

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
VOLUSIA COUNTY, FLORIDA
CIVIL ACTION

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

Plaintiff,

v.

CASE NO:

J. WILLIAM ENTERPRISES, LLC, a Florida limited liability company, d/b/a PRO TIMESHARE RESALES; PRO TIMESHARE RESALES, LLC., a Florida limited liability company; PRO TIMESHARE RESALES OF FLAGLER BEACH LLC, a Florida limited liability company; JESS W. KINMONT, individually and as an officer of J. WILLIAM ENTERPRISES, LLC and PRO TIMESHARE RESALES, LLC.; and JOHN P. WENZ, JR., individually and as an officer of PRO TIMESHARE RESALES OF FLAGLER BEACH LLC;

Defendants.

**COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL PENALTIES AND
OTHER STATUTORY RELIEF**

Plaintiff, Office of the Attorney General, State of Florida, Department of Legal Affairs (“Attorney General”), sues Defendants, J. William Enterprises,

LLC., a Florida limited liability company, d/b/a Pro Timeshare Resales; Pro Timeshare Resales, LLC, a Florida limited liability company; Pro Timeshare Resales of Flagler Beach LLC, a Florida limited liability company; Jess W. Kinmont, individually and as an officer of J. William Enterprises, LLC and Pro Timeshare Resales, LLC., and John P. Wenz, Jr., individually and as an officer of Pro Timeshare Resales of Flagler Beach LLC (collectively, "Pro Timeshare"), and alleges the following:

JURISDICTION AND VENUE

1. This is an action for injunctive relief, civil penalties, and other statutory relief against Pro Timeshare, in excess of \$15,000.00, pursuant to the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Chapter 501, Part II, Florida Statutes (2016), and the Florida Timeshare Resale Accountability Act ("FTRAA"), Section 721.205, Florida Statutes (2016).

2. This Court has jurisdiction over the subject matter pursuant to the provisions of FDUTPA. The granting of injunctive and other equitable relief is within the jurisdiction of the Circuit Court and the amount in controversy satisfies the jurisdictional threshold of the Circuit Court.

3. The principal place of business of Pro Timeshare is in DeLand, Volusia County, Florida. The violations alleged herein affect or occurred in more

than one judicial circuit in the State of Florida. Accordingly, venue is proper in Volusia County in the Seventh Judicial Circuit pursuant to the provisions of FDUTPA and Sections 47.011 and 47.021, Florida Statutes (2016).

4. All actions material to this Complaint have occurred within four years of the filing of this action.

5. All conditions precedent to this action have been performed or have occurred.

PLAINTIFF

6. The Attorney General is an enforcing authority pursuant to Section 501.203(2) of FDUTPA, is authorized to bring this action and to seek injunctive and other statutory and civil relief.

7. The Attorney General conducted an investigation of the matters alleged herein and has determined that this enforcement action serves the public interest, as required by Section 501.207(2), Florida Statutes (2016).

DEFENDANTS

8. At all times material to this action, Pro Timeshare was engaged in trade or commerce as defined in Section 501.203(8), Florida Statutes (2016).

9. Defendant J. William Enterprises, LLC d/b/a Pro Timeshare Resales (“JWE”), is a Florida corporation with its principal place of business located in DeLand, Florida.

10. Defendant Pro Timeshare Resales, LLC. (“PTR”) was a Florida corporation with its principal place of business located in DeLand, Florida.

11. Defendant Jess W. Kinmont (“Kinmont”) is an owner, officer, and/or manager of JWE, and has been an owner, officer, and/or manager of PTR. At all times material to this Complaint, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint.

12. Defendant Pro Timeshare Resales of Flagler Beach LLC (“PTR of Flagler Beach”) is a Florida corporation with its principal place of business located in Bunnell, Florida.

13. Defendant John P. Wenz, Jr. (“Wenz”) is an owner, officer, and/or manager of Defendant PTR of Flagler Beach. At all times material to this Complaint, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint.

14. Defendants JWE, PTR, and PTR of Flagler Beach (collectively, “Corporate Defendants”) engaged in the deceptive acts and practices alleged

below. The Corporate Defendants conducted the alleged business practices through interrelated companies that have common ownership, officers, managers, business functions, employees, and/or office locations; that have commingled funds; and/or that have shared one another's marketing materials. Defendants Kinmont and Wenz have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants.

FACTUAL ALLEGATIONS

15. Sometime after February 2012, Defendants began engaging in a plan, program, or campaign to deceptively advertise, market, promote, offer for sale, or sell timeshare resale services through unsolicited telephone calls to consumers throughout the State of Florida and the United States.

16. Defendants make unsolicited telemarketing calls to consumers who own timeshare properties. Defendants already have information about these consumers' timeshare properties, such as the names and locations of the properties, when making the calls.

17. Defendants begin their telemarketing call by misrepresenting to consumers that Defendants can sell or rent the timeshare property, including sometimes stating that they already have a buyer or renter, for the consumer's timeshare property, who will pay a specified price for the timeshare property.

18. Additionally, Defendants tell the consumer that the sale or rental of his or her timeshare property will occur quickly, usually within a few days to six months.

19. Once the consumer confirms that he or she is interested in selling or renting his or her timeshare property, Defendants then inform the consumer that he or she must pay an up-front fee generally ranging from \$200.00-\$2,500.00, and sometimes more, in order to sell or rent his or her timeshare property. Defendants then charge the consumer the up-front fee.

20. At or close to the time Defendants obtain the consumer's financial account information to charge the up-front fee, Defendants tell consumers a contract will be sent to them shortly via email. Consumers are instructed to immediately sign and return the contract to Defendants.

21. Despite Defendants' misrepresentations, the contract does not relate to the sale or rental of the consumer's timeshare property, as Defendants represented in the telemarketing call. Instead, the contract provides only that Defendants will advertise the consumer's timeshare property for sale or rent.

22. Consumers who pay Defendants' up-front fee do not receive what Defendants promised. Moreover, Defendants do not sell or rent the consumer's

timeshare property within the time specified promised by Defendants or for the specified price.

23. Often times, Defendants string along consumers with additional promises, including promises that a sale or rental is imminent, or that the consumer will receive sales or rental proceeds shortly. Usually, Defendants request and obtain additional monies for closing costs or other fees.

24. In numerous instances, consumers request a refund of Defendants' up-front fee; however, Defendants routinely deny such requests for refunds and consumers' timeshare properties remain unrented or unsold.

COUNT I

VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT, CHAPTER 501, PART II, FLORIDA STATUTES (2016)

25. The Attorney General incorporates and re-alleges paragraphs 1 through 24 above as if fully set forth hereinafter.

26. Section 501.204(1), Florida Statutes (2016) provides that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” The provisions of FDUTPA shall be “construed liberally” to promote and “protect the consuming public and legitimate business enterprises from those

who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” § 501.202, Fla. Stat. (2016).

27. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale and sale of their timeshare resale or rental services, Defendants have represented that Defendants have a buyer or renter for the consumer’s timeshare who will pay a specified price, or that Defendants will quickly sell or rent the consumer’s timeshare.

28. Pro Timeshare’s misrepresentations and omissions of material facts constitute deceptive acts and practices under FDUTPA, and are likely to mislead consumers acting reasonably under the circumstances.

29. Pro Timeshare knew or should have known that its timeshare resale services are deceptive or prohibited by Florida Statutes.

30. Pro Timeshare’s violations of FDUTPA have injured and likely will continue to injury and prejudice the public.

COUNT II

VIOLATIONS OF FDUTPA THROUGH VIOLATIONS OF THE FLORIDA TIMESHARE RESALE ACCOUNTABILITY ACT

31. The Attorney General incorporates and re-alleges paragraphs 1 through 24 above as if fully set forth hereinafter.

32. Effective July 1, 2012, Section 721.205(2) of the FTRAA precludes timeshare resale advertisers, in offering timeshare resale advertising services, from stating or implying, directly or indirectly, the following:

- A. the resale advertiser will provide or assist in providing any type of direct sales or resale brokerage services other than the advertising of the consumer resale timeshare interest for sale or rent by the consumer timeshare reseller;
- B. the resale advertiser has identified a person interested in buying or renting the timeshare resale interest without providing the name, address, and telephone number of such represented interested resale purchaser; and
- C. the timeshare interest has a specific resale value.

33. Defendants are timeshare “resale advertiser[s]” and “resale services provider[s]” offering timeshare “resale advertising service[s]” to “consumer timeshare reseller[s]” as defined in Sections 721.05(44), 721.05(46), 721.05(49) and 721.05(50) of FTRAA.

34. In the course of offering resale advertising services, Defendants have represented, directly or indirectly, expressly or by implication, that Defendants will provide or assist in providing direct sales or resale brokerage services to the consumer timeshare reseller.

35. In the course of offering resale advertising services, Defendants have stated or implied, directly or indirectly, that they have identified an interested renter or buyer without providing the contact information of the interested resale purchaser to the consumer timeshare reseller.

36. In the course of offering resale advertising services, Defendants have stated or implied to the consumer timeshare reseller that the consumer's timeshare interest has a specific resale value.

37. Pursuant to Section 721.205(6) of FTRAA, any person, in connection with resale advertising services, who violates any part of Section 721.205, commits a deceptive and unfair trade practice and is subject to all statutory remedies available under FDUTPA.

38. Therefore, Defendants have violated and continue to violate FDUTPA.

39. Defendants knew or should have known that their conduct was unfair or deceptive or prohibited by statute.

40. The above-described acts and practices of the Defendants have injured and will likely continue to injure and prejudice the public.

PRAYER FOR RELIEF

WHEREFORE, the Attorney General respectfully requests that this Court:

A. Temporarily and permanently enjoin Defendants and their officers, agents, servants, employees, and those persons in concert or participation with them who receive actual notice of the Court's injunction from engaging in any deceptive or unfair acts or practices in the timeshare resale services in violation of FDUTPA and FTRAA. Specifically, Defendants shall not falsely represent to consumers that Defendants have a buyer or renter for the consumer's timeshare who will pay a specified price, or that Defendants will quickly sell or rent the consumer's timeshare.

B. Assess civil penalties against Defendants pursuant to Section 501.2075, Florida Statutes (2016) in an amount not to exceed \$10,000 per violation;

C. Award the Attorney General reasonable attorney's fees and costs pursuant to the provisions of FDUTPA, and as otherwise allowable by applicable statutes;

D. Enter final judgment, jointly and severally, against Defendants for consumer restitution, disgorgement of profits, civil penalties, costs and reasonable attorney's fees; and

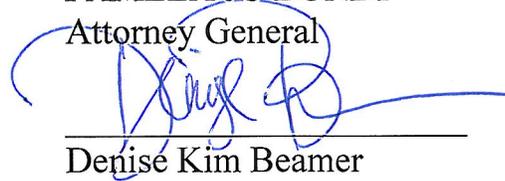
E. Award such other relief as the interests of justice shall require and that this Honorable Court may deem just and proper.

Dated this 20th day of December, 2016.

Respectfully submitted,

STATE OF FLORIDA

PAMELA JO BONDI
Attorney General



Denise Kim Beamer
Senior Assistant Attorney General
Florida Bar # 69369
Office of the Attorney General
Consumer Protection Division
135 W. Central Blvd., Suite 670
Orlando, FL 32801-2436
Telephone: 407-316-4840
Facsimile: 407-245-0365
Denise.Beamer@myfloridalegal.com

Donna C. Valin
Assistant Chief Assistant Attorney General
Florida Bar # 96687
Office of the Attorney General
Consumer Protection Division

135 W. Central Blvd., Suite 670
Orlando, FL 32801-2436
Telephone: 407-316-4840
Facsimile: 407-245-0365
Donna.Valin@myfloridalegal.com