



Office of Commissioner
Rohit Chopra

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

STATEMENT OF COMMISSIONER ROHIT CHOPRA

*In the Matter of Midwest Recovery Systems
Commission File No. 1923042
November 25, 2020*

Summary

- The FTC’s go-it-alone debt collection enforcement strategy frequently leads to outcomes where victims receive only a miniscule percentage of their losses – or even nothing at all.
- To best serve the public and stop debt collection abuses, the FTC should work in concert with the Consumer Financial Protection Bureau. Joint actions will help make victims whole through access to the CFPB’s Civil Penalty Fund and reduce duplicative efforts.
- As Commissioners, we must stop ignoring Congress and must recalibrate agency priorities and strategies in the financial services arena.

When debt collectors engage in illegal conduct, this harms families and their honest competitors. Decades ago, Congress recognized that our laws needed to do more to redress injuries, noting that collection abuses contribute to “personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.”¹ In addition, cracking down on abuses would ensure that “those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.”²

Today, the Commission is sanctioning Midwest Recovery Systems and its ringleaders – Brandon M. Tumber, Kenny W. Conway, and Joseph H. Smith – for allegedly engaging in unlawful debt collection and credit reporting practices. The complaint includes charges that this debt collection outfit “parked” debt – including counterfeit debt – on consumers’ credit reports in order to coerce them to pay.³ Families likely learned about these debts when applying for a job, an apartment, or a loan. The allegations suggest that the firm hauled in millions of dollars from consumers through these practices.⁴ This is deeply harmful to the families affected, and it is unfair to law-abiding firms.

While it is clear that these practices were unlawful, I respectfully disagree with the proposed settlement, since the defendants will be allowed to continue their careers in debt collection and consumers will receive almost no help whatsoever.

¹ 15 U.S.C. § 1692(a).

² 15 U.S.C. § 1692(e).

³ Compl., *Fed. Trade Comm’n v. Midwest Recovery Systems et al.*, ¶¶ 20-30.

⁴ *Id.* ¶¶ 13, 19.

Bad Actor Accountability and Victim Redress

First, I believe that the alleged misconduct warrants banning the defendants from engaging in any collections or credit reporting going forward. As a public service, the FTC maintains a database of banned debt collectors.⁵ The conduct at issue in this matter is similar in severity to conduct in other matters where the agency has sought and obtained bans. For example, last year, the Commission charged Global Asset Financial Services Group and its principals with collecting on phantom debt, among other violations alleged. This action resulted in an order banning several individuals involved from the debt collection industry.⁶

In addition, the FTC's settlement orders \$24.3 million in monetary relief, but the agency has agreed to accept just 0.2 percent of this amount to resolve the matter, since the defendants don't have the money.⁷ Unfortunately, this is a common occurrence. One of the current Commission's first debt collection settlements recovered just 1.8 percent of the judgment.⁸ Indeed, the vast majority of recent FTC debt collection actions do not make victims whole, and in a number of recent cases, the Commission has recovered less than three percent of the judgment.⁹ This means that victims are shortchanged, with many getting nothing at all, including those who may have lost out on job and housing opportunities due to the conduct.

In cases like these where there are almost no funds to distribute, I would prefer that the FTC closely cooperate with the debt collection industry's primary federal regulator, the Consumer Financial Protection Bureau (CFPB), to obtain a civil penalty, even if the penalty were only \$1. Under the Consumer Financial Protection Act, victims might then qualify for monetary redress under the CFPB's Civil Penalty Fund.¹⁰ For the victims of illegal debt collection schemes, any recovery could make a big difference in their lives.

⁵ *Banned Debt Collectors*, FED. TRADE COMM'N, <https://www.ftc.gov/enforcement/cases-proceedings/banned-debt-collectors> (last visited on Nov. 17, 2020).

⁶ See Press Release, Fed. Trade Comm'n, Operators of Phantom Debt Scheme Permanently Banned From Debt Collection under Settlement with FTC (Dec. 11, 2019), <https://www.ftc.gov/news-events/press-releases/2019/12/operators-phantom-debt-scheme-permanently-banned-debt-collection>.

⁷ It is my hope that we will recover more. This figure may be augmented through the sale or transfer of certain miscellaneous assets. See Stipulated Order for Permanent Injunction and Monetary Judgment, Section VIII (D)-(E).

⁸ Press Release, Fed. Trade Comm'n, Operator of Fraudulent Debt Collection Scheme Settles With FTC, New York (Feb. 25, 2020), <https://www.ftc.gov/news-events/press-releases/2020/02/operator-fraudulent-debt-collection-scheme-settles-ftc-new-york> (announcing a 1.8 percent recovery).

⁹ Press Release, Fed. Trade Comm'n, Phantom Debt Brokers and Collectors Settle FTC and New York AG Charges (July 1, 2019), <https://www.ftc.gov/news-events/press-releases/2019/07/phantom-debt-brokers-collectors-settle-ftc-new-york-ag-charges> (announcing a 2.4 percent recovery against one defendant, and a ten percent recovery against another); Press Release, Fed. Trade Comm'n, FTC and New York Attorney General Settlements Ban Abusive Debt Collectors from the Debt Collection Business and from Buying or Selling Debt (Mar. 22, 2018), <https://www.ftc.gov/news-events/press-releases/2018/03/ftc-new-york-attorney-general-settlements-ban-abusive-debt> (announcing a 2 percent recovery); Press Release, Fed. Trade Comm'n, Abusive Debt Collectors Banned from Collection Business (July 14, 2016), <https://www.ftc.gov/news-events/press-releases/2016/07/ftc-action-abusive-debt-collectors-banned-collection-business> (announcing a 2.3 percent recovery).

¹⁰ *Civil Penalty Fund*, CONSUMER FIN. PROTEC. BUREAU, <https://www.consumerfinance.gov/about-us/payments-harmed-consumers/civil-penalty-fund/> (last visited on Nov. 17, 2020). For example, in a recently announced settlement, the CFPB obtained an order that included a \$900,000 restitution payment, which constituted ten percent of the total consumer harm. However, because the CFPB also obtained a \$1 penalty judgment, victims may be able to seek relief from the Civil Penalty Fund. Press Release, Consumer Financial Protection Bureau, Consumer Fin. Protec. Bureau Settles with U.S. Equity Advantage, Inc. and Its Owner, Robert M. Steenbergh, for Deceptive Sales Practices (Nov. 20, 2020), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-us-equity->

Whack-a-Mole vs. Systemic Reform

Ten years ago, Congress stripped the FTC of key authorities in the mortgage, debt collection, and credit reporting markets, and empowered the CFPB and state attorneys general with new ones. While Congress significantly shrank the FTC's role in these industries, the FTC has enforcement authority for a subset of entities covered by laws like the Fair Debt Collection Practices Act and the Fair Credit Reporting Act. The agency should recognize that one-off case-by-case enforcement has limitations.

While case-by-case enforcement is critical to providing redress to victims and holding bad actors accountable, it will not lead to systemic fixes to persistent debt collection abuses. Here, the CFPB has important tools that could significantly reform this market. Several years ago, when the CFPB launched a rulemaking on third-party debt collection, the agency indicated that it planned to address first-party debt collection on a separate track.¹¹ Despite support for this approach,¹² it never did. Commonsense rules for ensuring accuracy in the collection and sale of debt would cut off at the source abuses like those seen in this case.

When it comes to “debt parking,” a systemic fix likely requires changes in business practices by Equifax, Experian, TransUnion, and other credit reporting agencies. These companies can prevent illegal parking by heeding clear warning signs, such as by cutting off furnishers with unusually high deletion rates.¹³ The CFPB can address this problem by using its authority to define unfair, deceptive, and abusive practices by credit reporting agencies. It is critical that bad actors not be allowed to weaponize the credit reporting system against consumers.

Conclusion

If the FTC's enforcement is routinely leading to outcomes that do not provide meaningful help for consumers, we will need to rethink our approach, given our limited resources. As Commissioners, we should carefully review our priorities in the financial services sector. For example, I strongly support the Commission's efforts to crack down on predatory nonbank small business lending, where the agency is the sole federal watchdog.¹⁴ In areas like this, the FTC can and should be on the leading edge of battling pressing problems in the marketplace.

[advantage-inc-and-owner-robert-m-steenbergh-deceptive-sales-practices/](#) (“Consumers harmed by USEA and Steenbergh may be eligible for additional relief from the Bureau's Civil Penalty Fund.”).

¹¹ Press Release, Consumer Fin. Protec. Bureau, Consumer Financial Protection Bureau Considers Proposal to Overhaul Debt Collection Market (July 28, 2016), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-considers-proposal-overhaul-debt-collection-market/> (“As part of its overhaul of the debt collection marketplace, the CFPB plans to address consumer protection issues involving first-party debt collectors and creditors on a separate track.”).

¹² See, e.g., Cal. Att'y Gen. et al., Re Proposed Rule Concerning Debt Collection Practices (Regulation F), Docket No. CFPB-2019-0022 (Sep. 18, 2019), <https://oag.ca.gov/system/files/attachments/press-docs/Multistate%20CFPB%20Debt%20Collection%20Comment%20Letter.pdf> (“Both first-party creditors and third-party debt collectors harm consumers when they engage in unfair, deceptive, and abusive debt collection practices. There is no reason to treat their actions differently.”); Nat'l Consumer L. Ctr. et al., Comments to the Consumer Financial Protection Bureau on its Proposed Debt Collection Rule, Docket No. CFPB-2019-0022, RIN 3170-AA41 (Sep. 18, 2019), https://www.nclc.org/images/pdf/debt_collection/comments-debt-collection-sept2019.pdf (“The CFPB should also open a new rulemaking to address excessive calls by payday lenders and other first-party creditors.”).

¹³ Compl., *supra* note 3, ¶ 29.

¹⁴ Rohit Chopra, Commissioner, Fed. Trade Comm'n., Prepared Remarks for the Forum on Small Bus. Financing

In shaping its priorities, the FTC must also stop ignoring Congress. Since 2010, Congress has granted the FTC many new authorities, but we need to recognize that they are going unused. For example:

- Congress gave the FTC rulemaking authority over a broad range of auto financing and sales practices, which could trigger penalties and damages for violators.¹⁵
- Congress enacted legislation giving the FTC enforcement authority over the Military Lending Act,¹⁶ and it directed the FTC to formally coordinate with the Federal Reserve Board of Governors and the CFPB's Office of Servicemember Affairs to address abuses against military families in the auto sector.¹⁷
- Congress provided the FTC with authority to protect small businesses from being overcharged on routing customer debit card transactions.¹⁸

Despite these new authorities and directives in the financial services sector, the Commission has not finalized any enforcement actions or otherwise put these tools to use in a meaningful way. As we seek additional authorities, we are more likely to succeed if we can demonstrate that we are fulfilling the responsibilities that Congress has already entrusted us with.

Across the government, we must take stock of our enforcement and rulemaking tools to ensure that agencies are delivering meaningful redress, deterring misconduct, and correcting systemic abuses. This will require careful collaboration across many government agencies with relevant authorities, rather than relying on a go-it-alone approach.¹⁹

For these reasons, I respectfully dissent.

(May 8, 2019), <https://www.ftc.gov/public-statements/2019/05/prepared-remarks-commissioner-rohit-chopra-forum-small-business-financing>; Statement of Commissioner Rohit Chopra Regarding Yellowstone Capital, LLC, Comm'n File No. 1823202 (Aug. 3, 2020), <https://www.ftc.gov/public-statements/2020/08/statement-commissioner-rohit-chopra-regarding-yellowstone-capital-llc>.

¹⁵ 12 U.S.C. § 5519(d).

¹⁶ In the National Defense Authorization Act for Fiscal Year 2013, Congress codified the FTC's authority to enforce the Military Lending Act. *See* 10 U.S.C. § 987.

¹⁷ 12 U.S.C. § 5519(e).

¹⁸ The FTC enforces rules promulgated by the Federal Reserve Board of Governors with respect to payment card networks and other nonbank entities. 15 U.S.C. § 1693o-2(b).

¹⁹ For example, under the Consumer Financial Protection Act, both state attorneys general and the CFPB can seek civil penalties for unfair or deceptive practices. Partnering with these enforcers can lead to better results for consumers and the market. *See* Statement of Commissioner Rohit Chopra, In the Matter of Social Finance, Inc., Comm'n File No. 1623197 (Oct. 29, 2018), <https://www.ftc.gov/public-statements/2018/10/statement-commissioner-rohit-chopra-matter-social-finance-inc> (noting that the Commission could have obtained stronger relief against a student loan finance firm by partnering with states or the CFPB).