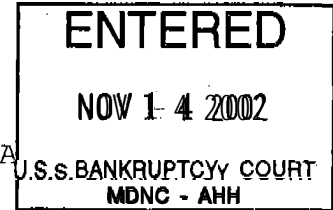


UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION



IN RE:	)	
	)	
Bessie L. Ford,	)	Case No. 01-11550C-13G
	)	
Debtor.	)	
	)	
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Bessie L. Ford,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary No. 2096
	)	
David D. Webster, Renee'	)	
Dorsett and Webster's	)	
Marketing & Financial	)	
Services, Inc.,	)	
	)	
Defendants.	)	

JUDGMENT

This adversary proceeding came before the court for trial on September 4, 2002 and on October 8, 2002. Stephen D. Ling appeared on behalf of the plaintiff and Donald L. Murphy appeared on behalf of the defendants. Having considered the evidence offered by the parties and the arguments of counsel, the court makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure:

FINDINGS OF FACT

1. The plaintiff is a citizen and resident of Guilford County, North Carolina, and is the Debtor in a Chapter 13 case pending before this court as Case No. 01-11550.

2. Defendant Webster's Marketing & Financial Services, Inc. ("Webster's Marketing") is a North Carolina corporation with a place of business in Greensboro, North Carolina.

3. Defendant David D. Webster is a citizen and resident of Guilford County, North Carolina, and at all times involved in this proceeding was the owner of all of the stock of Webster's Marketing and was president, chief executive officer and an employee of that corporation.

4. Defendant Renee' Dorsett is a citizen and resident of Guilford County, North Carolina, and at all times involved in this proceeding was vice president and an employee of Webster's Marketing.

5. During the years 2001 and 2002 Webster's Marketing was engaged in business in Greensboro, North Carolina. Webster's Marketing advertised and represented to the public that its business included credit counseling and "mortgage recovery" which was represented by David D. Webster and Webster's Marketing as providing assistance to clients whose mortgages had gone into default by contacting mortgagees and negotiating terms under which mortgages that were in default could be brought current by the client and reinstated by the mortgagee.

6. In February of 2001, the plaintiff was behind in the monthly payments to the mortgagee that held a mortgage on plaintiff's residence. As a result of such default, plaintiff was

faced with a possible foreclosure by the mortgagee.

7. In February of 2001, in response to the advertising of Webster's Marketing, the plaintiff made arrangements to meet with representatives of Webster's Marketing in order to seek the assistance of Webster's Marketing in avoiding a foreclosure of the mortgage on her residence,

8. On February 8, 2001, the plaintiff went to the place of business of Webster's Marketing and met with defendant Renee' Dorsett. This meeting resulted in an agreement between Webster's Marketing and the plaintiff under which Webster's Marketing agreed to act on behalf of the plaintiff in seeking a reinstatement of the plaintiff's mortgage loan. Under the agreement, the plaintiff agreed to pay Webster's a fee of \$500.00 for its services. Defendant Dorsett represented that a title examination and an appraisal would be needed in connection with Webster's Marketing seeking a reinstatement of plaintiff's mortgage. Therefore, plaintiff agreed to be responsible for the \$150.00 cost of a title examination and \$150.00 appraisal costs. Under the agreement, the plaintiff also was to turn over to Webster's Marketing as much money as she could so that Webster's Marketing would have on hand the funds required to be paid to the mortgage holder in the event that Webster's Marketing was able to work out a loan reinstatement with the mortgage holder. However, it was expressly understood and agreed that the money paid to Webster's Marketing would be held in

escrow and refunded to-the plaintiff in the event that Webster's Marketing was not successful in working out a loan reinstatement.

9. Pursuant to the agreement with Webster's Marketing, the plaintiff paid a total of \$5,100.00 to Webster's Marketing, consisting of the following payments: \$800.00 on February 9, 2001, \$1,200.00 on February 23, 2001, \$500.00 on March 12, 2001, and \$2,600.00 on May 14, 2001.

10. Webster's Marketing was not successful in getting plaintiff's mortgage loan reinstated, and in May of 2001, the plaintiff received a foreclosure notice from the mortgage holder.

11. After receiving the foreclosure notice, the plaintiff met with defendant Dorsett and with defendant Webster in an effort to obtain a refund from Webster's. At these meetings which took place in late May of 2001 and in contemporaneous telephone conversations with defendants Dorsett and Webster, the plaintiff demanded a refund of her money from Webster's Marketing. In these meetings and -conversations, defendants Dorsett and Webster falsely represented that a total of \$300.00 of plaintiff's money had been spent by Webster's Marketing for a title examination and appraisal review and that Webster's Marketing was holding only \$4,300.00 of the money that plaintiff had paid to Webster's Marketing. In truth, Webster's Marketing had not requested or obtained either a title examination or appraisal in or prior to May of 2001, and hence the amount of the refund that plaintiff was entitled to

receive from Webster's Marketing actually was \$4,600.00 rather than the \$4,300.00 represented by defendants Dorsett and Webster. Believing that she was entitled to a refund of only \$4,300.00, plaintiff demanded of defendants Dorsett and Webster that defendants refund \$4,300.00 to plaintiff. Despite plaintiff's demands, no funds were refunded or returned to the plaintiff by the defendants.

12. When plaintiff received no refund of her funds, plaintiff employed an attorney to represent her interests. In addition to filing a Chapter 13 case on her behalf, plaintiff's attorney immediately made a demand upon defendants for refund of \$4,300.00 and a copy of the title search report and appraisal report that defendants represented had been made. Notwithstanding repeated demands by plaintiff's attorney for a \$4,300.00 payment from defendants and for copies of the title search and appraisal reports, the defendants continued in their refusal to refund the \$4,300.00 and never informed plaintiff's attorney that 'the requested reports did not exist. Upon the continuing failure of the defendants to refund the \$4,300.00 demanded by plaintiff's attorney or to furnish the requested reports, plaintiff's attorney instituted this adversary proceeding on October 26, 2001.

13.. In 'their dealings with the plaintiff, defendants Webster and Dorsett, acting in concert, made false and misleading statements and engaged in misleading and deceptive conduct,

including the following:

(a) They falsely represented to plaintiff that the funds turned over to Webster's Marketing by the plaintiff would be held in escrow. In actuality, if the funds were ever placed in an escrow account, they were removed from the escrow account without plaintiff's knowledge or approval and placed in the operating account of Webster's Marketing and used for purposes unrelated to the plaintiff.

(b) They falsely represented that the funds paid by plaintiff to Webster's Marketing for payment to the mortgagee that held a mortgage on plaintiff's residence would be returned to plaintiff if defendants were not successful in getting plaintiff's loan reinstated.

(c) In May of 2001 they falsely represented to plaintiff that the sum of \$300.00 had been paid from the funds supplied by plaintiff to obtain a title search and appraisal report, when, in fact, neither a title search nor an appraisal -review had been obtained or paid for by defendants.

(d) They falsely represented to plaintiff in May of 2001 that Webster's Marketing was holding only \$4,300.00 of the funds supplied by plaintiff when, in fact, Webster's Marketing was holding or should have been holding \$4,600.00 of the funds supplied by the plaintiff since no expenses had been incurred for a title search or appraisal report.

(e) They falsely-represented that the plaintiff had agreed that plaintiff's funds were to be refunded over a period of twelve months at the rate of \$360.00 per month in order to assist plaintiff with her Chapter 13 payments, including such a false representation in a letter sent by defendant Dorsett to the plaintiff on August 29, 2001, and in a letter purportedly sent to the bankruptcy court on November 8, 2001, by defendant Dorsett. In fact, plaintiff had never agreed to such an arrangement.

(f) In March of 2002, long after defendants knew that they would not be able to obtain a reinstatement of plaintiff's mortgage loan and at a time when there was no purpose for doing so other than to cover up the earlier false representations that a title search and appraisal report had been performed, defendant Dorsett acting in concert with defendant Webster, requested that their attorney perform a title search and that their appraiser prepare an appraisal review with respect to plaintiff's property. Although the appraisal review was not requested until March 11, 2002, defendant Dorsett requested that the appraiser back date the appraisal to February 23, 2001, a request that was made in order to mislead plaintiff and create a false picture of when the appraisal actually was performed.

14. At the time of the aforesaid conduct, defendants Dorsett and Webster were officers and employees of Webster's Marketing and were acting on behalf of Webster's Marketing and within the course

and scope of their employment by Webster's Marketing.

15. The aforesaid conduct engaged in by defendants Dorsett and Webster in their dealings with the plaintiff involved business activity on the part of the defendants which occurred in commerce and which affected commerce.

16. The conduct of the defendants as described in paragraph thirteen was a proximate cause of injury and damage to the plaintiff. The damages proximately caused by the conduct of the defendants is in the amount of \$4,600.00, the amount which defendants improperly withheld from the plaintiff, plus plaintiff's loss of the use and benefit of the funds that were improperly withheld by the defendants.

#### CONCLUSIONS OF LAW

17. The conduct, acts and misrepresentations of the defendants as described in paragraph thirteen constitute unfair and deceptive acts and practices in commerce within the meaning of G.S. § 75-1.1 and constitute a violation of G.S. § 75-1.1.

18. A plaintiff may recover for a violation of G.S. § 75-1.1 even though the defendants' conduct also may give rise to a claim for breach of contract or other type of claim, as well. "Where the same course of conduct gives rise to a traditionally recognized cause of action, as, for example, an action for breach of contract, and as well gives rise to a cause of action for violation of G.S. 75-1.1, damages may be recovered for the breach of contract,



or for violation of G.S. 75-1.1. . . ." See Garlock v. Henson, 112 N.C. App. 243, 246, 435 S.E.2d 114 (1993) (quoting from Marshall v. Miller, 47 N.C. App. 530, 542, 268 S.E.2d 97, 103 (1980), modified and aff'd, 302 N.C. 539, 276 S.E.2d 397 (1981); Foley v. L & L Int'l, Inc., 88 N.C. App. 710, 364 S.E.2d 733 (1988). Plaintiff therefore is entitled to proceed with a claim under G.S. § 75-1.1 even though defendants' conduct also breached the agreement between the plaintiff and Webster's Marketing.

19. The plaintiff is entitled to recover from Webster's Marketing the amount of the damages that were proximately caused by -the violation of G.S. § 75-1.1 by the individual defendants Dorsett and Webster because defendants Dorsett and Webster committed such violation as officers and employees of Webster's Marketing, acting on behalf of Webster's Marketing and within course and scope of their employment by Webster's Marketing, which damages should be trebled pursuant to G.S. § 75-16.

20. The plaintiff also is entitled to recover from defendants Dorsett and Webster individually the amount of the damages that were proximately caused by the violation of G.S. § 75-1.1. A corporate officer may be held personally liable for torts or other wrongful actions in which the officer personally participates. See Wilson v McLeod Oil Co., 327 N.C. 491, 518, 398 S.E.2d 586, 600 (1990) ("a corporate officer can be held personally liable for torts in which he actively participates"); Estee Co. v. Goodman, 82 N.C.

App. 692, 348 S.E.2d -153' (1986) (president of corporation held liable for tort of conversion in selling leased property); see generally ROBINSON ON NORTH CAROLINA CORPORATION LAW §16.08 (6th ed. 2000). Defendants Dorsett and Webster both were actively and personally involved in violating G.S. § 75-1.1 through the willful acts and conduct described in paragraph thirteen, as a result of which they are jointly and severally liable for the damages proximately caused by the violation of G.S. § 75-1.1, which damages should be trebled pursuant to G.S. § 75-16.

21. As a proximate result of defendants' violation of G.S. § 75-1.1, the plaintiff sustained damages of \$5,135.36, consisting of the \$4,600.00 which defendants wrongly refused to refund to plaintiff plus interest at 8% per annum from June 1, 2001 through the date of this judgment in the amount of \$535.36.

22. Pursuant to G.S. § 75-16, the plaintiff is entitled to recover treble damages of \$15,406.08 from the defendants, jointly and severally.

23. Additionally, because the defendants' violation of G.S. § 75-1.1 consisted of willful acts and conduct and because there was an unwarranted refusal by the defendants to fully resolve the matter of refunding money to the plaintiff which the plaintiff clearly was entitled to receive, the plaintiff should be awarded a reasonable attorney fee of \$4,500.00 pursuant to G.S. § 75-16.1.

Now, therefore, it is ORDERED, ADJUDGED AND DECREED that the

plaintiff have and recover from Webster's Marketing & Financial Services, Inc., David D. Webster and Renee' Dorsett, jointly and severally, the sum of \$15,406.08, plus an attorney's fee of \$4,500.00 and the costs of this action.

This 12th day of November, 2002.

**William L. Stocks**

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WILLIAM L. STOCKS  
United States Bankruptcy Judge