

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02491-GPG

MICHAEL J. ROSEDALE,

Plaintiff,

v.

CAPITAL ONE BANK (USA) N.A.,

Defendant.

ORDER OF DISMISSAL

Plaintiff Michael J. Rosedale currently resides in Watkins, Colorado. He has filed "Plaintiff's Statement of Claim" (the Complaint) alleging violations of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681, *et seq.*, against Defendant Capital One Bank (USA) N.A. for furnishing false and inaccurate information to consumer reporting agencies. (See ECF No. 1, at 3-7).

Mr. Rosedale has been granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Subsection (e)(2)(B)(i) requires a court to dismiss *sua sponte* an action at any time if the action is frivolous. A legally frivolous claim is one in which the plaintiff asserts the violation of a legal interest that clearly does not exist or asserts facts that do not support an arguable claim. *Neitzke v. Williams*, 490 U.S. 319, 324 (1989).

The Court must construe the Complaint liberally because Mr. Rosedale is not represented by an attorney. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not act as

an advocate for *pro se* litigants. See *Hall*, 935 F.2d at 1110. For the reasons discussed below, this action will be dismissed.

On November 20, 2015, Magistrate Judge Gordon P. Gallagher reviewed the Complaint and determined that it was deficient because it was not filed on the proper Court-approved form. Magistrate Judge Gallagher further found that the Complaint was deficient because Mr. Rosedale failed to provide a short and plain statement of his claims demonstrating that he is entitled to relief as required by Rule 8 of the Federal Rules of Civil Procedure. Specifically, Magistrate Judge Gallagher advised Plaintiff that the FCRA imposes a duty on persons who provide information to credit reporting agencies ("furnishers") to accurately report information. 15 U.S.C. § 1681s–2(a). While it also gives consumers a private right of action against those who violate its provisions, see 15 U.S.C. § 1681n (right of action against willful violators); 15 U.S.C. § 1681o (right of action against negligent violators), that right of action is limited to claims against the credit reporting agency; it does not extend to furnishers to agencies. *Sanders v. Mountain America Federal Credit Union*, 689 F.3d 1138, 1147 (10th Cir. 2012) (internal citations omitted). Accordingly, Magistrate Judge Gallagher directed Mr. Rosedale to file an amended complaint on the proper Court-approved form that provides a short and plain statement of his claims in compliance with the requirements of Fed. R. Civ. P. 8. Magistrate Judge Gallagher warned Mr. Rosedale in the November 20 Order that failure to comply by the court-ordered deadline would result in dismissal of this action without further notice. (*Id.*). Mr. Rosedale did not file an amended complaint within the time allowed.

In the original Complaint, Mr. Rosedale asserted claims alleging violations of the

FCRA against Defendant Capital One Bank (USA) N.A., as “furnishers of information to consumer reporting agencies.” (See ECF No. 1, at 3-7). As set forth in the November 20 Order, a private right of action brought pursuant to the FCRA is limited to claims against the credit reporting agency; it does not extend to furnishers. *Sanders*, 689 F.3d at 1147. Thus, Mr. Rosedale has failed to state a claim against Defendant under the FCRA. Accordingly, it is

ORDERED that the Complaint (ECF No. 1) and this action are DISMISSED WITH PREJUDICE pursuant to 28 U.S.C. § 1915(e)(2)(B). It is

FURTHER ORDERED that leave to proceed *in forma pauperis* is denied for the purpose of appeal. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Mr. Rosedale files a notice of appeal he must also pay the full \$505 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24.

DATED January 4, 2016, at Denver, Colorado.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court