

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA**

Bureau of Consumer Financial Protection,
and South Carolina Department of
Consumer Affairs,

Plaintiffs,

v.

Katharine Snyder, Performance Arbitrage
Company, Inc., and Life Funding Options,
Inc.,

Defendants.

Case Number:

COMPLAINT

The Bureau of Consumer Financial Protection (Bureau) and the South Carolina Department of Consumer Affairs (Department) bring this action against Katharine Snyder, Performance Arbitrage Company, Inc., and Life Funding Options, Inc. (Defendants) under the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536(a), 5564, 5565, and the South Carolina Consumer Protection Code (SCCPC), and allege as follows.

Jurisdiction and Venue

1. 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.

2. This Court has supplemental jurisdiction over the Department’s state-law claims because they are so related to the federal claims that they form part of the same case or controversy. 28 U.S.C. § 1367(a).

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

Parties

4. The Bureau is an independent agency of the United States created by the CFPA. 12 U.S.C. § 5491(a). The Bureau has independent litigating authority and is authorized to initiate civil actions in federal district court to secure appropriate relief for violations of “Federal consumer financial law,” 12 U.S.C. § 5564(a)-(b), including the CFPA, 12 U.S.C. § 5481(14).

5. The Department is charged with administering and enforcing the SCCPC, which governs consumer-credit transactions made in this state. The Department can seek an injunction against any person violating the SCCPC and request other appropriate relief, including reforming contracts to conform to the SCCPC, even though a consumer is not a party to the action. S.C. Code Ann. § 37-6-110. The Department also can bring an action against a person to recover a civil penalty for repeatedly and intentionally violating the SCCPC and for failing to file notification as required by the SCCPC. S.C. Code Ann. § 37-6-113(B) & (C). The Department also is authorized to initiate civil actions in federal district court to enforce provisions of the CFPA with respect to an entity that is authorized to do business under South Carolina law. *See* 12 U.S.C. § 5552(a)(1).

6. Defendant Life Funding Options, Inc. (LFO) is a Delaware corporation headquartered in Greenville, South Carolina and was authorized to conduct business in South Carolina by the Secretary of State's Office. LFO brokered contracts containing a South Carolina choice-of-law provision. LFO brokers extensions of credit to consumers and is therefore a "covered person" under the CFPA. 12 U.S.C. § 5481(5)-(7), (15)(A)(i).

7. Defendant Performance Arbitrage Company, Inc. (PAC) was a Delaware corporation headquartered in Flowood, Mississippi. PAC brokered contracts containing a South Carolina choice-of-law provision. PAC brokered extensions of credit to consumers and is therefore a "covered person" under the CFPA. 12 U.S.C. § 5481(5)-(7), (15)(A)(i).

8. Defendant Katharine Snyder was a co-founder and owner of PAC. She had managerial responsibility for PAC and materially participated in the conduct of PAC's affairs. Snyder is President, Secretary/Treasurer, and sole owner of Life Funding Options. She had managerial responsibility for LFO and has materially participated in the conduct of LFO affairs. Snyder is therefore a "related person" under the CFPA, 12 U.S.C. § 5481(C)(i), (ii), and thus deemed a "covered person" under the CFPA. 12 U.S.C. § 5481(25)(B).

Factual Background

9. Katharine Snyder, through her companies Defendants Performance Arbitrage Company and Life Funding Options, brokers contracts offering high-interest credit to consumers. The credit offers are marketed as purchases of consumers' future pension or disability payments.

10. Defendants set up contracts between consumers and investors where consumers receive a lump-sum payment, ranging from a few thousand to tens of thousands of dollars, and are thereafter obligated to repay a much larger amount by purportedly assigning to investors part of consumers' monthly pension or disability payments. The consumers' obligations typically last five to ten years.

11. The majority of the high-interest credit offers Defendants broker are for veterans who have Department of Veterans Affairs (VA) disability pensions or pensions administered by the Defense Finance and Accounting Service (DFAS). The VA establishes a veteran's level of disability compensation and administers disability pensions. DFAS is a federal agency within the Department of Defense; it includes an office that issues monthly pension payments to military retirees.

12. Federal law prohibits agreements under which another person acquires the right to receive a veteran's pension payments. 38 U.S.C. § 5301.

13. South Carolina law, the law governing these contracts according to the choice-of-law provision in the contracts, prohibits an assignment of earnings for payment or as security for payment of a debt arising out of a consumer loan and deems a sale of unpaid earnings made in consideration of the payment of money to the seller of the earnings to be a loan secured by an assignment of earnings. S.C. Code Ann. § 37-3-403 (2012). "Earnings" includes periodic payments pursuant to a pension, retirement or disability program. S.C. Code Ann. § 37-1-301(15) (2012). Thus, these contracts are prohibited under South Carolina law.

14. Defendants represent to consumers that the products Defendants broker are sales of payments and not high-interest credit offers. For example, the first page of the “New Seller Information Packet,” sent to consumers by Defendants, stated, “It is important to note that this is not a loan[.]” The first paragraph of a form email sent with the packet stated, “Please keep in mind that this is not a loan, you are selling a product for a set price.”

15. But Defendants assess the creditworthiness of consumers before completing transactions. Defendants’ contracts require consumers to authorize a payment processor to withdraw the monthly payment amount from the consumer’s bank account. And consumers can repay the contracts from sources other than the contracted-for income stream.

16. Defendants do not disclose to consumers the interest rates for the products they broker.

17. Many consumers realized the illegal nature of the transactions, and some complained directly to Defendants that the transactions are illegal. In response, Defendants repeatedly told consumers that the transactions were legal.

Additional Factual Background Supporting State-Law Claims

In support of the state-law claims asserted in Counts IV through VII, the Department further alleges as follows:

18. Although Defendants characterize the contracts as “sales of payments,” the transactions are loans under South Carolina law.

19. Defendants brokered consumer loans with loan finance charges in excess of 12% per year.

Count I

Deceptive Acts or Practices, in Violation of the CFPA

Asserted by the Bureau and the Department

20. The allegations in paragraphs 1 to 17 are incorporated here by reference.

21. An act or practice is deceptive if it involves a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances.

22. Information that is material to consumers is information that is likely to affect a consumer's choice of, or conduct regarding, a product or service.

23. The contracts brokered by Defendants are void from inception because federal law prohibits agreements under which another person acquires the right to receive a veteran's pension payments, 38 U.S.C. § 5301, and because South Carolina law, which governs the contracts, prohibits sales of unpaid earnings and prohibits assignments of pensions as security on payment of a debt, S.C. Code Ann. § 37-3-403.

24. Defendants repeatedly misrepresented to consumers that the contracts Defendants broker are valid and enforceable. In fact, the contracts are void and illegal because assignments of veterans' pensions are prohibited by federal law, and sales of unpaid earnings and assignments of pensions as security on payment of a debt are prohibited under South Carolina law.

25. Defendants' misrepresentations of the contracts as valid and enforceable and their failure to disclose the illegality of the contracts are likely to mislead consumers acting reasonably under the circumstances.

26. Defendants' misrepresentations and omissions are material because they are likely to influence the decisions of consumers acting reasonably under the circumstances.

27. Therefore, Defendants engaged in deceptive acts and practices in violation of the CFPA. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

Count II

Deceptive Acts or Practices, in Violation of the CFPA

Asserted by the Bureau and the Department

28. The allegations in paragraphs 1 to 17 are incorporated here by reference.

29. Defendants broker contracts that provide for consumers to receive a lump-sum payment and thereafter repay a much larger total amount over time using their monthly pension or disability payments.

30. Defendants represent to consumers that Defendants' products are sales and not high-interest credit offers. In fact, these products are high-interest credit offers because the products allow consumers to incur a debt and defer the right to repay. 12 U.S.C. § 5481(7).

31. Consumers acting reasonably under the circumstances would likely be misled by Defendants' misrepresentations.

32. Defendants' misrepresentations regarding the nature of the products Defendants broker are material to consumers because they render a reasonable consumer

unable to compare the cost of Defendants' products with other potential sources of credit and are likely to influence the decisions of consumers acting reasonably under the circumstances.

33. Therefore, Defendants engaged in deceptive acts and practices in violation of the CFPA. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

Count III

Unfair Acts or Practices, in Violation of the CFPA

Asserted by the Bureau and the Department

34. The allegations in paragraphs 1 to 17 are incorporated here by reference.

35. An act or practice is unfair if it causes or is likely to cause consumers substantial injury that is not reasonably avoidable and is not outweighed by countervailing benefits to consumers or to competition.

36. Defendants failed to inform consumers of their products' interest rates.

37. Defendants' practice caused or likely caused substantial injury to consumers because it prevented consumers from comparing alternative products. And by failing to inform consumers about the products' interest rates, Defendants deprived consumers of information consumers would need to determine whether the product is usurious and therefore potentially unlawful under their state's law.

38. Consumers could not reasonably have avoided injury in this situation; consumers could not reasonably be expected to make the interest-rate calculation themselves, particularly after Defendants misrepresented that the product was not a high-interest credit offer.

39. This injury was not outweighed by countervailing benefits to consumers or competition.

40. Therefore, Defendants engaged in unfair acts and practices in violation of the CFPB 12 U.S.C. §§ 5531(c), 5536(a)(1)(B).

Count IV

Engaging in Supervised Loans without a License, in Violation of the SCCPC

Asserted by the Department

41. The allegations in paragraph 1 to 19 are incorporated here by reference.

42. Unless a person is a supervised financial organization or has obtained a license as a supervised lender, he shall not engage in the business of making supervised loans or taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from supervised loans. S.C. Code Ann. § 37-3-502.

43. A supervised loan is a consumer loan in which the rate of the loan finance charge exceeds 12% per year, excluding mortgage loans and closed-end credit transactions with original repayment terms of less than 120 days. S.C. Code Ann. § 37-3-501(1).

44. Defendants are not supervised financial organizations and have never been licensed to operate as a supervised lender in South Carolina.

45. Defendants engaged in the business of making supervised loans when they brokered consumer loans with loan finance charges in excess of 12% per year.

46. Defendants engaged in the business of taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from supervised loans when it sued consumers on behalf of buyers for breach of contract and specific performance.

47. Therefore, Defendants engaged in the business of supervised loans without a license, in violation of the SCCPC. S.C. Code Ann. § 37-3-502.

Count V

Failure to File Notification, in Violation of the SCCPC

Asserted by the Department

48. The allegations in paragraph 1 to 19 are incorporated here by reference.

49. A person engaged in making consumer loans or a person having an office or place of business in South Carolina who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from loans must file notification with the Department. S.C. Code Ann. §§ 37-6-201 & -202.

50. Defendants engaged in making consumer loans when they facilitated consumer-loan transactions using contracts with a South Carolina choice-of-law provision.

51. Defendants have an office in Greenville, South Carolina and took assignments of and undertook direct collection of payments from or enforcement of rights against debtors arising from the loans Defendants brokered using contracts with a South Carolina choice-of-law provision.

52. Defendants were required to file notification with the Department within 30 days after commencing business in South Carolina and, thereafter, on or before January 31 of each year. S.C. Code Ann. § 37-6-202 and Reg. 28-8.

53. Defendants failed to file notification with the Department within 30 days after commencing business in this state and failed to file each year on or before January 31.

54. For each notification required to be filed with the Department, Defendants were required to pay a fee of \$120 for each address in this state. S.C. Code Ann. § 37-6-203 and Reg. 28-8.

55. Defendants failed to pay the required fees.

56. Therefore, Defendants repeatedly violated the SCCPC.

Count VI

Illegal Assignment of Earnings, in Violation of the SCCPC

Asserted by the Department

57. The allegations in paragraph 1 to 19 are incorporated here by reference.

58. A lender may not take assignment of earnings of the debtor for payment or as security for payment of a debt arising out of a consumer loan. S.C. Code Ann. § 37-3-403(1).

59. A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to him secured by an assignment of earnings. S.C. Code Ann. § 37-3-403(2). Earnings includes periodic

payments pursuant to a pension, retirement, or disability program. S.C. Code Ann. § 37-1-301(15).

60. Defendants brokered contracts where investors took assignments of earnings of debtors for payment or as security for payment of debts arising out of consumer loans.

61. Therefore, Defendants violated the SCCPC.

Count VII

Unconscionable Debt Collection, in Violation of the SCCPC

Asserted by the Department

62. The allegations in paragraph 1 to 19 are incorporated here by reference.

63. Defendants engaged in unconscionable conduct in attempting to collect a debt as defined in S.C. Code Ann. § 37-5-108.

64. Defendants made fraudulent, deceptive, or misleading representations in connection with the collection of consumer debt. S.C. Code Ann. § 37-5-108(5)(c).

65. Defendants filed actions for breach of contract and specific performance when they knew or should have known the contracts for sales of unpaid earnings and assignments of pensions as security on payment of a debt are prohibited under South Carolina law. Defendants repeatedly misrepresented the contracts as valid and enforceable.

66. Therefore, Defendants engaged in unconscionable debt collection in violation of the SCCPC.

Demand for Relief

Wherefore, the Bureau and the Department request that the Court:

1. permanently enjoin Defendants from committing future violations of the CFPA, 12 U.S.C. §§ 5531, 5536(a), or any provision of “Federal consumer financial law,” as defined by 12 U.S.C. § 5481(14);
2. permanently enjoin Defendants from committing future violations of the SCCPC;
3. declare the contracts void ab initio and unenforceable;
4. grant additional injunctive relief as the Court may deem just and proper;
5. award restitution, damages or other monetary relief against Defendants;
6. order Defendants to pay redress to harmed consumers;
7. order Defendants to disgorge all ill-gotten gains;
8. impose on Defendants a civil money penalty;
9. order Defendants to pay the Bureau’s and the Department’s costs incurred in connection with prosecuting this action; and
10. award additional relief as the Court may determine to be just and proper.

Respectfully submitted,

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