

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BUREAU OF CONSUMER)	
FINANCIAL PROTECTION,)	
)	
Plaintiff,)	
)	No. 20 CV 6879
v.)	
)	Judge John J. Tharp, Jr.
FDATR, INC. et al.,)	
)	Magistrate Judge M. David Weisman
Defendants.)	
)	

DEFAULT JUDGMENT AND ORDER AGAINST FDATR, INC.

The Bureau of Consumer Financial Protection (Bureau) commenced this civil action on November 20, 2020, to obtain an injunction, monetary relief, and civil penalties from Defendant FDATR, Inc. and its principals. The complaint alleges violations of (1) the Telemarketing and Consumer Fraud and Abuse Prevention Act (Telemarketing Act), 15 U.S.C. §§ 6101–08, as was well as its implementing rule, the Telemarketing Sales Rule (TSR), 16 C.F.R. pt. 310, and (2) the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531(a), 5536(a)(1).

Upon consideration of the complaint, the Bureau’s motion for entry of default judgment against Defendant FDATR, Inc., and its supporting memorandum and exhibits, and the record in this matter, IT IS HEREBY ORDERED that the Bureau’s motion for entry of default judgment is GRANTED and, under Federal Rule of Civil Procedure 55(b)(2), DEFAULT JUDGMENT shall be ENTERED AGAINST DEFENDANT FDATR, INC.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has subject-matter jurisdiction over this action because it is brought under “[f]ederal consumer financial law,” 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345.

2. This Court has jurisdiction over FDATR, and venue is proper in this district because FDATR is or was located in, resides or resided in, or does or did business in this district. 12 U.S.C. § 5564(f), 28 U.S.C. § 1391(b).

3. FDATR was properly served with a summons and the complaint.

4. FDATR failed to answer or otherwise defend this action.

5. The Clerk of the Court properly entered default against FDATR on October 6, 2021. (ECF No. 39.)

6. The complaint states claims upon which relief may be granted under the CFPA, 12 U.S.C. §§ 5531, 5536(a), and the TSR, 16 C.F.R. pt. 310, which implements the Telemarketing Act, 15 U.S.C §§ 6101–08.

7. The relief provided in this Order is appropriate and available under section 1055 of the CFPA, 12 U.S.C. § 5565, and the Telemarketing Act, 15 U.S.C. § 6102(c).

8. Because of its default, FDATR is deemed to have admitted the well-pleaded facts of the complaint, and the allegations are taken as true. Fed. R. Civ. P. 8(b)(6).

9. Because of FDATR’s default and the Clerk of the Court’s entry of default against FDATR, the Court may now exercise its discretion to enter a default judgment against FDATR. Fed. R. Civ. P. 55(b)(2).

10. FDATR is a “covered person” under the CFPA, 12 U.S.C. § 5481(6), and also a “seller” or “telemarketer” engaged in “telemarketing” and the provision of “debt relief service[s]”

under the TSR, 16 C.F.R. § 310.2(o), (dd), (ff), (gg).

I. Defendant FDATR violated the TSR and CFPA

11. The TSR prohibits telemarketers from (1) requesting or receiving advance fees for both debt-relief and credit-repair services, 16 C.F.R. § 310.4(a)(2), (a)(5)(i), and (2) misrepresenting “any material aspect of the performance, efficacy, nature, or central characteristic of goods or services that are the subject of a sales offer,” as well as “any material aspect of any debt relief service,” 16 C.F.R. § 310.3(a)(2)(iii), (x).

12. The CFPA prohibits “any covered person” from engaging in any deceptive act or practice. 12 U.S.C. §§ 5531, 5536(a)(1)(B).

13. In connection with telemarketing debt-relief services, FDATR violated the TSR because it requested and received payments from consumers (a) before it had renegotiated, settled, reduced, or altered the terms of at least one debt pursuant to a bona fide agreement or plan with the creditor or debt collector, (b) before the customer had made at least one payment pursuant to that agreement or plan, and (c) the fee was not proportional to or a percentage of the amount saved. 16 C.F.R. § 310.4(a)(5)(i).

14. In connection with telemarketing credit-repair services, FDATR violated the TSR because it requested and received fees before (a) the promised timeframe for providing the services had expired and (b) the seller had provided a consumer credit report demonstrating that the promised results had been achieved and the report was issued more than six months after the results were achieved. 16 C.F.R. § 310.4(a)(2).

15. In connection with telemarketing its debt-relief services and credit-repair services, FDATR violated the TSR because it misrepresented that it would reduce consumers’ student-loan payments or cut student-loan payments in half, eliminate consumers’ student-loan payments,

improve consumers' credit scores, and remove negative credit status codes or ratings from consumers' credit reports. 16 C.F.R. § 310.3(a)(2)(iii) and (x). These representations were false, misleading, and unsubstantiated.

16. By violating the TSR, FDATR also violated the CFPA because a violation of the TSR committed by a person subject to the CFPA, like FDATR, is treated as a violation of a rule under section 1031 of the CFPA, 12 U.S.C. § 5531, regarding unfair, deceptive, or abusive acts or practices. 15 U.S.C. § 6102(c)(2).

17. FDATR violated the CFPA's prohibition of deceptive acts or practices because it misrepresented that it would reduce consumers' student-loan payments or cut student-loan payments in half, eliminate consumers' student-loan payments, improve consumers' credit scores, and remove negative credit status codes or ratings from consumers' credit reports. 12 U.S.C. §§ 5531(a), 5536. These false, misleading, and unsubstantiated representations were material and likely to mislead consumers acting reasonably under the circumstances.

18. Given the complaint's well-pleaded allegations and FDATR's failure to answer or defend, the Court enters a default judgment against FDATR on all counts of the complaint for violations of the TSR, 16 C.F.R. §§ 310.3 (a)(i)(viii)(C), (a)(2)(iii), (vii), (x), and 310.4(a)(2), (a)(5)(i), and for violations of the CFPA, 12 U.S.C. §§ 5531, 5536.

II. Remedies

19. The CFPA empowers this Court to order injunctive and other relief, restitution, and civil money penalties. 12 U.S.C. § 5565.

20. The Bureau established through competent evidence that the financial harm to consumers from FDATR's violations was at least \$2,117,133.28, which is the amount paid to FDATR by consumers, excluding refunds paid to consumers.

21. Absent a permanent injunction, there is a reasonable likelihood that FDATR will continue to engage in the unlawful conduct alleged in the complaint or similar misconduct. FDATR's unlawful conduct as alleged in the complaint justifies permanent injunctive relief.

22. The Bureau is entitled to an order imposing permanent injunctive relief, requiring FDATR to make restitution of \$2,117,133.28, and requiring FDATR to pay a civil money penalty in the amount of \$41,123,897.

23. The Court exercises its discretion to order injunctive and monetary relief without holding an evidentiary hearing.

24. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided at law, including both civil and criminal remedies.

25. Entry of this Order is in the public interest.

DEFINITIONS

26. The following definitions apply to this Order:

- a. *Affected consumers* means any person who paid an advance fee in violation of 16 C.F.R. § 310.4(a)(2) or (a)(5)(i) to FDATR or its officers, agents, servants, employees, and attorneys, or any other persons in active concert or participation with them from September 1, 2014, until the effective date.
- b. *Assisting others* means helping, aiding, or providing support to others, including:
 - i. consulting or advising in any form whatsoever;
 - ii. providing support services;
 - iii. formulating or providing, or arranging for the formulation or

provision of, any advertising or marketing material, including telephone-sales scripts, solicitations, or the text of any Internet website, email, or other electronic communication or advertisement;

iv. providing names of, or assisting in the generation of, potential customers;

v. performing marketing, billing, or payment services of any kind;

vi. participating in or providing services related to the offering, sale, or servicing of a product or the collection of payments for a product;

vii. acting or serving as an owner, officer, director, manager, principal, partner, or limited partner of any entity; and

viii. investing, loaning, or providing money or anything of financial value.

c. ***Consumer financial product or service*** has the same meaning set forth in the CFPA, 12 U.S.C. § 5481(5), including providing financial advisory services.

d. ***Credit-repair service*** means any program or service represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating as described in 16 C.F.R. § 310.4(2).

e. ***Debt-relief service*** means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including a reduction in the balance, interest rate, or fees owed by a person as set forth in 16 C.F.R. § 310(o).

- f. ***Effective date*** means the date on which this Order is entered by the Court.
- g. ***Enforcement Director*** means the Assistant Director of the Office of Enforcement for the Bureau, the person acting in this role, or his or her delegate.
- h. ***FDATR*** means FDATR, Inc. and its successors and assigns.
- i. ***Financial-advisory service*** means services provided to consumers on individual financial matters or relating to proprietary financial products or services, including (1) providing credit counseling to any consumer and (2) providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure as set forth in 12 U.S.C. § 5481(15)(A)(viii).
- j. ***Related consumer action*** means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against FDATR based on substantially the same facts as described in the complaint.
- k. ***Telemarketing*** means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call as set forth in 16 C.F.R. § 310.2(gg).

ORDER

I. Ban on Telemarketing, Debt-Relief Services, and Credit-Repair Services

IT IS ORDERED that:

27. FDATR, whether acting directly or indirectly, is permanently restrained and enjoined from engaging in or assisting others with:

- a. telemarketing any consumer financial product or service;
- b. offering, marketing, selling, or providing any financial advisory service;
- c. offering, marketing, selling, or providing any debt-relief service; or
- d. offering, marketing, selling, or providing any credit-repair service.

28. FDATR is further permanently restrained and enjoined from receiving any remuneration or other consideration from, holding any ownership interest in, or working in any capacity for any person that is engaged in advertising, marketing, promoting, offering for sale, selling, or providing any financial-advisory service; any person that is engaged in advertising, marketing, promoting, offering for sale, selling, or providing any debt-relief service; any person that is engaged in advertising, marketing, promoting, offering for sale, selling, or providing any credit-repair service, or any person that is engaged in any telemarketing of any consumer financial product or service.

II. Prohibitions Regarding Consumer Financial Products or Services

IT IS FURTHER ORDERED that:

29. In connection with offering, marketing, selling, or providing any consumer financial product or service, FDATR, and its officers, agents, servants, employees, and attorneys, whether acting directly or indirectly or by assisting others, is permanently enjoined and restrained from misrepresenting any material aspect of the product or service, whether express or implied,

including but not limited to:

- a. the benefits that a consumer will receive from the product or service; or
- b. the total costs or any other material term, restriction, limitation or condition of the product or service.

III. Prohibitions on Use of Customer Information

IT IS FURTHER ORDERED that:

30. FDATR and its officers, agents, servants, employees, attorneys, and all persons who are in active concert or participation with him, who have actual notice of this Order, whether acting directly or indirectly, may not:

- a. disclose, use, or benefit from customer information, including names, addresses, telephone numbers, email addresses, Social Security numbers, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that FDATR obtained before the effective date; or
- b. attempt to collect, sell, assign, or otherwise transfer any right to collect payment from any consumer who entered into a contract related to debt-relief or credit-repair services.

However, customer information may be disclosed if requested by a government agency or required by law, regulation, or court order.

IV. Order to Pay Redress

IT IS FURTHER ORDERED that:

31. Judgment for monetary relief is entered in favor of the Bureau and against FDATR in the amount of \$2,117,133.28 for the purpose of providing redress to affected consumers. The monetary judgment set forth in this section is immediately due and payable to the Bureau upon entry of this Order and is enforceable against any asset owned by, on behalf of, for the benefit of, or in trust by or for FDATR.

32. Any funds received by the Bureau in satisfaction of this judgment will be deposited into a fund or funds administered by the Bureau or to the Bureau's agent according to applicable statutes and regulations to be used for redress for injured consumers, including refund of moneys, restitution, damages, or other monetary relief, and for any attendant expenses for the administration of any such redress.

33. If the Bureau determines, in its sole discretion, that redress to consumers is wholly or partially impracticable or if funds remain after redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. FDATR will not have any right to challenge any actions that the Bureau or its representatives may take under this section.

34. Payment of redress to any affected consumer under this Order may not be conditioned on that affected consumer waiving any right.

V. Order to Pay Civil Money Penalties

IT IS FURTHER ORDERED that:

35. Under section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law alleged in the complaint and taking into account the factors in 12 U.S.C. § 5565(c)(3), a judgment for a civil money penalty is entered in favor of the Bureau and against

FDATR in the amount of \$41,123,897.

36. Within ten days of the effective date, FDATR must pay \$41,123,897 to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

37. The civil money penalty paid under this Order will be deposited in the Civil Penalty Fund of the Bureau as required by section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

38. FDATR must treat the civil money penalty paid under this Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, FDATR may not:

- a. claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Order; or
- b. seek or accept, directly or indirectly, reimbursement or indemnification from any source, including payment made under any insurance policy, with regard to any civil money penalty paid under this Order.

39. The civil penalty imposed by this Order represents a civil penalty owed to the United States Government, the civil penalty is not compensation for actual pecuniary loss, and thus, it is not subject to discharge under the Bankruptcy Code, 11 U.S.C. § 523(a)(7).

VI. Additional Monetary Provisions

IT IS FURTHER ORDERED that:

40. In the event of any default on FDATR's obligations to make payment under this Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment and will immediately become due and payable.

41. FDATR relinquishes all dominion, control, and title to the funds paid under this

Order to the fullest extent permitted by law, and no part of the funds may be returned to any Defendant.

42. The facts alleged in the complaint will be taken as true and be given collateral estoppel effect, without further proof, in any proceeding based on the entry of the Order, or in any subsequent civil litigation by or on behalf of the Bureau to enforce this Order or the Bureau's rights to any payment or monetary judgment under this Order, such as a non-dischargability complaint in any bankruptcy case

43. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Bureau under section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and for such purposes this Order will have collateral estoppel effect against FDATR, even in its capacity as debtor-in-possession.

44. Under 31 U.S.C. § 7701, FDATR, unless it already has done so, must furnish to the Bureau its taxpayer-identification numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

45. Within thirty days of the entry of a final judgment, order, or settlement in a related consumer action, FDATR must notify the Bureau in writing of the final judgment, order, or settlement. That notification must indicate the amount of redress, if any, that FDATR paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid. To preserve the deterrent effect of the civil money penalty in any related consumer action, FDATR may not argue that it is entitled to, nor may it benefit by, any offset or reduction of any monetary remedies imposed in the related consumer action because of the civil money penalty paid in this action or because of any payment that the Bureau makes from the Civil Penalty Fund. If the court in any related consumer action offsets or otherwise reduces the

amount of compensatory monetary remedies imposed against FDATR based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, it must, within thirty days after entry of a final order granting such offset or reduction, notify the Bureau and pay the amount of the offset or reduction to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

VII. Notices

IT IS FURTHER ORDERED that:

46. Unless otherwise directed in writing by the Bureau, FDATR must provide all submissions, requests, communications, or other documents relating to this Order in writing, with the subject line, “*CFPB v. FDATR et al.*, Case No. 1:20-cv-06879,” and send them by overnight courier or first-class mail to the below address and contemporaneously by email to Enforcement_Compliance@cfpb.gov:

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1700G Street, N.W.
Washington D.C. 20552

VIII. Compliance Monitoring

IT IS FURTHER ORDERED that:

47. Within fourteen days of receipt of a written request from the Bureau, FDATR must submit compliance reports or other requested information, which must be sworn under penalty of perjury; provide sworn testimony; or produce documents.

48. For purposes of this section, the Bureau may communicate directly with FDATR, unless FDATR retains counsel related to these communications.

49. FDATR must permit Bureau representatives to interview any employee or other person affiliated with FDATR who has agreed to such an interview regarding: (a) this matter; (b) anything related to or associated with the conduct described the complaint; or (c) compliance with this Order. The person interviewed may have counsel present.

50. Nothing in this Order will limit the Bureau's lawful use of compulsory process, under 12 C.F.R. § 1080.6.

IX. Retention of Jurisdiction

IT IS FURTHER ORDERED that:

51. The Court will retain jurisdiction of this matter for the purpose of enforcing this Order.

X. Service

IT IS FURTHER ORDERED that:

52. This Order may be served upon FDATR by U.S. Mail, electronic mail, or United Parcel Service, either by the United States Marshal, the Clerk of the Court, or any representative or agent of the Bureau, including by sending the Order to the address on file, or last known address on file, for FDATR with the Illinois Secretary of State.

IT IS SO ORDERED.

Date: February 7, 2022



John J. Tharp, Jr.
United States District Judge