



Retail Detail

Massachusetts Court Holds Do Not Even Attempt to Call Massachusetts Consumers More Than Twice in a 7-Day Period to Collect Their Delinquent Debts

By David Bizar and Andrew Stark

Seyfarth Synopsis: Court holds placing more than two debt collection calls to a Massachusetts consumer debtor in a seven-day period can violate the Massachusetts debt collection regulations even if the debtor does not answer the phone and no message is left.

Summary of the Case

In the case of *Watkins v. Glenn Associates, Inc.*, No. 15-cv-3302-H (Super. Ct. Middlesex, Mass., June 10, 2016) a debt collector called a Massachusetts consumer debtor's cell phone and spoke to him about his delinquent college tuition debt. The collector called his cell phone again four more times over the next seven days as it attempted to reconnect with him, each time obtaining his voicemail but leaving no message. The debtor sued, alleging that the four missed calls violated the Massachusetts Debt Collection Regulations, 940 Code Mass. Regs. § 7.04 and therefore the Massachusetts Consumer Protection Act, General Laws ch. 93A, § 2. The regulations make it an unfair or deceptive act or practice in violation of the Consumer Protection Act for any creditor (including agents and third parties of the creditor) to "initiat[e] a communication with any debtor via telephone, either in person or via text messaging or recorded audio message, in excess of two such communications in each seven-day period"

It had been widely believed that a missed call where the delinquent consumer debtor does not answer the phone and no telephone message is left is not a "communication" within the meaning of the Regulations, because no information is conveyed to the debtor. But in *Watkins*, the Superior Court, Justice Dennis J. Curran, observed that the Regulations define the term "initiating communication" to include "conveying information directly or indirectly to any person" (emphasis added) and concluded that information is at least indirectly conveyed to a person when the debtor's phone system, here a cell phone, receives information of the caller's name and telephone number, and the debtor has reason to know that such call is being placed to attempt to collect a debt from them. The court referenced that the Massachusetts Attorney General's official guidance provides that "unsuccessful attempts by a creditor to reach a debtor via telephone may not constitute initiation of communication if the creditor is truly unable to reach the debtor or to leave a message for the debtor." (Emphasis added). It concluded a creditor "cannot circumvent the Debt Collection law on excessive 'initiation of communication' merely by choosing not to leave a voicemail." To hold otherwise, the court found, "would render the limit on initiating communication meaningless and permit creditors to call ceaselessly until the debtor had no choice but to answer--an outcome clearly contrary to the stated anti-harassment purpose of the Debt Collection law." The court granted the debtor summary judgment.

What This Means for Creditors and Debt Collectors of Massachusetts Consumers

We expect that Massachusetts consumer debtors will attempt to use this decision to try to escape from paying their legitimate debts and to try to obtain damage awards against their creditors and debt collectors. Class actions also likely will be filed.

If you have any questions, please contact your Seyfarth attorney, [David Bizar](mailto:dbizar@seyfarth.com) at dbizar@seyfarth.com or [Andrew Stark](mailto:astark@seyfarth.com) at astark@seyfarth.com.

www.seyfarth.com



Attorney Advertising. This Retail Detail is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Seyfarth Shaw LLP Retail Detail | July 18, 2016

©2016 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.