Federal District Court Tosses Most of CFPB Lawsuit Against Credit Repair Company

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A federal district court in California has thrown out most of the Consumer Financial Protection Bureau's claims against a company offering credit repair services because the complaint did not meet the heightened requirements the Federal Rules of Civil Procedure impose when pleading fraud.

The CFPB alleged four violations of the Telemarketing Sales Rule ("TSR") and one violation of the Consumer Financial Protection Act ("CFPA"), all stemming from Defendant Prime Marketing Holding LLC's marketing of its credit repair services. The complaint alleged that Prime Marketing misled its customers about its fees, the efficacy of its services, and the availability of refunds.

While the Federal Rules of Civil Procedure are generally lenient with respect to how detailed allegations must be to survive a motion to dismiss, they require more detailed allegations when a plaintiff alleges the defendant committed fraud. This is true even if the complaint does not use the word "fraud." What triggers the heightened pleading standard in this situation is that the plaintiff alleged the defendant had engaged in a *unified course* of fraudulent conduct. Thus, a complaint sounds in fraud if it specifically alleges fraud *or* if it alleges facts that necessarily constitute fraud, regardless of the specific words used. If that is the case, under Rule 9(b), the plaintiff's complaint must state the time, place, and specific content of the false representations. The plaintiff must identify each defendant's role in the alleged scheme.

The CFPB argued that Rule 9(b)'s heightened pleading standard did not apply to its TSR and CFPA claims because deception - which formed the basis for its claims - is a different legal theory from fraud. The court rejected this distinction, and proceeded to hold that the CFPB failed to meet Rule 9(b)'s higher standard in four out of the five claims made in the complaint.

Specifically, the CFPB failed to plead facts sufficient to support the following:

- Count 2 alleged the defendant misrepresented material aspects of its performance in violation of the TSR. The court dismissed this claim because the complaint failed to identify any specific instance where the defendant made such a misrepresentation.

- Count 3 alleged the defendant failed to disclose truthfully all material terms and conditions for refunds, in violation of the TSR. The court dismissed this claim because the complaint failed to provide details of any instances where the defendant failed to make these disclosures.

- Count 4 alleged the defendant misrepresented the total cost of its services, in violation of the

TSR. The court dismissed this claim because the complaint pled only that the defendant "at times" failed to disclose monthly fees, and failed to plead with specificity what representations were made, when they were made, and to whom.

- Count 5 alleged the defendant committed a deceptive act or practice in violation of the CFPA based on the same alleged conduct in Counts 2 and 4, *i.e.*, by making misleading statements regarding the efficacy and cost of its services. This claim was dismissed for the same reasons.

The lone surviving claim is an allegation that the defendant violated the TSR by allegedly requesting payment of fees for its credit repair services before providing actual results. The court held the complaint sufficiently pled this claim by alleging specifically that the defendant charged consumers fees prior to an initial consultation, charged set-up fees within two months of the initial consultation, and charged monthly fees thereafter, prior to providing the consumer with a consumer agency report. This satisfied Rule 9(b)'s higher standard for specificity. The CFPB will have an opportunity to bring the other claims again if it can make sufficiently specific allegations to pass scrutiny under Rule 9(b).

Order

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