



Office of Commissioner
Rebecca Kelly Slaughter

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

CONCURRING STATEMENT OF COMMISSIONER REBECCA KELLY SLAUGHTER

In the Matter of Tate's Auto
Commission File No. X180041
July 29, 2021

The Commission announced a proposed settlement to resolve allegations against Richard Berry, owner and manager of the now defunct group of auto dealers known as Tate's Auto. Tate's Auto was a collection of auto dealerships with locations in cities near the border of the Navajo Nation that specifically marketed to and targeted Navajo consumers.¹ The FTC alleged that when consumers came in to buy a car and needed financing, Tate's Auto falsely inflated consumers' income and down payment information on vehicle financing applications.² As detailed in the FTC's complaint, by falsifying consumers' income and the amount of out-of-pocket cash paid, Tate's Auto made consumers appear more creditworthy and submitted false financing applications without consumers' knowledge.³ This practice exposed consumers to the risk of liability for submitting false information to financing companies and associated costs.⁴ Unsurprisingly, as described in our complaint, Tate's practices were followed by an increase in the rate of default for individual consumers and restrictions on access to credit for other consumers in the Navajo Nation area.⁵

This is exactly the type of pernicious conduct targeting a community that has already suffered generations of economic injustice that the FTC should be pursuing. The loan practices here were eerily similar to those at the heart of the financial crisis in 2008. And the consumers targeted with this scheme were from a population that is not only presently but also historically oppressed. We know all too well that unfair loan practices have outsized effects on disadvantaged communities⁶, and I want to commend the talented staff of the Division of Financial Practices for their thorough investigation and hard-fought litigation efforts.

I want to call specific attention, however, to the limitations staff faced here and what that

¹ Complaint ¶ 14 available at https://www.ftc.gov/system/files/documents/cases/tates_automotive_complaint.pdf.

² Complaint ¶¶ 18-21.

³ Complaint ¶ 26.

⁴ *Id.*

⁵ Complaint ¶¶ 31-32.

⁶ See, e.g., Caroline Nagy, *Building Justice: The Lasting Racial Stain of the Foreclosure Crisis*, City Limits, (Sept. 19, 2016) <https://citylimits.org/2016/09/19/building-justice-the-lasting-racial-stain-of-the-foreclosure-crisis/>.

means for the affected consumers. In 2018, the Commission filed suit against Tate’s Auto, owner-manager Richard Berry, and owner-president Linda Tate seeking monetary and injunctive relief for violations of the FTC Act as well as other regulations.⁷ Tate’s Auto filed for bankruptcy and the FTC settled for injunctive relief and a \$7 million judgment that was entered by the court, but remained unpaid by the conclusion of the bankruptcy proceedings.⁸ Thereafter, litigation continued against the individual owners Richard Berry and Linda Tate. But on April 21, 2021, the United States Supreme Court ruled in *AMG Capital Management* that the FTC no longer has the authority to seek monetary relief on behalf of consumers in federal court under Section 13(b) of the FTC Act.⁹ If the FTC continued to pursue Section 5 claims against Mr. Berry and relief defendant claims against Ms. Tate through trial the most we could expect to return to consumers is not \$7 million, but \$0.

In this stark judicial landscape, staff’s ability to secure injunctive relief and a payment of \$450,000 is the best available outcome for consumers and will hopefully provide modest monetary relief to some victims. But make no mistake: consumers here lost their cars and incurred the costs of default through no fault of their own, they are not made whole or anywhere close and the FTC’s ability to help them is greatly diminished.¹⁰

I call, again, on Congress to act quickly to restore fully our ability to seek monetary relief on behalf of consumers under Section 13(b) of the FTC Act.

⁷ In addition to falsely inflating consumers’ income and down payment information on vehicle financing applications in violation of Section 5 of the FTC Act, the FTC also alleged that Tate’s Auto misrepresented important financial terms in vehicle advertisements in violation of Section 5 and engaged in violations of the Truth in Lending Act (TILA) and the Consumer Lease Act (CLA). The Court found ruled in favor of the FTC regarding the defendants’ violations of TILA and the CLA, *Fed. Trade Comm’n v. Tate’s Auto Ctr. of Winslow Incorporation*, No. CV-18-08176-PCT-DJH (D. Ariz. Feb. 5, 2021), but the FTC is not entitled to seek monetary relief in this action under either statute.

⁸ See August 18, 2020 Order https://www.ftc.gov/system/files/documents/cases/148_order.pdf. The dealerships’ bankruptcy cases were jointly administered under Case No. 2:19-bk-02493-BMW (D. Ariz) and are now closed.

⁹ See *AMG Capital Mgmt., LLC v. FTC*, No. 19-508, 593 U.S. ___, slip op. (Apr. 22, 2021), https://www.supremecourt.gov/opinions/20pdf/19-508_l6gn.pdf.

¹⁰ This matter is not the only instance where the Commission is left with limited options to recover monetary relief in federal court for consumers. For example, the Commission recently voted to file a proposed settlement with Lending Club, resolving allegations centering on hidden origination fees for \$18 million when the possible range of allegedly hidden fees ran upwards of \$1 billion. See, Press Release, Fed. Trade Comm’n, *LendingClub Agrees to Pay \$18 Million to Settle FTC Charges* (July 14, 2021) <https://www.ftc.gov/news-events/press-releases/2021/07/lendingclub-agrees-pay-18-million-settle-ftc-charges>.