

IN THE SECOND JUDICIAL CIRCUIT COURT  
IN AND FOR LEON COUNTY

STATE OF FLORIDA, DEPARTMENT OF )  
LEGAL AFFAIRS, OFFICE OF THE )  
ATTORNEY GENERAL, )

Plaintiff, )

vs. )

LEASECOMM CORPORATION, and )  
MICROFINANCIAL INCORPORATED, )

Defendants )

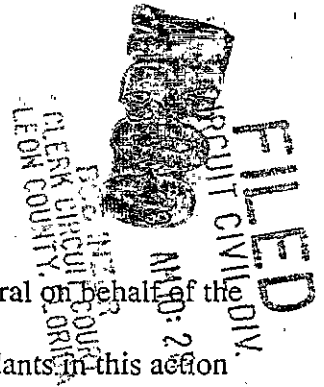
CASE NO. 2003-CA1255

COMPLAINT

This is a civil action brought in the public interest by the Attorney General on behalf of the State of Florida, pursuant to Chapter 501, Part II, Florida Statutes. The Defendants in this action are Massachusetts corporations engaged primarily in the business of leasing and financing small business opportunities and other items provided to individuals through a network of vendors throughout the United States. This action alleges that during the course and conduct of their business, the Defendants have committed unfair or deceptive acts or practices, in violation of Chapter 501, Part II.

JURISDICTION AND VENUE

1. The Attorney General is authorized to bring this action pursuant to Section 501.207, Florida Statutes.



2. This Court has jurisdiction over the subject matter of this action pursuant to Section 501.207, Florida Statutes.

3. Venue is proper in Leon County pursuant to Chapter 47, Florida Statutes.

#### **PLAINTIFF**

4. The plaintiff is the State of Florida, Department of Legal Affairs, Office of the Attorney General, (State) represented by Attorney General Charlie Crist, who brings this action in the public interest.

#### **DEFENDANTS**

5. Defendant MicroFinancial Incorporated ("MicroFinancial") is a Massachusetts corporation with corporate headquarters located at 10M Commerce Way, Woburn, Massachusetts. MicroFinancial stock is publicly traded on the New York Stock Exchange.

6. Defendant Leasecomm Corporation ("Leasecomm") is a wholly-owned subsidiary of MicroFinancial with a principal place of business also located at 10M Commerce Way, Woburn, Massachusetts.

#### **DEFINITIONS FOR PURPOSES OF THIS COMPLAINT**

7. "Customer" is any natural person who is individually liable to pay Leasecomm for financing, either directly or indirectly, *e.g.*, as a co-signor, guarantor, proprietor, or signatory general partner.

8. "Business venture" includes purported profit making ventures (*e.g.*, multilevel marketing programs, pyramid schemes, buyers' clubs, coupon clipping programs, investment opportunities, etc.), regardless of how participation in the venture is characterized (*e.g.*, as

investors, members, donors, etc.), seminars, or promotions that seek to induce customers to make money through business or investment, or similar intangible items.

### **DEFENDANTS' BUSINESS ACTIVITIES**

9. Leasecomm's principal business since at least 1997 has been providing financing through contracts it calls "leases" to individuals and small businesses throughout the United States. The contracts purport to be leases for items such as point-of-sale credit card swiping machines ("POS machines") and Internet-based, online payment systems ("virtual terminals"), which have often been sold as part of a purchase of a business opportunity or profit making venture. The business opportunities and profit making ventures include Internet web malls, multilevel marketing programs, pyramid schemes, medical billing software, coupon clipping programs, and similar, often worthless get-rich-quick schemes that customers have been duped into buying by deceptive practices of the business opportunity sellers. A typical lease requires total payments between \$3,000 to \$4,000 over a three to four year period.

10. Customers usually make no up-front payment for their business venture purchase. Instead, the business venture vendors, acting as Leasecomm's agents for selling financing, procure customers' signatures on Leasecomm financing contracts for all or most of the cost of the business venture. After making a successful sales pitch, the vendor presents the Leasecomm contract to the consumer amid the various papers the customer signs. Customers have little opportunity to read or understand the complex Leasecomm contract, which the vendors usually do not explain to them. Even if customers did read all the fine print in the contract, it is unlikely that they would understand the rights and remedies that the fine print attempts to take away from them. Leasecomm expressly prohibits the vendors from changing any of the contract's boilerplate

terms. Vendors, however, frequently make assertions that certain provisions will not apply to the customer.

11. Typically, the only payment the vendor receives for the business opportunity is a lump-sum payment from Leasecomm. In some cases, Leasecomm splits the payment between the vendor and a supplier of other goods or services associated with the business opportunity, like the provider of a POS machine or merchant account services. Thus, Leasecomm is actually financing the whole business venture.

12. Often times, based on the sales pitch by the vendors, customers believe that they are signing a financing agreement for the entire business venture they are purchasing. Even though the lease amount is often the full price of the business venture package plus finance charges, the lease purports to only finance a POS machine or virtual terminal, a computer software license, or some other item that is an incidental part of the business opportunity. For example, a typical sales contract lists many items being sold as part of a business venture (*e.g.*, training, web site design, customer leads, a manual, forms, software, merchant account) for a specified price per month (*e.g.*, \$70) over a specified term (*e.g.*, 4 years). The corresponding Leasecomm contract in this example would also be for the \$70 per month and over 4 years, but would state as the item being financed only one component of the business venture (*e.g.*, a POS machine). Nonetheless, frequently what the customers believe is that for payments of \$70 per month over a 4 year period, they are buying the entire business venture.

13. Leasecomm does not allow its vendors to fill in finance contracts with a truthful description of the business venture. Leasecomm makes the finance contract look like an equipment lease, because Uniform Commercial Code Article 2A ("UCC Art. 2A") equipment

lease provisions are significantly more favorable to lessors than the provisions relating to non-lease finance contracts. Finance contracts for business opportunities and other general intangible items do not qualify as UCC Art. 2A leases.

14. For web-based business ventures, the specified item financed in the Leasecomm lease is often a "virtual terminal." This is not a tangible piece of equipment that can be owned by Leasecomm as a lessor or the customer. Rather, it is simply the setting up of an online P.O.S. system and the information necessary to access that account. Virtual terminals are typically available from merchant account providers and processors, who then charge the customer a commission when charges or debits are made, plus a small monthly fee.

15. The customer will receive a contract for merchant account services included in the papers the vendor provides, along with the sales contract for the principal items being sold (e.g., training, web site design, customer leads, a manual, forms, software, merchant account) and the Leasecomm contract. The virtual terminal service contracts are generally cancelable by either party upon relatively short notice (e.g., one month). Typically, the "lease" that Leasecomm writes for the virtual terminal is non-cancelable for 36-48 months.

16. The deception continues when Leasecomm and the vendors fail to disclose to customers material facts about the transaction that would lead them to question whether they should enter into the business venture transaction or the finance contract with Leasecomm. Leasecomm and its vendors do not explain the involvement of Leasecomm in the transaction so that customers are often unaware that they are entering into a financing transaction with a third party. They also do not explain that the contract makes the customer's obligation to pay Leasecomm absolute. This obligation to pay is based on the customer's acceptance of the POS

machine, virtual terminal, or other item financed. In the contract, the customer is agreeing to waive defenses, including the defense of fraud in the inducement. Finally, the vendors do not explain that the contract provides that any disputes under the contract will be resolved in a Massachusetts court, a forum which in most instances is distant from the customer's residence. These provisions may not be enforceable under applicable contract laws.

17. Leasecomm drafts its lease contracts to ensure that customers pay even when the agreement to enter into the lease or the underlying business venture transaction is induced by the vendors' misrepresentations or fraud, or when the products or services fail to perform as represented. Most lease contracts contain a provision that tells consumers that they cannot assert any defense or counterclaim:

I fully recognize your [Leasecomm's] right to  
enforce the lease free from any current or future  
defenses, offsets or counterclaims.

Most lease contracts also contain a second provision that sets the location for filing collection suits in Massachusetts, regardless of where the customer resides or signed the contract. A typical form of that provision is:

The Parties hereby . . . consent and submit to the  
jurisdiction of the Courts of the Commonwealth of  
Massachusetts and express[ly] agree to such exclusive  
forum for the bringing of any suit, action or other  
proceeding arising out of their obligations hereunder, and

expressly waive any objection to venue in any such

Courts . . .

Another provision requires that customers agree to automatic debiting of their bank accounts and requires that customers sign a personal guarantee of the lease contract. Additionally, quite often the obligation to Leasecomm does not end after the end of the lease term. A provision in the lease automatically renews the lease agreement for an additional year, unless the customer notifies Leasecomm thirty (30) days prior to the end of the lease term and returns the leased equipment.

18. Leasecomm knows that many of its vendors engage in deceptive practices to sell their business ventures. Leasecomm employees maintain a close relationship with its vendors. Leasecomm uses a computerized system to track delinquent accounts, default rates, and customer complaints of vendor fraud or misrepresentation. The default rate with respect to particular business ventures often exceeds 30%, and with some vendors has exceeded 50%. Leasecomm also receives large numbers of customer complaints about misrepresentation or fraud concerning these vendors. Despite possessing evidence of serious problems with vendors, Leasecomm rarely terminates a vendor. Instead, it simply reduces the payment it makes to the vendor, retaining a larger share of the customers' payments for itself.

19. Leasecomm does not apply the usual finance industry standards for granting credit. First, the value of the equipment purportedly leased by Leasecomm has no relationship to the value of the lease. POS terminals, which Leasecomm leases for as much as \$4,000, have a retail value of approximately \$400 and wholesale cost of approximately \$250. Virtual terminals, leased for the same amount, have a retail value of approximately \$300 or less. Second, the credit

worthiness of the consumer is rarely used to deny credit. Instead, Leasecomm applies a matrix for rating both the vendor and the customer to set a rate for the lease.

20. Leasecomm imposes a loss and damage waiver fee. Leasecomm claims that this fee is equivalent to an insurance on the product or equipment leased. This fee, however, is typically not equivalent to the fair market value of insuring the product or equipment. Furthermore, Leasecomm imposes this fee on intangible items such as virtual terminals and business opportunities. Additionally, Leasecomm fails to clearly and conspicuously disclose the amount of the loss and damage waiver fee to customers prior to the signing of the contract.

21. Leasecomm's approach to debt collection is very aggressive. It uses the contract provisions described in Paragraph 18, above, to the fullest extent possible to obtain payment from customers and obtain judgments, if necessary. This is true even when the customers have been defrauded and received nothing of value.

22. Leasecomm is rarely responsive to customers' disputes or claims of fraud against vendors. It relies heavily on the wording of the contract to tell customers that they have no defenses to Leasecomm's demand for payment. For example, collectors will point out that the customer accepted a POS machine and that was the only product named in the lease. When the customers argue that the lease really financed an entire business opportunity that was fraudulent, and the POS machine was worthless without the rest of the package, the collectors will still insist that obligation to pay in full is absolute and that the customers have no defenses.

23. One example of how Leasecomm treated complaints of fraud involved InfoDirect, a vendor that ran a pyramid scheme. Its organizers made their money by requiring the purchase of overpriced computers, financed by Leasecomm, to participate in the scheme. According to

Leasecomm's own complaint records, the computers, if delivered at all, were typically low-end or used and defective models leased for \$3,300. The total lease volume was \$5.2 million. Of the 1,882 deals, 1,483 went into default, most early in the lease term.

24. Leasecomm wrote letters to InfoDirect complaining about the poor payment rate. Nonetheless, it continued to accept new leases for nearly a full year after it had notice from customer complaints and defaults that a serious problem existed with the product delivered. Leasecomm also sued one-third of the InfoDirect consumers in Massachusetts courts for non-payment, utilizing its venue waiver contract provision.

25. Another example involves one of Leasecomm's largest vendors for virtual terminal business opportunities at seminars, Executive Credit Services. This company accounted for \$16 million of business during 1999-2000, with nine thousand customers and a default rate of over 30%. Leasecomm's internal records show many complaints about software and websites never working. Leasecomm rejected virtually every claim. An example of a "reason" for rejecting a claim was:

[Eighty-three] 83 year old lessee claims he was misled. [Lessee] signed a non-cancelable lease agreement/merchant acct application ext all docs showed what the charges were for each/ it states right on the lease that if the person does not understand the lease they should seek legal advice (sic).

26. The fact that Executive Credit Services sold its business opportunities at seminars means that customers had little chance to read over all the purchase and finance documents, and no opportunity to consult with a lawyer before signing them.

27. Another example involves Roma computer, a company selling worthless website business ventures. Leasecomm financed the computers that customers purchased, ostensibly to access their website. One customer complained that she “received the equipment, but never used it; still has equipment; was under the impression after seminar that they would get a website and could make lots of money.” [Cryptic spellings from Leasecomm’s complaint database expanded for readability.] The customer also complained about not receiving a expected printer. Leasecomm denied the complaint completely because “the free printer has nothing to do with the lease agreement.” Leasecomm simply ignored the complaint about the worthless website business venture.

28. Contrary to representations by Leasecomm, customers have a number of substantive defenses that could be raised, particularly where business ventures or other intangible items are financed. The most significant is that business ventures or other intangible items are not subject to being leased under UCC Art. 2A and that, therefore, the leases may be voidable or unenforceable in whole or part. Under applicable contract law, those provisions of the lease that Leasecomm claims require payment regardless of performance or fraud may be unenforceable. Customers may have other defenses, such as that the customers did not actually accept the products, have a reasonable opportunity to inspect the product before acceptance, or that their entry into the contract was induced by fraud or deception.

29. Customers rarely have the opportunity to raise any defenses. Leasecomm regularly files its collection suits in Massachusetts, despite the fact that most of the customers reside in other states. Leasecomm has sued over 27,000 customers in the past three years in Massachusetts. Few of the customers can afford the expense of litigation in a distant forum and nearly all cases have ended in default judgments. Thus, customers have no real opportunity to raise defenses to the validity of the contract.

30. Even customers who do obtain counsel are hampered by the misleading Leasecomm contracts. Courts may take individual contracts at face value unless evidence exists that the contract is part of a pattern and practice of fraud and deception. Given the amounts in controversy, typically under \$5,000, it would be extremely difficult for customers' lawyers to develop the evidence to show Leasecomm's regular practice of incorrectly describing what was financed. Making complex arguments about the inappropriate use of UCC Art. 2A by Leasecomm would also be very costly. Finally, the potential witnesses for the customer are likely to be in the customer's local area and not in the Massachusetts jurisdiction. Thus, customer challenge to the distant forum clause in the Leasecomm's contracts is difficult.

31. Leasecomm aggressively enforces its judgments in the customers' local forum. With a judgment already entered, it is almost impossible for customers to challenge Leasecomm in the subsequent judgment enforcement actions. Had Leasecomm filed the suits in the local forum in the first instance, customers might have been able to appear and present a defense, either with an attorney or on their own.

32. Leasecomm adds to the customer injury by imposing high collection fees, not only for late payments, but for every collection call it makes and letter it sends. These fees provide

significant profits to Leasecomm and grossly exceed the cost of collection to Leasecomm. On the Leasecomm lease agreement, a provision provides that Leasecomm will charge the lessee \$5.00 per collection call and letter. Leasecomm sends lessees multiple collection letters, even though, the lessee has filed a complaint disputing the bill. Furthermore, Leasecomm customer service agents make multiple calls to lessees. Evidence exists that customer service agents even make multiple calls to a lessee on the same day. Leasecomm supports this practice by awarding bonus pay to its customer service agents when the agents collect amounts from customers. Moreover, Leasecomm frequently fails to clearly and conspicuously identify the basis for fees imposed on its invoices. Thus, in many cases, by the time Leasecomm commences collection in court, the amount sought substantially exceeds the total payments due under the lease.

33. Leasecomm customer service agents during collection calls frequently harass or threaten customers into paying Leasecomm. Customer service agents tell customers that if they do not pay Leasecomm, Leasecomm will garnish their wages, will call the police on them, will report them to a credit reporting agency, and will sue them in court in Massachusetts. Furthermore, customer service agents use abusive language.

**VIOLATIONS OF FLORIDA'S UNFAIR AND DECEPTIVE  
TRADE PRACTICES ACT**

**COUNT I**

34. The State re-alleges all preceding paragraphs of this complaint and incorporates them herein.

35. In numerous instances, in connection with the financing of small business ventures, Leasecomm represents, expressly or by implication, directly or indirectly, that the finance contract

the customer is entering into with Leasecomm finances all or a substantial portion of the customer's purchase of the business venture.

36. In truth and in fact, in most or all cases the finance contract, by its terms, finances only discrete equipment or services associated with the business venture, such as a credit card swiping terminal or a virtual terminal.

37. Therefore, the representations set forth in Paragraph 35 above are false or misleading and constitute deceptive acts or practices in violation of Chapter 501, Part II, Florida Statutes.

## COUNT II

38. The State re-alleges all preceding paragraphs of this complaint and incorporates them herein.

39. In numerous instances, in connection with the financing of small business ventures, Leasecomm represents, expressly or by implication, directly or indirectly, that it is financing the customer's purchase of a business venture.

40. Leasecomm fails to disclose:

a. That the financing agreement is with Leasecomm and not with the business venture vendor.

b. That the financing agreement purports to make the obligation to pay Leasecomm absolute and unrelated to the terms, conditions, or performance of any other agreement, between the consumer and the business venture vendor, and that this agreement may be unenforceable under applicable contract law.

c. That the obligation to pay Leasecomm in full is based entirely upon acceptance of a credit card swiping machine or virtual terminal.

d. That Leasecomm's contract requires or has the effect of requiring that customers waive all defenses that they might have, including, but not limited to, fraud in the inducement of the contract, and that this provision may be unenforceable under applicable contract law.

e. That any disputes concerning the financing agreement will be resolved in a forum distant from the customer's place of residence.

41. These facts would be material to consumers in their purchase or use of the product. The failure to disclose these facts, in light of the representation made in Paragraph 39 above, is a deceptive act in violation of Chapter 501, Part II, Florida Statutes.

### COUNT III

42. The State re-alleges all preceding paragraphs of this complaint and incorporates them herein.

43. In numerous instances in connection with the financing of business ventures, Leasecomm represents, expressly or by implication, directly or indirectly, that customers have waived all defenses, or are precluded from raising any defenses or counterclaims, including defenses of fraud in the inducement or that material provisions of the financing contract are unenforceable.

44. In truth and in fact, in numerous instances, customers have and can raise defenses and counterclaims, including defenses of fraud in the inducement or that material provisions of the financing contract are unenforceable.

45. Therefore, the representations set forth in Paragraph 43 are false or misleading and constitute deceptive acts or practices in violation of Chapter 501, Part II, Florida Statutes.

#### COUNT IV

46. The State re-alleges all preceding paragraphs of this complaint and incorporates them herein.

47. In numerous instances, in connection with the financing of small business ventures, Leasecomm's practices of including in its finance contracts provisions authorizing it to file lawsuits in venues other than the customer's place of residence or the location where the customer executed the contract, and of filing lawsuits under finance contracts in venues other than the customer's place of residence or the location where the customer executed the contract, are likely to cause substantial injury that cannot be reasonably avoided, and are not outweighed by countervailing benefits to consumers or competition.

48. Therefore, Leasecomm's practices, as alleged in paragraph 47 above, are unfair and violate Chapter 501, Part II, Florida Statutes.

#### COUNT V

49. The State re-alleges all preceding paragraphs of this complaint and incorporates them herein.

50. In the course of providing financing to consumers, defendants have regularly conditioned the extension of credit on the consumers signing a contract that includes compulsory electronic funds transfers from accounts established primarily for personal, family, or household purposes, in violation of Chapter 501, Part II, Florida Statutes.

#### COUNT VI

51. The State re-alleges all preceding paragraphs of this complaint and incorporates them herein.

52. The defendants have harassed or threatened customers through their collection practices. Furthermore, the collection fees grossly exceed the cost of collections.

53. Therefore, Leasecomm's practices, as alleged in paragraph 52 above, are unfair and violate Chapter 501, Part II, Florida Statutes.

### **CONSUMER INJURY**

54. Consumers throughout the United States have suffered substantial monetary loss as a result of the Defendants' unlawful acts or practices. In addition, the Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, the Defendants are likely to continue to injure consumers and to harm the public interest.

55. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by Defendants' violations.

### **PRAYER FOR RELIEF**

The State requests that this Court grant the following relief:

1. Enter judgment against Defendants and in favor of the State for each violation alleged in this complaint.

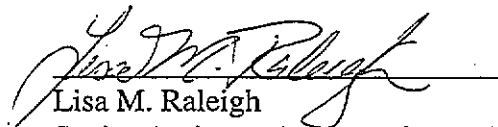
2. Permanently enjoin and restrain Defendants from violating the Unfair and Deceptive Trade Practices Act, Chapter 501, Part II, Florida Statutes.

3. Award such relief as this Court finds necessary to redress injury to consumers resulting from the Defendants' violations of the Unfair and Deceptive Trade Practices Act, Chapter 501, Part II, Florida Statutes, including but not limited to, reformation or rescission of contracts, and the cancellation of purported debts.

4. Award the State the costs of bringing this action, as well as such other and additional equitable relief as this Court may determine to be just and proper.

Respectfully Submitted,

CHARLES J. CRIST, JR.  
ATTORNEY GENERAL

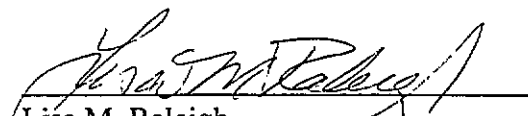


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Dated: May 29, 2003

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery on Peter Antonacci ,Gray Harris, 301 S. Bronough Street, Suite 600, Tallahassee, Florida 32301 this 29th day of May, 2003.



Lisa M. Raleigh  
Senior Assistant Attorney General