DODD-FRANK NEWS

Summer 2017

BURR · FORMAN LLP

The Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted as a measure to promote financial stability and protection for consumers through increased regulation of nearly every aspect of the consumer finance industry. In the years since its enactment, the Dodd-Frank Act has led to significant industry reforms and the promulgation of numerous new laws and regulations. In an effort to stay apprised of these significant industry changes, Burr & Forman's Dodd-Frank Newsletter will serve as a periodic update of recent case law, news, and developments related to the Dodd-Frank Act.

---- RECENT CASES ----

RESPA

Sutton v. CitiMortgage, Inc., No. 16 CIV. 1778 (KPF), 2017 WL 122989 (S.D.N.Y. Jan. 12, 2017).

After entering into a permanent loan modification, Plaintiff Chantal Sutton ("Plaintiff") sent her mortgage servicer, Defendant CitiMortgage, Inc. ("Defendant"), three written requests expressing dissatisfaction with the modification. Approximately two years after sending these three communications, Plaintiff filed suit alleging that Defendant's response to her communications violated RESPA and Regulation X. On Defendant's motion to dismiss, the court held that Plaintiff had failed to allege a viable RESPA claim and dismissed the action.

a. Stating a Claim Under 12 U.S.C. § 2605(e)

The court held that Plaintiff failed to state a claim for liability under 12 U.S.C. § 2605(e), as Plaintiff's three communications all concerned loan modification and not loan servicing.

Section 2605(e) requires servicers to respond to the "qualified written requests" they receive from borrowers. The court was satisfied that the subject communications constituted "qualified written requests," but held that this alone is insufficient to trigger the duty found in § 2605(e). In addition to the communication constituting a "qualified written request," it must also seek information related to the ***servicing*** of the loan in order to implicate the duty.

"Servicing" is defined as "receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts . . . and making the payments of principal and interest and such other payments . . . as may be required pursuant to the terms of the loan." 12 U.S.C. § 2605(i)(3). The court found that none of Plaintiff's communications related to servicing, as they all concerned modification. The court pointed out that courts have distinguished loan *servicing* inquiries from loan *modification* inquiries since long before the introduction of the Dodd-Frank amendments. Since neither the information Plaintiff provided in her communications nor the information Defendant allegedly did not provide was related to loan servicing, Plaintiff's communications could not support liability under § 2605(e).

b. Stating a Claim Under 12 U.S.C. § 2605(k)(1)(C)

The court also held that Plaintiff had failed to state a claim for liability under § 2605(k)(1)(C), which prohibits servicers from "fail[ing] to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other ***standard servicer's duties***." 12 U.S.C. § 2605(k)(1)(C) (emphasis added). Central to this holding was the court's determination that addressing a non-defaulted, non-delinquent borrower's request for a loan modification or for substantiation of its loss mitigation guidelines is not part of a "standard servicer's duties."

Acknowledging the scarcity of case law concerning this issue, the court turned to the CFPB statements issued at the time of the promulgation of Regulation X to decide this issue.

Plaintiff argued that, for purposes of § 2605(k)(1)(C) liability, "standard servicer's duties" should not be limited to errors actionable under RESPA, but instead include all duties undertaken by servicers in the ordinary course of business, including loss mitigation activities.

However, CFPB guidance states that the "standard servicer duties" contemplated by § 2605(k)(1)(C) are not limited to the duties that constitute "servicing," as defined in the rule, but instead extend to the duty "to work with investors and borrowers on options to mitigate losses for ***defaulted*** mortgage loans," among other duties. Since both the Plaintiff's and Defendant's pleadings indicated that Plaintiff had never defaulted on the loan payments, the court concluded there was "nothing to suggest that 'standard servicer's duties' included fielding Plaintiff's requests for loan modifications."

c. Stating a Claim Under 12 U.S.C. § 1024.35

The court also held that Plaintiff failed to state a claim under § 1024.35, which establishes error resolutions procedures for certain "covered errors." The court, assuming that a private right of action exists under § 1024.35, nevertheless rejected Plaintiff's argument that errors in evaluating loss mitigation options are included within those "covered errors."

Again looking to the CFPB for guidance, the court highlighted the fact that the CFPB declined to include incorrect loss mitigation evaluations as "covered errors." The CFPB did, however, include a catch-all provision for "any other error relating to the servicing of a borrower's mortgage loan." 12 C.F.R. § 1024.35(b)(11). However, the court held that this catch-all provision does not include errors in evaluating loss mitigation options.

The CFPB solicited comment regarding which errors to include as "covered errors" and whether §1024.35 should contain a catch-all provision. Additionally, the CFPB specifically solicited comment regarding whether to include errors in evaluating loss mitigation options as part of § 1024.35. Ultimately, it declined to include such errors as a "covered error," reasoning that the § 1024.41(h) appeals process provides sufficient recourse for borrowers facing issues with loan mitigation.

The court also pointed out that the broad reading advocated for by Plaintiff would undermine a recognized principle of law: that no private right of action exists for HAMP violations.

For all these reasons, the court ultimately held that RESPA "does not regulate the correctness of a loss mitigation decision, and certainly does not encompass errors in loss mitigation decisions within the catch-all provision in the definition of 'covered errors.'" Accordingly, the court held that Plaintiff had failed to state a claim under § 1024.35.

d. Failure to State a Claim for Actual Damages: Proximate Cause Required

Plaintiff sought four categories of damages: (1) "financial damage of having a balloon payment of over $197,730.14 due on March 1, 2019 rather than paying this sum over an extended term," (2) "financial damage of making monthly mortgage payments in excess of the rent" Plaintiff would otherwise pay, (3) emotional distress, and (4) "incidental costs" such as postage and travel to the office of Plaintiff's counsel. *Id.* at *15–*16. The court rejected all four.

The court, noting that it was the most challenging of Plaintiff's four damages claims to evaluate, held that the first damages claim failed to allege actual damages. To begin with, Plaintiff knew of and agreed to the balloon payment on which the first claim was based, and the balloon payment would not be due for years. Additionally, Plaintiff's complaint sought extension of the term of the loan, i.e., specific performance rather than actual damages.

The court rejected the second damages claim for being speculative and failing to allege a causal connection. A plaintiff seeking actual

damages under § 2605 must establish proximate causation. *Id.* at *16. Plaintiff's decision to seek homeownership over rental occurred prior to the time the subject communications were made, so Defendant's response to those communications could not have been a causal factor in making that decision.

Likewise, the court rejected the third damages claim, finding that Plaintiff's distress existed from the time she signed the permanent modification agreement, i.e., several months before any of the subject communications were made. Since this preexisting distress was inextricably intertwined with whatever distress that may have resulted from Defendant's response or nonresponse to the communications, Plaintiff failed to allege actionable emotional distress.

Finally, the court swiftly rejected the claim for incidental costs, reasoning that to allow such a claim "would transform virtually all unsatisfactory borrower inquiries into RESPA lawsuits, and, in doing so, would subvert the very reason for the damages requirement in the first place." *Id.* at *16.

e. Failure to State a Claim for Statutory Damages: No Pattern or Practice of Noncompliance

Lastly, the court held that Plaintiff had failed to allege that Defendant had engaged in a "pattern or practice of noncompliance with the requirements" of § 2605. Statutory damages require a plaintiff to establish a "pattern or practice of noncompliance." Thus, the court rejected Plaintiff's claim for statutory damages.

"Pattern or practice" is defined as "a standard or routine way of operating." *Id.* (quoting *Gorbaty v. Wells Fargo Bank, N.A.*, No. 10 Civ. 3291 (NGG) (SMG), 2014 WL 4742509, at *5 (E.D.N.Y. Sept. 23, 2014)). While no set number of violations automatically constitutes a "pattern or practice of noncompliance," courts have held that two RESPA violations are insufficient to support a claim for statutory damages. *Id.* (quoting *Kapsis v. Am. Home Mortg. Servicing Inc.*, 923 F.Supp.2d 430, 445 (E.D.N.Y. 2013) (collecting cases)). Additionally, vague and conclusory allegations that a defendant has engaged in misconduct are insufficient to support a claim for damages under RESPA. In this case, the court held that Plaintiff's conclusory allegations of "widespread" misconduct were insufficient to support a RESPA claim. *Id.* at *17.

Miller v. Bank of New York Mellon, 26 Fla. L. Weekly Fed. D 97 (M.D. Fla. Jan. 10, 2017).

Plaintiffs Victor L. Miller and Vilma M. Miller ("Plaintiffs"), proceeding pro se, filed suit against the Bank of New York Mellon ("BONY") alleging violations of the Dodd-Frank Act, the Real Estate Settlement Procedures Act of 1974 ("RESPA"), and its implementing regulation, Regulation X. Plaintiffs claimed BONY failed to offer them loss mitigation options, as required by Regulation X, before initiating foreclosure proceedings against them. Their complaint sought $2,000,000 in damages for the loss of their home and for pain and suffering. The court granted BONY's motion to dismiss the complaint, holding that the relevant loss mitigation regulation does not retroactively apply to a foreclosure action dismissed prior to the regulation's effective date.

Plaintiffs claimed BONY violated Regulation X at 12 C.F.R. § 1024.41, which governs loss mitigation procedures, by failing to offer them loss mitigation options before commencing a foreclosure action. BONY voluntarily dismissed the underlying foreclosure action on December 29, 2010. However, it was not until January 17, 2013, that the CFPB issued the final rule to amend Regulation X, with an effective date of January 10, 2014. The regulation does not expressly require retroactive application.

Since the regulation does not expressly require retroactive application, the court turned to a two-part test adopted by the Supreme Court for determining whether a regulation or statute should apply retroactively. The first part of the test requires the court to "look to whether Congress has expressly prescribed the statute's proper reach, and in the absence of language as helpful as that . . . to draw a comparably firm conclusion about the temporal reach specifically intended

by applying our normal rules of construction." *Id.* (quoting *Fernandez–Vargas v. Gonzales*, 548 U.S. 30, 37–38, 126 S.Ct. 2422, 165 L.Ed.2d 323 (2006) (citations omitted)).

If the first part of the test fails, the second step is to "ask whether applying the statute to the person objecting would have a retroactive consequence in the disfavored sense of affecting substantive rights, liabilities or duties [on the basis of] conduct arising before [its] enactment." *Id.* If the answer to the second step is yes, the court must "then apply the presumption against retroactivity." *Id.*

The court concluded that the first part of the *Fernandez–Vargas* test is dispositive in this instance. The court reasoned that it is unlikely the CFPB intended there to be retroactive application, since the CFPB has expressly acknowledged that Regulation X imposes "significant implementation burdens for the industry" and provided January 10, 2014, as the effective date in order to "afford creditors sufficient time to implement the more complex or resource-intensive new requirements." *Id.* (citing 78 Fed. Reg. 10708). The court also cited cases from the Sixth Circuit and the Southern District of Florida for their detailed discussions as to why the CFPB selected the effective date, "which supports the conclusion that 12 C.F.R. § 1024.41 does not apply retroactively." *Id.* (citing *Campbell v. Nationstar Mortg.*, 611 Fed.Appx. 288 (6th Cir. 2015) and *Lage v. Ocwen Loan Servicing LLC*, 145 F.Supp.3d 1172, 1184 (S.D. Fla. 2015)).

Interestingly, the court pointed out that Plaintiffs failed to allege that they submitted an application for loss mitigation pursuant to 12 C.F.R. § 1024.41 which would have triggered BONY's obligation under the regulation. However, the court went on to reason that, even with such an allegation, Plaintiff's claim would fail, because such an application would have been submitted prior to the regulation's effective date.

The court also reasoned that the second step of the *Fernandez-Vargas* test weighs against retroactive application of the regulation. The regulation's effective date did not occur until three years after dismissal of the foreclosure action. Retroactive application in this instance would simultaneously "increase a party's liability for past conduct, [and] impose new duties with respect to transactions already completed." *Id.* (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 280, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994)).

The court ultimately ruled that since Plaintiffs cannot claim retroactive application of 12 C.F.R. § 1024.41, they failed to state a claim for violation of RESPA. Plaintiff's first amended complaint was dismissed without prejudice to filing a second amended complaint.

Equal Credit Opportunity Act

Gilmore v. Ally Fin. Inc., 15-CV-6240 (RER), 2017 WL 1476596 (E.D.N.Y. Apr. 24, 2017).

Plaintiff Cydney Gilmore ("Plaintiff") filed suit against Ally Financial Inc. and Ally Bank ("Defendants") alleging a violation of the Equal Credit Opportunity Act ("ECOA") and seeking class action certification. Plaintiff alleged that Defendants had a policy of charging its African-American customers more for car financing than its similarly-situated white customers and sought actual, statutory, and punitive damages; pre- and post-judgment interest; fees and costs; and injunctive relief.

The court granted Defendant's motion to dismiss without prejudice, holding that Plaintiff had failed to establish Article III standing.

In order to establish standing, a plaintiff must demonstrate that (1) he or she has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent; (2) the injury is fairly traceable to the defendant's conduct; and (3) it is likely, rather than merely speculative, that a favorable decision will provide redress for the injury. The court found that, in this case, both an injury in fact and redressability were lacking.

The court found an injury in fact lacking, as Plaintiff both failed to (1) plead a particularized claim and (2) plead a concrete injury. Citing *Spokeo*, the court addressed particularity and concreteness separately.

Addressing the particularity requirement, the court emphasized that courts typically require a personal connection in ECOA cases. While Plaintiff did allege some facts regarding her personal transactions, she did not allege that she was personally discriminated against or that she personally suffered from having to pay a higher interest rate than that paid by non-African American customers. Instead, Plaintiff alleged that she was part of a class identified, in a separate investigation, as having *possibly* suffered inflated interest rates on loans financed by Defendants. The court held that alleging membership in a group that allegedly suffered from discrimination based on unproven claims in a separate action with different parties, without any other support, is insufficient to demonstrate that Plaintiff personally suffered from an injury that resulted from discriminatory practices followed at the time she entered into the subject loan.

Addressing the concreteness requirement, the court acknowledged that, on their face, Plaintiff's allegations would typically be sufficient to satisfy the concreteness requirement. Plaintiff alleged that she "and each Class Member, ha[d] been damaged to the extent of a specific amount based upon a discriminatorily inflated interest rate over the fixed terms of the loans." *Id.* at *6. This would ordinarily constitute a concrete injury, as any monetary loss satisfies the concrete injury requirement, even if it is a small financial loss.

However, Plaintiff had already been offered monetary relief to compensate any past harm she may have suffered. Plaintiff did not argue that this relief failed to compensate her for whatever damages she may have suffered. Since Plaintiff did not allege that this relief was insufficient or that she had suffered any additional harm, the court concluded that there was no concrete harm left for the court to consider.

The Court also held that, having failed to plead a concrete injury, Plaintiff also failed to plead a redressable injury. Since no concrete harm existed for the court to remedy, there was no redress the court could possibly provide Plaintiff.

Having found both an injury in fact and redressability lacking, the court held that Plaintiff had failed to plead Article III standing and dismissed the complaint with leave to amend.

The Truth in Lending Act

Singh v. U.S. Bank Nat'l Ass'n, 16-2257, 2017 WL 1541476 (10th Cir. May 1, 2017).

In order to prevent foreclosure of his home mortgage, Appellant Harjaspal Singh ("Appellant"), sent an untimely notice of rescission to the bank that had acquired his loan. When the bank did not respond to his notice, Appellant filed suit, pro se, seeking a declaration that he had rescinded the loan under the Truth in Lending Act ("TILA") and restitution of all payments he had made prior to the alleged rescission. Following the district court's dismissal of his complaint under Federal Rule of Civil Procedure 12(b)(6), Appellant appealed and the Tenth Circuit affirmed.

The district court dismissed the action for three reasons: (1) TILA's rescission provisions do not apply to residential mortgages; (2) under § 1635(f), Appellant's rescission claim is time-barred; and (3) Appellant failed to plead a necessary element of a TILA clam: tender of the loan back to the bank.

The Tenth Circuit discussed the first of these three reasons at length. While § 1635 of TILA does permit borrowers to rescind loans in certain circumstances, this ability to rescind does not apply to residential mortgage transactions. Section 1635(e)(1) explicitly exempts "residential mortgage transactions" from the rescission provision. "Residential mortgage transaction" is defined as "a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of such dwelling." 15 U.S.C.A. § 1602(x) (formerly codified at 15 U.S.C. § 1602(w)).

Appellant did not dispute that his loan qualified as a residential mortgage and he did not claim

to have entered into the mortgage for any reason apart from purchase of the subject property. Accordingly, the exemption in §1635(e)(1) bars him from rescinding the loan under § 1635. Since Appellant did not have a § 1635 right of rescission, the Tenth Circuit concluded that he had failed to state a claim for damages under § 1640(a) of TILA.

Dunn v. Bank of America, N.A., 844 F.3d 1002 (8th Cir. 2017).

Plaintiffs John and Christina Dunn ("Plaintiffs") filed suit against Bank of America and Nationstar Mortgage alleging that Bank of America had failed to provide disclosures required under TILA. The district court entered judgment on the pleadings, dismissing Plaintiffs' complaint, and the Eight Circuit affirmed.

In 2009, Plaintiffs obtained a loan from Bank of America, secured by a mortgage granting Bank of America a security interest in the subject property. In 2011, Plaintiffs sent Bank of America a letter purporting to invoke their right of rescission under § 1635 of TILA on the basis that they had not been provided complete copies of the notice of their right to rescind. The letter also stated that Bank of America had twenty days to return all monies paid and take the steps needed to terminate the security interest. Seventeen days later, Bank of America responded in a letter stating that their rescission request had been forwarded to the appropriate department, but the loan remained "in full force and effect."

In 2013, Bank of America assigned the mortgage to Nationstar Mortgage, which Nationstar Mortgage subsequently foreclosed. Plaintiff then filed this suit, alleging that Bank of America had failed to provide them with two copies of the "Notice of Right to Cancel" as required.

Section 1635 of TILA provides consumers with the right of rescission, but limits this right to certain transactions. Significantly, § 1635 exempts "residential mortgage transactions" from this right of rescission. 15 U.S.C. § 1635(e). "Residential mortgage transaction" is defined as "a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition . . . of such dwelling." 15 U.S.C.A. § 1602(x) (formerly codified at 15 U.S.C. § 1602(w)). Accordingly, a borrower whose loan qualifies as a residential mortgage transaction has no right of rescission under § 1635.

In their complaint, Plaintiffs admit that they reside at the same address as the property securing the subject loan. Additionally, they did not dispute that they obtained the subject mortgage in order to finance the purchase of the dwelling providing security. Accordingly, the Eighth Circuit agreed with the district court's determination that the subject loan unquestionably constitutes a "residential mortgage transaction" and precludes Plaintiffs from seeking relief under TILA.

Fair Debt Collections Practices Act

Wendel v. Mullooly, Jeffrey, Rooney & Flynn, LLP, 16-1461, 2017 WL 1507448 (2d Cir. Apr. 27, 2017).

Plaintiff Elaine Wendel ("Plaintiff") filed suit under the Fair Debt Collections Practices Act ("FDCPA"), claiming that the defendant law firm had sent Plaintiff a letter falsely implying that an attorney was meaningfully involved in the debt collection process and had thereby violated the FDCPA. The district court granted the defendant's motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) and Plaintiff appealed. The Second Circuit affirmed.

The Second Circuit has previously held that it is permissible for an attorney to "send a debt collection letter without being meaningfully involved as an attorney within the collection process," so long as the letter "includes disclaimers that should make clear even to the 'least sophisticated consumer' that the law firm or attorney sending the letter is not, at the time of the letter's transmission, acting as an attorney." *Greco v. Trauner, Cohen & Thomas, L.L.P.*, 412 F.3d 360, 364 (2d Cir. 2005) (emphasis omitted).

The relevant portion of the letter sent to Plaintiff in this case includes the following language:

> Our law firm has been retained by Bank of America, N.A., successor-in-interest to FIA Card Services (the "Bank"), in connection with the above referenced account. Please be advised the Bank may invoke its right to file a lawsuit against you.
>
> Unless you notify us within thirty days after receipt of this notice that the validity of this debt, or any portion of it, is disputed, we will assume that the debt is valid. If within thirty days of your receipt of this notice you notify us in writing that the debt or any portion thereof is disputed we will obtain a verification of the debt or if the debt is founded upon a judgment, we will obtain a copy of the judgment and we will mail to you a copy of such verification or such judgment. Also, upon your written request within thirty days of the receipt of this notice, we will provide you with the name and address of the original creditor if different from the current creditor.
>
> This communication is from a debt collector. We are attempting to collect a debt and any information obtained will be used for that purpose.
>
> At this time, no attorney with this firm has personally reviewed the particular circumstances of your account.

The Second Circuit highlighted the fact that the subject letter included the same disclaimer it had approved in *Greco*: "at this time, no attorney with this firm has personally reviewed the particular circumstances of your account." 412 F.3d at 361. Additionally, the subject letter went a step further by explaining that "[t]his communication is from a debt collector."

However, Plaintiff argued that these disclaimers were made ineffective by three items not present in the *Greco* communication: (1) use of the word "retained" in the opening sentence; (2) the warning that "the Bank may invoke its right to file a lawsuit against you"; and (3) the location of the *Greco* disclaimer at the end of the letter, following the required 30-day notices. The Second Circuit rejected these arguments.

As to the first argument, the Second Circuit concluded that "'retained' is no more suggestive of attorney involvement than 'represents,' the word used in *Greco*."

In considering the second argument, the Second Circuit acknowledged that the reference to the bank's right to sue is arguably stronger that the euphemisms utilized in *Greco*, but concluded that this did nothing to confuse or contravene the letter's explicit disclaimers of attorney involvement.

Finally, as to Plaintiff's third argument, the Second Circuit concluded that moving the *Greco* disclaimer from the first paragraph to the fourth paragraph of the letter did not have the effect of "burying" it or otherwise making it ineffective. The one-page letter contains only eight sentences, which all fit on half of the page. Thus, "[e]ven an unsophisticated individual can be expected to read the entire letter and comprehend the full text."

For these reasons, the Second Circuit affirmed the district court's judgment.

---- IN THE NEWS ----

CFPB Issues Proposal to Amend Regulations to Provide Flexibility to Mortgage Lenders in Collecting Information

On March 24, 2017, the CFPB announced a proposal to amend the Equal Credit Opportunity Act to provide additional flexibility to mortgage lenders when collecting information. The

amendments would support the mortgage lending industry in adopting consistent forms and compliance practices regarding the collection of information under Regulation B.

The proposal also contains commentary to facilitate compliance with Regulation B's requirements for the collection of information involving the ethnicity, race, and sex of mortgage applicants.

To read more, visit: http://files.consumerfinance.gov/f/documents/201703_cfpb_NPRM-to-amend-Regulation-B.pdf

CFPB Issues Consumer Reporting Supervisory Highlights Special Edition

On March 2, 2017, the CFPB issued a special edition of its Supervisory Highlights to discuss problems it has uncovered in the credit reporting industry. The CFPB has identified issues with the quality of information being provided and furnished by credit reporting companies. Specifically, the CFPB drafted this Supervisory Highlights to discuss its efforts to curb these issues.

The CFPB has aimed its efforts to correct credit reporting issues in the following three ways: (1) fixing data accuracy at consumer reporting companies, (2) repairing broken dispute processes at consumer reporting companies, and (3) cleaning up information from furnishers. The CFPB believes that its efforts in correcting these practices under the Fair Credit Reporting Act will help facilitate the relationship between consumers and consumer reporting companies.

To read this report, visit: https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-consumer-reporting-special-edition/

2017 Fair Debt Collection Practices Act Annual Report to Congress

On March 20, 2017, the CFPB submitted its sixth annual report summarizing activities under the Fair Debt Collection Practices Act ("FDCPA") to Congress. The report describes the activities conducted by the CFPB and the Federal Trade Commission ("FTC") relating to debt collection.

The report summarizes consumer complaints, CFPB supervision of debt collection activities, and an overview of CFPB enforcement in 2016. The report also provides education and outreach initiatives, as well as rulemaking, research, and policy initiatives.

To read this report, visit: https://www.consumerfinance.gov/documents/3264/201703_cfpb_Fair-Debt-Collection-Practices-Act-Annual-Report.pdf

CFPB's May 2017 Complaint Snapshot Focuses on Complaints Made by Older Consumers

The CFPB recently released its May Complaint Snapshot, which highlighted complaints made by consumers 62 years of age and older. According to the report, older consumers are more likely than younger consumers to submit complaints regarding traditional mortgages, reverse mortgages, credit cards, and issues with the management of bank accounts following a change in circumstance such as the death of a spouse.

To view the full report, visit: https://www.consumerfinance.gov/about-us/blog/snapshot-complaints-made-older-consumers/

---- ABOUT THE AUTHORS ----

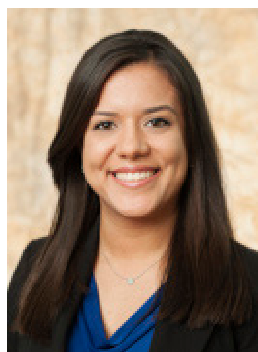
DAVID A. ELLIOTT

Partner, Litigation

Ph: (205) 458-5324 / delliott@burr.com

David serves as chair of the firm's Financial Services Litigation practice group and routinely defends lenders in all types of litigation, including individual actions, mass actions, and class actions ranging from common law lender liability lawsuits to statutory actions under state and federal statutes. He also has extensive experience defending lawsuits under TILA, HOEPA, FCRA, RESPA, FDCPA, FCCPA and the TCPA.

He has successfully litigated hundreds of matters on behalf of lenders in various forums across the Southeast. David is admitted to practice in Alabama, Florida, and South Carolina.



CHRISTINA OLIVOS

Associate, Litigation

Ph: (407) 540-6632 / colivos@burr.com

Christina practices in the Financial Services Litigation practice group. She received her J.D. from the University of Virginia School of Law, where she served on the editorial board of the *Virginia Journal of International Law*.

Christina received her B.A., *summa cum laude,* in English and Political Science from Florida International University.

RYAN S. RUMMAGE

Associate, Litigation

Ph: (205) 458-5288 / rrummage@burr.com

Ryan practices in the Financial Services Litigation practice group. He received his J.D. from Emory University School of Law (2015) where he served as Executive Managing Editor of the *Emory Law Journal*. Ryan also served as Volunteer Coordinator for the Emory Public Interest Committee and worked as a Student Ambassador.

Ryan received his B.A., *magna cum laude,* from Harding University.

BURR FORMAN LLP
results matter

Burr & Forman's Financial Services Litigation Team

Name	Office	Phone	Email
NICK AGNELLO	Ft. Lauderdale	(954) 414-6200	nagnello@burr.com
BRYAN BALOGH	Birmingham	(205) 458-5469	bbalogh@burr.com
GENNIFER BRIDGES	Orlando	(407) 540-6687	gbridges@burr.com
JONATHAN BROWN	Ft. Lauderdale	(954) 414-6218	jbrown@burr.com
RACHEL CASH	Birmingham	(205) 458-5483	rcash@burr.com
JOHN CHILES	Ft. Lauderdale	(954) 414-6200	jchiles@burr.com
DAVID ELLIOTT	Birmingham	(205) 458-5324	delliott@burr.com
ASHLEY ELMORE DREW	Tampa	(813) 367-5753	aelmoredrew@burr.com
LOU FIORILLA	Atlanta	(404) 685-4273	lfiorilla@burr.com
RACHEL FRIEDMAN	Birmingham	(205) 458-5267	rfriedman@burr.com
ERICA GOMER	Ft. Lauderdale	(954) 414-6214	egomer@burr.com
ELI HARE	Birmingham	(205) 458-5196	ehare@burr.com
RYAN HEBSON	Birmingham	(205) 458-5144	rhebson@burr.com
RICHARD KELLER	Birmingham	(205) 458-5323	rkeller@burr.com
JUSTIN KELLY	Birmingham	(205) 458-5452	jkelly@burr.com
ADAM KNIGHT	Tampa	(813) 367-5747	aknight@burr.com
ALAN LEETH	Birmingham	(205) 458-5499	aleeth@burr.com
CAITLIN LOONEY	Birmingham	(205) 458-5126	clooney@burr.com
REID MANLEY	Birmingham	(205) 458-5439	rmanley@burr.com
ZACH MILLER	Nashville	(615) 724-3216	zmiller@burr.com
MATT MITCHELL	Birmingham	(205) 458-5317	mmitchell@burr.com
SAMUEL MORRIS	Nashville	(615) 724-3258	smorris@burr.com
SABRINA NIEWIALKOUSKI	Ft. Lauderdale	(954) 414-6209	sniewialkouski@burr.com
COURTNEY OAKES	Ft. Lauderdale	(954) 414-6213	coakes@burr.com
CHRISTINA OLIVOS	Orlando	(407) 540-6632	colivos@burr.com
CHRISTINE IRWIN PARRISH	Orlando	(407) 540-6627	cparrish@burr.com
LAUREN REYNOLDS	Orlando	(407) 540-6604	lreynolds@burr.com
BROOK ROBERTSON	Birmingham	(205) 458-5211	brobertson@burr.com
RYAN RUMMAGE	Birmingham	(205) 458-5288	rrummage@burr.com
ROBERT RUTHERFORD	Birmingham	(205) 458-5286	rrutherford@burr.com
JACQUELINE SIMMS-PETREDIS	Tampa	(813) 367-5751	jsimms-petredis@burr.com
SARA SOLANO	Ft. Lauderdale	(954) 414-6225	ssolano@burr.com
FRANK SPRINGFIELD	Birmingham	(205) 458-5187	fspringfield@burr.com
MEGAN STEPHENS	Birmingham	(205) 458-5289	mstephens@burr.com
CHRIS SUEDEKUM	Nashville	(615) 724-3256	csuedekum@burr.com
JONATHAN SYKES	Orlando	(407) 540-6636	jsykes@burr.com
LAURA TANNER	Tampa	(813) 367-5758	ltanner@burr.com
JONATHAN TEBBS	Nashville	(615) 724-3271	jtebbs@burr.com
JOSHUA THREADCRAFT	Birmingham	(205) 458-5132	jthreadcraft@burr.com
RIK TOZZI	Birmingham	(205) 458-5152	rtozzi@burr.com
BRAD VANCE	Jackson	(601) 709-3456	bvance@burr.com
KRISTEN WATSON	Birmingham	(205) 458-5169	kwatson@burr.com
KATHERINE WEST	Birmingham	(205) 458-5188	kwest@burr.com
JENNIFER ZIEMANN	Atlanta	(404) 685-4336	jziemann@burr.com
FRANK ZINCONE	Ft. Lauderdale	(954) 414-6228	fzincone@burr.com

ATLANTA
171 Seventeenth Street, NW
Suite 1100
Atlanta, GA 30363
(404) 815-3000

BIRMINGHAM
420 North 20th Street
Suite 3400, Wachovia Tower
Birmingham, AL 35203
(205) 251-3000

FT. LAUDERDALE
Las Olas Centre II
350 East Las Olas Boulevard
Suite 1420
Ft. Lauderdale, FL 33301
(954) 414-6200

JACKSON
190 E Capitol Street
Suite M-100
Jackson, MS 39201
(601) 355-3434

JACKSONVILLE
Bank of America Tower
50 North Laura Street
Suite 3000
Jacksonville, FL 32202
(904) 232-7200

MOBILE
RSA Tower
11 North Water Street
Suite 22200
Mobile, AL 36602
(251) 344-5151

MONTGOMERY
201 Monroe Street
Suite 1950, RSA Tower
Montgomery, AL 36104
(334) 241-7000

NASHVILLE
Nashville City Center
511 Union Street
Suite 2300
Nashville, TN 37219
(615) 724-3200

ORLANDO
200 S. Orange Avenue
Suite 800
Orlando, FL 32801
(407) 540-6600

TAMPA
One Tampa City Center
Suite 3200
201 North Franklin Street
Tampa, FL 33602
(813) 221-2626

WILMINGTON
1201 N. Market Street
Suite 1407
Wilmington, DE 19801
Phone: (302) 397-4852

This update contains only a summary of the subject matter discussed and does not constitute and should not be treated as legal advice regarding the topics discussed therein. The topics discussed involve complex legal issues and before applying anything contained herein to a particular situation, you should contact an attorney and he or she will be able to advise you in the context of your specific circumstances. Alabama State Bar rules require the inclusion of the following: No representation is made about the quality of the legal services to be performed or the expertise of the lawyer performing such services. In addition, the Rules of Professional Conduct in the various states in which our offices are located require the following language: THIS IS AN ADVERTISEMENT. FREE BACKGROUND INFORMATION AVAILABLE UPON REQUEST.