

UNITED STATES BANKRUPTCY COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA

In re:

ALLEGRO LAW, LLC

the Debtor.

Case No. 10-30631 (WRS)  
Chapter 7

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Daniel G. Hamm, as Trustee for Debtors  
Allegro Law, LLC, and Allegro Financial  
Services, LLC

Plaintiff

v.

AmeriCorp, Inc.; Seton, Inc.; and Timothy  
McCallan,

Defendants.

Adv. Pro. No. \_\_\_\_\_

**COMPLAINT**

1. Daniel G. Hamm (the "Trustee"), Chapter 7 Trustee for Allegro Law, LLC and Allegro Financial Services, LLC (the "Debtors"), brings this adversary proceeding against Defendants AmeriCorp, Inc., Seton, Inc., and Timothy McCallan as follows:

**JURISDICTION AND VENUE**

2. This Court (the "Bankruptcy Court") has jurisdiction over this adversary proceeding and the Defendants, AmeriCorp, Inc. ("AmeriCorp"), Seton, Corp. ("Seton"), and Timothy McCallan ("McCallan") (collectively, "Defendants"), pursuant to 28 U.S.C. § 1334(b) and 28 U.S.C. § 157(a), which is a civil proceeding arising under, arising in, or related to a case under Title 11 of the United States Code (the "Bankruptcy Code").

3. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(A), (E), (F), (H), and (O).

4. Venue is properly in the Middle District of Alabama pursuant to 28 U.S.C. § 1409(a).

5. This adversary proceeding is commenced pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure. The Trustee asserts claims for turnover of estate property, recovery of preferences, recovery of post-petition transfers, fraudulent transfers, and an accounting.

#### **PARTIES**

6. Plaintiff Daniel G. Hamm is the Chapter 7 Trustee for the jointly administered estates of the Debtors.

7. Defendant AmeriCorp, Inc. ("AmeriCorp") is a debt counseling, negotiation, record keeping, and processing service organized and existing under the laws of New York with its principal place of business in Syosset, New York.

8. Defendant Seton Corp. ("Seton") operates a customer service and administrative data processing and record keeping business that provides account administration and other services to the clients of debt adjustment companies, including Allegro Law and Allegro Financial Services. Seton is organized and existing under the laws of New York with its principal place of business in Woodbury, New York.

9. Defendant Timothy McCallan ("McCallan") is an adult resident citizen of the state of New York. Timothy McCallan is the Chief Executive Officer of AmeriCorp., Inc. Upon information and belief, Timothy McCallan is one of the owners and operators of both AmeriCorp and Seton.

## **PROCEDURAL BACKGROUND**

10. On February 22, 2010, Keith A. Nelms filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code.

11. On February 23, 2010, Daniel G. Hamm was appointed Trustee in the Keith A. Nelms Chapter 7 case. This appointment remains in effect.

12. On March 11, 2010, the Court entered an Order granting the Trustee's Motion for Approval for Trustee, As Successor Sole Member of Allegro Financial Services, LLC and Allegro Law, LLC, To File Chapter 7 Bankruptcies for Those Entities.

13. On March 12, 2010, Debtors Allegro Law, LLC and Allegro Financial Services, LLC filed voluntary petitions for relief under Chapter 7 of the Bankruptcy Code. Daniel G. Hamm is the Trustee in both of those cases.

## **FACTUAL BACKGROUND**

14. Defendants AmeriCorp and Seton, through their principal Defendant Timothy McCallan, have a long history of masterminding, orchestrating, and facilitating debt settlement schemes across the United States. As described by one State Attorney General, debt settlement is, at best, an "aggressive" form of debt management in which consumers stop paying all of their unsecured debts in an attempt to have their creditors agree to a reduced settlement. *See Plaintiff's Complaint, State of Texas v. CSA-Credit Solutions Services of America, Inc.*, No. 09-00417, at p. 2 (Dist. Ct. Travis County, Tex. Mar. 26, 2009), attached hereto as Exhibit A.

15. The myriad risks inherent in a debt settlement program "can have catastrophic effects on the consumer," including the following: (a) an increase in the

amount owed by the consumer due to the addition of interest, late fees and penalties on any accounts that are not being paid; (b) a creditor's decision not to accept, let alone entertain, any settlement offers; (c) an increase in collection calls; (d) a drop in the consumer's credit score; and (e) an increase in tax liability because any debt forgiveness that may occur as part of the settlement is taxable income. *Id.*

16. Defendants AmeriCorp, Seton and McCallan purport to provide a laundry list of services to debt settlement companies (including to Debtors Allegro Law and Allegro Financial Services). However, they fail to deliver all of the promised services, make false claims about the results that they can achieve for consumers, exaggerate the effectiveness of what few services they do provide, and charge exorbitant fees for so doing.

I. Prior to Establishing a Business Relationship With the Debtors, Defendants Were Running the Same "Back Office Processing" Scheme in Florida

17. Prior to 2008, Hess-Kennedy Chartered, LLC, and its principals and affiliates<sup>1</sup> (collectively, "Hess-Kennedy") were involved in a debt elimination scheme in Florida.

18. Under the guise of providing "legal services," "debt elimination services," and/or "debt management services" for which various clients were charged substantial fees, Hess-Kennedy advised, encouraged, and enabled its clients to initiate, allegedly

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<sup>1</sup> Hess-Kennedy's *modus operandi* was to employ a myriad of legal entities and fictitious names, including, among others, Hess-Kennedy and variations thereof, Consumer Law Center ("CLC"), Campos Chartered Law Firm ("CCLF"), Legal Debt Center, LLC ("LDC") and Consumer Protection Law Center ("CPLC"). See Office of the Attorney General v. Laura Hess, Esquire, et al., No. 08-007686-08, at pp. 4 (Cir. Ct. Broward County, Fla. Jul. 17, 2008) (memorandum of law in support of Plaintiff's emergency motion), attached as Exhibit B.

under the Fair Credit Billing Act ("FCBA"), 15 U.S.C. §§ 1666 et seq., "billing error disputes" against various credit card companies. Hess-Kennedy induced its clients to retain Hess-Kennedy and to stop making any payments to their creditors. Hess-Kennedy also promised consumers that it would make settlement arrangements with their creditors and that payments would commence immediately. However, the Florida Attorney General determined that Hess-Kennedy failed to inform its clients that money sent to Hess-Kennedy by clients would be used to pay Hess-Kennedy's substantial fees first and "that only after legal fees are paid does the consumer start paying money towards settlement of the debt owed to creditors." *Office of the Attorney General v. Laura Hess, Esquire, et al.*, No. 08-007686-08, at pp. 2-3 (Cir. Ct. Broward County, Fla. Jul. 17, 2008) (memorandum of law in support of Plaintiff's emergency motion), attached as Exhibit B.

19. The entire Hess-Kennedy scheme was made possible only by the participation of Defendants AmeriCorp, Seton, and McCallan.<sup>2</sup> AmeriCorp, Seton, and

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<sup>2</sup> Timothy McCallan has a history of being associated with debt relief operations that end up in trouble with government regulators. Before working with Hess-Kennedy, McCallan participated in another debt relief operation that involved two companies owned and/or operated by Andris Pukke - AmeriDebt, Inc. and DebtWorks, Inc. See *Federal Trade Commission v. AmeriDebt, Inc. et al.*, No. 03-3317 (D. Md. Nov. 19, 2003) (plaintiff's complaint for injunctive relief), attached hereto as Exhibit C.

McCallan partnered with Andris Pukke to supply leads to AmeriDebt. AmeriDebt and DebtWorks were taken over by a receiver due to their fraudulent and deceptive conduct with consumers. See *FTC v. AmeriDebt, Inc., et al.*, No. 03-3317 (D. Md. Apr. 20, 2005) (order granting preliminary injunction and appointing receiver), attached hereto as Exhibit D). The companies and Andris Pukke were successfully prosecuted by the Federal Trade Commission. See *FTC v. AmeriDebt, Inc., et al.*, No. 03-3317 (D. Md. May 17, 2006) (order granting stipulated final judgment and permanent injunction), attached hereto as Exhibit E. For his role in the operation, McCallan agreed to release his claim to more than \$1.9 million in favor of the Florida Receiver for the

McCallan provided back office services, call center services, and processed payments as part of the Hess-Kennedy program. AmeriCorp, Seton, and, by extension, McCallan, received substantial sums of money in fees for the services they purportedly provided to Hess Kennedy and its related entities.

20. A lawsuit filed by Florida's Attorney General under Florida's Deceptive and Unfair Trade Practices Act resulted in the appointment of a receiver (the "Florida Receiver") who took over Hess-Kennedy's operations on July 18, 2008. See *Office of the Attorney General v. Laura Hess, Esquire, et al.*, No. 08-007686-08 (Cir. Ct. Broward County, Fla. Jul. 17, 2008) (order appointing receiver), attached as Exhibit G. As a result, the Defendants needed somewhere to move their operations.

II. After Hess-Kennedy Became the Subject of Serious Governmental Scrutiny, Defendants Targeted Debtors In the Hopes of Perpetuating Their Schemes Through Them

21. At the end of 2007, approximately 6 months before Hess-Kennedy was placed into receivership, Keith A. Nelms was introduced to Timothy McCallan, owner and operator of AmeriCorp and Seton. When Hess-Kennedy came under serious scrutiny from governmental investigators, McCallan became especially interested in establishing a relationship with Keith Nelms.

22. Keith Nelms began operating a debt settlement and negotiation business in the spring of 2008. The business operated under the name "Allegro Law, LLC." It signed its first contract with Seton, one of Timothy McCallan's data processing and

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benefit of the defrauded consumers. See *FTC v. AmeriDebt, Inc., et al.*, No. 03-3317, at pp. 4-5 (D. Md. March 2008) (receiver's emergency motion for order approving settlements), attached hereto as Exhibit F.

account administration companies, on March 31, 2008.

23. Defendant Seton was to provide a variety of services associated with data processing and account administration related to various consumers that would sign up for Allegro Law's debt elimination programs. These services included, but were not limited to:

- (a) Producing a standard set of business and operating statements that report transaction activity, client detail list, aged client receivables, checks paid, creditor billings, creditor cancellations and/or decline summaries, productivity and management reports for origination;
- (b) Scheduling and producing creditor proposals;
- (c) Scheduling and producing disbursements;
- (d) Scanning, archiving and processing client documents;
- (e) Mailing proposals, disbursement checks, fair share invoices, client statements, and routine customer correspondence;
- (f) Overseeing and maintaining a creditor database;
- (g) Calculating and collecting outstanding balances and applying funds received;
- (h) Recording manual and electronic payments, reversals and returns and reconciling such;
- (i) Administering banking functions;
- (j) Providing general cash management and reconciliation assistance to Allegro;
- (k) Establishing an account for each client;
- (l) Making certain portions of each client's file accessible via the Internet
- (m) Maintaining a call center;

- (n) Maintaining an administrative staff to receive and record documentation received from consumers and their creditors;
- (o) Maintaining a staff to handle client complaints and the escalation of those complaints;
- (p) Communicating on Allegro's behalf with consumers' creditors and collectors;
- (q) Communicating with consumers about the status of their claims;
- (r) Negotiating with each consumer's creditors and attempting to reach a mutually agreeable settlement approved by each client;
- (s) Providing notice of any pattern of client complaints;
- (t) Providing training to Allegro's staff; and
- (u) Providing Allegro with access to reports and queries through the Quality Contact System.

24. Defendant AmeriCorp was also supposed to provide a variety of services associated with data processing and account administration related to various consumers who signed up for Allegro Law's debt elimination programs. These services included, but were not limited to:

- (a) Collecting and scanning consumers' documents;
- (b) Sending debt settlement proposals to consumers' creditors and negotiating with them;
- (c) Contacting consumers regarding any additional requirements that their creditors may impose;
- (d) Processing consumers' initial payments, recurring payments, and all fees charged;
- (e) Depositing consumers' payments into bank accounts;
- (f) Providing daily deposit reports;
- (g) Disbursing consumers' funds to creditors;



- (h) Handling refunded or returned checks from creditors as well as reconciling discrepancies;
- (i) Operating a fully staffed call center for consumers;
- (j) Recording all calls and all call center activity and evaluating the customer service representatives on a monthly basis;
- (k) Reminding consumers about missed payments;
- (l) Operating a call center for creditors;
- (m) Providing regular reports and financial statements that record all of Allegro Law's revenues and expenses; and
- (n) Establishing bank accounts on behalf of Allegro Law and reconciling them each month.

25. Once Hess-Kennedy's operations were halted by the Attorney General in Florida, many of Hess-Kennedy's former customers were transferred to Allegro Law. Defendants AmeriCorp, Seton, and McCallan both created and seized the opportunity to continue raking in money from unsuspecting consumers by, among other things:

- (a) Falsely representing to the Debtors that they were performing certain debt elimination services on behalf of consumers in the Debtors' debt elimination program when in fact those services were either not performed or were inadequately performed;
- (b) Falsely stating the extent to which the Defendants could successfully negotiate a reduction in debt on behalf of consumers;
- (c) Concealing the fact that many creditors refused to negotiate with Defendants;
- (d) Concealing the fact that any settlement negotiated with a consumer's creditors would not necessarily result in a discharge of the remainder of the debt owed;
- (e) Concealing the fact that the Defendants had been involved in various other debt elimination schemes that had been found to be fraudulent and had been put into receivership;

- (f) Concealing the extent of the fees charged by the Defendants;
- (g) Concealing the fact that many of the fees collected by Defendants in conjunction with the Allegro Law debt elimination program were diverted for personal, family, or other improper uses; and
- (h) Concealing the fact that both AmeriCorp and Seton were charging fees for the same services.

26. Defendants AmeriCorp, Seton, and McCallan continued to use and abuse Debtors until Allegro Law, like other programs before it, was also put into receivership.

### **LEGAL THEORIES**

#### **FIRST CAUSE OF ACTION (TURNOVER OF ESTATE PROPERTY)**

27. Plaintiff readopts and realleges each and every allegation above the same as if fully set forth herein.

28. Section 541 of the Bankruptcy Code defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Section 542 of the Bankruptcy Code gives a trustee the power to seek turnover of all property of the debtors' estates.

29. Prior to filing their petitions in Bankruptcy Court, Debtors hired Defendants to provide certain services related to the Debtors' debt elimination program.

30. Debtors were to pay certain fees and expenses to Defendants in exchange for certain debt elimination, negotiation, record keeping, and processing services.

31. Defendants have collected substantial sums in fees from the Debtors but have not adequately provided the promised services.

32. The Trustee respectfully requests that Defendants be required to turn over: (1) the money that they collected in fees for services that were not performed and/or not adequately performed; and (2) any and all records (whether stored in electronic or hard copy format) relating to any and all aspects of the debt elimination programs, including, but not limited to, any and all records relating to each individual for whom Defendants performed or agreed to perform any aspect of the debt elimination program.

WHEREFORE, Plaintiff demands judgment against all the Defendants and seeks all such sums as the Court may assess, including, but not limited to, compensatory damages, interest, and costs.

**SECOND CAUSE OF ACTION  
(PREFERENCES)**

33. Plaintiff readopts and realleges each and every allegation above the same as if fully set forth herein.

34. The Debtors' transfers to Defendants were in payment to them as creditors of the Debtor on account of an antecedent debt owed by the Debtors prior to the transfers.

35. The Debtors were insolvent at the time of the transfers.

36. The transfers were made within one year of the filing of the voluntary petition by Debtors.

37. The transfers enabled the Defendants to receive more than they would have received if the transfers were not made and the Defendants were to receive payments under the Bankruptcy Code.

38. The Trustee may avoid the transfers under 11 U.S.C. § 547 and recover them for the estate under 11 U.S.C. § 550.

WHEREFORE, Plaintiff demands judgment against all the Defendants avoiding the transfers of Debtors' assets to Defendants and seeks all such sums as the Court may assess, including, but not limited to, the value of the transfers, attorneys' fees, and costs, as well as any further relief as may be just and proper. If the Defendants filed a proof of claim pursuant to Section 501 of the Bankruptcy Code (a "Filed Claim"), Plaintiff additionally demands a judgment disallowing the Filed Claim until such time as (i) Defendant turns over to the Trustee any property deemed recovered pursuant to Section 550 of the Bankruptcy Code; and/or (ii) Defendants have paid the amount for which they are liable pursuant to Section 550 of the Bankruptcy Code.

**THIRD CAUSE OF ACTION  
(POST-PETITION TRANSFERS)**

39. Plaintiff readopts and realleges each and every allegation above the same as if fully set forth herein.

40. After the Petitions were filed, one or more of the Debtors transferred or caused the transfers to be transferred to or for the benefit of the Defendants.

41. Each of the transfers constituted a transfer of an interest in property of one or more of the Debtors.

42. Transfers were payments by one or more of the Debtors to the Defendants for services that were purportedly rendered and/or goods delivered before the Petitions were filed.

43. The transfers constitute one or more post-petition transfers of property of

the estate that is authorized only under 11 U.S.C. §§ 303(f) or 542(c) or is not authorized under the Bankruptcy Code or by the Bankruptcy Court.

44. The Trustee may avoid the transfers under 11 U.S.C. § 549 and recover them for the estate under 11 U.S.C. § 550.

WHEREFORE, Plaintiff demands judgment against all the Defendants avoiding the transfers of Debtors' assets to Defendants and seeks all such sums as may be assessed by the Court, including, but not limited to, the value of the transfers, attorneys' fees, and costs, as well as any further relief as may be just and proper. If the Defendants filed a proof of claim pursuant to Section 501 of the Bankruptcy Code (a "Filed Claim"), Plaintiff additionally demands a judgment disallowing the Filed Claim until such time as (i) Defendant turns over to the Trustee any property deemed recovered pursuant to Section 550 of the Bankruptcy Code; and/or (ii) Defendants have paid the amount for which they are liable pursuant to Section 550 of the Bankruptcy Code.

**FOURTH CAUSE OF ACTION  
(FRAUDULENT TRANSFERS)**

45. Plaintiff readopts and realleges each and every allegation above the same as if fully set forth herein.

46. Defendants AmeriCorp, Seton, and McCallan are "insiders" within the meaning of 11 U.S.C. § 101(31).

47. Within two years of filing their petitions for bankruptcy, Debtors transferred substantial sums of money to or for the benefit of AmeriCorp, Seton, and McCallan (hereinafter "transfers").

48. The Debtors made such transfers with the actual intent to hinder, delay, or defraud present and future creditors.

49. The Debtors received less than a reasonably equivalent value in exchange for such transfer.

50. The Debtors were insolvent on the date that such transfers were made, became insolvent as a result of such transfer, and/or had unreasonably small capital in relation to their business or their transactions at the time or as a result of the transfers.

51. The Trustee may avoid the fraudulent transfers under 11 U.S.C. §§ 544 and 548. The Trustee may recover the transfers for the estate under 11 U.S.C. § 550.

WHEREFORE, Plaintiff demands judgment against all the Defendants avoiding the transfers of Debtors' assets to Defendants and seeks all such sums as may be assessed by the Court, including, but not limited to, the value of the transfers, attorneys' fees, and costs, as well as any further relief as may be just and proper. If the Defendants filed a proof of claim pursuant to Section 501 of the Bankruptcy Code (a "Filed Claim"), Plaintiff additionally demands a judgment disallowing the Filed Claim until such time as (i) Defendant turns over to the Trustee any property deemed recovered pursuant to Section 550 of the Bankruptcy Code; and/or (ii) Defendants have paid the amount for which they are liable pursuant to Section 550 of the Bankruptcy Code.

**FIFTH CAUSE OF ACTION  
(ACCOUNTING)**

52. Plaintiffs readopt and reallege each and every allegation above the same as if fully set forth herein.

53. The precise amount of money due from the Defendants to the Debtors is unknown and cannot be ascertained without: (1) knowing the amount of money that they collected in fees for services that were not performed and/or not adequately performed; and (2) acquiring any and all records (whether stored in electronic or hard copy format) relating to any and all aspects of the debt elimination programs, including, but not limited to, any and all records relating to each individual for whom Defendants performed or agreed to perform any aspect of the debt elimination program.

WHEREFORE, Plaintiff demands a complete accounting of the amount of monies received by each Defendant associated with the subject debt elimination program and related services, including, but not limited to, all fees (including, but not limited to, account set-up fees, service fees, monthly processing fees, and residual fees) or other source of income of any kind received by the Defendants related in any way to the Debtors' debt elimination program and related services and the turnover of any and all records (whether stored in electronic or hard copy format) relating to any and all aspects of the debt elimination programs, including, but not limited to, any and all records relating to each individual for whom Defendants performed or agreed to perform any aspect of the debt elimination program.

Respectfully submitted,



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