



15-SECOND ADVERTISING LAW ALERT

GET-RICH-QUICK AUTHOR GETS THE BOOK THROWN AT HIM

Defendants in the Ninth Circuit better think twice about opposing a plaintiff's consumer perception survey through expert testimony only, a recent case indicates.*

BACKGROUND

John Stefanchik authored *Wealth Without Boundaries* and helped market that book and other materials related to the "Stefanchik Program." These were touted as enabling consumers to earn \$10,000 per month by working part time buying and selling private mortgages.

The Federal Trade Commission sued Stefanchik individually, his corporation, and others for making false and deceptive claims in violation of Section 5 of the FTC Act. All defendants consented to judgment, except for Stefanchik and his corporation.

The FTC sought to enjoin those two defendants and make them individually and jointly liable for \$17,775,369. It moved for summary judgment based on a consumer

survey, declarations of consumers, and other evidence.

In opposition, the defendants argued that material facts were in dispute, thereby requiring a trial. In that regard, they offered expert opinions that the FTC survey was biased and unreliable. Nonetheless, summary judgment was granted.

DECISION

On appeal, the Ninth Circuit affirmed. It found that defendants' expert opinions on the inadequacy of the FTC survey were not "affirmative evidence" of an issue of material fact. It curiously found that such criticisms "do not contest the truth or validity of the individual responses reported in the survey."

To create an issue of material fact, the court stated that defendants must oppose summary judgment with "affirmative evidence ... in the form of survey results, contrary consumer declarations, sworn affidavits, or testimony to identify consumers who were able to make substantial amounts of money," as advertised.■

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* *FTC v. Stefanchik, et al.*, No. 07-35359 (9th Cir. March 13, 2009).