



News

Major Win for Passive Debt Buyer as Massachusetts Supreme Judicial Court Rules the Company is not an Unlicensed Debt Collector

April 16, 2018

Hinshaw client LVNV Funding LLC secured a major victory this week on behalf of passive debt buyers in the Massachusetts Supreme Judicial Court. At issue was whether the company was operating as an unlicensed debt collector in Massachusetts. The case could resonate outside of the Bay State in other areas where passive debt buyers have been sued for not obtaining licenses as debt collectors. A Hinshaw legal team consisting of Dave Schultz, John Ryan and Andrew Schneiderman represented LVNV in the case.

Passive debt buyers are investors who purchase debt and then hire debt collectors to collect the debt on their behalf. In a consolidated class action lawsuit, debtors alleged that LVNV was required to obtain a debt collector license under the Massachusetts Fair Debt Collection Act— modeled after the Federal Fair Debt Collection Practices Act—in order to operate in Massachusetts. On motion for summary judgment, a trial judge ruled that LVNV was operating as a debt collector without a license.

In a ruling issued on April 9, 2018, the Massachusetts Supreme Judicial Court vacated the trial judge's ruling, holding that passive debt buyers such as LVNV are not considered "debt collectors" under the licensing statute. As part of this ruling, the Court reviewed the legislative history of the MFDCPA and the FDCPA, and determined that passive debt buyers with "no employees and no contact whatsoever with debtors" were "outside the core concerns" of Congress, and by implication the Massachusetts legislature, when it adopted the statute. The Court also noted that the Massachusetts licensing regulator—the Division of Banks—has consistently concluded that a passive debt buyer is not included in the definition of "debt collector" under the MFDCPA.

"We are pleased that the Massachusetts Supreme Judicial Court unanimously agreed with our position that a passive debt buyer is not a debt collector under Massachusetts law," said Hinshaw partner Dave Schultz. "It is a great win for our client LVNV."

The decision received significant media coverage:

[Mass. Justices Say Passive Debt Buyer Doesn't Need License](#), Law360
(subscription may be required)

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[Massachusetts Supreme Court Rules Passive Debt Buyers Don't Need Licenses](#), AccountsRecovery.net

The case is *Tara Dorrian et al. v. LVNV Funding LLC*, case number 12355, in the Supreme Judicial Court for the Commonwealth of Massachusetts. [Download a copy of the decision](#) (PDF)