



July 19, 2016

ATTEMPTS CAN BE “COMMUNICATIONS” UNDER MASSACHUSETTS LAW

On June 10th, a Massachusetts trial court ruled that a creditor engaged in a “communication” under the Massachusetts Debt Collection Regulations (“Regulations”) when the creditor initiated a collection call to a debtor’s mobile phone, reached the debtor’s voicemail but did not leave a voicemail. *Watkins v. Glenn Associates, Inc.*, No. 15-CV-3302-H, 2016 WL 3224784 (Mass. Dist. Ct. June 10, 2016). As a result, the creditor violated the Regulations by initiating more than two communications in a 7-day period to a debtor’s residence, cellular telephone or other telephone number provided as a personal telephone number.

The Regulations define “communication” as conveying information directly or indirectly to any person through any medium excluding non-identifying communications. In *Watkins*, the creditor argued that it did not initiate a “communication” because the creditor did not speak with the debtor or leave a voicemail, so there was no successful transmittal of information to the debtor.

The court found two flaws in the creditor’s interpretation of “communication.” First, the court found that repeatedly calling a debtor’s cell phone from a number identified as belonging to the creditor *indirectly* conveyed to the debtor that the creditor wanted to speak with him. A creditor need not leave a voicemail to make the phone call constitute a “communication.”

Second, the creditor’s interpretation is inconsistent with the intent of the Regulations to avoid harassment. The court cited the Massachusetts’ Attorney General’s guidance on the Regulations, which explained that an attempt to communicate with a debtor does not constitute an initiation of communication if the creditor is truly unable to reach the debtor or leave a message. The creditor’s proposed interpretation would render the restriction on initiating communication meaningless because it would allow a creditor to circumvent the restriction simply by choosing not to leave a voicemail. A creditor could then place multiple calls a day leaving the debtor no choice but to talk to the creditor to stop further call attempts.

Creditors placing calls to Massachusetts debtors should review their collection call frequency policies in light of the court’s interpretation “communication.” □

CFPB DEBT COLLECTION PROPOSAL EXPECTED JULY 28TH

The Consumer Financial Protection Bureau (CFPB) has scheduled a field hearing on debt collection in Sacramento, CA for 11 a.m. PDT on July 28th. The hearing will feature remarks from CFPB Director Richard Cordray, as well as testimony from consumer groups, industry representatives, and members of the public.

The CFPB has often announced proposed regulations in connection with field hearings and many expect the CFPB to publish its long-awaited debt collection proposals.

In November 2013, the CFPB issued an Advance Notice of Proposed Rulemaking seeking information from the public on debt collection practices. See our ALERT dated Nov. 13, 2013.

We will circulate an Alert summarizing the CFPB’s debt collection proposal shortly after it is issued. □

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