

DEPARTMENT OF CONSUMER AFFAIRS
CITY OF NEW YORK

NYC DEPARTMENT OF CONSUMER
AFFAIRS,

Complainant,

-against-

CONSENT ORDER

Violation No. [REDACTED]

Respondent.

Respondent agrees to this Consent Order with the New York City Department of Consumer Affairs ("Department") to settle the above captioned violation(s).

1. Respondent has an office located at [REDACTED]
2. [REDACTED] was served with the above-referenced Notice(s) of Hearing on April 10, 2013, which cited [REDACTED] with violating New York City's Income Tax Preparation law and/or rules.
3. [REDACTED] is the Chief Executive Officer and principal owner of [REDACTED] [REDACTED] also owns and operates [REDACTED] and [REDACTED] ("Respondent") at [REDACTED] NY. Both [REDACTED] and Respondent advertise Respondent's tax preparation services.
4. On December 18, 2013, the Department amended the Notice of Hearing in the above matter pursuant to Section 6-24(a) of Title 6 of the Rules of the City of New York ("Rules"), adding Respondent to the Notice of Hearing. The amended Notice of Hearing separately charges both Respondent and [REDACTED] with violations of the New York City Administrative Code ("Administrative Code") and the Rules.
5. The Department shall withdraw the charges against [REDACTED] upon execution of this Consent Order with Respondent.
6. Respondent and the Department enter into this Consent Order to resolve the charges against Respondent without the necessity of a hearing in the above captioned matter.

Definitions

7. For purposes of this Consent Order, the following definitions shall apply:
 - a. "Advertisement" or "Advertisements" mean all labels, packaging, promotional materials, statements, visual descriptions, or other representations of any kind

disseminated in print, orally, or electronically by or on behalf of Respondent to New York City consumers including, but not limited to, mailings, postcards, signs, flyers, hand-outs, brochures, banners, billboards, awnings, window signs, in-store signs, store-front signs, newspaper print advertisements, television advertisements, radio advertisements and internet advertisements.

b. "Clear and conspicuous" and "clearly and conspicuously" with respect to disclosure of material exclusions, reservations, limitations, modifications or conditions on an advertising statement, shall mean that the disclosure is made in a manner that is readily apparent and understandable by an ordinary person from any distance from which a consumer is able to view the main message of the advertisement and complies with Sections 5-06 and 5-09 of the Rules. Considerations relevant to whether a disclosure is clear and conspicuous include, but are not limited to, use of plain language, relative type size, font, color contrast, location within an advertisement, and proximity to the statement or representation to which it applies. In addition,

(i) in print advertisements and mailings, the material disclosure, representation or term shall be presented in a manner that is easy to read and placed reasonably near the statement that it modifies; and

(ii) in radio advertisements, the disclosure, representation or term shall be made reasonably soon after the statement that it modifies, and at a volume and speed likely to be understood by an ordinary listener.

c. "Refund anticipation loan" shall mean any loan a taxpayer may receive against his or her anticipated income tax return.

Law and Rules Regarding Tax Preparers

8. Respondent shall comply fully with all relevant portions of the Administrative Code and the Rules that apply to tax preparation, including but not limited to, Section 20-739 et seq. of the Administrative Code ("Tax Preparation Law"); Section 20-700 et seq. of the Administrative Code ("Consumer Protection Law"); Section 5-01 et seq. of the Rules, Section 5-66 of the Rules; and Section 5-171 et seq. of the Rules.

Advertising

9. All disclosures required by Consumer Protection Law shall be clear and conspicuous from any distance from which a consumer is able to view the main message of the advertisement.

10. Respondent shall disclose clearly and conspicuously all material exclusions, reservations, limitations, modifications, qualifications, or conditions made to any advertisement.

11. In the case of Respondent's advertisements disseminated by means of an interactive electronic medium such as software, the Internet, or online services, a disclosure made through the use of a hyperlink shall not be deemed clear and conspicuous unless the hyperlink itself is clear and conspicuous, is clearly identified as a hyperlink, is labeled to

convey the nature and relevance of the information it leads to, is on the same webpage, online service page, or other electronic page and near the representation it modifies, and takes the consumer directly to the disclosure on the click-through electronic page or other display window or panel.

12. Respondent shall maintain on its premises copies of all advertisements published or caused to be published by Respondent for a period of three (3) years from publication date. Upon written demand by the Department, Respondent shall provide to the Department, in electronic format, within fifteen (15) days of the demand, copies of advertisements published by Respondent for the period of time specified by the Department, but not to exceed a period of three years from its publication date. Respondent shall produce such advertisements to the Department with an affidavit stating the date, medium, and place of publication.

Refund Anticipation Loans

13. If Respondent advertises the availability of or offers to consumers refund anticipation loans, as defined by Section 20-739(2) of the Administrative Code, Respondent shall comply with all requirements related to refund anticipation loans set forth in the Tax Preparation Law and the Rules, as well as the Consumer Protection Law.

Department Training

14. An employee of Respondent with management responsibility shall attend a training, conducted by the Department, at a date and time set forth by the Department, on the law and Rules enforced by the Department that apply to Income Tax Preparers, including but not limited to, the Tax Preparation Law and Rules, and the Consumer Protection Law.
15. Respondent shall comply with Department instructions on submitting proof of attendance.

Compliance

16. If Respondent offers refund anticipation loans, Respondent shall immediately provide to its refund anticipation loan lender a copy of any violations received during the 2013 tax season relating to refund anticipation loans along with this Consent Order, and shall provide to the lender any such future violations within ten (10) days of receipt of the violation. Respondent shall also send to the lender a copy of the resolution or disposition of such violations within ten (10) days of such resolution or disposition, and Respondent shall copy the Department on Respondent's notification to its lender.
17. Respondent shall provide to the Department, on the signature page of this Consent Order, an email address that Respondent regularly monitors year-round, and at which the Department may send communications.
18. If Respondent's business address changes, Respondent shall notify the Department, in writing, within ten (10) business days of Respondent's new business location.

19. Upon written demand by the Department, Respondent shall provide to the Department, within fifteen (15) days of the demand, proof of compliance with this Consent Order and the laws and rules governing tax preparers in New York City.
20. Respondent shall provide all employees with a copy of this Consent Order and require that the employees familiarize themselves with the requirements of this Consent Order and the Tax Preparation Laws, the Consumer Protection Law, and the Rules.
21. If Respondent has two (2) or fewer employees, Respondent shall ensure that all employees are familiar with and in compliance with this Consent Order, and the Tax Preparation Laws, the Consumer Protection Law, and the Rules. If Respondent has three (3) or more employees, Respondent shall conduct an annual training before January 31 of every calendar year to ensure that all employees are familiar and in compliance with this Consent Order and the Tax Preparation Laws, the Consumer Protection Law, and the applicable Rules, and shall maintain attendance logs for such employee trainings.
22. Respondent shall train all new employees on the requirements of this Consent Order and the Tax Preparation Laws, the Consumer Protection Law, and the Rules within two (2) days of the employees' start date.
23. Respondent shall maintain for inspection by the Department files of all consumer complaints it receives from any state or local agency, including the Department, in a manner that is organized and readily accessible. Respondent shall make all possible efforts in good faith to resolve all consumer complaints filed with the Department within twenty (20) days of receipt of copies of said complaints, but in all instances, it shall respond in writing to the Department regarding such consumer complaints within twenty (20) days of receipt of any complaints.

Fines and other Terms and Conditions

24. Respondent shall pay to the Department the full amount of \$ [REDACTED] by December 26, 2013, via a bank check, certified check, or money order made payable to "the NYC Department of Consumer Affairs" in resolution of OL [REDACTED].
25. Respondent will incur a late fee in the amount of \$ [REDACTED] if Respondent does not pay the above-referenced amount by the above-referenced date, and the entire balance (including the late fee) due under this Consent Order shall be due immediately.
26. Respondent acknowledges that in the event of any breach of a provision of this Consent Order or of any Consent Order previously executed by Respondent or its agents and the Department, Respondent shall pay to the Department a penalty of \$ [REDACTED] in addition to any other penalties authorized by law. In the event Respondent fails to comply with the terms of paragraph 19 of this Consent Order, Respondent shall pay to the Department a penalty of \$ [REDACTED] in addition to the penalties provided for in this paragraph for a material breach of any provision of this Consent Order.

Please email a signed copy to: taxpreparersettlements@dca.nyc.gov

Please remit payment via certified check or money order made payable to the NYC Department of Consumer Affairs to:

New York City Department of Consumer Affairs
66 John Street, 11th floor
New York, New York 10038
ATTN: Adjudication- Tax Preparation Settlement

27. Nothing in this Consent Order shall waive the Department's right to impose additional fines for violations of the Consumer Protection Law, the Tax Preparer Law and other provisions of the Administrative Code and/or the Rules.
28. This Consent Order resolves only violation number(s) [REDACTED] Respondent is independently responsible for resolving any other outstanding violations with the Department.
29. This Consent Order does not resolve any consumer complaints filed against Respondent and does not waive the Department's right to seek relief for aggrieved consumers, nor the right of individual consumers to bring a civil action for redress pursuant to Section 20-743.1 of the Administrative Code or any other laws.
30. Respondent agrees that Respondent waives the right to a hearing on, or appeal of, the violations alleged in the above-captioned Notice(s) of Hearing.
31. The acceptance of this Consent Order by the Department shall not be deemed approval by the Department of any of Respondent's business practices, and Respondent shall make no representation to the contrary.
32. A scanned or electronic copy of this Consent Order shall have the full force and effect of an original signature.
33. Any alteration to the terms of this Consent Order as it was originally written nullifies the entire agreement, Respondent must agree to all the original terms of this Consent Order or the Consent Order has no effect.
34. By signing below, I affirm that I am authorized to enter in to this Consent Order on behalf of Respondent.

Agreed to for Respondent

by:

[REDACTED]

Print Name

[REDACTED] 12-24-73
Signature Date

Accepted for Jonathan Mintz
Commissioner of Consumer Affairs
for the City of New York by:

[REDACTED]

Print Name

[REDACTED]
Signature Date

All businesses must comply with all relevant local, state and federal laws. Copies of New York City's consumer protection laws are available in-person at DCA's Licensing Center, located at 42 Broadway, 5th Floor, New York, NY, by calling 311, New York City's 24-hour Citizen Service Hotline, or by going online at www.nyc.gov/consumers.