

***FCRA Focus* — Tenant Tales and Reseller Realities: Inside the FCRA Arena with Eric Ellman**

Hosts: Kim Phan and Dave Gettings

Guest: Eric Ellman

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Kim Phan:

Welcome back, everyone, to the [FCRA Focus](#) podcast. I'm here today with my co-host, Dave Gettings, and our special guest, Eric Ellman, who is president of the National Consumer Reporting Association. However, before we jump into what is expected to be a riveting FCRA discussion, let me remind you to visit and subscribe to our blogs, [TroutmanFinancialServices.com](#) and [ConsumerFinancialServicesLawMonitor.com](#). And while you're at it, head on over to [Troutman.com](#) and add yourself to our Consumer Financial Services' email list that allows you to get invitations to our webinars, podcasts, and receive our alerts and advisories that we send out from time to time.

While we make lots of free content available to our listeners, if you cannot get enough FCRA, I would encourage you to explore our subscription-based tracker service, which provides information on federal and state regulatory and legislative developments, as well as summaries of FCRA case law on a weekly basis, and a monthly roundtable discussion. These tracker services can also cover topics including debt collection and privacy and data security.

Now, jumping right in, Dave, would you like to introduce our guest?

Dave Gettings:

Yeah, Kim, you said this was going to be a riveting discussion of the FCRA. Isn't that redundant because all discussions of the FCRA are riveting? I just want to make sure we're clear on that.

Kim Phan:

Some of them can be challenging and frustrating. Let's put it that way.

Dave Gettings:

Your point. All right. With us today is our bow-tie-wearing friend, Eric Ellman. I wish y'all could see him on video. It is yellow and red. I thought it was strawberries. But apparently, it's just something red. Eric is the president of the National Consumer Reporting Association, otherwise known as NCRA, a national trade organization of consumer reporting agencies and associated professionals.

He needs no introduction. But prior to his recent appointment as the head of NCRA, Eric spent 27 years at the Consumer Data Industry Association, also otherwise known as an acronym, CDIA. And there are a few people who can match Eric's depth and breadth of consumer

reporting knowledge besides, of course, your podcast hosts. We are very happy to have you with us today, Eric. And thanks for being here.

Eric Ellman:

Thank you very much, Dave and Kim. I appreciate it. And thank you for a sartorial shout-out. Years ago, maybe in the early two thousands, USA Today did a profile on me and my work on behalf of the consumer reporting industry across the country, but particularly focused on some work that I was doing at the time in the Montana legislature. And the reporter for the story referred to me as the bow-tied warrior. My mom was thrilled and the moniker has stuck. And not only am I excited for another riveting conversation about FCRA, who could not get enough talking about the FCRA, but I'm also hoping to bring the bow tie back into style. I would encourage all of your listeners to adopt that look.

Dave Gettings:

Well, as you were getting written up in USA Today in early 2000s, I was playing intramural sports in college. I don't know if that makes you feel better or worse, but certainly seasoned. So, thank you.

Eric Ellman:

It's all good. It's all good.

Kim Phan:

Well, I have always admired a bow-tie-wearing man. I wholeheartedly support the return of that fashion trend.

Eric Ellman:

Excellent. I would suggest maybe a sartorial podcast after this.

Dave Gettings:

I actually bought, I think it's called a bolo, one of those Texas ties, for a gala I went to a couple weeks ago, and it does give you some confidence walking around with a bolo. I can't imagine what a bow tie is like.

Kim Phan:

Did it have a tiny little skull on it?

Dave Gettings:

It did actually. I guess it was a steer head. You can tell how little I wear bolos that I say, I guess it was a steer head when – I'm sure it was very obvious it was a steer head to people that wear them consistently.

Eric Ellman:

Very nice. Well, the next time I go back to Montana with my warrior bow tie, you can bring your steer head bolo tie, and we will have a great time.

Dave Gettings:

We will.

Kim Phan:

Well, Eric, could you diverge a little bit from the sartorial advice, and tell us a little bit more about the organization that you're now heading up, the National Consumer Reporting Association? A little bit of a vague title. My understanding is that rather than attempting to address the wide variety of consumer reports that are available in the marketplace, your members are more narrowly focused. Do you want to elaborate on that? Tell our audience where and why to come to the NCRA?

Eric Ellman:

Yeah, of course, happy to do that. The National Consumer Reporting Association, NCRA, has been around for 15 or 20 years or so. I've been the president of the organization just for a couple of months, and I am having an absolute blast. This is an amazing job working with some really great people. NCRA is made up primarily of consumer reporting agencies that fall into two different categories of CRAs that are critical to the American economy.

First, we represent mortgage reporting resellers, which are companies that buy credit information from the nationwide credit reporting agencies and oftentimes de-dupe that information and sell it into the mortgage lending process, primarily onto the secondary market for mortgage loans, but others as well. And our members also offer additional services like flood inspection services and other things like that.

The second important category of members are tenant screening companies, and these are companies that use credit, criminal and eviction history information to sell to landlords and property managers to help ease the process to get consumers into tenancy, whether it's an apartment, or a home rental, or things like that. The thread that ties all of our members together is that they literally and figuratively help open doors to consumers for their housing needs, either through the mortgage buying process, the home buying process, or through the tenant leasing process.

And in fact, we launched a new logo that better reflects the mission and vision of our association, which does in fact open doors for consumers to homes, tenant and home buying. And it also pays homage to a seal, which reflects the value and the integrity of the reliable data that our members provide to the mortgage process and to the tenant screening process. At a very high level, those are our members.

This is also a great week to be recording this conversation because it also happens to be Small Business Week, National Small Business Week. And most of our members fit every definition, statutory, regulatory, and otherwise, of a small business. Some of our members are on their third or fourth generation of ownership, have been in the family for decades, if not for centuries, or at least a century. Those are our members, and I'm honored and thrilled to be representing.

Dave Gettings:

Eric, let's deal with one of the areas you talked about first, tenant screening. One of the goals of the podcast is often to help listeners sort of cliché, but see around corners a little bit to understand the issues the industry is facing and what they may face in the future if they haven't already seen it. Given your pulse on your membership, what are some of the most pressing issues you've seen your tenant screening members face in recent months, or 2024, or something like that?

Eric Ellman:

Sure. Thank you for the question, Dave. Our tenant screening members work with their customers who are landlords, property managers, public housing authorities to keep people and properties safe. And that means a number of things. That means doing credit checks on prospective tenants to make sure that they can pay the rent. Because if they can't pay the rent, ultimately, that oftentimes leads to a vacancy or an eviction. And who has to pay for that, but the other tenants in the building?

On the safety side of the ledger, our members provide eviction and criminal history information, again, to the landlords, property managers, and public housing authorities to focus on a public safety perspective to keep buildings and other occupants in the building safe. For example, tenants in many cases probably don't want to live near an arsonist or live in the same building perhaps as a sexual predator. That kind of information is relevant for the screening process to make sure that buildings, the people in the buildings are stable, and that they pay rent on time, and that they don't have the kinds of offenses that could pose jeopardy to other people in the building.

Dave Gettings:

And what kind of challenges are they facing in exercising both of those roles? Are they seeing increased litigation? Are they seeing increased pressure from regulators? What's kind of the pulse you're seeing?

Eric Ellman:

All of the above, Dave. There is an increase, particularly at the state level, in legislation, statutes, and rulemaking to limit the ability of landlords, property managers, to look at criminal or eviction history for prospective tenants. And that is a problem, in part, because as we've seen from some data provided by a landlord in Seattle a few years ago, relevant to some tenant screening litigation, that when Seattle prohibited or dramatically limited the ability of a landlord to look at prior criminal history information, there was a significant spike in 911 calls to this particular apartment building, and a significant increase in maintenance costs, elevated cost for increased security by the landlord.

And generally speaking, when a landlord or property manager loses the ability to get a full view of an applicant's criminal or eviction history, it is the other people in the building that tend to suffer from that. So we're seeing increased litigation by plaintiffs, attorneys who are suing landlords and tenant screening companies for alleged violations of law for using this information, as well as rules and statutes to prohibit this kind of information.

Kim Phan:

Well, Eric, it sounds like there's a lot of challenges that are being faced by the tenant screening industry right now. But our understanding from your prior comments is that they're only one part of your membership. What about resellers? Are they experiencing similar challenges, unique challenges to their role in the consumer reporting ecosystem?

Eric Ellman:

Yeah, absolutely. Our mortgage reporting members are suffering from several external challenges, both macroeconomic and legal. And I'll start with the macroeconomic. As we certainly know, mortgage rates have been pretty high for the last several years, and the home-buying industry has really suffered as a result. And when people are buying fewer homes and when mortgages are so high, that means that mortgage screening services, mortgage reporting services are being used far less. That just means that the ability of our members to step up and offer services to consumers and to customers, to business customers, has been shrinking.

The second and more critical, particularly for this podcast, external factor is litigation. And over the years, several plaintiffs' attorneys have really latched on to the theory that resellers could be sued for alleged inaccurate information that the resellers did not create themselves but came to that reseller from another consumer reporting agency, oftentimes the nationwide credit bureaus, but sometimes other consumer reporting agencies as well. We have macroeconomic forces that have been pushing down on our reseller members, as well as legal complications.

Dave Gettings:

Yeah, Eric, it sounds like you're aligned with one of my life goals, which is to make sure courts understand that even though resellers may have FCRA requirements for reasonable procedures, what is reasonable for a reseller is and should be very different than what is reasonable for a what we'll call source CRA because of the different roles they fit in the market.

They have different obligations under 1681i because of those different roles. Their customers have different expectations. There's been a real current, I think, in litigation to try to hold resellers to the same standards as source CRAs when they perform very, very functionally different roles in the market. Not sure if you're seeing that.

Eric Ellman:

Yeah, I agree. Resellers are treated differently under the Fair Credit Reporting Act, and they have a special and unique definition under 603(u), which is different than definitions for, say, nationwide specialty consumer reporting under 603(x) or nationwide consumer reporting agencies under 603(p). And we could geek out on this all day long. And we're better to do that on an FCRA podcast. But for the sake of sparing the listeners the boredom, I'll get back to your question.

The reseller's obligation under the FCRA should be very limited, and that it should only be required to accurately report the information that has been provided to them from the reporting or, as you said, the source consumer reporting agency. However, plaintiffs' attorneys have been exploiting an ambiguity in the Fair Credit Reporting Act and essentially double-dipping on liability where they are suing not just the wide consumer reporting agencies or the source CRA, and they may not always be the same, but they are also finding fodder in suing the resellers who are merely taking the information provided to them from the source CRA and turning that information around to their user.

Unfortunately, plaintiffs' attorneys are looking at our reseller members as the weak and the young gazelles on the herd of the Serengeti and are going after them because they are, unfortunately, an easier target, are less willing to fight, less able to fight, and more easily willing to settle to avoid taking the case to a fact-finding trial.

Kim Phan:

Well, we certainly don't want their heads to start showing up on bolo ties. Presumably –

Dave Gettings:

Full circle, Kim. Nice job.

Kim Phan:

Presumably, this is not a fight that's only playing out in the courts. In your role as the head of a national trade association for the industry, are there policy-level lobbying efforts that you're engaged in to try to either educate or change some of this?

Eric Ellman:

Yes, we have been taking our case to Capitol Hill, and we believe that it is imperative for Congress to correct this ambiguity that should be incorporated into the FCRA. And we are hoping that members of Congress will introduce and pass legislation to ultimately correct a

wrong that should not have existed in the FCRA. But unfortunately, we do have, like I said, plaintiffs' attorneys who are exploiting this process. And what ultimately happens is that if the law were changed, resellers still have accuracy obligations under the FCRA. And no one's suggesting that we shouldn't because the resellers should return to the roots of the statute to merely accurately convey the information as it was provided to them and also to make sure that our reseller, small businesses are protected for liability.

And consumers are going to still be protected because they are still going to wind up suing the source CRA anyway, again, to prevent the double-dipping. Of course, if there is liability, there should be liability, but it should only be available once. And you shouldn't get an opportunity to double-dip. We are hoping that Congress will see the wisdom in that argument. And we hope that Congress will amend the FCRA accordingly.

Kim Phan:

Well, we've been very doom and gloom so far on this podcast. Are there opportunities that you see for your members coming up around the corner? Maybe artificial intelligence, other technologies, things that folks can see a light at the end of the tunnel as opposed to some of these challenges?

Eric Ellman:

Yeah, of course. The old adage is that when you see a light at the end of the tunnel, is that, in fact, the light that you're coming out of, or is that the train that is heading in your direction? And I guess appropriate for the 200th anniversary of the founding of our republic, there was a famous comment where I think it was Ben Franklin at the Constitutional Convention in Philadelphia was looking at a half sun on the back of George Washington's chair and said, "I wonder if that sun is rising or setting." I might be getting the characters incorrect, and I apologize to you, history geeks, for perhaps mischaracterizing it, but the theme is accurate.

I think that the future still holds a lot of promise for our mortgage reporting and our tenant screening companies. People will always need places to live. They will always need an apartment. They will always need a house. And there will always be a need to accurately, reliably, legally screen these people to make sure that there is an ability to repay the loan, to repay the rent, to protect the safety and security of people in the building through credit or eviction screens. There will always be that need.

I think technology will show us a lot of promise to make sure that the screening is done fairly, and efficiently, and legally. And I feel pretty good about where our members stand in the economy going forward. Now, that being said, there are significant economic challenges across the economy. We see that all day long in our news feeds. But I feel overall, all signs are pointing to growth for our members. And I'm excited to be part of that and, on that curve, with our members.

Dave Gettings:

Well, thanks Eric. Really appreciate it. Appreciate your experience, appreciate your perspective you bring, appreciate the work you're doing.

Eric Ellman:

I just want to say thank you to Kim, and Dave, and to the Troutman team for having me on. I am friends with both of you. I am friends with many other Troutman people. I am a big fan of the work that your firm does. And you work really hard on behalf of your clients. You produce so much great work in the FCRA space. I get a lot out of it. I know our members get a lot out of it. And I appreciate everything that you guys do.

Dave Gettings:

Well, thanks, Eric. Really appreciate it. I think that about wraps it up in terms of our recap, what we're seeing in the tenant screening and reseller space. We hope a lot of people join the fight to work on the law with respect to resellers and understand what it means to be reasonable from a reseller's perspective. I know I've had a lot of good conversations with people throughout the years on that topic and a lot of people in the space feel really strongly about it.

I would like to thank everyone for listening to the podcast today. And as Kim said in the intro, don't forget to visit our blogs, [ConsumerFinancialServicesLawMonitor.com](https://www.consumerfinancialserviceslawmonitor.com), and [TroutmanFinancialServices.com](https://www.troutmanfinancialservices.com). And as always, please subscribe to our podcast at all of your favorite podcasting channels. Thanks for listening. Thanks for being here, Eric.

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