
IN RE NEXT GENERATION)
DEBT SETTLEMENT, INC.,)
2012-MISC-Next Generation Debt)
Settlement-0001)

**DECISION AND ORDER ON NEXT GENERATION DEBT SETTLEMENT, INC.'S
PETITION TO MODIFY OR SET ASIDE CIVIL INVESTIGATIVE DEMAND**

Next Generation Debt Settlement, Inc. (Next Generation) has petitioned the U.S. Consumer Financial Protection Bureau for an Order modifying or setting aside a civil investigative demand (CID). For the following reasons, the petition is denied.

STATEMENT OF FACTS

This matter arises from a CID the Bureau issued to Next Generation in connection with an investigation regarding, among other things, whether certain companies engaged in unlawful acts or practices in the advertising, marketing or sale of debt settlement services. The CID, which the Bureau issued on August 3, 2012, instructed Next Generation to appear for an investigational hearing on September 12, 2012.

On August 20, 2012, Bureau attorneys called Next Generation to confirm its attendance at the investigational hearing. The Bureau's call was received by a Next Generation employee who stated that she would arrange for a company official to return the call. Nine days later, after not receiving any further response, Bureau attorneys sent a letter to Next Generation asking it to confirm its attendance at the investigational hearing and alerting it to the fact that it had failed to meet and confer with Bureau staff in accordance with the Bureau's rules regarding investigations.

Hassan Kassir, an individual holding himself out as the Chief Executive Officer of Next Generation, sent an e-mail to the Bureau on September 4, 2012, requesting that the CID be set aside. Mr. Kassir offered eight reasons why the company should not be required to respond to the CID, all of which focused on potential defenses to claims the Bureau might bring against Next Generation. Mr. Kassir explained that Next Generation was prepared to substantiate its asserted defenses, but did not attach any documentation to the e-mail.

LEGAL DISCUSSION

Next Generation's petition is denied because it was not filed within the time permitted under the Bureau's rules regarding investigations, and because Next Generation failed to meet and confer with Bureau staff before filing the petition. But even if the petition comported with the Bureau's rules, it has no merit.

The Dodd-Frank Wall Street Reform and Consumer Protection Act and the Bureau's rules regarding investigations require that a petition to modify or set aside a CID be filed within 20 calendar days of service of the CID, or, if the return date is less than 20 calendar days from service, before the return date. *See* 12 U.S.C. § 5562(f)(1); 12 C.F.R. § 1080.6(e). The CID issued to Next Generation was served on August 3, 2012, with a return date of September 12, 2012. The company's petition was therefore due on August 24, 2012, but was not filed until September 4, 2012. Next Generation has not offered any argument to explain why the Bureau should entertain its petition in spite of its untimeliness. That is a sufficient basis to deny the petition.

Next Generation's failure to file a timely petition was compounded by its failure to meet and confer with Bureau staff prior to filing. The Bureau's rules regarding investigations require recipients of CIDs to "meet and confer with a Bureau investigator within 10 calendar days after receipt of the demand or before the deadline for filing a petition to modify or set aside the demand, whichever is earlier, to discuss and attempt to resolve all issues regarding compliance with the civil investigative demand." 12 C.F.R. § 1080.6(c). The Bureau "will not consider petitions to set aside or modify a civil investigative demand unless the recipient has meaningfully engaged in the meet and confer process," and "will consider only issues raised during the meet and confer process." 12 C.F.R. § 1080.6(c)(3). Although the Bureau may waive these requirements in appropriate circumstances, *see* 12 C.F.R. § 1080.6(c), Next Generation did not request a waiver. The lack of any attempt to meet and confer provides an additional basis to deny the petition.

Even if Next Generation had satisfied the Bureau's rules, its petition has no merit. The petition asserts substantive defenses to charges the Bureau has yet to assert, arguing that the company has not engaged in direct consumer marketing or telemarketing or committed other acts that might violate federal consumer financial law. But facts relating to whether Next Generation is covered by or has violated a federal consumer financial law are not defenses to the enforcement of a CID, even if they might eventually be defenses to legal claims contemplated in the CID. The Bureau may conduct an investigation "to discover and procure evidence, not to prove a pending charge or complaint, but upon which to make one if, in the [Bureau's] judgment, the facts thus discovered should justify doing so." *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 201 (1946). "If parties under investigation could contest substantive issues in an enforcement proceeding, when the agency lacks the information to establish its case, administrative investigations would be foreclosed or at least substantially delayed." *FTC v. Texaco, Inc.*, 555 F.2d 862, 879 (D.C. Cir. 1977).

CONCLUSION

For the foregoing reasons, Next Generation's petition to modify or set aside the Civil Investigative Demand in this matter is denied. The Bureau will notice an investigational hearing of Next Generation within 10 days of this Order.



Richard Cordray, Director

October 5, 2012