

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

2010 OCT 28 A 9:11

In re START POSITIVE
LOSS MITIGATION, LLC

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CIVIL DIVISION

Docket No. 767-10-10 WW

ASSURANCE OF DISCONTINUANCE

WHEREAS Start Positive Loss Mitigation, LLC (“Start Positive”) is a Maryland limited liability corporation with offices at 7125 Thomas Edison Drive, Suite 201, Columbia, Maryland 21046, that is engaged in the business of offering to assist consumers in negotiating modification of the terms of their home loans;

WHEREAS Start Positive began doing business in Vermont around January 2009;

WHEREAS Start Positive charged an advance fee for its services based on the value of the consumer’s mortgage, generally—\$900 for mortgages valued at less than \$100,000, and \$1,450 for mortgages valued at \$100,000 or more;

WHEREAS Start Positive received money from 13 Vermont consumers, who paid a total of approximately \$16,000 to the company;

WHEREAS Start Positive made a number of representations on its website about the company and the results it could achieve for consumers, including a statement that Start Positive’s negotiators have “many years of experience negotiating thousands of cases with lenders across the country,” that Start Positive “guarantee[s] an answer from your bank and we guarantee to submit a loan modification package that will significantly improve the terms of your loan to your lender,” and that Start Positive can “save your home,” “stop the foreclosure,” and “lower your mortgage payments.”

WHEREAS Start Positive had no factual substantiation for these representations, including factual substantiation of the typicality of the results claimed;

WHEREAS no loan modification resulted from Start Positive's work on behalf of Vermont consumers;

WHEREAS the Attorney General alleges that all of the above-described practices—the charging of advance fees, the lack of substantiation, and the lack of work done for Vermont consumers—violated the Vermont Consumer Fraud Act's prohibition on unfair and deceptive trade practices, 9 V.S.A. § 2453(a);

WHEREAS the Attorney General also alleges that Start Positive failed to provide proper notice of consumers' three-business-day right to cancel their contracts with the company, in violation of Vermont Consumer Fraud Rule 113 for telephonic sales and the Consumer Fraud Act, 9 V.S.A. § 2453(a);

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

THEREFORE the parties agree as follows:

1. If it continues to do business in or into the State of Vermont, Start Positive shall:
 - a. 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;
 - b. Clearly and conspicuously disclose the uncertainties associated with undertaking to negotiate modifications of the terms of consumers' home loan; and

c. Refrain from making any representations in any medium, directly or indirectly, about the results it can or will achieve for its clients without having prior reasonable factual substantiation that those representations reflect the typical experience of its clients.

2. Within sixty (60) days of signing this Assurance of Discontinuance, Start Positive shall send to each of its Vermont customers a check in the amount of all unrefunded fees paid by each customer to the company, by first-class mail, postage prepaid, to the consumer's last-known address, along with a letter in substantially the same form as Exhibit 1 and an itemized list of the amounts paid to the company by the consumer and the dates.

3. If the mailing required under paragraph 2, above, is returned as undeliverable, Start Positive shall make all reasonable efforts to find a valid mailing address for the consumer in question and shall promptly resend the letter and the accompanying payment required by this Assurance of Discontinuance to the new address. In the event that Start Positive is still unable to make one or more refunds, for example because certain consumers cannot be located, the company shall, within seventy-five (75) days of signing this Assurance of Discontinuance, pay the total amount of the unpaid refunds to the State of Vermont, in care of the Vermont Attorney General's Office, to be held by the State as unclaimed funds.

4. Within ninety (90) days of signing this Assurance of Discontinuance, Start Positive shall send to the Attorney General's Office a list of refunds paid to consumers or to the State under paragraphs 2 and 3, above, including the name and address of each consumer, the amount paid or attempted to be paid, the date(s) of payment or attempted payment, and to whom the payment was ultimately made.

5. In the event of a dispute about Start Positive's compliance with this Assurance of Discontinuance, the parties shall attempt in good faith to resolve the issue themselves. If they are unable to do so, either party may petition the Washington Superior Court in Montpelier, Vermont, for a ruling.

6. Start Positive shall pay to the State of Vermont, in care of the Vermont Attorney General's Office, the sum of ten thousand dollars (\$10,000.00) in civil penalties and costs, according to the following schedule: two thousand five hundred dollars (\$2,500.00) upon signing this Assurance of Discontinuance, and three installments of two thousand five hundred dollars (\$2,500.00) each no later than thirty (30), sixty (60), and ninety (90) days after said signing.

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

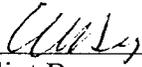
8. This Assurance of Discontinuance shall be binding on Start Positive, its officers, directors, owners, managers, successors and assigns. The undersigned authorized agent of Start Positive shall promptly take reasonable steps to ensure that copies of this document are provided to all officers, directors,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

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

Date: 10/7/10

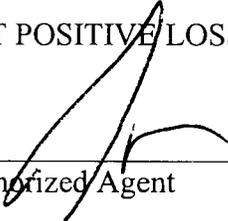
STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: 
Elliot Burg
Assistant Attorney General

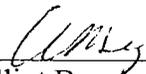
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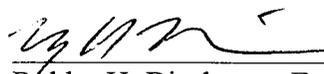
START POSITIVE LOSS MITIGATION, LLC

by: 
Its Authorized Agent

JOHN WAINWRIGHT PRESIDENT
Name and Title of Authorized Agent

APPROVED AS TO FORM:


Elliot Burg
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, VT 05609
For the State of Vermont


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100 W. Cypress Creek Road
Fort Lauderdale, FL 33309-2140
For Start Positive, LLC

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Exhibit 1

Important Information on Refunds to Consumers

Dear _____:

I am writing to inform you that Start Positive, a company that offered to negotiate a modification of the terms of your home loan, has entered into a legal settlement with the Vermont Attorney General's Office. The Attorney General alleges that Start Positive violated Vermont law in several respects, including making unsupported claims on the Internet about the results we could achieve.

Under the settlement, Start Positive is refunding to you all fees that you paid us, as itemized on the enclosed sheet. If the amount of the enclosed refund appears to be less than the total of what you paid us, please let us know at once by telephone at [telephone number] or by email at [email address].

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

Sincerely,

Office of the
ATTORNEY
GENERAL
09 State Street
Montpelier, VT
05609