

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-23507-GOLD/MCALILEY

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Kirkland Young, LLC, a limited liability
company, Attorney Aid, LLC, a limited
liability company, David Botton, April
Botton Krawiecki and Samy Botton,

Defendants.

**RECEIVER'S MOTION FOR ORDER
APPROVING SETTLEMENT WITH OFFICE
OF THE OHIO ATTORNEY GENERAL**

Mark F. Raymond, Court-appointed Receiver ("Receiver") for Defendant Kirkland Young, LLC, ("Kirkland Young") hereby moves this Court for entry of an Order authorizing the Receiver to enter into a proposed Consent Judgment with the Office of the Ohio Attorney General. In support of this Motion, the Receiver states:

INTRODUCTION

On November 23, 2009, the Attorney General of Ohio initiated an action styled *State of Ohio v. Kirkland Young, LLC*, Case No.: 09CVH11-17495 in the Court of Common Pleas, Franklin County, Ohio. The Complaint alleges various counts against Kirkland Young for violating Ohio's Telephone Solicitation Sales Act (R.C. 4719.01), Consumer Sales Practices Act (R.C. 1345.01) and Debt Adjuster's Act (R.C. 4710.01) in connection with the company's loan modification services. A copy of the Complaint is attached as Exhibit 1. The Receiver has

BROAD and CASSEL

One Biscayne Tower, 21st Floor 2 South Biscayne Blvd. Miami, Florida 33131-1811 305.373.9400

investigated the allegations and has been in communication with the Office of the Ohio Attorney General to settle the outstanding claims against Kirkland Young. The Receiver believes the proposed Consent Judgment is fair and reasonable under the facts and circumstances and therefore recommends that this proposed settlement be approved by the Court. A copy of the proposed Agreed Entry and Consent Judgment is attached as Exhibit 2.

MEMORANDUM

I. The Receiver's Settlement with the Office of the Ohio Attorney General is Governed by the Court's November 19, 2009 TRO.

The Receiver is an arm of the Court. Accordingly, once Kirkland Young (the Receivership Defendant) was placed under the control of the Court through the appointment of the Receiver, all actions taken by the Receiver on behalf of Kirkland Young had to be carried out in a manner consistent with and in furtherance of the Receiver's mandate under the Court's November 19, 2009 Order to Show Cause and *Ex Parte* Temporary Restraining Order with Asset Freeze and Other Equitable Relief ("TRO") [DE 19]. Here, the Attorney General of the State of Ohio instituted its lawsuit against Kirkland Young *after* this Court entered its order appointing the Receiver. Thus, any actions taken by the Receiver on behalf of Kirkland Young to defend or compromise the Ohio lawsuit had to be carried out in a manner consistent with the Court's TRO.

The TRO provides the Receiver with the specific authority to resolve actions instituted against the Kirkland Young. Specifically, Section XII, paragraph K states that the Receiver may:

Institute, *compromise* . . . or become a party to such *actions or proceedings in state, federal or foreign courts that the Temporary Receiver deems necessary* and advisable to preserve or recover the assets of the Receivership Defendant or to *carry out the Temporary Receiver's mandate under this Order.*

(See TRO Sec. XII, par. K) (emphasis added). The TRO further provides that the Receiver may:

Defend, compromise . . . other otherwise dispose of any or all actions or proceedings instituted against the Receivership Defendant or the Temporary Receiver, that the Temporary Receiver deems necessary and advisable to preserve the assets of the Receivership or to carry out the Temporary Receiver's mandate under this Order.

(TRO, Sec. XII, par. L) (emphasis added). By entering into the proposed settlement agreement with the Office of the Ohio Attorney General, the Receiver is carrying out his responsibilities because a settlement will preserve assets of the Receivership Estate by not having the Receiver or the Receivership Estate involved in prolonged litigation, which is of no benefit to the estate or its creditors. The Receiver is filing the instant Motion seeking the Court's approval to proceed with the settlement to provide the Court as well as the parties to the FTC's proceeding an opportunity to be heard and to provide comment or objection to the Receiver's Settlement with the Office of the Ohio Attorney General.

The Receiver believes the instant proposed settlement is in the best interest of the parties and the Receivership Estate. The Receiver agreed to the settlement, subject to this Court's ultimate approval, only after a thorough review of the merits of the Office of the Ohio Attorney General's lawsuit. More importantly, the Receiver believes the settlement is in the best interest of the Receivership Estate because without entering into the settlement, the Receiver will incur significant litigation costs in litigating this matter which would reduce the limited funds available to distribute to the Receivership's creditors and consumers. Finally, the Receiver seeks to execute the settlement agreement as he deems it important to the resolution and winding down of the Receivership Estate.

II. The Court Has Authority to Approve the Settlement.

The Receiver concedes that while the Court is not obligated to approve the settlement agreement, the All Writs Act provides this Court with the requisite authority to approve the settlement. The “All Writs Act,” 28 U.S.C. § 1651(a), provides a district court with the authority to enter orders that protect its jurisdiction and ensure enforcement of its orders. *See* 28 U.S.C. § 1651(a)(2003). Section 1651(a) provides:

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principals of law.

Id. Section 1651 (a) provides a district court with a “legislatively approved source of procedural instruments designed to achieve ‘rational ends of the law’.” *See United States v. New York Telephone Co.*, 434 U.S. 159, 172 (1977). Pursuant to § 1651(a), a district court, unless specifically confined by Congress, “may avail itself of all auxiliary writs as aids in the performance of its duties, when the use of such historic aids is calculated in its sound judgment to achieve the ends of justice entrusted to it.” *See Id.* (quoting *Adams v. United States ex rel McCann*, 317 U.S. 269, 273 (1942)). The authority granted to a district court under § 1651(a) should be applied flexibly where in conformity with these principals. *See Id.*; *SEC V. Bancorp, Ltd.*, 2002 WL 1792053 at *4 - *5 (S.D.N.Y. Aug 2, 2002) (approving receiver’s settlement with broker-dealer where it was within the receiver’s discretion based on the order appointing receiver); *see also SEC v. Wencke*, 577 F.2d 619, 622-23 (9th Cir. 1978) (enjoining further proceedings in a related state-court receivership because doing so “was necessary for the [federal] receivership to achieve its purposes”).

The Court’s TRO expressly authorizes the Receiver to compromise and defend actions instituted against the Receivership Defendant. TRO, Sec. XII, pars. K and L. Here, the

settlement agreement will enable the Receiver to discharge his duty to compromise pending legal actions on behalf of Kirkland Young in a manner that will preserve the limited assets of the Receivership Estate for the benefit of its creditors and consumers.

WHEREFORE, the Receiver respectfully requests that the Court enter an order approving the terms of the settlement agreement and granting the Receiver such other and further relief as the Court deems just and proper.

Respectfully submitted,

BROAD AND CASSEL

Attorneys for Receiver
One Biscayne Tower, 21st Floor
2 South Biscayne Boulevard
Miami, Florida 33131
Telephone: 305.373.9400
Facsimile: 305.373.9443

By: /s/ David B. Rosemberg
David B. Rosemberg, Esq.
Florida Bar No.: 0582239

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 19, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically Notices of Electronic Filing.

/s/ David B. Rosemberg
David B. Rosemberg, Esq.

SERVICE LIST

Chris M. Couillou, Esq.
Sana C. Chriss, Esq.
Federal Trade Commission
225 Peachtree Street, Suite 1500
Atlanta, GA 30303
Tel: 404.656.1353 (Couillou)
404.656.1364 (Chriss)
Fax: 404.656.1379
e-mail: ccouillou@ftc.gov ;
schriss@ftc.gov;

Darren Keith McCartney, Esq.
Rumberger Kirk & Caldwell
300 S Orange Avenue, Suite 1400
Orlando, FL 32802-1873
Tel: 407.872.7300
Fax: 407.841.2133
e-mail: dmccartney@rumberger.com

Gregory Richard Barthelette, Esq.
PO Box 400
Cobleskill, New York 12043
Tel.: 518.295.8383
e-mail: george5252@hotmail.com

David B. Rothman, Esq.
Rothman & Associates P A
200 S Biscayne Blvd., Suite 2770
Miami, Florida 33131
Tel.: 305.358.9000
Fax: 305.374.5747
e-mail: DBR@RothmanLawyers.com

Richard Wayne Epstein, Esq.
Greenspoon Marder P A
100 W Cypress Creek Rd Ste 700
Fort Lauderdale, Florida 33309
Tel.: 954.491.1120
Fax: 954. 771.9264
e-mail: richard.epstein@gmlaw.com

Douglas Brown, Esq.
Rumberger Kirk and Caldwell
Attorneys For David Botton
Lincoln Plaza, Suite 1400
300 South Orange Avenue
Orlando, Florida 32801
Tel.: 407.872.7300
Fax: 407.841.2133
e-mail: dbrown@rumberger.com

Michael Holt, Esq.
Rumberger Kirk & Caldwell P A
80 SW 8th Street, Suite 3000
Miami, Florida 33130
Tel.: 305.358.5577
Fax: 305.371.7580
e-mail: mholt@rumberger.com

Arthur R. Rosenberg, Esq.
Arthur R. Rosenberg, P.A.
6499 Powerline Rd., Suite 106
Fort Lauderdale, Florida 33309
Tel: 954.772.5151
Fax: 954.772.4224
e-mail: arr@arosenberg.com
Assistant Attorney General Rene Harrod
Office of the Attorney General
110 SE 6th Street, 10th Floor
Fort Lauderdale, Florida 33301
Tel.: 954.712.4600
Fax: 954.712.4658
e-mail: rene.harrod@myfloridalegal.com

Richard Alan Sharpstein, Esq.
Jordan Burt LLP
777 Brickell Ave Ste 500
Miami, Florida 33131
Tel.: 305.371.2600
Fax: 305.372.9928
e-mail: ras@jordenusa.com

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, ex rel.)
 RICHARD CORDRAY)
 Attorney General of Ohio)
 30 E. Broad St., 14th Floor)
 Columbus, Ohio 43215)
)
 Plaintiff,)
)
 v.)
)
 KIRKLAND YOUNG, LLC)
 2915 NE Biscayne Boulevard, Suite 303)
 Miami, FL 33137)
)
 Defendant.)

CASE NO. 09 CV H 11 - 17495

JUDGE

**COMPLAINT AND REQUEST FOR
DECLARATORY RELIEF,
INJUNCTIVE RELIEF, RESTITUTION,
CIVIL PENALTIES, AND DAMAGES**

FILED
 COMMON PLEAS COURT
 FRANKLIN CO., OHIO
 2009 NOV 23 AM 10:40
 CLERK OF COURTS

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Richard Cordray, having reasonable cause to believe that violations of Ohio's consumer laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by Ohio Revised Code (R.C.) 109.87, 1345.07, 4710.04, and 4719.12.
2. The primary place of business for Defendant Kirkland Young, LLC is located at 2915 NE Biscayne Boulevard, Suite 303, Miami, Florida, 33137.
3. The actions of Defendant, hereinafter described, have occurred in Franklin County and other counties in the State of Ohio, and as set forth below, the Telephone Solicitation Sales Act, R.C. 4719.01 et seq. ("TSSA"), the Consumer Sales Practices Act, R.C. 1345.01 et seq. ("CSPA") and its Substantive Rules, Ohio Adm. Code ("OAC") 109:4-3-01 et seq., and the Debt Adjuster Act, R.C. 4710.01 et. seq. ("DAA").
4. Defendant is a "supplier" as defined in R.C. 1345.01(C) since Defendant is, and was at all times relevant hereto, engaged in the business of effecting consumer transactions, either directly or indirectly by soliciting or selling goods or services to consumers for purposes that

were primarily for personal, family or household use, within the meaning specified in R.C. 1345.01(A).

5. Defendant is a "telephone solicitor" as defined in R.C. 4719.01(A)(8) since Defendant is, and was at all times relevant hereto, engaged in telephone solicitations, within the meaning specified in R.C. 4719.01(A)(7).
6. Defendant is, and was at all times relevant hereto, engaged in "debt adjusting" as defined in R.C. 4710.01(B) in that Defendant held itself out as providing services in the management of debts by effecting the adjustment, compromise, or discharge of accounts, notes or other indebtedness of the debtors.
7. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the Ohio Consumer Sales Practices Act.
8. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3) in that the Defendant conducted activity which gave rise to the claims for relief in several counties in the State of Ohio, including Franklin County, and pursuant to Ohio Civ. R. 3(B)(6) in that some of the transactions complained of herein, and out of which the claims for relief arose, occurred in Franklin County.

NATURE OF DEFENDANT'S BUSINESS

9. Defendant is, and was at all times relevant hereto, engaged in the business of advertising, soliciting, offering for sale and/or selling its loan modification and loss mitigation services to Ohio consumers.
10. Defendant executes contracts with Ohio consumers to "negotiate or modify their loans" in a purported effort to make payments more manageable for consumers and prevent consumers' homes from being lost in foreclosure.

STATEMENT OF FACTS

11. Defendant advertises its loan modification and loan mitigation services to Ohio consumers through telephone solicitations and its Internet web site located at www.kirklandyoung.com.
12. Defendant advertises its loan modification services to Ohio consumers through its Internet web site and invites consumers to call or fill out a form for assistance.
13. Defendant's Internet web site contains information about foreclosure, loan modification, and the mortgage industry.
14. Defendant initiates and makes unsolicited telephone calls to Ohio consumers offering modification of consumers' mortgage loans.
15. Defendant initiates and makes unsolicited telephone calls to Ohio consumers who are at risk of defaulting on their residential mortgage loans.
16. Defendant initiates and makes unsolicited telephone calls to Ohio consumers who are at risk of losing their homes in foreclosure.
17. Defendant is not registered with the Ohio Attorney General's office as a telephone solicitor.
18. After receiving telephone messages from the Defendant about its loan modification and loss mitigation services, Ohio consumers contact the Defendant by telephone.
19. When Ohio consumers speak with Defendant on the telephone, the Defendant makes misleading and false statements that it can get consumers lower monthly mortgage payments or get their payments "cut in half."
20. When Ohio consumers speak with Defendant on the telephone, the Defendant makes misleading or false statements to consumers about being able to get consumers into loans with lower interest rates.

21. When Ohio consumers speak with Defendant on the telephone, the Defendant makes misleading or false statements to consumers about being able to get the amounts of consumers' loans reduced.
22. When Ohio consumers speak with Defendant on the telephone, the Defendant makes misleading or false statements to consumers about being able to get consumers into fixed rate mortgages or loan modifications.
23. When Ohio consumers speak with Defendant on the telephone, the Defendant makes misleading or false statements to consumers about being able to get consumers into loan modifications in thirty to ninety days.
24. The Defendant's false or misleading statements induce Ohio consumers to purchase the Defendant's loan modification and loss mitigation services.
25. When Ohio consumers speak with Defendant on the telephone, the Defendant represents that it charges an initial payment between \$499 and \$750 for its loan modification and loss mitigation services.
26. Defendant instructs consumers to provide Defendant with the consumers' debit card numbers for immediate processing of initial payments.
27. Once the initial payment is made, Defendant provides the consumers with a copy of the contracts, escrow agreements, and hardship letters, which must be signed and returned to Defendant.
28. In accordance with the escrow agreement, consumers must make monthly payments to the escrow accounts to be used to pay the lender for costs of loan modifications.
29. The Defendant keeps any funds remaining in the escrow accounts once the lenders are paid.
30. Consumers must pay Defendant "closing costs" if they enter into a loan modification with their lender.
31. Defendant's oral representations during phone solicitations contradict the terms of its contract.

32. Defendant failed to make full refunds of the monies paid by consumers when consumers requested.
33. Defendant holds itself out as offering to effect the adjustment, compromise, or discharge of any account, note or other indebtedness of consumers who sign up for its loan modification and loss mitigation services.

CAUSES OF ACTION

VIOLATIONS OF THE TELEPHONE SOLICITATION SALES ACT

COUNT ONE

FAILURE TO REGISTER UNDER THE TSSA

34. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Thirty-three (1-33) of this Complaint.
35. Defendant engaged in telephone solicitations while failing to obtain a certificate of registration as a telephone solicitor from the Ohio Attorney General in violation of the TSSA, R.C. 4719.02(A) and 4719.14, an unfair and deceptive act or practice in violation of the CSPA, R.C. 1345.02.
36. Such acts and practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT TWO

MISREPRESENTATIONS MADE IN TELEPHONE SOLICITATIONS

37. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Thirty-three (1-33) of this Complaint.
38. Defendant engaged in telephone solicitations while making misrepresentations, including misrepresenting a material aspect of the nature or terms of its cancellation or refund policy, in violation of the TSSA, R.C. 4719.08(F) and 4719.14, an unfair and deceptive act or practice in violation of the CSPA, R.C. 1345.02.

39. Such acts and practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant committed said violations after the decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT THREE
FALSE OR MISLEADING STATEMENTS MADE IN TELEPHONE SOLICITATIONS

40. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Thirty-three (1-33) of this Complaint.

41. Defendant has made false or misleading statements, including representing that it can get consumers out of foreclosure, can get consumers into new loans with lower interest, can get consumers' loans reduced, and can get consumers into loan modifications with fixed rates, to induce consumers to pay for goods or services in violation of the TSSA, R.C. 4719.08(G), an unfair and deceptive act or practice in violation of the CSPA, R.C. 1345.02(A).

42. Such acts and practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

COUNT FOUR
UNFAIR AND DECEPTIVE ACTS OR PRACTICES

43. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Thirty-three (1-33) of this Complaint.

44. Defendant committed unfair and deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02(A) by making false and misleading statements.

45. Such acts and practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. Defendant committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT FIVE
UNCONSCIONABLE ACTS OR PRACTICES IN CONNECTION WITH CONSUMER TRANSACTIONS

46. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Thirty-three (1-33) of this Complaint.

47. Defendant committed unconscionable acts or practices in connection with consumer transactions in violation of R.C. 1345.03 and 1345.031(A) due to the inability of consumers to receive a substantial benefit from the subject of the consumer transactions; by entering into consumer transactions on terms the supplier knew were substantially one-sided in favor of the supplier; and by making misleading statements of opinions upon which consumers relied to their detriment.

48. Such acts and practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. Defendant committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

VIOLATIONS OF THE DEBT ADJUSTER'S ACT

COUNT SIX
CHARGING EXCESSIVE FEES

49. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs one through Thirty-three (1-33) of this Complaint.

50. Defendant engaged in debt adjusting activities, including holding out that it can effect the adjustment, compromise, or discharge of any account, note, or other indebtedness of debtors who sign up for its services, and engaged in acts prohibited by the DAA, R.C. 4710.02(A) and (B), including but not limited to charging Ohio residents a fee in excess of seventy-five

dollars for the initial set-up of its services, a violation of the DAA, R.C. 4710.02(F)(1). Pursuant to the DAA, R.C. 4710.04(A), a violation of 4710.02(F)(1) is an unfair and deceptive act or practice in violation of the CSPA, R.C. 1345.02.

51. Such acts and practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. DECLARE that each act or practice complained of herein violates the Telephone Solicitation Sales Act, R.C. 4719.01 et seq., the Consumer Sales Practices Act, R.C. 1345.01 et seq. and its Substantive Rules, Ohio Adm. Code 109:4-3-01 et seq., and the Debt Adjuster Act, R.C. 4710.01 et seq., in the manner set forth in the Complaint.
- B. ISSUE a permanent injunction enjoining Defendant Kirkland Young, LLC, doing business under the name Kirkland Young LLC or any other name(s), its agents, partners, servants, representatives, salespersons, employees, successors and assigns and all persons acting in concert and participation with it, directly or indirectly, through any corporate device, partnership or association, in connection with any consumer transaction, from committing any unfair, deceptive or unconscionable act or practice which violates the Telephone Solicitation Sales Act, R.C. 4719.01 et seq., the Consumer Sales Practices Act, R.C. 1345.01 et seq. and its Substantive Rules, Ohio Adm. Code 109:4-3-01 et seq., and the Debt Adjuster Act, R.C. 4710.01 et seq., including, but not limited to, violations of the specific statutes and rules alleged to have been violated herein.
- C. ORDER Defendant Kirkland Young LLC to pay actual and non-economic damages to all consumers injured by the conduct of the Defendant as set forth in the Complaint.

- D. ASSESS, FINE and IMPOSE upon Defendant Kirkland Young LLC a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein pursuant to R.C. 1345.07(D).
- E. ASSESS, FINE and IMPOSE upon Kirkland Young LLC a punitive damages award in an amount to be determined by the Court.
- G. ISSUE an Injunction prohibiting Defendant Kirkland Young LLC from engaging in business as a supplier in any consumer transaction in the State of Ohio until such time as they have satisfied all monetary obligations due hereunder.
- H. HOLD Defendant Kirkland Young LLC liable for all monetary amounts awarded herein.
- I. GRANT Plaintiff its costs in bringing this action.
- J. ORDER Defendant Kirkland Young to pay all court costs associated with this matter.
- K. GRANT such other relief as the court deems to be just, equitable and appropriate.

Respectfully submitted,

RICHARD CORDRAY
Ohio Attorney General



TERESA A. HEFFERNAN (0080732)
Assistant Attorney General
Office of the Ohio Attorney General
30 E. Broad St., 14th Floor
Columbus, Ohio 43215
(614) 644-9636
(866) 521-9921 – Fax
Teresa.heffernan@ohioattorneygeneral.gov

Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, ex rel.)	
R. MICHAEL DEWINE)	CASE NO. 09-CVH-11-1749
)	
Plaintiff,)	JUDGE K. COCROFT
)	
v.)	
)	
KIRKLAND YOUNG, LLC)	
)	
Defendant.)	

AGREED ENTRY AND CONSENT JUDGMENT

This matter came to be heard upon the filing of a complaint by the Attorney General of Ohio alleging that the Defendant, Kirkland Young, LLC (hereinafter “Kirkland Young” or “Defendant”) has violated the Ohio Telephone Solicitation Sales Act, R.C. 4719.01 et seq., the Ohio Consumer Sales Practices Act, R.C. 1345.01 et seq. and it’s Substantive Rules, Ohio Admin. Code 109:4-3-01 et seq., and the Ohio Debt Adjuster Act, R.C. 4710.01 et seq.

Defendant, through Mark F. Raymond, the undersigned Court-appointed Receiver for Kirkland Young, acknowledges having been served with the Complaint in this action, and admits the Court’s jurisdiction over Kirkland Young and over the subject matter of this action. Defendant Kirkland Young, without admitting or denying the allegations of the Complaint (except as to jurisdiction), voluntarily consents to the entry of this Consent Judgment. Pursuant to R.C. 1345.07(F), this Consent Judgment is not evidence of any prior violation of R.C. Chapter 1345 by Defendant. Pursuant to R.C. 1345.10, this Consent Judgment is not admissible as *prima facie* evidence of the facts on which it is based for any subsequent proceedings brought by any party under R.C. 1345.09.

Defendant Kirkland Young enters into this Consent Judgment voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the State or any member, officer, employee, agent, or representative of the State, to the Defendant or anyone acting on Defendant's behalf, except as stated in this Consent to induce the Defendant to enter into this Consent.

The Findings of Fact that follow are allegations by the Attorney General which are adopted by this Court, but denied by the Defendant.

FINDINGS OF FACT

1. Defendant Kirkland Young, LLC is a Florida corporation located at 2915 NE Biscayne Boulevard, Suite 303, Miami, Florida, 33137.

2. In the action *Federal Trade Commission v. Kirkland Young, LLC, et al.*, Case No.: 09-CV-23507/Gold (S.D. Fla.), on November 19, 2009, the United States District Court for the Southern District of Florida appointed Mark F. Raymond as Receiver over Kirkland Young and its related entities. Pursuant to that Order, the Receiver assumed control and custody over the assets and business of Kirkland Young.

3. Defendant is, and was at all times relevant hereto, engaged in the business of advertising, soliciting, offering for sale and/or selling its loan modification and loss mitigation services to Ohio consumers.

4. Defendant executed contracts with Ohio consumers to "negotiate or modify their loans" in a purported effort to make payments more manageable for consumers and prevent consumers' homes from being lost in foreclosure.

5. Defendant advertised its loan modification and loan mitigation services to Ohio consumers through telephone solicitations and its Internet web site, located at www.kirklandyoung.com.

6. Defendant advertised its loan modification services to Ohio consumers through its Internet web site and invited consumers to call or fill out a form for assistance.

7. Defendant's Internet web site contained information about foreclosure, loan modification, and the mortgage industry.

8. Defendant initiated and made unsolicited telephone calls to Ohio consumers offering modification of consumers' mortgage loans.

9. Defendant initiated and made unsolicited telephone calls to Ohio consumers who were at risk of defaulting on their residential mortgage loans.

10. Defendant initiated and made unsolicited telephone calls to Ohio consumers who were at risk of losing their homes in foreclosure.

11. Defendant was not registered with the Ohio Attorney General's office as a telephone solicitor.

12. After receiving telephone messages from the Defendant about its loan modification and loss mitigation services, Ohio consumers contacted the Defendant by telephone.

13. When Ohio consumers spoke with Defendant on the telephone, the Defendant made misleading and false statements that it can get consumers lower monthly mortgage payments or get their payments "cut in half."

14. When Ohio consumers spoke with Defendant on the telephone, the Defendant made misleading or false statements to consumers about being able to get consumers into loans with lower interest rates.

15. When Ohio consumers spoke with Defendant on the telephone, the Defendant made misleading or false statements to consumers about being able to get the amounts of consumers' loans reduced.

16. When Ohio consumers spoke with Defendant on the telephone, the Defendant made misleading or false statements to consumers about being able to get consumers into fixed rate mortgages or loan modifications.

17. When Ohio consumers spoke with Defendant on the telephone, the Defendant made misleading or false statements to consumers about being able to get consumers into loan modifications in thirty to ninety days.

18. The Defendant's false or misleading statements induced Ohio consumers to purchase the Defendant's loan modification and loss mitigation services.

19. When Ohio consumers spoke with Defendant on the telephone, the Defendant represented that it charged an initial payment between \$499 and \$750 for its loan modification and loss mitigation services.

20. Defendant instructed consumers to provide Defendant with the consumers' debit card numbers for immediate processing of initial payments.

21. Once the initial payment is made, Defendant provided the consumers with a copy of the contracts, escrow agreements, and hardship letters, which had to be signed and returned to Defendant.

22. In accordance with the escrow agreement, many consumers made monthly payments to the escrow accounts to be used to pay the lender for costs of loan modifications.

23. In many instances, the Defendant retained any funds remaining in the escrow accounts once the lenders were paid.

24. Consumers paid Defendant "closing costs" if they entered into a loan modification with their lender.

25. In many instances, Defendant's oral representations during phone solicitations contradicted the terms of its contract.

26. Defendant failed to make full refunds of the monies paid by consumers when consumers requested.

27. Defendant held itself out as offering to effect the adjustment, compromise, or discharge of any account, note or other indebtedness of consumers who signed up for its loan modification and loss mitigation services.

28. The Receiver in the action *FTC v. Kirkland Young* has instituted a claims process by which to provide redress to consumers who were harmed by the actions or conduct of Kirkland Young. By Orders dated June 16, 2010 and June 24, 2010, the United States District Court for the Southern District of Florida approved the Receiver's distribution of Claims Forms to potential claimants against Kirkland Young in order for consumers and other persons to assert claims against the receivership and to allow for an orderly distribution of available assets, pending further rulings by the District Court.

29. As of the date of execution of this Judgment, assets have not been distributed to consumer claimants.

CONCLUSIONS OF LAW

30. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the Ohio Consumer Sales Practices Act.

31. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B) in that the Defendant conducted activity, which gave rise to the claims for relief in several counties in the State of Ohio, including Franklin County.

32. Provisions of the Telephone Solicitation Sales Act, R.C. 4719.01 et seq. (“TSSA”), the Consumer Sales Practices Act, R.C. 1345.01 et seq. (“CSPA”) and its Substantive Rules, Ohio Adm. Code (“OAC”) 109:4-3-01 et seq., and the Debt Adjuster Act, R.C. 4710.01 et seq. (“DAA”) govern the business practices of Defendant.

33. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Richard Cordray, is the proper party to commence this proceeding under the authority vested in him by R.C. 109.87, R.C. 1345.07, R.C. 4710.04, and R.C. 4719.12 in the public interest and on behalf of the State of Ohio.

34. Defendant is a “supplier” as defined in R.C. 1345.01(C) since Defendant is, and was at all times relevant hereto, engaged in the business of effecting consumer transactions, either directly or indirectly by soliciting or selling goods or services to consumers for purposes that were primarily for personal, family or household use, within the meaning specified in R.C. 1345.01(A).

35. Defendant is a “telephone solicitor” as defined in R.C. 4719.01(A)(8) since Defendant is, and was at all times relevant hereto, engaged in telephone solicitations, within the meaning specified in R.C. 4719.01(A)(7).

36. Defendant is, and was at all times relevant hereto, engaged in “debt adjusting” as defined in R.C. 4710.01(B) in that Defendant held itself out as providing services in the management of debts by effecting the adjustment, compromise, or discharge of accounts, notes or other indebtedness of the debtors.

37. A telephone solicitor that engages in telephone solicitations while failing to obtain a certificate of registration as a telephone solicitor from the Ohio Attorney General is in violation

of the TSSA, R.C. 4719.02(A) and R.C. 4719.14, and commits an unfair and deceptive act or practice in violation of the CSPA, R.C. 1345.02.

38. A telephone solicitor that engages in telephone solicitations while making misrepresentations, including misrepresenting a material aspect of the nature or terms of its cancellation or refund policy, is in violation of the TSSA, R.C. 4719.08(F) and R.C. 4719.14, and commits an unfair and deceptive act or practice in violation of the CSPA, R.C. 1345.02.

39. A supplier that makes false or misleading statements, including representing that it can get consumers out of foreclosure, can get consumers into new loans with lower interest, can get consumers' loans reduced, and can get consumers into loan modifications with fixed rates, to induce consumers to pay for goods or services is in violation of the TSSA, R.C. 4719.08(G), and commits an unfair and deceptive act or practice in violation of the CSPA, R.C. 1345.02(A).

40. A supplier commits unfair and deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02(A) by making false and misleading statements.

41. A supplier commits unconscionable acts or practices in connection with consumer transactions in violation of R.C. 1345.03 by knowingly taking advantage of the inability of consumers to receive a substantial benefit from the subject of the consumer transactions; by entering into consumer transactions on terms the supplier knew were substantially one-sided in favor of the supplier; and by making misleading statements of opinions upon which consumers relied to their detriment.

42. A debt adjuster that engages in debt adjusting activities, including holding out that it can effect the adjustment, compromise, or discharge of any account, note, or other

indebtedness of debtors who sign up for its services, and engaged in acts prohibited by the DAA, has violated R.C. 4710.02(A) and (B), including but not limited to charging Ohio residents a fee in excess of seventy-five dollars for the initial set-up of its services, a violation of the DAA, R.C. 4710.02(F)(1). Pursuant to the DAA, R.C. 4710.04(A), a violation of R.C. 4710.02(F)(1) is an unfair and deceptive act or practice in violation of the CSPA, R.C. 1345.02.

ORDER

For purposes of affecting this Consent Judgment and Order, it is therefore

ORDERED and ADJUDGED as follows:

(a) Defendant Kirkland Young doing business under the name Kirkland Young, LLC or any other name(s), its representatives, salespersons, employees, and all persons acting in concert and participation with it, directly or indirectly, through any corporate device, partnership or association, in connection with any consumer transaction, is permanently enjoined from committing any unfair, deceptive, or unconscionable act or practice that violates: the Telephone Solicitation Sales Act, R.C. 4719.01 et seq.; the Consumer Sales Practices Act, R.C. 1345.01 et seq., and its Substantive Rules, Ohio Admin. Code 109:4-3-01 et seq., and the Debt Adjuster Act, R.C. 4710.01 et seq., including, but not limited to, violations of the specific statutes and rules violated herein.

(b) Defendant Kirkland Young is further permanently enjoined from:

(i) Committing unfair or deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02 by engaging in telephone solicitations while failing to obtain a certificate of registration as a telephone solicitor from the Ohio Attorney General in violation of the TSSA, R.C. 4719.02(A) and R.C. 4719.14;

(ii) Committing unfair or deceptive acts or practices in violation of the

Consumer Sales Practices Act, R.C. 1345.02 by engaging in telephone solicitations while making misrepresentations, including misrepresenting a material aspect of the nature or terms of its cancellation or refund policy, in violation of the TSSA, R.C. 4719.08(F) and R.C. 4719.14;

(iii) Committing unfair or deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02 by making false or misleading statements, including representing that it can get consumers out of foreclosure, can get consumers into new loans with lower interest, can get consumers' loans reduced, and can get consumers into loan modifications with fixed rates, to induce consumers to pay for goods or services in violation of the TSSA, R.C. 4719.08(G);

(iv) Committing unfair and deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02(A) by making false and misleading statements.

(v) Committing unconscionable acts or practices in connection with consumer transactions in violation of R.C. 1345.03 by knowingly taking advantage of the inability of consumers to receive a substantial benefit from the subject of the consumer transactions; by entering into consumer transactions on terms the supplier knew were substantially one-sided in favor of the supplier; and by making misleading statements of opinions upon which consumers relied to their detriment.

(vi) Committing unfair or deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02 by engaging in debt adjusting

activities, including holding out that it can effect the adjustment, compromise, or discharge of any account, note, or other indebtedness of debtors who sign up for its services, and engaging in acts prohibited by the DAA, R.C. 4710.02(A) and (B), including but not limited to charging Ohio residents a fee in excess of seventy-five dollars for the initial set-up of its services, a violation of the DAA, R.C. 4710.02(F)(1).

(c) It is further ordered that Defendant Kirkland Young, LLC shall, in accordance with any order by the Court in *FTC v. Kirkland Young et al.*, make payment to Ohio consumers who have submitted claims that were approved in accordance with the claims process.

(d) It is further ordered that Defendant shall negotiate in good faith, through the office of the Ohio Attorney General, any consumer complaints filed with the Ohio Attorney General's Office concerning Defendant's conduct occurring prior to the District Court's Order appointing the Receiver and filing date of the Consent Judgment, which are brought by consumers that are discovered after entering into this Consent Judgment.

(e) It is further ordered that pursuant to R.C. 1345.07(D) Defendant is assessed a civil penalty in the amount of One Hundred and Fifty Thousand Dollars (\$150,000.00). Said penalty is suspended upon compliance with this Judgment. If Defendant fails to comply with all provisions in this Judgment, One Hundred and Fifty Thousand Dollars (\$150,000.00) in civil penalties shall be due and payable upon demand.

(f) It is further ordered that any violation of the Orders set forth in Paragraphs (a) through (e) above shall constitute contempt. Service of any action for contempt shall be complete upon mailing a certified copy of such action to Defendant.

(g) It is further ordered that with respect to the monetary amounts contemplated in paragraph (e) of the Order portion of this Consent Judgment, any execution on the judgment herein will be stayed, until the conclusion of the Federal Court action, *FTC v. Kirkland Young*, et al., In the event that Kirkland Young is found to have violated the terms of this Consent Judgment, this stay provision will be null and void.

(h) Failure of the Attorney General to timely enforce any term, condition, or requirement of this Consent Judgment shall not provide, nor be construed to provide, Defendant a defense for noncompliance with any term of this Consent Judgment or any other law, rule, or regulation; nor shall it stop or limit the Attorney General from later enforcing any term of this Consent Judgment or seeking any other remedy available by law, rule, or regulation.

(i) It is further ordered that nothing in this Consent Judgment shall in any way preclude any investigation or enforcement action against Defendant under any legal authority granted to the State for transactions not subject to this action.

(j) It is further ordered that Defendant Kirkland Young shall not represent directly or indirectly or in any way whatsoever that the Court or the Ohio Attorney General has sanctioned, condoned, or approved any part or aspect of Defendant's business operation.

This Court shall retain jurisdiction to enforce compliance with this Consent Judgment and Order.

IT IS SO ORDERED.

JUDGE K. COCROFT

Approved:

TERESA A. HEFFERNAN (0080732)
Assistant Attorney General
Office of the Ohio Attorney General R. Michael DeWine
30 E. Broad St., 14th Floor
Columbus, Ohio 43215
(614) 644-9636
(866) 521-9921 – Fax
teresa.heffernan@ohioattorneygeneral.gov

Counsel for Plaintiff

MARK F. RAYMOND,
COURT-APPOINTED RECEIVER
FOR KIRKLAND YOUNG, LLC
Broad and Cassel
2 South Biscayne Blvd., 21st Floor
Miami, FL 33131
(305) 373-9425
(305) 995-6385– Fax
Mraymond@BroadandCassel.com