Debt Collection Firm, Hanna & Associates Ordered To Pay $3,100,000 Penalty

Defendants Frederick J. Hanna, Joseph C. Cooling and Robert A. Winter, partners of the Frederick J. Hanna & Associates, P.C., law firm agreed to pay a penalty in the amount of $3,100,000 to the Consumer Financial Protection Bureau ("CFPB") for a Complaint filed against the firm and the partners as individuals on July 14, 2014.

Hanna, Cooling and Winter had intimate knowledge of and directed the operation of the firm's deceptive practices. According to the CFPB, each defendant knew of and approved all of the practices outlined in the July 14, 2014 Complaint for violations of the Fair Debt Collection Practices Act ("FDCPA") 12 U.S.C. § 5491(a) and the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5481 (12)(H)(14).

The firm collected consumer debt on behalf of JP Morgan Chase, Bank of America, Capital One, as well as debt buyers like Portfolio Recovery Associates and Midland Funding.

The CFPB determined that the Judgment is in the public interest to further the goals of the Fair Debt Collection Practices Act ("FDCPA") and is a heavy warning to all debt collection firms. The FDCPA was enacted by Congress in 1977 because there was ample evidence of abusive, deceptive and unfair debt collection practices.

Debt Collectors in the State of California must also comply with the terms of the FDCPA and the corresponding California Rosenthal Act. The Rosenthal Act includes as a debt collector "anyone who in the ordinary course of business on behalf of herself or himself or others engages in debt collection," Cal. Civ. Code §1788.2(c). Therefore, even original creditors in the State of California who do not comply with the FDCPA may be in violation of state law.

There is a major difference between the FDCPA and the Rosenthal Act; the Rosenthal Act excludes lawyers. However, the California State Bar requires lawyers to comply with the Rosenthal Act, Cal. Bus. & Prof. Code §6077.5.

The Complaint against Defendants stated that the firm employed hundreds of non-attorney administrative staff and only a meager amount of lawyers (8-16). Hanna, Cooling and Winter used high volume litigation tactics generating millions of dollars in revenues by collecting debts from consumers who likely did not owe all or part of the debt collected. Between 2009 and 2013, the firm used an automated system and non-attorney staff to draft and file more than 350,000 lawsuits. One attorney at the firm was purported to have signed over 1,300 lawsuits each week.

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The lawyers at the firm could not exercise independent legal judgment given the minute or two that they were allotted to review each complaint.

There was no attorney involvement to verify the debt, the veracity of the affidavits or draft the lawsuits. This is a gross violation of the FDCPA and a long line case law which found that even the mere use of letterhead from a law firm that lacked meaningful involvement from an attorney violated the statute, Avila v. Rubin 84 F. 3d 222 (7th Cir. 1996), Miller v. Wolpoff & Abramson, LLP., 321 F. 3d 292 (2d Cir. 2003), Clomon v. Jackson 988 F. 2d 1314 (2d Cir. 1993) and Boyd v. Wexler F. 3d 642 (7th Cir. 2001).

Most of the actions filed by Hanna lacked any documentary evidence of the validity of the underlying debt and relied upon false and misleading affidavits. Many consumers failed to appear resulting in a default judgment. The firm routinely dismissed cases when a response was filed at the rate of more than 155 each week. A consumer who hired a lawyer was four times more likely to have their case dismissed.

The CFPB stated that the lawyers at the firm acted recklessly or knowingly by failing to determine the accuracy of the debt and by filing sworn affidavits from the creditors who obviously lacked personal knowledge of the facts. The filing of these false affidavits without meaningful attorney involvement is a violation of the CFPA 12 U.S.C. § 5536(a)(1)(A) because these suits relied heavily on unverified, misleading or false affidavits which constitutes deceptive practices under the Act. The defendants knowingly allowed affidavits to be filed with each action that falsely represented to consumers and the court the character, amount and legal status of the debt. The defendants widespread practice of using these sworn affidavits was an unconscionable practice and is also a prohibited under the FDCPA 15 U.S.C. §§1692 e (2), (A), (10).

Under the Order the Defendants are permanently restrained from initiating or threatening a lawsuit without having account-level documentation of the underlying debt and a chain of title including the transfer documents for any debt buyers. Any successive owner of consumer debt represented by the firm must produce a document signed by the consumer evidencing the opening and character of the account. In addition, the firm must require all lawyers, whether in-house or outside counsel to log onto a software system that will keep an electronic record of the lawyers work verifying the debt. Any affidavit attached to a complaint must be signed in the presence of a notary and may not contain any statements where the affiant does not have personal knowledge of the facts. The defendants must provide a copy of the Order to all lawyers whether in-house or outside counsel to ensure compliance with all of the requirements contained in the Order.

Finally, the Defendants must pay the $3,100,000 penalty within 10 days of the Order and may not seek or claim the penalty as a tax deduction and may not seek or accept any reimbursement from any source for the penalty associated with the Order.

The CFPB's complaint in the lawsuit can be found here.

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