

Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552



IN RE DANIEL A. ROSEN, INC., d/b/a)
CREDIT REPAIR CLOUD)
2020-MISC-Credit Repair Cloud-0001)

**DECISION AND ORDER ON PETITION BY DANIEL A. ROSEN, INC.,
d/b/a CREDIT REPAIR CLOUD TO SET ASIDE THE APRIL 13, 2020,
CIVIL INVESTIGATIVE DEMAND**

On May 18, 2020, Daniel A. Rosen, Inc., d/b/a Credit Repair Cloud (CRC) filed a Petition with the Bureau seeking to set aside a civil investigative demand (CID) that the Bureau served on it on April 13, 2020. For the reasons set forth below, I deny CRC’s Petition.

FACTUAL BACKGROUND

On April 13, 2020, the Bureau issued a CID to CRC seeking information about the nature of CRC’s business, the products it sells, and its relationship with its customers. As explained in the CID’s Notification of Purpose, the Bureau seeks:

to determine whether providers of credit repair business software, companies offering credit repair that use this software, or associated persons, in connection with the marketing or sale of credit repair services, have: (1) requested or received prohibited payments from consumers in a manner that violates the Telemarketing Sales Rule, 16 C.F.R. Part 310; or (2) provided substantial assistance in such violations in a manner that violates Sections 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536, or the Telemarketing Sales Rule, 16 C.F.R. Part 310.

The investigation will also determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

The CID seeks responses to interrogatories as well as documents. The interrogatories request information regarding CRC’s organizational structure, including its management; the products and services it provides to its customers; the information it collects from its customers, including information regarding how those customers bill for the services they provide to

consumers; the nature of CRC's Millionaire's Club; the identities of CRC's current and former employees; the identities of the customers who paid to use CRC's credit repair software; any steps CRC took to monitor its customers' compliance with laws regarding credit repair services; CRC's relationship with the billing company, Chargebee, Inc., and how CRC's customers use services provided by Chargebee; databases used or provided by CRC regarding the provision of credit repair services; and CRC's document retention policies.

The document request portion of the CID seeks the following documents from CRC: all contracts between CRC and its customers; training materials, manuals, and scripts that CRC provides to its customers; communications between CRC and its customers regarding the credit repair services offered by the customers, including consumer complaints that the customers have received; and CRC's organizational charts and financial statements.

The CID set May 15, 2020, as the due date for CRC's response. The Bureau's rules require that CRC meet with a Bureau investigator and confer regarding compliance. 12 C.F.R. § 1080.6(c). CRC did so. During that meeting, CRC did not request any modification of the CID but instead indicated that it did not intend to respond and would file a petition to set the CID aside. CRC requested an extension of time within which it could file a petition, and the Bureau extended that date until May 18, 2020. CRC filed its Petition to Set Aside Civil Investigative Demand (Pet.), which was docketed on May 18, 2020. The Petition was timely. That Petition only sought to have the Bureau set aside the CID; it did not seek any modification.

LEGAL DETERMINATION

In its Petition, CRC raises four arguments, all of which relate to relevance.¹ First, CRC contends that the Bureau lacks authority over companies that provide credit repair services. Pet. at 4-5. Second, CRC argues the CID is invalid because CRC does not engage in telemarketing, does not perform credit repair services, and does not market to consumers. Pet. at 5-7. Third, CRC contends that the Bureau cannot require it to participate in an investigation that seeks to identify violations of the Consumer Financial Protection Act (CFPA) because it is not a "covered person" or "service provider" as those terms are defined in the CFPA. Pet. at 7-9. And fourth, CRC provides a description of its business and, based on that description, argues that the Bureau cannot require it to respond to the CID because "it is clear that CRC does not provide any assistance, let alone substantial assistance, to any covered person in violation of the CFPA." Pet. at 9.

I reject all of these arguments because they are based on CRC's contention that the Bureau would, as a factual matter, lack authority to allege certain law violations in a hypothetical

¹ In addition to its arguments regarding relevance, CRC also contends that the Bureau issued its April 1, 2020, *Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act* in "apparent[] retaliation against the credit repair industry." See Pet. 3-4 & n.1. In fact, the portion of the Statement quoted by CRC merely reiterates provisions from the Fair Credit Reporting Act and its implementing Regulation V regarding the obligation of furnishers and consumer reporting agencies to investigate disputes.

future law enforcement action. However, different questions are at issue when, as here, a petitioner challenges the relevance of a CID. Those questions are 1) whether the Bureau has the authority to investigate the topics described in the CID's Notification of Purpose, and 2) whether the CID requests information that is relevant to those topics. CRC's arguments all go to the first of these questions, and I conclude that the Bureau has ample authority to conduct its investigation. Accordingly, I deny CRC's Petition and direct that it comply with the CID.

A. The Legal Standard

“[T]he standard for judging relevancy in an investigatory proceeding is more relaxed than in an adjudicatory one.” *Resolution Trust Corp. v. Walde*, 18 F.3d 943, 947 (D.C. Cir. 1994), quoting *FTC v. Invention Submission*, 965 F.2d 1086, 1090 (D.C. Cir. 1992). The test is whether the information requested is “not plainly incompetent or irrelevant to any lawful purpose of the agency.” *Invention Submission*, 965 F.2d at 1089 (quotation marks omitted). “So long as the material the [agency] seeks is relevant to the investigation, the boundary of which may be defined quite generally ... the district court must enforce the agency's demand.” *FTC v. Church & Dwight Co.*, 665 F.3d 1312, 1316 (D.C. Cir. 2011) (emphasis in original, internal quotation marks omitted). Further, “[t]he relevance of the material sought by the [agency] must be measured against the scope and purpose of the [agency's] investigation, as set forth in the [agency's] resolution.” *FTC v. Texaco*, 555 F.2d 862, 874 (D.C. Cir. 1977); see *CFPB v. Heartland Campus Sols., ESCI*, 747 Fed. App'x 44, 50 (3d Cir. 2018). Thus, “in light of the broad deference we afford the investigating agency, it is essentially the respondent's burden to show that the information is irrelevant.” *Invention Submission*, 965 F.2d at 1090.

B. The Bureau's investigation is lawful

As explained above, when analyzing relevance, the first question (and the only one at issue here) is whether the Bureau's investigation is lawful. CRC argues that the investigation is not lawful – it contends that it is outside the Bureau's CID authority because the Bureau could not bring an enforcement action against it under either the Telemarketing Sales Rule (TSR) or the CFPA. This argument fails for two reasons. First, the Bureau's investigative authority is broader than its enforcement authority. And second, the Bureau has the authority to investigate the topics set forth in the CID's Notification of Purpose.

1. The premise underlying CRC's Petition is that it cannot be required to comply with a Bureau CID unless the Bureau could bring an enforcement action against it. CRC argues that it could not be subject to an enforcement action under either the Telemarketing Sales Rule (TSR) (CRC contends that it is not a telemarketer and does not provide credit repair services, see Pet. at 2, 4, 6, 7), or under the CFPA (CRC argues it is neither a covered person nor a service provider, and did not provide substantial assistance to a covered person or service provider, see Pet. 8-10). But the Bureau's authority to investigate is broader than its authority to enforce. In particular, the CFPA authorizes the Bureau to issue CIDs to “any person [that] ... may have any information [] relevant to a violation...” 12 U.S.C. § 5562(c)(1). And because the CFPA's definition of “person” encompasses not only individuals, but also companies and corporations, it encompasses CRC. 12 U.S.C. § 5481(19). So regardless of whether CRC is a telemarketer, a provider of credit repair services, a covered person, a service provider, or a provider of substantial assistance, it is a “person,” and it may therefore be required to provide information in

response to a Bureau CID so long as the CID seeks information regarding a lawful investigation, *i.e.* an investigation of a potential violation of law that the Bureau is authorized to enforce.

2. The Bureau's investigation is lawful because the Bureau has the authority to investigate the topics described in the CID's Notification of Purpose. The CID has two topics: 1) whether providers of credit repair business software, companies offering credit repair that use this software, or associated persons, in connection with the marketing or sale of credit repair services, have requested or received prohibited payments from consumers in a manner that violates the Telemarketing Sales Rule, 16 C.F.R. Part 310; and 2) whether providers of credit repair business software, companies offering credit repair that use this software, or associated persons, in connection with the marketing or sale of credit repair services have provided substantial assistance in such violations in a manner that violates Sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531, 5536, or the Telemarketing Sales Rule, 16 C.F.R. Part 310.

CRC challenges the first topic of the CID by arguing that “[t]he CFPB has no authority to regulate credit repair” under the TSR. Pet. at 4. CRC is mistaken. The Bureau has the authority to enforce the TSR, and to do so against telemarketers of credit repair services. 15 U.S.C. § 6102(c)(2). The TSR specifically restricts the manner in which those who telemarket credit repair services may receive payment for the services they offer, and makes it an abusive act or practice to violate those restrictions. 16 C.F.R. § 310.4(a)(2). Thus, the Bureau may investigate to determine whether credit repair firms, including those who have purchased software from CRC, have violated the TSR.² It is certainly reasonable to assume that CRC has information regarding the practices of such firms since those are its customers, and nothing in CRC's Petition indicates otherwise. Regardless of whether CRC itself engages in telemarketing or accepts payments from consumers in a manner that violates the TSR, the Bureau has the authority to obtain information from CRC that will help it assess whether others may have done so.

The second CID topic seeks information regarding whether a company that provides business software to credit repair firms (as well as others) may have provided substantial assistance to those who have violated either the TSR or the CFPA. CRC challenges this topic by

² To the extent CRC suggests that, because the Bureau lacks authority to enforce the Credit Repair Organizations Act, 15 U.S.C. §§ 1679-1679j (CROA), it therefore has no authority under the TSR over companies that provide credit repair services, it is wrong. *See* Pet. at 3 (“Congress denied the Bureau authority to regulate credit repair companies”); *but see* Pet. at 5 (“the Bureau can investigate companies that offer ... credit repair services ... governed by the TSR”). As the court explained in *CFPB v. Prime Market Holdings, LLC*, No. CV 16-07111, 2016 WL 10516097, at *9 (C.D. Cal. Nov. 15, 2016), there is no conflict between CROA and the TSR and both may be enforced against companies that provide telemarketing services. *See also Tennessee v. Lexington Law Firms*, No. 3:96-0344, 1997 WL 367409 at *6 (M.D. Tenn. May 14, 1997) (“there is no language in [CROA] indicating that Defendant's telemarketing activities may not simultaneously be regulated by the Telemarketing Act”). So even though the Bureau does not have authority to enforce CROA, it may enforce those provisions of the TSR that apply to companies that provide credit repair services.

arguing that it is not subject to the CFPA. Pet. at 8. The Bureau has authority under the CFPA to prohibit unfair, deceptive, or abusive acts or practices committed by a “covered person” or a “service provider.” 12 U.S.C. § 5531. It also has the authority over those who, knowingly or recklessly, provide substantial assistance to a covered person. 12 U.S.C. § 5536(a)(3). CRC argues that it is not a “covered person” subject to the CFPA, Pet. at 8, that it cannot be a “service provider” because a credit repair firm cannot be a “covered person,” Pet. at 8, and that it does not provide substantial assistance to any credit repair firm, Pet. at 9-10. However, credit repair firms may certainly be “covered persons.” The CFPA’s definition of “covered person” encompasses a company that provides “financial advisory services ... including ... credit counseling” and “debt management or debt settlement,” or that engages in “collecting, analyzing, maintaining, or providing consumer report information, including information relating to the credit history of consumers.” 12 U.S.C. §§ 5481(6), (15)(A)(viii), (ix). A company that provides credit repair services purports to counsel consumers regarding their creditworthiness and their indebtedness, and to “analyz[e] ... information relating to the credit history of consumers.” Such a company may therefore be a “covered person.” *CFPB v. Prime Mkt. Holdings, LLC*, 2016 WL 10516097, at *8.

The Bureau also has the authority to investigate whether a provider of credit repair business software, such as CRC, provides substantial assistance to a violation of the CFPA’s prohibition on unfair, deceptive, or abusive acts or practices.³ 12 U.S.C. § 5536(a)(3). Whether a company that sells business software to credit repair firms does, in fact, substantially assist any violations committed by those firms depends upon the facts, and CRC recognizes this. See Pet. at 9-10. Throughout its Petition, CRC makes many fact-based claims. It states that it “does not provide a dialer platform,” “does not process payments,” and “does not interact with consumers.” Pet. at 2. It claims that it “does not sell a product to consumers,” “conducts no business with a consumer,” “is in no way ‘associated’ with credit repair services or products,” “does no telemarketing,” and “has no role in facilitating or assisting a credit repair company requesting or receiving any payment.” Pet. at 6, 8, 9. It seeks to assure that it does not provide substantial assistance, or indeed, any assistance, to companies that provide credit repair services, and that it is not affiliated or in any way associated with those companies. Pet. at 4, 8, 9. And CRC contends that, if its credit repair customers were receiving payments that violated the law, it had no knowledge of that fact, and did not benefit from such payments. Pet. at 10. These fact-based arguments are inappropriate in a petition to set aside a CID. It is well settled that that “courts should not refuse to enforce an administrative subpoena when confronted by a fact-based claim regarding coverage ...” *EEOC v. Karuk Tribe Housing Auth.*, 260 F.3d 1071, 1076 (9th Cir. 2001), citing *Okla. Press Publ’g Co. v. Walling*, 327 U.S. 186, 216 (1946); *United States v. Morton Salt Co.*, 338 U.S. 632, 652-53 (1950); *United States v. Powell*, 379 U.S. 48, 57-58 (1964). The reason for this is that fact-gathering is the purpose of the CID. That is, CRC is asking me to resolve factual issues based on its assertion while the Bureau is still in the process of gathering relevant information. That is not a basis for setting the CID aside.

³ In addition, the Bureau has the authority to enforce the TSR against those who provide substantial assistance to violators. 16 C.F.R. § 310.3(b). The second topic of the CID seeks information regarding such violations.

This CID should be set aside only if CRC can show that the Bureau has a “patent lack” of authority to investigate the topics set forth in the Notification of Purpose. *See FTC v. Ken Roberts Co.*, 276 F.3d 583, 587 (D.C. Cir. 2001). Here, CRC claims that the software it sells “makes it incredibly easy to launch, run and grow your very own credit repair business.” Pet. at 2. And according to its website, CRC’s software provides “everything you need to start a home-based credit repair business.” <https://www.creditrepaircloud.com/>. It may be that the Bureau’s investigation will ultimately reveal that CRC does not provide substantial assistance in violation of either the CFPA or the TSR. But at this stage, before the Bureau has completed its investigation, CRC has not been able to show that the Bureau plainly lacks authority to investigate the topics described in the CID’s Notification of Purpose.

* * * * *

Thus, I conclude that the Bureau has authority to pursue the topics set forth in the CID’s Notification of Purpose. When considering relevancy, the second question is whether the CID seeks information that is relevant to the topics set forth in the Notification of Purpose. CRC does not raise any dispute with respect to this question. Accordingly, I reject CRC’s request that I set the CID aside.

CONCLUSION

For the foregoing reasons, I deny CRC’s Petition. CRC is directed to comply with the CID dated April 13, 2020, and to provide responses to the Interrogatories and documents responsive to the Requests for Documents within 10 business days of the date of this Order. This date may be extended as provided by Bureau rule 1080.6(d). 12 C.F.R. § 1080.6(d).


Kathleen L. Kraninger, Director

August 13, 2020