

FILED
KNOX COUNTY
COURT OF COMMON PLEAS

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MARY JO HAWKINS
CLERK OF COURTS

COURT OF COMMON PLEAS
KNOX COUNTY, OHIO

SANDRA FITHIAN,

Plaintiff,

v.

ACCREDITED FINANCIAL, INC., *et al.*,

Defendants.

) Case No.: 10 OT 06-0352

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JUDGE: Hon. Otho Eyster

**JUDGMENT ENTRY GRANTING
PLAINTIFF'S MOTION FOR DEFAULT
AGAINST DEFENDANTS ACCREDITED
FINANCIAL, INC., ACCREDITED
FINANCIAL SERVICES LLC, AND HPM,
INC.**

* * *

This matter came to be considered on Plaintiff's Motion for Default Judgment against Defendants Accredited Financial, Inc., Accredited Financial Services LLC, and HPM, Inc. (hereafter "Defendants"). The Court has considered Plaintiff's motion and memorandum, the affidavits of the Plaintiff and Mr. Reichenbach, and has reviewed the Complaint. The Court finds that each of the Defendants was properly served by certified mail but failed to timely file a proper answer or other responsive pleading to the Complaint. The Court notes that the document purporting to be an Answer of the Defendants, filed June 30, 2010, was stricken by order dated August 19, 2010. The Court sustains the Plaintiff's Motion for Default Judgment.

With regard to the Consumer Sales Practices Act ("CSPA") claim, the Court finds that the Defendants' acts and practices constitute unfair, deceptive, and unconscionable acts and practices in

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violation of the CSPA. The Court specifically finds that each of the Defendants was a supplier because they were engaged in the business of providing services to consumers, including advising consumers on personal finance issues, and negotiating with creditors on behalf of consumers owing debts. The Court further finds that the transaction described in the Complaint, including representations made prior to the agreement, the agreement itself, and Defendants' post-agreement acts and omissions, is a "consumer transaction", and that Ms. Fithian is a "consumer" because she engaged the Defendants in debt negotiation services for her personal and family use. The Court finds that each of the Defendants was engaged in a joint venture with each other and with the two prior parties, Noteworld LLC and World Class Debt Services, Inc.¹

The Court finds that Defendants committed the following specific unfair, deceptive and unconscionable acts and practices, either directly or through the joint venture, for which each Defendant is jointly and severally responsible:

1. Defendants misrepresented their success rate, and the results of their program, prior to Ms. Fithian signing the contract.
2. Defendants falsely promised to provide Ms. Fithian with third party legal assistance; then failed to provide her legal professional assistance when a creditor in their program sued her on one of the debts, causing Ms. Fithian to suffer a wage garnishment.
3. Defendants' charges for their services are illegal under R.C. 4710.02(B).
4. Defendants knew at the time the consumer transaction was entered into, that Ms. Fithian would not receive a substantial benefit from it.

The acts and practices of the Defendants were previously declared unfair and deceptive by a provision of Ohio Administrative Code and by a decision of an Ohio court which has been included in the Attorney General's Public Inspection File. OAC 109:4-3-09; *State ex rel. Petro v. Debticated*

¹ No judgment is entered against Noteworld LLC and World Class Debt Services, Inc. Those two entities were dismissed by Plaintiff on August 6, 2010.

Consumer Counseling, Inc.; (Lucas Cty. CP, July 3, 2003), unreported, Case No. CIO 2002 04856. Thus Defendants are responsible for treble damages. R.C. 1345.09(B).

The Court finds that the Defendants acted "knowingly".

The Court finds that Ms. Fithian suffered actual damages of \$4,237.38, which is trebled to \$12,712.14.

With regard to Count 2, for violations of R.C. 4710.02(F)(1), the Court finds that these violations result in the same liability as is available to consumers under the CSPA (Count 1). R.C. 4710.04(A). Therefore, the Court awards the same relief as in Count 1.

With regard to Count 3, negligent misrepresentation, the Court finds that Ms. Fithian is entitled to \$4,237.38 in actual damages.

With regard to Count 4, civil conspiracy, the Court finds that Ms. Fithian is entitled to \$4,237.38 in actual damages. In addition, Defendants' reckless, wanton, willful and gross conduct warrants punitive damages. *Williams v. Aetna Fin. Co.*, 1998-Ohio-294, 83 Ohio St.3d 464, 478, 700 N.E.2d 859 (Ohio 1998); Complaint, ¶ 63. In order to punish Defendants' unfair, deceptive, and fraudulent acts, and to deter Defendants from doing the same in the future, the Court awards punitive damages in the amount of ten times Ms. Fithian's actual damages: \$42,373.80.

Because Allied acted knowingly, \$42,373.80 are responsible for Ms. Fithian's attorney fees for time spent prosecuting the claims against the Defendants.

The Court finds that Plaintiff's counsel spent 6.9 hours representing Plaintiff with regard to the claims against Defendants, and that 6.9 hours is a reasonable amount of time for Plaintiff's counsel to spend on this matter thus far. The Court finds that a reasonable hourly rate for an attorney doing civil work in north-central Ohio is \$175 per hour. The Court finds that Plaintiff's counsel, Gregory Reichenbach, has received extensive specialized training in consumer litigation, has published articles on the topic, taught CLE's on the topic, is well-respected in the local legal community, and is

experienced at litigating consumer cases. The Court notes that issues involved in cases under the Consumer Sales Practices Act and related claims, such as this one, involve complex legal issues, similar to those in other legal areas where attorneys often specialize. The Court finds that the hourly rate should be increased to \$210 per hour for the reasons cited by the Plaintiff in his memorandum. The Court therefore awards Plaintiff attorney fees of \$1,449.00.

It is further ORDERED AND ADJUDGED, that Defendants Accredited Financial, Inc., Accredited Financial Services LLC, and HPM, Inc. are each jointly and severally liable to the Plaintiff in the total amount of \$56,534.94, plus the costs of this action, with interest at the statutory rate of 4% per annum.

The Clerk is directed to serve a copy of this Judgment Entry on all parties at the following addresses:

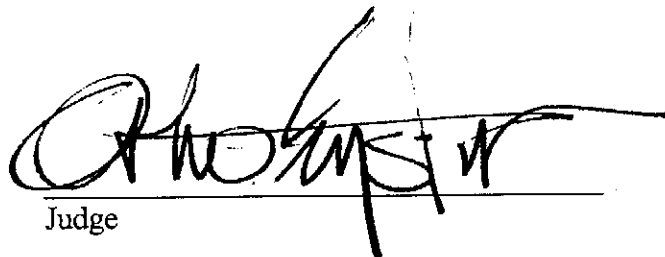
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HPM, Inc.
665 San Rodolfo Dr., # 106
Solana Beach, CA 92075

Date: 11/8/11



Judge