



District of Massachusetts Enjoins Massachusetts' Attorney General from Prohibiting Collection Calls

Consumer Finance Litigation
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On May 6, 2020, Judge Richard G. Stearns of the U.S. District Court for the District of Massachusetts granted a temporary restraining order ("TRO") and preliminary injunction sought by ACA International ("ACA") against Massachusetts Attorney General Maura Healey. The TRO and preliminary injunction prohibit the Attorney General's Office from enforcing specific provisions of 940 CMR 35.00, an emergency regulation issued in response to the COVID-19 pandemic.

On March 27, 2020, Attorney General Healy issued 940 CMR 35.00, *Unfair and Deceptive Debt Collection Practices During the State of Emergency Caused by COVID-19*, which prohibits unfair or deceptive acts in trade or commerce. 940 CMR 35.00 restricts communications by financial institutions, lenders, and debt collectors with consumers for 90 days after the issuance of the regulation or until the conclusion of the declared state of emergency. Notably, 940 CMR 35.03-35.04 prevents creditors and debt collectors from, among other things, initiating, filing, or threatening to file any new collection lawsuits; visiting consumers at their homes, places of work, or public spaces; repossessing vehicles; making unsolicited debt collections calls; and garnishing wages.

In the ACA's challenge of the Attorney General's regulation, the ACA disputed the validity of Section 35.04, which barred debt collectors from communicating via telephone with debtors about their debts, on the grounds of free speech. Specifically, the ACA categorized Section 35.04 as a content-based speech restriction

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because it did not prohibit debt collectors from calling debtors regarding debts owed under mortgages or leases or about rescheduling court appearances. Accordingly, the ACA argued that the only way to determine whether a communication would violate Section 35.04 would be to evaluate its content and the party initiating it. Likewise, the ACA also challenged Section 35.03, which barred creditors and debt collectors from filing new collection lawsuits and acting upon legal or equitable remedies, contending that the section violated state law separation of powers. The ACA alleged that the Attorney General's regulation impermissibly interfered with the judiciary's basic functions by restricting a court's inherent power to permit the filing of new petitions, deciding cases on a unilateral basis, and making it illegal for creditors and debt collectors to seek relief.

In the District of Massachusetts' May 6th order, Judge Stearns agreed with the ACA and enjoined Attorney General Healey from (i) enforcing the entirety of 940 CMR 35.04's ban on telephonic communications initiated by debt collectors; and (ii) enforcing 940 CMR 35.03, to the extent that it barred debt collectors from bringing enforcement actions in court. In his reasoning, Judge Stearns noted that Section 35.04 did not fully protect a consumer from debt collection efforts as "mortgagors, landlords, and nonprofit entities, among others are excepted from the ban — rather [the ban] singles out one group debt collectors and imposes a blanket suppression order on their ability to use what they believe is their most effective means of communication, the telephone." In reference to Section 35.03's ban on the initiation of lawsuits, Judge Stearns added that "the mere fact of an emergency does not increase constitutional power, nor diminish constitutional restrictions."

The final implications of this litigation could have a long lasting impact. If the court's final ruling in this matter remains consistent with its analysis of the ACA's motion for a TRO and preliminary injunction, other states may reconsider adopting similar restrictions on creditors and debt collectors during their respective COVID-19 state of emergencies. We will continue to monitor this issue and will update the blog accordingly.

A copy of the order can be found [here](#).

A copy of 940 CMR 35.00 can be found [here](#).

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