

Consumer Finance Monitor Podcast (Season 9, Episode 19): NYC DCWP at the Forefront of Consumer Protection: A Conversation with Commissioner Sam Levine

Speakers: Alan Kaplinsky and Sam Levine

Alan Kaplinsky:

Welcome to the award-winning Consumer Finance Monitor Podcast, where we explore important new developments in the world of consumer financial services and what they mean for your business, your customers, and the industry. This is a weekly show brought to you by the Consumer Financial Services Group at the Ballard Spahr Law Firm. And I'm your host, Alan Kaplinsky, the founder and former practice group leader for 25 years and now senior counsel of the Consumer Financial Services Group at Ballard Spahr. And I'll be moderating today's program. For those of you who want even more information, don't forget about our blog, consumerfinancemonitor.com. We've hosted the blog since 2011, so there's a lot of relevant industry content there. We also regularly host webinars on subjects of interest to those in the industry. So, to subscribe to our blog or to get on the list for our webinars, please visit us at ballardspahr.com.

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So, today we're joined by Commissioner Sam Levine of the New York City Department of Consumer and Worker Protection, the city agency that is charged with protecting consumers and enforcing fair business practices across New York City. This is the third in our series of podcasts about consumer protection in the consumer financial services industry in New York City and state. On February 12th of this year, we released a podcast show in which our guests were Jane Azia, the chief of the New York Attorney General's Consumer Protection Division, and her colleague, Alec Webley, Assistant Attorney General. They principally discuss the recently enacted New York Fair Business Practices Act, which greatly expands the jurisdiction of that office to enforce abusive and unfair acts and practices, as well as deceptive acts and practices perpetrated against consumers and small businesses.

On April 2nd of this year, we released a podcast show in which our guest was Max Dubin, Chief of Staff to Kaitlin Asrow, the acting Superintendent of Banking of the New York Department of Financial Services, which is known popularly as DFS. Among other hot topics at the agency, we discussed the agency's proposed regulations under the recently enacted statute, regulating and requiring the licensure of Buy Now, Pay Later companies. Turning now to our podcast today, we are delighted to have as our special guest Sam Levine, commissioner of the New York City Department of Consumer and Worker Protection. So, a very warm welcome to you, Sam.

Sam Levine:

Thanks, Alan. It's great to be here.

Alan Kaplinsky:

Commissioner Levine was appointed earlier this year by Mayor Zohran Mamdani. Prior to this role, he served as director of the Bureau of Consumer Protection at the Federal Trade Commission, where he oversaw national enforcement and rulemaking involving deceptive marketing, pricing, and unfair trade practices. His background at the Federal Trade Commission and previously in state law enforcement, particularly with the Illinois Attorney General, gives him a very broad perspective on how local, state and federal consumer protection regimes intersect with one another. The department that Sam now is commissioner of was originally established in 1969 as the New York City Department of Consumer Affairs, and it was expanded in 2019 to include worker protections. It enforces the city's consumer protection law and a wide range of licensing, pricing, debt collection, and workplace standards under Title 20 of the New York City Administrative Code. The Department has authority to investigate deceptive and unconscionable practices to conduct inspections, to promulgate rules, to bring enforcement actions and seek civil penalties, restitution, injunctive relief, and licensing sanctions.

Most recently, the department promulgated the SHIELD Rule, which significantly amends its debt collection regulations. The rule updates and expands requirements applicable to debt collectors operating in New York City, addressing issues such as validation notices, itemization of debt, communication practices, and dispute procedures. It also covers creditors collecting their own debts, or most creditors collecting their own debts, and it also applies to out-of-state debt collectors who have no physical presence in New York if they're collecting a debt from a New York resident. And we are going to be talking in detail about that rule, and we'll also be discussing Executive Orders 9 and 10 issued by Mayor Mamdani shortly after he took office, which targets junk fees and so-called subscription tricks and traps, issues that have become major affordability and transparency concerns for consumers.

On March 24th of this year, Politico published a very flattering article about Commissioner Levine, and I want to quote from it, because I couldn't say it any better than Politico said it. "President Donald Trump has taken apart the Biden administration's consumer protection agenda. Now, one of its architects is trying to revive the fight from New York City. As the new leader of the city's Department of Consumer and Worker Protection, Sam Levine is taking on a key element of Democratic Mayor Zohran Mamdani's affordability platform. So far, that is included going after tow truck operators accused of illegally towing cars, cracking down on deceptive claims of free tax preparation and auditing companies for compliance with labor laws. Those efforts echo initiatives headed at the Federal Trade Commission as director of its Bureau of Consumer Protection, where he landed the agency's largest ever kids privacy violation settlement, and at least 500 million, a half a billion dollars in judgments against companies who would charge unlawful junk fees.

Levine's New York role doesn't give him the same budget or national jurisdiction he had in DC, but it offers a chance to make the case that cities can carry out the same type of aggressive enforcement, usually reserved for states and the federal government, and the response from companies and voters could help shape efforts by Democrats across the country to campaign on affordability in this year's midterm election. That's just an excerpt for the beginning part of the article.

Okay. For a lot of our listeners, they're probably not so familiar with the agency that you are running. So, I think we ought to lay a little bit of a foundation before we launch into some of the things that you're up to. I'm wondering if you could just tell us a little bit about your agency. I know it's been around for a long time.

Sam Levine:

Yeah, no, that's exactly right. I was at the FTC before. We'll talk about that. That's a much older agency, but DCWP is pretty old too. We go back to 1969, Bess Myerson was actually our first commissioner, and the mandate of the agency is quite broad.

Alan Kaplinsky:

Yeah. She was Miss America, wasn't she?

Sam Levine:

First Jewish Miss America. Yes, indeed.

Alan Kaplinsky:

That's right.

Sam Levine:

Big shoes to fill for me. But no, our mandate is quite broad. We license tens of thousands of businesses in New York City. We do inspections all over the city to make sure businesses are compliant with the law. We do extensive financial empowerment work, free tax prep, financial empowerment centers, helping thousands of New Yorkers manage their finances, and perhaps of particular interest to your listeners, we do a lot of enforcement too. We have a consumer enforcement unit, which is in the shorthand would be it's a mini version of the FTC. It enforces unconscionable and deceptive practices. And then we have a worker protection unit that enforces minimum pay rate for delivery workers, fair work week, protected time off, a number of the worker protections that the city has enacted over the last decade.

Alan Kaplinsky:

Yeah. So, interesting that you've got the right to go after companies or individuals that are engaging in deceptive ... And you said unconscionable practices. It's not the typical UDAP where-

Sam Levine:

It's a different you.

Alan Kaplinsky:

... and abusive. What's it called?

Sam Levine:

I just said it's a different you.

Alan Kaplinsky:

Yeah, yes, yes. And I take it you've got the right, because we're going to be talking about a regulation that you promulgated not long ago, to issue regulations, as well as enforcement. Have I got that right?

Sam Levine:

Yeah, no, that's exactly right. And I should give a little more detail on this. On the enforcement front, we can enforce deceptive practices directly, go directly into court or into the administrative court oath here in New York City to enforce that prohibition. Unconscionable is a little more interesting. We have to promulgate a rule and then we can enforce the unconscionability ban through that rule. You asked about rulemaking authority. We have rulemaking authority under the consumer protection law, so we can do unconscionability rulemaking, deception rulemaking. We can also do rulemaking under our worker protection statutes. So for example, setting minimum pay rate for delivery workers, and then we can and do rulemaking under our licensing authority. And sometimes, and I know we're going to talk about the SHIELD Rule, we're using a combination of our licensing authority and our general consumer protection and rulemaking authority.

Alan Kaplinsky:

Okay. And I take it what you do, or your agency, is it authorized by the state too? Is there any issue about ... I mean, this is a long time ago, it's '69, but in order to create this agency, did the state have to enact some kind of a statute, or they just didn't do anything?

Sam Levine:

My understanding is that we were created by amendment to the city charter, and there have been subsequent amendments since. I don't think that required any additional state action. I will say, because I'm sure it'll come up, we have significantly overlapping authority, especially on the consumer protection side, with the state attorney general. And one of the things that's a big priority for me is making sure we're really coordinating closely with the AG, not duplicating efforts, and trying to be one team and protecting New Yorkers.

Alan Kaplinsky:

Yeah. Don't you overlap a little bit with the New York DFS, Department of Financial Services as well, right?

Sam Levine:

Absolutely. In fact, we just hosted a Consumer Protection Roundtable last week. We had DFS represented, New York AG. Yeah, we really do try to, and I think we do work very well with our state partners.

Alan Kaplinsky:

Great. Well, let's get into the real hot topic. It's very current, I would say, and that is the SHIELD Rule that you referred to. And it amends existing debt collection regulations that have been on the books for quite some time. I don't remember when they were originally promulgated. If you could tell our listeners about the changes, the

significant changes that were made through these amendments that just got finalized and I think become effective September 1, if I've got-

Sam Levine:

Exactly.

Alan Kaplinsky:

Yeah. And also, to the extent that they differ from the Federal Fair Debt Collection Practices Act or Reg F under that, the key differences, I think it'd be important to highlight.

Sam Levine:

Yeah, no, certainly. This is the strongest debt collection protection, consumer protection in the United States. It's called the SHIELD Rule. It takes effect, as you said, September 1st. And you're right, it goes significantly beyond Reg F, and I'll give a few of the highlights. First, there's a hard cap on communications, rather than the kind of presumption system you have under Reg F. Basically three attempts within seven days per account. The dispute rights are a lot stronger under the SHIELD Rule. Consumers can dispute debt at any time in the transaction in any mode of communication that they're using to contact the debt collector. The verification obligations are greater in that debt collectors have to provide documentation within 60 days, or send consumers a notice of unverified debt, which then means they can no longer collect on that debt.

And then we have some particularly strong protections around medical debt. Consumers are able to dispute the debt, of course, at any time, as with all debts, but uniquely collectors are obligated to inform consumers of their rights around financial assistance, which we know that many consumers are entitled to around medical debt, but many consumers unfortunately don't take advantage of because they often don't know it exists.

Alan Kaplinsky:

When you refer to medical debt, Sam, are you talking about debt incurred in hospitals or debt incurred by any practitioner or any provider, including doctors that are not working out of a hospital?

Sam Levine:

Yeah, this would cover any medical debt you could conceive of on a sort of law school exam, some gray areas, but for the most part, this is any medical debt, whether it's in a hospital setting or from a-

Alan Kaplinsky:

And I assume it would cover dentists, not just-

Sam Levine:

Sure. Yeah. Absolutely.

Alan Kaplinsky:

Okay. Very, very interesting. And what about who the rule applies to? The Fair Debt Collection Practices Act, a court supplies only to third-party debt collectors and debt buyers. I've heard a rumor that your rule goes beyond that, that it covers creditors who are collecting their own debts. Am I right?

Sam Levine:

Yeah, it does. It covers creditors who are collecting their own debts. The obligations are a little bit distinct. Folks should familiarize themselves with the rule. It covers debt buyers. Obviously, that's been a hot topic on Reg F, at least it used to be. It's clear under our rule. And we have exemptions too, is why it's important for your listeners if they're in this industry to go ahead and look. For example, if you're a financial institution subject to the Fair Credit Billing Act, you're going to be generally exempt from the rules of validation verification requirements. So, we do try to make sure that companies clearly understand their obligations. We really did a careful study of the overlapping, the stuff that keeps your firm thriving, the overlapping series of regulations at the state and federal level. But at the end of the day we want to give New York consumers the strongest protections in the country, and I think the rule does just that.

Alan Kaplinsky:

I see. So, you don't accept banks as a category, or depository institutions, so they're all subject to the statute. But if you comply with the Fair Credit Billing Act, which would include credit card issuers, what else? Is there any other category that would be exempt, or is that pretty much it?

Sam Levine:

I think it's worth going through the rule, because it's going to depend on the factual scenarios. For example, the obligations of third-party collectors differ from those of original creditors, similarly with debt buyers. Also, we do reference particular provisions, for example, Fair Credit Billing Act that would effectively supersede the obligations under the SHIELD Rule. I think it would be hard abstractly to describe every possible scenario, but I think if folks look at our rule, even though this is a complicated area, I certainly acknowledge, we really went out of our way to make it really clear what companies' obligations were. The other thing your listeners might be interested is to look at this rulemaking process over time. We really did take the comments of the business community, the collector community, consumer groups really seriously in crafting this rule. And over the weeks and months to come we're going to be issuing in advance of September 1st when it takes effect additional guidance and FAQs to make sure folks understand their obligations.

Alan Kaplinsky:

Oh, that's terrific idea. In terms of, let's talk about geographics a little bit. I take it that this covers attempts to collect a debt from a New York City resident, and it doesn't really matter where the debt collector or the creditor is located. They could not have any physical presence in New York City, but still be covered by it. Am I correct?

Sam Levine:

That's exactly right. And this is true generally for the laws DCWP enforces, if you're doing business with a New Yorker, you are genuinely subject to our jurisdiction. So, even if the collector is in California or Canada or what have you, if they're collecting from a New Yorker, you have to follow the SHIELD Rule starting September 1st.

Alan Kaplinsky:

Yeah. So, if you had a New York resident that was traveling outside New York and somebody did something wrong, something that's unlawful, you would technically cover it. You'd be able to cover that too, I take it?

Sam Levine:

I think so. I'd have to know more about the facts and think about where, but from the sound of it, yeah, I think we would be able to cover it.

Alan Kaplinsky:

Right, right, right. So, it's very broad, what I would call extraterritorial coverage. I guess at some point there might become a commerce clause issue lurking somewhere, but we don't have time to get into that, for sure. What about, how do you deal with national banks or federal S&Ls? How do they fit in there?

Sam Levine:

Well, there are no express exemptions, other than some of the specific exemptions I mentioned under the SHIELD Rule. Obviously, we are well aware of National Banking Act. We're well aware of state banking regulations. It really is going to depend on the facts, depend on the nature of the debt being collected, what the consumer's interactions were with the bank, but there are not exemptions under the rule. One thing we do make clear is that if the bank is just engaging with their customers in the course of ordinary business, rather than attempting to collect a debt, that is not collection under the rule. But in terms of general exemptions for national banks, that does not exist under the rule. And it's going to be case by case, whether there might be other sources of preemption, either from state banking regulation in the case of state charters, or federal banking regulation in the case of National charters.

Alan Kaplinsky:

Yeah. And boy, is that a murky area these days. And the Supreme Court didn't help very much with the opinion they came down with in that Cantero's case a couple of years ago now where they said, look at all the old cases that we decided, practically going back to when national banks were created in the 1860s. And it's a very difficult area to give advice in, at least I find it that way.

Sam Levine:

Yeah. I mean, you and I have both been in consumer protection a while. I think you have a couple of years on me. This is obviously that's an area that's evolved significantly and is always changing. I will say one thing we really do pride ourselves on at this agency is we are not going to try to hide the ball from people. I think you're going to see

our guidance coming out in connection with the SHIELD Rule, and we're going to aim to be really clear about what our expectations are for businesses, what the rights are for consumers. We want to promote compliance at the end.

Alan Kaplinsky:

Right, right. So, in terms of you also require licensing, don't you?

Sam Levine:

Yes.

Alan Kaplinsky:

Is that only for the non-banks? Is that limited to that? Or do you require licenses of, let's say, state banks in New York?

Sam Levine:

Yeah, we don't license banks. We license a whole wide range of industries, bingo parlors, used car dealers. Really, you could go through the alphabet and find categories, pretty much every letter. So, it's quite broad. And of course, there's overlap between what we do on the enforcement side and what we do on the licensing side. Most licensees have heightened obligations with respect to, for example, responding to consumer complaints. We expect that they respond timely to consumer complaints. And we have the ability when we take action against licensees, for example, we sued a major home improvement contractor called Radiant Solar. And one of the things we're seeking in court is a revocation of their license in addition for money back to consumers. I think we have a particular obligation to be ... Oversight obligation with respect to our licensees, but our jurisdiction, I want to be clear, is not cabin to the industries that we license.

Alan Kaplinsky:

Yeah. Yeah. The ones that you license, you don't do examinations of them, do you? Or do you?

Sam Levine:

Not in the sense that your listeners understand examinations like CFPB or DFS examinations. We do inspections. We want to make sure, for example, that secondhand auto dealers, what we call used car dealers, are being transparent about price. So, we do send inspectors all over the city to make sure businesses are following the law, but we don't do examinations in the sense that a state or federal examiner would.

Alan Kaplinsky:

I take it when you say the inspections are only done of the entities that are actually physically located in New York City, right? I mean, if it's a debt collector that doesn't have a presence in New York City, but is still collecting debt, that would be very expensive, I think, to start.

Sam Levine:

Yeah, the inspections are within the five boroughs.

Alan Kaplinsky:

Yeah, got that. Okay. So, is there anything else about the SHIELD Rule that is important to note? Let me just ask you one more final question on it. The original debt collection regulation was promulgated a while ago, right? I mean, it's not a recent thing.

Sam Levine:

Yeah, this is not new. Correct.

Alan Kaplinsky:

And the proposed rule was ... That you've finalized during your term started during a prior administration?

Sam Levine:

Correct. Yeah, no, this rule has a history, and again, that reflects the fact that we recognize this is a complicated industry. We want to provide New Yorkers with the strongest protections we can, but we also want our collectors and businesses in New York and those who serve New York consumers to clearly understand their obligations. So, we took the comments on this rulemaking really seriously. We made changes to the rules since our proposal, but I think what we came out with a couple of weeks ago, really good product, really strong protections. We're going to, as I mentioned, introduce additional guidance before September, but September 1st, this is going to take effect, and we're looking forward to enforcing it.

Alan Kaplinsky:

Yeah. Yeah. Let me ask you one thing about penalties and enforcement in general, not just the SHIELD Rule, but in terms of remedies that you could collect, you're able to get restitution, I take it. Are there civil money penalties on top of that?

Sam Levine:

Yeah, so, good question. Maybe I'll zoom out further. For our consumer protection cases, we can bring cases administratively in office of trial and hearings, or we can bring cases in state court for the most part. With respect to civil penalties, yes, we can seek civil penalties. Yes, we can seek restitution. If we're in state court, we can seek injunctive relief and sort of the full panoply of equitable remedies. So, we have a pretty broad ability to enforce the law and a broad ability to seek remedies to make consumers whole and secure penalties when appropriate.

Alan Kaplinsky:

Are the penalties specified by regulation or by statute somewhere?

Sam Levine:

Yeah, it's interesting, Alan. They are specified. It's actually a lot more specific than at the federal level. I was at the FTC for a long time where there's a civil penalty and it's a ceiling and it adjusts every year with inflation and there are factors, factors under the FTC Act. And then in other instances, there are Reader's Digest factors courts to consider. Under DCW, under the laws we enforce the penalties are actually pretty specific, first violation, second violation on and on, and they're often specific by law. So, it is interesting. I think it makes it more predictable for businesses, but we do have significant ability to secure civil penalties against companies that break the law, especially companies that are breaking the law repeatedly.

Alan Kaplinsky:

Yeah. And I guess you refer to a Radiant Solar, I think was one you mentioned, where you're in court now trying to shut them down. So, you've got the ability to shut down a business under certain circumstances, I take it.

Sam Levine:

No, that's right. Now, of course, that is a last resort. We take no pride in shutting down businesses, but they were, according to our complaint, ripping off New Yorkers quite significantly with solar home improvement agreements that often left people far worse off and in debt. So, we are looking to yank that business license to make sure they can't harm more consumers. And as you know, Alan, that's similar to what a lot of ... My first case as an assistant AG 15 years ago was a home improvement case for the Illinois Attorney General. So, to me, this is just bread and butter work of protecting here the people of New York from predatory firms.

Alan Kaplinsky:

So Sam, I wonder if you could clarify one other thing. Your agency is called the Department of Consumer Worker Protection, but I'm wondering, do you also have jurisdiction to protect small businesses similar to the way that your former employer, the Federal Trade Commission, very clearly has that authority and is very active in that area?

Sam Levine:

Yeah, it's a very good question. Our consumer protection law in terms of that particular distinction between business and consumer is more akin to Dodd-Frank, Consumer Financial Protection Act, and that it's focused on consumer personal household use. I don't think that's the exact term it uses. And the jurisdictional lines are certainly not identical, but generally, obviously it's going to be fact-specific. Business to business transactions in the consumer protection context often are not covered by the law. They might be implicated by other authorities we have, but on the core UDAP authority, generally business to business not covered.

Alan Kaplinsky:

Got it. Got it. Got it. Let's turn now to executive orders 9 and 10, dealing with junk fees and subscription tricks and traps. I guess shortly after Mayor Mamdani became mayor, I think it was in January, he issued a raft of executive orders, but he included orders 9 and 10 that focused on junk fees and subscription tricks and traps. What consumer

harms are these executive orders designed to address? And why did the mayor identify these issues as early priorities for his administration?

Sam Levine:

Yeah, well, I think these consumer harms are certainly familiar to anyone who followed the work of the FTC and the CFPB in the last administration. With respect to subscription traps, we know that many companies are making it extremely easy for consumers to sign up for subscriptions and extremely difficult to cancel. And when I was at the FTC, we sued Amazon over this. At the beginning of the trial this year, the Trump administration, I guess it was last year, the Trump administration settled that case for two and a half billion dollars. They also just settled a case against Adobe. This is a very persistent issue with companies large and small that costs consumers a lot of money if they can't cancel, and a lot of annoyance. With respect to junk fees, the mayor's executive order is really aimed at rooting out the kind of, to me at the most core are the hidden fees where companies advertise one price and then charge more at checkout. That was a big focus of ours at the FTC and is something that we're already been very active on at the DCWP.

Alan Kaplinsky:

Yeah. And when you talk about junk fees, you're talking about junk fees that are charged in all types to consumers. And I think I read that those ... I think you were doing something with the hotels. Yeah. Tell us about that, even though it's not technically consumer finance.

Sam Levine:

Yeah, certainly. We announced a rule a couple of weeks ago now. We believe it's the strongest hotel junk fee prohibition in America. It prohibits hidden resort fees. So, when a hotel advertises one room rate, and then you learn about a destination fee at the resort fee at checkout or check-in, I should say, that's illegal both for hotels located in New York City and also for hotels that advertise to New Yorkers, so the reach is quite broad. And also, and this differs from other rules you see around the country, there are requirements around credit card holds that companies have to disclose their policies with respect to credit card holds so consumers know how much they can expect to be held. I've had the experience myself where you show up at a hotel, you learn about fees when you get to the desk and you learn they're going to put a \$500 hold on your credit card. And especially for low income, middle income people who are traveling, that can be a significant barrier to actually being able to enjoy your vacation.

Alan Kaplinsky:

It could eat up their entire credit limit.

Sam Levine:

Absolutely.

Alan Kaplinsky:

And that could create some kind of an additional fee.

Sam Levine:

Oh, for sure.

Alan Kaplinsky:

So, you did that by rule or regulation, Sam?

Sam Levine:

Yep, that was by rule. That was by rule.

Alan Kaplinsky:

So, you proposed it and already finalized it, or how did that work?

Sam Levine:

It was proposed in 2025, finalized in 2026. Yeah, we have a city version of the APA. It's called CAPA, and it's pretty similar to the federal APA. You put out a proposed rule, you get comment, and then if you want to move forward, you finalize it.

Alan Kaplinsky:

And that focused on hotels, that particular rule?

Sam Levine:

Correct.

Alan Kaplinsky:

Now, in terms of going beyond hotels, is there a plan to issue additional regulations, or do you think you already have the authority under your existing authority to go after people who've engaged in deceptive acts or practices?

Sam Levine:

The way I would put it is that everything is on the table right now. We've been doing a lot. We've been bringing enforcement actions with respect to fees, including against a tow company here in New York, Instant Recovery. I mentioned Radiant Solar. We brought a case against Extra Space. All of these involve fees. Those are under our Consumer Protection Law Authority. We've been doing inspections. For example, there are limits in New York and

how much immigration on immigration service providers and employment providers, companies that help people obtain jobs, their limits on their ability to charge fees, tax preparation firms, we've been sending inspectors all over the city. But one of the options that we are considering pursuing is also a rule that would make clear that companies need to advertise the prices upfront, or otherwise go after the kind of junk fees that raise prices for New Yorkers. So really, we are using all of our tools and we're constantly monitoring our complaint database to see what additional interventions might be necessary.

Alan Kaplinsky:

By the way, I'm sure you're aware of this, but I want to mention it to our listeners. The FTC's rule that they finalized pertained to subscriptions, which included dealing with the difficulty of canceling subscriptions and a number of other abuses that were rather rampant. It got invalidated on a technicality by a court. I don't remember exactly-

Sam Levine:

Eight circuit. Not that it doesn't live large in my memory.

Alan Kaplinsky:

Yeah, yeah. But I think the FTC, they're doing a do-over, right? The last-

Sam Levine:

That's exactly right. And maybe I'll pause for a minute on this, because I think this is one of the, in my opinion, under-reported stories in consumer protection.

Alan Kaplinsky:

I know what you're going to say, but go ahead.

Sam Levine:

Yeah. I mean, I've been in consumer protection regulation enforcement my whole career. For years there were concerns about drip pricing. There were multi-states, there were scattered enforcement actions. FTC would put out studies. And same with subscription traps. We did during my tenure a subscription trap rule that, as you said, was invalidated by the Eighth Circuit. And we did a junk fee rule with respect to hotels and live events like concerts. That rule was bipartisan and the FTC continues to enforce. And I think what you see now, even in this Trump administration, is significant continuity. They're not using the term junk fee. They're not using the term subscription traps. They're claiming it was all the president's idea, but at the end of the day they sued Ticketmaster on hidden fees. They are now moving forward with an expanded junk fee rule with respect to rental housing.

They're moving forward with a new clip to cancel rule. They're not calling it that, but they just did an advanced notice of proposed rulemaking. And one of the things I'm proud of is that after years of FTC officials going on podcasts like yours and saying, "We can't do rulemaking." I think there's now a consensus across administrations and across parties that under appropriate circumstances where you see persistent law violations and where

enforcement is not getting the job done, that rulemaking can be a strong vehicle to promote competition and protect the public. I actually think that's an underappreciated area of continuity where we've made a lot of progress, in my opinion, on these consumer protections over the last half decade.

Alan Kaplinsky:

And may I say, the FTC has done this without any Democratic commissioners?

Sam Levine:

Yeah. I mean, look, I could write a book on all the things I think this FTC should be doing, all the areas, frankly, where I think they're dropping the ball. My anger and frustration that two Democratic commissioners were, in my opinion, will see if the Supreme Court agrees, illegally fired. But some of the core work we were doing, frankly, I think was so popular and so well grounded both legally and economically that this administration is continuing it, and I can't help but be pleased to see that.

Alan Kaplinsky:

Well, I think you've left behind a very strong legacy there. And one, I might say that was very balanced in your approach. It wasn't extreme by any sense. You welcomed comments, you considered what the industry was going to say, but let's contrast that with the CFPB. And that's what I find really incredible, how the FTC has managed to stay under the radar, so to speak, from the Trump administration, but you can't say that for the CFPB. I mean, it's really incredible what has happened to that agency in one year. And the question I really have for you is, let's assume hypothetically we have a new president elected, who's a Democrat, in 2028. How long is it going to take to get that agency back to where it used to be?

Sam Levine:

I'm really concerned about this too, Alan. I love the FTC to this day. I care a lot about the agency, but the FTC, and I think we did great financial ... I think we did great work in the consumer financial services space. I'm very proud of the work we did during my tenure and the great people there, many of them remain, but the FTC is not a substitute for a CFPB. I mean, for one thing, there are a lot of laws the FTC just can't enforce. The FTC is not enforcing against bank, national banks, for example. The FTC can't do rules for the most part in FCRA. FTC can't do rules for the most part on TILA or on ECOA. I mean, people think, I think, and some people think, "Well, the FTC will take care of it."

But Dodd-Frank wasn't just creating a new agency. Dodd-Frank shifted authority from the FTC to the CFPB. You can't just dim the lights on CFPB and assume that the FTC is going to fill the void. And frankly, even if you could, I think one reason, in my opinion, it was so important that we had a CFPB is I don't think we had the kind of federal oversight of non-bank lending products during the years leading up to the financial crisis that we should have had. And if anything, I think you had OCC and Office of Thrift Supervision turning a blind eye, sometimes encouraging that kind of lending. I think the FTC, and I've written about this, did not do nearly enough to go after deceptive and unfair practices around subprime lending.

That was a core reason the CFPB was ... You can go back to the hearings. You might've testified 2009, 2010, FTC officials were being grilled, "Why didn't you do more on the financial crisis?" I am deeply worried. Obviously, I care about the people who have lost their jobs at the CFPB and the fact that that agency has been hobbled and what that means for consumers. But I also think it's an issue for our economy at large that we don't have the kind of watchdog that Congress went out of its way to create following the 2008 crisis.

Alan Kaplinsky:

Yeah. Yeah, and I'm wondering, and you don't have to answer this question if you don't want to, but I'm wondering if it's because ... The reason why the Trump administration focused on the CFPB is that they considered Rohit Chopra, who was the prior director as going too far in the consumer's direction and not balancing industry interests with consumer interests and focusing more on innovation. I mean, there were a lot of things that what I would call pushing the envelope. I never felt FTC pushed the envelope at all. And I just think it had the combination of that and the long and storied history of the Federal Trade Commission. They had that going in their favor. The CFPB seemed to be an easy target. Do you have a reaction or ...

Sam Levine:

Yeah, I would probably differ with you a little bit on that. I mean, having been at the FTC the last four years, I think there were at least 100 Wall Street Journal editorials directed at Lina Khan. The Chamber of Commerce declared war on her. Director Chopra, of course, also engendered some controversy in some quarters. But at the end of the day, I think, and you saw this with the 1033 rule where the Trump people came in and abandoned it, and suddenly you heard from a lot of business groups they liked the idea of open banking. They liked what the CFPB was doing to promote competition in the banking sector. So, I honestly don't know why it is the case, because both of our agencies got a lot of heat from industry for various issues. I don't know exactly why it is the case that CFPB was so targeted and the FTC also very targeted.

I mean, you look at these illegal firings of commissioners and what's happened at that agency, but there certainly is a tale of two agencies here. But at the end of the day, it is not going to serve, in my personal opinion, this administration's made a very serious mistake. When people file a complaint with ... FTC, I love our complaint leaders. We don't mediate complaints. We don't have the ... I still say we. The agency does not mediate complaints, CFPB does. When people have a problem with their credit bureau, when people have a problem with their bank, they want help from the CFPB. And the fact that the Trump administration has gutted this agency, I don't think it's good for the economy, I don't think it's good for their consumers. And ultimately, I don't think it's going to be good for them politically, because this is an agency that's returned tens of billions of dollars back in people's pockets and can no longer do so, because it's being hobbled by ideologues who've really taken over, I would say, hijacked the agency.

Alan Kaplinsky:

Well, yeah, I worry about the future. I mean, at some point it will come back, but it's not going to happen overnight. It took a year to get that agency up and running. It may take another year to get it back to where it was and where people would like to see it be.

Sam Levine:

And just to bring it back to New York, I mean, that is exactly why I see it as so important for local enforcers, certainly here in New York City, but local enforcers all over the country at the municipal level, at the state level, to really step up their work to protect consumers. And one of the messages I really want to get out there is, CFPB might not be what it used to be. FTC might not be what it used to be. But here at DCWP, we are really stepping up our oversight, stepping up our enforcement. We have an incredibly talented and proactive attorney general here in New York in Letitia James. Obviously, there are many states with similarly active state enforcers. So, I think it's really critical that state enforcers step up their game, city and state enforcers step up the game, both to fill in the gap left behind by CFPB and the FTC, but also to really show people what it means to advance an affordability agenda through a consumer protection lens, whether it's going after junk fees or going after subscription trap.

So, that's sort of, to me, the silver lining here is I really do think it's an opportunity for state enforcers to step up. We've been lucky to be able to poach some folks who were previously at the CFPB. I know the AG and DFS have done the same. And we're not a substitute for the CFPB, but working together, we're going to do our best to make sure consumers continue to be protected, at least here in New York City.

Alan Kaplinsky:

You still hiring?

Sam Levine:

We are hiring, in fact. I wish we could hire a lot more. Budget negotiations are ongoing, but we're hiring attorneys, we're hiring investigators. We really are trying to beef up our enforcement to protect the people of New York City.

Alan Kaplinsky:

Are there many other cities in the country that have agencies like what you have in New York City?

Sam Levine:

There are a number of ... Baltimore has been very active. I've been a huge fan from afar, not that far, of their work. San Francisco City Attorney famously has been active for many, many years. Chicago Law Department, I've really been, and they also have a similar worker protection unit. I've been really keeping an eye on, they've done a lot of really good work. So, I think there are more cities doing this work. And if they want to talk to me and lessons learned and compare notes, I'm happy to do that.

Alan Kaplinsky:

Well, is there anything ... Here's my last question. We covered a lot during this podcast. Is there any other priority of your office that we didn't touch upon? Anything that you'd want our listeners to know about?

Sam Levine:

I think the biggest thing I would want your listeners to know about is that the decimation of the CFPB, the significant changes to the FTC does not mean they have a get out of jail free with respect to violating consumer protection laws, or worker protection laws. We have really strong tools at the city level. I have a lot of experience, as do our staff here, using them, whether it's rulemaking, enforcement. We do inspections now. We have a lot of tools to protect the public. And my expectation is that if you're doing business in the city of New York, you do have to familiarize yourselves both with, of course, with federal law and state law, but also take a look at municipal law.

New York City has a proud tradition of providing its own protections to its people. We talked about one of them with the SHIELD Rule, that's not the only one. So, I'd really encourage your listeners who do business in the city. We want you to thrive. We want all businesses in New York City to thrive, but we also have laws here to protect consumers, and we do expect compliance with them.

Alan Kaplinsky:

Right, right, right. Okay. Well, thank you so much, Sam. This was a very enlightening discussion that we've had, and you really are going above and beyond what I think a lot of the agencies are doing to really help fill that huge void left behind by the CFPB. So Sam, thank you for a very thoughtful and substantive discussion.

Sam Levine:

Thanks, Alan. Good to see you.

Alan Kaplinsky:

Today's conversation underscores the breadth of authority exercised by the New York City Department of Consumer and Worker Protection from its longstanding role in policing deceptive and unconscionable practices, to its updated debt collection framework under the SHIELD Rule, to the mayor's recent executive initiatives targeting junk fees and subscription practices. For businesses, the message is clear. Transparency, clear disclosures, and fair treatment of consumers remain paramount, and regulatory expectations are evolving. For consumers, the city continues to expand tools designed to ensure fairness in the marketplace. We will continue to follow how these initiatives develop and what they may signal for consumer protection policy more broadly. So, Commissioner Levine or Sam, thank you again for joining us, and thanks to our listeners for tuning in.

Alan Kaplinsky (Postscript):

Here is a postscript to my interview with Commissioner Sam Levine, something which occurred after my interview with him. During my interview with Commissioner Levine, we briefly discussed Executive Order 10 issued by New York City Mayor Mamdani shortly after he came into office regarding the need for the city to deal with subscription plans, and in the words of Mayor Mamdani himself, so-called "subscription tricks or traps." Shortly after the interview, the Department of Consumer and Worker Protection issued a proposed Click-to-Cancel rule that would position New York City at the forefront of consumer protection. The principal purpose of the proposed rule is to eliminate so-called subscription tricks and traps by requiring businesses to make cancellation of a subscription plan as simple and as easy as enrolling in the plan. Let's talk about the key features of the proposed rule. If adopted, the

rule would apply broadly to automatic renewals and continuous service offers, covering a wide range of industries from gyms to digital platforms and many other industries. Among its core requirements are, first and foremost, a simple cancellation mechanism. Businesses must provide a clear, straightforward way for consumers to cancel subscriptions, eliminating multi-step or opaque processes. Second, enhanced disclosures. Companies would be required to clearly inform consumers of subscription terms at signup, including renewal and cancellation rights. The third thing about the rule that people must know is that the DCWP would have citywide authority to enforce compliance with penalties starting at \$525 per violation, along with potential restitution to affected consumers. The proposal directly targets practices such as free trial offers that convert into paid subscriptions without meaningful consumer awareness, as well as cancellation processes that are intentionally difficult to navigate. Notably, this proposed rule, if it becomes final, would be the first municipal rule of its kind in the US, underscoring the increasingly prominent role of state and local regulators of consumer protection. Advocacy groups such as the National Association of Consumer Advocates and the Consumer Federation of America have praised the proposal as both innovative and necessary, particularly at a time when federal regulatory activity in this space has been perceived as being very uneven. The rule may also serve as a template for other jurisdictions. As momentum builds nationwide to address deceptive subscription practices, New York City's approach would become a model for state legislatures and local governments seeking to enhance consumer safeguards. The proposed rule was published in the city record on April 8th of this year, and that triggered a 30-day public comment period under the City Administrative Procedures Act. Following that period, the department will evaluate feedback and determine whether to finalize the rule, potentially with revisions. For companies that are operating in or marketing to New York residents, New York City residents, the proposal is a clear signal, subscription practices are under very heightened scrutiny. Businesses should begin assessing their enrollment flows, disclosure practices, and cancellation mechanisms right now, even before the rule gets finalized, to ensure that those practices align with the rule's anticipated requirements. More broadly, the proposal reflects a continuing shift towards symmetry in consumer transactions, where ease of entry must be matched by ease of exit. Whether at the municipal, state, or federal level, regulators are increasingly focused on ensuring that consumer consent is both informed and revocable without friction. If adopted, New York City's Click-to-Cancel rule will not only impact local businesses in New York City, but could also accelerate a nationwide rethinking of how subscription services are offered. Indeed, the Federal Trade Commission, a short while ago, issued an advanced notice of proposed rulemaking regarding subscription practices. They had earlier last year had finalized a rule dealing with subscription practices, but it was overturned by the Eighth Circuit Court of Appeals. And notwithstanding the fact that the FTC is now managed and governed only by two Republicans, there are no Democrats at all on the FTC, they have nevertheless seem to be moving forward with a rule which would apply nationally, although not to banks, because the Federal Trade Commission Act has an exemption in it for banks. For those of you who desire more information about this proposed rule, I urge you to read our April 17th blog entitled New York City's Click-to-Cancel Proposal Signals A New Era In Subscription Regulation, a blog that was published in our Consumer Finance Monitor.