

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

**COMMONWEALTH OF
PENNSYLVANIA, By JOSH SHAPIRO,
ATTORNEY GENERAL,**

Petitioner,

v.

**EQUITABLE ACCEPTANCE
CORPORATION,**

Respondent.

CIVIL DIVISION

G.D. No.

**ASSURANCE OF VOLUNTARY
COMPLIANCE**

Filed on Behalf of Petitioner:

**COMMONWEALTH OF
PENNSYLVANIA, JOSH SHAPIRO
ATTORNEY GENERAL**

Counsel of Record for this Party:

**Amy L. Schulman
Senior Deputy Attorney General
P.A. I.D. No. 80888**

**Bureau of Consumer Protection
1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222
(412) 565-3523**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

**COMMONWEALTH OF
PENNSYLVANIA, By JOSH SHAPIRO,
ATTORNEY GENERAL,**

Petitioner,

v.

**EQUITABLE ACCEPTANCE
CORPORATION,**

Respondent.

CIVIL DIVISION

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, by Attorney General Josh Shapiro, through the Bureau of Consumer Protection ("Commonwealth" or "Petitioner"), which caused an investigation to be made into the business practices of Equitable Acceptance Corporation ("Equitable Acceptance" or "Respondent"), pursuant to the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.* ("Consumer Protection Law") and states the following:

PARTIES

WHEREAS, Petitioner is the Commonwealth of Pennsylvania, Office of Attorney General, through the Bureau of Consumer Protection, with offices located at 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222; and 15th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120.

WHEREAS, Respondent Equitable Acceptance Corporation is a Minnesota corporation with a principal place of business located at 1200 Ford Road, Minnetonka, Minnesota 55305.

BACKGROUND

WHEREAS, Respondent is a third party financing company that has engaged in trade and commerce in the Commonwealth of Pennsylvania by extending credit to consumers in connection with the purchase of goods and services, including the purchase of Student Loan Debt Relief Services.

WHEREAS, Respondent entered into agreements with various Student Loan Debt Relief Companies located nationwide to provide third party financing to their customers.

WHEREAS, these Student Loan Debt Relief Companies represented to Pennsylvania Borrowers that they could assist consumers with enrollment in certain federal student loan repayment programs.

WHEREAS, these Student Loan Debt Relief Companies charged Pennsylvania Borrowers on average approximately \$1,332 in fees for their Student Loan Debt Relief Services, which consumers financed with Respondent.

WHEREAS, in addition to the fees charged by the Student Loan Debt Relief Companies, Respondent charged Pennsylvania Borrowers interest rates ranging from 17.99% to 20.99%.

WHEREAS, some of these Student Loan Debt Relief Companies failed to provide the Student Loan Debt Relief Services to consumers as advertised.

WHEREAS, based upon its investigation, the Commonwealth alleges Respondent engaged in acts and practices in violation of the Consumer Protection Law and the Federal Truth in Lending Act, relating to closed end credit transactions, 15 U.S.C. § 1601 *et seq.*, including but not limited to:

1. Misrepresenting to consumers that Respondent's financing plan was a revolving credit plan, when in fact it was a closed end credit transaction;

2. Misrepresenting to consumers that Respondent retained a security interest as a result of its financing agreements for Student Loan Debt Relief Services, when it did not;
3. Financing consumers' Student Loan Debt Relief Services when Respondent knew or should have known that the debt relief services were not being provided to consumers as advertised;
4. Failing to provide the required disclosures for closed end credit transactions, as required by Regulation Z of Truth in Lending, including: the "amount financed," 15 U.S.C. § 1638(a)(2)(A); the "finance charge," 15 U.S.C. § 1638(a)(3); the "total of payments," 15 U.S.C. § 1638(a)(5); and the number and amount of payments needed to repay the "total payments," 15 U.S.C. § 1638(a)(6).

WHEREAS, a violation of Regulation Z of Truth in Lending is deemed a violation of the Consumer Protection Law.

WHEREAS, the aforesaid acts and practices constitute "unfair methods of competition" and/or "unfair or deceptive acts or practices," as prohibited by Section 201-3 of the Consumer Protection Law, as defined by Section 201-2(4)(ii), (iii), (v), (vii) and (xxi):

1. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services, 73 P.S. § 201-2(4)(ii);
2. Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another, 73 P.S. § 201-2(4)(iii);
3. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have, 73 P.S. § 201-2(4)(v); and

4. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, 73 P.S. § 201-2(4)(xxi).

WHEREAS, Respondent agrees to cease and desist from violating the Consumer Protection Law and the Federal Truth in Lending Act and desires to comply with the civil laws of the Commonwealth.

WHEREAS, this Assurance of Voluntary Compliance is accepted by the Commonwealth pursuant to Section 201-5 of the Consumer Protection Law, 73 P.S. § 201-5, in lieu of commencing statutory proceedings under Sections 201-4 or 201-8 of the Consumer Protection Law, 73 P.S. §§ 201-4, 201-8.

DEFINITIONS

“Pennsylvania Borrower” or “Borrower” means (i) any consumer who obtained financing from Respondent in connection with the purchase of Student Loan Debt Relief Services and (ii) who either resided in Pennsylvania at the time they obtained the financing or currently resides in Pennsylvania.

“Effective Date” means date this Assurance of Voluntary Compliance is filed with the Court.

“Student Loan Debt Relief Companies” means companies that provide student loan borrowers with Student Loan Debt Relief Services for a fee.

“Student Loan Debt Relief Services” means any service, product or plan, such as document preparation and filing services, obtained by consumers to assist with the repayment of student loans, whether federal or private.

SETTLEMENT TERMS

NOW THEREFORE, having conducted trade and commerce within the Commonwealth, Respondent agrees for itself, its successors, assigns, agents, employees and all other persons acting on its behalf, directly or through any corporate or other business device, to the following:

I. The above recitals are incorporated herein as though fully set forth.

II. Injunctive and Affirmative Relief

A. Ban on Unfair and Deceptive Acts and Practices

1. Respondent shall comply with any and all provisions of the Consumer Protection Law and any amendments thereto; and, is permanently enjoined from any violation thereof.

2. Respondent shall comply with any and all provisions of the Federal Truth in Lending Act and any amendments thereto; and, is permanently enjoined from any violation thereof.

3. Respondent shall not misrepresent to Pennsylvania consumers, expressly or impliedly, the material terms and conditions of any financing agreement, including but not limited to:

- a. whether the financing is open-end or closed-end;
- b. whether the debt is secured or unsecured;
- c. the payment schedule, monthly payment amounts, any balloon payment , or other payment terms;
- d. the interest rate, annual percentage rate, or finance charge and whether they are fixed or adjustable;
- e. the amount of credit, the loan amount, or the outstanding balance;

- f. whether any specified minimum payment amount covers both interest and principal, and whether the credit has or can result in negative amortization;
- g. that the credit does not have a prepayment penalty or whether subsequent financing may trigger a prepayment penalty and/or other fees.

4. Respondent shall not provide financing to Pennsylvania consumers, in connection with the consumer's purchase of a good or service, if Respondent knows or has reason to know that the goods and services are not being provided to consumers as advertised or in an unlawful manner.

B. Ban on Financing Student Loan Debt Relief Services

5. Respondent is permanently enjoined in the Commonwealth of Pennsylvania from financing or assisting others in the financing of Student Loan Debt Relief Services.

6. Respondent is permanently enjoined in the Commonwealth of Pennsylvania from acting as an assignee or holder of contracts relating to the financing of Student Loan Debt Relief Services.

7. Respondent is permanently enjoined in the Commonwealth of Pennsylvania from advertising, offering for sale or selling any product or service relating to Student Loan Debt Relief services.

C. Ban on Collecting Any Debt from Pennsylvania Borrowers

8. Respondent is permanently enjoined from attempting to collect, collecting, or assigning any right to collect payment from any Pennsylvania Borrower on any debt or extension of credit related to the Pennsylvania Borrower's purchase of Student Loan Debt Relief Services.

9. Respondent shall not sell, assign, or otherwise transfer any debt related to a Pennsylvania Borrower's purchase of Student Loan Debt Relief Services.

D. Removal of Debts Reported to Credit Reporting Agencies

10. For each Pennsylvania Borrower debt that Respondent reported to a Credit Reporting Agency (“CRA”), Respondent shall, within ten (10) days of the Effective Date, request that each such debt be deleted from the Pennsylvania Borrower’s credit reporting file.

E. Consumer Notifications

11. Within twenty (20) days of the Effective Date, Respondent shall mail each Pennsylvania Borrower a written notice, in a form approved by the Commonwealth, to inform the Borrowers of the following:

- a. Respondent offered financing to the Pennsylvania Borrower, in connection with the Borrower’s purchase of Student Loan Debt Relief Services;
- b. Pursuant to the terms of an agreement with the Commonwealth of Pennsylvania, Office of Attorney General, Respondent is prohibited from collecting or attempting to collect any payments from the Borrower relating thereto;
- c. Respondent requested deletion of any debts it had previously reported to any CRA, relating to any debts owed by Pennsylvania Borrowers;
- d. The Assurance of Voluntary Compliance does not impact the Pennsylvania Borrower’s underlying student loan obligations;
- e. Each Pennsylvania Borrower should contact their student loan servicer to check on the status of their student loan and their enrollment in any student loan repayment program offered by the U.S. Department of Education; and
- f. Instructions to contact the U.S. Department of Education for questions relating to student loan repayment programs or the Commonwealth for questions relating to this Assurance of Voluntary Compliance.

F. Compliance

12. Within forty-five (45) days of the Effective Date, Respondent shall submit to counsel for the Commonwealth the following:

- a. A detailed accounting identifying all Pennsylvania Borrower debts that Respondent requested to be deleted from the Borrowers' credit reporting files, in accordance with requirements set forth in Paragraph II.D.11 herein; and
- b. Copies of each notice mailed to Pennsylvania Borrowers, as required by Paragraph II.E.12 herein.

III. Monetary Relief

A. Upon the execution of this Assurance of Voluntary Compliance, Respondent shall pay the Commonwealth the sum of NINE HUNDRED THIRTY THOUSAND and 00/100 Dollars (\$930,000.00), which shall be allocated as follows:

1. **Civil Penalties** in the amount of NINE HUNDRED THOUSAND and 00/100 Dollars (\$900,000.00) shall be distributed to the Commonwealth of Pennsylvania, Department of Treasury.
2. **Public Protection and Educational Purposes** in the amount of THIRTY THOUSAND and 00/100 Dollars (\$30,000.00) shall be distributed to the Commonwealth of Pennsylvania, Office of Attorney General, as costs of this investigation to be deposited into an interest-bearing account from which both principal and interest and shall be expended for public protection and educational purposes.

B. **Suspended Payments** – The civil penalties set forth above in Paragraph III(A)(1) shall be suspended and shall not become due and payable by Respondent to the Commonwealth

unless and until a court determines that Respondent has engaged in acts or practices that violate any of the terms of this Assurance of Voluntary Compliance

1. Should the civil penalties set forth above in Paragraph III(A)(1) be found to be due and payable by a court, the payment shall become immediately due and owing by Respondent.

2. Respondent acknowledges that the requirement to pay this suspended amount, resulting from a violation of any of the terms of this Assurance of Voluntary Compliance, shall be in addition to, and not in lieu of, any other sanctions that may be imposed under Section 201-8 of the Consumer Protection Law or any other applicable statute or rule of law. 73 P.S. § 201-8(a).

C. **Form of Payment** - All payments made by Respondent to the Commonwealth, pursuant to this Assurance of Voluntary Compliance, shall be in the form of a certified check, cashier's check, or money order made payable to the "Commonwealth of Pennsylvania, Office of Attorney General" and shall be forwarded to Amy L. Schulman, Senior Deputy Attorney General, Commonwealth of Pennsylvania, Office of Attorney General, Bureau of Consumer Protection, 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222.

IV. **Miscellaneous Terms**

A. This Court shall maintain jurisdiction over the subject matter of this Assurance of Voluntary Compliance and over Respondent for the purpose of enforcing its terms.

B. Nothing in this Assurance of Voluntary Compliance shall be construed to waive any individual right of action by a consumer or a local, state, federal, or other governmental entity.

C. Time shall be of the essence with regards to Respondent's obligations hereunder.

D. Jeffrey Henn is the Chief Executive Officer and President of Equitable Acceptance Corporation and therefore certifies that he is authorized to enter into and execute this Assurance of Voluntary Compliance on its behalf.

E. Respondent agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance of Voluntary Compliance, whether required prior to, contemporaneous with or subsequent to the Effective Date, as defined herein.

F. Respondent understands and agrees that if it made any false statement in or related to this Assurance of Voluntary Compliance, that such statement was made pursuant to and under penalty of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

G. This Assurance of Voluntary Compliance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance of Voluntary Compliance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute as original counterpart hereof.

H. This Assurance of Voluntary Compliance sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducement or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Assurance of Voluntary Compliance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance of

Voluntary Compliance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

I. Respondent agrees by the signing of this Assurance of Voluntary Compliance that Respondent shall abide by each of the aforementioned provisions and that the breach of any one of these terms shall be sufficient warrant for the Commonwealth of Pennsylvania to seek penalties provided for under Section 201-8(a) of the Consumer Protection Law, 73 P.S. § 201-8(a), and to seek any other equitable relief which the Court deems necessary or proper, up to and including forfeiture of the right to engage in trade or commerce within the Commonwealth of Pennsylvania.

J. Any failure of the Commonwealth to exercise any of its rights under this Assurance of Voluntary Compliance shall not constitute a waiver of its rights hereunder.

K. If any clause, provision or section of this Assurance of Voluntary Compliance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance of Voluntary Compliance and this Assurance of Voluntary Compliance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

L. Respondent shall not represent or imply that the Commonwealth acquiesces in, or approves of, Respondent's past or current business practices, efforts to improve their practices, or any future practices that Respondent may adopt or consider adopting.

{SIGNATURES ON THE FOLLOWING PAGES}

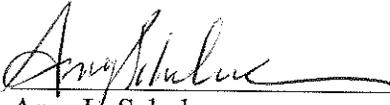
WHEREFORE, intending to be legally bound, the parties have hereto set their hands and seals.

For the Petitioner:

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

Date: 8/3/2020

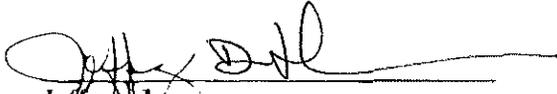
By: 
Amy I. Schulman
Senior Deputy Attorney General
PA Attorney I.D. No. 88088

Office of Attorney General
Bureau of Consumer Protection
1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222
412-565-3523

For the Respondent:

EQUITABLE ACCPETANCE
CORPORTION

Date: 7/31/2020

By: 
Jeffrey Henn
President
Equitable Acceptance Corporation

Date: 7/29/2020

By: 
Lucy Morris, Esquire
Hudson Cook, LLP
1909 K Street NW, 4th Floor
Washington, DC 20006

Counsel for Equitable Acceptance
Corporation

**RESOLUTION OF THE BOARD OF DIRECTORS
OF EQUITABLE ACCPETANCE CORPORTION**

The Board of Directors of **EQUITABLE ACCPETANCE CORPORTION**
met on the 31 day of July, 2020 and approved the following resolution:

RESOLVED, that Jeffrey Henn is hereby authorized and empowered on behalf of **EQUITABLE ACCPETANCE CORPORTION** to enter into an Assurance of Voluntary Compliance with the Commonwealth of Pennsylvania, Office of Attorney General, attached hereto and captioned Commonwealth of Pennsylvania, By Attorney General Josh Shapiro v. Equitable Acceptance Corporation the terms and conditions contained therein being incorporated here by reference.

Filed with and attested to by the Secretary of the Corporation, this 31st day of July, 2020.



Secretary