Latest CFPB Consent Order Changes the Rules for Collection Law Firms

Published on: 10 January 2017 at 09:11 a.m. ET

Written by:
Joann Needleman – Practice Group Leader – Clark Hill PLC

http://www.insidearm.com/news/00042507-latest-cfpb-consent-order-changes-rules-c/

The Consumer Financial Protection Bureau (CFPB or Bureau) issued a significant Consent Order against an Oklahoma debt collection law firm yesterday. This is the third such Consent Order alleging that a law firm was not "meaningfully involved" or did not sufficiently review accounts prior to and during the collections process.

You can read the full consent order **here (https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201701_cfpb_Works-and-Lentz-consent-order.pdf)**.

Works and Lentz, Inc. and Works and Lentz of Tulsa, Inc. specialize in the collection of medical debt on behalf of hospitals, doctors and healthcare providers. According to the findings of the Consent Order the Bureau concluded that the law firm committed the following violations of the Fair Debt Collection Practices Act (FDCPA) and Regulation V of the Fair Credit Reporting Act as follows:

- **Lack of Meaningful Review**: Attorneys at the law firm did not review accounts before demand letters were sent to consumers;
- **Lack of a Disclaimer**: The law firm failed to include a "disclaimer of attorney involvement" in their demand letters;
- **Collectors Stated they were Calling from a Law Firm**: Non-attorney staff identified themselves as calling from the law firm even though no attorney reviewed any account before the staff made such calls;
- **Falsifying Affidavits:** The law firm falsified notarized affidavits of clients without verifying the truth of their client's signature; and
- **Lack of Policies and Procedures to Ensure Accuracy of Information**: The law firm furnished credit information to the credit reporting agencies without any policies and procedures in place to ensure the accuracy and integrity of the information being furnished.

The law firm entered into the Consent Order without admitting or denying any of the CFPB's findings. Further, none of the Bureau's findings indicated that any consumer was harmed by the law firm's conduct, including collecting from the wrong consumer or collecting for the wrong amount. The Consent Order made no finding that any consumer was wrongfully sued or that any affidavit was inaccurate on its face prior to the improper notarization. Finally, nothing in the Consent Order suggests that any information furnished to any credit reporting agency was found to be inaccurate or that any consumer disputed the inaccurate information. Nonetheless, the law firm was ordered to pay $577,135.20 in redress to "Affected Consumers" who have yet to be identified as well as a civil penalty to the Bureau in the amount of $78,000.00.

After five years and countless Consent Orders against the ARM industry it's easy to pass off this case as possibly another rogue firm who should have known better. The industry should not be so apathetic. There is no evidence this law firm was repeatedly sued or had been the subject of any prior investigations. A review of the CFPB complaint portal shows only 35 complaints against the law firm from November 2013 until November 2016 and in all instances the complaints were closed with explanation.

Further, there are disturbing findings in this Consent Order that should not be overlooked, including the Bureau's clear distain for law firms who are paid on a contingency basis. It should further disturb the industry that the Bureau issued an Outline of Proposals for Debt Collection but intentionally omitted any mandate that substantiation of a debt should include a client's "original account level documentation," even for law firms.

Now, however, Works and Lentz are required to have and to review "original account level documentation" prior to any implicit or explicit communication that a lawsuit is likely. Remember, this is medical debt, so a written contract is highly unlikely. That staff members of the law firm are no longer permitted to identify themselves as employees of the firm is equally puzzling. Who should they say they are calling from? Such a mandate contradicts several sections of the FDCPA which requires the disclosure of a debt collector's identity as well as their respective employer.

Works and Lentz are now required to provide a written and even oral disclaimer in instances where no attorney has reviewed an account. In some states, like New Jersey, such a disclaimer that an attorney is not acting like an attorney is a violation of the state's Rules of Professional Conduct. Ironically in the 10th Circuit, where Works and Lentz are located, there is no case law on this issue and no requirement that such a disclaimer is even required. Finally, who is going to make the determination that an attorney review is sufficient in order to continue with collection activity or to provide a disclaimer? If it is the CFPB, through its rulemaking, then that clearly is the regulation of the practice of law and a complete disruption of the attorney client relationship.

Must all collection law firms now follow these same rules? CFPB Director Richard Cordray has certainly eluded to this in the past. In March 2016, Director Cordray **referred to consent orders (http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-consumer-bankers-association/)** as a guide "to all participants in the marketplace to avoid similar violations and make an immediate effort to correct any such improper practices," telling the Consumer Bankers Association that any company not following the precedents set by the CFPB's consent orders is committing "compliance malpractice."

The CFPB has done its job of dividing and conquering an industry that has spent small fortunes in compliance. The legal collections community has spent countless hours meeting and "talking" with the Bureau only to be told that what we do is bad, with no guidance as to what we should be doing right. We have seen colleagues reduced to roadkill for doing the job they were hired by their clients to do. Collection lawyers have been forced to put their adversary's interest over that of their client, all in the name of consumer protection. Hanna, Pressler and now Works and Lentz are not this industry's problem. Failure to fight the bully is.

—

Joann Needleman is leader of Clark Hill's Consumer Financial Services Regulatory & Compliance group. Joann has extensive litigation experience in state and federal courts, successfully defending creditors agains claims brought under the Fair Debt Collection Practices Act and Fair Credit Reporting Act as well as state statutes. She provides counsel, consultation and litigation services to financial institutions, law firms and debt buyers throughout the country. Joann is a former President of the Board of Directors of NARCA - the National Creditors Bar Association. She currently serves on the Consumer Financial Protection Bureau Consumer Advisory Board.