

## SMALL BUSINESS; In Equipment-Leasing Deals, Let the Renter Beware

By ELIZABETH OLSON (NYT) 1465 words

Published: August 12, 2004

After winning a contract for trash removal from the federal government last year, Connie's Disposal Service in Richmond, Va., knew it had to build up its inventory of waste compactors, containers and trucks. So Connie's obtained a \$250,000 credit from the Alliance Funding Group to lease the equipment.

That is when a seemingly straightforward business deal went sour, according to Terrence Chester, the accounts-payable manager at Connie's. First, after signing an agreement and paying the \$3,785 deposit, Connie's was billed twice for interest payments, he says. Then, after questioning the leasing company about the discrepancy and getting what he considered unsatisfactory answers, he says, Connie's terminated the deal and asked for its deposit back.

But Alliance, based in Anaheim, Calif., was unresponsive, he says. "I called I don't know how many people," Mr. Chester said. "I couldn't get hold of anyone. Finally, I talked to the president, and he was nasty."

Unlike most small companies that become caught up in equipment-leasing disputes, Connie's ultimately got some of its money back. Alliance Funding sent a check for \$2,600 after deducting unspecified fees, leaving the trash hauler \$1,185 short. Connie's found its equipment elsewhere, but Mr. Chester has vowed that he would never deal with Alliance again for equipment financing.

Add equipment-leasing deals to the list of financial pitfalls for small businesses. Last year, the number of complaints involving them at Better Business Bureaus across the country soared eightfold, to 772, from just 98 in 2002, according to the Council of Better Business Bureaus, an umbrella group. The surge placed questionable equipment-leasing practices high on the list of top problems at the group, based in Arlington, Va.

Equipment leasing typically requires deposits or access fees that run into the thousands of dollars. Disputes often arise over last-minute changes in the terms of the contract or over frozen deposits that customers feel ought to be returned. Small businesses are especially

vulnerable to abuses and misunderstandings because they often have shaky credit ratings and have to depend on brokers, who arrange the financing, or on the leasing companies themselves. They are usually too short of cash to buy their machinery.

Better Business Bureau files show that some leasing arrangements can involve sums that are hefty for small or medium-size businesses. Consider the case of Neoforma Inc., a consulting firm for the health care industry; the firm, based in San Jose, Calif., has annual revenue of \$11 million.

In 2002, Neoforma signed a contract with CapitalWerks of Irvine, Calif., for a \$10 million credit line to lease equipment, and it paid a \$180,000 "access fee." After the deal fell through -- because, Neoforma claims, CapitalWerks did not live up to its terms -- Neoforma demanded its money back. When CapitalWerks refused, Neoforma took the case to state court, according to Jason Somer, its associate general counsel. Just before the trial was to begin, the sides came to a settlement, with terms that are confidential.

The Better Business Bureaus post an "unsatisfactory business performance record" on their Web sites for companies that they believe have engaged in a pattern of unfair, illegal or unethical behavior.

Among those receiving unsatisfactory rates are Alliance Funding and CapitalWerks, which contact business owners by faxing or mailing advertisements to them that indicate they have been approved for an equipment-lease loan. Over the last three years, Alliance Funding has had 15 complaints filed against it with the Better Business Bureau of the Southland, an area that includes Anaheim; CapitalWerks, which usually requires a deposit of the first and last month's lease payment along with a processing fee to obtain the leasing deal, has had 88.

Larry Masani, Alliance Funding's vice president, said his company sent back "100 percent of the money close to 100 percent of the time." While he did not recall the Connie's Disposal case, he noted that "each deal is different so any amounts withheld depend on the expenses we incur."

According to the Better Business Bureau, Alliance Funding, which has been in business for six years, has accepted deposits without providing leases, or changed leasing terms and refused to refund deposits. But

Mr. Masani, who said he was unaware of his company's unfavorable rating, denied doing so. "That's obviously false," he said.

Jim Raeder, president of CapitalWerks, which also used the name Preferred Lease, said his firm had acquired five companies over the last four years, including one with unhappy clients. He said the company, which finances around 450 leases each month, has hired a full-time employee to track all the signed contracts. He declined to comment on the dispute with Neoforma.

William G. Mitchell, head of the Better Business Bureau of Southland, part of the greater Los Angeles network of bureaus, said, however, that CapitalWerks should have returned the \$180,000 deposit immediately since Neoforma "did nothing wrong." CapitalWerks's refusal to do so, he said, was "outrageous."

Most of CapitalWerks's complaints have been closed, which does not necessarily mean they were resolved. The Better Business Bureaus have no power to compel resolution to complaints.

That was what happened to Calvin Marble, a sandwich-shop operator in Indianapolis, who said CapitalWerks did not refund the deposit he sent to lease kitchen equipment for a restaurant he wanted to open.

To lease the grill, deep fryer and refrigerating equipment, Mr. Marble said, he turned to CapitalWerks because it sent "nice literature" in the mail and "seemed to be fine." But Mr. Marble said the leasing arrangement was not what he wanted, and then "it turned ugly."

"I called to tell them I wanted out of the deal, but I kept getting transferred to voice mail, and no one returned my calls."

Mr. Marble said the loss of money "almost killed me."

"It was \$3,000 out of my account," he said.

He finally filed a complaint with the Southland Better Business Bureau, and queried the Indiana attorney general's office, but got no help there since CapitalWerks is in California.

He contemplated going to California to file a small-claims suit against CapitalWerks, Mr. Marble says, but he was too busy running his business to take the time off.

Mr. Raeder, the CapitalWerks president, said he was unfamiliar with Mr. Marble's complaint but said his company's policy is that once a transaction is approved, the client loses the commitment fee -- usually about 1 percent of the overall leasing price -- to cover the time and effort spent arranging the deal.

The existence of this nonrefundable fee is almost always included in the letter of intent or the lease agreement, he said. Some states, including Texas, protect consumers by allowing them 30 days to contest the costs covered by the fee, he said.

According to Mr. Mitchell of the Better Business Bureau of Southland, small businesses often have little recourse against objectionable leasing practices, because it is difficult for them to prove criminal intent and because the deals cross state lines.

"That's why the problem seems to stay under the radar," he said.

Additionally, equipment leasing is an unregulated area that does not fall into one legal bailiwick, and both the National Association of Attorneys General and the Federal Trade Commission say they have little inclination to pursue such disputes.

The best way to avoid leasing traps, according to Michael Fleming, president of the Equipment Leasing Association, which has 780 members, is education.

The association's Code of Fair Business Practices specifies how its members should conduct themselves, and its Web site, [www.chooseleasing.com](http://www.chooseleasing.com), advises small businesses on the ins and outs of equipment financing and leasing.

"There is no substitute for doing your homework and learning the terminology and common practices," Mr. Fleming said.