Is Your Collection Agency Putting Your Association at Risk of Liability for Violations of the Federal Fair Debt Collection Act? By Shani O. Zakay, Esq.

"No cost" collection service can come with a serious cost.

Gena Hanson was a member of the Vineyard Terrace Homeowners Association. In 2013, she was hospitalized for three months while undergoing chemotherapy and fell behind on her assessment payments. The Association hired Pro Solutions to collect Hanson's outstanding debt. Pro Solutions, a debt collection company, agreed to represent the association on a "no cost" collection basis. Under this model, Pro Solution charged the delinquent owner directly for the collection costs and fees, while the Association assumed no liability for the costs whatsoever. Various "collection fees" and "management costs" were added to Hanson's ledger, but the Association was not responsible for paying those costs to Pro Solution.

Hanson made several payments to Pro Solutions, but Pro Solutions applied her payments to the costs it was charging, rather than to the assessments. Hanson decided to sue. The crux of her complaint alleged that Pro Solutions charged her for fees the association never incurred, in violation of Civil Code Sections 5650(b)(1) and 5600(b). She claimed that this conduct violated the Fair Debt Collection Act, seeking monetary penalties and attorneys' fees.

The United States Federal District Court agreed with Hanson and criticized Pro Solution's practice. It stated:

> "It is clear that the fees of Pro Solutions are not allowable claims of the HOA under [§ 5650(b)] because they were not costs *incurred by the HOA* in collecting the delinquent assessment. They are also not allowable under [§ 5600(b)] because they exceed the amount necessary to defray the HOA's costs; they are not costs *of the HOA* at all. To find otherwise opens the door to all sorts of mischief, as an HOA has no incentive whatsoever to question costs for which it is not liable and no incentive to search for services charging more reasonable costs."

It therefore allowed Hanson to proceed to trial with its claims against Pro Solutions.

So what does that mean for your association's future collection efforts? It means you have to be careful. Based on this decision, associations should stay away from collection companies that offer a "no cost" collection service—this type of service is usually going to be prohibited. While only Pro Solutions was named as a Defendant in Hanson's complaint, a homeowner could easily name the Association as a Defendant to a similar claim, because a collection agency merely acts as the agent of the association.

The savings in using a “no cost” collection service can prove worthless when facing the costs of litigation. Silldorf & Levine can ensure that you are not engaged in a collection activity that is putting your association at risk of liability. Our firm offers the benefits of a “no cost” collection without the risks presented by the Hanson case. Our firm provides a “fee advancement” model where the association incurs the costs, but is not responsible for paying them until we successfully recover the debt from the delinquent owner. With the “fee advancement” model, the association’s cash-flow is not affected, and the board does not have to worry about the monthly legal fees and collection costs being incurred. When the debt is collected, the Association pays Silldorf & Levine the fees and costs it had incurred, but can do so from the surplus it recovered.

Hanson v. JQD, LLC, No. 13-05377 RS, 2014 WL 644469, at *1 (N.D. Cal. Feb. 19, 2014)