

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.

11-1185 B

_____)
COMMONWEALTH OF MASSACHUSETTS,)
)
Plaintiff,)
)
v.)
)
BRIAR GROUP, LLC,)
)
Defendant.)
_____)

*Filed 3/28/11
Russell V. Muscato Jr.
Clerk*

FINAL JUDGMENT BY CONSENT

Plaintiff, the Commonwealth of Massachusetts (the "Commonwealth"), by and through its Attorney General Martha Coakley, and defendant, Briar Group, LLC ("Briar"), consent to the entry of this Final Judgment by Consent ("Final Judgment") and its provisions without trial or adjudication of any issue of fact or law. The parties enter this agreement to resolve the Commonwealth's alleged claims against Briar without the risks and expenses associated with litigation.

It appearing to the Court that the defendant has consented, by the attached Consent to Judgment, to the entry of this Final Judgment; that the defendant has waived all rights of appeal; and that this Court has subject matter and personal jurisdiction and sufficient basis for the entry of this Final Judgment,

IT IS HEREBY ORDERED AND ADJUDGED THAT:

I. DEFINITIONS

1. "Personal Information" shall mean that term as it is defined in G. L. c. 93H, § 1 and 201 CMR 17.02.

II. PARTIES SUBJECT TO JUDGMENT

2. This Final Judgment shall extend to the defendant, its officers, employees, agents, representatives, affiliates, successors, and assigns, or any other person acting under its direction and control, directly or indirectly, and shall constitute a continuing obligation.

III. GROUND S FOR COMPLAINT AND VIOLATIONS

3. The Commonwealth filed a Complaint against the defendant, alleging that Briar engaged in unfair or deceptive acts or practices, in violation of G. L. c. 93A, § 2, by accepting credit and debit cards from its consumers in order to facilitate transactions at Briar's restaurants and bars, yet failing to take reasonable steps to protect the personal information obtained from its patrons. The Commonwealth alleges that, due to Briar's failure to implement basic data security measures on its computer system, through the use of malware hackers were possibly able to gain access to data processed on Briar's computer system and extract customers' credit and debit card information during the period from April 2009 through December 2009.

4. The Commonwealth alleges that Briar's failure to implement basic data security measures to protect consumers' credit and debit card information includes, but is not limited to the following:

- a. failing to change default usernames and passwords on its Micros Point of Sale computer system;
- b. failing to change passwords in its computer network for more than five years;

- c. allowing multiple employees to share common usernames and passwords;
- d. failing to modify passwords after termination or resignation of employees;
- e. failing to adequately control the number of employees with administrative access to Briar's computer network;
- f. failing to properly secure its remote access utilities and wireless network;
- g. continuing to accept credit and debit cards from consumers when Briar knew of the data breach and failing to alert its patrons to the data breach while malcode remained on its computer system;
- h. storing payment card information in clear text on its servers; and
- i. failing to comply with Payment Card Industry Data Security Standards ("PCI DSS").

5. Without admitting to the validity of any of the allegations in the Complaint or admitting to any wrongdoing, violation of any law or liability to the Attorney General, Briar voluntarily and knowingly enters into this Final Judgment. Briar enters into this agreement in order to resolve disputed matters and to avoid the cost, uncertainty and delay associated with litigation.

IV. INJUNCTIVE RELIEF

6. Briar and its officers, employees, agents, representatives, affiliates, successors, and assigns, agree to:

- a) implement, maintain, and adhere to a Written Information Security Program ("WISP") pursuant to 201 CMR 17.00, and produce said WISP to the Attorney General's Office no later than fourteen (14) days after the entry of this Final Judgment;

- b) pursuant to 201 CMR 17.03(i), review the scope of its security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing personal information;
- c) maintain PCI DSS compliance, or such compliance standards that may be from time to time recognized by the payment card industry as acceptable, and verify with the Attorney General's Office its compliance with PCI DSS or such other acceptable standard. Briar shall verify with the Attorney General's Office its compliance with PCI DSS, by affidavit, signed by Briar's President, within fourteen (14) days after entry of this Final Judgment;
- d) not knowingly store or otherwise maintain on its network subsequent to the authorization process the full contents of the magnetic stripe of a credit or debit card, or of any single track of such a stripe, or the CVC2/CVV2/CID of any such card, or the PIN or PIN block of any such card;
- e) implement, within fourteen (14) days after entry of this Final Judgment, security password management for the portions of the Briar computer system that store, process, or transmit Personal Information, including for Briar's Micros Point of Sale computer systems;
- f) implement, within fourteen (14) days after entry of this Final Judgment security password management whereby each person with access to Briar's computer networks is assigned a unique ID;
- g) segment appropriately from the rest of Briar's computer system those network-based portions of the Briar computer system that store, process, or

transmit Personal Information, by firewalls, access controls, or other appropriate measures, within fourteen (14 days) after entry of this Final Judgment.

7. If in the future Briar receives notice from a credit card company, payment card processing company, bank, or law enforcement agency requiring a forensic audit of its Point of Sale Systems and related infrastructure because a Common Point of Purchase or similar analysis linked fraudulent transactions to Briar establishments, Briar will, within 24 hours after receiving such notice, contact a Qualified Incident Response Assessor (“QIRA”) to investigate the suspected data compromise. If, within fourteen (14) days after retaining a QIRA, Briar has been unable to conclude whether a data compromise has occurred, Briar will post conspicuous notice in each of its potentially affected establishments, alerting customers that their debit and credit cards might be at risk due to a suspected data compromise. The defendant will provide a copy of this consumer notice to the Attorney General’s Office.

8. The defendant will disclose the terms and conditions described in the Injunctive Relief section of this Final Judgment to its officers, directors, managers, and employees.

9. Any violation of the Injunctive Relief section of this Final Judgment is punishable under G. L. c. 93A, § 4 and/or by contempt sanctions.

V. PAYMENT OF CIVIL PENALTIES

10. Pursuant to G. L. c. 93A, § 4, judgment is hereby entered against the defendant for the sum of \$110,000.

11. Upon entry of a Final Judgment in this matter, Briar shall pay \$110,000 to the Commonwealth, by certified or cashier’s check made payable to the “Commonwealth of

Massachusetts” and delivered to Shannon Choy-Seymour, Assistant Attorney General, Consumer Protection Division, One Ashburton Place, Boston, Massachusetts 02108.

12. Pursuant to G. L. c. 93A, § 4, the Commonwealth waives the imposition of any payment to reimburse the Commonwealth for the costs associated with the investigation and litigation of this matter to date, and any other monetary amount that the Commonwealth may claim that it is otherwise entitled to under said statute.

VI. NOTICES

13. All notices and documents required by this Final Judgment shall be provided in writing to the parties as follows:

A. If to the Attorney General:

Shannon Choy-Seymour
Assistant Attorney General
Consumer Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2918

B. If to Briar Group, LLC:

Alan M. Reisch, Esq.
Goulston & Storrs, PC
400 Atlantic Avenue
Boston, MA 02110
(617) 482-1776

VII. WAIVER OF APPEAL AND OF FINDINGS AND RULINGS

14. The defendant waives all rights of appeal it has, and also waives the requirements of Rule 52 of the Massachusetts Rules of Civil Procedure.

VIII. CONTINUING JURISDICTION

15. The Superior Court of the Commonwealth retains jurisdiction of this action for the purpose of enforcing or modifying the terms of this Final Judgment, or granting such further relief as the Court deems just and proper, and the provisions of this Final Judgment shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

IX. MISCELLANEOUS

16. Compliance with this Final Judgment resolves and settles all civil claims the Commonwealth has or may in the future have against Briar arising from the data breach reported by Briar to the Attorney General's Office on or around November 24, 2009, including, but not limited to, the events and allegations which are the subject of the Commonwealth's November 22, 2010, G. L. c. 93A letter to Briar.

17. The provisions of this Final Judgment shall be severable and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the other provisions of this Judgment shall remain in full force and effect.

18. Nothing in this Final Judgment shall be construed as relieving the defendant of its duty to comply with all applicable federal, state, and local laws, regulations, rules, and permits.

19. Consent to this Final Judgment does not constitute an approval by the Commonwealth of any of the defendant's business acts and practices.

20. This Final Judgment by Consent contains the complete agreement between the parties.

21. This Final Judgment may not be changed, altered, or modified, except by further order of the Court.

22. This Final Judgment becomes effective upon entry by the Court, and all period of time described herein commence as of that date.

APPROVED AND ORDERED:


Justice of the Superior Court

Dated: March 28, 2011

CONSENT TO JUDGMENT OF BRIAR GROUP, LLC

1. The defendant, Briar Group, LLC (“Briar”), admits to the continuing jurisdiction and venue of the Suffolk Superior Court, and hereby consents to the entry of the Final Judgment in the form attached hereto. In so consenting, the defendant certifies that it has read and understands each of the sections, paragraphs, and subparagraphs in the Final Judgment.

2. The defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.

3. The defendant understands that the restrictions set forth in the Final Judgment apply to Briar and to its officers, employees, agents, representatives, affiliates, successors, and assigns.

4. The defendant states that it understands that any violation of this Final Judgment may result in sanctions against it under G. L. c. 93A, § 4, and/or a finding of contempt of court.

5. The defendant states that it is represented by legal counsel, Goulston & Storrs, PC, 400 Atlantic Avenue, Boston, MA 02110, and that Austin M. O’Connor, President of the Briar Group, LLC, has personally read and understands each numbered paragraph in the Final Judgment by Consent.

6. The undersigned, Austin M. O’Connor, represents that he is duly authorized to execute this Consent to Judgment on behalf of Briar and to bind Briar to all of its provisions, and that on behalf of Briar he voluntarily enters into this Final Judgment by Consent.

ASSENTED TO, WAIVING ALL RIGHTS OF APPEAL



Briar Group, LLC
By: Austin O’Connor, President

Dated: 3/23/11