

FCRA Claims Against Major Credit Reporting Agency Survive Statute of Limitations Challenge

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In *Andrews v. Equifax Information Services LLC*, No.: C-08-0817, 2010 U.S. Dist. Lexis 38020 (W.D. Wash. Mar. 30, 2010), plaintiff filed suit against Equifax after it allegedly “mixed up” her information with that of another individual of the same name and disseminated that information to third parties. Plaintiff alleges that this “mix up” was caused by Equifax’s failure to follow reasonable procedures to ensure maximum possible accuracy of the information it reported as well as its failure to re-investigate her disputes, both of which are required by FCRA.

FCRA requires claims to be brought within two years after the plaintiff discovers the violation or within five years after the date the violation occurs. Invoking the former provision, Equifax argued that it was entitled to dismissal because the plaintiff had discovered the alleged violations more than two-years before she filed suit in May 2008. Equifax cited record evidence that plaintiff had called in 2004 and 2005 to dispute information in her credit file that she believed was inaccurate. Equifax contended further that it sent plaintiff the results of its investigation into her disputes on three occasions, the last of which was in late November 2005. According to Equifax, because these results contained the inaccurate information forming the basis of her FCRA allegations, plaintiff had discovered the violation more than two years before filing suit.

The Western District of Washington denied the motion, rejecting the argument that plaintiff’s knowledge of inaccurate information in her credit report put her on notice of Equifax’s alleged FCRA violation. “FCRA is not a strict liability statute,” said the court. Indeed, a credit reporting agency can escape liability under FCRA for an inaccurate credit report as long as it shows it followed reasonable procedures in generating it. Therefore, inaccurate information in a credit report, standing alone, cannot violate FCRA. According to the court, to obtain dismissal, Equifax had to show something more. Specifically, it had to produce sufficient evidence tying the investigation reports it provided to the plaintiff with plaintiff’s discovery of the precise violations alleged in the lawsuit. This, according to the court, it failed to do.

As a threshold matter, while Equifax produced evidence that it sent the reports to the plaintiff, it failed to prove that she received them. In fact, plaintiff testified that she had no recollection of receiving the reports. The court refused to opine on “the applicability of any kind of mailbox rule or presumption of receipt” by the plaintiff simply because there was evidence that Equifax mailed the reports. Equifax cited no authority supporting such a rule.

In addition, the court rejected Equifax’s argument that plaintiff was on notice of the alleged FCRA violations as a result of being denied credit more than two years before filing suit. Equifax argued that the same inaccurate information forming the basis for her FCRA claims was sent to the credit

union that denied her credit application. However, there was no evidence indicating that the denial of credit by the third party credit union could alert plaintiff to a FCRA violation. In fact, plaintiff testified that she did not know what information Equifax sent to the credit union, and testified further that other, legitimately reported delinquencies on her credit report could have led to the denial of her credit application.