DREHER TOMKIES LLP

ALERT

FOR CLIENTS AND FRIENDS OF DREHER TOMKIES LLP

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DEBT BUYER SETTLES ENFORCEMENT ACTION REGARDING UNLICENSED ACTIVITIES

The Consumer Financial Protection Bureau ("CFPB") has entered into a consent order with a debt buyer to resolve allegations that the debt buyer violated the federal Fair Debt Collection Practices Act ("FDCPA") and Section 1031 of the Consumer Financial Protection Act ("CFPA") by sending demand letters and filing collection lawsuits through law firms without the proper licenses in three states. *See* Consent Order, *In re* RAB Performance Recoveries, LLC, 2020-BCFP-0023 (Dec. 8, 2020).

The CFPB alleged that the debt buyer violated Section 1692e(5) (prohibition on threating to take any action that cannot legally be taken or that is not intended to be taken) and Section 1692e(10) (prohibition on using any false representations or deceptive means to collect or attempt to collect any debt) of the FDCPA when (i) the debt buyer sent demand letters that referenced a conditional offer to settle an account or that threatened to sue and (ii) the debt buyer initiated collection lawsuits. According to the CFPB, these representations and actions implied that the debt buyer had a legally enforceable claim for payment from the consumer and that the debt buyer had the legal authority to initiate a collection lawsuit. However, without the required licenses in Rhode Island, New Jersey and Connecticut, the CFPB asserted that the debt buyer did not in fact have a legally enforceable claim for payment or the legal authority to recover payments from consumers through the judicial process.

The same conduct served as the basis for the CFPB's allegation that the debt buyer engaged in deceptive acts or practices in violation of the CFPA. The consent order indicated that the debt buyer stopped purchasing debts in 2012 and stopped filing lawsuits without the required licensure in 2014. Since then, the debt buyer has administered a portfolio of judgments and stipulated agreements to recover payments on the accounts subject to the consent order ("Covered Accounts").

To settle this enforcement action, the debt buyer agreed, among other things, to (i) pay a civil penalty of $204,000, (ii) refrain from collecting Covered Accounts or judgments related thereto, (iii) vacate any judgments related to Covered Accounts that have not been discharged or satisfied, (iv) seek dissolution of post-judgment enforcement devices (*e.g.,* writ of attachment) used to collect judgments on Covered Accounts and (v) cease collecting stipulated agreements with consumers related to Covered Accounts.

This enforcement action should catch the attention of debt collectors and debt buyers for two reasons. First, the allegedly unlicensed conduct stopped around six year ago although the debt buyer continues to recover payments related to the unlicensed conduct. Second, this matter involves a lack of collection licenses in three relatively less populous states. We routinely advise clients on licensing matters and can help you review state licenses that might apply to your business. ❑

PATIENTS SETTLE CASE INVOLVING MEDICAL BILLS NOT SENT IN BRAILLE.

According to reports, two blind individuals have settled a case with a health care provider that had alleged that health care providers a violated the federal Americans with Disabilities Act ("ADA") and other laws when the providers and their contractors failed to provide health care information including medical bills to the individuals in Braille or large print after the individuals requested such accommodations. *See* Complaint, *Bone v. University of North Carolina Health Care System*, No. 18-cv-994 (N.C.M.D. Dec. 3, 2018).

In the complaint, one plaintiff alleged that he told hospital staff that he was blind and needed billing statements for emergency medical services in Braille. The initial medical bills from the health care providers and their contractors were sent in standard print format. The plaintiff said he could not read the medical bills himself and did not know how much he owed or who to pay. After the plaintiff engaged an attorney, the health care provider sent billing statements in Braille. According to the plaintiff, the contractors never sent billing statements in Braille. As a result, the plaintiff was charged fees and his accounts were referred to collection agencies.

The complaint alleged that one health care provider was a "public entity" under Title II of the ADA and the other health care provider was a "place of public accommodation" under Title III of the ADA. The plaintiffs argued that the ADA required the health care providers to provide auxiliary aids and services and make the modifications necessary to ensure that blind individuals have an equal opportunity to participate in and enjoy the benefits of their programs and services. Auxiliary aids and services for blind individuals may include providing documents in alternative formats

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such as Braille or large print. The plaintiffs sought, among other things, compensatory damages and reasonable attorneys' fees.

Practices and policies to support limited English proficiency debtors have been a recent focus in collections. Debt collectors and creditors may also consider adopting practices and procedures to provide effective access to account information to individual with disabilities.

✧ *Mike Tomkies and Susan Seaman*