Consumers Wrongfully Labeled by Credit Reporting and Background Check Agencies Must Have Full Access to Remedies

Consumer reporting agencies are notorious for failing to fix avoidable errors on credit reports and background check reports. These errors can obstruct meaningful events in consumers' lives, such as their ability to obtain a mortgage for a home, a car, rental housing or employment. There are instances where the failures of credit reporting and background check agencies (CRAs) are so damaging to consumers' circumstances that remedies are awarded to reform and deter the misconduct to prevent future harm to others. H.R. 2359, titled the "FCRA Liability Harmonization Act," would remove critical remedies for individuals and for consumers who band together to seek accountability for harm caused by the same wrongdoing. It would eliminate punitive damages in individual cases and limit damages in class action cases, no matter how egregious the misconduct.

Below are examples showing CRAs whose conduct was so detrimental that individual consumers were unable to get serious errors in their credit reports or background checks fixed until they sued in court, and examples of consumers who banded together in class actions to seek accountability for violations of their rights under the Fair Credit Reporting Act. Under H.R. 2359, these consumers would have been denied the ability to seek adequate remedies against bad actors.

Angela Williams v. Equifax

Angela Williams of Cocoa, Fla. had an Equifax report that included at least 25 accounts that did not belong to her. The accounts which had negative information belonged to a stranger with a similar name and Social Security number. Angela spent 13 years trying to get her credit report fixed. She sent multiple disputes to Equifax, but new accounts from the other woman would still appear in Angela's credit report. In addition, Equifax would send Angela's information to creditors and debt collectors, who in turn wrongfully pursued her for the other woman's debts. Equifax's continued failure to fix Angela's reports took an enormous financial and emotional toll on her. Her credit score dropped and she was denied credit repeatedly. She was even told to leave a store after an employee viewed her credit report. Eventually, Angela sought legal help and filed a lawsuit against Equifax. Equifax long fought Angela's suit despite glaring evidence that it failed to fix the harmful errors in Angela Williams' credit report. Ultimately after a trial, a jury entered a verdict against Equifax for its misconduct and awarded actual and punitive damages to Angela.

Julie Miller v. Equifax

Julie Miller of Marion County, Oregon first discovered a problem with her credit report when a bank denied her a loan in early December 2009. Equifax had merged Miller's credit file with a different person who had the same name and a similar Social Security number, but who lived in a different state and who had a bad credit record. Miller alerted Equifax 8 times between 2009 and 2011 to correct the inaccuracies. Yet Equifax did not once correct its numerous mistakes. In addition, because Equifax

failed to fix her record, Miller could not help her disabled brother who was unable to get credit on his own. Miller eventually sued Equifax for its wrongdoing. A jury awarded her compensatory and punitive damages. "For two years [Miller] was frustrated, overwhelmed, angry, depressed, humiliated, fearful about misuse of her identity, and concerned for her damaged reputation," wrote the judge in her case. "Equifax engaged in reprehensible conduct that caused real harm to Miller…Equifax should be punished financially for that wrongful conduct. [The punitive damages award] should be enough to deter Equifax…from repeating this type of conduct in the future."

David Daugherty v. Ocwen

David Daugherty of West Virginia discovered that his single mortgage serviced by Ocwen Financial Corp was listed twice on his Equifax credit report. Due to poor file maintenance, Equifax had added a second listed account or "tradeline," for the Ocwen account. One tradeline reported the mortgage as current, while the other incorrectly showed that the mortgage payment was in foreclosure and over 120 days past due. In fact, Daugherty was current on his loan. Daugherty sent numerous disputes to Equifax to fix the record. Equifax, in turn, asked Ocwen to investigate the dispute. At least 12 times, Ocwen, the mortgage servicer, would respond that the reporting was correct for both tradelines despite the fact that they were contradictory. Meanwhile, Daugherty, in anticipation of a "balloon" payment on his mortgage, sought to refinance his mortgage but was denied several times due to the negative reporting. He also was turned down for other credit. Daugherty's inability to obtain a mortgage caused him emotional trauma and significant anxiety because he feared he would lose his family home due to the false foreclosure tradeline. He filed suit, and Equifax subsequently deleted the erroneous tradeline. After trial, a jury awarded Daugherty actual damages as well as punitive damages to hold Ocwen accountable.

Richard Williams v. First Advantage

After Richard Williams of Florida obtained a B.A. degree in 2009 he struggled to find a good job during the years following the Great Recession. First Advantage Background Services Corp., a background check firm, made his job search even harder when it repeatedly provided incorrect information labeling him as a criminal to employers. When Richard applied for a job with Rent-A-Center, First Advantage's background check report matched Richard with the criminal records for 'Ricky Williams,' who had the same birthdate as Richard and had been charged for an illegal drug sale. Richard's job application was rejected as a result. When he learned of the error, Richard successfully disputed the erroneous information and a new corrected report was issued, but by then, Rent-A-Center had chosen another candidate. A year later, another job opportunity was lost for Richard when First Advantage provided an inaccurate background check report to potential employer Winn Dixie. First Advantage again wrongly matched Richard Williams with the criminal records for 'Ricky Williams' which included convictions for felony burglary and battery on a pregnant woman. First Advantage failed to adequately assess the records, which had clear evidence that the two were different individuals. For example, an on-line record indicated that the other man was incarcerated at the same time Richard was applying for employment about 300 miles away. First Advantage also twice failed to use its special procedures for reviewing common names. As a result of its errors, Richard was, except for a short period, unemployed for over 1 ½ years. Richard filed a lawsuit and a jury rendered a verdict against First Advantage, awarding actual and punitive damages. Richard's attorney suggested a range of amounts of punitive damages for the jury to consider, and the jury awarded the highest amount suggested.

Class action resolves widespread inaccurate reporting of consumer bankruptcy discharges
White v. Experian Information Solutions

Consumers in a class action alleged that the Big Three credit reporting agencies (Experian Information Solutions, Inc., Trans Union, LLC, and Equifax Information Services, LLC – “CRAs”) recklessly failed to follow reasonable procedures to ensure the accurate reporting of debts discharged in bankruptcy and refused to adequately investigate consumer disputes regarding the status of discharged accounts. Creditors frequently had failed to report an updated status for these accounts, and the CRAs failed to update the accounts. The systemic and widespread failure to provide consumers a “fresh start” after a bankruptcy discharge, was, for many years one of the most serious problems in the credit reporting system. Thousands of consumers were deprived of employment, mortgage, housing rentals, credit or auto loans. The CRAs eventually agreed to a settlement that required them to revise their procedures. They agreed to treat all pre-bankruptcy debts as discharged unless the creditor or debt collector provided information showing that a debt was excludable from discharge. It resulted in a major reform in credit reporting, benefitting millions of consumers. The CRAs also agreed to a settlement payment of $45 million to compensate about 770,000 class members. The settlement payment covered “convenience awards” for some class members and actual damages awards for others, as well as costs.

Class action compensates consumers misidentified in credit reporting as terrorists and criminals
Ramirez v TransUnion LLC

In 2017, a California jury rendered a verdict for 8,000 consumers in a class action after finding that the credit reporting agency TransUnion violated the Fair Credit Reporting Act when it carelessly misidentified class members as terrorists and criminals in their credit reports, confusing the consumers with similarly named individuals on a government watch list. Trans Union defended its poor matching procedures by arguing that consumers weren't financially harmed by the inaccuracies. Yet its conduct caused tremendous injury to class members. The lead class member for example alleged that he was prevented from buying a car because TransUnion told lenders he potentially matched two entries on a government watch list. Besides the name, there were other factors, including birthdates, which showed Ramirez was not any of the persons on the government list. Ramirez said that when he tried to get off of TransUnion’s list, the company’s customer service agents failed to explain how the error could be corrected. Transunion could have delivered better results in its credit reporting but its active failure to ensure accuracy amounted to willful violation of the FCRA. The jury awarded nearly $60 million in statutory and punitive damages to the harmed consumers.

Conclusion

Class actions and the Fair Credit Reporting Act are critical in these and other cases because individual consumers do not have the ability to fix these issues without banding together with other similarly harmed consumers. Punitive damages are necessary to deter egregious conduct and ensure meaningful consequences when CRAs recklessly mislabel consumers as deadbeats or criminals and repeatedly fail to correct these slanderous errors. H.R. 2359, which proposes eliminating punitive damages, a $500,000 limit on statutory damages, and a $500,000 limit on actual damages in class actions would obstruct consumers’ rights under federal law. If applied to these cases, the class members and individual consumers would not have been adequately compensated for the harm suffered and the violation of their federal rights. Further, the CRAs would not have been deterred from engaging in future wrongdoing and similarly harming other consumers’ livelihood and wellbeing.

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