

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re) Chapter 7
)
Scott L. Hamilton and Brittani L.) Case No.: 17-14868
Hamilton,)
) Judge: Jessica Price Smith
Debtors.)
_____) _____
)
Sheldon Stein, Chapter 7 Bankruptcy) Adversary Proceeding No.:
Trustee for the Bankruptcy Estate of Scott)
L. Hamilton and Brittani L. Hamilton,) Judge: Jessica Price Smith
)
Plaintiff,) **Complaint to Avoid And Recover**
) **Fraudulent Transfer**
v.)
)
Freedom Debt Relief, LLC,)
)
Defendant.)

Preliminary Statement

1. Plaintiff Sheldon Stein, ("Stein"), the duly appointed Chapter 7 Trustee for the bankruptcy estate of Scott L. Hamilton and Brittani L. Hamilton, ("the Estate") brings this action to seek monetary damages, attorney's fees, the Estate's costs in this action and any other relief to which the Estate may be entitled to compensate the Hamilton bankruptcy Estate for fraudulent transfers in violation of 11 U.S.C. §548.

Jurisdiction and Venue

2. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§157(a) and 1334 and Local General Order Number 2012-7, dated April 4, 2012 and is brought pursuant to Fed. R. Bankr. Pro. 7001(1).

3. Venue is proper in this court pursuant to 28 U.S.C. §1408(1) and Loc. Bankr. Rule 1071-1.
4. This proceeding is a core proceeding pursuant to the provisions of 28 U.S.C. §157(b)(2)(A), (E), and (H).
5. To the extent that the claim asserted in this case is later determined not to be a core proceeding, it is directly related to the bankruptcy case referenced above.
6. Stein consents to the referral of this adversary proceeding to the bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under 28 U.S.C. §158.

Parties

7. Stein is the duly appointed, acting and qualified trustee in this case which was commenced by the filing of a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on August 17, 2017 by The Hamiltons.
8. Freedom Debt Relief, LLC ("Freedom Debt Relief") is a Delaware limited liability corporation located in San Mateo, California.
9. At all times relevant to this action, Freedom Debt Relief was engaged in the business of "debt adjusting".
10. During all times relevant to this action, Freedom Debt Relief regularly engaged in business in Ohio and directed solicitations to residents of Ohio.
11. Freedom Debt Relief purposefully availed itself of the Ohio marketplace and secured the benefits of that marketplace.
12. Freedom Debt Relief's conduct included some or all of the following, among other things:

- a. holding itself out to the public, including consumers such as The Hamiltons in Ohio, as providing services in the management of debts by effecting the adjustment, compromise, or discharge of any account, note or other indebtedness of its customers;
- b. holding itself out as an expert in settling unsecured consumer debt for less than what is owed to a creditor;
- c. directing business solicitations into the State of Ohio seeking participation in Freedom Debt Relief's debt settlement program;
- d. contracting in Ohio with Ohio consumers for various services, including debt settlement or debt adjustment services; and
- e. offering to perform and performing activities for Ohio residents, including debt settlement services.

13. In 2016, The Hamiltons were experiencing financial difficulty, including difficulty in paying their unsecured debts as they became due.

14. Upon information and belief, in 2016, The Hamiltons were insolvent on a book value basis as the fair market value of their liabilities exceeded the fair market value of their assets.

15. They contacted Freedom Debt Relief.

16. Freedom Debt Relief's agents or employees made various promises to them about the purported benefits of the services offered by Freedom Debt Relief.

17. The Hamiltons would not have contracted with Freedom Debt Relief had it not been for the oral representations made to them by Freedom's representatives the services and results Freedom Debt Relief could achieve for them.

18. Although Freedom Debt Relief convinced The Hamiltons that bankruptcy was not in their best interests, the truth is quite the opposite. A study from February 23, 2015 by the

New York Federal Reserve Bank shows that individuals who file for bankruptcy fare much better financially and see a sharp increase in their credit score as opposed to consumers that do not file.

19. The Hamiltons hired Freedom Debt Relief in 2016.

20. Upon information and belief, Freedom Debt Relief illegally seeks to charge a fee of 23% of the "enrolled amount" of a particular settled debt, which results in Freedom Debt Relief receiving a fee in excess of the maximum amount permitted under Ohio law.

Payments to Freedom Debt Relief

21. The Hamiltons made \$4,932.00 in payments to Freedom Debt Relief and received nothing substantive in exchange.

22. Freedom Debt Relief made various misrepresentations or non-disclosures in an effort to induce The Hamiltons to enter into a contract, including but not limited to:

- a. that they could settle their debts for significantly less than the balances owed;
- b. that attempting a debt settlement program would be better for them financially than other alternatives, such as bankruptcy; and
- c. that they would receive substantial value in return for the money paid.

23. On August 17, 2017, The Hamiltons filed for Chapter 7 bankruptcy protection. The case was styled *In re Scott L. Hamilton and Brittani L. Hamilton*, Case No.: 17-14868-jps in the records of this court.

24. Plaintiff Sheldon Stein was appointed as the trustee for The Hamiltons' bankruptcy case on or about August 17, 2017.

Claim for Relief: Avoidance & Recovery Pursuant to 11 U.S.C. §548(a)(1)(B)

25. All prior paragraphs are incorporated by reference into this claim.

26. According to the sworn testimony of The Hamiltons at their 11 U.S.C. §341 hearing, the information contained in The Hamiltons' petition and schedules, verified by them as being true and accurate under penalty of perjury, and the documentation submitted to Stein after The Hamiltons' 341 hearing, The Hamiltons entered into a contract with the Defendant.

27. Under the contract, Freedom Debt Relief was to provide debt settlement services with respect to certain of The Hamiltons' unsecured consumer debts so that they would not have to file for bankruptcy.

28. At the time of the filing of The Hamiltons' bankruptcy petition, they did not have a copy of their written agreement with Freedom Debt Relief, LLC, so the Estate is unable to attach a copy to this Complaint.

29. Freedom Debt Relief received approximately \$4,932.00 from The Hamiltons within the two years prior to the filing of their bankruptcy case for Freedom Debt Relief, LLC's purported services.

30. The Hamiltons were insolvent as of the time of the transfer or, alternatively, were rendered insolvent by the transfer of the funds.

31. Despite having paid \$4,932.00 to Freedom Debt Relief for its services, The Hamiltons had to file for Chapter 7 bankruptcy.

32. The fee received for the work performed by Freedom Debt Relief, LLC was grossly disproportionate to the value of the services rendered.

33. The Hamiltons did not receive a reasonably equivalent value in exchange for the funds received by Freedom Debt Relief, LLC.

34. The transfer was a fraudulent conveyance pursuant to the terms of 11 U.S.C. §548 that may be avoided by Stein with the funds being recovered by Stein for the benefit of the estate pursuant to 11 U.S.C. §550.

35. As a direct result of the transfer being a fraudulent conveyance, Stein is entitled to recovery of the \$4,932.00 from Freedom Debt Relief for the benefit of The Hamiltons' bankruptcy estate.

36. Stein is also entitled to his attorney's fees and the costs of this action.

Prayer for Relief

Wherefore, Plaintiff prays for judgment against the Defendant as follows:

1. for judgment for the Plaintiff and against Defendant avoiding and setting aside the fraudulent transfer;
2. for judgment in favor of the Plaintiff and against the Defendant in the amount of \$4,932.00, plus interest, costs, and
3. For any and all other legal or equitable relief to which Plaintiff may be entitled.

Respectfully submitted,

/s/ Matthew L. Alden

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