

## Recent Court Decision Regarding Reinvestigations

By: Henry R. Chalmers

A recent decision out of the Eastern District of Pennsylvania provides a timely and in depth analysis of reinvestigation requirements for CRAs. *Norman v. Trans Union, LLC*, 2020 WL 4735538 (E.D. Pa. August 14, 2020).

The case grows out of a home security company's phone call to a consumer, Mr. Norman, hoping to sell him a home security system. The company asked to obtain Norman's credit report, and despite his refusal to grant permission, the company pulled one from Trans Union anyway. As a result, Trans Union recorded on Norman's credit file that the home security company made a "regular inquiry" for his credit, which arguably had the effect of lowering Norman's credit score. Norman twice demanded that Trans Union remove the record from his file, arguing that the home security company lacked a permissible purpose to order his report. When Trans Union declined to do so, Norman sued on behalf of a putative class.

In opposing class certification, Trans Union argued that its refusal to reinvestigate Norman's dispute did not violate any duty imposed by the FCRA because his file accurately noted the home security company's inquiry. More importantly, Trans Union argued that inaccuracy is a necessary element of a 1681i claim, suggesting that, even if a duty to reinvestigate had been triggered, any failure to conduct one could not give rise to a legal claim because the disputed information was not inaccurate.

A number of other courts have ruled that a consumer fails to state a claim for violation of the FCRA's reinvestigation requirement--15 U.S.C. § 1681i (FCRA Section 611)--if the disputed record was in fact accurate and complete. This includes a case out of the same court last year, *Berkery v. Equifax Info. Servs., LLC* 2019 WL 1958567 (E.D. Pa. 2019), in which the court noted that "The 'weight of authority in other circuits indicates that without a showing that the reported information was in fact inaccurate, a claim brought under § 1681i must fail.'" *Id.* (citing *Schweiter v. Equifax Info. Solutions LLC* 441 Fed. App'x 896, 904 n.9 (3rd Cir. 2011)).

The *Norman* court, however, found Trans Union to be making a slightly different argument. According to the court, Trans Union argued that "its reinvestigation obligation is not triggered unless the consumer first makes a preliminary showing that the disputed item of information is inaccurate." It is this position with which the Court disagreed.

The court noted that section 1681i(a) requires only that the consumer dispute the accuracy of an item of information in his file, and that it does not require the consumer also to show that the information is inaccurate in order to trigger the reinvestigation obligation. The court then distinguished the above-referenced cases because in each "the consumer reporting agency had conducted *some* reinvestigation, and the question for the court was whether that reinvestigation was reasonable."

In essence, the court found that, if a CRA fails to initiate a reinvestigation in response to a consumer disputing the accuracy of information in his file, then the CRA can be found liable under section 1681i, even if the disputed information was accurate:

[W]here an agency fails in the first instance to reinvestigate in response to a consumer's dispute, it would be inconsistent with the statute for a court to then require the consumer to make a threshold showing of inaccuracy, when the statute provides that the duty to reinvestigate lies with the reporting agency. Granting the agency the freedom to decline to conduct any reinvestigation after a consumer had lodged an appropriate dispute would frustrate the purpose of the reinvestigation requirement.

CRAs may wish to review this case with their legal counsel.\*

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\*The court addressed a number of other important topics in its decision that could have an impact on how CRAs treat requests for credit reports and reinvestigations of disputes.