

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

In the Matter of:

**H & B ENTERPRISES, LLC et al.,**

Respondent.

CASE NO: CI 14- 1649

**ASSURANCE  
OF  
VOLUNTARY COMPLIANCE**

**PREAMBLE**

This Assurance of Voluntary Compliance (hereinafter Assurance) is entered into by the State of Nebraska by and through Jon Bruning, the Attorney General and the undersigned Assistant Attorney General, and Respondent H & B Enterprises, LLC, acting pursuant to Neb. Rev. Stat. § 59-1610 and § 87-303.05(2).

**PARTIES**

1. **Respondent:** H & B Enterprises, LLC is a domestic Nebraska limited liability company whose principal place of business is located at 11885 North 96<sup>th</sup> Street, Omaha, Nebraska. Henry A. Schelling is the sole member of H & B Enterprises, LLC. H & B Enterprises, LLC has transacted business in the State of Nebraska and elsewhere, and continues to transact business. As of March 2014, it discontinued taking on new business but is continuing its obligations to existing customers. Once its obligations to existing customers are fulfilled, H & B Enterprises, LLC will cease all business activity. H & B Enterprises, LLC has been in the business of telemarketing and online advertising and did business through a variety of names, including but not limited to: Car and Buyer, Condolink, Featured Aero, Featured Ag, Featured

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Auto, Featured Boat, Featured Classic, Featured Cycle, Featured HE, Featured Heavy Equipment, Featured Network, Featured RV, Featured Semi, Specialty Aero, Specialty Ag, Specialty Auto, Specialty Boat, Specialty Classic, Specialty Collector, Specialty Condo, Specialty Convertible, Specialty Cycle, Specialty HE, Specialty Heavy Equipment, Specialty Lexys, Specialty Muscicar, Specialty Network, Specialty Pontiac, Specialty RV, Specialty Semi, Specialty Sportscar, Specialty SUV, Specialty Trucks, Specialty Watersports, and vehicles-wanted.com. For purposes of this Assurance, Respondent means H & B Enterprises, LLC doing business under its own name, or under any other business name, as well as its sole member. Respondent also means anyone acting on behalf of, or in concert or participation with, H & B Enterprises, LLC and/or its sole member, directly or indirectly, including owners, members, principals, directors, officers, agents, representatives, salespersons, employees, instructors, independent contractors, affiliates, successors, transferees, assignees, and all other persons or corporate devices, partnerships, associations, or other business entities.

2. **Relator:** Jon Bruning is the duly elected, qualified, and acting Attorney General of the State of Nebraska (hereinafter Relator). Relator commenced an investigation into the business practices of Respondent in the State of Nebraska based on reasonable cause to believe that Respondent has engaged in business practices in violation of the Consumer Protection Act, Neb. Rev. Stat. § 59-1601 et seq. (hereinafter Consumer Protection Act), and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 et seq. (hereinafter Uniform Deceptive Trade Practices Act).

3. **Parties:** Relator and Respondent shall be collectively referred to as “the Parties” throughout this Assurance.

#### **VENUE, JURISDICTION, AND CHOICE OF LAW**

4. The Parties hereby agree that venue regarding the interpretation or enforcement of

this Assurance is before the District Court of Lancaster County, Nebraska (hereinafter Court); that the Court has subject matter jurisdiction over this matter; that the Parties herein submit to the personal jurisdiction of the Court; that the Court retains jurisdiction regarding the interpretation and enforcement of this Assurance; and that the laws of the State of Nebraska control and apply to the interpretation and enforcement of this Assurance.

### RECITALS

5. IT NOW APPEARS THAT, for the sake of judicial efficiency and preservation of resources, the Parties are willing to voluntarily enter into this Assurance in order to avoid the costs and uncertainty of litigation. Respondent admits no fault by entering into this Assurance.

6. IT FURTHER APPEARS THAT, Relator, acting on behalf of the general welfare of the public and citizenry of the State of Nebraska, is willing to accept this Assurance in lieu of bringing formal action against Respondent, provided the following provisions contained herein are fully complied with and met by Respondent.

7. THEREFORE, IT IS HEREBY AGREED by the Respondent that the following assurances are made and will be complied herewith as of the date of Court approval of this Assurance:

### ASSURANCES

8. Respondent shall not engage in any unfair methods of competition, or unfair, deceptive or unconscionable acts or practices in the conduct of any trade or commerce.

9. Respondent shall not make any misrepresentations and/or false or misleading statements, directly or by implication, which have the tendency or effect of deceiving or misleading consumers.

10. Respondent shall not engage in any of the following activities:

a. Represent that Respondent has identified a buyer who is interested in

purchasing, or has agreed to purchase, a consumer's goods, when no such buyer exists;

- b. Represent that funds paid by consumers to Respondent are refundable when Respondent's policy does not permit refunds or Respondent does not actually refund the funds;
- c. Assess extra fees or taxes, including but not limited to a "processing fee" or an "interstate tax," when such fees or taxes are not consistently applied to consumers and/or when such fees or taxes are not assessed for a legitimate or legal purpose;
- d. Represent that Respondent is affiliated with, connected with, or associated with eBay, except that Respondent may represent it advertises goods through eBay;
- e. Represent that Respondent is affiliated with, connected with, or associated with any other entity, unless said affiliation, connection, or association exists and is legitimate;
- f. Use any other statistics, survey results, or other similar metrics in a manner likely to confuse a consumer as to the application of said statistics, survey results, or other metrics to Respondent, including in representations made to consumers through any means;
- g. Represent to any consumer that he or she will receive the "full asking price" on any good unless Respondent actually pays the difference, if any, between the sale price and the original listing price;
- h. Represent that any pricing promotion, sale, or other discount of any

variety will expire at a certain time, unless, in fact it does;

- i. Represent that Respondent will provide and pay the shipping costs of any good, if Respondent does not pay such costs;
- j. Represent that Respondent will provide financing, if Respondent does not provide financing;
- k. Misrepresent the nature and qualities of Respondent's account status on eBay, including misrepresentations concerning the nature and qualities of being a "Titanium PowerSeller" or a "Top Rated Seller," as well as any misstatements or misrepresentations as to the amounts of actual dollar sales or sales volume Respondent conducts on eBay;
- l. Misrepresent the scope and scale of advertising services that Respondent provides, including but not limited to the representation that a good will be "advertised until sold," unless Respondent actually does fulfill all advertising services; and
- m. Misrepresent the nature and scope of follow-up contacts with consumers in any capacity.

### **CONSUMER RESTITUTION**

11. The Parties have compiled a list of Nebraska residents who have transacted business with H & B Enterprises, LLC, from December 19, 2009, to the date of court approval of this Assurance, and of all out-of-state residents who transacted business with H & B Enterprises, LLC, from December 19, 2009, to the date of court approval of this Assurance and who filed a complaint with Relator (hereinafter List).

12. Respondent shall pay \$171,024.50 in restitution to consumers on the List. Each

consumer on the List will receive a full refund of all amounts paid to Respondent, if such amount has not already been refunded. Accordingly, Respondent shall issue checks to pay such consumer restitution and provide said checks to Relator by the date of court approval of this Assurance. All checks issued to consumers shall be negotiable for at least 180 days from the date of issuance. Relator will distribute these checks to consumers on behalf of Respondent.

13. If, by December 31, 2014, either the Respondent or Relator becomes aware that any Nebraska resident(s) transacted business with H & B Enterprises, LLC, from December 19, 2009, to the date of court approval of this Assurance, but who were not on the List and therefore did not receive a full refund, the Party privy to this information must promptly notify the other Party. If adequate proof is provided of said transaction to the reasonable satisfaction of both the Respondent and the Relator, Respondent shall pay a full refund to those resident(s) within fifteen (15) days of prompt verification of the transaction by both Parties. For purposes of this paragraph, Nebraska resident means a legal resident of Nebraska at the time the transaction occurred.

#### **MONETARY PAYMENT**

14. Respondent shall pay a total of seventy-five thousand dollars (\$75,000) to the Relator by the date of Court approval of this Assurance. Payment shall be made via certified check or money order. The funds shall be placed in the State Settlement Cash Fund for such purposes that may include but are not limited to, defraying the costs of the inquiry leading hereto, attorneys' fees and other costs of investigation and litigation, consumer protection enforcement, consumer education, or for other uses permitted by state law. The Parties acknowledge that the payment described herein is not a fine or penalty, or payment in lieu thereof.

15. Respondent shall pay an additional one hundred thousand dollars (\$100,000) to the Relator if, within four (4) years of Court approval of this Assurance, Respondent violates any of the provisions of this Assurance, without curing said violation to the satisfaction of the Relator. Funds collected pursuant to this paragraph, should they become due and owed, shall be placed in the State Settlement Cash Fund for such purposes that may include but are not limited to, defraying the costs of the inquiry leading hereto, attorneys' fees and other costs of investigation and litigation, consumer protection enforcement, consumer education, or for other uses permitted by state law. The Parties acknowledge that any payment made pursuant to this paragraph is not a fine or penalty, or payment in lieu thereof. This in no way limits any other action or proceeding that can be made by Relator pursuant to law.

#### **GENERAL PROVISIONS**

16. This Assurance constitutes a complete settlement and release by the Relator of all civil claims and causes of action against Respondent relating to consumer complaints that existed as of the date the Court approves this Assurance and that could have been asserted by the Relator, either individually or collectively with the Attorneys General of other states, under the Consumer Protection Act, Uniform Deceptive Trade Practices Act, or any other consumer protection laws that give the Relator the authority to bring an action. This does not affect a consumer's private right of action, or the Relator's right to use the complaints for any and all contempt actions, or other actions arising out of violation of this Assurance, should any occur in the future.

17. Nothing in this Assurance shall be construed so as to limit or bar any other person or entity from pursuing any and all available legal remedies against Respondent; nor is it the intent of the Parties hereto that this Assurance shall create or support a cause of action against Respondent by non-parties to this Assurance.

18. Nothing contained herein shall be construed as relieving Respondent of the obligation to comply with any and all federal, state and local laws, regulations or rules, nor shall any of the provisions of this Assurance be deemed a waiver or permission to engage in any act or practice prohibited by law, regulation or rule. This Assurance is subject to all applicable federal, state and local laws, regulations and rules.

19. Respondent understands that this Assurance shall not be construed as an approval of or sanction by the Relator of the Respondent's business practices, nor shall the Respondent represent the Assurance as such approval. The Parties further understand and agree that any failure by the Relator to take any action in response to any information submitted pursuant to this Assurance shall not be construed to be an approval of or sanction of any representations, acts, or practices of the Respondent, nor shall any inaction by the Relator be considered a waiver by the Relator of any rights under this Assurance or the law.

20. If any portion, provision, or part of this Assurance is held to be invalid, unenforceable or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions or parts.

21. In the event any law, regulation or order is enacted, adopted or issued by the federal government, the State of Nebraska or any of its agencies, any relevant local government or a court of competent jurisdiction with respect to any issue specifically covered by this Assurance, the requirements of such law, regulation or order, after written notice by Respondent to the Relator, shall replace any provision contained herein so that compliance with such law, regulation or order shall be deemed compliance with this Assurance. Further, to the extent that any provisions or requirements of any agreement and/or order entered into between and/or

against Respondent in connection with any regulatory and/or enforcement action brought by any federal, state or local regulator or law enforcement entity (hereinafter Foreign Agreement/Order) conflict with this Assurance, then such conflicting terms of such Foreign Agreement/Order shall control only with respect to those business practices conducted by Respondent within that foreign jurisdiction.

22. Respondent shall generate, retain and make readily available to Relator for inspection, upon reasonable notice and without the necessity of a subpoena, civil investigative demand or other legal process, all material records and documents reasonably necessary to document compliance with this Assurance.

23. Pursuant to Neb. Rev. Stat. § 59-1610 and § 87-303.05(2), proof of failure to comply with the Assurance shall be prima facie evidence of a violation of applicable Nebraska statutes in any civil action or proceeding hereafter commenced by the Relator against Respondent.

24. This Assurance is made and entered into without trial or finding of fact or conclusions of law by a court. This Assurance does not constitute evidence against or an admission by Respondent of any issues of fact or any violations of law in the past or that Respondent has engaged in any inappropriate activities or other wrongdoing, and shall not be used in a manner inconsistent with these terms.

**WHEREFORE**, each undersigned representative of the Relator and Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Assurance and legally bind such Party to its terms. The following signatures are affixed hereto as of the dates written below in agreement hereof.

**JOINTLY APPROVED FOR ENTRY AND SUBMITTED BY:**

**FOR RELATOR:**

THE STATE OF NEBRASKA, ex rel.  
JON BRUNING, Attorney General

By: Jon Bruning, Attorney General, No. 20351

By: Abigail M. Stempson  
Abigail M. Stempson, No. 23329  
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May 12, 2014  
Date

*Counsel for the State of Nebraska*

**FOR H & B ENTERPRISES, LLC AND ITS SOLE MEMBER, HENRY A. SCHELLING:**

By: Henry A. Schelling  
Henry A. Schelling  
Sole Member, H & B Enterprises, LLC

April 30, 2014  
Date