

NAPBS – MOOT COURT / MINI TRIAL – FCRA

Part Three of the Tony the Timebomb Trilogy

Starring

Jon Burton, Esq.
Art Cohen, Esq.
Larry Henry, Esq.
Pam Devata, Esq.
Vince Pasquerella, Esq.
Less Rosen, Esq.

The Back-story

A long, long time ago in a place that is far, far away, there lived a man named Tony the Timebomb. In the early 90's Tony committed a series of violent offenses. After being incarcerated, during which time he escaped and was captured, and after his release and re-entry he secured employment with Acme Industries (Acme). Acme hired Tony after performing pre-employment background checks with ABC Company. However ABC failed to properly report Tony's background and Acme hired Tony, placing him in a position where he entered private homes.

While in an Acme customer's home, he assaulted the customer. The customer successfully sued both Acme and ABC for negligent hiring and negligence in performing the background checks. The verdict put ABC out of business. Tony went back to jail. After completing a 2d jail term, Tony was released in 2005 and successfully completed an ex-offender program. He reapplied to Acme who refused to hire Tony. Tony successfully sued Acme in 2008 for Title 7 violations and received a large punitive damages award. Tony has spent the money and late last year applied to his former employer Acme for a job.

Acme processed Tony's employment application and performed pre-employment background checks. XYZ Company is Acme's current vendor. XYZ provides little to no support to Acme in furtherance of a FCRA compliant screening program. While there is a written agreement between Acme and XYZ, Acme has not given XYZ much written information regarding Acme's obligations under the FCRA. Specifically it has never provided a copy of the FTC's Summary of Rights. The only written documentation that XYZ provides is the written consumer report after the background searches are completed. To make matters worse, XYZ does not do a very good job of ensuring that its consumer reports are even accurate. In particular it does not sufficiently check and match identifiers to ensure that applicants who are reported to have adverse criminal records are in fact the same person as the applicant.

XYZ performed a background check on Tony. It inaccurately reported Tony as having several recent convictions in late 2007 and 2008 arising from crimes committed during

the Title 7 action similar to those which got Tony in trouble in the first place. These offenses actually belonged to another person with a similar name (XYZ confused Tony the Timebomb Jr. (our Tony) with Anthony Timebomb, date of birth (our Tony's DOB is 2/13/75 while Anthony's is 2/18/75) and other identifiers. As a result, XYZ did not hire Tony.

Tony was told over the phone by Acme that he did not get the job. Thereafter he received, on the same day, both a pre-adverse action notice and a final adverse action notice which were sent out by XYZ on behalf of Acme. Evidently there was a delay in the mail caused by a weekend, federal holiday and some problems in XYZ's mailroom.

Tony has sued both Acme and XYZ. Acme has filed a cross-claim against XYZ. The jury will be asked to determine and allocate liability between the 2 defendants.

Those attending will be divided into 12 person juries to deliberate and render a decision.

The parties and players are as follows:

1. Art Cohen represents Tony.
2. Acme is represented by Pamela Devata, Esq.
3. Les Rosen represents XYZ.
4. Judge Jon Burton has ascended to the bench and will be trying this matter.
5. Tony has engaged the same expert he previously utilized in the Title 7 case, Pay Me Enough and I Will Say Anything (Mr. Payme). Payme will opine on alleged FCRA violations. Payme is played by Vince Pascarella.
6. Acme's and XYZ's expert, Larry Henry from the consulting firm We Can Make Pigs Fly, Inc. has disagreed with Payme's opinion.