Loyola Consumer Law Review

Volume 11 | Issue 1 Article 2

1998

Telemarketing Fraud upon the Elderly Shows No Signs of Slowing

Mark Allan Baginskis

CONSUMER NEWS

by Mark Allan Baginskis

Telemarketing Fraud Upon the Elderly Shows No Signs of Slowing

Telemarketing is attractive to those who partake in a legitimate business and to those who are willing to swindle unsuspected consumers out of billions of dollars a year. The National Consumer League receives hundreds of calls daily relating to fraud, and 60% of those calls involve the elderly.[1] Through the use of well-rehearsed and polished sales pitches, fraudulent telemarketers prey upon the weaknesses of the elderly. For example, one elderly woman lost over $74,000 due to repeated victimization by a telemarketing firm.[2]

Embarrassed victims often do not report the incident to either their family or to law enforcement officials. In other cases, victims may not know where to report such incidents.[3]

Recent federal legislation has facilitated the prosecution of telemarketing in federal courts. However, state and local authorities still face many obstacles in attempting to fight telephone fraud.[4] While many states do have anti-telemarketing statutes, not all states have consumer protection statutes that protect the elderly.[5] As more states enhance protection of the elderly, the ability to discourage fraudulent activity against the elderly may increase. However, unless there is uniformity in how deceptive telephone practices are punished, the opportunity will always exists for fraudulent perpetrators to "forum shop" for an area that does not restrict their deceptive practices.

Perpetrators target the elderly for a variety of reasons. According to one fraudulent telemarketer, it is because the elderly are often homebound, and they are more accessible during the day than the working class.[6] Others prey upon the elderly's feelings of loneliness.[7] Since many elderly people live alone, they may be more receptive to having social contact than younger individuals. These scenarios are open invitations to fraudulent operators. For example, one elderly woman explained to an interested telemarketer that she would consider his pitch if it would provide financial security.[9] The telemarketer then focused on financial security as one of his selling points.[10] Only later did she learn, via repeated phone calls and frequent conversations, that she had been victimized due to her loneliness.[11]

As long as the elderly population continues to grow and the perpetrators of fraud are successful, there will be a need to educate potential victims to help prevent fraudulent telemarketing schemes.

Telemarketing Fraud Schemes

Telemarketing has grown immensely over the last decade.[12] Because the industry has become so large, there are countless opportunities to run a deceptive practice by disguising it as a legitimate operation. Telemarketing is any plan which induces the purchase of goods or services, or the participation in a contest or sweepstakes, by the use of one or more interstate telephone calls, regardless of who initiates the call.[13] Telemarketing is a highly selective operation which can be focused to reach only a particular demograpic.[14]

Two of the more prevalent types of telemarketing fraud are the investment scam and the sweepstakes scam.[17] The fake investment is usually targeted towards males[18] and may include the sale of investment opportunities, FCC licenses, gem stones, foreign currency or commodities.[19] In making the initial pitch, the seller tells the victim that this is a safe and financially rewarding investment. To further convince the customer, the customer may be referred to a "previously satisifed investor." These investors are often "shills" paid by the telemarketers for their fraudulent and misrepresenated endorsement.[20] Only after having paid out large amounts of money does the victim learn that the investment is worthless or nonexistent.

The sweepstakes scam, in contrast, is most frequently targeted at women.[21] A potential victim receives a notification letter or postcard which identifies the individual as the winner of a prize. The letter then instructs the victim to call a particular number to redeem the prize. The victim eventually realizes that to receive the prize he or she must pay a fee to cover taxes, shipping and handling, or processing.[22] Unfortunately for the customer, there is either no prize at all or the consumer pays exorbitant amounts of money for a low-priced object.

Sweepstake giveaways frequently lure customers to buy products. Fraudulent telemarketers may offer prizes if the customer sits through a sales presentation. Legitimate businesses are careful in their operations not to violate state and federal laws prohibiting private lotteries.[23]

Fraudulent telemarketers, however, often do promote scams such as illegal lotteries.[24] In this type of scam, the telemarketers misinform the consumer that she must purchase a product to increase the chances of winning. Most state's laws forbid prizes being given away based upon skill and requires instead that the award of a prize is to be based upon chance.

Still another method employed by telemarketers is the use of 900 numbers. For example, the caller to a 900 number has to pay a charge just to hear what may be offered by the promoter of the product or service. At times, the cost of simply getting connected to the 900 number can exceed of $15 per call.

Fraudulent Telemarketers' Operations

Telemarketers find the name and addresses of potential victims via phone books, magazines, brokers with lists and various club rosters. The initial pitch comes from a group of people who work out of phone rooms called "boiler rooms."[25] Boiler rooms can be quickly shut down and relocated if law enforcement officials discover them. [26] These rooms often have a large number of sales people and telephones. Since telemarketing fraud operations can close quickly, law enforcement officials often have difficulty investigating such operations.

The "fronter" is the first person to contact a telemarketing fraud victim. Fronters read from a prepared script designed to induce the individual to buy a product or service.[27] These prewritten scripts list different responses to common customer objections and answers to frequently asked questions.[28] The scripts are set up in such a way that the fronter can often overcome any objection that a customer provides.[29] If it appears there is a chance of sale, the fronter may pass the call along to a "closer." Closers are specifically used to overcome objections raised by a customer; the closers are more experienced sales people, and therefore, are able to provide a stronger sales pitch to help complete the sale.

Once a sale is made, the fronter may pass that purchaser's name along to a "reloader" who does not work off a script but instead relies on his or her own persuasive powers to make further sales to the customer.[30] Repeat customers are victimized until victim becomes insolvent. The process continues until an impasse is reached or the authorities begin to move in on the operation. If an impasse is reached, fraudulent telemarketers offer larger discounts or more substantial prizes.

Another operation is the "recovery room."[31] This is where an offer is made to a telemarketing victim to recover his lost money. Lost money is rarely recovered, and even more is lost in this subsequent fraud. Of the sweepstakes-fraud victims who responded to a survey conducted by the American Association of Retired Persons ("AARP"), 27% claimed they were contacted by a recovery room.[32]

Challenges to Stopping Fraudulent Telemarketers

Stopping deceptive practices against the elderly is difficult for a number of reasons.[33] Too often fraudulent telemarketers pick up and move their shop to another location which makes it difficult for authorities to catch these offenders. Despite the boom, most states have not correspondingly increased funding to enforcement agencies. [34] Many elderly victims are reluctant to report a fraud, which makes it difficult for the government to stop fraudulent practices. Since no single statute encompasses all the fraudulent practices that exist, it is difficult for law enforcement officials to stop the problem.[35]

Local and state governments have made efforts to curtail the growth of fraudulent telemarketing practices.[36] While a state may enforce and actually stop the practice within its boundaries, injunctions and restraining orders do not prevent the operation from continuing in other states. For example, in California, one successful investigation could address only one type of telemarketing fraud because of budgetary contraints.[37] Also, when an enforcement agency does break up an operation, seldom are all of the individuals involved charged. The low-end fronters, who learn how the schemes operate, are able to go off on their own and restart the fraudulent process elsewhere. With stiffer and stiffer penalties, states are trying to curtail the operations and preventing new ones from opening.

On the federal level, those who commit fraud can be charged under federal statutes for mail or wire fraud and conspiracy.[38] Under 18 U.S.C. § 1343, mail fraud involves any correspondence that is part of a consumer fraud scheme and is sent through the U.S. mail or any other carrier. This includes any fraud that involves a mailed payment. Telemarketing scams also fall under the federal wire fraud statute. However, to trigger the wire fraud statute more than one perpetrator must be involved, because it must also be a conspiracy.[39]

Early in the 1990s, legislation was proposed to combat fraudulent telemarketing, but it was not until 1994 that the "Telemarketing and Consumer Fraud and Abuse Prevention Act" was passed.[40] The passage of the Act finally provided for a federal definition of telemarketing. In addition, the Act made disclosure of the purpose of the call such as selling of goods or services, as well as the nature and the price of the goods, a necessary part of a telemarketing call. The act also placed restrictions on the hours of when telemarketing companies can make calls.[41] The Act also stated that calls were not be coercive or abusive. Additionally, in 1994, the Senior Citizens Against Marketing Scams Act was passed to enhance penalties for violations of federal telemarketing statutes.[42]

AARP Survey Changes Common Myths

While it has often been felt that telemarketers target the elderly because of isolation and vulnerability, a study sponsored by AARP revealed some surprising findings.[43] In 1996, AARP initiated a large scale survey to gain a better understanding of telemarketing fraud and how it affects older Americans. *Telemarketing Fraud Victimization of Older Americans: An AARP Study* was one of four studies conducted to better understand the victims and why they may be such a vulnerable group.[44]

The survey compiled responses from 745 telemarketing fraud victims.[45] All participants were identified as victims of at least one type of scheme detailed as fraudulent by state or federal law. The usual victim of telemarketing fraud is older than one might expect. Over half of the participants (56%) were of the age of fifty or older.[47] Surprisingly, some survey participants are affluent, well-educated and well-informed.[46] Another surprise is that these individuals are active in their community.

AARP's survey also indicated that many respondents were contacted within the past six months. Some reported that they receive more than twenty calls. Of those surveyed, only 7% said the last time they received a telemarketing solicitation was over a year ago.

The survey found that these fraudulent telemarketing schemes build off one another. For example, after an individual has been scammed, a person may be "reloaded" so that he can be contacted once again to be taken for more money.[48] The survey also suggests that telemarketers buy and sell "mooch lists" for one another.[49] These "mooch lists" include people who have been frequently scammed.[50]

Over half (57%) of the survey's respondents felt the prizes offered in the telephone scams were going to be worth what was paid out.[51] Since the victims did not know when someone was selling them worthless products or services, they felt it was difficult to identify potential fraud.[52] However, a difference arose between those who were conned and those who were not. Those who did not fall for the scam either hung up or stayed alert for signals that might tip them off to a potential scam. Those who were victimized were less likely to hang up and may have even listened for signals that would in some way confirm the legitimacy of the telemarketer.

Some victims did not seem to have the skills necessary to end the call if they felt that the call was the scammer's only way to make a living. Significantly, few older people surveyed knew that telemarketing fraud is a crime (only 2%).[53] Furthermore, survey respondents did not view fraudulent telemarketing as stealing. Victims felt that telemarketers were in a business and it was up to the consumer to refuse the product, even though the these victims also felt the business had an obligation to operate honestly.

The survey results strongly suggest the need for education. The elderly need to know that fraudulent telemarketing is a crime. Further, the elderly need to know how this crime operates so that they can proceed more with caution speaking on the phone with telemarketers.

The AARP has developed a new slogan directed at the victims: "Fraudulent Telemarketers are Criminals. Don't Fall for the Telephone Line." Through their workshops, fliers and public service announcements, AARP aims to educate victims and potential victims of telemarketing fraud. The target audience is not just elderly individuals but also all those who may be involved with the elderly, such as AARP members, previous victims and their families, local police and law enforcement officials, and the general public.

Conclusion

Fraudulent telemarketers will continue to take other people's money because there is simply too much money to be made. The programs already in place may slow down swindlers, but the con-artists scams continue to evolve, and demand constant reassessment by the enforcement and education communities. The Senior Citizens Against Marketing Scams Act is a good step by the federal government toward decreasing tolerance that exists for their activity. However, a uniform definition of telemarketing fraud is still necessary at the state level, as is a continued focus on educating the elderly public on how to identify fraudulent schemes so as to avoid becoming targets themselves.

Endnotes

1 *They Can't Hang Up*, National Consumers League Video, 1996.

2 *See id.*

3 *See Consumer Fraud Prevention Act of 1995: Hearing Before the Subcommittee on Crime, Committee on the Judiciary*, 104th Cong., 2nd Sess. 20-21 (1996) [hereinafter 1996 *House Hearing*]; FRED SCHULTE, FLEECED! TELEMARKETING RIP-OFFS AND HOW TO AVOID THEM 21 (1995).

4 *See* Patrick E. Michela, Comment, *You May Have Already Won*, 21 PEPP. L.REV. 553, 585-87 (1992).

5 *See e.g.*, COLO. REV. STAT. § 6-1-301 (1993), OHIO REV. CODE ANN. 4719.03 (1998), KAN. STAT. ANN. 50-671 (1997).

6 *See They Can't Hang Up*, *supra* note 1.

7 *See* SCHULTE, *supra* note 3.

8 *See id.*

9 *See id.*

10 *See id.*

11 *See id.*

12 *See* Richard Starnes, *Consumer Fraud and the Elderly*, 4 ELD. L.J. 201, 206 (1996).

13 *See* 18 U.S.C. § 2325 (1995).

14 *See* Michela, *supra*, note 4 at 555.

15 *See They Can't Hang Up*, *supra* note 1.

16 *See* Michela, *supra*, note 4 at 564.

17 *See* Starnes, *supra*, note 12.

18 *See They Can't Hang Up*, *supra* note 1.

19 *See id.*

20 *See* United States v. Judd, 889 F.2d 1410, 1412 (5th Cir. 1989).

21 *See They Can't Hang Up*, *supra* note 1.

22 *See id.*

[23] *See* Michela, *supra*, note 4 at 566.

[24] *See id.*

[25] *See id.* at 559.

[26] *See id.* at 562; Hebe R. Smythe, *Fighting Telemarketing Scams*, 17 HASTINGS COMM. & ENT. L.J. 347, 351 (1994).

[27] *See* Michela, *supra*, note 4 at 559-60.

[28] *See id.* at 560.

[29] *See id.*

[30] *See id.* at 561-62.

[31] PRINCETON SURVEY RESEARCH ASSOCIATES, TELEMARKETING FRAUD AND OLDER AMERICANS, AN AARP SURVEY, 9 (1996).

[32] *See id.*

[33] *See* SCHULTE, *supra*, note 3, at 245-261.

[34] H.R. REP. NO. 421, 102nd Cong. 1st Sess. 3 (1991).

[35] *See* PRINCETON SURVEY RESEARCH ASSOCIATES, *supra* note 31.

[36] *See* Michela, *supra*, note 4 at 584.

[37] *See* CAL. BUS. PROF. CODE, § 17511.1(a)(8).

[38] 18 U.S.C. § 1341 (1988).

[39] 18 U.S.C. § 371 (1988).

[40] 18 U.S.C. § 2325 (1988).

[41] *See id.*

[42] *See id.*

[43] *See* PRINCETON SURVEY RESEARCH ASSOCIATES,*supra* note 31.

[44] *See id.*, at Introduction.

[45] *See id.*, at 37.

[46] *See id.*, at 7.

[47] *See id.*, at 4.

[48] *See id.*, at 9.

[49] *See id.*

[50] *See id.*

[51] *See id.*, at 17.

[52] *See id.*, at 18.

[53] *See They Can't Hang Up*, *supra* note 1.

CLR