Consumer Redress Amount Doesn’t Add Up

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Back in October of 2021, the FTC announced a settlement with Resident Home, LLC and its CEO, Ran Reske, for deceptively advertising its DreamCloud brand mattresses as being made with 100% USA-made materials. The administrative settlement included $753,300 in monetary redress pursuant to Section 19 of the FTC Act. Despite agreeing that Resident Home had violated the law, then-Commissioners Phillips and Wilson dissented to the settlement on the grounds that the monetary relief exceeded the Commission’s authority. [Full disclosure: the author worked as an Attorney Advisor for Commissioner Phillips from February 2021-October 2022.]

The crux of their argument was that the settlement amount went beyond any “reasonable estimate” of consumer damages, and was instead more akin to a penalty. As they explained, Section 19 allows the Commission to obtain refunds for consumers, or the payment of damages, but “expressly precludes ‘the imposition of any exemplary or punitive damages.’” The majority responded with its own statement, maintaining that the settlement was within the Commission’s authority and Section 19 allowed it to collect consequential damages to consumers and honest businesses. The complaint contained no details about the number of consumers or honest businesses that might have been harmed by the conduct at issue. [See here for a longer discussion of the boundaries of the FTC’s Section 19 authority.]

On Thursday, the Commission issued a press release announcing that it had sent checks totaling “nearly $45,000” to affected consumers. One need not have a particular facility with numbers to recognize the significant delta between $753,300 and $45,000. This rather paltry refund amount would seem to give credence to Commissioners Wilson and Phillips’ assertion that the Commission’s settlement was impermissibly punitive in nature. [The press release does say that the Commission will contact another 12,300 consumers who purchased Dreamcloud mattresses and may be eligible for a payment. It is unclear how these consumers may have been affected by the deceptive statements at issue, and it will be interesting to learn how many of these consumers ultimately receive compensation and in what amounts.]

This case illustrates the value of having minority commissioners that can provide insight into the operations of the agency and highlight areas worthy of additional scrutiny. Without Commissioners Wilson and Phillips, it will be harder for the public to evaluate the Commission’s work by identifying areas where the agency may be pushing the bounds of its authority.