No. 0:17-cv-60492-UU

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

In re MICHAEL ROBERT ETTUS,
Debtor.

MICHAEL ROBERT ETTUS,
Appellant,

v.

FEDERAL TRADE COMMISSION,
Appellee.

On Appeal from the United States Bankruptcy Court
for the Southern District of Florida
Adv. No. 16-01473-JKO

BRIEF OF THE FEDERAL TRADE COMMISSION

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INTRODUCTION

Michael Robert Ettus defrauded consumers of $2.8 million, which led to an enforcement lawsuit against him brought by the Federal Trade Commission and a monetary judgment against him for the amount of his fraud. Instead of paying the judgment, however, Ettus sought to have it discharged through a bankruptcy proceeding. Bankruptcy allows "certain insolvent debtors [to] reorder their affairs, make peace with their creditors, and enjoy a new opportunity in life" through discharge, but that relief is reserved for the "honest but unfortunate debtor." *Grogan v. Garner*, 498 U.S. 279, 286, 287 (1991) (internal quotation marks omitted). The "fraud exception" in the Bankruptcy Code forbids discharge of a debt for money or property obtained by "false pretenses, a false representation, or actual fraud." 11 U.S.C § 523(a)(2)(A).

In the ruling on review, the bankruptcy court held Ettus's debt to be non-dischargeable. After considering a full record, including both the prior findings in the underlying case and further evidence submitted by Ettus, the court determined that undisputed facts established in the underlying enforcement case proved all elements of the fraud exception. Now, before this Court, Ettus challenges only the bankruptcy court's ruling that Ettus had the intent to commit fraud.

On that element, the bankruptcy court held that the underlying findings that Ettus controlled, directly participated in, and had actual knowledge of his

company's fraudulent practices were not subject to relitigation and proved Ettus's intent to deceive. Although Ettus denied dishonest motives, the court found the evidence he offered to substantiate his denial irrelevant. In the absence of a genuine dispute of material fact on Ettus's intent, the court granted summary judgment for the FTC.

The bankruptcy court's judgment was sound and this Court should affirm it. There were no disputed facts in the underlying proceeding, and those facts amply established all elements of the fraud exception to discharge in bankruptcy, including the intent element. Ettus should not be allowed to take advantage of relief that Congress intended for honest debtors and not for dishonest ones.

QUESTIONS PRESENTED

1. Whether the bankruptcy court properly precluded Ettus from relitigating factual findings made in the underlying enforcement case that supported an inference that Ettus intentionally deceived consumers.

2. Whether the bankruptcy court properly granted summary judgment on the basis of the full factual record.

STANDARD OF REVIEW

This Court reviews a bankruptcy court's legal conclusions *de novo*, *In re Englander*, 95 F.3d 1028, 1030 (11th Cir. 1996), and its factual findings for clear error, *In re Gamble*, 168 F.3d 442, 444 (11th Cir. 1999). The grant of summary

judgment is reviewed *de novo*. *E.g.*, *United States v. Weiss*, 467 F.3d 1300, 1308 (11th Cir. 2006); *Flowers v. Troup Cty.*, 803 F.3d 1327, 1335 (11th Cir. 2015).

STATEMENT OF THE CASE

A. Ettus's Deceptive Scheme.

Ettus operated a "recovery room" telemarketing scheme that falsely promised to help consumers (many of them seniors or retirees) who had already been defrauded by other scams. He ran his operation under the corporate identity Consumer Collection Advocates Corp. ("CCA"), of which Ettus was the sole owner and officer. *See* Order Granting Motion for Summary Judgment, No. 14-CIV-62491-BLOOM (S.D. Fla. Sept. 8, 2015) ("Enforcement Order") at 2, 5 [RA 30, 33].[1] Ettus wrote scripts, pursuant to which CCA's telemarketers told consumers that the company could virtually guarantee recovery of a significant portion of the money they had lost, and could do so within a short time—typically 30 to 180 days. *Id*. at 3, 5 [RA 31, 33]. CCA told customers that it could be trusted because it was licensed by the State of Florida as an "advocacy firm" or "agency" that "engages in public service campaigns." *Id.* at 2 [RA 30]. CCA also told consumers that it would use legal actions and remedies to recover the funds. *Id*. at

[1] This factual summary is based on the district court's findings in the Enforcement Order. "RA" refers to the record on appeal transmitted to this Court, Dkt. No. 9-2.

2-3 [RA 30-31]. To obtain these services, consumers paid CCA upfront fees ranging up to $15,000. *Id*. at 3 [RA 31].

CCA's promises were empty and its business was a scam. Its license did not give CCA any approval to collect funds on behalf of consumers victimized by fraud. *Id.* at 9, 14 [RA 37, 42]. CCA did not engage in legal action on behalf of consumers. *Id*. at 2-3 [RA 30-31]. Instead, after paying the up-front fee, consumers generally heard nothing further from CCA. *Id*. at 4 [RA 32]. Those who tried to complain to the company found it difficult to reach anyone at CCA to ask about the status of their case. *Id.* Even if they did reach someone, CCA would put them off with perfunctory excuses that it was understaffed, that the consumers needed to be patient, and that their recovery would take time. *Id.*

Ettus personally handled every complaint that CCA received. *Id.* at 5 [RA 33]. In a few cases, CCA and Ettus offered to refund some money or provided assurances that work would be done on a case in exchange for the consumer's pledge to retract a complaint. *Id.* at 4 [RA 32]. In the vast majority of cases, however, consumers never recovered either the funds they had previously lost or a refund of the up-front fee paid to CCA. *Id.* Consumers who had already fallen victim to fraud once were thus victimized a second time by CCA and Ettus.

Ettus operated this deceptive scheme for over three years, until the FTC filed suit to stop it after it (and other state, federal, and private consumer agencies)

received numerous complaints. *Id*. In that time, consumers lost almost $3 million. *Id*. at 17-18 [RA 45-46].

B. The $2.8 Million Judgment Against Ettus.

The FTC sued Ettus and CCA for deceptive practices in violation of the Federal Trade Commission Act and the FTC's Telemarketing Sales Rule.[2] The agency presented overwhelming evidence—undisputed by Ettus—that Ettus had deceived consumers, and the district court granted summary judgment for the Commission. The court specifically found Ettus individually liable for the harm he caused consumers, entered a permanent injunction prohibiting further deception, and ordered Ettus to pay $2,825,761.28 (the amount of his scheme's ill-gotten receipts) as equitable monetary relief. Final Order of Permanent Injunction and Monetary Judgment, No. 14-CIV-62491-BLOOM (S.D. Fla. Sept. 28, 2015) [RA 14-27] .

Specifically, the district court found that Ettus's company used deceptive tactics to sell its services. Although CCA "repeatedly and expressly" promised consumers substantial recovery of funds previously lost to fraudulent schemes, Enforcement Order at 9 [RA 37], and further promised recovery within 30 to 180

[2] Section 5(a) of the FTC Act prohibits "deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a)(1). The Telemarketing Sales Act directs the FTC to enact "rules prohibiting deceptive telemarketing acts or practices," 15 U.S.C. § 6102(a), which the Commission has done through the Telemarketing Sales Rule, 16 C.F.R. § 310.

days, these representations were "altogether spurious," *id*. at 12 [RA 40]. Indeed, in some cases, the recovery promised by CCA would have been "impossible." *Id*. at 4 [RA 32]. CCA's claims that its activities were approved by state agencies and regulatory authorities likewise were "false." *Id*. at 9 [RA 37]. The court found that these representations "reasonably would, and did, mislead consumers, into subscribing to [this] fraudulent scheme," *id*. at 9 [RA 37], causing consumer injury in the amount of approximately $2.8 million, *id*. at 18 [RA 46].

The district court further held that Ettus was individually liable for CCA's misconduct by virtue of his control over the company's operations and his knowing participation in its unlawful practices. *Id.* at 13-14 [RA 41-42]. Ettus, the court found, was the sole owner and officer of CCA, exclusively controlled managerial decisions, ran the company's day-to-day operations, retained and directed its employees, obtained the telemarketing licenses, and maintained exclusive authority over CCA's financial affairs. *Id*. at 5, 13 [RA 33, 41]. Importantly, the court found, "Ettus directly participated in the illicit practices" and "was well aware of such conduct." *Id*. at 13 [RA 41]. The court noted, for example, that Ettus wrote the scripts that CCA used in making its deceptive sales pitch, and was the sole point of contact for the company (and, specifically, handled all complaints about CCA). *Id*. at 5, 13 [RA 33, 41]. This uncontroverted evidence, the court concluded, left no doubt about Ettus's personal culpability for CCA's

deceptive practices: "If there was a captain of the M/S CCA, it was Ettus." *Id*. at 13 [RA 41].[3]

On appeal, the Eleventh Circuit affirmed the judgment against Ettus. *FTC v. Consumer Collection Advocates, Corp.*, 668 F. App'x 357 (11th Cir. 2016).[4]

C. The Bankruptcy Proceeding.

Instead of paying the judgment against him, Ettus filed a Chapter 7 bankruptcy petition and sought discharge of the judgment. The FTC opposed that attempt on the ground that Ettus's judgment debt is excepted from discharge under the Bankruptcy Code's fraud exception, which bars discharge of debts "to the extent obtained by false pretenses, a false representation, or actual fraud." 11 U.S.C. § 523(a)(2)(A).

The Eleventh Circuit assesses five factors to determine whether a debt falls within the fraud exception: whether (1) "the debtor made a false representation," (2) with intent "to deceive the creditor";[5] (3) "the creditor relied on the misrepresentation"; (4) "the reliance was justified"; and (5) "the creditor sustained

[3] The district court imposed direct liability on Ettus for his own knowing participation in the deceptive scheme; it did not impose "derivative" liability, as Ettus mistakenly claims. *See* Br. 4.

[4] Neither CCA nor Ettus challenged the judgment against CCA.

[5] Although the Eleventh Circuit usually groups factors 1 and 2 together, deception and intent are distinct factual determinations. *See*, *e.g.*, *McMillan v. Firestone* (*In re Firestone*), 26 B.R. 706, 715-18 (Bankr. S.D. Fla. 1982) (addressing misrepresentations and intent separately).

a loss as a result of the misrepresentation." *SEC v. Bilzerian* (*In re Bilzerian*), 153 F.3d 1278, 1281 (11th Cir. 1998); *accord In re Sears*, 533 F. App'x 941, 945 (11th Cir. 2013). The FTC moved for summary judgment on the ground that the Enforcement Order had already resolved each of those factors.

In response, Ettus disputed only whether the FTC could show he had acted with an intent to deceive. Ettus submitted an affidavit denying any such intent. He claimed in the affidavit that he did not intend to deceive consumers for two reasons: (1) because the State of Florida had approved CCA's requests for up-front fees; and (2) because the deception had been carried out by CCA agents other than Ettus. In reply, the FTC argued that the bankruptcy court could infer intent from facts established in the enforcement action, and Ettus's uncorroborated affidavit failed to demonstrate a genuine dispute on this issue.

After a hearing, the bankruptcy court ruled orally that "the rulings by the District Court [in the underlying judgment] are collateral estoppel on the issues of liability under 523(a)(2)" and "that the issue of intent is satisfied by the District Court's order, that Mr. Ettus, acting with a reckless disregard for the truth, and actual knowledge of the falseness of the scripts, which he promulgated and caused his employees to use." Feb. 16, 2017 Tr. 20:14-20.[6] Responding to Ettus's

[6] The hearing transcript was transmitted to this Court, and can be found at Dkt. No. 10.

contention that not he, but his employees had deceived consumers because they made promises not contained in the scripts written by Ettus, the court found that "whether they went off script further or not is quite irrelevant" in light of the overt deceptiveness of the Ettus-written scripts themselves. *Id*. at 20:20-21. In sum, the court found that "Mr. Ettus is not an honest but unfortunate debtor" who deserves discharge. *Id*. at 20:21-22.

On March 2, 2017, the bankruptcy court entered judgment in favor of the Commission. The court found that "there are no genuine issues of material fact in dispute," and the FTC "is entitled to judgment as a matter of law." Judgment of Nondischargeability at 2 [RA 164]. Ettus now appeals that judgment.

SUMMARY OF ARGUMENT

Ettus wrongly claims that the bankruptcy court applied collateral estoppel to preclude him from presenting evidence regarding his intent. But the bankruptcy court did no such thing. To the contrary, it expressly considered Ettus's proffered evidence—his affidavit denying improper intent—and rejected it on the merits. The court did apply collateral estoppel to preclude relitigation of factual findings in the underlying enforcement action—such as Ettus's "reckless disregard for the truth" and his "actual knowledge of the falseness of the scripts"—and determined that those facts demonstrated that Ettus intended to deceive. That application of collateral estoppel was correct. Those factual issues were actually litigated and

necessarily decided in the enforcement action, and they are identical to the bankruptcy court's inquiry (particularly regarding the debtor's knowledge) in determining intent.

The bankruptcy court was also correct in concluding that those facts supported an inference of intent to deceive. Courts properly infer intent from the surrounding circumstances. Among other things, as the Eleventh Circuit has made clear, intent to deceive may be inferred from a debtor's "reckless disregard for the truth" of a representation. Here, the underlying enforcement action established that Ettus was not merely "recklessly indifferent" to the truth or falsity of his company's representations but was an active purveyor of falsehood: he wrote the deceptive sales scripts and had actual knowledge that his sales pitches were false. The bankruptcy court thus was on solid ground in concluding that Ettus intended to deceive.

Moreover, the bankruptcy court properly determined that Ettus's affidavit did not demonstrate any genuine dispute regarding his intent. Ettus's assertions in that affidavit that he believed the State of Florida had approved CCA's requests for up-front fees has no bearing on Ettus's intent in using deceptive sales pitches. As the bankruptcy court correctly noted, Ettus's further claim that CCA employees may have made some misrepresentations that he did not authorize is irrelevant to the deceptive intent demonstrated by his scripted misrepresentations—which were

the basis for the judgment against him. And Ettus's blanket, conclusory denial of intent does not serve to defeat summary judgment.

ARGUMENT

The only question before the Court is whether the bankruptcy court properly found that Ettus acted with intent when he defrauded consumers through his recovery room scam. As we show below, the bankruptcy court correctly held that Ettus could not relitigate settled facts about his conduct, that those settled facts amply supported an inference of intent, and that Ettus's affidavit did not create a genuine dispute of material fact that precluded summary judgment.

I. THE BANKRUPTCY COURT CORRECTLY CONCLUDED THAT ETTUS COULD NOT RELITIGATE FACTS ESTABLISHED IN THE ENFORCEMENT ACTION, WHICH SUPPORTED AN INFERENCE OF INTENT.

The bankruptcy court correctly determined that factual findings in the underlying enforcement action showing that Ettus knew about and directly participated in his company's scheme to defraud consumers warranted an inference that Ettus acted with intent to deceive, demonstrating that he was not an honest debtor entitled to discharge of his judgment debt. Contrary to Ettus's contention, the bankruptcy court did not "bar Ettus from raising his intent as a defense" in this proceeding. Br. 7. Rather, the court accepted Ettus's affidavit professing his lack of intent, considered the full record on the question, and ruled that undisputed facts supported an inference of intent. Consistent with Eleventh Circuit precedent, the

bankruptcy court properly precluded Ettus from relitigating questions of fact that had been established in the underlying proceeding.

A. The Bankruptcy Court Correctly Precluded Relitigation of Previously-Litigated Facts Relevant To Intent.

Ettus's principal claim is that that the bankruptcy court applied collateral estoppel to bar him from presenting a defense on the question of intent. Br. at 9. That is simply not what happened. The bankruptcy court did not apply collateral estoppel to bar Ettus from attempting to prove that he lacked intent to deceive. To the contrary, the court accepted Ettus's affidavit in support of his claim and rejected it on the merits, finding that "the issue of intent is satisfied by the" Enforcement Order. Tr. 20:16-17. The bankruptcy court did apply collateral estoppel to preclude relitigation of factual questions—such as "reckless disregard for the truth" and "actual knowledge of the falseness of the scripts"—decided in the underlying enforcement action (and as explained in Section I.B, the court properly determined that those facts supported an inference of intent). But Ettus does not challenge that action—and doing so would be futile. As the Eleventh Circuit has explained, "[a] bankruptcy court may rely on collateral estoppel to reach conclusions about certain facts, foreclose relitigation of those facts, and then consider those facts as 'evidence of nondischargability.'" *Thomas v. Loveless (In re Thomas)*, 288 F. App'x. 547, 548 (11th Cir. 2008) (citing *In re Halpern*, 810 F.2d 1061, 1064 (11th Cir. 1987)).

The doctrine of collateral estoppel precludes a party from relitigating an issue that was fully litigated in a previous action when: (1) the issue at stake is identical to the one involved in the prior litigation; (2) the issue was actually litigated in the prior litigation; and (3) the determination of the issue in the prior litigation was a critical and necessary part of the judgment in the earlier action. *Bush v. Balfour Beatty Bahamas, Ltd.* (*In re Bush*), 62 F.3d 1319, 1322 (11th Cir. 1995).[7]

On that test, the bankruptcy court correctly declined to allow relitigation of the prior findings in the Enforcement Order that Ettus controlled, directly participated in, and knew about the consumer deception. In the underlying case, the court could hold Ettus individually liable for the consumer harm caused by CCA's deceptive marketing only if the FTC had proven that Ettus (1) "participated directly in" or "had authority to control" the deceptive practices, and (2) "had some knowledge of" the deceptive practices. *FTC v. IAB Mktg. Assocs.*, 746 F.3d 1228, 1233 (11th Cir. 2014) (quoting *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989)); *see FTC v. Gem Merch. Corp.*, 87 F.3d 466, 470 (11th Cir. 1996).

[7] In addition, the standard of proof in the present action must not be significantly heavier than the standard of proof in the prior action. *In re Bush*, 62 F.3d at 1322. Here, the standard of proof is the same in both cases: preponderance of the evidence. *See Bilzerian*, 153 F.3d at 1281 (Section 523(a)(2)(A) proceeding); *FTC v. Direct Benefits Grp., LLC*, No. 6:11–cv–1186–Orl–28TBS, 2013 WL 3771322, at *1 (M.D. Fla. July 18, 2013) (FTC Act enforcement action).

To show knowledge, the FTC had to prove that Ettus had "actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of such misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth." *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1270 (S.D. Fla. 2007) (quoting *Amy Travel*, 875 F.2d at 574).

Those issues were identical to the bankruptcy court's findings, they were "actually litigated," and the factual findings on these issues were "a critical and necessary part of the judgment" in the underlying enforcement action. *In re Bush*, 62 F.3d at 1322. In particular, as other courts have recognized, the degree of knowledge required for individual liability under the FTC Act is the same degree of knowledge that often supports an inference of intent under Section 523(a)(2)(A). *See, e.g.*, *FTC v. Abeyta* (*In re Abeyta*), 387 B.R. 846, 853, 855 (Bankr. D.N.M. 2008); *FTC v. Austin* (*In re Austin*), 138 B.R. 898, 908, 914 (Bankr. N.D. Ill. 1992).

Because collateral estoppel applied to the Enforcement Order's findings regarding his knowledge and direct participation in this consumer fraud, Ettus could not dispute intent by denying those facts. The bankruptcy court correctly relied on those undisputed facts to infer that Ettus intended to deceive. And because Ettus pointed to no evidence that would support a contrary conclusion on

intent (discussed in Section II below), the bankruptcy court properly granted summary judgment for the FTC.

B. Evidence Of Ettus's Central Role In The Fraudulent Scheme And His Knowledge That He Was Deceiving Consumers Support an Inference of Intent.

Because intent can be difficult to prove directly, courts properly infer intent from the surrounding circumstances. *Equitable Bank v. Miller* (*In re Miller*), 39 F.3d 301, 305 (11th Cir. 1994). Facts establishing a debtor's knowledge, for example, often serve to establish intent. In particular, the Eleventh Circuit has held that, for purposes of Section 523(a)(2)(A), intent to deceive may be inferred from a debtor's "reckless disregard for the truth" of a representation. *Birmingham Trust Nat. Bank v. Case*, 755 F.2d 1474, 1476 (11th Cir. 1985), *superseded on other grounds by* Pub. L. No. 98–353, 98 Stat. 333 (1984). Likewise, in the context of an analogous discharge exception (regarding false written statements), the Eleventh Circuit has held that "[r]eckless disregard for the truth or falsity of a statement combined with the sheer magnitude of the resultant misrepresentation may combine to produce the inferrence [sic] of intent [to deceive]." *In re Miller*, 39 F.3d at 305 (quoting *In re Albanese*, 96 B.R. 376, 380 (Bankr. M.D. Fla. 1989)) (correction in original). A debtor's intent to deceive may also be "inferred from the volume and pattern of his misrepresentations." *In re Sears*, 533 F. App'x at 945.

For example, in *McMillan v. Firestone* (*In re Firestone*), 26 B.R. 706 (Bankr. S.D. Fla. 1982), the court held that, under the fraud exception, the owner and operator of a franchise sales business was not entitled to discharge of debt arising from his company's deceptive sales practices. The court found that the company's "pattern of misrepresentations," its "persistence in continuing the deceit," and "the complete absence of any disclaimers by the sales representatives even though [the debtor] had received complaints" about the deceptive representations, warranted an inference of intent to deceive. *Id*. at 717-18. *See also In re Freedman*, 431 B.R. 245, 257 (Bankr. S.D. Fla. 2010) (inferring intent from totality of the circumstances, including the debtor's financial stake in the deception), *aff'd*, 427 F. App'x 813 (11th Cir. 2011).

Here, the underlying enforcement action provided ample circumstantial evidence of intent to deceive. Among other things:

- Ettus wrote the sales scripts that made bogus claims that CCA would obtain substantial recovery of consumers' prior financial losses, Enforcement Order at 13 [RA 41];[8]
- Under Ettus's direction, his employees "repeatedly" and "consistently" used this deceptive sales pitch to induce consumers to purchase recovery services, *id*. at 9, 12 [RA 37, 40];
- Ettus knew that his company's promises of substantial recovery were false and unsubstantiated, including because he personally handled all complaints about CCA's failure to provide the promised recovery, *id*. at 5, 13 [RA 33, 41]; and
- In response to complaints, Ettus continued to repeat the same bogus claims, *id*. at 4 [RA 32].

These facts plainly support the bankruptcy court's conclusion that Ettus's conduct demonstrated an intent to deceive consumers that precludes discharge of his judgment debt to the FTC.

[8] At the bankruptcy hearing. Ettus's counsel suggested that it was unknown whether the telemarketing scripts contained misrepresentations. Tr. 14:6-9. But, in fact, the FTC's Statement of Facts supporting its motion for summary judgment in that case—which facts the Enforcement Order found were uncontroverted and admitted by Ettus, *see* Enforcement Order at 5-7 [RA 33-35]—clearly demonstrated that Ettus's scripts made the representations the district court found were deceptive. *See* ECF No. 64-1, in No. 14-CIV-62491-BLOOM (S.D. Fla.), at ¶¶ 3, 9, 21, 32. The bankruptcy court was thus correct when it noted that Ettus had "actual knowledge of the falseness of the scripts." Tr. 20:18-19.

II. ETTUS PROVIDED NO FACTUAL BASIS TO CONTRADICT THE INFERENCE THAT HE INTENDED TO DECEIVE.

Ettus submitted an affidavit in which he denied having an intent to deceive, but the bankruptcy court properly found that it did not overcome the strong inference of intent based on the evidence in the underlying case. That ruling was correct.

Ettus posited two facts that allegedly disproved his intent. First, he asserted in his affidavit that he thought CCA's collection of up-front fees was legal because those fees were mentioned in sales scripts that he submitted to state regulatory authorities, and they did not notify him that charging up-front fees was improper. Affidavit at ¶¶ 4-6 [RA 146-147]. But Ettus's collection of up-front fees is not the unlawful practice at issue here. Indeed, Ettus explicitly acknowledges that CCA's collection of up-front fees "is not immediately relevant to this appeal." Br. 3 n.2. Ettus's professed belief that the fees were lawful therefore has no conceivable bearing on his intent to deceive consumers.[9]

Second, Ettus asserted in his affidavit that he did not intend to deceive consumers, but that the deceit was committed by CCA employees, some of who

[9] Moreover, to the extent Ettus's affidavit could be read to suggest that the scripts were not deceptive because Florida state agencies had approved them, the district court rejected the contention in the underlying case. The district court determined instead that the pertinent telemarketing license application "clearly advises the applicant that [the agency] does not review the content of contracts or scripts." Enforcement Order at 14 (internal quotation marks omitted) [RA 42].

"may" have made "certain" representations that he did not authorize. *Id*. ¶ 8 [RA 147]. But it is undisputed—and was established as an uncontested matter of fact in the underlying case—that Ettus himself wrote scripts for CCA employees that contained deceptive sales pitches. That fact was a principal basis for the underlying judgment. Because the Ettus-written scripts were deceitful, they supported an inference of intentional deceit, and it makes no difference whether Ettus's employees may have engaged in additional deceit. The bankruptcy court thus correctly recognized that the excuse was "quite irrelevant" in light of "the falseness of the scripts, which he promulgated and caused his employees to use." Tr. 20:19-21.

To the degree that Ettus's affidavit provides a blanket denial of intent, that is also insufficient to overcome the powerful inference drawn from overwhelming evidence in the underlying record. "A party's self-serving and unsupported claim that [he] lacked the requisite intent is not sufficient to defeat summary judgment where the evidence otherwise supports a finding of fraud." *Hinsley v. Boudloche* (*In re Hinsley*), 201 F.3d 638, 643 (5th Cir. 2000); *see Gertsch v. Johnson & Johnson Fin. Corp.* (*In re Gertsch*), 237 B.R. 160, 169 (9th Cir. BAP 1999) (granting summary on nondischargeability because the debtor's "conclusory allegations and improbable inferences [were] not sufficient" to rebut the inference of intent warranted by the evidence); *United States v. $705,270.00 in U.S.*

Currency, 820 F. Supp. 1398, 1403 (S.D. Fla. 1993) (a "conclusory affidavit is insufficient to meet [the respondent's] burden on summary judgment"), *aff'd*, 29 F.3d 640 (11th Cir. 1994).

CONCLUSION

For the foregoing reasons, the judgment of the bankruptcy court should be affirmed.

Respectfully submitted,

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July 21, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2017, I served the foregoing Brief of the Federal Trade Commission on counsel of record by electronic service through the Court's CM-ECF system.

/s/ Michele Arington
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