

STATE OF VERMONT
WASHINGTON COUNTY, SS.

FILED

2009 NOV 13 A 9 36

IN RE APEX)
PROFESSIONALS, LLC)

Washington Superior Court
Docket No. 868-11-09 WNCV

ASSURANCE OF DISCONTINUANCE

WHEREAS Apex Professionals, LLC (“Apex”) (originally Apex Closing Services, LLC), is a Delaware limited liability corporation with offices at 200 South Virginia Street, 8th Floor, Reno, Nevada 89501, that is engaged in the business of transferring ownership of timeshares for a fee, so that the original timeshare owner may be relieved of maintenance fees, taxes and special assessments associated with the timeshare;

WHEREAS Apex representatives came to Vermont in March and May, 2009, to solicit consumers to pay to transfer ownership of their timeshares;

WHEREAS Apex’s representatives met with consumers on March 4 and 5, 2009, at the Courtyard Burlington Harbor in Burlington, Vermont, and on March 6 and May 15, 2009, at the Capitol Plaza Hotel in Montpelier, Vermont;

WHEREAS Apex advertised these meetings with a prior mailing of postcards stating, among other things, “Don’t play the waiting game in this economy! If you accept our offer we will put your timeshare into closing immediately. ... Call Now For Your Individual Appointment”;

WHEREAS Apex’s advertising also included flyers depicting a middle-aged couple from Chicago who were quoted as saying that they had “spent over \$1000 with two different

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Montpelier,
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listing companies—and we’ve had no luck trying to sell our timeshare. We were anxious to see what Apex Professionals had to offer. We met with a representative face to face (it was so nice to meet in person) and their offer ended up being exactly what our family needed.”;

WHEREAS Vermont consumers with timeshares whose maintenance and other costs were burdensome understood Apex’s advertising and its reference to making an “offer” to mean that Apex would be offering them money in exchange for their timeshares;

WHEREAS in fact, Apex charged these consumers a fee in the amount of several thousand dollars to transfer ownership of the consumers’ timeshares;

WHEREAS Apex’s representatives in Vermont told the consumers with whom they met that they could offset their payment to Apex by filing for a federal income tax deduction for investment losses on their timeshare, the value of which the representatives claimed would be equal to or greater than their payment to Apex;

WHEREAS while Apex’s form Agreement, under which the company agreed to accept ownership of one or more timeshares and to assure that the prior owner was relieved of responsibility for timeshare maintenance fees, taxes and special assessments, contained a provision under which the consumer acknowledged that s/he was “not entering this Contract in reliance upon any information received from [Apex] regarding the legal or tax consequences of the transaction” to the consumer, the Apex representatives in Vermont nonetheless told consumers who did not purchase their timeshares primarily for investment purposes that they could claim an investment loss on the sale of the timeshares for income tax deduction purposes;

WHEREAS Apex representatives in Vermont also told consumers that if they rented their timeshares and then sold the timeshares at a loss, that loss could be claimed as an income tax deduction;

WHEREAS in some cases, the Apex representatives hand-wrote a specific calculation of the value of this tax deduction to the consumer (referred to herein as a “tax sheet”);

WHEREAS this advice given by the Apex representatives in Vermont was not true, since an income tax deduction may be claimed for a loss on a timeshare only if the *primary purpose* for which the timeshare was originally purchased was as an investment, regardless of whether it was later rented;

WHEREAS the Vermont Attorney General alleges that these misrepresentations violated the Vermont Consumer Fraud Act’s prohibition on deceptive trade practices, 9 V.S.A. § 2453(a);

WHEREAS the Consumer Fraud Act, 9 V.S.A. §§ 2451a(d) and 2454, also requires sellers of goods or services at a transient location like a hotel in Vermont to offer consumers a three-business-day right to cancel their transaction, which right must be disclosed verbally and prominently in short-form and long-form written disclosures respectively on and attached to the consumer’s contract or receipt;

WHEREAS Apex did not disclose such a right to cancel to the consumers who met with its representatives in Vermont;

WHEREAS the Attorney General alleges that Apex’s failure to properly disclose consumers’ right to cancel in Vermont also violated the Consumer Fraud Act;

WHEREAS of the consumers who attended the Apex presentations in Vermont, 15 entered into agreements with Apex and paid the company a total of over \$51,000;

AND WHEREAS the Attorney General and Apex are willing to accept this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459;

THEREFORE the parties agree as follows:

1. In the event that Apex does business again in Vermont, the company:

a. Shall comply with all applicable federal and Vermont laws and regulations, including but not limited to the Vermont Consumer Fraud Act, 9 V.S.A. ch. 63, and any regulations promulgated thereunder, including the three-day right to cancel provisions of the Act; and

b. Shall not give any tax advice to consumers other than to consult with their accountant or other tax preparer about whether there may be any tax consequence to their transferring ownership of their timeshare.

2. Within thirty (30) days of signing this Assurance of Discontinuance, Apex shall refund the following amounts of money to all of the consumers who paid the company to transfer ownership of a timeshare following a meeting in Vermont (hereinafter "Vermont consumers"):

a. For Vermont consumers who have a tax sheet from Apex setting out the value of a tax deduction to them, the greater of (i) the amount the consumer paid to Apex, or (ii) the value of the tax deduction as set out on the tax sheet; or

b. For consumers who do not have a tax sheet from Apex, the amount the consumer paid to Apex;

provided that if one of the Vermont consumers has already received a refund or a chargeback of some or all portion of the amount he or she paid to Apex, the amount of that refund or chargeback shall be deducted from the amount due under this paragraph 2, so as to avoid a double recovery;

and provided further that the parties to this Assurance of Discontinuance have signed a Confidential Addendum hereto, setting out the names of the 15 Vermont consumers identified by Apex and the amounts they are entitled to under this paragraph, the total of which is sixty-four thousand one hundred eighty-seven dollars (\$64,187.00);

and provided further that in the event that more than the 15 Vermont consumers identified in the Confidential Addendum paid money to Apex following a meeting with an Apex representative in Vermont, the Attorney General shall have the right to seek to modify this Assurance of Discontinuance, by agreement or in court, to make those additional consumers whole and to increase the dollar amount of the penalties to be paid to the State of Vermont under this Assurance of Discontinuance.

3. To implement paragraph 2, above, within thirty (30) days of signing this Assurance of Discontinuance, Apex shall mail the refunds required by that paragraph to the Vermont consumers by first-class mail, postage prepaid, with a letter in substantially the same form as Exhibit 1 hereto. If the letter is returned as undeliverable, Apex shall make all reasonable efforts to find a valid mailing address for the consumer in question and shall promptly resend the letter and any accompanying payment required by this Assurance of Discontinuance to the new address. In the event that the letter is returned again as undeliverable, Apex shall promptly pay, as unclaimed funds, the amount due the consumer to the State of Vermont, in care of the Attorney General's Office, 109 State Street, Montpelier, Vermont 05609.

4. The Vermont consumers shall be entitled, at their option, to have Apex transfer their timeshare(s) back to them, if ownership of the timeshare(s) in question has not been transferred by Apex to a third party as of October 1, 2009. To exercise this option,

consumers must send their request in writing to Apex within ten (10) days of receiving their letter (Exhibit 1) from the company.

5. Apex shall pay to the State of Vermont, in care of the Vermont Attorney General's Office, the additional sum of sixty-five thousand dollars (\$65,000.00) in civil penalties and costs, according to the following schedule: twenty-five thousand dollars (\$25,000.00) upon signing this Assurance of Discontinuance; another twenty thousand dollars (\$20,000.00) within thirty (30) days of signing; and the final twenty thousand dollars (\$20,000.00) within sixty (60) days of signing.

6. Acceptance of this Assurance of Discontinuance by the Vermont Attorney General does not constitute approval of any business practices by Apex, nor shall the company or anyone acting on its behalf state or infer otherwise.


7. This Assurance of Discontinuance shall be binding on Apex, its officers, directors, owners, managers, successors and assigns. The undersigned authorized agent of Apex shall promptly take reasonable steps to ensure that copies of this document are provide to all officers, directors, owners, and managers of the company.

8. This Assurance of Discontinuance resolves all existing claims the State of Vermont may have against Apex stemming from the conduct described in this document.

Date: 10/23/09

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: 
Elliot Burg
Assistant Attorney General

Office of the
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Montpelier,
Vermont 05609

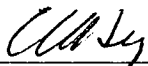
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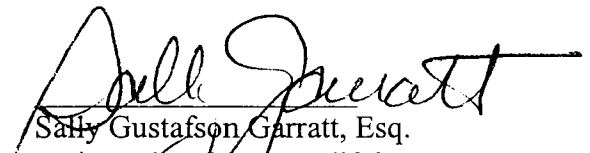
APEX PROFESSIONALS, LLC

by: 
Its Authorized Agent

Michael Davidson, Manager
Name and Title of Authorized Agent

APPROVED AS TO FORM:


Elliot Burg
Assistant Attorney General
Office of the Attorney General
109 State Street
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For the State of Vermont


Sally Gustafson Garratt, Esq.
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For Apex Professionals, LLC

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Exhibit 1

Important Information on Refunds to Consumers

Dear _____:

Earlier this year, you attended a presentation by Apex Professionals, LLC, in Burlington or Montpelier and transferred to Apex ownership of one or more timeshares. Apex has recently entered into a legal settlement with the Vermont Attorney General's Office to settle claims that the company misrepresented the tax advantages of your transfer and did not provide you with notice of your legal right to cancel your agreement with Apex.

Under the settlement, Apex is refunding to you all amounts that you paid to the company, or, if higher, the value of any tax deduction set out on a "tax sheet" written up by the Apex representative and provided by you to the Attorney General's Office. (If you have already received a refund or credit card chargeback of the money you paid Apex, that amount has been deducted from your refund to prevent a double recovery.)

[For any consumer whose timeshare(s) were not transferred by Apex to a third party as of the date Apex signed the Assurance of Discontinuance: In addition, since Apex has not yet transferred ownership of your timeshare(s) to anyone else, you may, at your option, have Apex transfer your timeshare(s) back to you at no charge. If you wish to exercise this option, you must contact Apex within ten (10) days of receiving this letter. You may do so by calling [telephone number], emailing your request to [email address] or mailing your request to [address].]

If you have any questions about the settlement, you may call the Vermont Attorney General's Office at (802) 828-5507.

Sincerely,

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