

New York State Debt Collection Laws

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Mel S. Harris & Associates, LLC (“MSH”), is a financial services litigation law firm located in the heart of the New York City Financial District. MSH specializes in creditors’ rights, with a primary practice of consumer debt collection dedicated to providing comprehensive collection and litigation services. In addition to MSH’s consumer debt collection services, MSH has a recognized expertise in creditors’ rights defense litigation and compliance, specializing in individual and class actions brought under the FDCPA, FCRA, TCPA, and all related consumer torts, associated state consumer protection laws, and administrative/regulatory actions. MSH serves as Regional Defense Counsel for Travelers Insurance, while also managing the nationwide litigation for several collection agencies and debt buyers. [Scott E. Wortman, Esq.](#), is a Partner at MSH, and specializes in creditors’ rights defense litigation and compliance.

Statute of Limitations

A. Open Ended Accounts and Written Contracts:

With respect to the timeliness of a plaintiff’s action in New York, a collection matter based on an open ended or written contract must be commenced within six years of the accrual of the claim. See [CPLR § 213](#). However, it should be noted that this does not apply to contracts that fall under Article 2 of the UCC or Article 36-B of NY Gen. Bus. Law. Since the introduction of the CPLR, there was general consensus amongst the courts that contractual choice of law provisions only apply to substantive issues, and that NY follows its own procedural laws. Thus, irrespective of any contractual choice of law provision, or the location of the creditor or any successor in interest, NY courts followed their own procedural rules, specifically applying the six-year statutory commencement period to all collection actions properly filed in NY. However, on 4/29/2010, the NY State Court of Appeals reached a landmark decision in [Portfolio Recovery Associates, LLC v. King](#), 14 N.Y.3d 410, 927 N.E.2d 1059, 901 N.Y.S.2d 575 (2010), holding that [CPLR § 202](#) requires that a cause of action must be timely under the limitation periods of both NY and the jurisdiction where the cause of action accrued. Also, if there was any question as to the retroactivity of *King* in applying a statute of limitations analysis, a recently decided Federal case upheld the implied retroactivity determination of *King*. See [Diaz v. Portfolio Recovery Associates, LLC](#), No. 10 CV 3920, Slip Copy, 2012 WL 661456 (E.D.N.Y. Feb. 28, 2012).

B. Judgments

A money judgment obtained in NY is enforceable for a period of 20 years from the greater of (1) the judgment entry date, or (2) the date of any post judgment payments. See [CPLR § 211\(b\)](#). Though it should be noted that, in regards to a judgment lien against real property, unless a judgment renewal

action is brought under [CPLR § 5014](#) (thereby closing any gap in the continuity of the full 20 year lien), enforcement must be accomplished within 10 years from the judgment entry date.

C. Foreign Judgments:

For any type of foreign judgment, once the judgment has been properly registered in NY, the courts will typically use the statute of limitations of NY, rather than the statute of limitations of the foreign state. This is because, once registration in NY is official, the judgment is expressly treated as if it were a NY judgment. In fact, this has applied in cases where the statute of limitations in the foreign state had already run. See, [Roche v McDonald](#), 275 US 449, 452-55 [1928]; [Cadle Co. v Tri-Angle Assocs.](#), 18 AD3d 100, 103 (1 Dept 2005).

Bad Check Laws and Civil Penalties

NY State law allows for civil remedies for the recipient of a bad check. Under the NY [General Obligations Law, § 11-104.2](#), a court may award the recipient of a bad check the lesser of an amount up to twice the face value amount of the check or \$750.00.

General Garnishment Exemptions

A. Personal Property

[CPLR § 5205](#) is the primary guide for personal property exempt from application to the satisfaction of money judgments. Under [CPLR § 5222](#) there are statutory exemptions derived from Federal laws, including [20 CFR 404.970 SSR 79-4](#), and state laws, such as [Social Services Law, § 137](#), that exempt various personal property based on the source of the property. Historically, it has been up to the judgment debtor to maintain and assert an exemption, but similarly, it is up to the judgment creditor to provide notice of possible exemptions to the judgment debtor. See *CPLR* §§ [5222](#), [5232](#), and [5234](#).

In 2008, the NY State legislature added [CPLR § 5222-a](#), and amended various other sections, which expanded on the protections afforded to judgment debtors, while making it vastly far more onerous for judgment creditors to enforce a judgment against a judgment debtor's personal property. These measures are known as the [Exempt Income Protection Act](#); however, notwithstanding the name, this Act protects far more than a judgment debtor's "exempt" property. Without going into all the details, I will breakdown some of the more tedious additional requirements.

Under [CPLR § 5205](#), the amendments create an automatic \$2500.00 bank exemption upon a bank's receipt of a restraining notice, if the banking institution received direct deposit or electronic payments reasonably identifiable as statutorily exempt payments (even if the amount is less than \$2500.00, and irrespective of other sources of deposit).

Similar to the new exemptions found within [CPLR § 5205](#), there is a presumption found under [CPLR § 5222](#) that a restraining notice issued pursuant to this section does not apply to the first \$1,716.00 in a judgment debtor's bank account. Please take note that the exemption presumption rose to \$1740.00 on 7/24/2009, and will continue to rise in tandem with the minimum wage. See [CPLR § 5222\(i\)](#). This is

irrespective of the source of the deposit, as now all income deposited in this range is considered exempt from judgment enforcement. Because many people do live paycheck to paycheck, judgment creditors are finding it increasingly difficult to enforce a judgment against a judgment debtor's bank account. However, in the event that a judgment creditor does discover a bank account with monies beyond the statutory exemption, there are further requirements under [CPLR § 5222-a](#) that allow a judgment debtor to file what is known as an [Exemption Claim Form](#) with the bank, which subsequently leads to the bank's release of all funds (notwithstanding whether the funds are actually exempt) within 8 days, unless the judgment creditor files a motion with the court to maintain the restraint prior to the release. Although the judgment creditor may not have possession of any banking records relevant to the proceeding, the burden of proof is on the judgment creditor to establish the amount of funds that are not exempt. Even though a judgment debtor is not penalized for filing an exemption claim form in bad faith, under [CPLR § 5222-a\(g\)](#), if a court determines that a judgment creditor's motion to maintain was filed in "bad faith," the judgment debtor is entitled to costs, fees, and damages up to \$1,000.00.

B. Real Property Exemptions:

Similar to other states, NY has a homestead exemption ranging from \$75,000.00 to \$150,000.00, depending on the location of the real property. It should be noted that this exemption to the satisfaction of a money judgment only applies to a judgment debtor's *principal residence* and can only be claimed on current equity in the real property.

C. Income Exemptions

As found under [CPLR § 5205\(d\)](#), only 10 percent of income from a trust or wages are applicable to a judgment creditor attempting to enforce a judgment through an income execution. Still, there is an exception allowing a higher percentage level of enforcement against income, as a court determines the income to be unnecessary for the reasonable requirements of the judgment debtor and his/her dependents. See CPLR § 5205(d).

Licensing and Bonding

A. Creditor/Lender

A domestic (NY) creditor or registered foreign creditor does not require a license to do business or litigate in the state of NY. However, NY takes the position that, if a non-registered foreign entity or non-resident chooses to take advantage of its court system, if the opposing party makes the appropriate motion, the entity/non-resident will be ordered to pay up-front security costs in the amount of \$200.00 before a suit can move forward. If not, the case will be dismissed outright. See [CPLR § 8501\(a\)](#).

B. Collection Agency

NY does not have any statewide licensure requirement for any collection agency to collect debt within the state of NY. However; both [NY City](#) and the [City of Buffalo](#) require collection agency licensure.

In Buffalo, a license will be issued to a collection agency upon filing an [application](#), and the successful investigation of an applicant by the [Commissioner of Permit and Inspection Services](#). As seen

in the statute and the application itself, there is a fee requirement for each license issued. As well, the statute requires that every applicant for a collection agency license deposit a [bond in the sum of \\$5,000.00](#) payable to the City of Buffalo prior to the issuance of a collection agency license.

Collection agencies doing any business in the City of NY are directly regulated by the NY City Department of Consumer Affairs (“DCA”), and they must comply with burdensome, expensive and potentially oppressive regulations. As defense counsel to various agencies conducting business in NY City, we have repeatedly witnessed the punitive approach DCA takes on, while engaged in an investigation or proceeding against all those involved in consumer collections (especially collection agencies located outside the state).

All businesses that seek to collect personal or household debts from NY City residents must have a [Debt Collection Agency license](#) no matter where the agency is located. From our experience with defending collection agencies throughout the country, it is imperative that all responses on the DCA collection application are 100 percent accurate and candid. Even a bona fide error on an application will be exploited, and if any intent to deceive is determined, there are potentially [severe penalties](#) (“*Any [agency]... found guilty of violating any provision of this subchapter... shall be subject to a penalty of not less than \$700.00 nor more than \$1,000.00 for each violation provide further, however, that any such person found guilty of having acted as a debt collection agency in violation of section 20-490 ... be subject to an additional penalty of \$100.00 for each instance in which contact is made with a consumer in violation of such section. As well, such [agency] may be responsible for the cost of DCA’s investigation*”).

As well, there are fees involved with licensure, and similar to Buffalo, there is a requirement for a surety bond in the amount of \$5,000.00 with DCA as the Certificate Holder.

Some of the requirements for collection agencies issued by DCA for attempting to collect debts from NY City residents are as follows: (1) documentation of the debt issued by the originating creditor; (2) disclosure of consumer’s legal rights regarding statute of limitations on debt payment; (3) various records to be maintained by the collection agency, including but not limited to: (A) separate file for each debt; (B) a copy of all communications with the consumer; (C) detailed record of each payment from a consumer; (D) records related to any debt purchasing by a collection agency; (E) monthly log of all calls made to consumers, listing the date, time and duration of each call, the number called and the name of the person reached during the call; (F) recordings of complete conversations with at least 5percent of all calls made or received by the debt collection agency; (G) a copy of all actions, proceedings or investigations by government agencies, including voluntary settlements; (H) a copy of all policies, training manuals and guides related to how a collector is to interact with a consumer; and (4) call back number in any communication that must be answered by a natural person

C. Debt Buyer

Under [Section 20-493.1 of the NY City Administrative Code](#) and the rules promulgated by DCA on 3/25/2010 (Codified in [Title 6, Chapter 2, Subchapter S of the Rules of the City of New York](#)) the definition of a debt collector includes “a buyer of debt who refers such debt to another for collection or to

an attorney at law for litigation in order to collect such debt.” In direct response to this amendment, there is currently a case before the U.S District Court for the Eastern District of NY (*Berman v. City of NY*, 09-cv-3017) that expressly challenges the right of NY City to require licensure for a passive debt buying entity (debt buyer that outsources all collection duties to other parties). On September 29, 2012, in deciding cross motions for summary judgment, the court was unable to make a ruling as a matter of a law on the issue, and placed the matter on a trial schedule to resolve the “discrete” issues of fact related to NY City licensing requirement imposed on debt buyers. [Berman v. City of NY](#), --- F.Supp.2d ----, 2012 WL 4514407 (E.D.N.Y.). Accordingly, as it stands, a debt buying entity must be licensed by DCA. This remains a hot button issue for the industry at large, and it will be followed closely in the coming months.

In Buffalo, there is no requirement for a passive debt buying entity to be licensed in order to do business through outsourcing collection duties to other parties.

D. Lawyer

Similar to passive debt buying entities, the above mentioned amendments to the NY City Administrative Code specifically included “debt collection attorneys.” Considering attorneys impacted by this Code were already licensed by the State of NY, attorneys specializing in collections also challenged the City’s ostensible abuse of authority in *Berman*, Supra.

On September 29, 2012, the *Berman* court issued a stirring ruling that NY City exceeded its authority in attempting to regulate attorneys under the City’s debt collection law. The ruling stated that “while the Court agrees with defendants that there may well be some activities, like driving a taxi cab or operating a fruit stand, that are so unrelated to the practice of law that they may be regulated by municipalities, even if performed by an attorney, there can be no material factual dispute that the activities Local Law 15 seeks to regulate lie far from this line.” *Id* at 24. In light of this decision, NY City no longer has any authority to compel attorneys into what was a bizarre and idiosyncratic licensing structure.

In Buffalo, attorneys are expressly exempted from any licensing requirements. See Buffalo Code [§ 140-1](#).

E. Lawyer not Licensed to Practice within NY State

Pursuant to [Rule 5.5 of the NY State Rules of Professional Conduct](#), “A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction.” 15 U.S.C. § 1692e(3) also prohibits the false representation that an individual is an attorney. Still, there is a case out of the Northern District of NY holding that it is not a misrepresentation under the FDCPA for an out-of-state attorney to send a dunning letter into NY. [Nichols v. Frederick J. Hanna & Associates, PC](#), 760. F.Supp.2d 275 (N.D.N.Y 2011). Though, it is important to note that defendant in this action did not attempt to institute any legal action in this case, and more importantly, the Second Circuit has not addressed this issue.

Because an out-of-state collection letter on attorney letterhead may potentially be misconstrued by the ubiquitous “least sophisticated consumer” as the possibility of legal action, we recommend that our out-of-state attorney clients utilize licensed attorneys within NY State for any collection matter.

Practices Related to Commercial Collections

In 15 U.S.C § 1692a(3), the term "consumer" means any natural person obligated or allegedly obligated to pay any debt. Appropriately, any collection on a commercial claim is not regulated by the FDCPA. In its definition of "principal creditor," [NY General Business Law § 600](#) specifically refers to consumer claims.

For any information regarding a referral to an attorney specializing in commercial collections, or further insight into some of the nuance and general fee structure for commercial collections/litigation, we highly recommend visiting the website for the [Commercial Law League of America](#).

Practices Related to Consumer Collections

In addition to the FDCPA, consumer collections are regulated by NY State statutes, including, but not limited to the General Business Law, the Judiciary Law, and a range of Court Directives.

A. General Business Law

[NY General Business Law](#) ("GBL") §§ 600-603 closely follows the FDCPA. However, there are some notable distinctions contained in sections [601](#) and [602](#). In subparagraph 10 of section [601](#), there is a requirement that a judgment creditor or their agent that sends more than 50 information subpoenas per month maintains records for 5 years on information subpoenas sent. The records must set forth the grounds for the reasonable belief required under [CPLR § 5224](#). Moreover, [§ 602](#) creates a cause of action for an aggrieved party served with 50 or more subpoenas per month by a creditor who fails to maintain the required records or whose grounds are not deemed reasonable.

The primary NY specific statute used by self-proclaimed consumer attorneys when developing a complaint related to NY based consumer collections is undisputedly [GBL § 349](#). The scope and purpose of GBL § 349 is to protect consumers from deceptive acts or practices in the conduct of any business; however, the pleading requirement for a cognizable 349 claim is greater than simply alleging a deceptive practice. In fact, a plaintiff who brings a 349 action must prove three elements: **(1)** that the challenged act or practice affects the public interest or is consumer-oriented conduct having a broad impact on consumers at large, **(2)** that it was misleading in a material way, and **(3)** that the plaintiff suffered an injury as a result of the deceptive act. See *Stutman v. Chemical Bank*, 95 N.Y.2d 24, 25, 709 N.Y.S.2d 892, 731 N.E.2d 608 (2000). This is a high burden, and the typical violation contemplated by the statute involves consumers that fall victim to misrepresentations made by a seller of consumer goods, usually by way of false and misleading advertising. *Genesco Entertainment v. Koch*, 593 F. Supp. 743, 751 (S.D.N.Y. 1984).

B. Judiciary Law

In addition to the GBL, attorneys engaged in consumer collection litigation must be aware of [NY Judiciary Law § 487](#), which permits a civil action to be maintained by any party who is *injured* by an attorney's *intentional* deceit or collusion in NY on a court or on any party to the litigation. This includes

any oral or written statement related to a proceeding and communicated to a court or party with the intent to deceive. See [Trautenberg v. Paul, Weiss, Rifkind, Wharton & Garrison LLP](#), 629 F.Supp.2d 259 (S.D.N.Y. 2007), reconsideration denied 2008 WL 850163 (S.D.N.Y.), affirmed 351 Fed.Appx. 472, 2009 WL 3259560 (2d Cir. 2009).

There is some disagreement as to whether a consistent pattern of offensive conduct is necessary to rise to the level of a 487 violation. On the state court level, "Civil relief [under Section 487] is warranted only where the defendant attorney has engaged in a chronic, extreme pattern of legal delinquency." [Schindler v. Issler & Schrage, P.C.](#), 262 A.D.2d 226, 692 N.Y.S.2d 361, 362-63 (1st Dept.1999). However, in dicta, contrary to the Appellate Division, the Second Circuit found that, based on the plain meaning of the statute, a single intentional deceitful act is enough to find a violation. [Amalfitano v. Rosenberg](#), 533 F.3d 117, 123-24 (2d Cir. 2008).

C. Brief Synopsis of Relevant Court Directives

[NY Civil Court Directive \(DRP-182\)](#): When a plaintiff who is a third-party debt collector requests entry of a default judgment to the clerk, in addition to the requirements of [CPLR § 3215](#), the filer must submit the following supplemental affidavits: (1) an Affidavit of Sale of Account by Original Creditor; (2) if an account that has been purchased is subsequently sold to another debt buyer, an Affidavit of the Sale of the Account by the Debt Seller (one affidavit for each sale) and (3) an Affidavit of a Witness of the Plaintiff.

[Chief Clerk's Memorandum \(186-A\)](#): A request for a default judgment by the Clerk must be accompanied by an affidavit by the debt collector (who may be the plaintiff or plaintiff's attorney) stating: where the cause of action accrued; if the cause of action accrued outside of NY, the statute of limitations for that state; and state that after reasonable inquiry, the debt collector has reason to believe that the applicable statute of limitations has not expired.

[Chief Clerk's Memorandum \(176\)](#): Since April 2008, the NY City Civil Court System has been providing notice to defendants before the entry of any default judgment. In fact, "no default judgment based on defendant's failure to answer shall be entered unless there has been compliance with this subdivision and at least 20 days have elapsed from the date of mailing by the clerk." See also [22 NYCRR 208.6\(h\)](#).

[Chief Clerk's Memorandum \(184\)](#): When reviewing an application for a judgment on default, the judgment clerk will accept as a valid address the address of the defendant(s) on a Certified Abstract of Driving Record issued from the NY State Department of Motor Vehicles, when the [208.6\(h\)](#) notice has been returned by the Post Office as undeliverable.

[NY Civil Court Directive \(DRP-189\)](#): An affidavit signed outside of the state by a foreign notary (i.e., affidavit of merit from creditor outside of NY State) must be accompanied by a certificate of conformity which certifies that the manner in which the acknowledgement was taken conforms with the laws of the State of NY or the laws of the state or other place where the acknowledgement was taken.

Court Costs and Enforcement Fees

A. Court Costs

Actions in the Supreme Court, County Court, NY City Civil Court, City Courts, and District Court are commenced by filing either the summons and complaint or summons with notice with the clerk of the county in which the action is brought [[CPLR 304, 203\(c\)](#)]. After the initial filing, process must be served within the time frame imposed by [CPLR 306-b](#).

Throughout the State of NY, the fee for purchasing an index number in either Supreme Court or in County Court is \$210.00. If a plaintiff is filing a case in Civil Court, City Court, or District Court, the fee for purchasing an index number is \$140.00.

B. Enforcement Fees

In NY State, enforcement fees are broken down by County, as well as type of enforcement. This list is extensive, as the fees differ in almost every County throughout the State. Although there is no true uniformity, we can break down each category with a helpful range of enforcement fees.

In regards to a bank property execution, pursuant to judgment enforcement outside NY City, the average sheriff fee is approximately \$60.00, but goes as high as \$120.00 (Orange County), and as low as \$30.00 (11 Counties in NY). Within NY City, Marshals generally charge \$40.00 for a bank property execution.

When the NY State Legislature passed the Exempt Income Protection Act in 2008 (see above), out of necessity, income executions (also known as wage garnishments) became a primary and essential component to enforcing valid judgments throughout the State. An income execution may direct that installments from a judgment debtor's income of not more than 10 percent of the income be withheld and paid to the marshal, but no amount may be withheld for any week unless the judgment debtor's disposable earnings for that week exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable. There are potentially two stages in attempting to garnish wages pursuant to judgment enforcement through an income execution. See [CPLR § 5231](#). In the first stage, the income execution is served on the judgment debtor, who must begin making voluntary installment payments to the sheriff or marshal. If the debtor fails to make the required voluntary payments, the second stage begins. In the second stage, the income execution is served on the debtor's employer, who will deduct a percentage from the debtor's earnings and remit it to the sheriff or marshal.

Outside of NY City, the average Sheriff's fee for the first stage of an income execution is approximately \$39.00. If a second stage income execution is necessary, the average Sheriff's fee is \$38.00. Within NY City, Marshals generally charge approximately \$36.00 for both a first stage and second stage execution.

Significant Cases Brought by the NY State Attorney General

In July 2009, the NY State Office of the Attorney General brought a lawsuit ([Pfau v. Forster & Garbus, et al., No. 2009-8236 \(Sup. Ct. Erie County, July 2009\)](#)) against 35 collection law firms and 2

collection agencies, specifically alleging that lawyers and debt collectors improperly obtained more than 100,000 default judgments by never notifying consumers that they were being sued, thus not providing defendants with an opportunity to defend themselves in court. Throughout the case, defendants denied any liability or wrongdoing, and eventually the case settled through a [Consent Order](#), which allowed for the allegedly aggrieved consumers the opportunity to vacate default judgments and proceed with answering the original complaint.

In addition to investigating the collection industry, NY State has also looked closely at the debt settlement industry, and in May 2009, the Attorney General filed suit against two debt settlement companies. According to the [lawsuit](#), the debt settlement companies promised a 60 percent reduction in its consumers' outstanding debt, but only an average of 1 percent of consumers received those savings.

Recent and Relevant Case Law Related to NY Debt Collection

A. [Hecht v. United Collection Bureau, Inc.](#)

On 8/17/2012, the United States Court of Appeals for the Second Circuit reached a seminal decision on notice requirements for a class certification, as it relates to the FDCPA and injunctive relief. [Hecht v. United Collection Bureau, Inc., 691 F.3d 218 C.A.2 \(Conn.\) 2012](#). With the District Court's approval, the original parties to the action stipulated to certify the class under Rule 23(b)(2) of the Federal Rules of Civil Procedure, which authorizes certification of a class where final injunctive relief is appropriate. As approved by the District Court, the parties published a notice purporting to inform absent class member both of the class action and of the proposed settlement in one edition of *USA Today*. Also, it should be noted that the Settlement class (approximately 2 million potential class members) was awarded \$13,254.00 payable completely to a national charitable organization while class counsel was awarded up to \$90,000.00 in fees and costs.

In analyzing the District Court's decision, the Court of Appeals held that "sham requests for injunctive relief should not provide cover for claims that are brought essentially for monetary recovery," and concluded that "the claim for damages... predominated over the claim for injunctive relief, and that Hecht therefore had a due process right... to notice and the opportunity to opt out."

This is an important case related to debt collection as it demonstrates that if there are zero monies available for the class (here 2,000,000 million class members would have to share in a pot of \$13,254.00 coming to less than 1 penny per person), the case would potentially not meet the Superiority requirement of Fed R. Civ. P. 23(b)(3) and would not be eligible for class certification under Rule 23(b)(2). Hence, this case supports the proposition that a *de minimis* class recovery is a proper basis to deny a motion for class certification.

B. [Koehler v. Bank of Bermuda](#)

In *Koehler v. Bank of Bermuda, Ltd.*, 12 N.Y.3d 533, 883 N.Y.S.2d 763, 911N.E.2d 825 (2009), the NY Court of Appeals addressed the issue of whether a NY court may order a bank to deliver out-of-state assets owned by a judgment debtor to a judgment creditor pursuant to CPLR Article 52 when the

NY court has personal jurisdiction over said bank. The Court of Appeals favorably held that as long as the NY court has personal jurisdiction over a defendant, the court may order the bank to turn over out-of-state property to a judgment creditor. *Id* at 541.

C. [Mostiller v. Chase Asset Recovery Corp.](#)

Many in the industry have been confronted with a dramatic increase in cases asserting a violation of the prohibition found under 15 U.S.C. § 1692c(b) against third-party disclosures. In most cases, the alleged FDCPA violation is for an inadvertent and unintentional third-party disclosure at the consumer's home. The court in *Mostiller v. Chase Asset Recovery Corp.*, No. 09-CV-218A, 2010 WL 335023*3 (W.D.N.Y. January 22, 2010), decided not to grant plaintiff's request for damages based on the stress that she allegedly experienced from defendant's telephone message to plaintiff's residence, which was overheard by her fiancé. In arriving at its practical decision, the court stated that: "The FDCPA was intended to protect against deliberate disclosures to third parties as a method of embarrassing the consumer, not to protect against the risk of an inadvertent disclosure that could occur if another person unintentionally overheard the messages left on [plaintiff's] answering machine." *Id* at 3 (*citing, Mark v. J.C. Christensen & Assocs., Inc.*, Civil No. 09-100 ADM/SRN, 2009 WL 2407700, at *5 (D.Minn. Aug.4, 2009) (*citing Joseph v. J.J. Mac Intyre Cos., L.L.C.*, 281 F.Supp.2d 1156, 1164 (N.D.Cal.2003)); see also *Edwards v. Niagara Credit Solutions, Inc.*, 586 F.Supp.2d 1346, 1363 (N.D.Ga.2008).

Please be advised that this is not intended as legal advice. Changes to laws, statutes, regulations and costs can and do occur. We recommend that you contact an attorney for advice specific to your legal matters and your state.

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