

**IN THE COUNTY COURT,
IN AND FOR PINELLAS COUNTY, FLORIDA
SMALL CLAIMS DIVISION**

MATTHEW D. WEIDNER,

CASE NO.: 15-6598-SC

Plaintiff,

v.

**BREAST CANCER RESEARCH AND SUPPORT FUND AKA
COMMUNITY CHARITY ADVANCEMENT, INC.;**
AND, "THE FUNDRAISING CENTER"
Defendant.

_____ /

PLAINTIFF'S AMENDED COMPLAINT

Plaintiff Matthew D. Weidner ("Plaintiff"), by and through undersigned counsel, sues Breast Cancer Research and Support Fund a/k/a Community Charity Advancement, Inc. ("Defendant") and The Fundraising Center ("Center"), and alleges as follows:

JURISDICTION, VENUE, AND PARTIES

1. This is an action for damages that does not exceed \$5,000.00 exclusive of attorney's fees and costs and for equitable relief.
2. This Court has subject-matter jurisdiction based on Fla. Stat. §34.01, Fla. Stat. §501, 47 U.S.C. 227, and 47 U.S.C. 64.
3. "The Fundraising Center" is an entity or fictitious name operating within the State of Florida.
4. In 2010, Seven Sisters of Healing, Inc., a Florida Not for Profit Corporation made an application for the fictitious name of Breast Cancer Research and Support Fund to be registered in its name.

5. In 2011, Seven Sisters of Healing, Inc., a Florida Not for Profit Corporation, amended its name to Community Charity Advancement, Inc.

6. Venue is proper because the events complained of occurred in Pinellas County.

7. Plaintiff is a resident of Pinellas County, Florida and is otherwise *sui juris*.

FACTS COMMON TO ALL COUNTS

8. On August 12, 2015, at 9:34 a.m. EST, Plaintiff Weidner's cellular telephone rang from a number identified as 904-575-3774. When Plaintiff answered the phone a prerecorded female voice message began speaking identifying herself as an agent of the "Breast Cancer Research and Support Fund". The message indicated that the call was placed to me for the purpose of soliciting donations to the entity identified and that donations provided would be used to fund cancer research and provide care to patients suffering from cancer. The female voice next entered into an automated script where she suggested that a \$15.00 donation would be most appropriate. At some point after the monolog began it became apparent that the voice was a prerecorded script because the voice would not respond to inquiries or questions. After the unsolicited telephone call, your undersigned called back the telephone number where a prerecorded message identified the source of the call as, "The Fundraising Center". Next, your undersigned Googled the name "Breast Cancer Research and Support Fund" and located the website www.bcrsf.org. Upon reviewing the website, your undersigned became suspicious that the Defendants did not represent an actual or legitimate charitable organization based in part upon the identification of many nationally recognized cancer treatment centers as, "Program Partners". Your undersigned suspects that these reputable institutions are not in fact affiliated in any way with the Defendants and that their identity is being used in furtherance of a fraudulent charitable solicitation scheme.

CLAIM FOR RELIEF

COUNT I

Violation of the Federal Telephone Consumer Protection Act

8. Title 47 of the US Code restricts the use of telephone communication devices. 47 U.S.C. §227 specifically prohibits the use of prerecorded or automated dialing systems to contact consumer telephone devices. While 47 CFR 64.1200 (e)(2)(iii) provides further restrictions on contacts.

9. On August 12, 2015 at 9:34 a.m., one of more of the Defendants individually or acting in concert called Plaintiff's cellular telephone in violation of the prohibitions of the

10. Said telephone call was made using an automatic telephone dialing system which included an artificial or prerecorded voice message.

11. The telephone call placed to Defendant was unsolicited, unwanted and was unduly manipulative. The stated purpose of the phone call, according to the recorded voice on the other end of the line, was to raise money in support of curing cancer and caring for cancer patients.

12. Defendant did not have prior express consent to contact Plaintiff.

13. Defendant willfully and knowingly placed a non-emergency telephone call to Plaintiff's cellular telephone without Plaintiff's consent to do so in violation of 47 U.S.C. §227 ("TCPA").

14. Defendant perpetrated this scheme individually or acting in concert.

WHEREFORE, Plaintiff demands:

- (a) Judgment in his favor;
- (b) Actual damages;
- (c) Statutory damages for each violation of the TCPA committed by Defendant;
- (d) An order enjoining Defendant from further violations of the TCPA.

- (e) An award of attorneys' fees and costs; and
- (f) Any other relief the Court deems just and proper.

COUNT II

Violation of Florida's Unfair and Deceptive Trade Practices Act

15. Plaintiff re-alleges and re-incorporates the preceding paragraphs and all previous allegations as if fully set forth herein.

16. One or more defendants individually or collectively operate the website identified as www.bcrsf.org. Each of the statements of fact and the entirety of the website and all pages are hereby expressly incorporated into this complaint.

17. One or more statements made on the website are not in fact true and correct. Specifically, the said website asserts that the following institutions are "Program Partners", Auburn University Research Institute in Cancer, University of North Carolina Lineberger Comprehensive Cancer Center, University of Florida Health Cancer Center, University of Tennessee, Columbia University Medical Center, University of Kentucky, MD Anderson, Lerner Research Institute, University of Miami Comprehensive Cancer Center, University of Texas, University of Chicago, Seattle Cancer Care Alliance, Georgetown University Medical Center, TCSC Foundation, Mount Sinai Hospital, Vanderbilt Breast Cancer Center, and Harvard Cancer Center.

18. Further, the website states that it supports the following breast cancer research institutions: University of (sic) Michigan Comprehensive Cancer Center, MD Anderson Cancer Center, University of Chicago Comprehensive (sic) Care Center, Seattle Cancer Alliance, Georgetown University Medical Center, and TCSC Foundation

19. The well-regarded institutions identified on the website are not all "Program Partners" with the named Defendants.

20. Some of these organizations do not exist as named.

21. The telephone solicitation campaign engaged in by the Defendants is unfair and deceptive. The contributions made to Defendant are not in fact be directed toward legitimate charitable purposes.

22. The misstatements and conduct of Defendants are willfully unfair and deceptive.

23. Plaintiff relied upon the allegations in the website and in the information in the telephone call to his cellular telephone by making a donation.

24. As a result of Plaintiff's reliance, he incurred actual damages.

25. Had Plaintiff known that the institutions mentioned either did not exist or do not exist as named, he would not have made a donation.

26. This practice therefore violates Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §501.

WHEREFORE, Plaintiff demands:

- a. Judgment in his favor;
- b. Actual damages;
- c. Statutory damages for each violation of the FDUTPA committed by Defendant pursuant to Fla. Stat. §501.2075;
- d. An order enjoining Defendant from further violations of the FDUTPA;
- e. An award of attorneys' fees and costs pursuant to Fla. Stat. §501.2105; and
- f. Any other relief the Court deems just and proper.

COUNT III

Fraud

27. Plaintiff re-alleges and re-incorporates the preceding paragraphs and allegations as if fully set forth herein.

28. One or more of the Defendants individually or collectively made false statements of fact with knowledge that the statements were false with the intent that Plaintiff rely upon those statements and Plaintiff was injured thereby.

29. Specifically, the Plaintiff asserts that the representations made during the telephone solicitation that money provided to the Defendants would be used to research cancer treatments and care for cancer patients was not a true statement of fact.

30. Plaintiff paid money to Defendant as a result of his reliance on the representations and therefore was injured as a result of his reliance.

WHEREFORE, Plaintiff demands:

- a. Judgment in his favor;
- b. Actual damages;
- c. An award of attorneys' fees and costs;
- d. Any other relief the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands trial by jury on all claims, defenses, and issues so triable.

DEMAND FOR ATTORNEY'S FEES AND COSTS

Plaintiff hereby demands an award of all attorney's fees and costs incurred in prosecution of this action.

Dated this 8th day of October, 2015.

By: /JMK/

Jason Michael Kral, Esq.

WeidnerLaw, P.A.

Attorney for Plaintiff

250 Mirror Lake Dr., N.

St. Petersburg, FL 33701

(727) 954-8752

service@mattweidnerlaw.com

FBN: 67952