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Feds, Minnesota, and Other States Prevail in Appeal of "Guaranteed Grant" Case

In what is expected to be the last act in a four year long effort to stop fraudsters from offering products or services which are guaranteed to enable a business or individual to obtain a federal grant, the U. S. Court of Appeals for the Tenth Circuit on May 7th upheld a $1.68 million judgment in favor of defrauded consumers who paid to seventeen defendants money to obtain grants from the federal government. The decision is expected to halt practices which have long been a staple of late night infomercials. [*FTC v. Meggie Chapman*, (No. 11-3319)]

In 2009, the Federal Trade Commission (FTC) and the Attorneys General of Minnesota, Kansas, and North Carolina (later joined by Illinois) filed suit against the corporate and individual defendants for violation of the federal Telemarketing Sales Rule and state consumer protection statutes for falsely advertising to consumers – by mail and telephone – that the defendants could guarantee a federal grant to the consumer of at least $25,000 if the consumer purchased their grants manual and other grant research and assistance products and services. The defendants did this knowing that in most cases there were no federal grants made directly to end user businesses or individuals, that no guarantee of grant award could be made, and that its grants assistance services did not have the advertised seventy percent success rate.

In 2011, the Federal Trade Commission and the states entered into settlement orders resolving the charges against all but one of the defendants. Those orders required payment of money judgments and barred the defendants from marketing of money-making opportunities.

At a bench trial in 2011, the one remaining defendant, independent contractor Meggie Chapman, was found to have violated the telemarketing Sales Rule by "providing substantial assistance to the telemarketing defendants while knowing or consciously avoiding knowing of their deceptive telemarketing practices." That assistance took the form of Ms. Chapman's authorship of "Grant Guide" sold to consumers; making lists of potential grant opportunities which were sold to consumers despite her knowledge that most of the organizations listed did not fund individual consumers; and billing $1.68 million for grant related services sold to 8,631 customers between 2007 and 2009. The court entered a permanent injunction against her and ordered her to pay $1.68 million in restitution.

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On appeal Ms. Chapman argued that her actions did not rise to the level of "substantial assistance" in violation of the Telemarketing Rule because she was herself not involved in the misrepresentations made to customers by the telemarketers. Rejecting this argument the Court of Appeals noted that "The FTC and courts have not purported to create an exclusive list of activities that establish substantial assistance…It is sufficient that Ms. Chapman played an integral part…by providing services and products they marketed to consumers."

For both business and individual consumers the lesson of case is clear: there is no free money and if something sounds too good to be true, it probably is not true. Over eight thousand consumers learned this the hard way.

New Legislation for Employers: Criminal Background Checks, Payment of Wages, Workers' Compensation

Effective January 1, 2014 new provisions of Minn. Stat. § 364.021 and 364.09 will provide that Minnesota employers, both public and private, may not inquire into, consider, or require disclosure of an employment applicant's criminal history until the applicant has been selected for an interview, or, if there is no interview, before a conditional offer of employment is made.

Effective April 30, 2013 new provisions of Minn. Stat. § 181.13 dealing with prompt payment of wages and Minn. Stat. § 181.14 dealing with final payment of wages now provide a common definition of wages "actually earned and unpaid" to make clear that "wages are actually earned and unpaid if the employee was not paid for all time worked at the employer's regular rate of pay or at the rate required by law, including any applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or other legal authority, whichever rate of pay is greater."

Effective October 1, 2013 a new provision of Minnesota's workers' compensation law (at Minn. Stat. § 176.011 Subd. 15 and 16) revises the definition of a compensable "occupational disease" to include a mental impairment arising out of and in the course of employment. "Mental impairment" is defined as post-traumatic stress disorder diagnosed by a licensed psychiatrist or psychologist as meeting the definition of post-traumatic stress disorder described in the Diagnostic and Statistical Manual of Mental Disorders. The new language is, however, restrictive in stating that mental impairment is not considered a disease if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer.

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