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Housing Authority Is a "Person" Under State's Consumer Fraud Act

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service contract prices amid costs itemized as "License, Title and Taxes."

The plaintiffs objected to these practices for several reasons. First, not all the money listed under "Amount Paid to Others" actually went to others. The dealership retained a portion of the proceeds. Second, the plaintiffs alleged misrepresentation as to the specific amount paid to the dealership versus that rendered to others. Finally, the information placed under "License, Title and Taxes" appeared to be nonnegotiable because of its location on the form.

The defendants moved to dismiss the action based on its compliance with both the TILA and Regulation Z. The defendant reasoned that its use of model forms, provided by the Federal Reserve Board, precluded any fraud under the TILA. However, the court found that if information contained on these forms was false, the use of the form would not provide immunity. Thus, the court held that the

plaintiffs had stated a cause of action on this claim and denied the motion to dismiss.

The court did, however, dismiss the plaintiffs' claim of misrepresentation of the service contract price as nonnegotiable. After examining the form and regulations, it found no other place to put the charges on the form; and that the regulations expressly authorized the defendant to list the charges in that category. Therefore, the court granted the defendant's motion to dismiss this issue.

Illinois Consumer Fraud Act broader than the TILA

The defendant also challenged the plaintiffs' claim under the CFA and alleged three grounds for dismissal: claiming that overcharging a consumer was not a violation of the CFA; defendant's compliance with TILA precluded a finding of a violation of CFA; and the plaintiffs' damage remedy was

too speculative to admit consideration.

The court found the defendant's first argument inviable because the plaintiff claimed deception, not excessive price. This constituted a cause of action since the full amount of the money earmarked for the service contract went to a third party. Second, the court determined that despite defendant's compliance with the TILA, the CFA may reach beyond the TILA. Although a creditor's compliance with Regulation Z automatically comports agreement with the TILA, this is not necessarily the case with the CFA. However, in this case, the plaintiffs' claim regarding misrepresentation of a nonnegotiable item did not state a claim, and therefore was dismissed. Finally, the defendant argued that damages claimed by the plaintiffs were too speculative to warrant consideration. However, the defendant did not follow up on this count and the court thereby dismissed it.

Housing authority is a "person" under state's Consumer Fraud Act

by Dana Shannon

In *Zorba Contractors, Inc. v. Housing Auth. of Newark*, 660 A.2d 550 (N.J. Super. Ct. App. Div. 1995), the appellate court of New Jersey held that a housing authority is a "person" as defined by the New Jersey Consumer Fraud Act ("CFA"), section 56:8-1 to 56:8-20 of the New Jersey Revised Statutes.

Housing authority seeks repair or replacement of faulty roofing

The Housing Authority of the City of Newark ("Authority"), a defendant in a multi-party case, filed a third party action against three roofing

supply companies. The Authority alleged violations of the CFA and sought costs for the replacement or repair of defective roofing materials.

The trial court reasoned that if the legislature had intended to include organizations in the CFA's definition of "person," then it would have specifically listed organizations, such as the Authority, in the statute. Since the CFA listed neither "organization" nor the Authority in its definition of "person," the trial court dismissed the Authority's claims. The Authority appealed.

Expansive statutory language and remedial purpose reveal legislature's intention

On appeal, the Authority argued that the CFA's language demonstrates the legislature's intention that the term "person" should be liberally construed. In addition, the Authority asserted that controlling law dictates an expansive reading of the CFA. The appellate court began its analysis by examining the language of 56:8-1(d), which states:

The term "person" as used in this act shall include any natural person or his legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestuis que trustent thereof

Applying principles of statutory construction, the court observed that "includes" is generally a term of expansion rather than limitation. Thus, the court noted that "includes" suggests other items may be includable even though they are not delineated.

In addition, the court commented that the Authority shares characteristics with entities, such as corporations, that are specifically listed in the CFA's definition of "person." For example, the court explained that the Authority can make and execute contracts, borrow money, and acquire real or personal property, much as a "corporation," "company," "business entity," or "association" does.

Furthermore, the court examined the objective of the CFA, which is "to discourage unlawful sales and advertising practices designed to induce consumers to purchase merchandise." Emphasizing the CFA's goal of consumer protection, the court again turned to statutory interpretation. The court recognized that "consumer" is typically defined as "one who uses (economic) goods, and so diminishes or destroys their utilities." Applying this definition, the court found that the Authority is undoubtedly a consumer, since it purchases goods with public funds to benefit certain segments of the populace. The court also concluded that the CFA, as remedial legislation, requires an expansive construction in favor of consumer protection. Accordingly, the court held that the term "person," as defined by the CFA, includes a public authority acting as a consumer; therefore, a public authority may prosecute a consumer fraud claim.

Salesman's deceptive statements constitute an unfair trade practice

by Dana Shannon

In *Torrance v. AS & L Motors, Ltd.*, 459 S.E.2d 67 (N.C. Ct. App. 1995), the North Carolina Court of Appeals held that an automobile salesman's deceptive comments concerning the condition

of a used car constituted an unfair trade practice. In addition, the court determined that the parol evidence rule did not bar evidence of the salesman's misleading statements, which occurred prior to the

plaintiff's execution of an "as is-no warranty" agreement. Although the court affirmed the trial court by allowing the salesman's statements as evidence and by finding an unfair trade practice, the court reversed an