

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

of the laws of the District of Columbia. All of the above corporate respondents had their principal offices and places of business at 1612 K Street, N.W., Washington, D.C..

Respondents John William Costello, Sr., John William Costello, Jr., James H. Sellors, and William S. Spector are or were officers of both of the corporate respondents named herein. They directed, formulated and controlled the acts and practices of said corporate respondents, including the acts and practices hereinafter set forth.

John William Costello, Sr.'s address is 5601 River Road, Bethesda, Maryland.

John William Costello, Jr.'s address is 7866 Archbold Terrace, Cabin John, Maryland.

James H. Sellors' address is 12900 Old Frederick Road, Sykesville, Maryland.

William S. Spector's address is 41 Orchard Way South, Rockville, Maryland.

The aforementioned respondents cooperated and acted together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents, until at least August 1, 1983, 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 respondents' services ranged from \$2,500 to \$25,000 and higher.

PAR. 3. Respondents advertised their services in newspapers of interstate circulation, in Washington, D.C., and in various states. Respondents solicited prospective clients for their services at regional sales offices located in various states and offered and sold their services at their principal office and place of business in Washington, D.C. Respondents 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 their business, for the purpose of inducing prospective clients to purchase their services, respondents, through various statements in newspaper advertisements and promotional materials and orally by their officers and sales representatives, represented, directly or by implication, that:

(1) Respondents' clients typically received several interviews with and job offers from prospective employers through the services of respondents.

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

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

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

PAR. 5. In truth and in fact:

(1) Respondents' clients seldom received any interviews or job offers through respondents' services.

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

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

(4) Respondents did not limit their clients to those persons they could successfully place. Instead, respondents accepted almost any client that could pay respondents' fees.

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

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

PAR. 7. In truth and in fact, respondents have not placed in jobs a large percentage, such as, *inter alia*, 80%, 85% or 90% of their 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, respondents have represented, directly or by implication, that they 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, respondents 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 their business, and at all times mentioned herein, respondents have 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 respondents.

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

PAR. 12. The acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' 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 respondents named in the caption hereof, and the respondents 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 respondents with violation of the Federal Trade Commission Act.

The respondents, Douglas L. Lashley, Attorney for James H. Sellers, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have 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. 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 of the laws

of the District of Columbia, with their offices and places of business previously at 1612 K Street, N. W., in the City of Washington, District of Columbia.

Respondents John William Costello, Sr., John William Costello, Jr., James H. Sellors, and William S. Spector are or were officers of said corporations. They formulated, directed, and controlled the policies, acts and practices of said corporations, and their principal offices and places of business were previously located at the above stated address.

John William Costello, Sr.'s address is 5601 River Road, Bethesda, Maryland.

John William Costello, Jr.'s address is 7866 Archbold Terrace, Cabin John, Maryland.

James H. Sellors' address is 12900 Old Frederick Road, Sykesville, Maryland.

William S. Spector's address is 41 Orchard Way South, Rockville, Maryland.

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

ORDER

I.

It is ordered, That respondents John William Costello Associates, Inc., a corporation, and National Executive Search, Inc., a corporation, their successors and assigns, and their officers, and respondents John William Costello, Sr., John William Costello, Jr., James H. Sellors, and William S. Spector, individually and as officers of said corporations, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale or sale of any employment counseling service 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 respondents' services;
3. the number or percentage of clients who obtained interviews or job offers as a result of respondents' services;
4. the number or percentage of clients who obtained jobs as a result of respondents' 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 respondents possess and rely upon evidence constituting a reasonable basis for such representation.

C. 1. Failing whenever respondents make 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 respondents' 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 respondents; provided, however, that this prohibition shall not apply if respondents:

1. provide only counseling or resume writing services;
2. do not make any representations, express or implied, concerning (a) respondents' job placement rates with former clients; or (b) respondents' ability to locate prospective employers or their ability to obtain interviews for clients or place clients in jobs; and
3. disclose to the client orally and clearly and conspicuously in a written contract, that (a) respondents' services only include employment counseling and/or resume writing; and (b) respondents have 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 respondents 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 respondents distribute a copy of this order to all operating divisions of said corporations and to present or future personnel, agents or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order and that respondents secure from each such person a signed statement acknowledging receipt of said order.

III.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliations with new businesses or employment. In addition, for a period of five (5) years from the date of service of this order, each respondent shall promptly notify the Commission of each affiliation of a new business or employment. Each such notice shall include each respondents' 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 respondents' 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 respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
NATIONAL ENERGY ASSOCIATES, INC., ET AL.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3179. Complaint, Feb. 5, 1986—Decision, Feb. 5, 1986

This consent order requires a Norcross, Ga. manufacturer and marketer of home energy controlling devices, and its corporate officer, among other things, to cease making claims of energy savings associated with the product "Cyclematic", or any other energy-control device, without competent and reliable substantiation. Additionally, respondents are prohibited from representing that consumers are eligible for a federal income tax credit with the purchase of their products, unless that is true.

Appearances

For the Commission: *Michael Dershowitz and Sandra N. Hammer.*

For the respondents: *J. Patrick O'Brien, Boyce, Thompson & O'Brien,* Norcross, Ga.

COMPLAINT

The Federal Trade Commission, having reason to believe that National Energy Associates, Inc., a corporation, and James B. Brooks, individually and as an officer of said corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. (a) National Energy Associates, Inc. is a Georgia corporation with its principal office or place of business at 6435 Warren Drive, Norcross, Georgia.

(b) James B. Brooks is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of the corporation.

(c) Respondents cooperate and act together in carrying out the acts and practices alleged in this complaint.

PAR. 2. Respondents manufacture, advertise, offer for sale, sell and distribute energy control devices for residential or small commercial use.