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FAIR DEBT COLLECTION PRACTICES ACT

Debt collector's attorneys not liable for suing debtor in wrong court

A law firm did not violate the Fair Debt Collection Practices Act by filing a state court collection lawsuit against a debtor in a venue where he neither lived nor signed the underlying debt contract, a Chicago federal judge has ruled.

Olivia v. Blatt, Hasenmiller, Leibsker & Moore LLC, No. 14-CV-6447, 2015 WL 4253795 (N.D. Ill., E. Div. July 14, 2015).

U.S. District Judge Elaine E. Bucklo of the Northern District of Illinois held in favor of Blatt, Hasenmiller, Leibsker & Moore, finding the firm made a "bona fide error" under the statute when it chose the venue of its debt collection lawsuit against Ronald Olivia.

The FDCPA, 15 U.S.C. § 1692k(c), provides that a debt collector may avoid liability under the law if it can show that the violation was not intentional and arose from a bona fide error.

The judge said Blatt Hasenmiller made such an error when it chose the courthouse where it sued Olivia because it relied on a then-valid federal

appellate court decision discussing appropriate venue under the FDCPA.

According to the judge's opinion, Olivia held a credit card account that he used to make purchases while living in Chicago between 2002

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Certified public accountant Bradford L. Hall, managing director of accounting firm Hall & Co., discusses how bankers can work with independent certified public accountants to minimize the risks of business loan transactions.

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Criminalizing free enterprise: The Bank Secrecy Act and the cryptocurrency revolution

Jeffrey Alberts and Leighton Dellinger of Pryor Cashman discuss the growing use of cryptocurrency and how financial technology companies can run afoul of anti-money-laundering laws and incur criminal liability if they are not aware of the reporting requirements.

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On the road to a business loan, a CPA can be a banker's best friend

By Bradford L. Hall, CPA,
Hall & Co.

Bankers are like society's rich uncle because they are always being asked for money. One of the main differences, of course, is that unlike the uncle the banker expects to be paid back — in full, plus interest.

The likelihood of being paid back is the key variable for any lender. Since each borrower poses a different amount of non-payment risk for the bank, each loan is subject to a different interest rate, which is essentially the cost of taking on that risk. With this method Warren Buffett doesn't have to pay as much interest as, say, a college dropout who wants money for his new alpaca farming start-up.

Most loan officers, however, face opportunities in the middle market that are not as clear cut, meaning the risk of a loan defaulting is somewhere between Buffett's company, Berkshire Hathaway, and "Alpacas R Us." How can this risk be accurately quantified so the bank can set the right interest rate for its business model?

The answer is often in the loan applicant's documents: the profit and loss records that are needed to justify the entrepreneur's capital raising program.

An applicant's projections are more meaningful to a loan officer if an independent CPA has evaluated the underlying assumptions that were used by management, as well as the adequacy of the data that support the financial statements.

As auditors, we take on a fiduciary responsibility to verify each client's financial records, including their balance sheets, income statements and tax returns. We also analyze the company's revenue projection based on trends within the particular industry, market conditions and the business's performance.

These CPA reports should be the ultimate report card for each banker who has to assess the risk of a loan applicant. The decision to issue a loan and put your bank on the hook for the principal is basically an exercise in two core accounting practices: valuation and risk assessment. They go hand in hand for loan officers, who would be well-advised to draw conclusions from a loan applicant's CPA firm rather than from the applicant directly.

Bankers are like society's rich uncle because they are always being asked for money.

Some of the most financially savvy business people may fail to consider many key factors for bookkeeping when they do not retain a professional. Things such as depreciating assets, or dependence on revenue streams that have yet to materialize, should be filtered through the experienced eyes of a trained and experienced CPA when a company is asking a bank for money.

If the numbers don't add up, so to speak, as a loan officer you will have to deny the application and squash a poor entrepreneur's dreams of growing his business. Or at the very least, the bank should, when making the loan, price in an increased risk of default as a result of the overly optimistic — or downright suspicious — bookkeeping. The bank should also encumber additional personal assets in an abundance of caution to mitigate the risk at hand (that otherwise would not have been included had the numbers added up).

CALCULATING RISK

Whenever the numbers seem off — whether in a capital raising program for an international conglomerate or a mom-and-pop store in the Midwest — that situation affects the valuation of the company's assets. But by how much?

In my more than 30 years of accounting and auditing experience in Southern California, sloppy bookkeeping can cut a company's valuation substantially, sometimes up to 20 percent or more.

In an investing scenario where one company is acquiring another one or a private investor is buying that company's publicly traded shares, it will always pay a higher amount than the company is worth. The amount it pays is calculated by the price one is willing to pay divided by the target company's earnings. If those earnings numbers are even remotely suspect, the investor will not pay as much as it would if the books looked good and were certified by a trusted CPA. For instance, if a standard price-to-earnings ratio yields a value worth five times the profit, then suspicious accounting would bring it down to four times its profit: 20 percent less.

The same philosophy can be applied to banks that are reviewing a loan application for a business seeking money to expand. A reputable CPA's seal of approval could bridge that 20 percent gap in valuation. Accounting firms make each capital raising event a

Bradford L. Hall, CPA, is the managing director of **Hall & Co.**, Certified Public Accountants & Consultants Inc., in Irvine, Calif. He has worked with law firms in Orange County for the past 35 years. He can be reached at bh@hallcpas.com.

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"win-win" with less risk for the bank and a better interest rate for the borrower.

COMMON ISSUES

Like accountants, loan officers are looking out for risk all day long. Some risks are hidden deep in an applicant's balance sheet or in a note from many years ago. Others are hiding in plain sight but can be equally difficult to sniff out.

Here are some of the more common things to look for when sizing up a business loan applicant in an attempt to gauge how much investment the deal poses for your bank.

Foreign ownership

Foreign companies are not under Securities and Exchange Commission regulations and may have dramatically different accounting and auditing procedures. Not only may the regulations be different, but they also may change rapidly based on political issues and government transitions. China, in particular, has unpredictable and rapidly changing government influence, meaning that accounting standards may not be consistent or transparent even over short periods. This lack of regulation and oversight can be a red flag for any part of a company's financial operation.

Tax deadline extension

While it may seem suspicious on the surface, it is not unusual for companies to request a tax deadline extension. Most are entitled to an automatic six-month extension, which is often used to ensure the tax return is as accurate and complete as possible. While this does not create any issues with the IRS or for the corporation in most situations, delayed tax returns make it difficult to determine an accurate company valuation. Without the most up-to-date tax return, the valuation may be based on data that do not reflect the company's current financial position.

Past audit failure

In business, a minor error in your bookkeeping from the 1990s might come back to haunt you today even if you are presently on solid ground. How can a bank trust the balance sheet of a business loan applicant if that company's new treasurer had been cited by the SEC earlier in his career? It's a tough assessment to make, but one that can be made easier if there's a solid and well-reported history of financial performance following the initial error.

CONCLUSION

CPA firms can be a valuable resource for any banker, especially loan officers who are tasked with risk assessment in determining whether to approve or deny a business loan application. Astute and experienced auditors can make the difference between a potential default or a solid and profitable long-term business relationship between the applicant and the bank. WJ