

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE
COMMISSION, et al.,

Plaintiffs,

v.

CASE NO. 8:15-cv-1417-T-23AEP

E.M. SYSTEMS
& SERVICES, LLC., et al.,

Defendants.

ORDER

The Federal Trade Commission and the Florida Attorney General sue (Doc. 58) sixteen defendants under the Florida Deceptive and Unfair Trade Practices Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, and Sections 13(b) and 19 of the FTC Act. The plaintiffs and Andrew S. Padnick stipulate to the injunctive and monetary relief in this order.

DEFINITIONS

A. "ACH Debit" means any attempted or completed debit to a person's account at a financial institution that is processed electronically through the Automated Clearing House Network.

B. "Acquirer" means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system (e.g., Visa, MasterCard, American Express, and Discover) to authorize a merchant to accept, to transmit, or to process a payment by

credit card through the credit card system for money, goods or services, or another valuable item.

C. “CardReady defendants” means the individual defendants and the corporate defendants, individually or in combination.

D. “Chargeback” means a procedure in which an issuing bank or other financial institution charges all or part of a person’s credit or debit card transaction back to the acquiring or merchant bank.

E. “Client” means a person who obtains directly or indirectly from Padnick a merchant account or a person for whom Padnick acts directly or indirectly as a sales agent.

F. “Corporate defendant” means CardReady, LLC, and its assigns and successors.

G. “Credit card laundering” means:

1. Presenting or depositing into, or causing another to present or to deposit into, the credit card system for payment a Credit Card Sales Draft if the underlying transaction is not between the cardholder and the merchant;

2. Employing, soliciting, or allowing a merchant, or an employee, representative, or agent of a merchant, to present to or to deposit into the credit card system for payment a Credit Card Sales Draft if the underlying transaction is not between the cardholder and the merchant;

3. Obtaining access to the credit card system through a business relation with a merchant when the access is not authorized by the merchant account or by the applicable credit card system.

H. “Credit Card Sales Draft” means any record or evidence of a credit card transaction.

I. “Debit Relief Product or Service” means any product, service, or plan represented to re-negotiate, to settle, or to alter a term of payment or another term of the debt between a person and an unsecured creditor or debt collector, including a reduction in balance, interest rate, or fee.

J. “Independent sales organization” (“ISO”) means a person who enters into an agreement with a Payment Processor to sell or to market payment processing services to a merchant and who holds full or partial liability for a loss related to the payment processing activities conducted by or on behalf of the merchant.

K. “Individual defendants” means Brandon A. Becker, James F. Berland, and Andrew S. Padnick.

L. “Merchant” means a person who may, under a written contract with an Acquirer, honor or accept a credit card, or transmit or process a credit card payment, for the purchase of a good, service, or charitable contribution.

M. “Merchant account” means an account with an Acquirer that authorizes a merchant to honor or to accept a credit card, or to transmit or process for payment a credit card, for the purchase of a good, service, or charitable contribution.

N. “Payment processing” means providing a person with the means to charge or to debit an account through a payment mechanism, including a Remotely Created Payment Order, an ACH Debit, or a debit, credit, prepaid, or stored value card. Payment processing includes reviewing and approving a merchant application for payment processing services; providing the means to transmit sales transaction data from a merchant to an acquiring bank or to another financial institution; clearing, settling, or distributing a proceed of a transaction from an acquiring bank or from a financial institution to a merchant; or processing a chargeback or returned Remotely Created Payment Order or ACH Debit.

O. “Payment processor” means a person providing payment processing services in connection with a charitable contribution or in connection with another person’s sale of a good or service.

P. “Person” means an individual, group, unincorporated association, limited or general partnership, corporation, or entity.

Q. “Remotely Created Payment Order” means a written or electronic check, draft, payment instruction, or payment order drawn on a payor’s account, initiated or created by or on behalf of a payee, and deposited into or cleared through the check-clearing system. An account includes

a financial or credit accounts that permits the drawing of a check, payment instruction, or order payable by or through a bank.

R. “Sales agent” means a person who matches, arranges, or refers a prospective client to a payment processor or ISO for payment processing but holds no contractual liability for a loss related to a payment processing activity conducted by or on behalf of a client. A sales agent may recommend a particular payment processor or ISO to a prospective client, may forward to the payment process or ISO a prospective client’s merchant application, and may negotiate the fee charged by a payment processor or ISO, but a sales agent may not act as an ISO.

I. Ban on credit card laundering

Padnick must not engage in credit card laundering.

II. Ban on payment processing or acting as an ISO or sales agent

Padnick must not engage in payment processing and must not act as a merchant’s ISO or sales agent.

III. Ban on facilitating fraudulent payment processing

Padnick must not assist a person whom the he knows or should know is:

1. Misrepresenting a fact so as to obtain Payment Processing services;
2. Misrepresenting a material fact about a product’s performance, efficacy, or nature;
3. Misrepresenting a material term of a refund, cancellation, exchange, or re-purchase policy;
4. Debiting or charging a consumer’s account without authorization;
5. Attempting to avoid detection of a fraud or risk monitoring program through any tactic, including balancing or distributing sales transaction volume, splitting a single transaction into

smaller transactions, or using a shell company to apply for a merchant account.

IV. Monetary relief

The clerk is directed to enter a judgment in the amount of \$437,199.33 for the Federal Trade Commission and the Office of the Attorney General, State of Florida, Department of Legal Affairs, and against Andrew S. Padnick.

Within seven days of entry of this order and in accord with instructions from the FTC, Padnick must pay the plaintiffs \$5,945.82. The payment of the \$5,945.82 will suspend the remainder of the judgment as explained below.

The plaintiffs agree to the partial suspension of the judgment against Padnick only if the financial representations in the following documents are truthful, accurate, and complete:

1. The December 20, 2015 financial statement of Andrew S. Padnick and attachments to the statement;
2. The March 18, 2016 correspondence from Edward Glynn, Padnick's counsel, to the FTC's counsel and attachments to the correspondence;
3. The March 21, 2016 correspondence from Edward Glynn to the FTC's counsel and attachments to the correspondence.

If an order finds that the defendant materially misstated, or failed to disclose, either a material asset or an asset's value, the order will re-instate the judgment.

If re-instated, the judgment is due immediately as to that defendant. For this section only, the parties stipulate that the judgment amount represents the

defendant's unjust enrichment plus post-judgment interest less a payment ordered in this section.

In any civil litigation by or on behalf of the plaintiffs, including a proceeding to enforce the judgment and a non-dischargeability claim in a bankruptcy action, Padnick may not dispute the truth of the complaint's factual allegations.

Padnick relinquishes legal and equitable right, title and interest in an asset surrendered under this order and may not seek return of a surrendered asset.

Padnick permits the use, in accord with 31 U.S.C. § 7701, of a Taxpayer Identification Number, i.e., a Social Security Number or Employer Identification Number, for the collection and the reporting of a delinquent amount of the judgment.

The plaintiffs may deposit money paid in satisfaction of the judgment into a fund administered by the FTC or its designee and used for equitable relief, including consumer redress and the expenses of administering the redress program. If redress is impracticable or if money remains after completion of the redress program, the plaintiffs may use the money for other equitable relief, i.e., a consumer information remedy, that is reasonably related to Padnick's alleged violations. The plaintiffs may divide equally any money not used for consumer redress or for equitable relief. The FTC must deposit its half in the U.S. Treasury and the Florida Attorney General must deposit its half in the Florida Attorney General Department of Legal Affairs' Revolving Trust Fund. Padnick may not challenge any expense under this section by the plaintiffs.

V. Customer information

For information obtained (before entry of this order) by Padnick in connection with payment processing services provided to Steven Short or E.M. Systems, Padnick must not disclose or use customer information, which includes a name, address, telephone number, e-mail address, Social Security number, or any data that permits access to a customer's credit card, bank, or other financial account. And, if directed in writing by a plaintiff, Padnick must destroy any of the above information within thirty days of receipt of the directive. But Padnick need not destroy, and may disclose, customer information if required by law to preserve or to disclose the information.

VI. Cooperation

Padnick must cooperate fully with the plaintiffs in this action and in any investigation related to this action. Padnick must provide truthful and complete information, evidence, and testimony, and must appear for an interview, hearing, discovery, trial, or another proceeding if the plaintiff provides at least five days' written notice and if the subject of the proceeding relates to the allegations in this action.

VII. Acknowledgments

Within seven days of receiving this order, Padnick must submit to the plaintiffs a sworn acknowledgment that he received the order.

For five years after entry of this order, Padnick, for any business that he owns individually or collectively with another CardReady defendant and for which business the defendant owns or controls a majority share, must deliver this order to the business's principals, officers, directors, and LLC managers and members, to all employees, agents, and representatives who participate in conduct related to the subject of this action; and to any business entity resulting from a change in structure (as explained in the compliance reporting section of this order). For current personnel, the defendant must deliver this order within seven days of the order's entry. For all others, the defendant must deliver this order before assuming responsibility. For each person described above, the defendant must obtain within thirty days of delivery a signed and dated acknowledgment by the person that he received this order.

VIII. Compliance reporting

A year after entry of this order, Padnick must submit a sworn compliance report which includes:

1. The defendant's telephone number and primary physical, postal, and e-mail address.
2. A list of the defendant's businesses and the names, telephone numbers, and physical, postal, e-mail, and Internet addresses of the business;
3. For each business listed in accord with the instruction above, a description of the business's activity, including the good or service offered; the means of advertising, marketing, and sales; and a list of every other CardReady defendant involved with the business;

4. A detailed explanation whether and why the defendant is compliant with this order, and;

5. Unless already submitted, a copy of each order acknowledgment obtained under this order.

Also, Padnick must identify all of his telephone numbers and physical, postal, e-mail, and Internet addresses; identify all business activities; and describe in detail his involvement in the business, including his title, role, responsibilities, and ownership interest.

For ten years after entry of this order, Padnick must submit a sworn compliance notice within fourteen days of any change in:

1. The defendant's telephone number and primary physical, postal, and e-mail address.
2. The structure of an entity in which Padnick has or acquires an interest, including a merger, sale, incorporation, dissolution, or any of the preceding that involves a parent, subsidiary, or affiliate engaged in any act that is the subject of this action.
3. Padnick's name (including an alias) or residence; and the role in any business activity or the individual's title in any business.

Padnick must notify plaintiffs about the filing of a bankruptcy petition or an insolvency proceeding by or against Padnick within fourteen days of the petition's filing.

Unless a plaintiff requests differently, Padnick must submit a document or statement required by this order to the FTC at Debrief@ftc.gov with subject line "FTC v. E.M. Systems, et al., Andrew S. Padnick, No. X150051." Or the defendant may submit the document by overnight courier to the Associate Director for

Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, D.C., 20580. Also, Padnick must submit the document or statement to the Florida Attorney General at cpenforcement@myfloridalegal.com or mail the document to the Office of the Attorney General, Consumer Protection Enforcement Division, PL-01 The Capitol, Tallahassee, Florida 32399.

Any sworn statement to the plaintiffs must comply with 28 U.S.C. § 1746.

IX. Recordkeeping

For a business owned or controlled in majority share by Padnick, the defendant must create the following documents for twenty years after entry of this order:

1. An account record that shows the revenue from all goods and services sold;
2. A personnel record that shows each employee or contractor's name, address, telephone number, job title, dates of service, and if applicable the reason for termination;
3. A record of every chargeback and refund request received by the defendant and the defendant's response; and
4. Any record necessary to demonstrate compliance with this order.

X. Compliance monitoring

Within fourteen days of a written request from a plaintiff, Padnick must submit a sworn compliance report or other information requested by the plaintiff and must produce a requested document. Without requesting leave of court, a plaintiff

may obtain discovery under Rules 29, 30, 31, 33, 34, 36, 45, and 69, Federal Rules of Civil Procedure, if the discovery request relates to this order or to the complaint in this action. Also, the FTC may invoke compulsory process under Sections 9 and 20 of the FTC Act.

If the employee or individual agrees, Padnick must permit a representative of a plaintiff to interview an employee of his or another individual affiliated with him. The person's counsel may appear at the interview.

XI. Jurisdiction retained

Jurisdiction is retained to enforce this order.

ORDERED in Tampa, Florida, on January 17, 2017.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE