

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
FINANCIAL FRAUDS & CONSUMER PROTECTION DIVISION

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In the Matter of

INTERACTIV EDUCATION, LLC d/b/a
DIRECT STUDENT AID, INC.,
THOMAS PANIK, and
DAVID STEIN,

Respondents.

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CONSENT ORDER

WHEREAS, in 2013, the New York State Department of Financial Services (the “Department”) commenced an investigation pursuant to Financial Services Law (“FSL”) Section 404 into the student loan debt relief service and other business practices of Interactiv Education, LLC d/b/a Direct Student Aid, Inc. (“DSA”), Thomas Panik, and David Stein (the “Investigation”);

WHEREAS, the Department investigated whether Respondents complied with the requirements of the FSL and other applicable laws and regulations, including the Telemarketing Sales Rule, 16 C.F.R. Part 310 (the “TSR”), the Consumer Financial Protection Act of 2010, 12 U.S.C. Section 5481 *et seq* (the “CFPA”), and New York General Business Law (“GBL”) Article 28-BB, in offering and selling student loan debt relief services and credit repair services to New York consumers;

WHEREAS, the Investigation concluded that DSA violated the FSL and other applicable state and federal laws and regulations in connection with the offer and sale of student loan debt relief services and credit repair services to New York consumers by requesting and receiving

illegal upfront fees and making misrepresentations relating to DSA's debt relief and credit repair services;

WHEREAS, this Consent Order contains the findings of the Investigation, violations found as a result of the Investigation, and the relief agreed to by the Department and Respondents.

NOW, THEREFORE, the Department and Respondents are willing to resolve the matters cited herein in lieu of proceeding by notice and a hearing.

FINDINGS

The findings of the Investigation are as follows:

Relevant Persons

1. DSA is a Florida limited liability corporation with its principal place of business located at 135 Avenue L, Delray Beach, Florida 33483.
2. David Stein ("Mr. Stein") is the President of DSA. Mr. Stein is involved in the day-to-day business operations of DSA.
3. Thomas Panik ("Mr. Panik") is an owner of DSA and its managing member.
4. DSA is a private company that charges student loan debtors, including New York consumers, fees to complete and submit the paperwork required to obtain federal Direct Consolidation Loans from the U.S. Department of Education and to select and enter into repayment plans for the Direct Consolidation Loans.
5. DSA marketed and sold student loan debt relief services to New York consumers between October 2011 and February 2014.

6. DSA has advertised its student loan debt relief services through its website, www.directstudentaid.com, a Facebook page, and a Twitter account. DSA also employed national television and radio advertisements for its student loan debt relief services.

7. DSA sold its student loan debt relief services over the telephone through in-bound and out-bound sales calls. DSA's webpage solicited consumers to call for a "FREE consultation" and/or enter their contact information, including their name and telephone number, to be contacted by a DSA representative.

8. Between October 2011 and February 2014, DSA entered into 411 service agreements with New York consumers for student loan debt relief services. Since on or about August 2014, www.directstudentaid.com has stated in small type at the very bottom of the webpage: **"*Direct Student Aid is not accepting enrollments from clients who reside in Massachusetts or New York.*"**

DSA Requested and Received Fees Prior to Altering Customers' Student Loans

9. DSA's service agreements relating to its student loan debt relief services include a paragraph describing the "service fee" that DSA charges its customers for its student loan debt relief services. This paragraph includes the total service fee to be paid and a schedule of payment. These service agreements also state that DSA will not "commence activities" on behalf of a customer until DSA collects "40%" of the total service fee.

10. To retain DSA's student loan debt relief services, each New York customer also had to complete a service fee payment form. This form includes the customer's name and address, and information relating to the customer's chosen method of payment – credit card, debit card, or bank account Automated Clearing House transfer. This form also includes the

terms of payment, including the total service fee owed to DSA, and the dates and amounts of any scheduled partial payments.

11. According to the U.S. Department of Education’s website, it “generally takes 60-90 days” to complete a Direct Loan consolidation after an application is submitted to the U.S. Department of Education.¹ DSA charged all of its New York customers within 39 days of their signing DSA’s service and payment agreements, and in many cases DSA charged the initial fees for its student loan debt relief services before New York customers even signed their service and payment agreements.

12. Under TSR Section 310.4(a)(5), it is an abusive act or practice for a seller or telemarketer to “[r]equest[] or receiv[e] payment of any fee or consideration for any debt relief service until and unless: (A) [t]he seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer [and] (B) [t]he customer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement”

13. CFPA Section 6102(c)(2) provides that any TSR violation also “shall be treated as a violation” of the CFPA’s prohibition of unfair, deceptive, or abusive acts or practices if the TSR violation is “committed by a person subject to” the CFPA. DSA is “a person subject to” the CFPA pursuant to CFPA Sections 5481(6) and 5481(15)(A)(viii) because it “engages in offering or providing” “financial advisory services” to student loan debtors.

14. FSL Section 408(a)(1)(A) prohibits any intentional misrepresentation of a material fact with respect to a financial product or service offered or sold to New York consumers.

¹ <http://loanconsolidation.ed.gov/help/faq.html#howlong>

15. In violation of the TSR and the CFPA, DSA requested and received fees ranging from \$99 to \$3,400 for its student loan debt relief services from each of its New York customers prior to the consolidation of their student loans, reducing their monthly student loan payments, or otherwise altering the terms of at least one of their student loans. In requesting and receiving these upfront fees, DSA misrepresented that it was authorized to charge such fees when, in fact, such fees are unlawful.

DSA’s Misrepresentations and Omissions Relating To Obtaining Free Student Loan Debt Relief Directly From the Federal Government

16. Borrowers of eligible federal student loans may combine such loans into a single Direct Consolidation Loan issued by the U.S. Department of Education. There is no charge for borrowers to apply to consolidate – or to actually consolidate – eligible student loan debt into a single Direct Consolidation Loan.

17. It is a deceptive act or practice under TSR Section 310.3(2)(iii), and therefore also a deceptive act or practice under the CFPA, for a seller or telemarketer to “[m]isrepresent[], directly or by implication, in the sale of goods or services . . . [a]ny material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer.”

18. FSL Section 408(a)(1)(A) prohibits any intentional misrepresentation of a material fact with respect to a financial product or service offered or sold to New York consumers.

19. DSA’s online advertising represented that it could “reduce” and “lower” its customers’ monthly student loan payments and restore defaulted student loans.

20. However, DSA’s online advertising failed to clearly and conspicuously disclose that DSA would obtain the advertised student loan relief merely by completing an application for

a Direct Consolidation Loan from the U.S. Department of Education on behalf of its customers and, in many cases, electing an income-dependent repayment plan for the Direct Consolidation Loan. DSA's online advertising also failed to disclose that consumers could obtain this same student loan debt relief for free directly from the U.S. Department of Education simply by filling out the same loan consolidation applications themselves.

DSA's Credit Services Business and Credit Repair Representations

21. GBL Article 28-BB sets forth requirements for credit services businesses. GBL Section 458-b defines a "credit services business" as "any person who sells, provides, or performs, or represents that he can or will sell, provide or perform, a service for the express or implied purpose of improving a consumer's credit record, history, or rating . . . in return for the payment of a fee."

22. DSA is subject to the requirements of New York GBL Article 28-BB because it represented that it could provide services that would improve consumers' credit scores. For example, until on or about December 2013, DSA's "What We Do" webpage stated:

We can improve your credit score. Defaulted Student Loans will cause an i9 listing on your credit report – the absolute worst listing you can have for a trade line (or credit line) on your credit report. The i9 listing will prevent you from being able to apply for a mortgage, car loan, and additional sources of credit. In this tough jobs market, many employers review credit reports. This i9 rating can prevent you from getting a job. **Once you complete our program the negative items will be removed on your credit report,** and you will become FHA applicable. (emphasis added)

23. New York GBL Section 458-e prohibits a credit services business from receiving a "fee in advance of" performing credit repair services.

24. Furthermore, it is an abusive telemarketing act or practice under TSR Section 310.4(a)(2), and therefore also an abusive act or practice under the CFPA, for any seller or telemarketer to request or receive payment of any fee or consideration "for goods or services

represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until" both the time in which the seller has represented that the services will be provided has expired and the seller has provided the consumer with "a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved."

25. During the period that DSA represented itself as a credit services business, contrary to the requirements of GBL Section 458-e and TSR Section 310.4(a)(2), DSA received fees from all of its New York customers prior to performing the represented credit repair services.

26. New York GBL Sections 458-c, 458-d, and 458-f require a credit services business to, among other things, (1) provide a consumer with a written information statement prior to executing the credit services contract, which must include, among other information, information regarding time limits on adverse data and remedying credit reporting errors; and (2) include in every consumer contract, among other information, a "complete and detailed statement" of the services to be performed and the results to be achieved, a warning that New York law prohibits credit services businesses from collecting advance fees, and an express, detachable notice of the right to cancel the contract within three days of signing.

27. During the period that DSA represented itself as a credit services business, contrary to the requirements of GBL Sections 458-c, 458-d, and 458-f, DSA failed to provide any of its New York customers with a written information statement prior to executing their service agreements and failed to include in every consumer contract a "complete and detailed statement" of the credit repair service to be performed and the results to be achieved, a warning

that New York law prohibits credit services businesses from collecting advance fees, and an express, detachable notice of the right to cancel the contract within three days of signing.

Violations

28. The foregoing acts and practices of DSA violated the FSL, TSR, and CFPA.

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by Respondents, their successors, assigns, agents, representatives and employees, and by any parent company, holding company, corporation, subsidiary or division through which any Respondent operates, that:

1. Respondents are willing to settle and resolve this Investigation and the Superintendent is willing to accept this Consent Order in lieu of commencing an administrative or other proceeding arising out of the subject matter of this Consent Order.

I. Permanent Cessation of Business

2. Respondents are prohibited from advertising, marketing, offering for sale, selling, or assisting in the sale of debt relief services and/or services represented to improve a consumer's credit score, history, or rating, and from providing services to any person or entity engaged in or assisting in the advertising, marketing, offering for sale, selling, or assisting in the sale of debt relief services and/or services represented to improve a consumer's credit score, history, or rating.

3. Except as provided in paragraphs I(4) and II(6), Respondents are prohibited from providing debt relief services and/or services represented to improve a consumer's credit score, history, or rating, and from receiving any payment or other consideration from, or holding any ownership interest in any entity that provides debt relief services and/or services represented to improve a consumer's credit score, history, or rating.

4. Respondents shall provide any and all agreed-upon services to all of their existing customers within one hundred and twenty (120) days of the Effective Date of this Consent Order.

5. Respondents shall amend DSA's website, www.directstudentaid.com, and any other electronic or Internet-based websites or accounts that DSA controls or maintains to remove all advertising relating to the solicitation of new clients and to clearly and conspicuously state that DSA is not enrolling any new clients and is only remaining in business to finish servicing existing clients' accounts. Respondents shall provide screenshots of each of the amended webpages to the Department within ten (10) days of the Effective Date.

II. Practices Prohibited During Wind-Down

6. During the 120-day period specified in paragraph (I)4 during which Respondents are completing service on existing customer accounts, Respondents, their successors, assigns, agents, representatives, employees, and any parent company, holding company, corporation, subsidiary or division through which any Respondent operates, agree that:

- a. Except as permitted pursuant to 16 C.F.R. Section 310.4(a)(5)(ii), Respondents shall not request or receive from a consumer any money or any other consideration for debt relief services until and unless the consumer is issued a Direct Consolidation Loan from the U.S. Department of Education or the consumer's debt is otherwise altered, and, if a monthly payment is owed, the consumer has made at least the first payment toward such altered debt.
- b. To the extent that applicable law and this Consent Order permit Respondents to collect a one-time fee for debt relief services, they may charge and collect such fee in installment payments; provided, however, that Respondents shall

not charge consumers any additional monthly or recurring fee or fees in connection with debt relief services.

- c. Respondents shall clearly and conspicuously disclose on DSA's webpage and any other electronic or Internet-based webpages or accounts that DSA controls or maintains:
 - i. That there is no charge for one to apply for and obtain a Direct Consolidation Loan from the U.S. Department of Education, including a direct link in all written advertising to the application materials for a Direct Consolidation Loan from the U.S. Department of Education; and
 - ii. That obtaining a Direct Consolidation Loan may not be the best or only option for eligible federal student loan debtors, including a comprehensive list of the potential benefits and drawbacks of consolidating eligible federal student loans and a statement that alternative federal student loan repayment plans, including income-based programs, may be available through the U.S. Department of Education without consolidating existing federal student loans.
- d. Respondents shall not represent directly or by implication that they are, or are affiliated with, the U.S. Department of Education or any other government agency or entity.
- e. Respondents shall not require or request that New York consumers provide their FAFSA PIN numbers in connection with the provision of student loan debt relief services.

- f. To the extent that Respondents sell, provide, or perform, or represent that they can or will sell, provide, or perform a service for the express or implied purpose of improving a New York consumer's credit record, history, or rating or providing advice or assistance to a New York consumer with regard to the consumer's credit record history or rating, Respondents shall comply with each of the provisions of GBL Article 28-BB and TSR Section 310.4(a)(2), including but not limited to the following:
- i. Respondents shall not receive or collect from a consumer any fee in advance of the performance of the services Respondents represented they would provide to customers;
 - ii. Respondents shall not misrepresent in any manner "the nature of the services to be performed; the time within which services will be performed; the ability to improve a consumer's credit report or credit rating; the amount or type of credit a consumer can expect to receive as a result of the performance of the services offered; [or] the qualifications, training or experience of its personnel;" and
 - iii. Respondents shall not themselves make or advise any consumer to make "any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, to a consumer credit reporting agency or to any person who has extended credit to a consumer or to whom a consumer is applying for an extension of credit, with respect to a consumer's credit worthiness, credit standing, or credit capacity."

III. Penalty and Remedial Procedures

7. Within ten (10) days of the Effective Date of this Consent Order, Respondents shall pay a civil penalty of TEN THOUSAND DOLLARS (\$10,000.00) to the New York State Department of Financial Services to address the foregoing conduct by Respondents. The payment shall be in the form of a wire transfer in accordance with the Department's instructions.

8. Respondents shall be jointly and severally liable for the civil penalty specified in Paragraph III(7).

9. Respondents agree that they shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to, payment made pursuant to any insurance policy, with regard to any civil penalty amounts that any Respondent pays pursuant to this Consent Order. Respondents further agree that they shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state or local tax, directly or indirectly, for any portion of the penalty paid pursuant to this Consent Order.

IV. Other Relief

10. Respondents admit to the authority of the Department to effectuate this Consent Order.

V. Breach of the Consent Order

11. In the event that the Department believes any Respondent to be materially in breach of the Consent Order ("Breach"), the Department will provide written notice of the Breach and Respondents, must, within ten (10) business days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of the Department, appear before the Department and shall have an opportunity to rebut the evidence, if any, of the Department

that a Breach has occurred and, to the extent pertinent, demonstrate that any such Breach is not material or has been cured.

12. The Parties understand and agree that Respondents' failure to appear before the Department to make the required demonstration within the specified period as set forth in Paragraph V(11) of the Agreement Section of this Consent Order is presumptive evidence of Respondents' Breach. Upon a finding of Breach, the Department has all the remedies available to it under the FSL and the CFPA and may use any and all evidence available to it in connection with all ensuing hearings, notices, orders and other remedies that are available under the FSL and the CFPA.

VI. Other Provisions

13. Nothing in this Consent Order shall be construed to prevent any consumer from pursuing any right or remedy at law.

14. If Respondents default on the monetary obligations under this Consent Order, the Department may terminate this Consent Order, at its sole discretion, upon ten (10) days' written notice to Respondents. In the event of such termination, Respondents expressly agree and acknowledge that this Consent Order shall in no way bar or otherwise preclude the Department from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Consent Order, against any of the Respondents, or from using in any way statements, documents or other materials produced or provided by Respondents prior to or after the date of this Consent Order including, without limitation, such statements, documents or other materials, if any, provided for purposes of settlement negotiations.

15. The Department has agreed to the terms of this Consent Order based on, among other things, the representations made to the Department by Respondents or their counsel and the

Department's own factual Investigation. To the extent that representations made by Respondents or their counsel are later found to be materially incomplete or inaccurate, this Consent Order is voidable by the Department in its sole discretion.

16. Upon the request of the Department, Respondents shall provide all documentation and information reasonably necessary for the Department to verify compliance with this Consent Order.

17. All notices, reports, requests, and other communications to any party pursuant to this Consent Order shall be in writing and shall be directed as follows:

If to the Department:

New York State Department of Financial Services
One State Street
New York, NY 10004-1511
Attention: Brian Montgomery, Supervising Counsel for Civil Investigations

If to DSA:

Greenspoon Marder Law
100 West Cypress Creek Road, Suite 700
Fort Lauderdale, FL 33309
Attention: Robby H. Birnbaum, Esq.

If to Mr. Panik:

Greenspoon Marder Law
100 West Cypress Creek Road, Suite 700
Fort Lauderdale, FL 33309
Attention: Robby H. Birnbaum, Esq.

If to Mr. Stein:

Greenspoon Marder Law
100 West Cypress Creek Road, Suite 700
Fort Lauderdale, FL 33309
Attention: Robby H. Birnbaum, Esq.

18. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

19. Respondents waive their right to further notice and hearing in this matter as to any allegations of past violations up to and including the Effective Date of this Consent Order and agrees that no provision of the Consent Order is subject to review in any court or tribunal outside the Department.

20. This Consent Order may not be amended except by an instrument in writing signed on behalf of all the parties to this Consent Order.

21. This Consent Order constitutes the entire agreement between the Department and Respondents and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Consent Order. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.

22. In the event that one or more provisions contained in this Consent Order shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Consent Order.

23. This Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto and So Ordered by the Superintendent of Financial Services or his designee (the "Effective Date").

24. Upon execution by the parties to this Consent Order, the Department will discontinue the Investigation as and against Respondents solely with respect to the provision of student loan debt relief services to New York consumers through the date of this Consent Order.

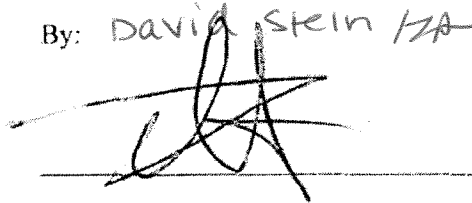
No further action will be taken by the Department against Respondents for the conduct set forth in this Consent Order provided that Respondents comply with the terms of the Consent Order.

WHEREFORE, the signatures evidencing assent to this Consent Order have been affixed hereto on the dates set forth below.

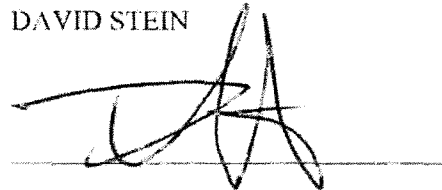
Dated: June 30, 2015

INTERACTIV EDUCATION, LLC
d/b/a DIRECT STUDENT AID, INC.

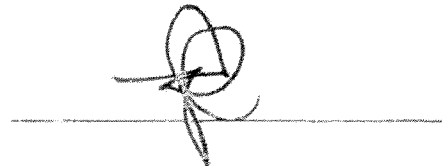
By: David Stein / SA

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DAVID STEIN

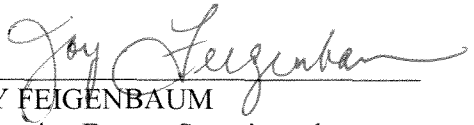
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THOMAS PANIK

A handwritten signature in black ink, appearing to be 'Thomas Panik', written over a horizontal line. The signature is stylized and somewhat illegible.


ANTHONY J. ALBANESE
Acting Superintendent of Financial Services

By:



JOY FEIGENBAUM
Executive Deputy Superintendent
Financial Frauds and Consumer Protection

SO ORDERED



ANTHONY J. ALBANESE
Acting Superintendent of Financial Services

Dated: June 30, 2015