



Count 2, contending that Jackson Hewitt, a competitor and not a consumer of its retail services, may not avail itself of the Act's protection.

H&R Block is correct. The New Jersey Supreme Court has made clear that the New Jersey Consumer Fraud Act permits causes of actions to be brought by (a) the Attorney General of the state and (b) "victims of consumer fraud who have suffered an ascertainable loss." Weinberg v. Sprint Corp., 173 N.J. 233, 290-91 (N.J. 2002). As to the latter category, "[t]he Act focuses on allowing individual consumers to recover refunds for losses caused by violations of the Act." Id. at 290. Jackson Hewitt's Amended Complaint identifies these parties as "direct competitors in an intensely competitive market." Amended Compl. ¶ 2. The Amended Complaint goes on to allege that, by various acts, H&R Block has engaged in unfair practices that have disadvantaged Jackson Hewitt in the marketplace. Nowhere does Jackson Hewitt allege a harm associated with consuming H&R Block's services. Jackson Hewitt has brought this lawsuit as a competitor of H&R Block, not a consumer of its services, and therefore cannot avail itself of the Act.

The motion to dismiss Count 2 of the Amended Complaint is granted. As no effort to amend the complaint could make out a plausible claim under the Act, the dismissal is with prejudice. In re Tamoxifen Citrate Antitrust Litig., 466 F.3d 187, 220 (2d Cir. 2006).

The Clerk shall terminate the motion (Doc. No. 18).

SO ORDERED.

Dated: May 26 2011  
New York, New York

  
ALVIN K. HELLERSTEIN  
United States District Judge