

Lawyers & Debt Collection

*The Fine Line Between Compliant
Collection and Deception*

CFPB Update, June 2016

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Legal Disclaimer

This information is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has been made to assure this information is up-to-date. It is not intended to be a full and exhaustive explanation of the law in any area, however, nor should it be used to replace the advice of your own legal counsel.

Presentation Overview

- CFPB & FTC Update: June 2016
 - **Rulemaking:**
 - “Update” on Upcoming CFPB Debt Collection Rulemaking
 - **Official Staff Comment:**
 - FTC Urges FCC Not to Allow Robocalls
 - **Enforcement Action:**
 - FTC Bans Agency from Debt Collection
 - **Report:**
 - CFPB Monthly Complaint Report
- This Month’s Focus:
 - Lawyers and Debt Collection
- Tony’s CFPB Strategy Updates

“Update” on Upcoming Debt Collection Rulemaking

- “The Bureau is in the process of analyzing responses to a survey seeking information from consumers about their experiences with debt collectors and is engaged in qualitative testing to determine what information would be useful for consumers to have about debt collection and how that information should be provided to them.”

– CFPB Spring 2016 Rulemaking Agenda

FTC Staff Comment: *Debt Collection Robocalls*

- FTC issued a staff comment to the proposed amendments to the FCC regulations that limit robocalls to consumers.
 - The proposed amendments permit robocalls to collect debt owed to or guaranteed by the federal government without a consumer's prior express consent.
- The Comment cautions against expanding permissible robocalling, recommending the FCC create standards for collecting debt that are consistent with the FDCPA & TSR.
- The Comment proposed that the FCC limit newly-permitted robocalls in four key ways, allowing such calls:
 - (1) only to those regarding debts in "default,"
 - (2) only to persons who actually owe the debts,
 - (3) only to collect government debt and no other type of debt, and
 - (4) only for collection purposes.

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Enforcement Action: *FTC Bans Agency From Debt Collection*

- Defendants deceived consumers via text messages, emails and phone calls that falsely threatened consumers with arrest or lawsuits if they did not make debt collection payments.
- The court's final order bans the defendants from debt collection activities and prohibits them from misrepresenting material facts about financial-related products and services.
- \$980,000 judgment imposed.

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CFPB Monthly Complaint Report

- Focus of May 2016 Monthly Complaint Snapshot: Credit Reporting
- Debt Collection Issues Identified:
 - Consumer complaints frequently allege inaccurate items on credit reports are a result of credit reporting by collectors.
 - **CFPB Focus Area**

June 2016 Focus: *Lawyers & Debt Collection*

- Last month, the Seventh Circuit held that three collection agencies did not engage in “deceptive” conduct when they dismissed three lawsuits brought against borrowers before trial.
 - Litigation is a “process” – there are many ways to resolve litigation short of trial.
 - Collectors never represented expressly or impliedly that they intended to go to trial.
- First major debt collection legal development post-*Hanna & Associates*

June 2016 Focus: *Lawyers & Debt Collection*

- NY State Bar Association issued ethics opinion.
- Holding: Attorneys do not have to identify themselves when working in a non-attorney capacity, such as debt collection.
- Attorneys, however, must be truthful and not mislead when asked direct questions.

June 2016 Focus: *Lawyers & Debt Collection*

Where does this newest decision that leave us?

- A debt collector has to have accurate documentation that verifies and substantiates the debt before filing a complaint that has been reviewed by an attorney (*Hanna*); but the collector does not need to intend to go to trial.

Result: A debt collector may bring a lawsuit with the goal of driving the consumer to settlement so long as an attorney has reviewed the supporting documentation and made a good faith determination that the debt is valid and substantiated.

Tony's CFPB Strategy Updates

- Supervisory Examinations
 - CFPB currently identifying companies for 2017 exams
 - CFPB staff more sophisticated and knowledgeable about debt collection industry
 - CFPB prefers a more formal approach
- Investigations
 - The “science” versus the “art”
 - CFPB focus on the accounts receivable industry
 - Rulemaking through enforcement

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Questions?

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