

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MORRIS COUNTY
DOCKET NO. MRS-C - 74-09

PAULA T. DOW, Attorney General of the State of New Jersey, and THOMAS R. CALCAGNI, Acting Director of the New Jersey Division of Consumer Affairs,

Plaintiffs,

v.

DARYL T. TURNER, individually and d/b/a DREAMWORKS VACATION CLUB, DREAMWORKS VACATIONS, DREAMWORKS, BENTLEY TRAVEL, MODERN DESTINATIONS UNLIMITED and BLUE WATER; VACATION CLUBS LLC d/b/a LA BONNE VIE TRAVEL; FIVE POINTS TRAVEL COMPANY; and DREAM VACATIONS INTERNATIONAL, INC.; AWAY WE GO PROMOTIONS, LLC; JANE AND JOHN DOES 1-20, individually and as owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of DARYL T. TURNER, individually and d/b/a DREAMWORKS VACATION CLUB, DREAMWORKS VACATIONS, DREAMWORKS, BENTLEY TRAVEL, MODERN DESTINATIONS UNLIMITED and BLUE WATER; VACATION CLUBS LLC d/b/a LA BONNE VIE TRAVEL; FIVE POINTS TRAVEL COMPANY; and DREAM VACATIONS INTERNATIONAL, INC.; and AWAY WE GO PROMOTIONS, LLC, and XYZ CORPORATIONS, 1-20,

Defendants.

Civil Action

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2011 MAY 13 P 4: 18
CIVIL DIVISION

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO ENFORCE LITIGANT'S RIGHTS**

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Plaintiffs
(973) 877-1280

LORRAINE K. RAK
Deputy Attorney General
Of Counsel and On the Brief

PRELIMINARY STATEMENT

Plaintiffs Paula T. Dow, Attorney General of the State of New Jersey, and Thomas R. Calcagni, Acting Director of the New Jersey Division of Consumer Affairs (collectively, "Plaintiffs")¹ submit this memorandum of law in support of their Motion to Enforce Litigant's Rights, pursuant to R. 1:10-3 ("Motion") as against defendant Daryl T. Turner ("Turner").

As detailed below, Turner is in violation of the Final Consent Judgment by which this action was settled ("Consent Judgment"), among other things, by: (1) his ownership and/or operation of Travel Deals, a business in the State of New Jersey ("State") that is engaged in the advertisement, offering for sale and sale of vacation club membership packages ("Vacation Packages"); (2) failing to disclose to Plaintiffs his ownership and/or operation of Travel Deals; and (3) failing to post the requisite bond. Additionally, the Consent Judgment provided for a Settlement Amount of \$3,086,508.62, of which \$2,188,728.52 comprises consumer restitution. To date, neither Turner nor any other Defendant has made any payment in satisfaction thereof. To that end, Plaintiffs forwarded to Turner an Information Subpoena. Among other things, Turner's response indicated that he is neither employed nor in possession of any personal assets, including motor vehicles and bank accounts. As detailed below, Turner's response is belied by information obtained by Plaintiffs.

Based upon Turner's violation of the Consent Judgment and what can only be interpreted as an attempt to secrete assets available to satisfy the Consent Judgment, Plaintiffs submit this Motion on short notice to Turner. Additionally, Plaintiffs seek an Order, among other things: (1) granting Plaintiffs' Motion; (2) enjoining Turner from any involvement in the operation of Travel Deals

¹ This action was commenced on behalf of Anne Milgram, former Attorney General of the State of New Jersey ("Attorney General"), and David M. Szuchman, former Director of the New Jersey Division of Consumer Affairs ("Director"). Pursuant to R. 4:34-4, the caption has been revised to reflect the current Attorney General and Acting Director.

and/or any other business or entity engaged in the advertisement, offering for sale and/or sale of Vacation Packages; (3) enjoining Turner from removing, selling, encumbering, transferring or otherwise disposing of any assets, including motor vehicles and bank accounts; (4) requiring Turner to appear at deposition; and (5) requiring Turner to reimburse Plaintiffs for their attorneys' fees and costs incurred in connection with any post-judgment collection efforts as well as this Motion.

STATEMENT OF FACTS AND PROCEEDING

I. COMMENCEMENT AND SETTLEMENT OF ACTION:

On May 26, 2009, Plaintiffs commenced this action by Order to Show Cause as to Turner as well as Dreamworks Vacation Club a/k/a Dreamworks Vacations a/k/a Dreamworks (collectively, "Dreamworks"), Five Points Travel Company ("Five Points Travel") and Bentley Travel, alleging violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), and the Regulations Governing General Advertising Practices, N.J.A.C. 13:45A-9.1 et seq. ("Advertising Regulations") arising from their solicitation and sale of Vacation Packages. Thereafter, Turner was found to be engaged in the sale of Vacation Packages through several other business names or entities. As such, Plaintiffs amended the Verified Complaint on five (5) occasions to include the following as defendants: Vacation Clubs LLC d/b/a La Bonne Vie Travel ("Vacation Clubs"), Dream Vacations International, Inc. ("DVI"), Modern Destinations Unlimited ("MDU"), Blue Water and Away We Go Promotions, LLC ("Away We Go Promotions").² (Certification of Lorraine K. Rak, dated May 13, 2011 ("Rak Cert.") ¶4.)

² Turner, Dreamworks, Five Points Travel, Bentley Travel, Vacation Clubs, DVI, MDU, Blue Water and Away We Go Promotions are collectively referred to as "Defendants."

On December 1, 2010, Plaintiffs filed a Motion for Final Injunctive and Other Relief, pursuant to R. 4:67-1(a) and N.J.S.A. 56:8-8 (“Motion for Final Relief”). In support of the Motion for Final Relief, Plaintiffs submitted certifications from twenty-four (24) consumers, including Diane Olszewski and Kathleen M. Posluszny. (Rak Cert. ¶5.)³

Prior to the oral argument of the Motion for Final Relief, Plaintiffs and Defendants (collectively, “Parties”) settled this action. The settlement is memorialized in the Consent Judgment, executed by counsel for the Parties as well as Turner. The Consent Judgment was executed by the Honorable Deanne M. Wilson, P.J.Ch. and filed on February 1, 2011. (Rak Cert. ¶6, Exh. A.)

Section 5 of the Consent Judgment is titled “Injunctive Relief and Business Practices” and includes the following:

Subject to the provisions of Section 12.1, Defendant Turner is enjoined from owning and/or operating any business or other entity in the State that is engaged in the Advertisement, offering for Sale and/or Sale of Vacation Packages.

[Rak Cert. ¶7, Exh. A at 5.2.]

Section 12 of the Consent Judgment is titled “Future Businesses Owned and/or Operated by Turner” and includes the following:

At any time after five (5) years from the Effective Date, Turner may make a written request to the Plaintiffs to open and/or operate any business or other entity in New Jersey that is engaged in the Advertisement, offering for Sale and/or Sale of Vacation Packages. . . .

[Rak Cert. 8, Exh. A at 12.1.]

³ A copy of the Certification of Diane Olszewski, dated August 14, 2009 (“Olszewski Cert.”), and the Certification of Kathleen M. Posluszny, dated November 19, 2010 (“Posluszny Cert.”), are submitted in connection with this Motion.

Section 12.3 of the Consent Judgment provides as follows:

For a period of five (5) years from the Effective Date, Turner shall notify Plaintiffs of subsequent plans to: (a) open, close or relocate any retail office and/or business locations owned, operated and/or managed by Defendant Turner in New Jersey; and/or (b) Advertise, offer for Sale and/or sell Merchandise to Consumers in New Jersey, along with a description of the Merchandise. Defendant Turner shall provide such notification at least thirty (30) days prior to the effective date of any such change.

[Rak Cert. ¶9, Exh. A at 12.3.]

Section 12.4 of the Consent Judgment also requires Turner to post a bond, as follows:

As soon as practical, but not later than thirty (30) days prior to Defendant Turner: (a) opening and/or operating any business or other entity in New Jersey as an owner or executive officer; (b) Advertising, offering for Sale and/or selling Merchandise to Consumers in New Jersey, Defendant Turner shall post a bond in favor of Plaintiffs in the amount of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) or ten percent (10%) of Defendant Turner's prior business year's gross income, whichever is greater. . . .

[Rak Cert. ¶10, Exh. A at 12.4.]

The Consent Judgment also requires Turner to provide Plaintiffs with notification of the opening, closing or relocation of any business accepting Consumer deposits in which he is an owner or executive officer. (Id. ¶11, Exh. A at 12.7.)

Further, the Consent Judgment provides for a Settlement Amount of \$3,086,508.62, which is comprised of the following: (a) \$478,000.00 in civil penalties, pursuant to N.J.S.A. 56:8-13; (b) \$2,188,728.52 in consumer restitution, pursuant to N.J.S.A. 56:8-8; and (c) \$375,374.16 in reimbursement of attorneys' fees and \$44,405.91 in reimbursement of Plaintiffs' investigative costs, pursuant to N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19. (Rak Cert. ¶12, Exh. A at 6.2.) To date, neither Turner nor any other Defendant has made any payment in satisfaction of the Settlement Amount. (Rak Cert. ¶13.)

II. TURNER'S INVOLVEMENT WITH TRAVEL DEALS:

In or about October 2010, the New Jersey Division of Consumer Affairs ("Division") began to receive telephone calls indicating that Turner was engaged in the sale of Vacation Packages under the name of "Travel Deals" and out of a new location, namely, 110 Centre Boulevard, Marlton, New Jersey 08053 ("110 Centre Boulevard"). (Certification of Murat Botas, dated May 13, 2011 ("Botas Cert."), ¶5.)

A. Corporate Information:

On December 8, 2010, the Division obtained corporate information for Travel Deals Limited Liability Company, which identified Robyn Bernstein (also referred to as "Ms. Bernstein") as the registered agent and a mailing address of 110 Centre Boulevard. (Botas Cert. ¶9, Exh. D.)⁴ On the same day, the Division obtained corporate information for VIP Executives, LLC ("VIP Executives") which identified Ms. Bernstein as the managing member and an address of 110 Centre Boulevard. (Id. ¶10, Exh. E.)

On May 4, 2011, the Division obtained an Accurint report for VIP Executives. The report indicates that VIP Executives is a Nevada limited liability company incorporated on September 20, 2006. Under the "Officers and Directors" portion of the report, Robyn Bernstein is identified as a managing member and Daryl Turner as a manager. (Botas Cert. ¶14, Exh. G.)

B. Emergency Contact And Lease:

On October 21, 2010, the Division obtained from the Evesham Township Fire Department a copy of the Fire Safety Use Registration Form for 110 Centre Boulevard. (Botas Cert. ¶6, Exh. A.)

⁴ Ms. Bernstein previously identified herself as the Sales Director of MDU. (See Posluszny Cert. ¶10.) Ms. Bernstein was also identified as the Sales Manager of Vacation Clubs. (See Olszewski Cert. Exh. A.)

The contact information on the form listed Ms. Bernstein and "Daryl Thomas." The telephone contact number for "Daryl Thomas" is "856-625-8601." (Id.) During the course of its investigation, the Division determined that Turner's complete name is "Daryl Thomas Turner." (Id.) Turner listed the same telephone number as his contact number on the Township of Manalapan Bureau of Fire Prevention Application for Inspection submitted by Turner on behalf of Vacation Clubs. (Id. ¶7, Exh. B.)

On December 10, 2010, the Division obtained the Lease Agreement, effective as of August 25, 2010, between Marlton Crossings, LLC and VIP Executives d/b/a Travel Deals Website concerning 110 Centre Boulevard. (Botas Cert. ¶12, Exh. F.) The Lease Agreement includes a signature line for the tenant, VIP Executives, which includes the name "Daryl Bernstein" with the title "Executive." (Id.)

On or about May 3, 2011, the Division learned that Travel Deals opened an office in Windsor, Connecticut. (Botas Cert. ¶15.) On May 5, 2011, The Windsor Management Company forwarded a copy of the Lease, dated as of March 7, 2011, between Kennedy Parks, LLC (Landlord) and VIP Executives, LLC (Tenant). Among other things, Tenant is defined as "VIP Executives, LLC, a Nevada limited liability company with an office and principal place of business at 108(b) Center Boulevard, Evesham, NJ 08053." In addition, the Lease includes a signature line for the Tenant, VIP Executives, LLC, which includes the name "Derrick Turner" as "Its: Principal, duly authorized." (Id. ¶17, Exh. H.)

C. Consumer Kathleen DeGregorio:

On February 23, 2011, Kathleen DeGregorio and her husband, Michael, attended a presentation for Vacation Packages at the Travel Deals location at 110 Centre Boulevard.

(Certification of Kathleen DeGregorio, dated May 12, 2011 (“DeGregorio Cert.”), ¶¶5-6.) At the conclusion of the presentation, Mr. and Mrs. DeGregorio purchased a Vacation Package for \$4,194.00, in addition to an annual fee of \$299.00. (Id. ¶¶14, 16.) Afterwards, Mr. and Mrs. DeGregorio discovered that the discounts and other accommodations represented during the presentation were actually not available through the Vacation Package. Consequently, Mr. and Mrs. DeGregorio requested a refund from Travel Deals. (DeGregorio Cert. ¶26, Exh. G.)

On or about April 12, 2011, Mrs. DeGregorio received a letter from Discover Financial Services (“Discover”) indicating that the temporary credit of \$4,194.00 had been reversed. (DeGregorio Cert. ¶37, Exh. L.) Included with that letter were documents Discover received from First American Title Company (“First American Title”). The documents include an email, dated March 14, 2011 11:18:34 AM EDT, from Cammy Smith of First American Title (camsmith@firstam.com) to “closeresq@aol.com.” The message reads: “Hi Daryl - we received a charge back inquiry on Kathleen Degregorio disputing quality of goods or services. Has the purchaser been in touch with Travel Deals regarding issue?” The documents also include an email from “Daryl (closeresq@aolcom)” to Cammy Smith, dated March 14, 2011 11:25 AM, reads as follows: “I will have service dept contact you about this client[.] Spoke to numerous times states we promised her discount Disney we never did[.] She had put in other reservations in as well[.]” Finally, the documents include an email, dated March 14, 2011 11:25 am from Daryl (closeresq@aol.com) to tdnjservice (tdnjservice@aol.com). (Id. ¶38, Exh. L.)

Afterwards, Mrs. DeGregorio contacted Discover and the representative told me to call First American Title because the charges went through that company first. (DeGregorio Cert. ¶39.) When Mrs. DeGregorio called First American Title, she inquired as to the identity of the “Daryl” who sent

and received the emails from First American Title. Mrs. DeGregorio was told that the contact person for Travel Deals was Daryl Turner and that he was the person First American Title contacted if there were any issues. (Id. ¶40.)

D. Division's Undercover Investigation Of Travel Deals:

On March 3, 2011, Division Investigators Kelly Fennell and Michael Bruch conducted an undercover visit to the Travel Deals location at 110 Centre Boulevard. While at that location, Investigators Fennell and Bruch were introduced to an individual named "D" who discussed payment and financing options for the membership packages offered by Travel Deals. "D" was later identified by Investigators Fennell and Bruch as Turner. (See Certification of Kelly Fennell, dated May 12, 2011 ("Fennell Cert."), ¶¶24-28, Exh. I.; Botas Cert. ¶13.)

III. TURNER'S ASSETS:

In April 2011, the Division received an anonymous telephone call from an individual who stated that Turner and Ms. Bernstein were "bragging" about the recent purchases of motor vehicles, specifically a Bentley and Ferrari. (Botas Cert. ¶18.)

First, information obtained from the New Jersey Motor Vehicle Commission ("NJMVC") indicated that a 2011 Land Rover Range Rover, purchased on March 17, 2011, was owned by Turner and Ms. Bernstein ("2011 Range Rover"). Second, the NJMVC information indicated that a 2001 Ferrari, purchased on April 15, 2011, was owned by Turner and Ms. Bernstein. Third, the NJMVC information indicated that a 2007 Bentley, purchased on April 21, 2011, was owned by Ms. Bernstein. (Botas Cert. ¶19, Exh. I.)

On May 3, 2011, the Division received a copy of the deal jacket for the 2001 Ferrari ("Ferrari Deal Jacket") and the deal jacket for the 2007 Bentley ("Bentley Deal Jacket") from Interstate

Motorsports. (Botas Cert. ¶22, Exhs. J and K.) On May 5, 2011, the Division received a copy of the deal jacket for the 2011 Range Rover from Cherry Hill Imports (“Range Rover Deal Jacket”). (Id. ¶25, Exh. K.)

The Ferrari Deal Jacket indicates that the \$80,000 purchase price (without taxes and fees) of the 2001 Ferrari was reduced by \$25,000, which reflected the trade-in value of a 2007 BMW 750, which vehicle was owned by Turner. The Ferrari Deal Jacket includes check #9553, in the amount of \$84,149.00, and check #9543, in the amount of \$25,000.00. Both checks bear the account of “VIP Executives c/o Daryl Turner.” (Botas Cert. ¶23, Exh. J.)

The Bentley Deal Jacket indicates a purchase price (with taxes and fees) of \$106,229.00. The Bentley Deal Jacket includes check #9551, in the amount of \$81,229.00. The check bears the account of “VIP Executives c/o Daryl Turner.” (Botas Cert. ¶24, Exh. K.)

The Range Rover Deal Jacket indicates a purchase price of \$80,632.68, which was reduced by \$17,500.00, which reflected the trade-in value of a 2004 Hummer that was owned by Turner and Ms. Bernstein. The Range Rover Deal Jacket indicates that the payment of \$68,000.00 was paid by electronic transfer on March 17, 2011 by VIP Executives, LLC. Such is reflected in an email from VIP EXECUTIVES LLC (closeresq@aol.com). (Botas Cert. ¶25, Exh. L.)⁵

IV. INFORMATION SUBPOENA DIRECTED TO TURNER:

On April 13, 2011, an Information Subpoena was forwarded to Turner by regular mail, certified mail and UPS Next Day Air. On April 13, 2011, a copy of Information Subpoena directed to Turner was forwarded to Richard D. Gallucci, Esq. by regular mail, certified mail and UPS Next

⁵ The email address was the same email address in the correspondence received by Mrs. DeGregorio from Discover.

Day Air. (Rak Cert. ¶14, Exh. B.)⁶ On April 14, 2011, the Information Subpoena was delivered to Turner and Mr. Gallucci by UPS Next Day Air. (Id.)

In late April 2011, Turner forwarded the Information Subpoena to Plaintiffs' counsel. (Rak Cert. ¶15, Exh. C.) As to the Information Subpoena Question #7 concerning "Full name and address of your employer," Turner responded "N/A." Additionally, Turner listed no weekly salary. As to the Information Subpoena Question #9 concerning "names, addresses and account numbers of all bank accounts on which your name appears" Turner responded "N/A." As to the Information Subpoena Question #14 asking "Does the present value of your personal property, which includes automobiles, furniture, appliances, stocks, bonds and cash on hand, exceed \$1,000?" Turner responded "No." Turner also indicated that he had no cash on hand. (Rak Cert. ¶¶16-18, Exh. C.)

As to the Information Subpoena Question #15 asking "Do you own a motor vehicle?" Turner responded "No." As to the Information Subpoena Question #16 asking "Do you own a business?" Turner responded "No." Additionally, the Information Subpoena appears to bear the signature of Daryl T. Turner and is dated "4/19/11." (Rak Cert. ¶¶19-21, Exh. C.)

To date, Plaintiffs have expended attorneys' fees and investigative costs in connection with post-judgment collection efforts. Plaintiffs shall supplement this submission to provide such fees and costs. (Rak Cert. ¶22.)

⁶ The Consent Judgment provides that any notices required therein are to be forwarded to Richard D. Gallucci, Jr., Esq. on behalf of Defendants. On or about April 1, 2011, Plaintiffs learned that Mr. Gallucci had joined the firm of Lauletta Birnbaum. Prior to the issuance of the Information Subpoena, Plaintiffs' counsel attempted to contact Mr. Gallucci to discern whether he still represented Defendants. To date, Mr. Gallucci has not responded to Plaintiffs' inquiry. (Rak Cert. ¶14, n.4.)

LEGAL ARGUMENT

THIS COURT'S GRANT OF PLAINTIFFS' MOTION IS WARRANTED

By this Motion, Plaintiffs seek relief pursuant to R. 1:10-3 (formerly designated as R. 1;10-5) arising from Turner's violation of the terms of the Consent Judgment as well as his failure to identify assets subject to collection thereunder.

R. 1:10-3 provides, in pertinent part:

Notwithstanding that an act or omission may also constitute a contempt of court, a litigant in any action may seek relief by application in the action. A judge shall not be disqualified because he or she signed the order sought to be enforced. If an order entered on such application provides for commitment, it shall specify the terms of release provided, however, that no order for commitment shall be entered to enforce a judgment or order exclusively for the payment of money, except for orders and judgments based on a claim of equitable relief including orders and judgments of the Family Part and except if a judgment creditor demonstrates to the court that the judgment debtor has assets that have been secreted or otherwise placed beyond the reach of execution. The court in its discretion may make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under this rule. . . .

"The purpose of R. [1:10-3] is to provide a mechanism, coercive in nature, to afford relief to a litigant who has not received what a Court Order or Judgment entitles that litigant to receive."

D'Atria v. D'Atria, 242 N.J. Super. 392, 407 (Ch. Div. 1990). "Although R. 1:10 is ordinarily employed to obtain coercive measures to ensure compliance with a judgment or order, it is also available for limited declarations of rights of parties." Id. at 405. In this regard, the court will "see[k] to enforce that to which the parties already agreed." Id. at 406-07 (court enforces Property Settlement Agreement provision prohibiting former wife's use of the surname D'Atria except in

limited circumstances). Additionally, R. 1:10-3 provides for monetary sanctions, which must be “related to the litigant’s damages” and not punitive. D’Atria, 242 N.J. Super. at 408.

As set forth above, Turner has violated the Consent Judgment by his operation of Travel Deals. Additionally, in his response to the Information Subpoena, Turner has failed to disclose assets, including motor vehicles and bank accounts, as well as any income earned through his operation of Travel Deals.

Consequently, Plaintiffs seek an Order that provides for the following: (1) granting Plaintiffs’ Motion; (2) enjoining Turner from any involvement in the operation of Travel Deals and/or any other business or entity engaged in the advertisement, offering for sale and/or sale of Vacation Packages; (3) enjoining Turner from removing, selling, encumbering, transferring or otherwise disposing of any assets, including motor vehicles and bank accounts; (4) requiring Turner to execute Form 4506 to permit Plaintiffs to obtain his individual and corporate income tax returns for the years of 2008 through 2010; (5) requiring Turner to appear at deposition; (6) requiring Turner to reimburse Plaintiffs for their attorneys’ fees and costs incurred in connection with any post-judgment collection efforts as well as this Motion; and (7) upon Turner’s failure to meet any of the above-referenced requirements, providing that a bench warrant shall be issued for his arrest.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully submit that this Court's grant of their Motion to Enforce Litigant's Rights is necessitated..

Respectfully submitted,

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____


Lorraine K. Rak
Deputy Attorney General
Chief, Consumer Fraud Prosecution Section

Dated: May 13, 2011
Newark, New Jersey