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Judge finds debt collector Portfolio Recovery violated federal law

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(Reuters) - Portfolio Recovery Associates, the nation's second-largest debt collector, is liable for violating federal law by offering to settle old debts without telling consumers that they were no longer legally enforceable, a federal judge has ruled.

Portfolio Recovery's suggestions that the company might report consumers' debt as settled if consumers paid up was also misleading because obsolete debt cannot be reported to a credit bureau, U.S. District Judge John Darrah ruled on Monday.

The lawsuit filed in 2012 seeks damages for consumers in Illinois and Indiana who made payments to Portfolio Recovery after receiving a settlement letter between March 2011 and March 2012.

Granting summary judgment in favor of plaintiffs, the judge said Portfolio Recovery was liable under the Fair Debt Collection Practices Act (FDCPA), which bars unfair and misleading practices. Damages will be determined at trial, which has not yet been scheduled.

"We are still analyzing the ruling and conferring with the client on our next approach," said David Schultz, a lawyer for Portfolio Recovery.

Portfolio Recovery and other debt collectors buy debt that has been written off by the ordinal creditor for pennies on the dollar and profit by collecting larger amounts.

A report last year by the National Consumer Law Center said debt collectors nationwide have been confronting consumers with demands for payment of stale debt years after the statute of limitations for enforcing it has passed.

Debt can be collected after the statute of limitations has been passed, but consumers cannot be sued over it.

The lawsuit said Portfolio Recovery misled consumers because its offer of a settlement implied that individuals had a legal obligation to pay.

Portfolio Recovery also failed to disclose that making even a small payment could reset the statute of limitations so that consumers could be legally liable for the entire amount, the lawsuit said.

Judge Darrah's ruling is "a good, big win for consumers because it's an important disclosure," said plaintiffs' lawyer Cassandra Miller.

"Lots of consumers don't necessarily understand what the meaning of the statute of limitations is and what that means in terms of what the debt collector can do on the account."

In a motion last year for judgment in favor of Portfolio Recovery, lawyers for the company said plaintiffs failed to prove their theory that an offer to settle debt deceives consumers into believing that they could be sued. Plaintiffs offered no evidence that anyone was actually misled, the lawyers said.

The 7th Circuit has held on multiple occasions that plaintiffs asserting claims of deceptive communications under the FDCPA must present extrinsic evidence showing how a collection letter was perceived, the lawyers said.

Darrah, however, said extrinsic evidence is not necessary when a collection letter is deceptive on its face, as Portfolio Recovery's was by making settlement offers and not telling consumers the debt was time-barred.

The case is Magee et al v. Portfolio Recovery Associates, U.S. District Court, Northern District of Illinois, No. 12-cv-1624.

For the plaintiffs: Cassandra Miller, Daniel Edelman, Cathleen Combs and James Lattuner at Edelman Combs Lattuner & Goodwin

For the defendants: David Schultz, Avanti Bakane, Jennifer Weller and Katherine Oblak at Hinshaw & Culbertson

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