

Appeals court deals a blow to junk-fax collection firms

BY PAULA MOORE
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The Colorado Court of Appeals has ruled against Consumer Crusade Inc. in a second "junk fax" case that could spell the end of third-party collections against people and companies that send unwanted faxes.

A three-member panel of judges, led by Judge Robert Hawthorne, upheld a 2004 lower court dismissal of Consumer Crusade's collections suit against MBA Financial Group Inc. and its owner, Dale Finney. The decision was released Sept. 28.

"What these decisions say is that people who received the faxes, and who the cause of action is accrued to, can sue, but you can't make a business out of selling [faxes]," said Douglas Turner, attorney for MBA Financial.

Local talk show host Tom Martino at one time heavily promoted Consumer Crusade's anti-junk fax effort.

The appellate judges agreed with the lower court that so-called junk faxes can't be assigned to third parties such as Consumer Crusade for litigation. Earlier this month, the appeals court also found for the defendants in another junk-fax case because of the assignability issue. That case was Douglas McKenna vs. Mile High Karate LLC.

Defendants' attorneys expect McKenna and Consumer Crusade to appeal the appellate courts' decisions to the Colorado Supreme Court.

On his FaxWar.com Web site, Finney calls the decision "another win for the good guys." Finney no longer owns MBA, having sold the company in April 2005.



Tom Martino previously promoted Consumer Crusade's efforts.

Junk faxes are fax advertisements sent without the recipient's permission and are illegal under state and federal laws.

Companies such as Englewood-based Consumer Crusade and U.S. Fax Law Center Inc. of Centennial, whose owners also have been in the collections business, solicit unwanted faxes from recipients and try to collect damages on them. Fax

TIMELINE

Consumer Crusade vs. MBA Financial

May 2004: Complaint filed by Consumer Crusade

July 2004: MBA files motion to dismiss

Oct. 2004: Lower court grants motion to dismiss

Sept. 2006: Appeals court affirms lower court judgment

Source: Denver District Court records

recipients generally get \$25 per fax, while companies such as Consumer Crusade seek damages from the senders of \$1,500 per fax.

Consumer Crusade and U.S. Fax Law also have appeals in federal court related to the assignability issue.

The most recent appeals court ruling involved a Consumer Crusade lawsuit against MBA filed in May 2004. The suit alleged that MBA sent "one or more" fax advertisements to Colorado individuals without their permission. The

company sought more than \$15,000 in total damages.

Denver-based MBA subsequently moved to dismiss the suit, saying laws against junk faxes aren't intended "to create a moneymaking enterprise for law firms and debt collectors."

Denver District Court Judge Lawrence Manzanares granted MBA's motion in July 2004.

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Lawyer in junk-fax legal effort owes back wages to ex-workers

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Two former employees of The Demirali Law Firm won a combined judgment this summer of \$35,000 against the firm for back pay, but the wages remain unpaid.

The Denver-based law firm, headed by attorney Agim "Jim" Demirali, represents local junk-fax collection company Consumer Crusade Inc. of Englewood.

Denver District Judge Joseph Meyer III ruled in June that Laurie Lawrence and Sydney King, the two ex-Demirali employees, are entitled to a total of \$34,689 in back pay plus \$427.50 in costs.

The former employees also were awarded interest of roughly \$4 and \$3 a day, respectively, for every day the wages aren't paid.

The women still hadn't collected on that judgment as of this week, Lawrence said. "We've waited years to get our money, which is wages — not an investment," she said.

Demirali, in a court filing answering his former employees' complaint, denied he

owes them the wages they specified. He also asked the judge to dismiss the suit.

Demirali did not return a phone call for comment this week.

King and Lawrence sued Demirali in Denver District Court in April 2005. The women said in the suit they started working for the firm in December 2003 for \$45 an hour, but Demirali asked them to defer that wage for 30 to 60 days.

The Demirali firm collects and processes unwanted, illegal junk faxes that recipients assign to Consumer Crusade, and seeks damages on the faxes in and outside of court.

The ex-employees contend Demirali never paid them the \$45 hourly wage, and asked them to work for \$15 an hour for immediate payment of wages. King and Lawrence agreed and subsequently received partial payments, but not their full wages, according to the suit.

The women left the Demirali firm in April 2004.

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