

Banking and Finance Law Daily Wrap Up, TOP STORY—Deceptive practices lead to CFPB shutdown of 2 largest U.S. debt buyers, (Sep. 9, 2015)

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The Consumer Financial Protection Bureau has charged the two largest debt buyers and collectors in the nation with deceptive collection practices. According to the bureau, Encore Capital Group, Inc. and Portfolio Recovery Associates, LLC bought debts that were “potentially inaccurate, lacking documentation, or unenforceable.” Encore must pay up to \$42 million in consumer refunds and a \$10 million penalty, and stop collection on over \$125 million worth of debts. Portfolio Recovery Associates must pay \$19 million in consumer refunds and an \$8 million penalty, and stop collecting on over \$3 million worth of debts. Both companies were ordered to overhaul their debt collection and litigation practices.

“Encore and Portfolio Recovery Associates threatened and deceived consumers to collect on debts they should have known were inaccurate or had other problems,” said CFPB Director Richard Cordray. “Now, the two biggest debt buyers in the market must refund millions and overhaul their practices. We will continue to take action to protect consumers from illegal and obnoxious debt collection practices.”

Encore consent order. According to the CFPB’s consent order against Encore, the company violated the Consumer Financial Protection Act of 2010, the Fair Debt Collection Practices Act, and the Fair Credit Reporting Act. Encore purchases portfolios of old consumer debt from some of the nation’s largest consumer finance and telecommunications companies, and from other debt buyers, for pennies on the dollar. These debts mainly consist of charged-off consumer credit card and telecommunications debts, purchased at various points in time from the date of default. From 2009 to 2015, Encore paid about \$4 billion for approximately 60 million consumer accounts with a total face value of \$128 billion.

The bureau charges that Encore has received an average of 30,000 written disputes and complaints and 10,000 oral disputes and complaints directly from consumers in a typical month relating to Encore’s debt collection and credit reporting. Another approximately 100,000 consumer disputes have come to Encore in a typical month through e-OSCAR, the web-based communications system used by the nationwide consumer reporting agencies to communicate with data furnishers about consumer disputes. Encore requires consumers to submit disputes within 45 days. After that period, the company considers them “untimely.” Encore then requires the consumer to produce specific documents or other “proof” to support their dispute or it will not conduct the legally-required investigation of the issues raised by the consumer.

In addition, the bureau contends that Encore farmed out disputed debts to law firms without forwarding required information and made harassing collection calls to consumers.

Portfolio consent order. The CFPB consent order against Portfolio charges the company with violations of the CFPA and FDCPA. Portfolio receives a “sales file” prior to purchasing a debt portfolio. The bureau contends that Portfolio knows that “significant inaccuracies” about the consumers and the debts may exist, including that some debt balances were not reduced by a consumer’s subsequent payments. While the purchase agreements state that Portfolio is purchasing the loans based on its independent examination, study, inspection, and knowledge of the loans, Portfolio did not routinely check the account information in the sale files it purchased against the original creditor’s records before contacting consumers, even when the company knew or should have known the sale file contained unreliable information.

Litigation violations. Both companies collected debts through lawsuits and threats of legal action in unlawful ways, according to the bureau. Specifically, Encore and Portfolio:

- misrepresented their intention to prove debts over which they sued consumers;
- relied on misleading, robo-signed court filings to “churn out” lawsuits;

- sued or threatened to sue consumers past the statute of limitations; and
- pressured consumers to make payments using misrepresentations.

Prohibited actions. In addition to paying millions in consumer refunds and penalties and stopping collection of debts, Encore and Portfolio are ordered to:

- stop collecting debts they cannot verify;
- ensure accuracy when filing lawsuits;
- provide consumers with information prior to filing suit;
- use accurate affidavits that specifically describe the signer's knowledge of the facts and documents attached; and
- reform collection of older debts by not suing or threatening suit on time-barred debts and not collecting on debts unless they disclose to consumers that they cannot sue on the debts.

Companies: Encore Capital Group, Inc.; Portfolio Recovery Associates, LLC

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