

STATE OF NEW YORK

9193

IN ASSEMBLY

February 9, 2022

Introduced by M. of A. ROZIC -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law and the financial services law, in relation to fraud in connection with an abnormal disruption of the market

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions (b) and (c) of section 349 of the general
2 business law, as added by chapter 43 of the laws of 1970, are amended to
3 read as follows:

4 (b) Whenever the attorney general shall believe from evidence satis-
5 factory to him or her that any person, firm, corporation or association
6 or agent or employee thereof has engaged in or is about to engage in any
7 of the acts or practices stated to be unlawful he or she may bring an
8 action in the name and on behalf of the people of the state of New York
9 to enjoin such unlawful acts or practices and to obtain restitution of
10 any moneys or property obtained directly or indirectly by any such
11 unlawful acts or practices. In such action preliminary relief may be
12 granted under article sixty-three of the civil practice law and rules.
13 Provided further that, whenever the attorney general shall believe from
14 evidence satisfactory to him or her that a firm, corporation or associ-
15 ation or agent or employee thereof has engaged in any of the acts or
16 practices stated to be unlawful in connection with and with the intent
17 to unlawfully gain from an abnormal disruption of the market as defined
18 in section three hundred ninety-six-r of this chapter, he or she may
19 bring an action on behalf of the people of the state of New York to
20 recover three times the actual damages proved or twenty-five thousand
21 dollars, whichever is greater.

22 (c) Before any violation of this section is sought to be enjoined, the
23 attorney general shall be required to give the person against whom such
24 proceeding is contemplated notice by certified mail and an opportunity
25 to show in writing within five business days after receipt of notice why
26 proceedings should not be instituted against him or her, unless the
27 attorney general shall find, in any case in which he or she seeks

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD09574-03-2

1 preliminary relief, that to give such notice and opportunity is not in
2 the public interest.

3 § 2. Section 408 of the financial services law is amended to read as
4 follows:

5 § 408. Civil penalty. (a) In addition to any civil or criminal liabil-
6 ity provided by law, the superintendent may, after notice and hearing,
7 levy a civil penalty:

8 (1) not to exceed five thousand dollars per offense, for:

9 (A) any intentional fraud or intentional misrepresentation of a mate-
10 rial fact with respect to a financial product or service or involving
11 any person offering to provide or providing financial products or
12 services; ~~or~~

13 (B) any violation of state or federal fair debt collection practices
14 or federal or state fair lending laws; ~~and~~ or

15 (C) a firm, corporation or association or agent or employee thereof
16 intentionally engaging in fraud or misconduct with respect to the bank-
17 ing law, the insurance law, the provisions of this chapter or other laws
18 or any final or temporary order issued pursuant to which the superinten-
19 dent has investigatory or enforcement powers, in connection with and
20 with the intent to unlawfully gain from an abnormal disruption of the
21 market as defined in section three hundred ninety-six-r of the general
22 business law; and

23 (2) not to exceed one thousand dollars for any other violation of this
24 chapter or the regulations issued thereunder, provided that there shall
25 be no civil penalty under this section for violations of article five of
26 this chapter or the regulations issued thereunder; and

27 (3) provided, however, that, with the exception of subparagraph (C) of
28 paragraph one of this subsection:

29 (A) penalties for regulated persons under the banking law shall be as
30 provided for in the banking law and penalties for regulated persons
31 under the insurance law shall be as provided for in the insurance law;
32 and

33 (B) the superintendent shall not impose or collect any penalty under
34 this section in addition to any penalty or fine for the same act or
35 omission that is imposed under the insurance law or banking law; and

36 (C) nothing in this section shall affect the construction or interpre-
37 tation of the term "fraud" as it is used in any other provision of the
38 consolidated or unconsolidated law.

39 (b) Civil penalties received by the superintendent pursuant to this
40 section shall be applied on an annual basis as follows: funds shall be
41 applied first to reduce the assessments charged on persons regulated
42 under the insurance law and the banking law pursuant to section two
43 hundred six of this chapter up to the full amount paid by persons regu-
44 lated under the insurance law and banking law for the operating expenses
45 of the financial frauds and consumer protection unit not attributable to
46 regulation under the insurance or banking law for the fiscal year in
47 which such penalties are received, such amount shall be applied to any
48 assessment in the following year, and any remaining funds shall be paid
49 to the general fund. The superintendent shall have discretion to deter-
50 mine how operating expenses which are not solely attributable to regu-
51 lating persons under either the insurance law or the banking law shall
52 be allocated.

53 (c) (1) Prior to levying a civil penalty pursuant to subparagraph (C)
54 of paragraph one of subsection (a) of this section, the superintendent
55 shall consider, in addition to other appropriate factors:

1 (A) Whether the subject of the investigation knew that their conduct
2 was made in connection with an abnormal disruption of the market with an
3 intent to unlawfully gain from such disruption or whether the defend-
4 ant's conduct was in willful disregard to an abnormal disruption of the
5 market with an intent to unlawfully gain from such disruption;

6 (B) Whether the conduct of the subject of the investigation caused a
7 person or persons to suffer loss or encumbrance of a primary residence,
8 principal employment or source of income, payments received under a
9 pension or retirement plan or a government benefits program, or assets
10 essential to health or welfare;

11 (C) Any other substantial economic damage resulting from the conduct
12 of the subject of the investigation; and

13 (D) The net worth and annual business volume of the subject of the
14 investigation.

15 (2) In determining the amount of any supplemental civil penalty
16 imposed pursuant subparagraph (C) of paragraph one of subsection (a) of
17 this section, the superintendent shall make a finding, after notice and
18 hearing is provided, as to the amount of the unlawful gain made in
19 connection with the abnormal disruption of the market by the subject of
20 the investigation.

21 § 3. This act shall take effect on the thirtieth day after it shall
22 have become a law. Effective immediately, the superintendent of finan-
23 cial services and the attorney general may make regulations and take
24 other actions reasonably necessary to implement this act on such effec-
25 tive date.