

Ninth Circuit Affirms Summary Judgment for CRA in Seven-Year Look-Back Case

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On February 10, the Ninth Circuit affirmed a Central District of California decision, finding that a consumer reporting agency (CRA) did not violate the Fair Credit Reporting Act (FCRA) when it reported a criminal record with a charge date that antedated the report by more than seven years. The case is *Moran v. Screening Pros, LLC*, No. 20-55908 (9th Cir. Feb. 10, 2022), and a copy of the opinion is available [here](#).

Background

In February 2010, the plaintiff applied for housing at a low-income housing development. The housing development used a CRA to prepare a background check, which included three dismissed criminal charges and a conviction. At the time of report issuance, the conviction and two dismissed charges were filed in 2006, but the oldest dismissed charge was filed in 2000 and dismissed in 2004. The CRA relied on the 2004 dismissal date to report the charge, which was within the statute's seven-year look-back period.

The plaintiff argued that including the 2000 charge violated Sections 1681c(a), 1681e, and 1681i of the FCRA. The appeal focused on Section 1681c(a), which prohibits a CRA from reporting any "adverse item of information, other than records of convictions of crimes[,] which antedate the report by more than seven years." The plaintiff argued the seven-year period ran from the date of the charge, while the defendant CRA argued that industry standards at the time of the report measured the seven-year period from the date of dismissal.

Previous Appeal (2012 through 2019)

At the outset of the case, the District Court granted the CRA's motion to dismiss. The plaintiff appealed that decision in November 2012, and the Ninth Circuit reversed, finding that the allegation that inclusion of the 2000 charge fell outside the FCRA's permissible seven-year window sufficiently stated a claim. Thus, the case was permitted to proceed even though the panel majority noted that Section 1681c(a)(5) "does not specifically state the date that triggers the reporting window." The majority panel reasoned that "the plain language of the statute suggests that for a criminal charge, the date of entry begins the seven-year window" because "the statute's use of 'antedates' connects the seven-year window directly to the adverse event itself," and the charge constitutes an adverse event upon its entry.

District Court Grants Summary Judgment (2020)

After the case proceeded, the parties filed cross motions for summary judgment. The District Court ultimately granted summary judgment to the defendant on all FCRA claims and remanded the remaining state law claims to state court. The District Court reasoned that the defendant's actions were neither willful nor negligent because the statutory interpretation was a matter of first impression. Further, none of the information included in the report was actually inaccurate — indeed, the charges and convictions had all occurred, and the dates were properly reported. The District Court also looked to Federal Trade Commission (FTC) guidance at the time of the reporting and found that the only relevant guidance “asserted that the seven-year reporting period ran from the date of disposition.” The District Court relied on the testimony of the CRA's expert that tended “to prove that the statute had been interpreted for decades to permit the report of a dismissal of charges occurring within seven years of the report.”

The Decision on Appeal (2022)

On appeal, the Ninth Circuit addressed the question of whether the defendant “was negligent or willful in adopting an interpretation of section 1681c(a)(5), which we subsequently held was erroneous, that permitted the reporting of a dismissal of a charge that had been filed more than seven years from the date of the report, where the dismissal occurred within seven years of the report.”

The plaintiff argued that because the Ninth Circuit found the defendant's interpretation of Section 1681c(a)(5) to be incorrect in the initial appeal, there must be a negligent violation of the FCRA. However, the Ninth Circuit rejected this argument, finding that its prior holding did not show that the defendant's interpretation of the state was *objectively unreasonable*.

The Ninth Circuit also rejected the plaintiff's argument that the 1998 amendment to the FCRA removed the phrase “the date of disposition” from the prior version of Section 1681c(a)(5). The Ninth Circuit again disagreed, reasoning that although that language was removed, Congress did not replace that phrase with another reference date.

The plaintiff further argued that it was reckless for the defendant to rely on outdated 1990 FTC commentary. However, the Ninth Circuit disposed of this argument as well, reasoning that “it was the only guidance from the FTC on this issue in 2010” at the time the report was issued. That guidance indicated that the seven-year reporting period ran from the date of disposition of a criminal charge.

Finally, the Ninth Circuit noted that “whether Defendant correctly interpreted section 1681c(a)(5) to permit the reporting of a criminal charge that was filed outside of, but dismissed within, the statute's seven-year window arose as a matter of first impression during this lawsuit.” Taking into account industry standards, relevant guidance at the time of the reporting, and expert testimony, the Ninth Circuit held that neither the court nor any reasonable fact finder could conclude that the reporting of the 2000 charge was negligent, much less willful.

Although the decision took over 10 years to obtain, it provides helpful guidance on what courts will consider when determining the reasonableness of a company's FCRA interpretation. It also further solidifies the appropriate date from which to calculate the seven-year reporting window.

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