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News

David Schultz Analyzes in ARM Compliance Digest: Judge Denies MTD in FCRA Case on Failure to State a Claim

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In the November 30, 2020 edition of the *ARM Compliance Digest*, Hinshaw partner David Schultz discusses a Florida decision in which the judge denied a defendant's motion to dismiss after it was sued for allegedly violating the Fair Credit Reporting Act, ruling that the plaintiff met the threshold for stating a claim by saying that the furnisher failed to conduct a reasonable investigation after it was notified by a credit reporting agency that a dispute had been filed:

> *Harris v Equifax* presents an unusual factual scenario and one that could represent a "set-up" claim. Plaintiff had a tradeline with a "dispute" notation. She either disputed it earlier or it was an errant notation. She provided a written request to the credit bureaus to remove the dispute notation. The furnisher, however, verified the information as accurate. Plaintiff filed an FCRA suit, claiming that the bureaus and furnisher did not conduct a reasonable investigation. The court denied the furnisher's motion to dismiss.
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> The case highlights the low threshold to plead a case in federal court and the difficulty in winning a motion to dismiss. The court said plaintiff only needs to plead: (1) defendant failed to conduct a proper dispute, (2) defendant failed to review the information available, and (3) she was damaged. The court held plaintiff alleged enough to state a claim but also questioned what damage was inflicted, saying that will be addressed at the summary judgment stage.
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> A takeaway from this case for furnishers is to be aware that consumers can seek to have a dispute removed. This could be overlooked because most of the disputes they receive seek to have a tradeline deleted or notated with a dispute. This case highlights an odd scenario of someone wanting a dispute removed.

Read the full November 30, 2020 edition of the AccountsRecovery.net Compliance Digest.

Attorneys

David M. Schultz

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