Alert

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COZEN O'CONNOR

Talk to the Machine! AKA Revoking TCPA Consent by "Talking" to a Pre-Recorded Message

Can a TCPA plaintiff revoke consent to be contacted by "talking" to a pre-recorded message? Probably not. But this is the theory advanced by serial pro se litigant Na'eem Betz in *Betz v. Synchrony Bank*, currently pending in the U.S. District Court, District of Columbia.

Betz defeated a motion to dismiss his TCPA claim — in part.

Following several iterations of his complaint spanning nearly a year of litigation, Betz alleged in his second amended complaint that Synchrony Bank, in an effort to collect a debt, called him over 80 times using an automatic telephone dialing system (ATDS) and a pre-recorded or artificial voice (PRAV).[1] Betz allegedly answered the phone, listened to part of the pre-recorded message, stated that he "revoke[d] any and all prior consent," and then immediately hung up.[2] Synchrony Bank moved to dismiss.

Betz admitted that Synchrony Bank called him to collect a debt.[3] He was, therefore, the *intended recipient* of the calls. An ATDS system uses a random or sequential number generator and would objectively and, as a matter of law, *not* be utilized to contact a specific customer about a specific debt. On this basis, the court dismissed the TCPA claim to the extent it was based upon the use of an ATDS.[4]

On the other hand, there was no dispute that Synchrony Bank utilized a PRAV since the message made clear that it was a recording.[5] Hence, the issues before the court were whether Betz had ever consented to receive such messages (he denied this) and whether Betz ever effectively revoked consent to such calls.

As anyone who has dealt with pro se litigants in the consumer protection space knows, these plaintiffs can concoct some very, shall we say, "unique" arguments. Most of the time, these arguments are rejected outright. Sometimes, however, they get a bit of traction, and full attention must be paid to them.

Here, the case will likely turn on whether Betz ever gave consent to receive these calls, and the burden to show consent will lie with the bank. If Betz did give consent, then he will no doubt continue to argue that his attempted revocation — speaking to a recorded message — was sufficient to revoke consent. However, a revocation is not reasonable if the surrounding facts and circumstances indicate the revocation will not be effective.[6] Synchrony Bank will continue to argue that Betz could not have held a reasonable expectation that he revoked consent under these circumstances because his allegation is simply that he attempted to revoke his consent by speaking to a pre-recorded message (and then immediately hanging up). Betz did not allege that he ever spoke to a live representative or that anyone on behalf of Synchrony Bank confirmed or even acknowledged the alleged revocation request.[7]

While it is exceedingly unlikely that a court would ever adopt Betz's position on revocation, it may be an interesting case to watch.

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[1] *Betz v. Synchrony Bank*, 2023 WL 3303669 at *1 (May 8, 2023).

[2] *Id.* at *1.

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[3] *Id.* at *3.

[4] *Id.* at *3.

[5] *Id.* at *3.

[6] *Epps v. Earth Fare, Inc.*, 2017 WL 1424637 (C.D. Cal., Feb. 27, 2017).

[7] *Betz v. Synchrony Bank*, 2023 WL 3303669 at *4.