Court Ruling Likely to Result in More Voice Mail Messages from Debt Collectors

May 15, 2012 - Because of wording in the Fair Debt Collection Practices Act (FDCPA) that restricts who debt collectors can communicate with regarding unpaid debts, debt collectors have been reluctant to leave voice mail messages when unable to reach people they are trying to collect from. Until now, collectors could get into real trouble for violating the FDCPA if someone other than the actual debtor listened to the voice mail message. But a recent federal court ruling out of Minnesota now provides some guidance to debt collectors that is likely to change the way they act when an answering machine picks up their calls.

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In the case known as Zortman v. J.C. Christensen & Associates, Inc., Christina Zortman had received a call from a collection agency on her cell phone. When she didn't pick up, the call went to her voice mail. The caller left a message that said he had an "important message" for Zortman. He identified himself as a debt collector and left a return phone number.

Zortman claimed that she had lent her cellular phone to her children and that one of them retrieved the message. She sued the collection agency claiming that the message was a "communication" under the FDCPA and because it had been picked up by someone other than her, the collection agency had violated the portion of the law prohibiting third party communication.
The court disagreed.

The ruling from the court specifically stated that the term "important message" didn't describe the nature of the call. Simply because the call originated from a collection agency didn't mean that the agency was attempting to collect a debt. Nor did it mean that Zortman was the target of a collection agency action simply because she was receiving a call.

In fact, the judge stated that the information contained in the message revealed little more than what anyone could discover in a "missed call log" had the agency not left a message in the first place.

As a practical matter, this ruling is likely to mean that people who do receive calls from debt collectors will start seeing their voice mail boxes fill up with messages from them. Consumers who want to put a stop to this will have to notify the collection agency that they no longer want to communicate with them. To do this, consumers should put their request in writing and send it via certified mail with a return receipt required.

While debt collectors are required to honor requests to cut off communication under the FDCPA, making such a request will not stop them from pursuing other collection methods. Nor will it stop them from suing debtors.
byJim Malmberg
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