

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES, Attorney General
of the State of New York,

**CONSENT ORDER AND
JUDGMENT**

Petitioner,

- against -

Index No. 802674/2020

RED STORM LLC d/b/a Simply Certificates
and ROBERT R. LYNN,

Respondents.

Petitioner commenced this special proceeding by Notice of Petition dated February 24, 2020; the Verified Petition, verified by Christopher L. Boyd, Assistant Attorney General, on February 24, 2020, and supported by the affirmation of Christopher L. Boyd, sworn to on February 24, 2020, and exhibits thereto; the affidavits of consumers Mary Dirrigl, sworn to on February 21, 2020, Merlyn Hudson, sworn to on February 7, 2020, Mary Philbin, sworn to on February 5, 2020, and Barbara Woloszyn, sworn to on February 7, 2020, and the exhibits thereto.

Upon reading and filing the foregoing, and the Stipulation and Consent dated August 3, 2020, in which Respondents Red Storm LLC (“Simply Certificates”) and Robert R. Lynn (“Lynn”) acknowledged receipt of the above-said documents and consented to entry of this Consent Order and Judgment (the “Consent Order”) and waived notice of entry thereof,

NOW, on motion of Letitia James, Attorney General of the State of New York (hereinafter “OAG”), attorney for the Petitioner, and on the above pleadings, and on the consent of Respondent, it is hereby

1. ORDERED, ADJUDGED AND DECREED that Respondents Simply Certificates and Lynn, their agents, trustees, servants, employees, successors, heirs and assigns, or any other person under their direction and control, whether acting individually or in concert with others, or through any corporate or other entity or device through which they may now or hereafter act or conduct business, operating or doing business in New York State, including businesses in which they have any legal or beneficial interest are bound by the terms of this Consent Order; and it is further

INJUNCTIVE RELIEF

2. ORDERED, ADJUDGED AND DECREED that Respondents are hereby permanently barred and enjoined from violating Executive Law § 63(12), General Business Law §§ 350 and 396-i and 15 U.S.C. §16931-1; and it is further

3. ORDERED, ADJUDGED AND DECREED that Respondents shall not sell or offer for sale any gift certificate, general use prepaid card or store gift card:

- a) with an expiration date of less than five years from the date of sale;
- b) that contains terms and conditions without a sign conspicuously posted stating “TERMS AND CONDITIONS ARE APPLIED TO GIFT CERTIFICATES/GIFT CARDS”;
- c) that contains terms and conditions without clearly and conspicuously stating such terms and conditions thereon, including the expiration date, whether any fees are assessed against the balance, and whether a fee will be charged for the replacement if it is lost, stolen, or destroyed;

d) that imposes a monthly service fee, dormancy fee or inactivity fee prior to the twenty-fifth month of dormancy; and it is further

4. ORDERED, ADJUDGED AND DECREED that Respondents shall not engage in deceptive advertising in violation of General Business Law § 350, including, without limitation, advertising that a restaurant or other merchant accepts certificates issued by Simply Certificates when in fact such restaurant or other merchant has terminated their participation in the program and no longer accepts certificates issued by Simply Certificates.

CONDUCT RELIEF

5. ORDERED, ADJUDGED AND DECREED that Respondents shall, within thirty (30) days of entry of this Consent Order, implement a convenient method for consumers holding expired certificates issued by Simply Certificates from December 25, 2016 to the date of this Consent Order, to exchange such expired certificates for certificates that contain an expiration date of no sooner than five years from the original date of purchase of such certificates (the “Exchange”); and it is further

6. ORDERED, ADJUDGED AND DECREED that Respondents shall, within thirty (30) days of entry of this Consent Order, and lasting until December 31, 2020, implement a convenient method for consumers holding expired certificates issued by Simply Certificates from December 25, 2016 to the date of this Consent Order, to obtain a refund of such expired certificates (the “Refund”) in lieu of an Exchange; provided however that any consumer seeking a Refund must submit the form annexed hereto as Annex A (the “Refund Form”) and Respondents shall make the Refund Form available to consumers on their website and at any physical locations at which Respondents sell certificates or conducts business; and it is further

7. ORDERED, ADJUDGED AND DECREED that Respondents shall offer eligible consumers the ability to conduct an Exchange or obtain a Refund via mail without any cost to the consumer other than the cost of postage to mail the expired certificate to Respondents, and it is further

8. ORDERED, ADJUDGED AND DECREED that, at any physical location at which Respondents sell certificates or conducts business, Respondents must offer an Exchange or Refund to eligible consumers at no cost; and is further

9. ORDERED, ADJUDGED AND DECREED that Respondents must prominently advertise the availability of the Exchange and Refund procedure described herein on Respondents' website and at any physical locations operated by Respondents; and it is further

10. ORDERED, ADJUDGED AND DECREED that Respondents must prominently advertise, on Respondents' website and at any physical locations operated by Respondents, the terms and conditions upon which a restaurant or other vendor that accepts Simply Certificates may choose to leave the program and decline to accept Simply Certificates as payment; and it is further

MONETARY PENALTIES

11. ORDERED, ADJUDGED AND DECREED that for their past violations of Executive Law § 63(12), General Business Law §§ 350 and 396-i and 15 U.S.C. §16931-1, Respondents shall pay damages in the sum of \$10,000 to the State of New York. Such payment shall be made by certified check or attorney's check within five (5) days of entry of this Consent Order; and it is further

MISCELLANEOUS

12. ORDERED, ADJUDGED AND DECREED that nothing contained in this Consent Order shall be construed to limit the rights of a person or an entity who is not a party to this special proceeding; and it is further

13. ORDERED, ADJUDGED AND DECREED that all correspondence and payments required herein shall be delivered or mailed to the following address, unless a different address is specified in writing by the party changing such address:

If to OAG: Office of the Attorney General of the State of New York
Attn: Christopher L. Boyd, Assistant Attorney General
350 Main Street, Suite 300A
Buffalo, New York 14202

If to Respondents: Brian Melber, Esq.
2100 Main Place Tower
350 Main Street
Buffalo, NY 14202

14. ORDERED, ADJUDGED AND DECREED that the Court hereby retains jurisdiction to enforce this Consent Order and all disputes arising under this Consent Order shall be submitted to the Court, and the Court retains authority to decide all such disputes.

Dated: August 4, 2020



HON. MARK A. MONTOUR, J.S.C.

ANNEX A

SIMPLY CERTIFICATES REFUND REQUEST FORM

I _____, hereby certify that I purchased or received as a gift Simply
(print name)

Certificates with a total value of _____, that were issued on or after December
(amount of certificates)

25, 2016, and am seeking a refund for such Simply Certificates, which are enclosed herewith.

(sign name)