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Opinion

Consumer Agency Wins Court Case against CashCall

Charlene Crowell

NNPA Columnist

The fight for fair lending got a big boost on Aug. 31 when a federal court rejected a payday loan collector's attempt to evade consumer laws. The decision against CashCall, a California-based online payday and installment lender, upheld the Consumer Financial Protection Bureau's (CFPB) authority to investigate and fine lenders for unfair, abusive or deceptive practices.

The court ruling is a key step in a legal battle that began nearly three years ago.

In December 2013 and for the first time, CFPB sued to secure consumer refunds of illegally collected money. According to the filing, "defendants engaged in unfair, deceptive and abusive practices, including illegally debiting consumer checking accounts for loans that were void."

CFPB charged that California-based CashCall, its subsidiary WS Funding LLC, affiliate Delbert Services Corporation, a Nevada collection agency were all the same ownership. Loans ranging from $850- $10,000 were sold with upfront fees, lengthy repayment terms and interest rates as high as 343 percent. CFPB charged that these loan terms violated state laws in at least 16 states that had in place licensing requirements, interest rate caps — or both.

As early as 2009, CashCall also partnered with Western Sky Financial, another company, to claim that tribal law rather than state law applied to their loans. Readers may recall a series of television ads promoting Western Sky's quick and easy loans.

The federal court disagreed and dismissed challenging arguments, finding CashCall to be the true lender. The relationship with Western Sky was tantamount to a "rent-a-bank" scheme. In part the ruling stated affected states "have expressed a fundamental public policy in protecting its citizens."

> "The noticeable presence of payday lenders in Black and Latino communities indicate that our people are being targeted to become financial victims

CFPB's late summer court victory is similar to another recent enforcement action by the Maryland Commissioner of Financial Regulation. In that state's court, CashCall was found to be a lender that tried to evade state usury limits by using the rent-a-bank scheme.

Today, there are 90 million people who live in the District of Columbia and 14 states where excessively-priced payday loans are not allowed. Collectively, these states save more than $2 billion a year that would otherwise be spent on payday loan fees.

That's a good thing for consumers.

Consumer advocates are celebrating this important victory. It is one that upholds the importance of strong state laws and effective enforcement.

"This important ruling validates the right of states to protect their citizens from predatory loans, whether they are made online or at a storefront", noted Diane Standaert, director of state policy and an executive vice president with the Center for Responsible Lending. "It reinforces the common sense concept that people should not be harassed for debts they do not owe. Both states and the CFPB must continue to enact protections against unfair lending and collection practices."

The court ruling also comes when the deadline for public comment on payday lending approaches. CFPB will accept comments from citizens and organizations that have concerns about payday and high-cost, small-dollar loans. An online portal can accept comments at: http://stoppaydaypredators.org/crl/.

The deadline for public comment is October 7. If anyone doubts how these small-dollar loans cause so much financial harm, consider these facts:

- Over $3.4 billion in excessive fees are drained from payday borrowers each year.
- Nearly 1 in 4 payday borrowers rely on either public assistance or retirement benefits as an income source.
- Payday borrowers are more likely to experience bank penalty fees, delinquencies on other bills, and delayed medical care.

All too often across the country, payday storefronts ply their trade in Black and Latino neighborhoods. The noticeable presence of payday lenders in our communities indicate that our people are being targeted to become financial victims. I would challenge anyone to identify areas dominated by high-income consumers have a comparable number of payday stores.

Starting now, choose not to become a payday victim. If there was ever a time to speak up or speak out on predatory lending, don't miss the Oct. 7 deadline for comments.

Richard Cordray's Testimony Before the Senate

Richard Cordray

Director, Consumer Financial Protection Bureau

This week, Consumer Financial Protection Bureau (CFPB) Director Richard Cordray delivered before the Senate Committee on Banking, Housing, and Urban Affairs in Washington, DC.

Below, please find his written testimony:

Chairman Shelby, Ranking Member Brown, and members of the Committee, thank you for the opportunity to speak with you today. In these brief remarks, I will discuss: (1) what our investigation found about the sales practices at Wells Fargo; (2) what we are seeking to achieve by our Order; and (3) some initial thoughts about what further steps need to be taken to improve the culture and practices of the banking industry.

On Sept. 8, 2016, the Consumer Bureau, together with our partners at the Los Angeles City Attorney's office and the Office of the Comptroller of the Currency, took an enforcement action against Wells Fargo Bank. Our investigations found that, in order to meet sales goals and collect financial bonuses for themselves, employees of the bank created unauthorized deposit and credit card accounts, enrolled consumers in online banking services, and ordered debit cards for consumers, all without their consent or even their knowledge. Some of these practices involved fake email accounts and phony PIN numbers.

> "They represent a staggering breach of trust and conduct that should never occur at any bank

The fraudulent conduct occurred on a massive scale. As detailed in our Order, Wells Fargo opened 1,534,280 deposit accounts that may not have been authorized, including transferring funds from some customer accounts without their knowledge or consent. Wells Fargo also initiated applications for 565,443 credit card accounts that may not have been authorized, by using consumers' information without their knowledge or consent. These activities caused some consumers to incur fees. Even apart from that, they represent a staggering breach of trust and conduct that should never occur at any bank. Wells Fargo has demonstrated the epic scope of its failures by terminating at least 5,300 people thus far, including branch managers and managers of managers.

The gravity and breadth of the fraud that occurred at Wells Fargo cannot be pushed aside as the stray misconduct of just a few bad apples. As one former federal prosecutor has aptly noted, the stunning nature and scale of these practices reflects instead the consequences of a diseased orchard. As our Order describes, Wells Fargo built and refined an incentive-compensation program and implemented sales goals to boost the cross-selling of products, but did so in a way that made it possible for its employees to pursue unfair and abusive sales practices. It appears that the bank did not monitor the program carefully, allowing thousands of employees to game the system and inflate their sales figures to meet their sales targets and claim higher bonuses. Rather than put its customers first, Wells Fargo built and sustained a program where the bank and many of its employees served themselves instead, violating the basic ethics of a banking institution, including the key norm of trust.

Our Order accomplishes several things. First, the kind of detail that we always make it a point to provide in our enforcement orders exposes Wells Fargo's illegal misconduct, including its scale, for all to see for themselves. It has spawned vigorous public scrutiny over the past two weeks that no doubt will continue.

Read the rest of this commentary at **TheSkanner.com**