RECENT DEVELOPMENTS

CONSUMER CREDIT

CONSUMER REPORTING AGENCY MUST REINVESTIGATE DISPUTED INQUIRIES

Norman v. Trans Union, LLC, ___ F. Supp. 3d ___ (E.D. Pa. 2020).
https://www.casemine.com/judgement/us/5f398cf94653d06cd6ba7bff

FACTS: Plaintiff Norman sued Defendant Trans Union, LLC for its refusal to reinvestigate or remove an entry from Norman's credit report. Against his explicit instruction, Safe Home Security ("Safe Home") made an inquiry on Norman's credit report. In his dispute letters, Norman expressed his explicit dissent to Safe Home's credit report inquiry. Norman claimed that Trans Union failed to uphold its duty under the Fair Credit Reporting Act ("FCRA") to promptly reinvestigate any item of information in a consumer's file disputed as incomplete or inaccurate.

Norman sued on behalf of himself and a class and motioned for class certification.

HOLDING: Motion granted.

REASONING: To trigger a reinvestigation, the consumer must (1) "directly . . . dispute" (2) "the completeness or accuracy of" (3) "any item of information . . . in [the] consumer's file." 15 U.S.C. § 1681i (2020). The court stated that Norman directly disputed by posting his letters directly to Trans Union. The court reasoned that the Safe Home inquiry qualified as "any item of information" in the consumer's file.

Trans Union argued that they were not obligated to reinvestigate because the entry accurately reflected that an inquiry had occurred. The court rejected Trans Union's definition of "accurate" by reasoning that a credit report inquiry can have negative effects and, if falsely made, can be misleading. The court held that Norman properly disputed the "accuracy" of the entry by sending dispute letters questioning the propriety of the inquiry to which he had explicitly dissented.

Trans Union further argued that a disputing consumer must show an inaccuracy to trigger an agency's duty to reinvestigate. The court rejected this argument by stating that neither the statute's structure nor Trans Union's cited authority supported it. The court held that a consumer need not make a prima facie showing of inaccuracy to trigger an agency's reinvestigation obligation. Instead, the provision requires that the consumer only "dispute" the accuracy of some item of information on their credit file.

Additionally, Trans Union contended that its duty to reinvestigate was exclusively limited to information supplied by "furnishers" cited in the statute's subheading. The court rejected this argument by reasoning that "furnishers" was meant in the general sense, was unambiguous, and did not command a limiting definition.

Finally, Trans Union claimed that it could not be liable under the statute for failing to reinvestigate if the entity that requested the consumer's credit information had a "permissible purpose" in doing so. However, the court held that the legitimacy or illegitimacy of Same Home's inquiry was irrelevant. The fact that Trans Union may ultimately have resolved the dispute against Norman did not obviate its duty to investigate.

Thus, the court held that Norman triggered Trans Union's duty to reinvestigate and that Trans Union's failure to do so supported a valid cause of action.

OMITTING A FAVORABLE CREDIT ITEM DOES NOT CREATE A MISLEADING CREDIT REPORT

Hammer v. Equifax Info. Servs., ___ F. Supp. 3d. ___ (N.D. Tex. 2020).
https://buckleyfirm.com/sites/default/files/Buckley%20InfoBytes%20-%20Hammer%20v.%20Equifax%20et%20al%20-%20Fifth%20Circuit%20Opinion%202020.09.09.pdf

Facts: Plaintiff Scott Hammer obtained a credit card from Capital One Bank. Every month thereafter, he made timely payments on his credit card. The three largest consumer reporting agencies ("CRAs") in the United States, Equifax, Experian, and TransUnion, reported Hammer's Capital One account until 2017. After learning that the CRAs stopped reporting the account, Hammer requested that each CRA restore it. TransUnion complied with the request, but Defendants Equifax and Experian refused. Hammer's credit score fell as a result of losing a positive trade line from his report.

Businesses relying on credit reports have no reason to believe that a credit report reflects all relevant information on a consumer.

Hammer sued Experian and Equifax for negligent and willful violations of the Fair Credit Reporting Act ("FCRA"). The district court granted Experian and Equifax's motion to dismiss and entered final judgment resolving Hammer's claims. Hammer appealed.

Holding: Affirmed.

Reasoning: Hammer argued that Equifax violated the FRCA because it had favorable information about his Capital One card, omitted it from his credit report, and thereby harmed his creditworthiness. In his view, a credit report was inaccurate under the FRCA if a CRA (1) had verified information on the consumer, (2) omitted that information from the report, and (3) that omission harmed the consumer's credit.

The court rejected Hammer's interpretation, holding that a credit report does not become inaccurate whenever there is an omission, but only when an omission renders the report "misleading in such a way and to such an extent that it can be expected to adversely affect credit decisions." The court held that an omission of a single credit item does not render a report "inaccurate" or "misleading." Businesses relying on credit reports have no reason to believe that a credit report reflects all relevant information on a consumer. Such a requirement would be impossible for a CRA to satisfy, as creditors furnish CRAs with consumer information only on a voluntary basis.