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CFPB Flexes Enforcement Muscle In 1st Criminal Referral

By **Evan Weinberger**

Law360, New York (May 07, 2013, 7:53 PM ET) -- Criminal charges filed Tuesday against a New York debt settlement firm based on a referral from the Consumer Financial Protection Bureau show that the fledgling agency's enforcement staff will be able to successfully leverage its unique investigative powers, attorneys say.

U.S. Attorney Preet Bharara of the Southern District of New York charged Michael Levitis, his company Mission Settlement Agency and three employees of the company with mail fraud, wire fraud and conspiracy to commit mail and wire fraud alleging they scammed 1,200 customers seeking debt relief out of about $2.2 million.

The case was the direct result of a referral from the CFPB, marking the first time that criminal charges have come out of a probe by the bureau. And it won't be the last, experts said.

The bureau already has an aggressive enforcement policy and broad authority and investigative powers, and will likely use the referral tool to make its enforcement powers even more formidable, according to K&L Gates LLP partner Larry Platt.

"Most people have had the CFPB on their radar screen as an enforcement agency. But what this shows is that it's also working as a scout," he said.

The criminal complaint alleges Levitis and other Mission employees lied to vulnerable customers seeking to escape debt about the terms and costs of the company's debt reduction plan. In many cases, the company did nothing to get customers out of debt, instead pocketing money intended to go toward debt relief, according to prosecutors.

In all, more than 2,200 customers paid Mission more than $14 million in the four years since it opened. Of that total, Mission collected about $6.6 million in fees and only paid $4.4 million to customers' creditors, the criminal complaint alleges.

And in more than 1,200 cases, Mission took the entire amount that was deposited into an escrow account to use for other purposes, resulting in a haul of around $2.2 million, according to prosecutors.

Levitis and the three co-defendants pled not guilty Tuesday before U.S. Magistrate Judge Gabriel W. Gorenstein and were released on bail.

A woman who answered the phone at Mission's head office in Brooklyn said Levitis and the company had no comment. Levitis' attorney, Jeffrey Lichtfield, could not be reached for comment.

The CFPB filed a parallel civil action against Levitis and Mission as well as New Jersey debt settlement firm Premier Consultant Group LLC in federal court in Manhattan on Tuesday.

“These wolves in sheep’s clothing take money from consumers who are already struggling to pay their bills, falsely promising them help while really making their problems worse,” CFPB Director Richard Cordray said at a Tuesday news conference announcing the case, according to prepared remarks.

Cordray also vowed future cooperation with criminal prosecutors.

“By working in close partnership, we can better protect our citizens,” he said.

The Dodd-Frank Act gave the CFPB the powers to regulate not just banks with assets of more than $10 billion, but also payday lenders, mortgage companies and private student lenders that had previously avoided strict federal oversight.

The CFPB has also taken on supervision of debt collectors and consumer credit reporting firms, two other industries that were regulated in part by the Federal Trade Commission, but had mainly seen state oversight.

While the FTC has taken on illegal practices in those industry sectors — the CFPB in fact cites violations of the FTC's Telemarketing Sales Rule in its parallel civil suit — the CFPB has the additional capability to regularly inspect the companies it regulates.

That power will give the CFPB a better shot at ferreting out alleged wrongdoing than the FTC, said John Calender, a shareholder at Baker Donelson Bearman Caldwell & Berkowitz PC.

“It gives the CFPB more opportunity just because it has much more expanded audit authority than the FTC normally would,” he said.

The power to refer a case for criminal prosecution is not unique to the CFPB. Any regulatory agency with civil enforcement powers, including the Federal Reserve, theFederal Deposit Insurance Corp. and the Office of the Comptroller of the Currency, has the authority to do so as well.

But observers say the bureau may be more willing to use that power than other banking regulators.

Prudential banking regulators view their main mission as preserving the safety and soundness of the institutions they regulate, not necessarily seeking criminal actions for consumer protection violations, according to Brooklyn Law School professor David Reiss. The CFPB, by contrast, is charged solely with a mission for consumer protection, he said.

“There's no question that the CFPB would be more aggressive on criminal investigations than other bank regulators,” Reiss said.

Because it's a young agency, the CFPB is still attempting to establish its enforcement reputation. With several eye-catching credit card settlements under its belt as well as several other cases, that reputation is beginning to grow.

Having the Southern District of New York pick up and follow the bureau's first criminal referral will only enhance its reputation within the law enforcement community, said Michael Weinstein, the chairman of Cole Schotz Meisel Forman & Leonard PA's white collar defense and investigations practice group.

“The Southern District of New York is giving its stamp of approval to the CFPB's investigation and enforcement activities,” Weinstein, a former federal prosecutor, said. “It's like being invited to a party by the prettiest girl.”

Which means companies should be on the lookout for more collaborations between federal prosecutors and the CFPB.

--Editing by John Quinn and Chris Yates.
