

USTP's Consumer Protection Efforts Curb Abuses by Creditors, Poorly Performing Attorneys

By Clifford J. White III, Director
Executive Office for U.S. Trustees¹

USTP's Consumer Practice

Like many bankruptcy professionals, we in the U.S. Trustee Program are engaged in both consumer and chapter 11 practice. In fact, the vast majority of the work that the USTP does day in and day out is in consumer cases, where we address violations by both debtors and creditors.

This article highlights several of our important consumer protection priorities, with a focus on national enforcement against abuses by creditors and poorly performing attorneys.

Creditor Abuse Enforcement

Aside from the mandatory statutory duties the USTP carries out in consumer bankruptcy cases, such as appointing and overseeing private trustees and administering the means test, enforcement against creditor violations has been a significant feature of our consumer practice for the past 10 years. I think we have shown conclusively that the USTP understands all the words of the title of the 2005 reform law – the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The integrity of the bankruptcy system depends on compliance by all of the parties in that system.

In February, we announced the Program's 12th national settlement, which was the ninth one involving a major financial institution or creditor. These settlements have covered a range of violations, from the collection of discharged debt to improper disclosure of privacy protected information to misconduct by mortgage servicers. The settlements reflect a litigation strategy to combat national systemic violations of the Bankruptcy Code and Rules with national solutions that hold creditors accountable and protect consumers.

That 12th settlement was reached by the Department of Justice and its federal and state partners with HSBC Bank USA NA, to resolve a panoply of mortgage loan origination and servicing claims. The USTP took an active role in forging the \$470 million agreement, which also addressed violations of bankruptcy law that deprived distressed homeowners of their rights as they sought to save their homes in chapter 13. As I said in the Department's news release, even as the mortgage crisis recedes, the USTP will continue to combat mortgage servicer abuse of federal bankruptcy laws.

The HSBC settlement was just the latest in a series of settlements in which we joined our federal and state partners in obtaining consumer relief from financial institutions. Our review of the wide swath of bankruptcy cases has allowed the USTP to compile evidence regarding

¹ This article is an adaptation of portions of a speech delivered at the ABI's Bankruptcy Battleground West in Los Angeles on March 11, 2016.

servicer misconduct both before and after the bankruptcy filing that has been instrumental in obtaining these settlements.

Importantly, though, we also enter into national agreements that are confined solely to bankruptcy-specific violations and do not involve federal or state partners. For example, recently, we identified cases involving major national banks that, years after entering into the National Mortgage Settlement, were still failing to comply with bankruptcy law. In particular, some banks systematically failed to timely and accurately notify bankruptcy customers about changes in mortgage payments and to provide timely and accurate escrow analyses.

In March 2015, we announced a \$50 million settlement with JPMorgan Chase Bank N.A., and then, in November 2015, an \$81.6 million settlement with Wells Fargo Bank N.A. The violations committed by these banks affected well over 100,000 borrowers seeking to save their homes through chapter 13 bankruptcy. In the case of Chase, the bank engaged in the robo-signing of tens of thousands of court documents. That conduct was especially egregious because it occurred several years after the scandal of robo-signing mortgage documents first broke onto the front pages of newspapers.

Even as we continue to investigate mortgage violations, we have launched investigations of the conduct of creditors who engage in the buying and selling of unsecured consumer claims. There may be more to report on this initiative at a later time.

Although we cannot begin to compete with the resources of the armies of legal professionals engaged by major creditors, we can leverage the resources of our 93 field office locations to engage in discovery and other litigation around the country. We can amass representative evidence, detect patterns of violations and then seek global agreements.

Generally, these global resolutions are court-ordered and include monetary payments and other relief to consumers, changes to internal practices, and long-term compliance monitoring by an independent party acceptable to the USTP and paid for by the creditor. All agreements can have variations, but we have developed what we consider to be an effective investigative strategy and formula for resolving broader systemic misconduct.

Our success as an enforcement agency is demonstrated not only by the settlements achieved to date, but by the reaction we receive from the creditor and financial communities, which now seem more willing to accept the important role of the USTP as a regulator and enforcer in the consumer arena. We are pleased that some financial institutions have begun to come forward to admit to us operational flaws detected in their own internal compliance reviews. While we are prepared to litigate, this trend is a welcome outgrowth of the success of our enforcement efforts and may augur well for future consensual and efficient resolution of violations.

Poorly Performing Consumer Attorney Enforcement

Let me also give you a preview of a developing consumer protection initiative. We are deeply concerned about the increase in poorly performing debtors' lawyers, especially those who are marketed as national law firms or who recruit clients via the Internet. Consumers in financial

distress are at one of the most vulnerable times in their lives. Fortunately, the USTP has significant experience in dealing with those who seek to prey on that vulnerability, from our long-standing practice of seeking fee disgorgement from attorneys who fail their consumer clients and pursuing sanctions against non-attorney bankruptcy petition preparers who violate the law.

Perhaps as a result of the recent decline in filings, many good consumer lawyers may be leaving the practice of bankruptcy law and some unscrupulous attorneys may be attempting to take their place. We are reviewing our statutory options to deal with this problem on a more national basis. You will hear more about this initiative in the coming months.

Conclusion

Although our role in policing debtor misconduct still constitutes the large majority of actions we take, the USTP is uniquely positioned in the bankruptcy system to deal with abusive practices by creditors, poorly performing attorneys and others who cross jurisdictional lines. In those instances in which an entity operates nationally, the Program has been particularly successful in coordinating the litigation efforts of our offices to reach national settlements with far-ranging scope. As the nation's bankruptcy watchdog, we have taken on an expanded role in the consumer protection arena and we will keep at it, to help ensure that debtors receive the "fresh start" they deserve.