

Compliance Chrestomathy

Notes from the Compliance Cutting Room Floor

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UDAAP Trouble

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O the ongoing trials and tribulations of UDAAP!

Sometimes knowing what violates UDAAP is difficult to discern; sometimes you know what it is when you see it; and sometimes you really should have known better![*]

The Federal Deposit Insurance Corporation recently announced settlements with Cross River Bank, Teaneck, New Jersey, and its institution-affiliated party, Freedom Financial Asset Management, LLC (FFAM), San Mateo, California. It seems that they got themselves into an unfair and deceptive practices violation of Section 5 of the Federal Trade Commission Act, the section that relates to the marketing and origination of Consolidation Plus Loans (C+ Loans). And, for good measure, the FDIC found the bank and FFAM violated the Truth in Lending Act (TILA) and Electronic Funds Transfer Act (EFTA).[†]

The FDIC said that while the exact amount of restitution has not been finally determined, \$20 million has been placed in a segregated account for the purpose of providing restitution to harmed consumers. Additionally, the FDIC orders assess civil money penalties of \$641,750 against the bank, and \$493,500 against FFAM.

Cross River Bank originates C+ Loans, an unsecured debt consolidation loan product, through FFAM. C+ Loans are offered exclusively to consumers who contract with Freedom Debt Relief (FDR), a FFAM-affiliated debt settlement company. C+ Loans were marketed as a way for consumers to quickly resolve their outstanding debts. Consumers are charged a settlement fee of up to 25 percent of each debt enrolled in FDR's program.

Here are the salient findings.

The FDIC determined that Cross River Bank and FFAM violated federal law prohibiting unfair and deceptive practices by:

- Requiring borrowers to sign loan documents without knowing the essential terms and conditions of the loan;

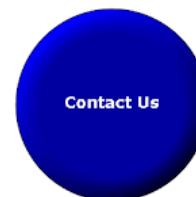
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- Failing to inform borrowers that certain major creditors will not negotiate debts with FDR and including related debt settlement fees into C+ Loans, when in fact, borrowers had to negotiate such debts themselves;
- Misrepresenting to consumers that the C+ Loans would result in the settlement of all their debts within 30 to 45 days or 30 to 90 days, which was not true for nearly half of the consumers; and
- Misrepresenting that the consumers' creditworthiness would improve by obtaining a C+ Loan.

The FDIC orders require Cross River Bank and FFAM to develop and implement a restitution plan that covers borrowers who, from 2013 to the present, received loans originated by the bank through FFAM, and were harmed by the practices identified as being unfair and deceptive.

The restitution plan must be submitted to the FDIC for review and non-objection, and restitution calculations will be verified by an independent third-party. In addition to the payment of restitution to harmed consumers and civil money penalties, the FDIC orders also require Cross River Bank and FFAM to take affirmative steps to ensure compliance with the FTC Act, as well as TILA and EFTA.

All of these UDAAP violations were entirely avoidable.

Sometimes you really should have known better!

[*] Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, all covered persons or service providers are legally required to refrain from committing unfair, deceptive, or abusive acts or practices ("UDAAP") in violation of the Act.

[†] *In the Matter of Cross River Bank, Teaneck, NJ, Consent Order, Order for restitution, and Order to Pay Civil Money Penalty*, FDIC, 3.28.18; and, *In the Matter of Freedom Financial Asset Management, LLC, as an institution-affiliated party of Cross River Bank, Teaneck, NJ, Consent Order, Order for Restitution, and Order to Pay Civil Money Penalty*, FDIC, 3.28.18

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