



FEDERAL COURTS FIND THAT CREDIT BUREAUS MUST DISCLOSE THE IMMEDIATE PROVIDER OF CREDIT INFORMATION

Two federal cases have come to our attention, which held that national consumer reporting agencies ("CRAs") willfully violated section 1681g(a) of the Fair Credit Reporting Act (FCRA) by failing to include the name of the immediate provider of credit information in a credit report. Section 1681g(a) provides that every CRA must clearly and accurately disclose to a consumer the "sources of information" that appear in a credit file. Companies that furnish information to CRAs through an intermediary or on behalf of other companies should reexamine their credit reporting practices in light of the decisions below.

Dreher v. Experian Information Solutions, Inc.

A federal district court addressed whether Experian willfully violated Section 1681g(a) when it disclosed the name of the creditor as the sole source of information on a trade line. No. 3:11-cv-00624-JAG, 2013 WL 2389878 (E.D. Va. May 30, 2013). The plaintiff's credit report listed "Advanta Credit Credits" in connection with a delinquent credit card account, which the plaintiff claimed he never opened. The bank that issued the credit card, Advanta Bank, had been placed in receivership with the FDIC. CardWorks, Inc., an unaffiliated third party, had been hired to service all Advanta accounts. CardWorks, Inc. directly supplied credit information regarding Advanta accounts to Experian and responded to disputes regarding Advanta accounts.

To determine whether Experian's conduct was objectively unreasonable and therefore a willful violation of the FCRA, the court considered three factors: (1) whether the FCRA gives "clear guidance" as to the meaning of "sources of information," (2) whether Experian's proposed interpretation of the term had a foundation in the statutory text and (3) whether Experian was interpreting the statute in absence of any contrary authority from a court of appeals or the Federal Trade Commission ("FTC") on the meaning of "sources of information."

The district court concluded that the first and second factors weighed heavily against Experian. Although not defined in the FCRA or interpreted by the FTC, the FCRA provides "clear guidance" on the

meaning of "sources of information" according to the court. "Information" refers to the content of the credit items in a credit report. The court concluded that at the very least, "sources" clearly includes the entity that gives information directly to a CRA. CardWorks should have been disclosed because (i) CardWorks was the immediate supplier of credit information, (ii) CardWorks determined the actual content to report and (iii) the creditor no longer existed independently and played at most a passive role in credit reporting. The court opined that any interpretation of "sources of information" that omits the principal supplier of information has little foundation in the statutory text.

Experian argued that listing the creditor as the single source of information was a reasonable practice insofar as the disclosure fulfilled the FCRA's overriding consumer protection purpose. Experian noted that there were 8 known entities that could be deemed "sources" of credit information for Advanta accounts. Disclosing multiple sources of information could hinder the consumer's ability to review a credit report and correct inaccuracies.

The court disagreed. Experian's practice is not reasonable in light of the fact that (i) the FCRA requires a CRA to disclose the "sources of information" and (ii) Metro 2, the industry standard reporting format, allows trade lines to identify multiple sources of information. The court discounted the number of entities that could be deemed "sources of information," indicating that entities with little or no connection to or interaction with Experian or consumers should not be considered "sources of information." The court found that Experian's reliance on a 7th Circuit case holding that accurate disclosure of unclear information did not meet the FCRA's "clearly and accurately" standard was not helpful to Experian. Although consumers might initially be surprised to see an unfamiliar name on their credit reports, the court commented that disclosing the servicer that actually supplied the information could hardly make it more difficult for a consumer to remove inaccurate information.

In a subsequent motion for summary judgment, Experian provided three additional justifications for its practice of disclosing only the underlying creditor in credit reports: (i) CardWorks actually operated under the Advanta name, so disclosing "Advanta" in credit reports satisfied the FCRA, (ii) the FDIC directed Experian to list Advanta and not CardWorks in credit reports and (iii) the industry-standard practice is to disclose only the creditor of a trade

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line. *Dreher*, 71 F.Supp.3d 572, 580 (E.D. Va. 2014).

The court was unconvinced by these justifications. Although CardWorks answered Advanta's mail and phone line, corresponded with account holders on Advanta letterhead and operated Advanta's website, Experian presented no formal legal recognition of CardWorks acting as Advanta, such as a trade name registration. The court found nothing in the FCRA that requires a CRA to disclose the name a company uses to interface with consumers instead of the name a company uses to report credit information. The court also dismissed the evidence of the FDIC's instructions to list "Advanta" in credit reports as not authoritative and determined that it would be unreasonable for a CRA to rely on FDIC guidance because the FDIC lacks supervisory authority over CRAs.

Finally, the court rejected Experian's expert testimony that CRAs often list the creditor and omit the servicer as the source of information because the designation is likely to be more useful to consumers, who are familiar with a creditor's name. The court found that Experian's "everyone else did it that way" justification did not make a practice objectively reasonable considering that the FCRA provides "clear guidance" on the meaning of "sources of information" and that Experian could have easily disclosed both Advanta and CardWorks through the Metro 2 format. Thus, the court held that Experian willfully violated the FCRA by listing the creditor as the source of information.

Dennis v. Trans Union, LLC

A federal district court denied a motion to dismiss a claim that Trans Union violated Section 1681g(a) of the FCRA by failing to disclose a third party vendor as the source of public records information. No. 14-2865, 2014 WL 5325231 (E.D.Pa. Oct. 20, 2014). The consumer's credit report displayed inaccurate information regarding a state tax lien and indicated that the source of the information was the "Albany County Clerk." In reality, a third party vendor had retrieved the public records data and furnished "distilled versions" of the data, including the inaccurate state tax lien information, to Trans Union.

Trans Union advocated for a narrow interpretation of the term "sources of information" to include only the original source of information and not intermediaries. The district court refused to interpret "sources" to exclude the possibility of multiple sources for one piece of information based on (i) the remedial scheme of the FCRA and (ii) the FCRA's use of plural "sources" instead of the singular "source." The court cited *Dreher* to support its conclusion that a third party vendor that retrieves data and furnishes data is a "source of information" that should be disclosed in a credit report.

Conclusion

Under the facts of Dreher and Dennis, the courts' conclusions may seem reasonable, but what are the implications of these holding to other facts? Must the servicer or both the servicer and the creditor be listed as the source of information? These cases illustrate the importance of properly structuring credit reporting practices and maintaining oversight of servicers. ☐

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