Docket No. 20-658

United States Supreme Court

SHERRI COHEN

Petitioner,

-against-

EQUIFAX INFORMATION SERVICES LLC and
TRANSUNION LLC

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the
Second Circuit, No. 19-3063

PETITIONER'S RULE 15.6 REPLY TO RESPONDENT'S RESPONSE

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JURISDICTIONAL STATEMENT

This brief is filed pursuant to Supreme Court Rule 15.6 which allows Petitioners to file replies to responses filed by Respondents to their Petitions.

PETITIONER'S REPLY TO TRANSUNON'S RESPONSE TO MY PETITION

TransUnion makes four arguments in its response to my petition for Write of Certiorari. None of those is correct.

First, TransUnion argues that the Court should not hear this Writ because the Second Circuit refused to consider the District Court's decision that TransUnion conducted reasonable investigations of each of my disputes. For this, TransUnion cites *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 487, 128 S.Ct. 2605 (2008) for the proposition that "it is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below." But this is part of the error of both the District Court and the Second Circuit. The District Court did consider this issue and it wrongly found that TransUnion "reasonably investigated" each of my disputes, as the statute requires. *See* Fair Credit Reporting Act, 15 U.S.C. §1681 *et seq.* ("FCRA"). In reaching that conclusion, the District Court determined that the type of investigation TransUnion claimed to perform was legally sufficient. That is the error. What TransUnion claimed was an investigation, and what the District Court agreed was a reasonable investigation, was TransUnion relying on confirmation from the furnishers of the information without any actual investigation by TransUnion. That violates the law as interpreted by every other Circuit to rule on this issue: *Gorman v. Experian Information Solutions, Inc.*, No. 07 CV 1846(RPP), 2008 WL 4934047, at *5 (S.D.N.Y. Nov. 19, 2008) (citing *Cushman v. Trans Union Corp.*, 115 F.3d 220, 225 (3rd Cir. 1997); *Henson v. CSC Credit Servs.*, 29 F.3d 280, 287 (7th Cir. 1994); *Stevenson v. TRW Inc.*, 987 F.2d 288, 293 (5th Cir. 1993))*Jones v. Experian Info. Solutions, Inc.*, 982 F.Supp.2d. 268 (S.D.N.Y. 2013). TransUnion's attempts to explain away these cases completely

contradicts the plain language of those cases and makes them into nonsense. In fact, it's not possible to reasonably possible to conclude that the District Court's ruling that such an investigation is a "reasonable investigation" under the statute is consistent with these cases, like *Jones* and *Cushman*, which not only found such an "investigation" to be not reasonable but found it to be evidence of intentional violation of the statute. This is what the Court needs to fix or it will leave millions of consumers in the Second Circuit without this key right to an independent investigation, and conflicts with every other Circuit to consider the issue.[1]

Secondly, TransUnion argues that making a consumer who has sued under the FCRA go through TransUnion's attorney to fix their credit during litigation cannot be the basis of a lawsuit. That is incorrect, as I outlined in my petition. But even more to the point, that isn't the fundamental problem here. The problem here is that TransUnion took my credit report offline so it was no longer available to me or my creditors. That is the primary issue even before reaching the second offense here, which is that TransUnion's attorney had improper access to my credit and controlled whether or not and when I could get it. In other words, TransUnion mischaracterizes my claim, as they have done repeatedly throughout this litigation with all my claims. TransUnion pointing to the Second Circuit decision doesn't make its claim any better either because the Second Circuit likewise misinterpreted my claim regarding the litigation lock, which is pointed out in my Writ and ignored by TransUnion.

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1 In 2015, Equifax and TransUnion entered into an agreement with New York Attorney General Eric Schneiderman to improve their consumer dispute procedures and to broadcast to consumers their rights in a series of television ads in New York, but neither Equifax nor TransUnion did this and Schneiderman left office. I raised this as part of my state law claims, but the District Court dismissed those without any real analysis.

Third, TransUnion claims my allegations of being subject to different standards as a result of my *pro se* status are unfounded or "false." But TransUnion provides no explanation of how that is true. It never addresses a single one of the things I pointed out, which do that I've been treated differently. Indeed, look at my Rule 15.8 Supplement, which highlights how I've repeatedly been denied the rights afforded by the Rules of Civil Procedure, local rules, the Judge's own rules, and the normal rules of the legal profession.2

Finally, TransUnion argues that the Court should not consider the question of whether or not disputes filed with credit repair agencies should be considered disputes under the FCRA. For this, TransUnion points to the Second Circuit's conclusion that I abandoned that claim, but I never abandoned anything. Whether or not I filed disputes and if those were properly evaluated is the very heart of my case and my appeal.

TransUnion's response/opposition to my writ should be ignored. It presents no real arguments other than to tell the Court to rely on the Second Circuit, even though its decision is full of errors. It fails to address the points I made in my Writ. It mischaracterizes my arguments when it does address them and skips the fundamental points. Finally, it ignores the vital importance of what the District Court has erroneously done and how this will affect millions of consumers.

Respectfully submitted,

Sherri Cohen, *Pro Se*
Petitioner

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2 Because Judge Rakoff has shown such unwillingness to follow the rules for a pro se party like myself, I respectfully request that if the court does send this case back, that it send the case to a different judge or District Court.