

Legal Alert

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**QUESTION: IS BILL COLLECTING
ILLEGAL?**

**ANSWER: NO, BUT THE FEDERAL TRADE
COMMISSION SOMETIMES MAKES
IT SEEM ILLEGAL TO COLLECT
DEBTS!**

Expert Global Solutions was fined a record \$3.2 million by the Federal Trade Commission ("FTC")! *United States v. Expert Global Solutions, Inc.*, 3-13 CV2611-M (U.S. Distr.Ct., N.D. Tex, July 16, 2013). What did Expert Global Solutions do to deserve a \$3.2 million penalty? I'll give you a clue. Expert Global Solutions is the world's largest debt collection operation.

The FTC accused Expert Global Solutions of numerous violations of the Fair Debt Collection Practices Act ("FDCPA"). Beyond the usual litany of FDCPA violations, the FTC seeks to place new restrictions on telephone calls by bill collectors. Telephone calls and telephone messages are basic tools for debt collectors.

Communications by telephone are very different today than when the FDCPA was first enacted. Today, fewer individuals have traditional wire-connected home phones. Nearly everyone has a voicemail recording device of some kind. The need for hands-free telephone calls has required even our smart phones to have speakers. Making sure that your message is only heard by the intended recipient is practically impossible!

What did the FTC say about voicemails?

Regulating the content of collection messages to consumers is expected under the FDCPA. The FTC now wants collectors of consumer accounts, using even appropriate messages, to confirm that the messages are only being delivered to and heard by the intended debtors. Expert Global Solutions and its agents are enjoined from:

Leaving recorded messages, such as on the voicemail, answering machine, or messaging service of any person, in which [Expert

Global Solutions or its affiliates] state both:
(1) the first or last name of the debtor, and
(2) disclose that they are a debt collector, are attempting to collect a debt, or that the debtor owes a debt.

If there is a chance that your message could be going to the wrong voicemail, then you have problems. If your message could be overheard by someone else, other than the intended debtor, whether a visitor, a secretary, a family member checking messages, or anyone who can hear the debtor's speaker-phone, you have problems!

How can anyone possibly guaranty that a message will only be received by and heard by the intended recipient? Beats me! Maybe all collectors can do when they reach voicemail messages is to avoid leaving messages with any names, either of the debtors or of the collection agencies. Or maybe collectors simply need to hang-up and leave no messages at all. Either solution would seriously hamper collection efforts.

What if the debtor answers the phone and denies owing the debt?

The FTC says that if debtors dispute debts during telephone calls or conversations, Expert Global Solutions is required to cease collections communications and efforts until it makes reasonable efforts to verify the debts and provide that information to the debtors. As to Expert Global Solutions, the consent order states that:

there shall exist a rebuttable presumption of an intent to annoy, harass, or abuse if [Expert Global Solutions or its affiliates] place more than one call to any person about a debt after that person has notified [Expert Global Solutions or its affiliates] either orally or in writing that the person refuses to pay such a debt or that the person wishes...to cease further communication... (*emphasis added*).

Industry practice has been only to take those steps when a consumer disputes the validity or amount of the debt in writing. Now, prudence would dictate that, upon hearing of a dispute, the collection agency either close the account and end collection efforts, or suspend collection efforts. The collector must conduct a reasonable investigation and verify that the information about the debt is accurate and complete before proceeding with any more collection steps. Again, "dialing for dollars" has become more hazardous for collectors.

What else can't collectors do in collecting debts?

In addition to penalizing Expert Global Solutions \$3.2 million, the FTC consent order requires Expert Global Solutions to comply with the FDCPA. Every third-party debt collector collecting consumer debts should follow these rules to comply with the FDCPA. Cease communications if a consumer debtor tells you to stop communicating about the debt. Stop communications with the debtor if the consumer refuses to pay the debt, except in limited circumstances. Don't communicate with third-parties about a consumer's debt. Don't engage in harassing, abusive or oppressive communications while attempting to collect debts. Don't falsely represent that you won't call a number to collect a debt.

Add to the list:

1. Don't leave voice messages unless you are very careful that no one else can hear them; and
2. Stop communications and collection efforts if the debtor tells you over the phone or in a conversation that he or she disputes the validity or the amount of the debts.

After all, you don't want to be the recipient of the next record penalty from the FTC. If you have any questions about collecting debts, please call me.

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