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Hinshaw Obtains Major Win for Passive Debt Buyer Before Massachusetts Supreme Judicial Court

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Hinshaw secured a major victory last week before the Massachusetts Supreme Judicial Court on behalf of passive debt buyers. At issue was whether LVNV Funding, LLC was operating as an unlicensed debt collector in Massachusetts. Passive debt buyers are investors who purchase debt, and then hire debt collectors to collect the debt on their behalf. The passive debt buyer takes no action in furtherance of the collection of debt it owns, and never has any contact with any debtor.

In the consolidated class action lawsuits, LVNV took title to the debtors' respect debts. To collect the debts, LVNV retained licensed third-party law firms to file lawsuits against the plaintiffs. Despite its complete lack of involvement in the collection process, the plaintiffs alleged that LVNV was required to obtain a debt collector license under the Massachusetts Fair Debt Collection Act—one modeled after the Federal Fair Debt Collection Practices Act—in order to operate in Massachusetts. On motion for summary judgment, a trial judge ruled that LVNV was operating as a debt collector without a license and certified a class.

In a ruling issued on April 9, 2018, the Massachusetts Supreme Judicial Court vacated the trial judge's ruling, holding that passive debt buyers such as LVNV are not considered "debt collectors" under the licensing statute. As part of its ruling, the Court reviewed the legislative history of the MFDCPA and the FDCPA, and determined that passive debt buyers with "no employees and no contact whatsoever with debtors" were "outside the core concerns" of Congress, and by implication the Massachusetts legislature, when it adopted the statute. The Court also noted that the entity charged with overseeing the licensing process—the Division of Banks—has consistently concluded that a passive debt buyer is not included in the definition of "debt collector" under the MFDCPA.

In fact, the case could resonate outside Massachusetts and particularly in jurisdictions where passive debt buyers have been sued for not obtaining licenses as debt collectors.

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