

REASONABLE INVESTIGATION UNDER FCRA: TWO TIMES MIGHT NOT BE A CHARM

***Ponder v. Ocwen Loan Serv., LLC, 2018 WL 4474635 (N.D. Ga. July 30, 2018)* is a reminder to furnishers of information to consumer reporting agencies to conduct a reasonable investigation of any reported errors the first time they learn of a dispute.**

Under the facts of the case, Plaintiff filed a number of claims against Ocwen arising from alleged improper mortgage servicing. Among other things, Plaintiff claimed that Ocwen reported inaccurate information to the consumer reporting agencies about an account that was charged off due to a Bankruptcy Case prior to the date upon which Ocwen obtained servicing rights. Essentially, Plaintiff alleged that Ocwen reported two trade lines regarding his mortgage loan, and that the second trade line was incorrect because it contained old information regarding the pre-bankruptcy status of the loan. Plaintiff alleged that he reported the inaccuracy to the consumer reporting agencies who reported the claim to Ocwen who then investigated the claim and took the position that the reporting was correct.

In response, Plaintiff filed a complaint against Ocwen with the CFPB. Allegedly, because of the CFPB complaint, Ocwen conducted a second investigation into Plaintiff's claims and determined that, in fact, the account was charged off prior to the date upon which it obtained servicing rights and, as a result, Ocwen should not have reported the second trade line. Ocwen then requested that the consumer reporting agencies delete this second trade line and informed Plaintiff that it had done so.

Plaintiff then filed suit against Ocwen for failing to conduct a reasonable investigation of his claim as required by 15 U.S.C. § 1681s-2(a)(2)(B). In response, Ocwen moved to dismiss this claim on the basis that, in fact, it did investigate Plaintiff's claim. The *Ponder* Court denied Ocwen's motion. In doing so, the court held that **Plaintiff's Complaint stated a FCRA claim because Ocwen was required to conduct a reasonable investigation, not just an investigation. The court reasoned that Plaintiff could allege that Ocwen's initial investigation was not reasonable because Ocwen reviewed the same materials in both investigations. Because Ocwen found its error after it received the CFPB complaint, the court reasoned that it could have found its error through its initial investigation.** Faced with two investigations into the same subject – one of which did not find the

error and one of which found the error – **the *Ponder* court held that the Plaintiff could allege that the former investigation was deficient and unreasonable.**