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MAY 31, 1994

VOL 2, #5

required to comply with the FDCPA. (ACB Communicator Vol. IV, Issue 5.)

(We believe this article will be of special interest to those creditors that have taken over or acquired other creditors.)

## COURT SAYS DEPUTY DID NOT VIOLATE FCRA

### CREDITOR MUST COMPLY WITH FDCPA IN DEBT COLLECTIONS

A consumer charged that a bank had used methods prohibited by the Fair Debt Collect Practices Act (FDCPA) to collect on a \$25,491.59 judgment. The trial court that originally heard this case agreed with the bank and dismissed the consumer's action.

The US Court of Appeals of the fifth circuit, recently ruled against the bank, that was trying to collect on the judgment.

Because the FDCPA does not govern the efforts of a creditor who is attempting to collect its own debt, the question arises as to whether the bank was actually a debt collector. Only when the creditor uses a name other than its own, indicating a third party, is it considered a debtor collector under the law. (FDCPA 803(6), 15 U.S.C. 1692(6).)

The bank involved in this action was not the original bank that recovered the judgment. Instead, this bank was trying to collect the judgment in connection with the liquidation of the original bank. Therefore, it could be interpreted that the defendant was acting as an agent of the creditor and would not be governed by the FDCPA.

According to the FDCPA, a collector is defined as "any person to the extent that he or she receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another." (FDCPA 803(4), 15 U.S.C. 1692a(4).)

The court determined the defendant fit into this category, since the debt had been transferred from the liquidated bank's portfolio of loans. Therefore, it was

The Fair Credit Reporting Act states that a credit bureau can only furnish a credit report if there is a permissible purpose. It also prohibits the use of false pretenses to obtain information from a credit bureau. When a deputy sheriff obtained a credit report for other than permissible purposes, it could be considered a violation of the FCRA. However, he made it clear that he would be using it for a grand jury investigation of the consumer, consequently he had not received it under false pretenses. Nevertheless, the consumer believed the deputy had violated the FCRA and brought action against him.

The deputy sheriff believed a credit report could be used as evidence of the crime and asked Mike Halsey of United Financial to obtain one. Since Halsey ordered credit reports every day on consumers requesting loans, acquiring one could be completed in the ordinary course of business. However, it could be interpreted that Halsey used false pretenses to get the C/R by letting it appear to the credit bureau that the report would be used to evaluate an application for credit.

The court ruled that "the fact that Halsey failed to convey the true purpose of the information is not attributable to the [the deputy sheriff]." Charging the deputy with using false pretenses and violating the FCRA was baseless and the deputy had incurred no liability for his actions. (Allen v. Calvo(d.Ore.1993).) (ACB Communicator Vol IV, Issue 5)

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