L.C.: Defendant GHS Solutions, L.L.C. ("GHS") is a Florida limited liability company. GHS has its principal place of business in Delray Beach, Florida. GHS is engaged in business activities directed at residents of Kentucky, including those activities alleged in this Complaint, and does business in the state of Kentucky. GHS is not registered as a debt adjuster as required by K.R.S. 380.040.

6. Defendant Rocky Mountain Bank & Trust: Defendant Rocky Mountain Bank & Trust ("RMBT") is a financial institution organized under the laws of Colorado. RMBT has its principal place of business in Florence, Colorado. RMBT, in partnership with or as the principal of GCS, is engaged in business activities directed at residents of Kentucky, including those activities alleged in this Complaint, and does business in the state of Kentucky.

7. Defendants John and Jane Does A-K: John and Jane Does A - K are managing agents of GCS, GHS and/or RMBT whose identities are not presently known to Plaintiffs; who exercised close control, direction, and management of GCS, GHS or RMBT in respect of corporate misconduct alleged in this Complaint; who participated in

or with knowledge approved of corporate conduct alleged in this Complaint; or who otherwise engaged in conduct in violation of Chapters 367 and 380.

III. JURISDICTION AND VENUE

8. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d)(2). Based on information and belief, the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and is a class action composed of more than 100 members and in which at least one member of the Class is a citizen of a state different from that of a Defendant.

9. The Court has personal jurisdiction over each of the Defendants.

10. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) in that the events that gave rise to claims occurred in substantial part in this federal district.

IV. FACTS

11. GCS is in the business of receiving funds for the purpose of distributing those funds among creditors in payment or partial payment of obligations of debtors, including Class members.

12. GCS, in partnership with RMBT, maintains and manages debt settlement accounts that are a component part of, and integral to the operation of, debt settlement programs offered by hundreds of companies, including GHS, engaged in the business of settling, adjusting, prorating, or liquidating the indebtedness of debtors, including Class members.

13. GHS offers debt settlement programs to Kentucky debtors through standardized program materials that include agreements with GCS and RMBT.

14. These debt settlement programs, effectuated through these agreements, universally involve the following material elements:

a. The Kentucky debtor agrees to coordinately engage GCS, RMBT, and GHS for purposes of settling scheduled credit card debts.

b. The Kentucky debtor agrees to pay specified fees that, unknown to the debtor, are criminally illegal, owing to their enormous size and accelerated timing of payment.

c. For purpose of securing funds to pay the illegal fees and potentially accumulate debt settlement funds used in settling debts, GCS and RMBT are given authority to maintain and manage a debt settlement account in Colorado and to transfer specified monthly program payments into the account from the debtor's Kentucky bank account. GCS, RMBT, and GHS are given authority to automatically pay the fees from the subject account.

d. The predatory nature of the fees is such that the monthly payments are typically consumed by program fees for the first several months of the debtor's participation in the program.

e. If meaningful positive funds eventually accumulate in the debt settlement account, GHS may attempt settlement of a scheduled debt in exchange for additional fees.

15. The agreements drafted by Defendants are illegal.

16. Faced with the long history of predatory fee practices by the debt adjuster industry, many states, including Kentucky, adopted statutes prohibiting predatory fees and other abusive debt adjuster practices.

17. At all times material to allegations made in this Complaint, Defendants were mindful of the debt adjuster industry's predatory fee history and of state laws, including those of Kentucky, prohibiting abusive debt adjuster practices.

18. Plaintiffs are Kentucky residents who received solicitations from GHS regarding participation in a debt settlement program having the features detailed above. Plaintiffs participated in this program and GCS and RMBT established, maintained, and managed a debt settlement account for Plaintiffs.

19. K.R.S. 380.040 permits GHS to accept fees under certain circumstances. Those fees include:

- a. An initial setup fee not exceeding \$75.
- b. An annual consultation fee not exceeding \$50.
- c. A periodic fee for disbursing monies to the debtor's creditors up to 8 ½% of the amount paid or \$30, whichever is less.

20. As amended in April 2010, K.R.S. 380.040(2)(d) prohibits GHS from accepting any other fee until all promised services are completely performed.

21. The Davises were to be charged total fees of \$3,750.00, all to be paid before Defendants even began to perform any services for Plaintiffs. In fact, Defendants transferred \$3,523.32 from the Davises' account for fees over just 11 months time. During this time;

- a. Nothing (\$0.00) was paid to the Davises' creditors;
- b. Not one letter was sent by Defendants to the Davises' creditors;
- c. The Davises' creditors continued to hound them for the collection of the debt;
- d. Defendants undertook no action to settle the Davises' debts;
- e. The Davises' were left with the same creditors, owing more to each.

22. Defendants knew that the debt settlement programs' charges exceeded the amount permitted by K.R.S. 380.040.

23. Defendants knowingly transferred named Plaintiffs' and Class members' funds out of the state of Kentucky for purposes of paying the subject illegal fees and subsequently paid the illegal fees from the debt settlement account, all for the purpose of carrying out the illegal debt adjuster business enterprise described in this Complaint.

24. K.R.S. 380.040(1)(a) requires that Defendants distribute to creditors at least once each 30 days after receipt of payment at least 91 ½% (less the 8 1/2 % fee) of each payment received from the debtor.

25. Defendants' debt adjuster programs, by their intrinsic nature, required that debt settlement funds not be distributed in accordance with K.R.S. 380.040.

26. Defendants knowingly established, maintained and managed Plaintiffs' and Class members' debt settlement accounts in violation of K.R.S. 380.040, all for the purpose of carrying out the illegal debt adjuster enterprise detailed in this Complaint.

27. K.R.S. 380.990 provides that any person who violates K.R.S. 380.040 is guilty of a misdemeanor.

28. Defendants violated Chapter 380 and knowingly aided and abetted one another for purposes of carrying out the illegal debt adjuster programs detailed in this Complaint.

29. RMBT was subject to an Order to Cease and Desist ("C&D") by the Federal Deposit Insurance Corporation ("FDIC") effective April 2, 2009. The C&D ordered that RMBT cease and desist from engaging in "unsafe or unsound banking practices" including, maintaining appropriate safeguards for compliance with consumer protection laws. In particular, the C&D orders changes to RMBT's relationship with "Debt Settlement Companies." RMBT was ordered to ensure its compliance with "state

consumer protection laws, regulations, and policies" and that its clients "rectify harmful consumer activity."

30. On or about August 6, 2009, without prior notice to Class members, GCS closed Class members' debt settlement accounts at RMBT and deposited Class members' debt settlement funds into a custodial account in the name of GCS held at Bank of Oklahoma, in Tulsa, Oklahoma.

31. Beginning on or before August 6, 2009, and without prior notice to Class members, GCS began making electronic transfers of monthly payments from Class members' Kentucky bank accounts into the custodial account of GCS at Bank of Oklahoma.

32. The subject account of GCS now held at Bank of Oklahoma is being employed in the same wrongful manner and for the same wrongful purposes detailed in this Complaint.

V. CLASS CERTIFICATION

33. Named Plaintiffs bring this action on behalf of themselves and a Kentucky Class composed of the following individuals: All Kentucky residents for whom Defendants have established, maintained, and/or managed a debt settlement account.

34. Members of the Class are so numerous that their joinder is impracticable. GCS boasts of serving over 400 debt adjuster companies nationally and of managing over 600,000 accounts nationwide.

35. There are questions of law and fact common to the Class.

36. The claims and defenses of the named Plaintiffs are typical of the claims and defenses of the Class.

37. Named Plaintiffs are members of the proposed Class and will fairly and adequately protect the interests of the Class.

38. Defendants have acted or refused to act on grounds generally applicable to the Class as a whole rendering certification appropriate under Fed. R. Civ. P. 23(b)(2).

39. Core common questions of law and fact central to claims of the Class predominate over individual questions, rendering certification appropriate under Fed. R. Civ. P. 23(b)(3). Core common questions of law and fact include:

a. Whether Defendants are debt adjusters or engaged in debt adjusting within the meaning of K.R.S. 380.010, or are otherwise subject to that statute.

b. Whether, at the time of assistance, Defendants were generally aware of their role in the deceptive acts and practices.

c. Whether standardized fees charged to Class members are criminally illegal or otherwise constitute an unfair or deceptive business practice and, further, whether Defendants should be enjoined from paying those fees from Class members' accounts.

d. Whether GCS's and RMBT's standardized practices with respect to the maintenance and management of Class members' debt settlement accounts violate chapter 367, or otherwise constitute unfair or deceptive business practices.

e. Whether fees associated with the services of GCS and RMBT constitute fees for debt adjusting services within the meaning of K.R.S. 380.040.

f. Whether Defendants have acted in concert and pursuant to a common design.

g. Whether Class members are uniformly entitled to reimbursement of the amount of all payments made to Defendants' and not distributed to creditors.

40. The class device is a superior method of adjudicating Class members' claims as compared to other available methods for fairly and efficiently adjudicating this controversy. Class members are financially distressed individuals who are unlikely to have any meaningful recourse against Defendants absent collective pursuit of their claims under Fed. R. Civ. P. 23. Class members remain unaware that the conduct of Defendants is illegal and are thus incapable of pursuing their claims or protecting their interests on an individual basis. The value of Class members' claims, taken individually, is such that their claims have negative value and cannot, as a practical matter, be litigated on an individual basis.

VI. CLAIMS

A. Violation of the Debt Adjusting Statute.

41. Defendants are "persons" engaged in "debt adjusting" and are subject to the requirements of the Debt Adjusting statute. K.R.S. 380.010, et seq.

42. Defendants, acting individually and in concert, effect the adjustment, compromise or discharge of indebtedness of debtors, or receive and disburse funds to debtors' creditors, or solicit business and advertise as a debt adjuster.

43. K.R.S. 380.040 requires Defendants to:

- a. Disburse all funds received from the debtor, less lawful fees, to appropriate creditors within 30 days.
- b. Not accept an initial setup fee in excess of \$75.
- c. Not accept an annual consultation fee in excess of \$50.
- d. Not accept a periodic distribution fee in excess of 8 1/2% of the payment amount or \$30, whichever is less.

e. Register pursuant to regulations promulgated by the Attorney General's office.

f. To submit to an annual audit of its business and file the results of that audit with the Attorney General's office.

g. To maintain appropriate insurance in the amount specified in K.R.S. 380.040(7).

44. Defendants have violated each of the requirements in the preceding paragraph in that:

a. Defendants do not disburse all funds received from the debtor, less lawful fees, to appropriate creditors within 30 days.

b. Defendants demand and accept initial setup fees greatly in excess of \$75.

c. Defendants demand and accept annual consultation fees greatly in excess of \$50.

d. Defendants demand and accept periodic distribution fees greatly in excess of 8 1/2% of the payment amount or \$30, whichever is less.

e. Defendants have failed to register pursuant to regulations promulgated by the Attorney General's office.

f. Defendants have failed to submit to an annual audit of its business and file the results of that audit with the Attorney General's office.

g. Defendants have failed to maintain appropriate insurance in the amount specified in K.R.S. 380.040(7).

45. As a result of Defendants' violations of the Debt Adjusting statute, Defendants have committed a crime in the Commonwealth of Kentucky.

46. As a result of Defendants' violations of the Debt Adjusting statute, Plaintiffs and Class members have suffered harm, including, having exorbitant fees deducted from their accounts by Defendants and not having appropriate creditors paid within 30 days of Defendants' receipt of funds from Plaintiffs and Class members.

47. As a direct and proximate result of Defendants' violation of the Debt Adjusting statute, Plaintiffs and Class members have suffered losses and damages in amounts in excess of the jurisdictional limits of this Court as may be determined by the trier of fact.

B. Violation of the Consumer Protection Act.

48. Pursuant to Section 367.220(1) of the Kentucky Consumer Protection Act ("CPA"), Plaintiffs and Class members are authorized to bring this civil suit to recover the actual damages sustained by them as a result of the unlawful acts of Defendants constituting violations of the CPA.

49. Plaintiffs and Class members participation in Defendants' unlawful debt adjusting program was for their own personal, family or household purposes within the meaning of the CPA - namely, providing for the economic security of their families.

50. Defendants' debt adjusting program constitutes unfair, unconscionable, false, misleading and/or deceptive acts or practices in the conduct of trade or commerce.

51. As a direct and proximate result of Defendants' violation of the CPA, Plaintiffs and Class members have suffered losses and damages in amounts in excess of the jurisdictional limits of this Court as may be determined by the trier of fact.

C. Civil Conspiracy.

52. Defendants, and each of them, agreed to promote the unlawful and deceptive debt adjusting program as alleged herein.

53. In furtherance of their conspiracy, Defendants conceived of and implemented a common scheme to engage in unfair and deceptive acts in violation of the Kentucky Debt Adjusting statute and the Consumer Protection Act.

54. Defendants participated and furthered this conspiracy through their individual and concerted actions. Namely, Defendants acted in concert with each other and pursuant to a common design which conduct constitutes a violation of the Kentucky Debt Adjusting statute and the Consumer Protection Act; Defendants knew that the other's conduct was unlawful and gave substantial assistance or encouragement to the other to so conduct itself; and, gave substantial assistance to the other in accomplishing a tortious result.

55. As a result of their agreement to act in concert, Defendants are jointly and severally responsible for the damage to Plaintiffs and Class members.

56. As a direct result of Defendants' agreement to promote the unlawful and deceptive debt adjusting programs, Plaintiffs and class members were damaged thereby in an amount to be determined at trial.

D. Injunctive Relief.

57. Class members and Kentucky consumers generally remain unaware that Defendants' debt settlement programs are illegal.

58. Defendants are engaged in business activities, continuing in nature, instrumental to the carrying out of the ongoing criminal enterprises directed at Class members and Kentucky consumers generally.

59. Defendants and Bank of Oklahoma are in possession of funds belonging to Class members, obtained pursuant to void and criminally illegal debt adjuster contracts.

60. Defendants, on a continuing basis, are engaged in transferring Class members' funds outside the state of Kentucky and into debt settlement accounts in Colorado and/or Oklahoma, for purposes of securing payment of fees which are both criminal and not owed. Class members are unaware that transfers out of their account are illegal, that the subject fees are illegal, and that the fees are not owed.

61. Defendants, on a continuing basis, are engaged in paying illegal and fees which are not owed from Class members' debt settlement accounts. Class members remain unaware that the fees being paid are illegal and not owed.

62. Class members and the general public will suffer continuing, immediate, and irreparable injury, absent the issuance of injunctive and equitable relief by this Court.

63. Class members have no complete, speedy, and adequate remedy at law with respect to Defendants' continuing conduct.

64. Preliminary and final injunctive relief is necessary to prevent further injury to Class members and to the general Kentucky public, including:

a. An order enjoining Defendants from paying debt adjuster fees from Class members' debt settlement accounts.

b. An order enjoining Defendants from transferring Class member funds into the subject debt settlement accounts.

c. An order that Defendants hold in trust, until further direction of this Court, all proceeds held in debt settlement accounts of Class members.

d. An order directing that Defendants timely provide a complete accounting of: i) the identities of each Class member; ii) the funds held in the debt settlement accounts of each Class member; and iii) the identities of each entity to whom

distributions have been made from the subject debt settlement accounts and the amounts of such distributions.

e. A final order directing the disbursement of funds held in trust pursuant to order of this Court.

f. An order enjoining each Defendant from engaging in further business activities violating Chapter 380 or Chapter 367.

VII. DEMAND FOR RELIEF

Plaintiffs therefore request, on behalf of themselves and the proposed Class, the following relief:

1. An order certifying Class members' claims pursuant to Fed. R. Civ. P. 23(b)(3) and/or 23(b)(2), or certifying such issues as may be deemed appropriately treated on a class basis;

2. An order appointing named Plaintiffs as representatives of the Class and appointing undersigned counsel as Class counsel;

3. An order and decree issuing the preliminary and final injunctive relief demanded in this Complaint;

4. An award of damages, jointly and severally, as against each Defendant, in an amount to be proven at the time of trial;

5. An award of exemplary damages in the amount of three times the damages or loss suffered by each Class member;

6. An award of prejudgment interest on liquidated damages;

7. An award of attorney fees, including those provided for in Chapter 367;

8. An award of litigation costs; and

9. Such other declaratory or injunctive relief as the Court may deem fair and equitable.

VIII. JURY DEMAND

Plaintiffs demand a trial by jury in this matter.

DATED this 5th day of May, 2010.

PARRY DEERING FUTSCHER & SPARKS, PSC

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