

Case Still Dismissed!: Plaintiff Joseph Nelums' Motion For Reconsideration Denied

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Hi TCPAWorld! The Dame here reporting from a VERY humid South Florida – and no less on a topic we rarely cover: motions for reconsideration.

The United States District Court of New Mexico denied a motion for reconsideration in *Joseph Nelums v. Mandu Wellness, LLC*, 2024 WL 22204 (D.N.M. Jan. 2, 2024).

To start with, the Federal Rules do not recognize “motions to reconsider.” The Rules however do “contemplate a motion to alter or amend judgment under Rule 59(e), or a motion for relief from judgment under Rule 60(b).”

Here, Nelums sought the court to reconsider its earlier decision dismissing his claims against the defendants under the TCPA. Nelums argued that the court had not properly considered evidence and precedent regarding outsourced telemarketing and vicarious liability under the TCPA.

The main argument made by Nelums was that defendants cannot escape liability under the TCPA merely by outsourcing their telemarketing activities. Nelums argued that even indirect involvement in telemarketing practices, such as through third-party services, does not absolve a company from responsibility.

Additionally, Nelums raised concerns about the defendants' alleged deceptive practices. He claimed that the court had not fully acknowledged evidence that pointed towards the defendants' efforts to conceal their involvement in the telemarketing text messages—suggesting that they were more than passive bystanders in the telemarketing campaign.

Despite these arguments, the court found that the motion largely repeated arguments that had already been addressed in the initial ruling. It emphasized that, for a motion for reconsideration to be successful, there must be 1) an intervening change in controlling law, 2) new evidence that was previously unavailable, or 3) a need to correct clear error or prevent injustice—as specified under Rule 59(e) of the Federal Rules of Civil Procedure.

The court also addressed Nelums' request for jurisdictional discovery. Nelums' argument for this discovery was predicated on the assumption of the defendants' deceptive actions and their efforts to

obscure their identities. However, this was deemed too speculative, lacking the substantive support required for additional discovery.

Anyway, a fair secondary win for the defendants here.

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