

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

Court File No. _____

In the Matter of Phoenix Advisors, Inc.

**ASSURANCE OF
DISCONTINUANCE**

WHEREAS, this Assurance of Discontinuance (“Assurance”) is entered into pursuant to Minn. Stat. § 8.31, subd. 2b, between the State of Minnesota, through its Attorney General, Keith Ellison, and Phoenix Advisors, Inc. d/b/a Capital Student Loan Center (“Capital Student Loan Center”);

WHEREAS, the Attorney General of the State of Minnesota has authority to enforce Minnesota’s laws relating to unfair, discriminatory, and other unlawful practices in business, commerce, or trade, including but not limited to the Minnesota’s Debt Settlement Services Act, Minn. Stat. §§ 332B.03-.12, the Prevention of Consumer Fraud Act, Minn. Stat. § 325F.69, *et seq.*, and the Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;

WHEREAS, the Attorney General alleges that Capital Student Loan Center marketed, sold, and provided goods or services to Minnesota consumers related to the repayment of student loans;

WHEREAS, the Attorney General alleges that Capital Student Loan Center, without first becoming registered with Minnesota’s Department of Commerce as required by Minn. Stat. § 332B.03, offered to provide advice, or offered to act or acted as an intermediary between Minnesota consumers and the U.S. Department of Education or its federal student loan servicers, where the primary purpose of the advice or action was to reduce or eliminate student loan debt;

WHEREAS, the Attorney General alleges that Capital Student Loan Center performed for Minnesota consumers, and imposed charges or received payment from Minnesota consumers for, debt settlement services without first executing written debt settlement services agreements that complied with Minn. Stat. § 332B, as required by Minn. Stat. § 332B.06, and without first performing all of the services it agreed to perform, as required by Minn. Stat. § 332B.09;

WHEREAS, the Attorney General alleges that Capital Student Loan Center misrepresented its services or created the likelihood of consumer confusion or misunderstanding regarding its services in its dealings with Minnesota consumers in violation of Minn. Stat. §§ 332B.11, 325F.69, and 325D.44;

WHEREAS, the Attorney General alleges that the above-described alleged conduct violates Minn. Stat. §§ 332B.03-.12, 325F.69, and 325D.44;

WHEREAS, Capital Student Loan Center denies that it violated Minn. Stat. §§ 332B.03-.12, 325F.69, and 325D.44 as alleged by the Attorney General of the State of Minnesota;

WHEREAS, the Attorney General and Capital Student Loan Center (collectively, the “Parties”) desire to resolve fully this matter by Assurance;

NOW THEREFORE, the Attorney General and Capital Student Loan Center hereby agree to entry of an order with the following terms and conditions:

REPRESENTATIONS

1. On March 26,2021, Capital Student Loan Center provided the Attorney General with a sworn affidavit attaching a list of Minnesota consumers with whom Capital Student Loan Center contracted, along with the amount of payments Capital Student Loan Center collected from each Minnesota consumer on the list.

2. Capital Student Loan Center represents and warrants that the Minnesota consumer list is a complete and accurate list of all Minnesota consumers with whom Capital Student Loan Center has contracted, and that the payment amounts are accurate.

3. The Attorney General relies upon Capital Student Loan Center's representations and warranties in its investigation and resolution of this matter.

INJUNCTIVE RELIEF

4. Capital Student Loan Center, including its principals, officers, directors, employees, independent contractors, affiliates, subsidiaries, and successors, as well as other persons in active concert or participation with Capital Student Loan Center (including any agents or affiliates who may have acted on its behalf or who may act on its behalf in the future) who receive actual notice of this order, shall comply with the following permanent injunctive terms and provisions:

5. Without first becoming registered with Minnesota's Department of Commerce as required by Minn. Stat. § 332B.03, Capital Student Loan Center shall not hereinafter conduct any business, directly or indirectly, individually or in conjunction with any other person or entity, in the State of Minnesota, including but not limited to collecting payments, marketing, selling, and providing goods or services related to repayment of student loans, including but not limited to completion of application materials for student loan consolidation or repayment plans.

6. Capital Student Loan Center shall fulfill the terms of this Assurance, and all of its parents, subsidiaries, and successors shall be bound by this Assurance as if they had signed this Assurance, so as to accomplish the full relief contemplated by this Assurance. Capital Student Loan Center shall not effect any change in its form of doing business, organizational identity, organizational structure, affiliations, ownership, or management composition as a method or means of attempting to avoid the requirements of this Assurance.

MONETARY PAYMENT

7. Capital Student Loan Center shall pay to the Attorney General the sum of \$18,190.50 (the “Settlement Sum”) pursuant to Minn. Stat. § 8.31. Capital Student Loan Center’s payment shall be made by electronic funds transfer no later than two days after receiving written payment processing instructions from the Attorney General.

8. All or any portion of the Settlement Sum may be distributed to consumers by the Attorney General in his sole discretion pursuant to Minn. Stat. § 8.31. Monies from the Settlement Sum may also be used for settlement administration expenses, including payment to a settlement administrator. Any remaining funds shall be remitted to the general fund of the State of Minnesota pursuant to Minn. Stat. § 8.31.

9. If, after execution of this Assurance, the Attorney General learns that Capital Student Loan Center imposed charges or received payment from additional Minnesota consumers not previously disclosed to the Attorney General, the Attorney General shall provide Capital Student Loan Center written notice of this violation pursuant to Paragraph 32 and give Capital Student Loan Center five business days to cure this violation.

10. If Capital Student Loan Center fails to pay the Settlement Sum as provided in Paragraph 7, the Attorney General shall provide Capital Student Loan Center written notice of this violation pursuant to Paragraph 32 and give Capital Student Loan Center five business days to cure this violation. Failure to comply with Paragraph 7 in any respect shall be a violation of the Assurance for the purposes of Paragraph 11.

STAYED CIVIL PENALTY

11. Capital Student Loan Center shall pay a stayed civil penalty of \$50,000 to the Attorney General upon application to the Court, with an opportunity for Capital Student Loan Center to respond to such application, and a finding by the Court indicating that Capital Student

Loan Center has violated any of the terms of this Assurance and Order, or failed to provide the Attorney General with an accurate and complete list of Minnesota consumers with whom Capital Student Loan Center contracted for the provision of goods or services related to repayment of student loans. Inadvertent failure to provide such a list shall not trigger the application of this Paragraph, as long as Capital Student Loan Center promptly cures such failure pursuant to this Assurance. The release in Paragraph 15 does not prevent the Attorney General from moving for, or collecting, the stayed civil penalty described in this Paragraph.

DEFINITIONS

12. “Capital Student Loan Center” means Phoenix Advisors, Inc., d/b/a Capital Student Loan Center, and all of its merged or acquired predecessors, successors, divisions, subsidiaries, and parents. The term “Capital Student Loan Center” also includes all present directors, officers, employees, and other agents of Phoenix Advisors, Inc. and Capital Student Loan Center.

13. “Minnesota consumer” means any person with a Minnesota mailing address.

GENERAL TERMS

14. Nothing in this Assurance shall relieve Capital Student Loan Center of its obligation to comply with all applicable Minnesota and federal laws and regulations.

15. In consideration of the stipulated relief and contingent upon the Court’s entry of this Assurance, the Attorney General, by execution of this Assurance, hereby fully and completely releases Capital Student Loan Center of any and all claims of the Attorney General under Minn. Stat. §§ 332B.03-.12, 325F.69, and 325D.44, connected with or arising out of the allegations contained in this Assurance, up to and including the date of this Assurance. The Attorney General through this Assurance does not settle, release, or resolve any claim against Capital Student Loan Center or any other person or entity involving any private causes of action, claims, and remedies, including, but not limited to, private causes of action, claims, or remedies provided for under Minn.

Stat. § 8.31. This release does not apply in any way to claims of any other Minnesota state agency, department, official, or division.

16. This Assurance is for the purposes of settlement and shall not be construed to be a substantive admission or denial of any violations of state law.

17. This Assurance may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement. This Assurance may be executed by facsimile or electronic copy in any image format.

18. The person signing this Assurance for Capital Student Loan Center warrants that Capital Student Loan Center has authorized the person to execute this Assurance, that Capital Student Loan Center has been fully advised by its counsel before entering into the Assurance, and that he or she executes this Assurance in an official capacity that binds Capital Student Loan Center and its successors.

19. This Assurance constitutes the full and complete terms of the agreement entered into by Capital Student Loan Center and the Attorney General.

20. The Parties agree that this Assurance, including any issues related to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

21. The Ramsey County District Court shall retain jurisdiction of this matter for purposes of enforcing this Assurance. The Attorney General may make such application as appropriate to enforce or interpret the provisions of this Assurance or, in the alternative, maintain any action within his legal authority for such other and further relief as he determines is proper and necessary for the enforcement of this Assurance. The parties agree that, in any action brought by the Attorney General to enforce the terms of this Assurance, the Court shall have the authority to award equitable relief, including specific performance.

22. The failure of a party to exercise any rights under this Assurance shall not be deemed to be a waiver of any right or any future rights.

23. Nothing in this Assurance shall be construed to limit the power or authority of the State of Minnesota or the Attorney General except as expressly set forth herein.

24. Each of the parties is represented by counsel, participated in the drafting of this Assurance, and agrees that the Assurance's terms may not be construed against or in favor of any of the parties by virtue of draftsmanship.

25. The facts alleged in this Assurance will be taken as true without further proof for the purposes of determining the nondischargeability of the State's monetary judgment, as ordered by this Assurance, in any bankruptcy proceeding.

26. The facts alleged in this Assurance establish all elements necessary to sustain an action by the Attorney General pursuant to section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Assurance will have collateral estoppel effect for such purposes.

27. Capital Student Loan Center agrees that the Stayed Civil Penalty in Paragraph 11 of this Assurance, if imposed by any court, represents a civil penalty owed to the State of Minnesota, is not compensation for actual pecuniary loss, and, therefore, is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7).

28. Capital Student Loan Center understands that if a Court of competent jurisdiction holds that Capital Student Loan Center has committed a violation of this Assurance, that such violation may be enforced through contempt proceedings under Minn. Stat. § 8.31, subdivision 2b, and that the Attorney General may thereafter, in his sole discretion, initiate legal proceedings against Capital Student Loan Center for any and all violations of this Assurance.

29. Each party shall perform such further acts and execute and deliver such further documents as may reasonably be necessary to carry out this Assurance.

30. Capital Student Loan Center shall not state or imply, directly or indirectly, that the State of Minnesota or the Attorney General have approved of, condoned, or agree with any conduct or actions by Capital Student Loan Center.

31. Capital Student Loan Center agrees that the Attorney General, without further notice to Capital Student Loan Center, may file this Assurance with the Ramsey County District Court on an *ex parte* basis, and that the Court may issue the Order below without further proceedings.

32. Service of notices required by this Assurance shall be served on the following persons, or any person subsequently designated by the parties to receive such notices:

Evan Romanoff, Assistant Attorney General
Office of the Minnesota Attorney General
evan.romanoff@ag.state.mn.us
445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101

Phoenix Advisors, Inc.
d/b/a Capital Student Loan Center
c/o Christopher Meier, Esq. and Robby H. Birnbaum, Esq.
christopher.meier@gmlaw.com
robb.birnbaum@gmlaw.com
100 West Cypress Creek Road, Suite 700
Fort Lauderdale, FL 33309


KEITH ELLISON
Attorney General
State of Minnesota

Date: March 31, 2021

By: /s/ Evan Romanoff
EVAN ROMANOFF
Assistant Attorney General

PHOENIX ADVISORS, INC., D/B/A
CAPITAL STUDENT LOAN CENTER

Date: 4/6/2021

By: 
Michael Barrios
Capital Student Loan Center

ORDER

Having reviewed the terms of the foregoing Assurance of Discontinuance, which is incorporated herein by reference, and which the Court finds reasonable and appropriate, it is SO ORDERED.

Date: April 12, 2021



Grewing, Sara (Judge)
Apr 12 2021 11:52 AM

JUDGE OF DISTRICT COURT

THERE BEING NO CAUSE FOR FURTHER DELAY, LET JUDGMENT BE ENTERED IMMEDIATELY.