

Verdicts



Michael E. Sievers, J.D.

**Jury's \$10.201 million verdict for abusive debt collection practices vindicates Albuquerque man Christensen v. Financial Credit Service,
1:2015-CV-00134
U.S. District Court for the District of New Mexico**

An Albuquerque jury recently sent a strong message to abusive debt collectors who line their pockets by preying on the fears of ordinary people struggling to get by. The jurors rendered a \$10,201,000 verdict against Financial Credit Service, Inc., d/b/a Asset Recovery Associates ("FCS"), whose abusive tactics in attempting to collect a supposed debt wiped out a man's modest retirement savings. The verdict is now under fire from the company's lawyers, despite the fact that FCS never filed an answer and was absent from trial while the plaintiff's lawyer presented a case for damages. FCS, an Illinois corporation, slithered away after clearing out the man's bank account and did not file an answer to his complaint for violations of the Fair

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Debt Collection Practices Act. Nick Mattison, an associate of Feferman & Warren in Albuquerque, filed the claims in February 2015 in federal court. A default was entered in April

after the deadline for FCS to file an answer passed without a peep from the company whose representatives threatened and terrorized Paul Christensen to the point that he agreed to give the company his debit card information to pay a debt they claimed he owed.

Mattison filed a motion for default judgment and an evidentiary hearing on damages, and the court entered default judgment on liability in January of this year. Judge Kenneth Gonzales referred the case to Magistrate Judge Laura Fashing for a jury trial on damages, which took place over the course of one day, April 21. No one showed up on behalf of the company to testify or to defend the claims.

A debt collector pursuing a debt is required to comply with the Fair Debt Collection Practices Act, a federal law that, among other things:

- Prohibits conduct that results in harassment, oppression or abuse of the consumer;
- Requires a debt collector, when attempting to collect a debt through a telephone call, to meaningfully disclose the identity of the caller;
- Prohibits misrepresentations about the character or legal status of a debt;
- Prohibits the debt collector from threatening to take actions that the debt collector does not intend to take or that would be illegal;
- Prohibits the use of deceptive means to collect information about a consumer or to collect a debt;
- Prohibits the use of unfair or unconscionable means to attempt to collect a debt.

15 U.S.C. §§ 1692d, 1692e, 1692f. Mattison said the evidence at trial demonstrated that FCS had a system where the initial caller would confirm the identity of the consumer by stating personal information about the consumer, such as Social Security numbers and addresses. Once the consumer's identity was confirmed, the call would transfer to a different person with FCS who proceeded to terrorize the consumer.

Mr. Christensen received the call from FCS in May 2014. The initial caller confirmed his identity and passed him on to the heavy hitter, who kept Mr. Christensen on the line for an estimated 15 minutes, threatening to get a judgment against him and stating that someone would be pounding on his door to collect.

After FCS succeeded in tying Mr. Christensen's stomach up in knots, they offered him a glimmer of hope, a "way out," meaning that he could satisfy the supposed debt and pay less than half of the full amount. All he had to do was turn over his debit card information.

Mr. Christensen, being proud of the fact that he was debt free, was shocked and surprised at the phone call. He thought it might be possible that he incurred the credit card debt nearly 30 years before the phone call. The callers never identified themselves as being with FCS. But under the stress of the confrontation, he succumbed and gave them the information. FCS withdrew \$2,875.75 from his account, or 80 percent of his net worth.

Before the call, Mr. Christensen had been saving what he could from Social Security benefits and a modest pension, and planned to use the money in the summer of 2014 for a badly

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needed dental procedure. With his money gone, he had to wait another two years with worn-down bottom teeth, which was uncomfortable and limited the types of food he could eat. The condition worsened during those two years, and got so bad that Mr. Christensen removed a tooth with a pair of tweezers.

Just as disturbing as the methods used to collect was the fact that the company never actually provided evidence that the debt was legitimate or that it owned the debt.

Mattison said when he took on the case, he looked into the company and discovered that his firm had brought cases against it in the past and that it had a prolific record of collecting money in the way that it collected from Mr. Christensen. Just as disturbing as the methods used to collect was the fact that the company never actually provided evidence that the debt was legitimate or that it owned the debt.

"We weren't able to come up with any indication that it was legitimate at all," Mattison said.

In addition to the claims for violations of the FD CPA, Mattison filed claims for fraud, violations of the New Mexico Unfair Practices Act, and tortious debt collection.

The jury voiced its outrage at company's tactics in the form of a verdict: \$200,000 in actual damages, \$1,000 in statutory damages, and \$10 million in punitive damages. The actual damages included loss of money; out-of-pocket expenses, pain and suffering, and personal humiliation, embarrassment, mental anguish, emotional distress, aggravation, and frustration. The Magistrate Judge

recommended that the court adopt the jury's award of compensatory and statutory damages, but directed the parties to file briefs regarding whether the punitive damages award was unconstitutionally excessive.

Even at the time of the verdict, Mr. Christensen's chances of collecting

were uncertain, given the company's absence from the case. However, Mattison noted that FCS had not defaulted

in past cases, and the company is still listed as an active corporation in Illinois. "Sometimes these are just pure scam artists and you can't even find the business," Mattison said.

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"These guys were a little different in that they seemingly did business all over the country." Although there was no attorney on the other side to present evidence or object to evidence, Mattison said he treated the trial like any other and followed the same processes for introducing evidence. "I think the judge would have shut us down if we had gone out of bounds," Mattison said, adding that Judge Fashing said she expected

compliance with the Rules of Evidence despite the fact that no opposing attorney was present to object. "We did our normal process and we tried to play it straight."

Mattison said his client was very surprised about the amount of the verdict. "It's nice for him. He's turning 71, living on his own. This whole thing was so upsetting to him. To have a jury come back and deliver a verdict like this – it meant a lot to him," Mattison said.

Mattison said although it is uncertain whether his client will see the \$10.201 million he was awarded, the verdict vindicated his client's right to be treated with respect and sent a message to other debt collectors who use similar tactics. "We want to be absolutely clear to folks in this business that they have to follow the rules," Mattison said. "They are not difficult rules to follow."

In the weeks since the verdict was handed down, FCS has finally made an appearance in the lawsuit, with its attorneys filing a motion to vacate the default judgment and objections to the Magistrate Judge's

report and recommendation, arguing for the first time that the plaintiff failed to state plausible claims for relief on all of the counts in the complaint. It remains to be seen whether FCS will pay a dime for the conduct alleged by Mr. Christensen, but the jury's decision should serve

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