Middlemen Run Afoul of FTC Suspicions

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Brokers, middlemen, and intermediaries serve an economic purpose: to put people who want a product or service in touch with a product maker or service provider. Real estate brokers help us buy and sell homes; mortgage brokers help us find lenders for our home purchases; manufacturing reps help get new products on our grocery shelves, and so on. These middlemen help match buyers and sellers and provide information in the marketplace.

The Federal Trade Commission, however, has become highly suspicious of intermediaries and brokers in some marketplace areas. Last week, for example, the FTC settled a case against three companies and their owner for marketing debt relief services on behalf of debt settlement service providers.

The defendant companies, Hermosa Group LLC, Media Innovations LLC and Financial Future Network LLC, and their owner Jonathan Greenberg, were charged in the FTC's four-count complaint with (1) misrepresenting to consumers that they themselves provided debt settlement services and (2) misrepresenting to consumers that they could provide debt relief benefits without being able to substantiate such claims. The settlement bans the defendants from future involvement in the debt relief services industry and requires a payout of some $8.5 million (which will be suspended in part if the defendants pay $500,000 within ten days of the judge's order).

The defendants advertised debt relief services on radio and television, claiming that consumers could reduce, eliminate or settle their debt by calling the advertised toll-free telephone number. Consumers who called the number provided information and were ultimately put in touch with debt relief service providers.

But what did the defendants do wrong? They provided an unpopular service to a group of consumers considered vulnerable. They apparently were not explicit enough in saying that they themselves would not be providing the services and that there were no guarantees that customers would find debt relief.

Brokers like the defendants, often referred to as lead generators, are being scrutinized with increased vigor by the FTC, especially in areas where consumers are most vulnerable. Lead generators – companies that collect and sell consumer data to service providers – in the mortgage and debt services industries have been subject of recent FTC investigations and new FTC rules.

The FTC's stated reason for its increased oversight is to reduce abusive practices against desperate and cash-strapped consumers. We can all appreciate why it's important to root out fraudsters who take vulnerable consumers' last pennies in return for nothing. But the government already regulates that. The FTC's recent enforcement activity against middlemen and new rules may effectively squeeze out all intermediaries in these industries. For instance, the new Telemarketing Sales Rule will prohibit any entity – including lead generators – from receiving payment until debt relief services have been fully performed. Lead generators, such as the defendants in the recent FTC action, are generally paid up front for each lead provided, regardless of the ultimate outcome. The new rule could effectively eliminate lead generators' profits and destroy all incentive to enter the industry.

Will consumers benefit in the end? In the name of fraud prevention, consumers will see less promotion of services that may be valuable to them.

FTC Beat is authored by the Ifrah Law Firm, a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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