

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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| Bureau of Consumer Financial Protection, |) | |
| |) | |
| <i>Plaintiff,</i> |) | |
| |) | |
| v. |) | Case No. |
| |) | |
| FDATR, Inc., |) | |
| Dean Tucci, and |) | |
| Kenneth Wayne Halverson, |) | |
| |) | |
| <i>Defendants.</i> |) | |

COMPLAINT

The Bureau of Consumer Financial Protection (Bureau) brings this action against FDATR, Inc., Dean Tucci, and Kenneth Wayne Halverson for (1) deceptive and abusive telemarketing acts or practices that violate the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101–6108, and the Telemarketing Sales Rule (TSR), 16 C.F.R. §§ 310.3, 310.4, and (2) deceptive acts or practices that violate §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536. The Bureau alleges as follows.

JURISDICTION AND VENUE

1. This Court has subject-matter jurisdiction over this action because it concerns federal consumer-financial law, 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345.
2. Venue is proper in this district because Defendants are located, reside, or do business in this district. 12 U.S.C. § 5564(f).

PARTIES

3. The Bureau is an independent agency of the United States. 12 U.S.C. § 5491. The Bureau is charged with enforcing “Federal consumer financial laws.” 12 U.S.C. §§ 5563, 5564. The Bureau has independent litigating authority, 12 U.S.C. §§ 5564(a)-(b), including the authority to enforce the TSR with respect to the offering or provision of a consumer-financial product or service under the CFPA, 15 U.S.C. § 6105(d).

4. FDATR, Inc. was a company incorporated in Illinois in 2014 that was involuntarily dissolved on September 29, 2020. Its principal place of business was 199 South Addison Road, Suite 104A, Wood Dale, Illinois. Through telemarketing and telephone sales, FDATR offered and purported to provide student-loan debt-relief and credit-repair services to consumers.

5. FDATR is subject to and liable for violations of the CFPA as a “covered person” because it offered or provided a consumer-financial product or service, specifically “financial advisory services” in the form of debt-relief and credit-repair services, for use by consumers primarily for personal, family, or household purposes. 12 U.S.C. § 5481(5)(A), (6)(A), (15)(A)(viii).

6. FDATR is also subject to and liable for violations of the TSR as (1) a “telemarketer” because, in connection with telemarketing, it initiated and received telephone calls from customers, and (2) a “seller” because, in connection with a telemarketing transaction, it provided or offered to provide services to its customers in exchange for consideration. 16 C.F.R. § 310.2(dd), (ff). FDATR engaged in “telemarketing” because it received inbound telephone calls from consumers—calls that consumers made in response to advertising placed by or on behalf of FDATR—to induce those consumers to purchase its debt-relief and credit-repair

services. 16 C.F.R. § 310.2(gg). FDATR also provided “debt relief services” under the TSR because it represented that it would alter the terms of payment for consumers’ student-loan debts. 16 C.F.R. § 310.2(o).

7. Dean Tucci was an owner or officer of, or had managerial responsibility over, FDATR. At all material times, Tucci managed, formulated, directed, designed, controlled or had the authority to control, and materially participated in the conduct of FDATR’s affairs. He developed FDATR’s advertising, sales scripts, and training materials, and he at times managed FDATR’s day-to-day operations, including training sales people. In July 2017, Tucci transferred FDATR’s ownership to Halverson for \$0, but he continued to work for the company until 2019 as a “consultant” with managerial responsibility over, among other things, FDATR’s day-to-day operations.

8. Tucci is subject to and liable for CFPA violations as a “related person” and a “covered person.” A person is a “related person” if he or she is a “director, officer, or employee charged with managerial responsibility for . . . such covered person” or a “shareholder, consultant, joint venture partner, or other person . . . who materially participates in the conduct of the affairs of such covered person.” 12 U.S.C. § 5481(25)(C)(i), (ii). Tucci is a “related person” because he was an officer of and had managerial responsibility for FDATR—he was a key decision maker, handled day-to-day operations, and was responsible for marketing and sales practices. Tucci remained a “related person” after he transferred ownership of FDATR to Halverson in 2017 because he worked as a consultant for FDATR and materially participated in its conduct and affairs. 12 U.S.C. § 5481(25)(C)(ii). As a “related person,” Tucci is deemed a “covered person” under the CFPA. 12 U.S.C. § 5481(25)(B).

9. Tucci is also subject to and liable for violations of the TSR as a “seller” because he arranged for FDATR to provide its services through telemarketing. 16 C.F.R. § 310.2(dd). He is also liable under the TSR for providing substantial assistance or support to FDATR because he knew or consciously avoided knowing that it was engaged in acts or practices that violated §§ 310.3(a) and 310.4 of the TSR. 16 C.F.R. § 310.3(b). He provided substantial assistance because he drafted FDATR’s telemarketing sales scripts and designed FDATR’s program and marketing materials. He knew or consciously avoided knowing that the representations being made about the program’s success were false or had no reasonable basis and could not be substantiated.

10. Kenneth Wayne Halverson was an owner, officer, or manager of FDATR. Halverson joined FDATR in 2016 as an officer and sales floor manager. He managed the company’s day-to-day operations and took control of the company when Tucci transferred ownership to him in 2017. He purportedly closed the company in 2019.

11. Halverson is subject to and liable for CFPA violations as a “related person” or “covered person.” A person is a “related person” if he or she is a “director, officer, or employee charged with managerial responsibility for . . . such covered person” or a “shareholder, consultant, joint venture partner, or other person . . . who materially participates in the conduct of the affairs of such covered person.” 12 U.S.C. § 5481(25)(C)(i), (ii). Halverson is a “related person” because he was an officer of and had managerial responsibility for FDATR—he handled its day-to-day operations as well as its sales force and sales practices. As a related person, Halverson is deemed a “covered person” under the CFPA. 12 U.S.C. § 5481(25)(B).

12. Halverson is also subject to and liable for violations of the TSR as a “seller” because he arranged for FDATR to provide its debt-relief services through telemarketing. 16 C.F.R. § 310.2(dd). He is also liable under the TSR for providing substantial assistance or

support to FDATR, because he knew or consciously avoided knowing that it was engaged in acts or practices that violated §§ 310.3(a) and 310.4 of the TSR. 16 C.F.R. § 310.3(b). He provided substantial assistance because he managed the company's sales floor and was involved in the design of the company's program and marketing materials. He knew or consciously avoided knowing that the representations being made about the program's success were false or had no reasonable basis and could not be substantiated.

FACTUAL ALLEGATIONS

13. FDATR offered and provided student-loan debt-relief and credit-repair services to consumers nationwide from 2011 until at least April 2019.

14. FDATR solicited consumers through radio and television commercials as well as through its website, fedsrelief.com, and through Facebook ads that linked to the website.

15. On both the website and in Facebook advertisements, FDATR claimed that its services would:

- Reduce or Eliminate Your Payments;
- Stop Wage Garnishment;
- Lift IRS Tax Liens; and
- Improve Credit Scores.

16. On its website, FDATR additionally claimed that it would:

- Cut Loan Payments in HALF;
- Restore Financial Aid Eligibility;
- Remove I9 Rating; and
- Restore your ability to get your Diplomas & Transcripts.

17. FDATR's advertisements instructed consumers to call a toll-free number, which connected consumers to FDATR's telemarketing call center.

18. Through telemarketing-sales agents, FDATR told consumers that the company had helped thousands of customers resolve their loan-payment problems.

19. FDATR, through its telemarketing-sales agents, told consumers that its services would result in lower student-loan payments or in consumers' student loans being forgiven and that, with respect to those student loans, consumers would be debt-free, owing \$0 in payments.

20. For consumers facing wage garnishment due to a student-loan debt, FDATR, through its telemarketing-sales agents, offered services to resolve the consumer's wage garnishment.

21. For consumers that enrolled in services, FDATR's telemarketing-sales agents caused electronic documents, including a contract, a power-of-attorney form, and an invoice, to be sent to the enrolling consumer through FDATR's customer-management platform.

22. Before sending those documents to prospective customers, FDATR, through its telemarketing-sales agents, charged the customer, typically \$1 or \$99, purportedly to ensure that it had a valid payment method on file.

23. For its services, FDATR typically charged customers a minimum of \$499 as a one-time payment within two to three weeks of enrollment or \$600 paid in installments over a three-to-six-month period, with customers typically making the first payment within days or weeks of enrollment.

24. The services that FDATR typically provided to customers consisted of, at most, completing and filing loan-consolidation paperwork with the Department of Education, and it typically took three to six months to do so.

25. But loan consolidation alone does not achieve the results that FDATR promised to consumers—it does not necessarily result in lower loan payments, does not eliminate payments, and can result in higher payments. Moreover, loan consolidation does not improve consumers' credit scores or remove negative credit-status codes or ratings from credit reports.

26. FDATR had no basis to assert that its services would result in lower monthly payments, cut student-loan payments in half, or eliminate consumer's monthly student-loan payments entirely. FDATR did not track whether its services achieved any of these results for consumers. And consumers complained that FDATR did not, in fact, achieve these results.

27. FDATR had no basis to assert that its services would result in improved credit scores or the removal of negative credit-status codes or ratings from credit reports. In fact, FDATR did no work to improve consumers' credit scores or to remove negative credit-status codes or ratings from credit reports. And FDATR did not track whether its services achieved these promised results. FDATR did not check consumers' credit scores before or after the company performed services for consumers and had no way of knowing how, or to what extent, even a successful loan consolidation would impact a consumer's credit score.

COUNT I

Abusive Telemarketing Acts or Practices That Violate the TSR—Debt-Relief Services (Against All Defendants)

28. The allegations in paragraphs 1 to 27 are incorporated here by reference.

29. It is an abusive telemarketing act or practice and a TSR violation for any seller or telemarketer to request or receive payment of any fee or consideration for any debt-relief service until and unless:

- a. the seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement,

debt-management plan, or other such valid contractual agreement executed by the customer;

- b. the customer has made at least one payment pursuant to that settlement agreement, debt-management plan, or other valid contractual agreement between the customer and the creditor or debt collector; and
- c. to the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration either (1) bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount; or (2) is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration. 16 C.F.R. § 310.4(a)(5)(i).

30. In numerous instances, in connection with telemarketing student-loan debt-relief services, Defendants requested and received payment of a fee or consideration for a debt-relief service before they renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt-management plan, or other such valid contractual agreement executed by the customer and the customer made at least one payment pursuant to that agreement. And FDATR's fee or consideration was not proportional to or a percentage of the amount saved as a result of its services. 16 C.F.R. § 310.4(a)(5)(i).

31. Defendants, therefore, engaged in abusive telemarketing acts or practices that violated the TSR. 16 C.F.R. § 310.4(a)(5)(i).

32. In addition to being sellers under the TSR, Tucci and Halverson also provided substantial assistance or support to FDATR while they knew or consciously avoided knowing that FDATR had engaged in an act or practice that violated the TSR. 16 C.F.R. § 310.3(b).

COUNT II

Abusive Telemarketing Acts or Practices That Violate the TSR—Credit-Repair Services (Against All Defendants)

33. The allegations in paragraphs 1 to 27 are incorporated here by reference.

34. It is an abusive telemarketing act or practice and TSR violation for any seller or telemarketer to request or receive payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating, until:

- a. the timeframe in which the seller has represented that all of the goods or services will be provided to that person has expired; and
- b. the seller has provided the person with documentation in the form of a consumer report from a consumer-reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. 16 C.F.R. § 310.4(a)(2).

35. Defendants made representations to consumers that its services would remove derogatory information from, or improve, consumers' credit histories, credit reports, or credit ratings, but Defendants did not provide any such services.

36. Defendants routinely requested and received payment of a fee or consideration for its credit-repair services before (a) the timeframe in which they represented that all of their goods or services would be provided to the consumer expired, and (b) they provided the consumer with documentation in the form of a consumer report from a consumer-reporting agency

demonstrating that the promised results were achieved, such report having been issued more than six months after the results were achieved.

37. Defendants, therefore, engaged in abusive telemarketing acts or practices that violated the TSR, 16 C.F.R. § 310.4(a)(2).

38. In addition to being sellers under the TSR, Tucci and Halverson also provided substantial assistance or support to FDATR while they knew or consciously avoided knowing that FDATR had engaged in an act or practice that violated the TSR. 16 C.F.R. § 310.3(b).

COUNT III
Deceptive Telemarketing Acts or Practices That Violate the TSR
(Against All Defendants)

39. The allegations in paragraphs 1 to 27 are incorporated here by reference.

40. It is a deceptive telemarketing act or practice under the TSR for a seller or telemarketer to misrepresent any material aspect of the performance, efficacy, nature, or central characteristics of its services. 16 C.F.R. § 310.3(a)(2)(iii).

41. It is also a deceptive marketing practice under the TSR for a seller or telemarketer of a debt-relief service to misrepresent any material aspect of any debt-relief service, including: (1) the percentage of the debt amount that a customer may save through the service, (2) the effect of the service on collection efforts of the customer's creditors or debt collectors, and (3) the effect of the service on a customer's creditworthiness. 16 C.F.R. § 310.3(a)(2)(x). And, when making representations, a seller or telemarketer must have a reasonable basis to substantiate its claims. *Telemarketing Sales Rule, Statement of Basis and Purpose*, 75 Fed. Reg. 48,458, 48,500-501 (Aug. 10, 2010).

42. In numerous instances, in connection with telemarketing their services, Defendants misrepresented, directly or indirectly, expressly or by implication, material aspects of

the student-loan debt-relief services that they offered, sold, or provided to consumers, including that its services would result in:

- a. reduced student-loan payments or cut student-loan payments in half;
- b. eliminated student-loan payments;
- c. improved credit scores; and
- d. the removal of negative credit-status codes or ratings from credit reports.

43. But, in numerous instances, FDATR's actions did not result in the elimination of consumers' student-loan payments, did not cut consumers' student-loan payments, did not always reduce consumers' student-loan payments, did not improve consumers' credit scores, and did not remove negative credit-status codes or ratings from consumers' credit reports. Further, FDATR did not provide any services related to credit reporting or scores and in no way tracked whether it achieved the results advertised.

44. Accordingly, these claims were false—FDATR rarely if ever achieved the promised results and, in some instances, did not provide the promised services at all.

45. These claims were also unsubstantiated—FDATR cannot substantiate these claims because it did not track its results and it had no way of knowing whether it achieved the promised results.

46. Defendants, therefore, engaged in deceptive telemarketing acts or practices that violated the TSR, 16 C.F.R. § 310.3(a)(2)(iii) and (x).

47. In addition to being sellers under the TSR, Tucci and Halverson also provided substantial assistance or support to FDATR while they knew or consciously avoided knowing that FDATR had engaged in an act or practice that violated the TSR. 16 C.F.R. § 310.3(b).

COUNT IV
TSR Violations Constitute Violations of the CFPA
(Against All Defendants)

48. The allegations in paragraphs 1 to 27 are incorporated here by reference.

49. Under the CFPA, it is unlawful for any covered person or service provider to commit any act or omission that violates a “Federal consumer financial law.” 12 U.S.C. § 5536(a)(1)(A).

50. A violation of the TSR that is committed by a person subject to the CFPA shall be treated as a violation of a rule under § 1031 of the CFPA, 12 U.S.C. § 5531, regarding unfair, deceptive, or abusive acts or practices. 15 U.S.C. § 6102(c)(2).

51. Therefore, a violation of the TSR by a covered person is also a violation of the CFPA.

52. Because Defendants are covered persons and have committed an act or omission that violated the TSR, they also violated the CFPA. 12 U.S.C. § 5536(a)(1)(A).

COUNT V
Deceptive Acts or Practices That Violate the CFPA
(Against All Defendants)

53. The allegations in paragraphs 1 to 27 are incorporated here by reference.

54. Under the CFPA, it is unlawful for any covered person or service provider to engage in a deceptive act or practice in connection with any transaction with a consumer for a consumer-financial product or service, or the offering of a consumer-financial product or service. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

55. An act or practice is deceptive if it involves a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances.

56. In numerous instances, in connection with the offering or provision of student-loan debt-relief and credit-repair services, Defendants represented, directly or indirectly, expressly or by implication, to consumers that its services would result in:

- a. reduced student-loan payments or cut student-loan payments in half;
- b. eliminated student-loan payments;
- c. improved credit scores; and
- d. the removal of negative credit-status codes or ratings from credit reports.

57. These claims were material because they were the main services that FDATR offered—debt relief and credit repair—and were the outcomes that financially distressed consumers paid FDATR to pursue. Moreover, these claims were likely to affect consumers’ decisions to enroll in FDATR’s program and pay FDATR for its services.

58. These claims were false—FDATR rarely if ever achieved the promised results and, in some instances, did not provide the promised services at all.

59. These claims were also unsubstantiated—FDATR cannot substantiate these claims because it did not track its results and it had no way of knowing whether it achieved the promised results.

60. Consumers reasonably relied on FDATR’s express claims about the results its services would achieve, and these claims misled financially distressed consumers into paying substantial amounts of money to FDATR to their detriment.

61. Defendants, therefore, engaged in deceptive acts or practices that violated the CFPA. 12 U.S.C. §§ 5531, 5536(a)(1).

DEMAND FOR RELIEF

As permitted by 12 U.S.C. § 5565, the Bureau requests that the Court:

- a. permanently enjoin Defendants from further violations of the TSR and CFPA;
- b. grant additional equitable relief as the Court may deem to be just and proper, including the rescission of contracts;
- c. award monetary relief against Defendants, including the refund of monies paid and restitution;
- d. order disgorgement of ill-gotten revenues against Defendants;
- e. impose civil money penalties against Defendants; and
- f. award the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: November 20, 2020

Respectfully submitted,
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