

Asset Acceptance Calls a Consumer a Fat Motherfucker While Trying to Collect Debt NJ Plaintiff Says

<http://www.consumerlitigators.com/2812/consumer-case-law/asset-acceptance-calls-a-consumer-a-fat-motherfucker-while-trying-to-collect-debt-nj-plaintiff-says/>

July 19, 2012

Asset Acceptance to be judged by a jury.

The Take-Away

Dopey Asset Acceptance, a debt collector, cannot hide behind procedure to exclude from evidence a voicemail that captured it accusing a consumer of being a “fat motherfucker.”

Alleged Facts

A consumer filed a lawsuit in the federal court of New Jersey alleging that Asset Acceptance violated the Fair Debt Collection Practices Act (FDCPA) when trying to collect for a junk debt buyer.

Collecting on behalf of the junk debt buyer, World Financial Network, Asset Acceptance called and wrote the consumer seeking repayment of an alleged debt. The court found as undisputed that Asset Acceptance recorded a voicemail for the consumer calling her a “fat motherfucker” while trying to collect the alleged junk debt.

Asset Acceptance Tries to Hide Behind a Transparent “Wall”

Although Asset Acceptance denied leaving such an inflammatory and clearly unlawful voicemail, it thought the old maxim of “if the facts are bad, argue the law...” would extricate itself from its untenable situation.

Asset Acceptance tried to exclude the damning voicemail claiming that the words “fat motherfucker” were hearsay. Problem is, the consumer was not trying to prove she *was*, actually, a “fat motherfucker”; rather, she was trying to prove only that Asset Acceptance *said* it.

As Asset Acceptance well knows, calling a consumer a “fat motherfucker” while attempting to collect a debt is as close to a *per se* violation of the FDCPA as one can get. Rather than, perhaps, quietly settling the matter, Asset Acceptance persisted in defending itself and filed a summary judgment motion.

Consumer Shoots Through Asset Acceptance’s Transparent Wall

The federal court made short work of Asset Acceptance’s ridiculous argument: The consumer “does not offer the profane remark or testimony about it in order to *prove* its truth [that she’s a “fat motherfucker”]; rather, the import of the statement is its having been made, as such a statement could violate the FDCPA.”

In another issue Asset Acceptance tried to claim that because the consumer did not actually possess the offensive voicemail as it existed in the hands of her cell phone provider, the consumer could not seek to admit into evidence a copy of the voicemail. The court advised that the original voicemail (in the possession of the cell phone company) no longer existed. Slight merit did attach to Asset Acceptance’s arguments here because the law usually requires original evidence to be admitted. However, the consumer’s copy of the voicemail was a suitable substitute because the cell phone

provider deleted the original voicemail shortly after its creation by Asset Acceptance.

In permitting both the voicemail and the consumer's testimony as to what the voicemail said to go before a jury, the court sums it up:

Plaintiff's testimony as to the content of the voicemail message is not hearsay. As the Court also finds that Plaintiff is entitled to present secondary evidence of the message under [the Rules], Plaintiff may testify as to the message as she heard it. As such, Plaintiff possesses admissible evidence which creates a genuine issue of material fact as to whether [Asset Acceptance] left an abusive voicemail in violation of the FDCPA.

The Ruling

When a statement made by a debt collector like Asset Acceptance is, in and of itself, a violation of the FDCPA, hearsay rules will not operate to keep the statement away from a jury.

The Analysis

The facts as alleged by the consumer are very egregious. It's not all that often a debt collector in 2010 (when the voicemail was recorded) will be so brazen to actually record a voicemail calling a consumer a "fat motherfucker." But, when debt collection companies like Asset Acceptance permit cultures of greed and abuse to permeate their collection floors, it's no wonder these facts are alleged to have happened. Moreover, Asset Acceptance's craven attempt to avoid liability by attempting to contort law underscores just what kind of culture it's actually harboring.

The Cite

Walker v Asset Acceptance, Civ. A. No. 10-4279 (D.N.J. July 10, 2012) (Rodriguez, J.)

Read the court's opinion about [Asset Acceptance](#).

[If you are a PA or NJ consumer and Asset Acceptance is bothering, harassing, or abusing you, call us at 610-616-5303 or 856-861-4241 or click this link to contact us.](#)

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