

Complaint

107 F.T.C.

IN THE MATTER OF

ROY B. KELLY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3177. Complaint, Feb. 4, 1986—Decision, Feb. 4, 1986*

This consent order requires a former corporate officer of a Washington, D.C.-based employment counseling service, among other things, to cease misrepresenting: (1) the basis on which clients are accepted; (2) the number of clients who have obtained interviews, job offers, or jobs through respondent's services; and (3) the chances that the clients' fees would be refunded because the employer would likely pay the respondent a finder's fee. Additionally, respondent is required to have a reasonable basis for any placement claims he makes, and whenever such placement claims are made, to maintain records of his placements and make a composite of these records available to clients on request. Further, respondent is prohibited from accepting a fee until a client has obtained employment through respondent's services.

Appearances

For the Commission: *Walter C. Gross and E. Charles Lane.*

For the respondent: *Thomas R. Dyson, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Roy B. Kelly, individually and as a former officer of John William Costello Associates, Inc. (JWCA), hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Roy B. Kelly was an officer of John William Costello Associates, Inc. The corporation's principal office and place of business was located at 1612 K Street, N.W., Washington, D.C.. John William Costello Associates, Inc., is a corporation organized, existing and formerly doing business under and by virtue of the laws of the District of Columbia. He directed, formulated and controlled the acts and practices of John William Costello Associates, Inc., including the acts and practices hereinafter set forth.

The aforementioned respondent Roy B. Kelly cooperated and acted

together along with others in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondent, until at least August 1982, engaged in the advertising, offering for sale, and sale of services to persons seeking employment. These services included, *inter alia*, providing advice, assistance and counseling to clients, preparing resumes for clients, preparing cover letters to prospective employers, identifying companies as prospective employers, and mailing resumes and cover letters to prospective employers. The cost of JWCA's services ranged from \$2,500 to \$25,000 and higher.

PAR. 3. Respondent advertised JWCA's services in newspapers of interstate circulation, in Washington, D.C. and in various states. Respondent solicited prospective clients for JWCA's services at regional sales offices located in various states and offered and sold its services at its principal office and place of business in Washington, D.C. Respondent maintained a substantial course of business, including the acts and practices as hereinafter set forth, which were in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of respondent's business, for the purpose of inducing prospective clients to purchase JWCA's services, respondent through various statements in newspaper advertisements and promotional materials and orally by JWCA's officers and sales representatives, represented, directly or by implication, that:

(1) Clients typically received several interviews with and job offers from prospective employers through the services of JWCA.

(2) The large majority of JWCA's previous clients obtained employment through the services of JWCA.

(3) Most of JWCA's clients received a refund, in whole or in part, of fees paid to JWCA.

(4) JWCA carefully screened prospective applicants and only accepted as clients those persons that JWCA could successfully place.

PAR. 5. In truth and in fact:

(1) Clients seldom received any interviews or job offers through JWCA's services.

(2) The large majority of JWCA's previous clients did not obtain employment through the services of JWCA. In fact, only a small number of JWCA's clients obtained employment through the services of JWCA.

(3) The fees paid by most of JWCA's clients were not refunded. In fact, only a small number of clients received refunds from JWCA.

(4) JWCA did not limit their clients to those persons they could

successfully place. Instead, JWCA accepted almost any client that could pay its fees.

Therefore, the representations set forth in Paragraph Four were false and misleading.

PAR. 6. In the further course and conduct of respondent's business, respondent represented, directly or by implication, to prospective clients that JWCA had placed in jobs a large percentage, such as, *inter alia*, 80%, 85% or 90%, of its clients.

PAR. 7. In truth and in fact, JWCA did not place in jobs a large percentage, such as, *inter alia*, 80%, 85% or 90% of its clients. Therefore, the representation set forth in Paragraph Six was false and misleading.

PAR. 8. Through the use of the representation referred to in Paragraph Six, and other representations not specifically set forth herein, respondent represented, directly or by implication, that he possessed and relied upon a reasonable basis for the representation set forth in Paragraph Six at the time of the initial representation and each subsequent representation.

PAR. 9. In truth and in fact, respondent did not possess and rely upon a reasonable basis for making the representation set forth in Paragraph Six. Therefore, the representation set forth in Paragraph Eight was false and deceptive.

PAR. 10. In the course and conduct of its business, and at all times mentioned herein, respondent has been in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of services of the same general kind and nature as services sold by respondent.

PAR. 11. The use by respondent of the aforesaid false and misleading representations, had the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said representations were true and complete, and into purchase of respondent's services by reason of said erroneous and mistaken belief.

PAR. 12. The acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of JWCA's competitors and constituted and now constitute, unfair and deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a

copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission, would charge respondent with violation of the Federal Trade Commission Act.

The respondent, his attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Roy B. Kelly, individually and as a former officer of John William Costello Associates, Inc., a corporation organized, existing and formerly doing business under and by virtue of the laws of the District of Columbia, with its office and place of business previously at 1612 K Street, N. W., in the City of Washington, District of Columbia. The present address of Roy B. Kelly is 4701 Woodward Avenue, #331, Chevy Chase, Maryland.

Respondent Roy B. Kelly was an officer of said corporation. He formulated, directed, and controlled the policies, acts and practices of said corporation, and its principal office and place of business was previously located at the above stated address.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondent Roy B. Kelly, individually and as a former officer of John William Costello Associates, Inc., directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale or sale of any employ-

ment counseling services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication,

1. the basis upon which clients are accepted;
2. the number of interviews or job offers which clients typically receive as a result of respondent's services;
3. the number or percentage of clients who obtained interviews or job offers as a result of respondent's services;
4. the number or percentage of clients who obtained jobs as a result of respondent's services; and
5. the likelihood that clients' fees will be refunded.

B. Making any representation, directly or by implication, concerning the benefits received by former clients, or the benefits a client is likely to receive, including but not limited to, job interviews, job offers, jobs, or the return of clients' fees, unless at the time of making such representation respondent possesses and relies upon evidence constituting a reasonable basis for such representation.

C. 1. Failing whenever respondent makes any job placement representation, including representations concerning matters covered by subparagraphs 1-5 of Paragraph A., to:

(a) maintain accurate records for every client who has contracted for such employment services, noting who has been placed in a new job as a result of respondent's services; (b) compile a composite of such records, including at a minimum, the placement history for the eight calendar quarters immediately preceding the quarter in which the claim is made and a calculation on a quarterly and annual basis of the actual percentage of placements as a ratio of all clients who were placed to all clients who contracted for services but who did not cancel within any applicable cooling-off period; and (c) advise each prospective client orally and in writing, that a composite of placement records is available on request.

2. Failing to include in every contract for such job placement services and in any advertisement or promotional material that contains any express or implied job placement claim, a clear and conspicuous statement that a composite of placement records for the previous two (2) years is available for inspection and copying upon request.

D. Accepting any fee from a client or obligating a client to pay any fee before that client has obtained employment through the efforts of respondent; provided, however, that this prohibition shall not apply if respondent:

1. provides only counseling or resume writing services;

2. does not make any representations, express or implied, concerning (a) respondent's job placement rates with former clients; or (b) respondent's ability to locate prospective employers or his ability to obtain interviews for clients or place clients in jobs; and

3. discloses to the client orally and clearly and conspicuously in a written contract, that (a) respondent's services only include employment counseling and/or resume writing; and (b) respondent has not contracted to obtain interviews for the client or to place him or her in a job.

E. Failing to maintain for three years from the date that the representations are last made or disseminated all materials relied upon by respondent in making any representation covered by this order and upon request make them available to the FTC for inspection and copying such materials.

II.

It is further ordered, That respondent distribute a copy of this order to all present or future personnel, agents or representatives having sales, advertising or policy responsibilities with respect to the subject matter of this order and that respondent secure from each such person a signed statement acknowledging receipt of said order.

III.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of five (5) years from the date of service of this order, respondent shall promptly notify the Commission of each affiliation of a new business or employment. Each such notice shall include respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph will not affect any other obligation arising under this order.

It is further ordered, That the respondent herein shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

JOHN WILLIAM COSTELLO ASSOCIATES, INC., ET AL

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3178. Complaint, Feb. 4, 1986—Decision, Feb. 4, 1986*

This consent order requires two Washington, D.C.-based employment counseling services and four corporate officers, among other things, to cease misrepresenting: (1) the basis on which clients are accepted; (2) the number of clients who have obtained interviews, job offers, or jobs through respondents' services; and (3) the chances that the clients' fees would be refunded because the employer would likely pay the respondents a finder's fee. Additionally, respondents are required to have a reasonable basis for any placement claims they make, and whenever such placement claims are made, to maintain records of their placements and make a composite of these records available to clients on request. Further, respondents are prohibited from accepting a fee until a client has obtained employment through respondents' services.

Appearances

For the Commission: *Walter C. Gross and E. Charles Lane.*

For the respondent: *Douglas L. Lashley, Beckett, Cromwell & Meyers, Bethesda, Md.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that John William Costello Associates, Inc., a corporation, National Executive Search, Inc., a corporation, John William Costello, Sr., individually and as an officer of said corporations, John William Costello, Jr., individually and as an officer of said corporations, James H. Sellors, individually and as an officer of said corporations, and William S. Spector, individually and as an officer of said corporations, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents John William Costello Associates, Inc. (JWCA) and National Executive Search, Inc. (NESI) are corporations organized, existing and formerly doing business under and by virtue