Law Firm Trial Victory Should Signal to the Bureau of Consumer Financial Protection (Bureau) That They Should No Longer Attempt to Regulate the Practice of Law

By Joann Needleman / Jul 27, 2018

On Wednesday, July 25, 2018, a United States District Court Judge in the Northern District of Ohio ruled, after a four day jury trial, that the Bureau of Consumer Financial Protection (Bureau) failed to prove that an Ohio debt collection law firm had misled consumers by sending demand letters using the firm's letterhead. The Court also found that the Bureau failed to prove that the law firm was not meaningfully involved in the debt collection process. The trial brings to a close a four year investigation and enforcement action against the law firm of Weltman, Weinberg & Reis (WWR). More importantly, the result in this case calls into question whether the Bureau should investigate or bring future enforcement actions against collection law firms.

CFPB v. WWR

In 2014, the Bureau began an investigation of WWR serving multiple civil investigation demands (CIDs) and deposing numerous attorneys and employees of the firm in regard to the firm's debt collection processes and procedures. Hundreds of thousands of documents were produced. The Bureau then filed suit against the firm when they failed to obtain a consent order, alleging that WWR's conduct violated both the federal Fair Debt Collection Practices Act (FDCPA) and the Consumer Financial Protection Act (CFPA).

The complaint against WWR was puzzling. In its pleading the Bureau alleged that WWR, by identifying themselves as attorneys and using their firm's own letterhead, mislead consumers because the attorneys were not meaningfully involved in the debt collection process. The Bureau also alleged that WWR employees engaged in false and deceptive conduct when they identified themselves as employees of the firm even though the firm was not meaningfully involved in the consumer's case. Prior to trial the Bureau dismissed the later claims with prejudice.

It is interesting to note that several years prior to the Bureau's investigation of WWR, the firm was hired by the Ohio Attorney General (AG), former Bureau Director Richard Cordray, to work as special counsel for the collection of debts owed to the state of Ohio. The same letters, as well as the same procedures were not only used by WWR when they represented the state of Ohio, then-AG Cordray also approved those same letters and processes. Yet it was Bureau Director Cordray who authorized the suit against WRR for those same letters.

Upon the commencement of the trial the judge empaneled an advisory jury. At trial the Bureau produced no consumer witnesses and only called one WWR attorney, one non-attorney and the Bureau's own expert. WWR called their managing attorney of the collections practice and the managing shareholder of the firm. After four days of proceedings, the jury found by a preponderance of the evidence that the collection letters contained false, deceptive and misleading representations in connection with the collection of a debt. However, the jury also found that WWR was meaningfully involved in the debt collection process. The judge ordered both sides to submit findings of facts and conclusions of law and took the jury's findings under advisement.

The Court's Findings in CFPB v. WWR

Upon review of the party's submissions, the Judge made the following findings:

- The demand letters sent by WWR accurately described the identity and legal description of the firm and as such the letters could not be fairly described as false or misleading;
- The series of extensive procedures used and implemented by WWR prior to sending demand letters all involved attorneys;
- WWR had robust formal compliance programs in place, which were developed and approved by attorneys, shareholders and the firm's Board;
- WWR attorneys drafted demand letter templates and work together with non-attorney staff on a daily basis as they conducted their work;
- There had never been a finding in any jurisdiction that WWR letters or any other statements contained falsehoods or misrepresentations;
- Despite requiring similar indications and disclosures of attorney involvement in the debt collection letters used on behalf of the State of Ohio, Richard Cordray, when he became head of the Bureau, authorized this lawsuit against WWR even though they truthfully identified themselves as a law firm; and
- Plaintiff offered no evidence to show that any consumer was harmed by -- or that any consumer prioritized payments based upon -- WWR's practice of identifying itself as a law firm.

As a result of these findings and others, the judge determined that the Bureau failed to prove its case and judgment was entered in WWR's favor.

Dodd Frank, the Bureau and the Practice of Law

Dodd Frank was enacted with an exemption for the practice of law, *see* 12 USC §5517(e). However the statute also included various exceptions, which further muddled the issue of whether the Bureau had authority to pursue law firms. Nevertheless, the Bureau took the position that collection lawyers were not included in the practice of law exemption and once the Bureau opened its doors, many collection law firms were targeted by the Bureau in enforcement proceedings under the theory of meaningful involvement. In the case of the *Frederick J. Hanna* (Hanna) *Law Firm*, the Bureau made claims similar to WWR that Hanna lacked meaningful involvement when it brought suit against consumers, because the firm failed to review "original account

level documentation." Again, this standard is not found anywhere in the plain text of the FDCPA or any other statute for that matter. After years of an investigation and a vigorous defense by Hanna including a motion to dismiss, Hanna agreed to a consent order that set forth certain meaningful involvement standards. The Hanna case never went to trial. Investigations of other collection law firms soon followed. All were resolved by consent orders as many firms simply did not have the resources to fight the Bureau. WWR, one of the largest collection firms in the industry, was the first to defend and proceed to trial.

Despite the many civil lawsuits brought against law firms alleging a lack of meaningful involvement, no court has articulated what a meaningful involvement standard should be, nor can they. The ABA Model Rule of Professional Conduct 1.2 states that “a lawyer shall abide by a client's decisions concerning the objectives of representation and … shall consult with the client as to the means by which they are to be pursued …” Absent a lawyer engaging in fraud or some other unlawful conduct, the client sets the objectives and the attorney provides the means by which to meet those objectives. It is not for an opposing party or its attorney, a regulator or even a judge to determine how and in what manner an attorney manages its case, let alone sets the strategy for doing so.

One of the bureau's many functions, aside from enforcement, is to provide guidance and rules. Assuming the bureau can regulate how debt collection attorneys can practice law and how an attorney should review and handle its case, the bureau has put forth no rule or guidance as to what it means to be meaningfully involved. A consent order against one law firm is not a rule, nor should it be.

The decision in this case may result in a change in Bureau policy when it comes to future enforcement actions against debt collection law firms since it has now been shown by the WWR case that lawyers are not only involved in the debt collection process but actively so.