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Appeals Court Liberally Interprets Credit Repair Statute

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Recently the Ninth Circuit Court of Appeals issued its opinion in the appeal of *Stout v. FreeScore, LLC* concerning the scope of the Credit Repair Organizations Act (“CROA”). The result is not good for advertisers of credit counseling, debt relief services, credit monitoring, and similar products and services, principally because it further confuses application of CROA across the nation. The Ninth Circuit’s decision is a departure from the text of CROA and falls in line with a broad view that has been asserted by the **Federal Trade Commission** and class action attorneys. Accordingly, companies advertising credit-related products and services will need to consider CROA compliance as part of their overall compliance program.

In this case, the defendant offered credit scores, reports, and consumer credit information via an online website and television advertising. The plaintiffs in a putative class action alleged that the defendants were subject to the strict requirements of CROA. The district court dismissed the action for failure to state a claim. On appeal, the panel reversed the judgment of the district court and remanded the case for further proceedings. The appeals court held that the defendant was a “credit repair organization” because the defendant, through the representations it made on its website and in its television advertising, offered a service, in return for the payment of money, for the implied purpose of providing advice or assistance to consumers with regard to improving the consumer’s credit record, credit history, or credit rating.

The defendant argued that it did not make any promises of credit improvement. The district court agreed and held that the plaintiff failed to demonstrate that any of defendant’s representations were made for the express or implied purpose of improving a consumer’s credit record, credit history, or credit rating as required by CROA. Rather, the defendant merely promises to provide a consumer with his or her credit score; it is up to the consumer to improve it. However, according to the appeals court:

From the plain language of the statute, it is clear that under the CROA, a person need not actually provide credit repair services to fall within the statutory definition of a credit repair organization. Instead, the person need only *represent* that it can or will sell, provide, or perform a service for the purpose of providing advice or assistance to a consumer with regard to improving a consumer’s credit record, credit history, or credit rating.

The Ninth Circuit found that “FreeScore’s advertisements clearly go beyond merely providing information about one’s credit. FreeScore even goes so far to recommend a course of action to consumers, as its advertisements tell consumers to use FreeScore.com to ‘[s]pot damaging inaccuracies,’ and use ‘[i]nstant email alerts’ which notify them when ‘critical changes appear on [their] Credit Report so [they] can make corrections fast!’” The court concluded “[t]he overall net impression communicated by FreeScore.com is that in order to ‘repair a damaged credit score,’ the ‘best solution’ is to ‘utilize[e] services like credit monitoring,’ which ‘can have an immediate effect on your credit score.’”

The appeals court noted similar decisions including *Zimmerman v. Puccio*, 613 F.3d 60 (1st Cir. 2010), where the First Circuit concluded that services or “credit counseling aimed at improving future creditworthy behavior is the quintessential credit repair service;” and *Helms v. Consumerinfo.com, Inc.*, 436 F. Supp. 2d 1220, 1224–26 (N.D. Ala. 2005), where the court concluded that a company only offering educational information, such as credit reports, credit scores, and credit monitoring, was a credit repair organization. For more on *Zimmerman* [click here](#).

But, in reaching its decision, the Ninth Circuit also noted contrasting court decisions that found that the definition of “credit repair organization” does not encompass entities that provide credit information so consumers can improve their own credit. See *Hillis v. Equifax Consumer Servs., Inc.*, 237 F.R.D. 491

(N.D. Ga. 2006); *Plattner v. Edge Solutions, Inc.*, 422 F. Supp. 2d 969 (N.D. Ill. 2006).

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