

STATE OF VERMONT **FILED**
WASHINGTON COUNTY, SS.

2010 JUL 16 P 12: 27

In re:)
SCF STATE CAPITAL FINANCIAL,)
INC.)
)
)
)
)

SUPERIOR COURT
WASHINGTON COUNTY
Washington Superior Court
Docket No. 511-7-10 Wncv

ASSURANCE OF DISCONTINUANCE

WHEREAS SCF State Capital Financial, Inc (“State Capital Financial” or “the company”) is a Florida corporation with offices at 1920 E. Hallandale Beach Blvd. Suite 806, Hallandale Beach, Florida, 33009, that is engaged in the business of assisting consumers (“clients”) in negotiating and settling their unsecured, personal debts;

WHEREAS State Capital Financial offers, among other things, to negotiate with its clients’ creditors reductions in the amounts due the creditors;

WHEREAS State Capital Financial provides debt settlement account processing, negotiations, settlement, and customer service (collectively, “services”) to its clients for a fee of 10-15% of the principal amount of the debt enrolled in the program;

WHEREAS State Capital Financial began doing business in Vermont on November 1, 2006;

WHEREAS State Capital Financial provided services to 11 Vermont consumers, who paid a total in fees, after refunds, of over \$26, 815 to the company;

WHEREAS the Attorney General asserts that the Vermont Debt Adjusters Act, 8 V.S.A. ch. 133, is applicable to State Capital Financial’s business and its services;

WHEREAS at no time relevant to this Assurance of Discontinuance did State Capital Financial possess a Vermont debt adjuster license;

WHEREAS State Capital Financial also did not (1) pay the fees or obtain the bond required by 8 V.S.A. §§ 4862 and 4864-4865; (2) include in its client contract the right-to-cancel disclosure required by 8 V.S.A. § 4869a(b); (3) make payments to creditors at least once every 30 days as required by 8 V.S.A. § 4870a; or (4) limit its fee for services to the \$50.00 initial setup fee plus ten percent of any payment received by the company for distribution to credits, as prescribed by 8 V.S.A. § 4872;

WHEREAS State Capital Financial represented that it could achieve particular results for its clients (e.g., “Debt Free in 12 to 36 Months,” “Settle Debts for 40-60% of Balance,” “State Capital Financial settles your outstanding debt by eliminating 40-60% of your total outstanding debt through negotiations!”), for which the Vermont Attorney General alleges that the company did not have prior reasonable factual substantiation as to the typicality of those results;

WHEREAS the Attorney General alleges that all of the above-described practices 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 although State Capital Financial offered consumers a right to cancel, the company’s disclosures of that right, and its exclusion of refunds for its processing fee, violated the right-to-cancel provisions of 9 V.S.A. § 2454 and Vermont Consumer Fraud Rule 113 for telephonic sales;

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

THEREFORE the parties agree as follows:

1. State Capital Financial shall comply with all applicable federal and Vermont laws and regulations, including but not limited to the Vermont Debt Adjusters Act, 8 V.S.A. ch. 133, the Vermont Consumer Fraud Act, 9 V.S.A. ch. 63, and any regulations promulgated under either statute.

2. In the event that it obtains a license to engage in the business of debt adjustment in Vermont in the future, State Capital Financial shall further:

- a. Clearly and conspicuously disclose the risks (including the risk of being sued) associated with turning accounts over to the company and not making payments to creditors; and
- b. 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.

3. Within sixty (60) days of signing this Assurance of Discontinuance, State Capital Financial shall refund to all of its Vermont clients, all unrefunded fees paid by each of those clients to the company. In the event that State Capital Financial is unable to make one or more refunds, for example because certain clients cannot be located, the company shall, within ninety (90) days of signing this Assurance of Discontinuance, pay the total amount of those unpaid refunds to the State of Vermont, in care of the Vermont Attorney General's Office, as unclaimed funds.

4. Also within sixty (60) days of signing this Assurance of Discontinuance, State Capital Financial shall pay liquidated damages in the amount of \$2,000.00 (two thousand dollars) to any Vermont client who was sued by one or more creditors between the

consumer's sign-up with State Capital Financial and the date of the company's settlement with the creditor.

5. State Capital Financial shall promptly complete, without charge, negotiations with all listed creditors of each of its Vermont clients, at the client's option, and shall make all reasonable efforts to settle the amount due each creditor at no more than 50% percent of the enrolled amount of the debt. State Capital Financial shall document these efforts in writing, including a comparison with past settlements with the same creditor, and provide such documentation to the Attorney General's Office within sixty (60) days of signing this Assurance of Discontinuance. In the event of a dispute about the adequacy or promptness of State Capital Financial's efforts under this paragraph, 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. To implement the provisions of paragraphs 3 through 5, above, within sixty (60) days of signing this Assurance of Discontinuance, State Capital Financial shall send to each of its Vermont clients, by first class mail, postage prepaid, a letter in substantially the same form as Exhibit 1, enclosing an itemized list of the amounts and dates of all fees paid to the company, and further enclosing any payments required by paragraphs 3 and 4, above, in the form of a check or checks. If the letter is returned as undeliverable, State Capital Financial 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 (if applicable) required by this Assurance of Discontinuance to the new address.

7. State Capital Financial shall pay to the State of Vermont, in care of the Vermont Attorney General's Office, the sum of \$40,000.00 (forty thousand dollars) in civil penalties and costs.

8. Payment of the \$40,000 (forty thousand dollars) civil penalty described in paragraph 7 shall be made in ten monthly installments of at least \$4,000.00 (four thousand dollars). Payment shall be due on the last day of each month. The first payment shall be due July 31, 2010.

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

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

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

DATED at Montpelier, Vermont this 16th day of July, 2010.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: Robert F. McDougall

Robert F. McDougall
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609

DATED at _____, _____ this 9 day of July, 2010.

STATE CAPITAL FINANCIAL

By: [Signature]
Its Authorized Agent

Richard S. Ruster President
Name and Title of Authorized Agent

APPROVED AS TO FORM:

Robert F. McDougall

Robert F. McDougall
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, VT 05609
For the State of Vermont

[Signature]

Ben A. Donnell
Donnell, Abernethy & Kieschnick
555 N. Carancahua, Suite 400
Corpus Christi, TX 78401-0817
Burlington, VT 05402-1489
For State Capital Financial

Office of the
ATTORNEY
GENERAL
Montpelier,
Vermont 05609

Exhibit 1

Important Information on Refunds to Consumers

Dear _____:

I am writing to inform you that State Capital Financial has entered into a legal settlement with the Vermont Attorney General's Office. The Attorney General alleges that State Capital Financial violated Vermont law in several respects, including engaging in the business of debt adjustment without a required license.

Under the settlement, State Capital Financial is refunding to you all fees that you paid to State Capital Financial, 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].

In addition, if, while we were working for you, you were sued by one of the creditors enrolled in your program, we are enclosing a payment in the amount of an additional \$2,000, as required by the settlement. If you were sued during that time but did not notify us of that fact, you will need to provide us with documentation of the lawsuit (for example, a copy of the complaint), which you may fax to [fax number] or mail to [mailing address] or email to [email address].

Under the settlement, State Capital Financial has also agreed, at your option, to complete its negotiations with your creditors, at no charge to you, and to make all reasonable efforts to settle those debts for no more than 50% of the enrolled amount due. If you would like us to do that, please call or email us as directed above as soon as you can; otherwise, we will assume that you do not want us to continue our settlement efforts.

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

Sincerely,