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CFPB ANNOUNCES FIRST ENFORCEMENT ACTION AGAINST "ABUSIVE" PRACTICES

The Consumer Financial Protection Bureau (CFPB) announced recently that it filed a complaint in the United States District Court for the Southern District of Florida against American Debt Settlement Solutions, Inc. (ADSS), a Florida debt-relief company, and its owner, that the CFPB alleges misled consumers and charged illegal fees for their services. The CFPB's proposed consent order (i) places a ban on the defendants' debt-relief products and services, (ii) enters a suspended judgment for equitable monetary relief and damages in the amount of approximately \$500,000 and (iii) imposes a civil penalty of \$15,000.

The complaint makes specific allegations of violations of the Federal Trade Commission's Telemarketing Sales Rule and the Consumer Financial Protection Act of 2010 (CFPA), which prohibits "unfair, deceptive, or abusive acts or practices." Under the CFPA, an act or practice is abusive if it, among other things, takes unreasonable advantage of (i) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service, (ii) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service, or (iii) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

According to the CFPB's complaint, ADSS sells debt-relief services to consumers, which ADSS markets through the Internet. The company charges consumers certain fees, including an "enrollment fee" (typically 15% of the consumers enrolled debts) which ADSS usually collects in the first three to six months of the consumer's enrollment, plus a monthly service fee. As part of its process, ADSS requires consumers to complete detailed worksheets describing their monthly income, expenditures and debts, which are then reviewed by ADSS. ADSS represents to all enrolled consumers that it will renegotiate, settle, reduce or otherwise alter the terms of the consumers' debts.

The CFPB specifically alleges that ADSS routinely:

- Fails to renegotiate, settle, reduce or otherwise alter the terms of a single debt for approximately 89% of the consumers enrolled in the program;
- Represents that the first settlement for a consumer could occur within 90 days to six months, while in fact ADSS only rarely renegotiates, settles, reduces or otherwise altered the terms of debts for consumers within these time-frames; and
- Enrolls a consumer in its program even when ADSS knows that

the consumer's income is inadequate to complete the debt-relief program.

With respect to "abusiveness," the complaint specifically alleges that ADSS, in numerous instances, enrolled in its debt-relief programs consumers whose financial conditions make it highly unlikely that they can complete the programs, especially given ADSS' knowledge that ADSS is unlikely to settle debts within the first three to six months on enrollment. Nonetheless, the complaint alleges, ADSS collects "enrollment" fees from these consumers in the first three to six months of their enrollment. This practice, the CFPB alleges, causes certain consumers to spend their last savings paying ADSS fees for a service from which they likely will not benefit, to drop out after paying such fees, and to receive in fact no material benefits.

The CFPB says that ADSS' practices take unreasonable advantage of consumers' lack of understanding of how long it will actually take ADSS to settle their debts and therefore how much money they will spend before realizing any benefits from enrolling in ADSS' debt-relief program. The CFPB alleges that consumers reasonably rely on ADSS to act in consumers' interest by enrolling consumers in a debt-relief program that the consumers can reasonably be expected to complete. Consumers also reasonably rely on ADSS to act in their interest by settling their debts as soon as possible, generally within three to six months of enrollment as represented by ADSS.

The CFPB indicates that this is the first time that it is enforcing the prohibition on "abusive" acts or practices under the CFPA. Much uncertainty has surrounded the CFPA's new "abusive" standard. The Director of the CFPB in 2012, noted, among other things, that the definition of "abusive" is situational. This initial action bears out that approach by focusing on specific actions taken by ADSS with respect to the debt-relief products and services it offered.

Creditors should review their programs for similar arguably "abusive" practices in order to avoid potential violations.

✧ *Mike Tomkies and Margaret Stolar*

2750 HUNTINGTON CENTER 41 S. HIGH STREET COLUMBUS, OHIO 43215

TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600 WWW.DLTLAW.COM

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