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Department of Justice Remains Focused on SCRA Enforcement

October 30, 2020 | Chuck Dodge

The U.S. Department of Justice continued the pursuit of its civil rights initiatives aimed at enforcement of federal laws that protect servicemembers, veterans, and their families in September by settling with the City of San Antonio and three Florida towing companies for alleged violations of the federal Servicemembers Civil Relief Act and suing a Texas towing company on the same grounds.

In last month's issue of *Spot Delivery*, we reported that the DOJ sued two related towing companies in Florida, as well as an off-site storage company in Massachusetts, for alleged SCRA violations when, without a court order, they sold property, subject to storage liens, owned by servicemembers deployed overseas.

The DOJ proposed a consent order, subject to court approval, with the related Florida towing companies — Target Recovery Towing Inc., and Target Recovery & Transport Inc. — for $20,000, of which $2,500 is a penalty and $17,500 is compensation to the servicemember. The proposed order also prohibits the towing companies from enforcing storage liens against servicemembers without a court order and requires them to develop an SCRA compliance policy within 30 days after entry of the order. The policy must include procedures for the towing companies to figure out who owns a vehicle before enforcing any storage lien, determine whether the owner is a servicemember by searching the Department of Defense Manpower Data Center database, and file an affidavit of military service in any case where they sue to enforce a lien. The towing companies agreed in the proposed consent order to do annual SCRA training for their employees.

The DOJ also sued and settled with another towing company in Florida, ASAP Towing & Storage Company, for alleged violations of 50 U.S.C.A. § 3958, the same SCRA provision cited in the Target case that prohibits the foreclosure or enforcement of a lien "for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any other reason" during the servicemember's period of military service or for 90 days after, without a court order. In this case, ASAP evidently had a procedure for a visual inspection of the interior of any vehicle it picked up to look for signs that a "military person" owned it. The DOJ alleged that there were clear signs inside and outside the vehicle that the owner was a servicemember, but ASAP either missed those signs in its inspection or failed to react upon noticing them. The DOJ noted

that ASAP had no procedures for seeking court orders to enforce storage liens or to search the DMDC database for information about vehicle owners.

The proposed consent order with ASAP is structurally similar to the order in the Target case: a prohibition against enforcing storage liens against servicemembers without a court order, a requirement to adopt an SCRA policy and procedure to identify servicemembers and avoid enforcement of liens against servicemembers without a court order, and a requirement to train employees annually on SCRA compliance. The DOJ also requires ASAP to review its files over the last seven year to identify cases where ASAP sold a servicemember's property. ASAP is required to pay those servicemembers the estimated trade-in value for the vehicles sold as of the date of sale plus $500, up to an aggregate remediation of $99,500, and a civil penalty of $20,000.

In addition, the DOJ reached an agreement, also subject to court approval, with the city of San Antonio for alleged SCRA violations under Section 3958. The city allegedly repossessed and sold the vehicles of two servicemembers deployed overseas. In one case, the servicemember learned that her vehicle had been repossessed, contacted the city's impound and storage facility to advise that she was in the military and overseas, and tried to arrange for release of the vehicle to members of her unit or for recovery of her personal effects. The city ultimately sold the vehicle without a court order. The DOJ investigation identified 227 vehicles owned by servicemembers that were auctioned by the city. In its proposed settlement, the DOJ requires the city to adopt an SCRA policy, obtain court orders to enforce liens against servicemembers, pay the two servicemembers identified in the complaint a total of $47,000, establish a settlement fund of $150,000 for other affected servicemembers, and pay a penalty of just over $62,000 to the U.S. Treasury.

Finally, and most recently, the DOJ sued a Texas towing company, United Tows LLC, for auctioning at least five servicemembers' vehicles in violation of the SCRA.

These ongoing actions by the DOJ reflect a sustained focus on SCRA enforcement initiatives designed to protect servicemembers. From the proposed settlements, there is clear guidance on the basic expectations of SCRA compliance for any company in the lien enforcement business. Specifically, SCRA compliance policies must include procedures for identifying servicemembers, avoiding enforcement of any liens against their property without a court order, and regular training to make sure that employees are aware of and follow the policies and procedures.

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