
CFPB Orders Two Largest Debt Buyers to Pay Fines and Penalties for Using Deceptive Debt Collection Tactics: Extends the Scope of the FDCPA in the Process

By Joann Needleman / Sep 11, 2015

On September 9, 2015, the Consumer Financial Protection Bureau (CFPB) announced that it would take action against two of the nation's largest debt buyers related to their use of deceptive tactics to collect bad debts. The Bureau found that both Encore Capital Group (Encore) and Portfolio Recovery Associates (PRA) violated the Consumer Financial Protection Act (CFPA) as well as the Fair Debt Collection Practices Act (FDCPA).

As stated in simultaneous consent orders, the CFPB found that both Encore and PRA engaged in the following:

- **Improper Debt Buying Practices** - Both companies purchased debt that they knew or should have known, was inaccurate, was missing information to substantiate the debt, or where in some instances the seller had disclaimed its accuracy and enforceability. Both companies stated incorrect balances, interest rates, and payment due dates in attempting to collect debts from consumers;
- **Improper Handling of Consumer Disputes** - Both companies relied upon the consumer to advise as to the accuracy of the debt and failed to provide "account level documentation" after the validation period, failed to investigate oral disputes and referred matters to law firms knowing the accounts had been disputed;
- **Illegal Litigation Practices** - The CFPB also found that the companies engaged in unlawful litigation practices both internally and with outside law firms. Notably, the companies sued consumers in state courts across the country with no intention of ever proving the debts. Instead, the companies made no effort to obtain the documents to back up their claims, relying instead on consumers not to file a defense and winning the lawsuits by default. Additionally, the companies filed affidavits that contained misleading statements as well as sent thousands of letters to consumers offering to settle, without revealing that the debt was time-barred and too old for litigation.

In some instances, PRA and Encore were found to have violated the FDCPA even though they complied with the plain meaning of the Act. For example, pursuant to § 1692g(a)(3), if a consumer fails to dispute the debt, or any portion thereof within thirty (30) days from the date they receive the initial notice, the debt will assumed to be valid by the debt collector. The CFPB found that both PRA and Encore failed to investigate the accuracy of the debts they were collecting, even in instances where there was no evidence of a dispute or any communication by the consumer. The CFPB also found that PRA and Encore failed to investigate oral disputes outside the 30 day validation period, even though the FDCPA does not require a debt collector to do so.

The CFPB also took issue with the law firms hired by both PRA and Encore suggesting that the number of attorneys in the respective law firms was extraordinarily small compared to the volume of the cases being sued upon. Neither consent order found that any of these law firms had violated any Rules of Professional Conduct or that any attorney in any of these firms was not otherwise qualified to represent PRA or Encore.

Both PRA and Encore were ordered to cease collections on millions of dollars of debt, and move to vacate all judgments and dismiss all lawsuits where it misrepresented that a debt was assumed valid or where a lawsuit was filed past the statute of limitations. That amount could reach in excess of \$125 million. Additionally, both companies are prohibited from making any representation regarding any debt unless it can be substantiated including a review of all "original account level documentation." Any engagement with a law firm requires extensive policies and procedures to ensure not only compliance with federal consumer protection laws but termination in the event of non-compliance.

Encore was ordered to pay up to \$42 million in refunds to consumers while PRA must pay up to \$19 million in refunds. Each were assessed civil penalties as well.

The effect of these consent orders will be far-reaching. For one, the reputations of both PRA and Encore have been severely compromised such that any evidence to substantiate a debt will be met with suspicion both by the consumer and the courts. Look for increased litigation against PRA, Encore and their law firms for no other reason than that they do business together. The consent orders have created an environment of mistrust resulting in a law firm being unable to rely on the information provided to it by its client. Law firms will be required to adopt enhanced policies and procedures to ensure that not only is the information provided to it by its client accurate, but that the debt has not otherwise been disputed and that evidence exists to substantiate the debt.

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