

THE
NATIONAL LAW REVIEW

Federal jury convicts operator of payday lenders sued by CFPB and FTC

Monday, November 20, 2017

Richard Moseley Sr., the operator of a group of interrelated payday lenders, was [convicted by a federal jury](#) on all criminal counts in an indictment filed by the Department of Justice, including violating the Racketeer Influenced and Corrupt Organizations Act (RICO) and the Truth in Lending Act (TILA). The criminal case is reported to have resulted from a referral to the DOJ by the CFPB. The conviction is part of an aggressive attack by the DOJ, CFPB, and FTC on high-rate loan programs.

In 2014, [the CFPB and FTC sued Mr. Mosley](#), together with various companies and other individuals. The companies sued by the CFPB and FTC included entities that were directly involved in making payday loans to consumers and entities that provided loan servicing and processing for such loans.

The CFPB alleged that the defendants had engaged in deceptive and unfair acts or practices in violation of the Consumer Financial Protection Act (CFPA) as well as violations of TILA and the Electronic Fund Transfer Act (EFTA). According to the CFPB's complaint, the defendants' unlawful actions included providing TILA disclosures that did not reflect the loans' automatic renewal feature and conditioning the loans on the consumer's repayment through preauthorized electronic funds transfers.

In its complaint, the FTC also alleged that the defendants' conduct violated the TILA and EFTA. However, instead of alleging that such conduct violated the CFPA, the FTC alleged that it constituted deceptive or unfair acts or practices in violation of Section 5 of the FTC Act. A receiver was subsequently appointed for the companies.

In November 2016, [the receiver filed a lawsuit](#) against the law firm that assisted in drafting the loan documents used by the companies. The lawsuit alleges that although the payday lending was initially done through entities incorporated in Nevis and subsequently done through entities incorporated in New Zealand, the law firm committed malpractice and breached its fiduciary obligations to the companies by failing to advise them that because of the U.S. locations of the servicing and processing entities, the lenders' documents had to comply with the TILA and EFTA. A motion to dismiss the lawsuit filed by the law firm [was denied](#).

In its [indictment of Mr. Moseley](#), the DOJ claimed that the loans made by the lenders controlled by Mr. Moseley violated the usury laws of various states that effectively prohibit payday lending and also violated the usury laws of other states that permit payday lending by licensed (but not unlicensed) lenders. The indictment charged that Mr. Moseley was part of a criminal organization under RICO engaged in crimes that included the collection of unlawful debts.

In addition to aggravated identity theft, the indictment charged Mr. Moseley with wire fraud and conspiracy to commit wire fraud by making loans to consumers who had not authorized such loans and thereafter withdrawing payments from the consumers' accounts without their authorization. Mr. Moseley was also charged with committing a criminal violation of TILA by "willfully and knowingly" giving false and inaccurate information and failing to provide information required to be disclosed under TILA. The DOJ's TILA count is particularly noteworthy because criminal prosecutions for alleged TILA violations are very rare.

This is not the only recent prosecution of payday lenders and their principals. The DOJ has launched at least three other criminal payday lending prosecutions since June 2015, including [one against the same individual operator of several payday lenders](#) against whom [the FTC obtained a \\$1.3 billion judgment](#). It remains to be seen whether

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the DOJ will limit prosecutions to cases where it perceives fraud and not just a good-faith disclosure violation or disagreement on the legality of the lending model. Certainly, the offenses charged by the DOJ were not limited to fraud.

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