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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Payment Processing Marketer Wants Sanctions Against CFPB

By **Dani Kass**

Law360, New York (January 5, 2017, 4:42 PM EST) -- Pathfinder Payment Solutions Inc. on Wednesday asked a Georgia federal court to sanction the Consumer Financial Protection Bureau for trying to hold it accountable for contractors that allegedly violated debt collection rules and facilitated illegal payments, arguing the CFPB never had proof Pathfinder acted wrongfully.

Pathfinder — which says it's a marketer of payment processors and not a processor itself — said discovery has showed it followed industry standards and that there were no red flags for the allegedly problematic payment processors, Universal Debt & Payment Solutions LLC and Credit Power.

"The CFPB had knowingly exceeded its statutory authority, deliberately disregarded the law, consciously distorted the facts against Pathfinder in the complaint, and should be sanctioned for this conduct," the motion states. "The CFPB's case against Pathfinder has always been a farce. Discovery simply reinforced this."

The CFPB sued in March 2015, alleging the processors and others engaged in practices that violated the Fair Debt Collections Practices Act by collecting on so-called phantom debts, which are debts that a consumer either does not owe or a creditor is legally barred from collecting.

The agency claims the defendants used a host of fictitious names, including a fake firm called IRS Equity, when they called consumers and threatened them with arrest, wage garnishment and "financial restraining orders," all of which were untrue and violations of the FDCPA.

When consumers gave their payment information over to the defendants, that information was then transferred over to the payment processor defendants, who then transferred funds from the bank accounts to the debt collection firms, the CFPB said.

The suit claims Pathfinder should have noticed an excessive chargeback volume at the two processors and dropped them. But in the motion for sanctions, Pathfinder said the government only points to isolated months of excessive chargebacks, not solid evidence of wrongdoing.

"In the payment processing services industry, chargebacks are a fact of life. In the same way that a fruit farmer must deal with some worm-ridden apples, so too must a payment processor expect a reasonable amount of reversed transactions," the motion states. "The farmer wouldn't abandon the production of apples based on these expected, regular losses of product. In fact, the farmer may not be concerned with such losses at all if the number of bad apples didn't increase from prior years and the apple yield was otherwise in line with projected expectations.”

The CFPB’s thought process in bringing the suit is “the sort of second-guessing regulatory tunnel vision that would bring the entire credit card processing industry to a screeching halt,” Pathfinder said. “The CFPB would have the farmer fell the entire orchard, return the money from selling good apples, accuse him of misconduct if he did not, and end his business to the chagrin of apple consumers.”

The CFPB declined to comment on the motion.

The CFPB is represented by Jonathan Engle, David Dudley, John Horn, Anthony Alexis and Frank Kulbaski.

Pathfinder is represented by John Da Grosa Smith of Smith LLC.

The case is Consumer Financial Protection Bureau v. Universal Debt & Payment Solutions LLC et al., case number 1:15-cv-00859, in the U.S. District Court for the Northern District of Georgia.

—Additional reporting by Evan Weinberger. Editing by Joe Phalon.