



CFPB DEBT COLLECTION REGULATORY UPDATE

During 2018, the regulation of debt buyers and collectors continued at the Consumer Financial Protection Bureau (“CFPB”). The three most significant CFPB developments were (1) the confirmation of Kathy Kraninger as the Bureau’s new Director, succeeding Acting Director Mick Mulvaney, to a five-year term; (2) continued work (and an industry waiting) for the previously announced debt collection rulemaking; and (3) continued enforcement and supervisory activity involving the Fair Debt Collection Practices Act (“FDCPA”) and Consumer Financial Protection Act (“CFPA”), including a defeat in a lawsuit over debt collection letters sent on law firm letterhead.

DEBT COLLECTION RULEMAKING

Throughout 2018, the CFPB reported that it was working toward releasing a proposed rule concerning FDCPA collectors’ communications practices and consumer disclosures. As of March 2019, the proposed rule has not been released for comment. The CFPB first announced it was considering rules for debt collection in 2013. In 2017 the CFPB announced that it would bifurcate the rulemaking to cover communications practices and consumer disclosures, and then information flows between creditors and collectors and first-party collections.

CFPB ENFORCEMENT AND LITIGATION HIGHLIGHTS

The CFPB was a party in the following notable public enforcement actions involving debt collection and continued litigation in other cases that had been filed previously.

IN THE MATTER OF: SECURITY GROUP, INC., ET AL.

In June 2018, the CFPB entered into a consent order with Security Group entities alleging that they violated the CFPA by making improper in-person and telephonic collection attempts on consumer installment loans and retail sales installment contracts. The CFPB found that these improper attempts included physically preventing consumers from leaving their homes and visiting and calling consumers’ places of work while knowing that those contacts could endanger the consumers’ employment. The CFPB also found that the Security Group entities violated the Fair Credit Reporting Act by regularly furnishing inaccurate and incomplete information about consumers to credit reporting agencies. Under the terms of the consent order, the entities are barred from certain collection practices, must correct certain inaccurate information about consumers they furnished to credit reporting agencies, and pay a \$5 million civil money penalty (“CMP”).

IN THE MATTER OF: NATIONAL CREDIT ADJUSTERS, ET AL.

On July 13, 2018, the CFPB announced a settlement with National Credit Adjusters, LLC (NCA), and its former CEO and part-owner resolving allegations of use of a network of collection companies in frequent unlawful debt collection acts and practices that harmed consumers, including by representing that consumers owed more than they were legally required to pay, threatening consumers and their family members with lawsuits, visits from process servers, and arrest, when neither the debt owner nor the collection companies intended or had the legal authority to take those actions. NCA acquired, purchased, and sold payday loans and other extensions of credit. The CFPB alleged violations of the FDCPA and CFPA. The order bars the defendants from certain collection practices, and the former CEO from working in any business that collects, buys, or sells consumer debt. The order imposes a judgment for civil money penalties of \$3 million against NCA and \$3 million against the former CEO. Full payment was suspended subject to partial payments being made.

IN THE MATTER OF: BLUESTEM BRANDS, INC., ET AL.

On October 4, 2018, the CFPB announced an administrative consent order against Bluestem Brands, Inc. and affiliates, doing business as Fingerhut and gettington.com, resolving allegations of unfair debt collection involving delayed payments to third-party debt buyers and inaccurate credit reporting. The consent order requires the companies to improve their processes to timely identify and forward customer payments on accounts that they have sold to third-party debt buyers; to prevent consumers from making payments by phone or on the companies’ websites on sold accounts; and to notify customers who do make payments to the companies on sold accounts that their accounts have been sold. The order requires payment of a CMP of \$200,000.

IN THE MATTER OF: CASH EXPRESS, LLC

On October 24, 2018, the CFPB announced a settlement with Cash Express, LLC, a small-dollar lender based in Cookeville, Tenn., that offers high-cost, short-term loans, such as payday and title loans, as well as check-cashing services. As described in the consent order, the CFPB found that Cash Express violated the CFPA by (1) deceptively threatening in collection letters that it would take legal action against consumers, even though the debts were past the date for suing on legal claims, and it was not Cash Express’s practice to file lawsuits against these consumers; (2) misrepresenting that it might report negative credit information to consumer reporting agencies for late or missed payments, when the company did not actually report this information; and (3) abusively withholding funds during check-cashing transactions to satisfy outstanding amounts on prior loans, without disclosing this practice to the consumer during the initiation of the transaction.

Under the terms of the consent order, Cash Express and its subsidiaries are barred from automatically taking money from



check-cashing transactions unless certain conditions are met; and from making misrepresentations about its consumer reporting activities and its intention or likelihood of filing suit to collect a debt. The order requires Cash Express to pay approximately \$32,000 in restitution to consumers, and to pay a \$200,000 CMP.

CORDRAY-ERA ACTIONS

CFPB v. Think Finance, LLC; CFPB v. Freedom Debt Relief, LLC — In November 2017, the CFPB filed separate lawsuits against lending technology company Think Finance, and debt relief services company Freedom Debt Relief. Both lawsuits remain pending.

CFPB v. Weltman, Weinberg, and Reis (“Weltman”) The district court judge in this case decided in favor of the collection law firm and assessed cost to the CFPB, on May 7, 2018. The CFPB alleged that Weltman falsely represented in collection letters sent to consumers that attorneys were involved in collecting the debt. The district court found the CFPB failed to prove its FDCPA and CFPA claims by a preponderance of the evidence.

SUPERVISORY EXAMINATION HIGHLIGHTS

In addition to enforcement developments, the CFPB also continued its practice of reporting supervisory examination *Highlights* in the area of debt collection. In the summer of 2018, the CFPB reported that examiners discovered that one or more collectors failed to obtain and mail debt verification before engaging in further collection activity in compliance with Section 809(b) of the FDCPA. In response to these findings, the *Highlights* indicated the collector(s) revised their debt validation policies, procedures, and practices.

REPORTS ON DEBT COLLECTION

The CFPB continued its practice of issuing reports on the debt collection market:

Quarterly consumer credit trends: Telecommunications debt collection: In August 2018, the CFPB issued a report

on telecommunications debts in credit records. The CFPB used a longitudinal, nationally representative sample of approximately five million de-identified credit records maintained by one of the three nationwide credit reporting companies.

Complaint Snapshot: Debt Collection: In May 2018, the CFPB issued a Complaint Snapshot that provides a high-level overview of trends in consumer complaints with a spotlight on debt collection.

AMICUS BRIEFS

In 2018, the CFPB filed amicus curiae (friend of the court) briefs in the following notable cases involving debt collection topics:

Nonjudicial Foreclosure Proceedings: On November 14, 2018, the CFPB and the Solicitor General of the United States filed a brief in the Supreme Court in *Obduskey v. McCarthy & Holthus, LLP*



THE THREE MOST SIGNIFICANT CFPB DEVELOPMENTS WERE:

THE CONFIRMATION OF KATHY KRANINGER AS THE BUREAU'S NEW DIRECTOR;

CONTINUED WORK (AND AN INDUSTRY WAITING) FOR THE PREVIOUSLY ANNOUNCED DEBT COLLECTION RULEMAKING;

CONTINUED ENFORCEMENT AND SUPERVISORY ACTIVITY INVOLVING THE FDCPA AND CFPA.



arguing that actions that are legally required to carry out a nonjudicial foreclosure are generally not debt collection regulated under the FDCPA. The case was heard by the Supreme Court on January 7, 2019, and the Court has not yet issued a decision in this case.

This case involves a foreclosure action where the borrower sued McCarthy and Wells Fargo, alleging, among other things, a violation of the FDCPA. The district court granted the defendants' motion to dismiss on all claims. The U.S. Court of Appeals for the 10th Circuit held, among many things, that based on the statute's plain language as well as policy considerations, the FDCPA did not apply to non-judicial foreclosure proceedings in Colorado, which was in conflict with the 4th, 5th, and 6th Circuits, and consistent with the 9th Circuit.

Electronic Communication: On April 25, 2018, the CFPB filed an amicus brief addressing the applicability of the E-SIGN Act to electronically delivered validation notices under the FDCPA in the 7th Circuit case of *Lavallee v. Med-1 Solutions, LLC*. The Bureau's brief argued that the Electronic Signatures in Global and National Commerce Act ("E-SIGN Act") applies to electronic versions of

validation notices. The brief also argued that, absent a regulatory exemption, electronic versions of validation notices cannot be used to satisfy the "written notice" requirement in the FDCPA unless the consumer consents and other E-SIGN Act requirements are met.

This case involves the question of whether a debt collector complied with the requirement in the FDCPA that it, under certain conditions, "send the consumer a written notice" (often called a validation notice) that sets forth certain consumer rights under the Act. The debt collector sought to comply with that requirement by sending the consumer emails containing a link to an Internet-connected server from which the consumer could purportedly obtain the validation notice. The trial court concluded that, under the circumstances presented, the debt collector did not "send" the consumer the validation notice. The collector appealed the case to the 7th Circuit and argued, among other things, that an electronic version of a validation notice satisfies the FDCPA's requirement that it send the consumer a "written notice." The court issued a decision on March 20, 2019. See page 11 for further discussion of the decision.

Foreclosure Proceedings and FDCPA: In July 2018, the 2nd Circuit agreed with the CFPB's brief supporting application of the FDCPA to judicial foreclosure proceedings that can lead to a deficiency judgment in *Cohen v. Ditech Financial LLC*.

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By necessity, this article provides only general summaries based on CFPB materials, but not exhaustive treatments of the CFPB's activities related to debt collection in 2018.



Jonathan L. Pompan
Attorney/Partner
Venable LLP

Jonathan L. Pompan is a partner and co-chair of the Consumer Financial Services Practice Group at Venable LLP. The opinions expressed are those of the author and are not intended to represent the views of his firm or clients.



BUD REITZEL AWARD

RMAI awarded Bryan Faliero of Resurgent Holdings, LLC the Bud Reitzel Lifetime Commitment Award, the industry's highest recognition, at the 22nd Annual Conference in Las Vegas.

Bryan Faliero is CEO of Sherman Financial Group's debt purchasing and servicing business. Prior to joining Sherman Financial Group in 2005, Mr. Faliero was an EVP with Outsourcing Solutions Inc. (OSI), President of Financial Services Business and Founder and CEO of its Portfolio Purchasing and Asset Backed Servicing business.

Bryan has served on the RMAI Board as an officer and as the 2014 Board President. He was instrumental in establishing RMAI's engagement with the Aria for our annual conference in Las Vegas. Bryan is an active supporter of RMAI's Federal Legislative initiatives and was one of the initial supporters of RMAI's Certification Program. Bryan created one of the most accomplished debt buying companies in the business. His leadership has elevated many under the Resurgent brand and many others at other companies he has enjoyed coaching along the way.



PRESIDENT'S AWARD

RMAI awarded Jeremiah Wheeler of DRN the President's Award. Jeremiah has impacted the association and industry through his work on RMAI's Legislative Fund and Membership Committees. Jeremiah has also contributed to the annual conference by providing innovative networking ideas such as the Suite Crawl.

The President's Award was created in 2017 to recognize an individual who has made outstanding contributions and services to the association and membership. Nominations for the President's Award are submitted by the Board of Directors and the Certification Chair.

The award goes to someone who currently serves on an RMAI Committee or Task Force or on the RMAI Certification Council or a Council Committee and has been selected because of their contribution to committee goals and has provided innovative ideas to help further the success of the association.



INTEGRITY AWARD

RMAI awarded Jim Richards of Capiro Partners, the Integrity Award.

The 2019 Integrity Award is RMAI's newest award, which recognizes an individual from an RMAI member company for demonstrated integrity in action, either professionally or personally. RMAI formally recognized Jim for demonstrated integrity and contributing positively to the receivables management industry.

Jim has devoted his entire life to the receivables management industry, tirelessly being an advocate of the industry value to our economy and always demonstrating through actions that doing the right thing is easy. His motto is, "Complaintless Collections." He has also brought honor to the debt buying industry by standing behind the debt Capiro Partners purchases and vetting every account that is put back in the collection cycle. He has served on various committees of industry associations through the years, always striving to change the perception of the collection industry.