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ARTICLES & INSIGHTS

ABOUT THE AUTHOR



Jerry Myers is Smith Debnam's Managing Partner and for more than 30 years, he has focused his practice in the area of creditors' rights, with an emphasis on debt collection, judgment enforcement, and commercial litigation. Jerry is certified by the American Board of Certification as a Specialist in the field of Creditors Rights law. Jerry is a past President of the Commercial Law League of America and was the first President of the North Carolina Creditors Bar Association. He has written and lectured extensively on debt collection and judgment enforcement, including CLE presentations sponsored by Wake Forest University School of Law, the North Carolina Bar Foundation, the Commercial Law League of America, and the National Association of Retail Collection Attorneys.

CFPB Penalizes Yet Another Debt Collection Law Firm

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On April 25, 2016, the Consumer Financial Protection Bureau (CFPB) issued its latest consent order against *Pressler & Pressler, a New Jersey law firm* that collects consumer debt. The CFPB issued a similar consent order back in December against *Georgia law firm Frederick J. Hanna & Associates*. In both orders, the CFPB highlighted what it deemed to be unfair and deceptive practices by the firms to collect consumer debts.

The focus of both consent orders rests with the collection activity the law firms performed on behalf of clients who purchased the defaulted consumer debts. In both situations, the CFPB claimed that the debt purchasers and the law firms attempted to collect debts without first making a sufficient review of loan documents and account statements to confirm that the debts were owed. This *failure to review*, in CFPB's estimation, resulted in the law firms attempting to collect on debts that were not owed. In response, the CFPB assessed a \$3.1 million penalty against the Hanna firm and a \$1 million penalty against the Pressler firm.

During the review periods, both Hanna and Pressler law firms initiated litigation on thousands of consumer accounts each month. Both firms relied heavily on staff to review account data and to perform the necessary scrubs to eliminate bankrupt or deceased accounts and to confirm consumer addresses. In both enforcement actions, the CFPB asserted that the firms' attorneys were not meaningfully involved in reviewing accounts before initiating litigation. The CFPB found this lack of meaningful attorney involvement violated both the Fair Debt Collection Practices Act and the Dodd-Frank Act.

Both consent orders specify the activities the firms' attorneys must take to demonstrate meaningful involvement in cases they file.

The firms must:

- Before sending a demand letter or making a collection call, have in their possession a charge-off statement, and if the case is based on a breach of contract, either account statements from the creditor indicating actual use of the account or a copy of the account/loan agreement signed by the consumer. If the account is owned by a

debt buyer, the attorney must also have evidence of the chain of title to the account.

- Before filing suit, the attorney of record for the case must log into the consumer's account in the firm's case management system, creating a record showing the attorney's review of the account. In addition to reviewing the account level documentation, the attorney must also confirm the following: 1) – the case filing falls within the statute of limitations, 2) – the consumer has not filed bankruptcy, 3) – the consumer's address, using a historically reliable and accurate source, and 4) – the case filing occurs in a proper venue.

Additionally, both consent orders prohibit the attorneys' use of any affidavits supplied by their clients, which the attorney knows or should know may be defective. Examples of defective affidavits include those in which the affiant falsely claims personal knowledge of the character, amount, or legal status of a debt; those in which the affiant falsely claims to have performed account level document review; and those affidavits which were not actually executed in the presence of a notary.

As with the Hanna order, the Pressler consent order is only binding on the Pressler law firm. However, it does contain guidance for all law firms that collect consumer debt. It is likely that aspects of this consent order will make their way into the debt collection rules expected soon from the CFPB.

The Pressler consent order confirms two key directives from the CFPB's consent order in the Hanna case. First, collection law firms must be familiar with their clients' processes for executing affidavits. Second, collection law firms must be able to demonstrate that their attorneys are actually involved in the review of documents used in support of litigation.

Both orders also require that attorneys retain final approval and ultimate oversight of all processes followed by their staff. Attorneys must also have final approval for all letter and pleading templates used by the firm in prosecuting their cases. While attorneys do not have to personally perform every step involved in the prosecution of their cases, these consent orders make it clear that they must be involved in every key decision arising in their cases.

CONTACT US

919.250.2000
mail@smithdebnamlaw.com

RALEIGH OFFICE

The Landmark Center
4601 Six Forks Road, Suite 400
Raleigh, NC 27609

Phone: 919.250.2000
Fax: 919.250.2100

CHARLESTON OFFICE

171 Church Street
Suite 120C
Charleston, SC 29401

Phone: 843.714.2530
Fax: 843.714.2541