NY Judge Green Lights FCRA Suit Against Experian

from The Privacy Times

JUDGE PERMITS FCRA SUIT AGAINST EXPERIAN TO PROCEED

A federal judge in Manhattan has rejected Experian Information Solutions Inc.â€™s bid to dismiss a Bronx womanâ€™s FCRA lawsuit charging that the giant credit bureau failed to investigate her disputes of alleged inaccuracies stemming from identity theft.

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U.S. District Judge Colleen McMahon, of New Yorkâ€™s Southern District, dismissed Experianâ€™s claim it complied with the FCRA as a matter of law merely by verifying the disputed debts with collectors and creditors. The judge also ruled that the plaintiff, Keisha Jones, had standing to bring the suit even though she is not alleging any actual damages. She upheld Jonesâ€™ right to pursue statutory and punitive damages. The ruling means the case will go to trial â€“ unless the two sides settle. The opinion was first reported by The New York Law Journal.

Jones, a New York resident, disputed to Experian she was responsible for an $800 debt at a Philadelphia hospital reported by Central Financial Control (CFC), a collector. She told Experian she likely was the victim of identity theft. Similarly, she said she didnâ€™t owe nearly $3,000 to Comcast, which was showing past due and charged off. In response to both disputes, Experian followed its normal practice of sending an electronic query to the two furnishers. CFC confirmed the disputed accounts were associated with Jonesâ€™ name and Social Security number, but with a different birth date and

address. Nonetheless, Experian told Jones it would not remove the disputed items.

Experian gave her the same response, even after Comcast advised that Jonesâ€™ first name was spelled differently on the accountâ€”Keshia instead of Keishaâ€”and that the address was different, but the Social Security number and birthday were the same.

In denying Experianâ€™s motion that Jones lacks Article III standing because she did not allege actual damages, Judge McMahon wrote that such standing arises when a plaintiff suffers an â€œinjury in factâ€• consisting of â€œan invasion of a legal protected interest,â€• quoting the U.S. Supreme Courtâ€™s 1992 decision in Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-62.

Such an injury â€œmay exist solely by virtue of statutes creating legal rights, the invasion of which creates standing,â€• she said quoting the Supreme Courtâ€™s 1975 decision in Warth v. Seldin, 422 U.S. 490, 500.

â€œDefendantâ€™s alleged failure to fulfill its statutory obligations with respect to Plaintiff caused Plaintiff an injury in factâ€”she not get the benefit of the reasonable reinvestigation of her credit report to which she was statutorily entitled,â€• Judge McMahon wrote. â€œThis is an actual, concrete injury which is particularized to Plaintiff.â€•

She went on to reject Experianâ€™s argument that it had fulfilled its obligations as a matter of law by asking CFC and Comcast about the disputed items. A reasonable jury could find otherwise, Judge McMahon said, in light of the fact that Jones had shown that the disputed items contained inaccurate information concerning name, birthday and address. She ruled that the FCRA does not require that erroneous information was given to third parties in order for Jonesto state a claim.

Finally, Judge McMahon ruled that Jones may be entitled to punitive damages under the FCRA, even in the absence of actual damages, because a reasonable jury could find that Experian had willfully failed to fulfill its duty.

â€œWe think itâ€™s a very significant decision,â€• plaintiffâ€™s attorney Kevin Mallon, of Fishman & Mallon, told The New Yor Journal. â€œThe procedures that are outlined in the decision are, in our experience, standard operating procedure. This is what [the credit reporting agencies] do, and they donâ€™t do much.â€•

Itâ€™s particularly baffling in a case of identity theft,â€• he added, since simply confirming someone incurred a debt using Jonesâ€™s name and personal information cannot possibly not rule out identity theft. (Jones v. Experian: USDC-S.D.N.Y. â€“ No. 1:11-cv-09136; Nov. 12)

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