

CFPB Settles Lawsuit Against Online Payday Lenders

Prepared by:
Barbara S. Mishkin
Ballard Spahr LLP

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CFPB settles lawsuit against online payday lenders

Written by **Barbara S. Mishkin** 8/14/18

The CFPB announced that it has settled a lawsuit that it filed in 2014 in a Missouri federal district court alleging that the defendants engaged in unlawful online payday lending schemes. The CFPB had sued Richard Moseley Sr., two other individuals, and a group of interrelated companies, some of which were directly involved in making payday loans and others that provided loan servicing and processing for such loans. The CFPB alleged that the defendants had engaged in deceptive and unfair acts or practices in violation of the Consumer Financial Protection Act as well as violations of the Truth in Lending Act and the Electronic Fund Transfer Act. According to the CFPB's complaint, the defendants' unlawful actions included providing TILA disclosures that did not reflect the loans' automatic renewal feature and conditioning the loans on the consumer's repayment through preauthorized electronic funds transfers. A receiver was subsequently appointed for the companies.

In November 2017, Mr. Moseley was convicted by a federal jury on all criminal counts in an indictment filed by the DOJ, including violations of the Racketeer Influenced and Corrupt Organizations Act (RICO) and the TILA. In its indictment of Mr. Moseley, the DOJ claimed that the loans made by the lenders

controlled by Mr. Moseley violated the usury laws of various states that effectively prohibit payday lending and also violated the usury laws of other states that permit payday lending by licensed (but not unlicensed) lenders. The indictment charged that Mr. Moseley was part of a criminal organization under RICO whose crimes included the collection of unlawful debts.

Mr. Moseley was charged with committing a criminal violation of TILA by “willfully and knowingly” giving false and inaccurate information and failing to provide information required to be disclosed under TILA. The DOJ’s TILA count was particularly noteworthy because criminal prosecutions for alleged TILA violations are very rare. The other counts against Mr. Moseley included wire fraud and conspiracy to commit wire fraud by making loans to consumers who had not authorized such loans. Mr. Moseley has appealed his conviction.

Pursuant to the Stipulated Final Judgment and Order (Order), a judgment is entered in favor of the Bureau in the amount of \$69,623,658 “for the purpose of redress” to consumers. The Order states that this amount represents the Defendants’ gross profits from January 1, 2008 through August 1, 2018. The Order extinguishes all consumer debt related to loans originated by the defendants during that period.

Based on the defendants’ financial condition, the Order suspends the full amount of the judgment subject to the defendants’ forfeiture of various assets and “the truthfulness, accuracy, and completeness” of the financial statements and supporting

documents that the defendants submitted to the Bureau. According to the CFPB's press release, the forfeited assets, which consist of bank accounts and other assets, are worth approximately \$14 million. The Order also requires the defendants to pay a \$1 civil money penalty.

The Order permanently bans the defendants from marketing, originating, collecting, or selling consumer credit or debt, permanently enjoins them from continuing to engage in the unlawful conduct alleged in the CFPB's lawsuit, and prohibits them from disclosing any customer information that was obtained in connection with the loans made by the defendants.

This publication is intended to notify recipients of new developments in the law. It should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own attorney concerning your situation and specific legal questions you have.

*For questions regarding this update, please contact: Barbara S. Mishkin
Ballard Spahr LLP, 1735 Market Street, 51st Floor Philadelphia, PA 19103-7599*

Email: mishkinb@ballardspahr.com

Phone: 215.864.8528

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