



August 15, 2008

Federal Trade Commission
Office of the Secretary, Room H-135 (Annex Z)
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Debt Settlement Industry - Public Workshop: FTC Matter No. P084808

Ladies and Gentlemen:

The American Financial Services Association (“AFSA”) commends the Federal Trade Commission (“FTC”) for convening a workshop and requesting comment to learn more about the nature and extent of developments in the for-profit debt settlement industry. AFSA is the national trade association for the consumer credit industry, protecting access to credit by consumers and their choice of credit products. The association encourages and maintains ethical business practices and supports financial education for consumers of all ages. AFSA has provided services to its members for over ninety years. AFSA’s officers, board, and staff are dedicated to continuing this legacy of commitment through the addition of new members and programs, and increasing the quality of existing services.

In recent years, the debt settlement industry has changed. As the FTC notes, these changes in the debt settlement industry have now drawn the attention of state and federal law enforcement agencies and regulators. It has been the experience of AFSA’s members that many debt settlement companies actually do harm to both consumers and creditors by engaging in questionable practices, abusing the Fair Credit Reporting Act, abusing the power given to them by consumers, perpetrating fraud, delaying in remitting payment, engaging in deceitful actions, and facilitating false complaints.¹

First, it is AFSA’s belief that many debt settlement companies engage questionable practices. They use false advertising by offering hollow promises such as, “Eliminate unsecured debt for only pennies on the dollar!” These advertisements do not adequately disclose the possible risks to the consumer, which include credit damage, additional fees, adverse action, and legal action. For example, debt settlement companies often damage a consumer’s credit by withholding payment while submitting bogus disputes to the creditor – with no up front disclosure to the customer. Debt settlement is complicated and highly customized to each unique consumer situation; blanket promises create false hope and are misleading.

¹ Instead of contacting a debt settlement company, AFSA has always recommended that when borrowers have trouble meeting credit obligations, they seek help by contacting their lenders or locating a reputable credit counseling agency accredited by “The Good Consumer Credit Counseling Association after careful research and referrals.

Second, it is the experience of AFSA's members that rather than engaging in bona fide attempts to reach a settlement with creditors regarding the consumer's obligation, debt settlement companies instead often submit communications for the apparent purpose of abusing the protections that consumers are given under Regulation Z/Fair Credit Reporting Act. Creditors have found that debt settlement companies falsely claim that a consumer's account has been previously disputed by the consumer, although no record of a prior dispute exists. Debt settlement companies also claim that a consumer is currently disputing a debt, when in fact, the consumer does not disagree with the history of charges. Furthermore, debt settlement companies often make frivolous or unreasonable claims of jurisdiction, challenge the creditor's right to collect the debt, and allege violations by the creditor of the USA Patriot Act. Debt settlement companies frequently request information, such as debt validation, from the creditor for the sole purpose of following those requests with claims that the information the debt settlement company received is incomplete.

Third, debt settlement companies perpetrate fraud by abusing the power that consumers give them. Debt settlement companies use unsigned Power of Attorney and Limited Power of Attorney forms. Moreover, they frequently do not adhere to state laws that govern the creation and use of the Power of Attorney. Debt settlement companies will also claim to represent a consumer without any proof in writing. Without evidence that a consumer has authorized a debt settlement company, the company will still submit requests for cease and desist orders and change of billing addresses.

Fourth, debt settlement companies often give consumers the impression that the consumer is now represented by an attorney when the entity is either not a law firm or not a law firm licensed and authorized to practice law in the consumer's state. This unauthorized practice of law harms consumers.

Fifth, creditors are required to post or return payment remittance in a timely fashion in order to minimize the resulting assessment of fees, interest, etc. Creditors manage escrow accounts to strict regulations. However, debt settlement companies do not follow industry standard practices intended to protect the consumer public. For example, debt settlement companies do not forward consumer funds to creditors in a timely manner. Oftentimes, they will hold the funds while submitting bogus disputes. This often results in unnecessary accrual and assessment of fees and interest to a consumer's account. Also, it is the membership's belief that debt settlement companies do not return fees and/or proceeds to a consumer if or when they fail to negotiate terms with a creditor. Debt settlement companies do not make accommodations with respect to the date that funds are received, nor do they adhere to industry standard regulations governing the management of escrow accounts.

Sixth, it has been the experience of AFSA members that some debt settlement companies fail to make known funds they possess on behalf of consumers during judicial proceedings, including bankruptcy and probate hearings.

Seventh, AFSA members have seen examples of debt settlement companies facilitating frivolous complaints using the machinery of our regulators in a fashion that calls into question the consumer's knowledge and involvement. For instance, one AFSA member has observed a debt settlement company / attorney submit a patently spurious dispute through the OCC's consumer complaint process, where the purported signatures of the consumer on the OCC complaint and a limited power of attorney provided via the debt settlement company / attorney appear not to have been signed by the same person.

Given these extensive problems with the debt settlement companies, and the fact that there are no current formal federal regulations that govern the general operations of debt settlement companies, AFSA recommends that the FTC consider changes in law or policy that would assist the agency in fulfilling its core mission of protecting consumers.

Please feel free to contact me with any questions at 202-296-5544, ext. 616 or bhimpler@afsamail.org.

Respectfully submitted,


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