

STATE OF NEW YORK
NEW YORK STATE DIVISION OF HUMAN RIGHTS

NEW YORK STATE, DIVISION OF HUMAN
RIGHTS,

Complainant,

v.

JACKSON HEWITT, INC. and JACKSON HEWITT
TAX SERVICE, INC.,

Respondents.

VERIFIED COMPLAINT
Pursuant to Executive Law,
Article 15

Case No.

The New York State Division of Human Rights (“Division”), with offices at One Fordham Plaza, 4th Floor, Bronx, New York 10458, by Spencer Freedman, charges, on information and belief, pursuant to its authority under the Human Rights Law, Article 15 of the New York Executive Law, that the above-named Respondents violated and continue to violate Human Rights Law § 296 by marketing to, targeting, and selling abusive, high-interest loan products to individuals based on their race and military status. The discriminatory acts alleged are continuing and ongoing.

BACKGROUND

1. It has long been recognized that access to credit is a cornerstone of economic investment, savings, security, and upward mobility. Conversely, as the recent subprime mortgage crisis reveals, abusive credit practices can strip individuals of equity, trigger cycles of debt and economic instability, and devastate whole communities. Such abusive practices are particularly odious and harmful when they target people and communities on discriminatory bases, including their race and military status. Unfortunately, Respondents, Jackson Hewitt Inc. and Jackson Hewitt Tax Service, Inc. (collectively, “Jackson Hewitt”) have engaged, and continue to engage, in such practices.

2. In the past several years, numerous tax preparation companies, including Jackson Hewitt, began to expand their services and offer different types of short-term, high-cost loan products to customers. Although different companies refer to these loan products by different names, they are commonly referred to as “pay stub loans,” “holiday loans,” and “Refund Anticipation Loans” (or “RALs”).

3. RALs are offered at the time an individual seeks to utilize a company’s tax preparation services. These products provide short-term loans backed by an individual’s anticipated tax refund and are marketed as a way for customers to secure quick cash, typically based on a review of their W-2 forms. The loans often include exorbitant fees and costs, and rates of up to 700% annualized, stripping New Yorkers of millions of dollars each year, even though tax payers can receive their refunds from the IRS, at no cost, usually within a week to ten days of filing. According to New Yorkers for Responsible Lending, \$1.8 million was drained from New York families every day of the 2004 tax season through high-cost RALs.

4. Pre-File Loans, which include “pay stub” loans and “holiday” loans, typically involve smaller, “quick cash” loans based on an individual’s paycheck or prior tax return and include high fees and interest rates, which can hover at an annual percentage rate of as high as 400%. They generally are marketed and issued before tax season and often are designed to tie customers into using the companies’ tax preparation services. Because the documentation required to obtain these loans often does not accurately reflect the customer’s ultimate tax refund, the fees and repayment owed on these loans can exceed the tax refund itself, sending customers into a cycle of debt and often resulting in loan defaults.

5. By usurping tax refunds through fees, costs, and exorbitant interest on these loans, these products also undermine vital tax credits designed by Congress to support families and the

working poor, including Child Tax Credit benefits and the Earned Income Tax Credit. It is estimated that in 2005 alone, these products stripped \$649 million in fees from New York residents eligible to receive the Earned Income Tax Credit, a program designed to reduce or eliminate taxes for low-income working people to lessen the risk that they will spiral into poverty.

6. The abusiveness of these products is well-documented, and these lending practices have faced other legal challenges and government enforcement actions for consumer protection and deceptive practices violations. For example, New York City Consumer Affairs Department settled an action with Jackson Hewitt regarding its RALs practices, as did the California Attorney General just this past year.

7. Recent studies also strongly suggest that these products are specifically targeted toward and have a discriminatory impact on military families and people of color, both of which are protected classes under the Human Rights Law. *See* N.Y. Executive Law § 296.

8. For instance, the Neighborhood Economic Development Advocacy Project (“NEDAP”) found that from 2002-2005, the vast majority of RALs were issued in communities of color, and that New York City residents lost \$324 million of their tax refunds and credits to RALs-related fees and costs. And a 2004 study conducted by the National Consumer Law Center found that almost twice as many African-American taxpayers were sold RALs compared to White taxpayers.

9. In addition, other recent studies, including an extensive report by the Department of Defense and studies by the Center for Responsible Lending and the Consumer Federation of America, have documented that these abusive, high cost loans are being marketed to and targeted at vulnerable military families.

10. Based on these studies, the Division initiated an investigation into the marketing and sales practices of Jackson Hewitt, among other tax preparation companies.

11. An analysis of the sales and marketing practices of Jackson Hewitt demonstrates that Jackson Hewitt disproportionately targets and sells these abusive products to communities of color and communities with a high concentration of military families, in violation of the Human Rights Law.

Jackson Hewitt

12. Jackson Hewitt, Inc., a Virginia corporation, does business in the State of New York.

13. Jackson Hewitt Tax Service, Inc., a Delaware corporation, does business in the State of New York.

14. Jackson Hewitt Tax Service, Inc. is the second-largest tax preparation company in the country, with 6,501 stores locations nationwide and approximately 360 store locations in New York State.

15. In connection with the business of tax preparation and the provision of products and services, including loan products, Respondents, through their officers, agents, and employees, have engaged in the unlawful actions alleged.

16. Jackson Hewitt markets, promotes, and offers a number of loan products, including Refund Anticipation Loans, promising money secured against a borrower's anticipated tax refund as quickly as within a day.

17. Prior to this tax season, Jackson Hewitt marketed Pre-File Loans (including both Money Now Loans ("MNLs") and Holiday Express Loan Program ("HELP") Loans), offering money in as little as one hour. The amount and terms of these loans were determined by

reviewing a pay check or prior year's tax return to estimate the anticipated refund for the coming tax season.

18. Upon information and belief, in marketing and providing these services, Jackson Hewitt has contemplated that a significant number of these loans would result in a default. The revenue Jackson Hewitt derived from marketing and facilitating these loans was tied in part to the number of loans and loan amounts that ultimately defaulted (obtaining some revenue based on a percentage of the difference between revenue generated and loan amounts in default).

19. And, in fact, on information and belief, the repayment amounts owed on these loans, including the fees, have approached and even exceeded the amount of customers' tax refunds, resulting in increasing debt for the customer and/or a default on the loan. In part, as a result, Jackson Hewitt recently ceased offering these Pre-File Loans moving forward.

20. Beginning this tax season, Jackson Hewitt is marketing and offering MNLs *during* tax season (instead of as a Pre-File product), based on a review of the customer's W-2 forms, continuing to promise money secured against the customer's anticipated tax refund as quickly as within an hour.

21. Its marketing and sale of these products is extraordinarily profitable for Jackson Hewitt. According to its 2007 SEC filing, Jackson Hewitt generated over \$80 million in revenue in 2007 from fees related to the facilitation of these loan products -- over 27% of its total revenue.

Jackson Hewitt's Practices in New York

22. Jackson Hewitt markets its loan products throughout New York in numerous ways, including through signage and brochures at its 360 store locations (which exist in approximately 20% of the zip codes in New York State), and through outdoor marketing, including billboards and bus depots, and television and radio advertisements.

23. Although a number of Jackson Hewitt stores are franchises, decisions regarding store locations are determined and approved by the corporate entities, and product development and marketing efforts at the national, regional, and local levels are also directed by corporate. These include brand development, targeted network and local television advertising, outdoor marketing, direct mail marketing, and sponsorship of sports organizations whose fan base reflects what the company views as its the core customer demographic group (including promotion of a NASCAR team called the "#16 National Guard Ford Fusion," and sponsorships of a "National Guard Heroes of the Year" award in connection with its NASCAR affiliation).

24. From 2005 through 2007, Jackson Hewitt facilitated 198,626 RALs and 62,509 Pre-File Loans in New York State.

25. Its sales of loan products in New York increased dramatically between 2005-2007. Specifically, the number of RALs it sold during this period increased approximately 10%, and the number of Pre-File loans jumped almost 500%.

26. Jackson Hewitt has received substantial revenue from both RALs and MNLs, including a significant amount of revenue from fees attached to these loans.

27. An analysis of the Jackson Hewitt's advertising, marketing, and sales of these products demonstrates that Jackson Hewitt disproportionately targets Blacks and Latinos and

military families for abusive, high cost loans, in violation of the New York State Human Rights Law § 296.

Based on the foregoing, Complainant, the New York State Division of Human Rights, charges Respondents with engaging in an unlawful discriminatory practice, in violation of Human Rights Law, and seeks an Order:

1. Requiring Respondents to cease and desist immediately in the engaging of the unlawful conduct described above;
2. Requiring Respondents to comply fully with the provisions of the Human Rights Law in the marketing and sale of its products; and
3. Awarding such other and further relief as may be just and appropriate.

Dated: Bronx, New York
January 17, 2008


SPENCER FREEDMAN