



THE SEVENTH CIRCUIT FINDS TIME-BARRED DEBT LETTER MISLEADING

✧ *Mike Tomkies and Susan Manship Seaman*

The U.S. Court of Appeals for the Seventh Circuit recently concluded that a debt buyer violated the federal Fair Debt Collection Practices Act ("FDCPA") by sending a misleading letter offering to settle a time-barred debt. *Pantoja v. Portfolio Recovery Associates*, No. 15-1567, 2017 WL 1160902 (7th Cir. Mar. 29, 2017). The debt arose from a credit card account, which the plaintiff opened in 1993 and never used. The debt was composed of annual fees, late fees and activation fees. The collector purchased the delinquent account 20 years after account opening and after the statute of limitations on the debt had run.

The Seventh Circuit focused on the following language in the collection letter: "[b]ecause of the age of your debt, we will not sue you for it and we will not report it to any credit reporting agency." The court found this language is misleading for two reasons. First, the letter failed to warn the debtor that accepting a settlement offer, by payment or agreement, would restart the statute of limitations on the debt. The court stated that silence about the significant risk of reviving the statute of limitations period renders the letter misleading and deceptive as a matter of law.

Second, an unsophisticated consumer could reasonably interpret the letter to mean that the collector had chosen not to sue the debtor for the time-barred. In reality, the collector is legally barred from suing. The language at issue was modeled on a 2012 consent order between the Federal Trade Commission ("FTC") and another debt collector, which prescribed language for a collection letter regarding time-barred debt. However, the letter at issue omitted the first sentence set forth in the FTC's consent order which stated "[t]he law limits how long you can be sued on a debt." The court characterized the collector's letter as an example of careful and deliberate ambiguity used to obscure that the law prohibits the collector from suing to collect the debt. Thus, the letter was misleading in violation of the FDCPA.

Time-barred debt remains an area of heightened scrutiny. Collectors should review their letter templates to ensure they comply with recent developments in case law and state law and when modeling language on consent orders, faithfully adhere to precedent. □

Darrell L. Dreher
ddreher@dtlaw.com

Elizabeth L. Anstaett
eanstaett@dtlaw.com

Emily C. Cellier
ecellier@dtlaw.com

Susan L. Ostrander
sostrander@dtlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DTLAW.COM

To see previously sent ALERTS, visit our website at www.dtlaw.com

To decline future ALERTS, please contact us at ALERTS@DLTAW.COM.
This ALERT has been prepared for informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship.

Michael C. Tomkies
mtomkies@dtlaw.com

Susan M. Seaman
sseaman@dtlaw.com

Judith M. Scheiderer
jscheiderer@dtlaw.com

Robin R. De Leo
robin@dreher-la.com