



## News

### David Schultz Analyzes in ARM Compliance Digest: Appeals Court Affirms Dismissal of FCRA Suit Over Deleted Item on Credit Report

September 21, 2020

In the September 21, 2020 edition of the *ARM Compliance Digest*, Hinshaw partner David Schultz reviewed a recent decision by the Fifth Circuit to affirm a lower court's dismissal of a lawsuit in which an individual alleged a credit reporting agency violated the Fair Credit Reporting Act by excluding a positive tradeline from a credit report:

*Hammer v Equifax* dealt with an unusual set of facts. Hammer sued because a positive tradeline was not listed on his report. The Fifth Circuit Court of Appeals applied a strict statutory construction analysis in affirming the dismissal of the three FCRA claims.

Hammer had a Capital One credit card and timely made his monthly payments. For some reason it fell off the reports. He complained and two bureaus included back the reporting but it ended up staying off the Equifax report. Plaintiff sued, claiming his credit score fell as a result of losing a positive tradeline, he was then denied a credit card, rejected for one mortgage, and offered a high interest rate on another.

The first claim was under §1681e(b) for failing to follow reasonable procedures to assure the maximum possible accuracy of the report. The Court held that "the omission of a single credit item does not render a report 'inaccurate' or 'misleading.' Businesses relying on credit reports have no reason to believe that a credit report reflects all relevant information on a consumer."

The second claim was under §1681i(a) for failing to investigate an omission. The Court affirmed dismissal, holding that Hammer "disputed the completeness of his credit report, not of an item in that report. As a result, he did not trigger the CRA's §1681i(a) obligation to investigate."

The last count was pursuant to §1681i(a)(5)(B) for failing to notify him when it reinserted the account into his credit report. In rejecting that claim, it held that section deals with items deleted from and reinserted into credit files, but Hammer argued "that Equifax had not removed the Capital One card from his credit file but only excluded it from his credit report. Equifax therefore had no duty under §1681i(a)(5)(B)(ii) to notify Hammer."

#### Attorneys

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#### Service Areas

Consumer and Class Action  
Defense

Consumer Financial Services

Fair Credit Reporting Act

The Telephone Consumer  
Protection Act



The main takeaway was how the Court strictly applied the FCRA provisions and held plaintiff pled himself out of court.

[Read the September 21, 2020 edition of AccountsRecovery.net Compliance Digest.](#)