

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

Case No. 9:20-CV-81057

BUREAU OF CONSUMER FINANCIAL PROTECTION,

Plaintiff,

vs.

TIMEMARK SOLUTIONS, INC.,

TIMOTHY LENIHAN, SR.,

MARK NAGLER, and

CASEY GASSAWAY,

Defendants.

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COMPLAINT

1. The Bureau of Consumer Financial Protection (Bureau) brings this action against Timemark Solutions, Inc., Timothy Lenihan, Sr., Mark Nagler, and Casey Gassaway (Defendants) alleging abusive telemarketing practices in violation of the Telemarketing and Consumer Fraud and Abuse Prevention Act (Telemarketing Act), 15 U.S.C. §§ 6101 *et seq.*, and its implementing rule, the Telemarketing Sales Rule (TSR), 16 C.F.R. Part 310, as well as violations of the Consumer Financial Protection Act (CFPA), 12 U.S.C. § 5536(a)(1)(A). The Bureau brings this action in connection with Defendants' offering debt-relief services to consumers with federal student-loan debt.

2. From 2016 through October 2019, Defendants harmed consumers nationwide by charging consumers with federal student loan debt unlawful advance fees through their debt-relief business.

3. The Bureau brings this action to obtain relief for harmed consumers, enjoin Defendants from repeating or continuing their unlawful conduct, and impose civil money penalties on Defendants for their unlawful actions.

JURISDICTION AND VENUE

4. 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.

5. Venue is proper in this district pursuant to 12 U.S.C. § 5564(f) because Defendants are located, reside, or do business in this district.

PARTIES

6. The Bureau is an independent agency of the United States. 12 U.S.C. § 5491(a). The Bureau is charged with enforcing federal consumer financial laws. 12 U.S.C. §§ 5563 and 5564. The Bureau has independent litigating authority, 12 U.S.C. §§ 5564(a) and (b), including the authority to enforce the TSR with respect to the offering or provision of a consumer financial product or service subject to the CFPA, 15 U.S.C. §§ 6102(c), 6105(d).

7. Defendant Timemark Solutions, Inc. (Timemark), based in Deerfield Beach, Florida, is a company that operated from 2016 through October 2019, offering debt-relief services to consumers with federal student-loan debt. Timemark is owned by Defendants Lenihan, Nagler, and Gassaway.

8. Defendant Timothy Lenihan, Sr. resides in Boca Raton, Florida. Lenihan is a co-founder and President of Timemark, and a 30% shareholder in the company.

9. Defendant Mark Nagler resides in Boca Raton, Florida. Nagler is a co-founder, Vice President, Treasurer, and Secretary of Timemark, as well as a 30% shareholder in the company.

10. Defendant Casey Gassaway resides in Parkland, Florida. Gassaway is a Vice President of Timemark and a 40% shareholder in the company.

FACTUAL ALLEGATIONS

11. Timemark is a company that offered to, and did, prepare and submit paperwork for consumers to the U.S. Department of Education in support of applications for loan consolidation, income-driven repayment plans, loan-forgiveness programs, and other debt-relief options available to consumers with federal student-loan debt.

12. Timemark marketed its debt-relief services nationwide, using websites, including timemarksolutions.com and loan-counselors.com, creating and posting YouTube videos, and placing Google Ads. Each of these marketing channels provided a phone number for consumers to call to sign up for Timemark services. When a consumer with federal student-loan debt called the number, the consumer reached a Timemark sales representative on the telephone. The sales representative explained Timemark's services, encouraged the consumer to sign up, and discussed the fees charged for the services.

13. Once the consumer agreed to sign up for the services and to pay the requisite fees for the services, the sales representative would email the service-agreement package for the consumer to sign electronically. The consumer typically signed the service-agreement documents while on the phone with the

sales representative.

14. After the consumer signed up for the services, the consumer was transferred by phone to a customer-service representative who would, among other things, verify the consumer's payment information and collect documents and other information from the consumer in order to process the paperwork required for the consumer's application for the loan consolidation, income-based repayment plan, or loan-forgiveness program offered by the U.S. Department of Education. After it received the required documentation, Timemark submitted the application to the Department of Education; this could happen the same day or a week later. After that, the application would take at least a few weeks and sometimes months to be processed before approval by the Department of Education.

15. Timemark's service-agreement package included the client agreement, a limited power-of-attorney authorization form, and a payment-authorization form. The client agreement set forth the debt-relief program offered by the Department of Education for which Timemark would prepare and submit the paperwork, and the payment-authorization form set forth the fees for that service, listing the dates and amounts of payments due to Timemark and when they would be charged.

16. Timemark's fees for the debt-relief service generally ranged from \$99 to \$699. The consumer could pay the entire fee in one payment or make payments for up to about four months. Timemark usually received the first payment for the service within a few days, or at the latest within 30 days, of the consumer signing the service-agreement documents. Timemark received this first payment, and sometimes the entire amount due, before the Department of Education would approve a consumer's application for debt-relief, and before a consumer could make a first payment on newly altered debt.

17. Before Timemark was established, Lenihan, Nagler, and Gassaway worked as salespeople at a now-defunct company that offered the same services as Timemark. In early 2016, Lenihan and Nagler founded Timemark, modeling it on this defunct company and using a similar service-agreement package. In or about the summer of 2016, Lenihan and Nagler recruited Gassaway to join Timemark. After that, Lenihan, Nagler, and Gassaway shared ownership of the company, with Lenihan and Nagler holding 30% each, and Gassaway holding 40%. Lenihan, Nagler, and Gassaway jointly managed the company.

18. Lenihan hired, trained, and supervised the sales representatives. Lenihan was supposed to provide approval if a sales representative offered a reduced fee for a consumer.

19. Nagler was in charge of Timemark's finances, including arranging for the issuance of remote checks from a consumer's checking account to pay the fees, and keeping track of the revenue of the company. He also oversaw the customer service team and handled consumer complaints.

20. Gassaway was responsible for Timemark's marketing campaigns.

21. The fee amount and timing were set and/or controlled by Lenihan, Nagler, and Gassaway, and they were all aware, either through their roles at the company or based on their experience at the now-defunct company on which Timemark was modeled, of the timing of payments, the fact that Timemark made sales through representatives on the telephone, and the fact that those sales calls involved more than one interstate telephone call.

22. As of October 30, 2019, Timemark received \$3,784,360 in fees from around 7,329 consumers for its debt-relief services.

DEFENDANTS' VIOLATIONS OF THE TSR

23. The Bureau is authorized to enforce the Telemarketing Act and the

TSR with respect to the offering or provision of a consumer financial product or service subject to the CFPB. 15 U.S.C. § 6105(d). Among other things, a consumer financial product or service is defined by the CFPB to include “providing financial advisory services...including...providing services to assist a consumer with debt management or debt settlement [or] modifying the terms of any extension of credit....” 12 U.S.C. § 5481(15)(A)(viii)(II).

24. The TSR defines “debt relief service” as “any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.” 16 C.F.R. § 310.2(o).

25. The TSR defines a “seller” as “any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.” 16 C.F.R. § 310.2(dd).

26. The TSR defines “telemarketer” as “any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer....” 16 C.F.R. § 310.2(ff).

27. The TSR defines “telemarketing” in relevant part as “a plan, program, or campaign which is conducted to induce the purchase of goods or services . . . by use of one or more telephones and which involves more than one interstate telephone call.” 16 C.F.R. § 310.2(gg).

28. As defined in the TSR, Timemark is a telemarketer that engaged in telemarketing of its debt-relief services to consumers. Timemark’s marketing of its services included a telephone number, which, when called by consumers, would

connect to Timemark sales representatives. This was done as part of a “plan, program, or campaign” to sell Timemark’s services, and involved more than one phone and more than one interstate phone call. Consumers calling the telephone number were located in a number of different states outside of Florida, where Timemark is located.

29. Timemark is a seller under the TSR because, in connection with its telemarketing, it offered to provide, and did provide, services related to federal student-loan debt in exchange for a fee. Those services were debt-relief services under TSR because Timemark represented it would alter the terms of repayment or other terms of consumers’ federal student-loan debt.

COUNT I

Request and Receipt of Advance Fees for Debt Relief Services in Violation of the TSR (All Defendants)

30. The Bureau re-alleges and incorporates by reference Paragraphs 1 to 29.

31. It is an abusive telemarketing act or practice in violation of the TSR for any seller or telemarketer to request or receive payment of any fee or consideration for debt-relief services unless and until: (A) the seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt-management plan, or other such valid contractual agreement executed by the customer; and (B) the customer has made at least one payment pursuant to that settlement agreement, debt-management plan, or other valid contractual agreement between the customer and the creditor or debt collector. 16 C.F.R. § 310.4(a)(5)(i)(A)-(B).

32. In the course of offering to provide, or providing debt-relief services, Timemark has requested and received the payment of fees from consumers before

renegotiating, settling, reducing, or otherwise altering the terms of at least one of the consumers' debts, and before the consumers had made at least one payment on such altered debts. Timemark has thereby violated the TSR. 16 C.F.R.

§ 310.4(a)(5)(i)(A)-(B).

33. Lenihan, Nagler, and Gassaway participated in or had the authority to control the requests that Timemark made for consumers to make payment of fees before the terms of their debts had been altered, or participated in or had the authority to control Timemark's receipt of payment of fees from consumers prior to the alteration of the terms of their debt. They also participated in or had the authority to control the telemarketing of the debt-relief services by Timemark.

34. Lenihan, Nagler, and Gassaway knew, or were reckless to the fact, that Timemark requested the payment of fees, or received fees before the terms of those consumers' debts were altered, and before those consumers had made at least one payment on such altered debts. They also knew, or were reckless to the fact, that Timemark's debt-relief services were offered in connection with telemarketing.

35. Therefore, all Defendants have engaged in abusive telemarketing acts or practices in violation of 16 C.F.R. § 310.4(a)(5).

COUNT II

Providing Substantial Assistance or Support to Timemark in Its Violation of the TSR (Timothy Lenihan, Mark Nagler, and Casey Gassaway)

36. The allegations in Paragraphs 1 to 35 are incorporated here by reference.

37. The TSR prohibits any person from providing substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids

knowing that the seller or telemarketer is engaged in any act or practice that constitutes deceptive or abusive conduct under the TSR. 16 C.F.R. § 310.3(b).

38. In the course of offering to provide, or providing debt-relief services to consumers, Timemark requested and received the payment of fees from consumers before renegotiating, settling, reducing, or otherwise altering the terms of at least one of the consumers' debts, and before the consumers had made at least one payment on such altered debts. Thus, Timemark engaged in acts or practices that violated the TSR. 16 C.F.R. § 310.4(a)(5)(i)(A)-(B).

39. Lenihan provided substantial assistance or support to Timemark by hiring, training, and supervising the sales team.

40. Nagler provided substantial assistance or support to Timemark by handling customer service, the company's finances, and customer complaints.

41. Gassaway provided substantial assistance or support to Timemark by handling its marketing.

42. Lenihan, Nagler, and Gassaway knew, or consciously avoided knowing, that Timemark provided its debt-relief services in connection with telemarketing.

43. Lenihan, Nagler, and Gassaway knew, or consciously avoided knowing, that Timemark requested and received fees from consumers before the terms of those consumers' debts were renegotiated, settled, reduced, or otherwise altered, and before those consumers had made at least one payment on such altered debts.

44. Therefore, Lenihan, Nagler, and Gassaway violated 16 C.F.R. § 310.3(b).

DEFENDANTS' VIOLATIONS OF THE CFPA

45. Section 1036(a)(1)(A) of the CFPA provides that it is "unlawful for

any covered person to offer or provide to a consumer a financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law.” 12 U.S.C. § 5536(a)(1)(A).

46. Timemark is a covered person because it offers or provides consumer financial products or services, namely financial advisory services to assist consumers with modifying the terms of any extension of credit. 12 U.S.C. §§ 5481(6), (15)(A)(viii)(II).

47. Under the CFPA, a “related person” is a covered person. 12 U.S.C. § 5481(25)(B). Lenihan, Nagler, and Gassaway are related persons of Timemark, as each one is an “officer[] or employee charged with managerial responsibility for” Timemark, and a “shareholder...who materially participates in the conduct of affairs” of Timemark. 12 U.S.C. § 5481(25)(C)(i) and (ii). Therefore, Lenihan, Nagler, and Gassaway are covered persons.

COUNT III
CFPA Violations Based on Violations of the TSR
(All Defendants)

48. The allegations in paragraphs 1 to 47 are incorporated by reference.

49. A violation of a federal consumer financial law by a covered person is a violation of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

50. The Telemarketing Act and the TSR are federal consumer financial laws as defined by the CFPA. 12 U.S.C § 5481(14); 15 U.S.C § 6105(d).

51. Therefore, Defendants’ violations of the TSR, described in Counts I and II, constitute violations of section 1036(a)(1)(A) of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

DEMAND FOR RELIEF

WHEREFORE, the Bureau requests, under 12 U.S.C. § 5565, that the Court:

- a. impose appropriate injunctive relief against Defendants for their violations of the TSR and the CFPA;
- b. grant additional injunctive relief as the Court may deem to be just and proper;
- c. award monetary relief against Defendants including but not limited to rescission or reformation of contracts, the refund of monies paid, restitution, disgorgement or compensation for unjust enrichment, and payment of damages;
- d. award the Bureau civil money penalties;
- e. award the Bureau the costs of bringing this action; and
- f. award such other and additional relief as the Court may determine to be just and proper.

Dated: July 7, 2020

Respectfully submitted,

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/s/ Rina Tucker Harris

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served by CM/ECF and email on July 7, 2020 to all counsel on the Service List below.

/s/ Rina Tucker Harris

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