

**United States District Court
Southern District of Florida**

Case No. _____ -Civ- _____ - _____

Consumer Financial Protection Bureau,

Plaintiff,

v.

**American Debt Settlement Solutions, Inc., a
Florida corporation, and Michael DiPanni,
owner of American Debt Settlement
Solutions, Inc.,**

Defendants.

Complaint

The Consumer Financial Protection Bureau (the “Bureau”) alleges the following against American Debt Settlement Solutions, Inc. (“ADSS”) and Michael DiPanni (“DiPanni”) (together, “Defendants”):

Introduction

1. The Bureau brings this action under sections 1031(a), 1036(a), 1054(a), 1055, and 1061 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531(a), 5536(a), 5564(a), 5581, and under the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6102(c)(2), 6105(d), based on Defendants’ violations of the Telemarketing Sales Rule (TSR), 16 C.F.R. pt. 310, in connection

with the marketing and sale of debt-relief services, and Defendants' violations of sections 1031(a) and 1036(a)(1) of the CFPA, which prohibit unfair, deceptive, and abusive acts or practices. Specifically, the Bureau brings this action against Defendants based on their violations of 16 C.F.R. § 310.3(a)(1), 310.3(a)(2), and 310.4(a)(5) and 12 U.S.C. §§ 5531(a) and 5536(a)(1).

Jurisdiction and Venue

2. This Court has subject-matter jurisdiction over this action because it is brought under Federal 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.

3. Venue is proper in this district because ADSS is located, resides, and does business here, and because DiPanni resides and does business here. 28 U.S.C. §1391(b); 12 U.S.C. § 5564(f).

Plaintiff

4. The Bureau is an independent agency of the United States charged with regulating the offering and provision of consumer financial products or services under Federal consumer financial laws. 12 U.S.C. § 5491(a). It has independent litigating authority, 12 U.S.C. § 5564(a)-(b), including the authority to enforce the TSR as it applies to persons subject to the CFPA, 15 U.S.C. §§ 6102(c)(2), 6105(d); 12 U.S.C.

§ 5531(a).

Defendants

5. ADSS is a Florida for-profit corporation that is located, resides, and does business in this district at 7601 N. Federal Hwy., #2108, Boca Raton, Florida 33487. At all times material to this Complaint, ADSS has provided and offered a consumer financial product or service that is covered by the CFPA. 12 U.S.C. § 5481(5), (15)(A)(viii)(II). Accordingly, ADSS is a “covered person” under the CFPA. 12 U.S.C. § 5481(6). At all times material to this Complaint, ADSS has transacted business in the Southern District of Florida.

6. DiPanni is ADSS’s owner and at all times material to this Complaint is, or has been, charged with managerial responsibility for ADSS. He has approved, ratified, endorsed, directed, controlled, and otherwise materially participated in the conduct of ADSS’s affairs. Given his status as an officer or managerial employee, DiPanni is a “related person” under the CFPA. 12 U.S.C. § 5481(25). Because of his status as a related person, DiPanni is deemed a “covered person” for purposes of the CFPA. *Id.* At all times material to this Complaint, DiPanni has transacted business in the Southern District of Florida.

ADSS's Debt-Relief Services

7. ADSS began doing business in late 2008. Since then, it has sold or offered to sell debt-relief services to consumers.

8. In exchange for a fee, ADSS has promised to renegotiate, settle, reduce, or otherwise alter the terms of at least one debt between consumers and one or more unsecured creditors or debt collectors pursuant to a settlement agreement, debt-management plan, or other contractual agreement executed by a consumer.

9. ADSS has marketed its debt-relief services via the Internet at <http://www.americandebtss.com> and received telephone calls from consumers in response to its Internet marketing efforts.

10. As part of the consumer-enrollment process, ADSS has required that consumers complete detailed worksheets describing their monthly income (including income sources), expenditures, and debts. ADSS has then reviewed these worksheets with consumers before they enter into any debt-relief program.

11. ADSS has enrolled consumers in debt-relief programs varying in length from 24 to 48 months by entering into contracts with them.

12. Under the terms of ADSS's contracts with consumers, consumers have paid ADSS an "enrollment" fee in an amount calculated as a percentage – typically 15 percent – of the amount of the consumers' enrolled debts. Since its inception, ADSS has collected the balance of this "enrollment" fee in the first three to six months of a consumer's enrollment.

13. Under the terms of ADSS's contracts with consumers, consumers also pay ADSS a "service" fee that is assessed on a monthly basis for the duration of the debt-relief program. This monthly service fee is typically \$99, of which a portion is applied to pay a payment processor.

14. At all times material to this Complaint, ADSS's practice has been to request or receive enrollment fees, processing fees, debt-relief service fees, or other types of fees in advance of settling at least one of a consumer's debts.

15. ADSS entered into a contract with a payment processor to receive services for the management, processing, and administration of payments. Under this contract, the payment processor has managed the savings account ("Dedicated Account") of each consumer who is enrolled in an ADSS debt-relief program. Since its inception, ADSS has required and relied on assistance from the payment processor to collect and disburse monies through the consumer's Dedicated Accounts.

16. Upon enrollment in an ADSS debt-relief program, ADSS has directed consumers to stop paying their creditors. ADSS has directed consumers instead to sign up for a Dedicated Account with the payment processor and to make monthly payments by ACH transfer into that account.

17. ADSS has represented to consumers that, when a consumer's Dedicated Account reaches a sufficient balance, ADSS would instruct the payment processor to transmit funds to the consumer's creditors to help satisfy the consumer's debts.

18. At all times material to this Complaint, ADSS has directed the payment processor to disburse payments to and from consumers' Dedicated Accounts.

19. At all times material to this Complaint, ADSS has provided to the payment processor a copy of each contract that it entered into with consumers for its debt-relief program.

20. At ADSS's direction, the payment processor has: (1) withdrawn funds from the consumer's bank account through ACH transfer and deposited them into the Dedicated Account, and (2) transmitted funds from the Dedicated Account to itself and to ADSS for the payment of processing and servicing fees, including the fee ADSS has charged consumers for its debt-relief services. The payment processor has managed the routine transfer of consumers' funds out of consumers' accounts to pay ADSS's debt-relief fees before making any payments to creditors. ADSS and the payment processor have also communicated directly about ADSS's fee structure.

21. When consumers have closed their Dedicated Accounts, the payment processor has typically refunded to consumers any money remaining in their Dedicated Accounts. Consumers typically have not received any refunds of fees paid to ADSS or the payment processor.

22. At all times material to this Complaint, ADSS has represented to all consumers that it will renegotiate, settle, reduce, or otherwise alter the terms of debts that consumers enroll in its program. For example, ADSS's form contract with consumers makes the following representations:

- a. “Eliminate your unsecured debt sooner than you ever thought possible.”
- b. “Reduce your current monthly expense on debt service.”
- c. “[B]e off the debt treadmill and on the road to recovery.”

23. Since its inception, ADSS has failed to renegotiate, settle, reduce, or otherwise alter the terms of a single debt for approximately 89 percent of the consumers who enrolled in its debt-relief programs.

24. In the welcome package provided to all consumers, ADSS has provided a list of “frequently asked questions,” including, “How long does it take for my first settlement?” In response, ADSS has stated: “the first settlement could be in 90 days, or as much as six months.”

25. Since its inception, ADSS has only rarely renegotiated, settled, reduced, or otherwise altered the terms of debts for consumers within three to six months of their enrollment.

26. Since its inception, ADSS has known that it was nearly impossible for ADSS to renegotiate, settle, reduce, or otherwise alter the terms of debts under \$700. Nonetheless, it has been ADSS’s practice to enroll consumers in its program with debts under \$700 without disclosing this limitation.

27. Since its inception, it has also been ADSS’s practice to enroll consumers in its program even when ADSS knows that the consumers’ incomes are inadequate to complete the debt-relief programs in which they are enrolled.

28. Since ADSS's inception, consumers have deposited more than \$9.9 million into their Dedicated Accounts, and ADSS has directed the payment processor to make payments totaling less than \$2 million to creditors in settlement of their debts. Most consumers have paid fees to ADSS but closed their Dedicated Accounts before their creditors received any payments in settlement of the consumers' debts.

29. With respect to Dedicated Accounts that were established on or after October 27, 2010, the effective date of the TSR, and from which no creditors received payments for settlements achieved through ADSS's debt-relief program, ADSS collected fees totaling approximately \$43,665.95.

30. ADSS has collected fees on or after July 21, 2011, the effective date of 12 U.S.C. § 5536(a)(1), from consumers who, according to the information they provided to ADSS, had inadequate income to complete the debt-relief program in which they were enrolled.

DiPanni's Role as Owner of ADSS

31. DiPanni is ADSS's owner. As owner, DiPanni has managed ADSS's day-to-day operations, including ADSS's Internet marketing of debt-relief services, ADSS's interactions with consumers who signed up for those services, and ADSS's request and receipt of fees for the services. He also has engaged directly in debt-relief sales and customer-support functions on ADSS's behalf.

32. DiPanni designed and implemented the front-loaded debt-relief service fee structure through which ADSS charged advance fees.

33. DiPanni selected and hired the payment processor on ADSS's behalf.

34. Since ADSS's inception, DiPanni has known or should have known that ADSS represented that it could likely renegotiate, settle, reduce, or otherwise alter the terms of the debts of consumers enrolled in its debt-relief program. DiPanni also has known or should have known that ADSS represented to consumers that it could renegotiate, settle, reduce, or otherwise alter the terms of at least one debt within three to six months of enrollment. DiPanni also has known or should have known that ADSS enrolled consumers in its program who had debts under \$700. Finally, DiPanni has known or should have known that ADSS enrolled consumers with inadequate income to complete a debt-relief program. In addition, DiPanni had authority to control these actions by ADSS.

Count One
(ADSS's Violations of the TSR and the CFPA – Advance Fees)

35. The allegations in paragraphs 1-34 are incorporated here by reference.

36. In the course of telemarketing debt-relief services from approximately October 27, 2010 to present, ADSS requested or received fees from consumers for debt-relief services before renegotiating, settling, reducing, or otherwise altering the terms of at least one of such consumers' debts. ADSS requested or received payment

of these fees prior to consumers' making at least one payment pursuant to any settlement agreement, debt-management plan, or other valid contractual agreement between consumers and their creditors.

37. Therefore, ADSS's acts or practices violate the TSR, 16 C.F.R. § 310.4(a)(5)(i), and are unlawful acts or practices in telemarketing. Because ADSS is a "covered person," its conduct is unlawful under sections 1031(a) and 1036(a)(1) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1).

Count Two
(ADSS's Violations of the TSR and the CFPA - Deception)

38. The allegations in paragraphs 1-34 are incorporated here by reference.

39. Section 310.3(a)(1)(ii) of the TSR prohibits a seller or telemarketer from failing to truthfully disclose all material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer before a customer consents to pay for goods or services offered.

40. In connection with the advertising, marketing, promoting, offering for sale, or sale of debt-relief services, in numerous instances, ADSS has represented, directly or indirectly, expressly or by implication, that it likely will renegotiate, settle, reduce, or otherwise alter the terms of consumers' debts.

41. In truth, ADSS failed to disclose the material restriction, limitation, or condition that it is nearly impossible for ADSS to renegotiate, settle, reduce, or otherwise alter the terms of debts under \$700.

42. Therefore, ADSS's practices violate the TSR, 16 C.F.R. § 310.3(a)(1)(ii), and are deceptive acts or practices in telemarketing. Because ADSS is a "covered person," its conduct is unlawful under sections 1031(a) and 1036(a)(1) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1).

Count Three
(ADSS's Violations of the TSR and the CFPA - Deception)

43. The allegations in paragraphs 1-34 are incorporated here by reference.

44. Section 310.3(a)(2)(ii) of the TSR prohibits a seller or telemarketer from misrepresenting any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer.

45. Section 310.3(a)(2)(x) of the TSR prohibits a seller or telemarketer of a debt-relief service from misrepresenting any material aspect of any debt-relief service, including, but not limited to, the amount of time necessary to achieve the represented results.

46. In numerous instances, in connection with the advertising, marketing, promoting, offering for sale, or sale of debt-relief services, ADSS has represented, directly or indirectly, expressly or by implication, that it will likely renegotiate, settle,

reduce, or otherwise alter the terms of consumers' debts within the first three to six months after consumers enroll in a debt-relief program with ADSS.

47. In truth, ADSS is not likely to renegotiate, settle, reduce, or otherwise alter the terms of debts within the first three to six months after consumers enroll in a debt-relief program with ADSS.

48. Therefore, ADSS's representations as described in paragraph 46 violate the TSR, 16 C.F.R. § 310.3(a)(2)(ii), (x), and are deceptive acts or practices in telemarketing. Because ADSS is a "covered person," its conduct is unlawful under sections 1031(a) and 1036(a)(1) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1).

Count Four
(ADSS's Violations of the TSR and the CFPA – Deception)

49. The allegations in paragraphs 1-34 are incorporated here by reference.

50. Section 310.3(a)(2)(iii) of the TSR prohibits a seller or telemarketer from misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer.

51. Section 310.3(a)(2)(x) of the TSR prohibits a seller or telemarketer of a debt-relief service from misrepresenting any material aspect of any debt-relief service.

52. In numerous instances, in connection with the advertising, marketing, promoting, offering for sale, or sale of debt-relief services, ADSS has represented, directly or indirectly, expressly or by implication, that it likely will renegotiate, settle,

reduce, or otherwise alter the terms of debts for consumers who enroll in its debt-relief programs.

53. In truth, ADSS is not likely to renegotiate, settle, reduce, or otherwise alter the terms of debts for consumers who enroll in its debt-relief programs.

54. Therefore, ADSS's representations as described in paragraph 52 violate the TSR, 16 C.F.R. § 310.3(a)(2)(iii), (x), and are deceptive acts or practices in telemarketing. Because ADSS is a "covered person," its conduct is unlawful under sections 1031(a) and 1036(a)(1) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1).

Count Five
(ADSS's Violations of the CFPA – Abusiveness)

55. The allegations in paragraphs 1-34 are incorporated here by reference.

56. Section 1036(a)(1)(B) of the CFPA prohibits "unfair, deceptive, or abusive acts or practices." 12 U.S.C. § 5536(a)(1)(B). An act or practice is abusive if it "takes unreasonable advantage of . . . (A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service; (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or (C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer." 12 U.S.C. § 5531(d)(2).

57. In numerous instances, in connection with the advertising, marketing, promoting, offering for sale, or sale of debt-relief services, ADSS has enrolled in its debt-relief programs consumers whose financial conditions make it highly unlikely that they can complete the programs.

58. ADSS knows that the financial conditions of these consumers make it highly unlikely that they will complete the debt-relief program in which ADSS enrolls them, especially given ADSS's knowledge that ADSS is unlikely to settle their debts within the first three to six months of enrollment. Before enrolling consumers in its debt-relief programs, ADSS has secured from consumers a detailed worksheet describing their monthly income (including income sources), expenses, and debts. Using this information, ADSS can determine whether a consumer is able to afford the monthly payments required by the debt-relief program.

59. Despite receiving financial information showing that some consumers could not afford the monthly payments under the debt-relief program in which they were enrolled, ADSS nonetheless collects "enrollment" fees from these consumers in the first three to six months of their enrollment. This practice causes certain consumers to spend their last savings paying ADSS fees for a service from which they will not benefit.

60. Instead of negotiating any debts with creditors during the first three to six months of a consumer's enrollment – as it represents to consumers that it will – ADSS collects its "enrollment" fees during this period. As a result, consumers with

inadequate income to complete the program drop out after paying significant fees and without receiving any benefit.

61. This practice takes unreasonable advantage of consumers' lack of understanding of how long it will take ADSS to settle their debts and therefore how much money they will spend before realizing any benefits from enrolling in ADSS's debt-relief program.

62. Consumers also reasonably rely on ADSS to act in their interest by enrolling them in a debt-relief program that they can be reasonably expected to complete, and which will therefore result in the negotiation, settlement, reduction, or alteration of the terms of their debts. Consumers also reasonably rely on ADSS to act in their interest by settling their debts as soon as possible and, in particular, within three to six months of enrollment as represented by ADSS.

63. Therefore, ADSS's acts or practices violate sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B), and are abusive.

Count Six
(DiPanni's Violations of the TSR and the CFPA)

64. The allegations in paragraphs 1-34 are incorporated here by reference.

65. DiPanni is a "related person" and a "covered person," 12 U.S.C. § 5481(25), who is liable for violations of sections 310.3 and 310.4 of the TSR, 16

C.F.R. § 310.3, 310.4, and sections 1031(a) and 1036(a)(1) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1).

Demand for Relief

Wherefore, the Bureau requests that the Court:

1. permanently enjoin Defendants from advertising, marketing, promoting, offering for sale, or selling any debt-relief product or service;
2. permanently enjoin Defendants from assisting others engaged in advertising, marketing, promoting, offering for sale, or selling any debt-relief product or service;
3. permanently enjoin Defendants from committing future violations of the CFPA, 12 U.S.C. §§ 5531, 5536, and the TSR, 16 C.F.R. pt. 310;
4. award restitution against Defendants in the amount of all unlawfully collected fees;
5. order disgorgement of ill-gotten profits against Defendants;
6. award civil money penalties against Defendants;
7. award attorneys' fees and costs against Defendants; and
8. award additional relief as the Court may determine to be just and proper.

Respectfully submitted,

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s/ Meredith B. Osborn

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