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Suit Aims to Vacate 100,000 Judgments

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ATTORNEY GENERAL Andrew M. Cuomo is demanding information from dozens of debt collection law firms throughout the state as part of a civil lawsuit to overturn more than 100,000 faulty default judgements, he announced yesterday.

The suit, *Pfau v. Forster & Garbus*, 2009-8236, was filed in state Supreme Court in Erie County on behalf of Chief Administrative Judge Ann Pfau. It asks Justice Timothy J. Drury to vacate all default judgments where the sole evidence that a defendant received service notifying him that he was being sued was an affidavit from American Legal Process of Lynbrook, N.Y.

In April, Mr. Cuomo's office arrested American Legal Process owner William Singler and charged him with fraud and other felonies (NYLJ, April 15). Mr. Singler has denied the charges.

The complaint against Mr. Singler contends that American Legal Process' process servers did not make efforts to properly serve defendants in lawsuits prescribed by CPLR §308. Instead of making the required three attempts to serve papers before being allowed to "nail and mail"—or mail a copy of the lawsuit and affix a copy to the person's door—Mr. Cuomo alleges



Andrew M. Cuomo

Mr. Singler's servers often gave up after one attempt.

That, in turn, left thousands of consumers unaware they faced default until their bank accounts had been frozen or their ATM cards were rejected, Mr. Cuomo contends.

Mr. Cuomo said in a statement yesterday that people forfeit a basic right when they are not informed that they are the subject of a default proceeding.

"Our legal system is defined by due process and the guarantee that every New Yorker will get the chance to defend his or herself in court," the attorney general said. "ALP's scheme undermined the foundation of this system and denied thousands of individuals their day in court."

Judge Pfau had no comment on the suit, citing the pending nature of the litigation, said » Page 2

Online

» A link to Mr. Cuomo's complaint is posted on nylj.com.

Judgments

« Continued from page 1

Office of Court Administration spokesman David Bookstaver.

Judge Pfau's suit seeks to compel 36 named law firms and two collection agencies to detail for the Unified Court System all actions in which they used American Legal Process, the cases in which a default judgment was entered and those in which payment was made under the judgment.

All the firms and companies named in the suit used American Legal Process for service in at least 100 cases, Mr. Cuomo's office said.

The firms also must notify those consumers of the suit's filing in Erie County and inform the Unified Court System of instances where consumers had made payments under default judgments and how much. The suit asks that restitution be ordered in instances where consumers made payments under improperly obtained default judgments.

Mr. Cuomo's office estimated that the average default judgment totaled about \$5,500.

The suit does not accuse the named organizations of any wrongdoing.

It states that the firms obtained default judgments for their clients after American Legal Process, or its servers, provided affidavits attesting to the service of the lawsuits on consumers. The suit contends that American Legal Process "repeatedly and persistently lied on affidavits of service that they had attempted, without success, to serve the defendant in the action on three occasions before resorting to nail-and-mail service."

The suit also provides for the eventual re-entry of default judg-

ments against consumers whose judgments are vacated, but only where service has been properly made under the CPLR and does not involve American Legal Process.

'We're Appalled'

Attorney Eric M. Berman, whose Babylon-based firm is named in the suit, said yesterday that law firms were victimized by American Legal Process just as consumers were.

"We're appalled by what the attorney general claims American Legal Process did, and we will certainly cooperate to ensure that individuals are not compromised by that service, but at the same time I want to be really clear there was no way we would have known they were improperly serving, and I don't think that claim is included" in the complaint, Mr. Berman said in an interview.

He said his firm stopped using American Legal Process in April 2008, after receiving an information subpoena from Mr. Cuomo. Mr. Berman added that he has cooperated fully with the attorney general.

Sheldon H. Pressler of Pressler and Pressler, which has offices in New Jersey and Manhattan, also said his firm stopped using American Legal Process in April 2008 because we "had thoughts maybe they were not doing their job properly."

"We weren't too happy with their service" and had problems with their billing, he said.

After April 2008, Pressler and Pressler established procedures requiring process servers to take a digital photograph of the location being served, a move Mr. Pressler called a "step in the right direction."

He observed that New Jer-

sey, where most summons are served by court officers rather than independent contractors, has a better method than New York of serving consumers with legal papers.

Calls to several other firms named in the suit were not immediately returned yesterday.

Carolyn E. Coffey, a lawyer with MFY Legal Services, which provides free civil legal assistance in New York, said in an interview that the suit makes good use of CPLR §5015c, which gives an administrative judge the power to initiate a proceeding to vacate default judgments, "obtained by fraud, misrepresentation, illegality, unconscionability, lack of due service, violations of law, or other illegalities."

While the statute has been used in consumer cases where there is evidence of a pattern of fraud or illegality, it is rarely employed, and this is "the perfect circumstance" for applying the §5015c, Ms. Coffey said.

According to Judge Pfau's suit, American Legal Process workers generally got between \$4 and \$8 for each service. Mr. Cuomo's office said its arrest in April effectively put the company out of business, and its phone number has been disconnected.

Mr. Singler's criminal defense attorney, Corey Winograd of Winograd & Winograd, did not return a call seeking comment yesterday.

Aides to the attorney general said the suit was filed in Buffalo because the attorney general's western New York regional office had handled much of the initial investigation of American Legal Process. However, the case involves default judgments in all 62 counties.

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Law Firms And Debt Collectors Named in Suit

Advanced Litigation Services
Arnold A. Arpino & Associates
Cohen & Slamowitz
Cooper Erving & Savage
Cullen and Dykman
Eltman Eltman and Cooper
Eric M. Berman, P.C.
Eric Ostrager
Fabiano and Associates
Fleck, Fleck & Fleck
Forster & Garbus
Gerald D. DeSantis
Goldman & Warshaw
Greater Niagara Holdings
Hayt Hayt & Landau
Houslanger & Associates
Jaffe & Asher
Jason L. Cafarella
Jones, Jones Larkin O'Connell
Kirschenbaum & Phillips
Leschack & Grodesny
Mann Bracken
McNamee, Lochner Titus & Williams
Mullen & Iannarone
Panteris & Panteris
Pressler & Pressler
Relin, Goldstein & Crane
Robert P. Rothman, P.C.
Rodney A. Giove
Sharinn and Lipshie
Smith Carroad Levy & Finkel
Solomon and Solomon
Stephen Einstein & Associates
Thomas Law Offices
Winston & Winston
Wolpoff & Abramson
Woods Oviatt Gilman
Zwicker and Associates