

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
CIVIL DIVISION

STATE OF ARKANSAS, *ex rel.*
LESLIE RUTLEDGE, ATTORNEY GENERAL

PLAINTIFF

v.

CASE NO. 04CV-19-1838

REAL TRAVEL, LLC;
BART BOWE; AND
BRIAN SCROGGS

DEFENDANTS

CONSENT JUDGMENT

NOW ON THIS DAY comes before the Court for consideration the entry of a Consent Judgment between the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General (the “State”), and Separate Defendant Bart Bowe (“Bowe”). The Plaintiff appears by and through its counsel, Shannon Halijan, and the Defendant appears and by and through counsel, Nicki Nicolo and Sergio Ceja.

The State initiated this action to redress and restrain alleged violations of the Arkansas Deceptive Trade Practices Act (“ADTPA”), Ark. Code Ann. §§ 4-88-101, *et seq.* The State and Defendant Bowe wish to resolve this action. The parties recognize that this Consent Judgment has been negotiated by the parties in good faith, and that this Consent Judgment is fair, reasonable, and in the public interest.

Based upon the facts and matters before this Court, and with the consent of the parties to this Judgment, it is hereby ORDERED, ADJUDGED, and DECREED:

I. Definitions

1. Unless otherwise indicated, the terms used herein shall carry those definitions provided by the ADTPA.

II. Jurisdiction

2. This Court has jurisdiction over this matter pursuant to Ark. Code Ann. § 4-88-104, and the common law of the State of Arkansas. Venue is proper pursuant to Ark. Code Ann. § 4-88-104, § 4-88-112, and the common law of the State of Arkansas. The Defendants have transacted business in the State of Arkansas.

3. For purposes of this Consent Judgment, the State and Defendant Bowe waive all objections and defenses that they may have to the jurisdiction or venue of the Circuit Court of Benton County, Arkansas, and shall not challenge the Court's jurisdiction over any enforcement action in the event of breach.

III. Parties Bound

4. This Consent Judgment applies to and is binding upon the State and Defendant Bowe.

5. Any change in ownership or status of a party, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Defendant Bowe's responsibilities under this Consent Judgment.

IV. The Attorney General's Position

6. Real Travel, LLC ("Real Travel") is a Bentonville, Arkansas-based limited liability company, which was organized on June 5, 2018. Defendants Bowe and Brian Scroggs ("Scroggs") were the only members of Real Travel. Defendant Bowe served as its registered agent from June 5, 2018, through September 6, 2019.

7. Real Travel purported to provide “timeshare exit” services to consumers who no longer wanted to own timeshares. Real Travel also sold memberships or licenses to one or more vacation travel clubs.

8. Real Travel failed to sell or transfer consumers’ timeshare properties, failed to activate consumers’ memberships into the travel clubs, failed to honor the contractual three-day cancellation period by refusing to refund monies paid by consumers, and engaged in other unconscionable, false, and deceptive acts and practices in business, commerce, or trade.

9. Defendant Bowe served as a “controlling person” for Real Travel and personally formulated, directed, controlled, supervised, managed, participated in, had knowledge of, and acquiesced in the business practices of Real Travel.

10. The conduct engaged in by Defendant Bowe constitutes deceptive and unconscionable trade practices prohibited by the ADTPA, including violations of Ark. Code Ann. § 4-88-107(a)(1), (a)(3), and (a)(10) and § 4-88-108(2).

11. The Attorney General specifically denies the assertions of the Defendant set forth in “The Defendant’s Position” in this Consent Judgment.

V. The Defendant’s Position

12. Defendant Bowe denies the legal and factual assertions contained in Section IV above, entitled “The Attorney General’s Position.”

VI. Injunctive Relief

13. Defendant Bowe is permanently restrained and enjoined from conducting any and all business related to the timeshare and timeshare exit industries in the State of Arkansas.

14. Defendant Bowe is permanently restrained and enjoined from entering into contractual agreements with any resident of the State of Arkansas related to a timeshare or timeshare exit service.

15. Defendant Bowe is permanently restrained and enjoined from violating the ADTPA.

16. Defendant Bowe shall not use any plan, device, or sham to avoid the terms of this Consent Judgment.

VII. Monetary Provisions

17. **Restitution.** Defendant Bowe shall pay restitution to the State in the amount of \$50,000.00, for affected consumers. The balance shall be paid by October 1, 2030, with an initial annual payment of \$5,000.00 to be paid contemporaneously with the signing of this Consent Judgment. Each \$5,000.00 annual payment made thereafter shall be submitted to the State on or before October 1. The Office of the Arkansas Attorney General shall provide the restitution to the affected consumers. The persons identified as affected consumers, as well as any sums determined to be paid to each affected consumer, shall be within the discretion of the Arkansas Attorney General and based upon credible evidence of a claim. Payment shall be made in the following manner:

- a. All checks will be delivered to the Chief Financial Officer, Office of the Attorney General, 323 Center Street, Suite 200, Little Rock, AR 72201.
- b. Following receipt of payment from Defendant Bowe, the Attorney General shall undertake to contact any affected consumers based upon consumer complaints submitted to her office.

- c. The Attorney General shall have the authority and discretion, exercised in good faith, to determine the restitution due to each affected consumer.
- d. Any funds remaining after restitution funds that the Attorney General is unable to distribute after reasonable effort shall be placed in the Consumer Education and Enforcement Fund.

18. **Suspended Civil Penalty.** Defendant Bowe is assessed civil penalties under Ark. Code Ann. § 4-88-113(a)(3) in the amount of \$250,000.00. Violations of the ADTPA are punishable by up to a \$10,000 fine per violation. This Civil Penalty is **SUSPENDED**. Should Defendant Bowe violate any portion of this Consent Judgment, the suspended penalty shall become immediately due and payable. The payment shall be delivered to Chief Fiscal Officer, Arkansas Attorney General's Office, 323 Center Street, Suite 200, Little Rock, Arkansas 72201, and shall bear the name of the Defendant upon the face of the check. A copy of the payment shall be contemporaneously delivered to the Attorney General's counsel of record in this matter. These sums shall be held by the Attorney General and deposited in the Consumer Education and Enforcement Fund to be used in accordance with Act 763 of 2013. The payment of this sum shall be in addition to any restitution, civil penalty, attorney fees or costs, or other sanctions ordered by the court due to the violation(s) triggering this provision.

19. **Suspended Enhanced Civil Penalties.** Defendant Bowe is assessed enhanced civil penalties under Ark. Code Ann. § 4-88-202 in the amount of \$200,000.00. This Enhanced Civil Penalty is **SUSPENDED**. Should Defendant Bowe violate any portion of this Consent Judgment, the suspended penalty shall become

immediately due and payable. The payment shall be delivered to Chief Fiscal Officer, Arkansas Attorney General's Office, 323 Center Street, Suite 200, Little Rock, Arkansas 72201, and shall bear the name of the Defendant upon the face of the check. A copy of the payment shall be contemporaneously delivered to the Attorney General's counsel of record in this matter. These sums shall be held by the Attorney General and deposited in the Consumer Education and Enforcement Fund to be used in accordance with Act 763 of 2013. The payment of this sum shall be in addition to any restitution, civil penalty, attorney fees or costs, or other sanctions ordered by the court due to the violation(s) triggering this provision.

VIII. Miscellaneous Provisions

20. This Consent Judgment constitutes the entire agreement of the Attorney General and Defendant Bowe. The undersigned acknowledge that there are no communications or oral understandings contrary, different, or which in any way restrict this Consent Judgment, and that any and all prior agreements or understandings within the subject matter of this Consent Judgment are, upon the effective date of the Consent Judgment, superseded, null and void.

21. This Consent Judgment resolves and releases all civil claims, causes of action, or proceedings that were or could have been asserted by the Attorney General against Defendant Bowe for those practices alleged within its Complaint. This release shall not in any way limit the authority of the Attorney General to conduct such investigations as she deems advisable or to bring any enforcement action regarding alleged violations of law unrelated to its Complaint or occurring after the date of this Consent Judgment. Also, the Attorney General is empowered to seek

enforcement of any and all sections of this Consent Judgment by appropriate petition to this Court.

22. Nothing in this Consent Judgment shall be construed to deprive any person or entity not a signatory hereto of any private right of action of any kind whatsoever, nor shall this Consent Judgment be construed to create any private right of action for any person or entity not a signatory hereto.

23. This Consent Judgment does not constitute an admission by the Defendant of any fact or the existence or application of any law, regulation, or legal principle.

24. This Consent Judgment represents solely a compromise of disputed claims within the meaning of Rule 408 of the Federal and Arkansas Rules of Evidence. The document is not admissible to prove liability for, invalidity of, or amount of the claim or any other claim. This Consent Judgment and all actions of the parties pursuant to this Consent Judgment are intended by the parties to be exclusively a compromise and resolution of existing and disputed claims.

25. Nothing herein shall be construed as the endorsement of, or acquiescence in, any trade practices of the Defendant, past, current, or future; and, the Defendant shall make no representations to the contrary.

26. Nothing herein shall be construed as the admission by the Defendant of any fact or the existence or application of any law, regulation, or legal principle applicable to the Defendant; and the Attorney General shall make no representations to the contrary.

27. This Consent Judgment will be construed and enforced under the laws of the State of Arkansas.

IX. Signatories


28. Each undersigned representative of a party certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Judgment and legally bind such parties to its terms.

29. This Consent Judgment is made and entered into by and between the parties hereto and on this 9th day of October, 2020.

FOR THE ATTORNEY GENERAL:


Shannon Halijan
Assistant Attorney General

FOR BART BOWE:


Sergio Ceja
Attorney for Defendant Bowe

IT IS SO ORDERED.

This Document Electronically Signed By:
CIRCUIT JUDGE

DATE: October 7, 2020

Prepared By:

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Arkansas Judiciary

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Type: CONSENT ORDER

So Ordered




JUDGE XOLLIE DUNCAN