

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES F. BEISEL, et al. : CIVIL ACTION
 :
 v. : No.: 07-2219
 :
 ABN AMBRO MORTGAGE, Inc. :

MEMORANDUM AND ORDER

Juan R. Sánchez, J.

August 10, 2007

Defendant ABN Amro Mortgage, Inc.¹ asks me to dismiss this complaint because Plaintiffs James and Penney Beisel failed to first report their disputed information to a credit reporting agency as required by statute. The Beisels argue the Fair Credit Reporting Act permits a private right of action against any person, including ABN Amro. I agree with ABN Amro and grant its 12(b)(6) motion.

FACTS²

Plaintiffs James and Penney Beisel defaulted in their mortgage with Defendant ABN Amro Mortgage Inc and filed Chapter 13 bankruptcy. After the Beisels completed a chapter 13 bankruptcy proceeding, ABN Amro filed a proof of claim alleging pre-petition arrearage of \$8,491.98. The Beisels state they paid the arrearage in full and ABN Amro inaccurately claimed the remaining

¹ Plaintiffs James and Penny Beisel incorrectly identified Defendant ABN Amro as “ABN Ambro.” I will address the Defendant correctly as ABN Amro.

² I accept all allegations in, and reasonable inferences from, the Complaint as true and view them in the light most favorable to the Beisels. *Rocks v. City of Philadelphia*, 868 F.2d 644, 645 (3d Cir. 1989).

unpaid balance of the loan was \$28,000.

While the Beisels contend they cured the default in the mortgage loan by successfully completing the bankruptcy proceeding, they did not dispute ABN Amro's report with a credit reporting agency. Nor did they allege such a dispute in their complaint. Instead, the Beisels argue notice of the bankruptcy completion should have alerted ABN Amro of its inaccurate report about the Beisels' credit. They contend because ABN Amro still inaccurately reported the Beisels' default, ABN Amro willfully and negligently violated the FCRA. ABN Amro's alleged violation resulted in the Beisels' damaged credit report and ultimately prevented them from refinancing their home.

DISCUSSION

ABN Amro moves to dismiss the Beisels' claim because the Beisels have not disputed the credit information with a credit reporting agency prior to filing suit. Because ABN Amro is a furnisher of information, its FCRA duties are triggered only after the complaining party has disputed the credit information with a credit reporting agency and the credit reporting agency has notified the furnisher of information. *Thomasson v. Bank One*, 137 F. Supp. 2d 721, 722 (E.D. La. 2001). I agree with ABN Amro and grant its 12(b)(6) motion.

A 12(b)(6) motion to dismiss admits the complaint's well pleaded allegations, but denies their legal sufficiency. *Hospital Building Co. v. Trustees of the Rex Hospital*, 425 U.S. 738, 740 (1976); *T.R. Ashe, Inc. v. Bolus*, 34 F. Supp. 2d 272, 274-75 (M.D. Pa. 1999). The complaint and every doubt is resolved in the plaintiff's favor. *In re Arthur Treacher's Franchise Litigation*, 92 F.R.D. 398, 422 (E.D. Pa. 1981). The court must accept the complaint's factual allegations as true, as well as all its reasonable inferences. *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996); *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994). "[A] case should not be

dismissed unless it clearly appears that no relief can be granted under any set of facts that could be proved consistently with the plaintiff's allegations." *Id.* (citing *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)).

To prevail on a FCRA claim against a furnisher of information, the Beisels must prove they notified a credit reporting agency of the dispute, this credit reporting agency then notified the furnisher of information, and the furnisher of information failed to investigate or rectify the disputed charge. *Jaramillo v. Experian Information Solutions, Inc.*, 155 F. Supp. 2d 356, 363 (E.D. Pa. 2001). Courts have dismissed complaints when the plaintiffs have failed to allege they first disputed the information with a credit reporting agency. *Cf. Sheffer v. Experian Info. Solutions, Inc.*, 249 F. Supp. 2d 560, 562 (E.D. Pa. 2003) (denying dismissal because plaintiff had allegedly filed dispute with credit reporting agency); *Jaramillo*, 155 F. Supp. 2d at 363 (denying dismissal because plaintiff had alleged disputing information with credit reporting agency before furnisher of information).

The Beisels do not allege they disputed this information with a credit reporting agency. In their response to ABN Amro's motion to dismiss, they admit they only disputed this information with ABN Amro, the furnisher of information, not a credit reporting agency. Pl.'s Resp. to Def.'s Mot. Dismiss 2. By failing to report the dispute with a credit reporting agency, the Beisels have failed to state a claim for relief under the FCRA 15 USC § 1681s-2(b).³

The Beisels rely on 15 USC § 1681n, which creates a private right of action against any

³ ABN Amro's alleged misconduct seems to be governed by 15 USC § 1681s-2(a). This subsection addresses when furnishers of information have reported alleged inaccurate information after receiving their customers' complaints. This subsection eliminates a private action and authorizes only the Federal Trade Commission with jurisdiction to hear this type of case. *Fino v. Key Bank of New York*, 2001 WL 849700 *4 (W.D. Pa. July 27, 2001) (citing *Olexy v. Interstate Assurance Co.*, 113 F. Supp. 2d 1045, 1047 (S.D. Miss. 2000)).

person, violating the FCRA's duties. While the statute does say "person," the person, in this case ABN Amro as a furnisher of information, must still violate the FCRA. The furnisher of information does not have FCRA duties until the complainant disputes it to the credit reporting agency and the credit reporting agency provides ABN Amro with notice. *See Sheffer*, 249 F. Supp. 2d at 562; *Jaramillo*, 155 F. Supp. 2d at 363.

Because the Beisels' complaint fails to allege a claim for relief, their FCRA claim must be dismissed. I decline to exercise supplemental jurisdiction over the remaining state law claims pursuant to 28 U.S.C. § 1367 (c).

An appropriate order follows.

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ABN AMBRO MORTGAGE, Inc.	:	

ORDER

AND NOW, this 10th day of August, 2007, Defendant ABN Ambro Mortgage Inc.'s Motion to Dismiss (Document 2) is GRANTED and the Clerk is directed to mark the above-captioned case CLOSED.

BY THE COURT:

/s/ Juan R. Sánchez, J.
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