

## SUE WEAVER CASE SUMMARY

Burdines, Inc. ("Burdines"), a subsidiary of Federated Department Stores ("Federated"), advertises their residential services regularly and extensively throughout the State of Florida in newspapers and other media sources. These residential services include, but are not limited, to air conditioning duct, carpet and upholstery cleaning.

Burdines purchases space in newspapers throughout the State of Florida in which it advertises its residential services, places its logo in its advertisements, offers consumers the option to paying for its residential services with a Burdines' credit card, isolates the consumer to residential services only, and assures the consumer that Burdines is licensed and insured to perform the in-house services.

The consumer is led to believe by Burdines' advertisements that Burdines, a subsidiary of Federated, is sending Burdines' employees to perform the residential services, implying the credibility and security of Burdines. The agents even wear the Burdines' logo on their uniform.

In this case, Burdines was sending employees of Adler Services, Inc. ("Adler") into the residences of their customers although Burdines controlled every aspect of Adler's business.

Consumers routinely respond to these advertisements for residential services and contract for these services to be performed in their homes. In response to Burdines' advertising for residential services, Cathy Sue Weaver ("Sue Weaver"), contracted with Burdines to perform air conditioning duct cleaning services in her home located at 5495 Palm Lake Circle, Orlando, Orange County, Florida. Sue Weaver was a single woman who resided alone and operated a home-based business at that address.

On February 20, 2001, Burdines sent its agents, James Perrigo and Jeffrey Hefling, employees of Adler, into the home of Sue Weaver to perform these air conditioning duct cleaning services. Sue Weaver was given a Burdines' invoice for the services performed and paid with a check made payable to Burdines.

Hefling was a resident of Seminole County, Florida, and was employed by and performed air conditioning duct cleaning for Burdines. Hefling is a convicted rapist. At the time Hefling performed the air conditioning duct cleaning services at Sue Weaver's private residence, he was on parole for various violent sexual offenses and was listed on the Florida Department of Law Enforcement's Sexual Offenders' Website and Seminole County Website.

On August 27, 2001, Hefling returned to Sue Weaver's private residence where he raped, murdered and, in an attempt to conceal his crimes, burned both Sue Weaver and her home. Currently Hefling is being held without bail in the Orange County, Florida jail charged with first degree murder, sexual battery with a deadly weapon, arson and burglary of a dwelling.

Burdines, through its licensing agreement, mandated that Adler perform background investigations on employees before sending those employees to a customer's home. The licensing agreement not only set forth the specific scope of the background investigation, it clearly defined what was considered unacceptable history for sending a person to a customer's home ("In the event the results of the reference checks are unacceptable and/or the background check reveals that the employee has a criminal record, the licensee shall not send such employee to the customer's home.")

The agreement further stated that Burdines could request that Adler transfer or remove any employee who, in Burdines' judgment, was ineffective, undesirable or dishonest. This background check was *never* performed.

In the deposition of Paul Imbrone, Burdines' Vice President of Loss Prevention, Risk Management, Communications and Legal, he stated that Burdines felt it was important to conduct such background checks to ensure that criminals could not pose a threat to Burdines' customers by going into their homes. He not only acknowledged his awareness of the Licensing Agreement requirements, he emphasized the importance of conducting these investigations to ensure customer safety.

In spite of Imbrone's emphasis placed on the importance of the background investigation process, employees at Adler contend they were unaware of the requirement to conduct these investigations and normally hired individuals for Burdines without doing so.

In spite of the significance placed on these background investigations by Burdines, Burdines could produce no documentation to indicate that they took any action to ensure that Adler was meeting these critical requirements. As a result, Adler management was hiring and retaining employees with criminal records and sending them to customer's homes in violation of the licensing agreement.

In this case, the situation is particularly egregious in light of the fact that, during the application process, Hefling admitted he had spent 14 years in jail, yet was hired without anyone attempting to determine

why he had been incarcerated

In addition to Hefling, Adler also employed Perrigo as the field supervisor in their Orlando Office, who admitted in his own deposition that he had a conviction for breaking and entering. Perrigo was the individual who hired Hefling.

Federated Department Stores corresponded directly with Adler Services regarding the licensing agreement with Burdines, Federated executed the original agreement, and terminated the most recent agreement. Burdines is "a division of Federated Department Stores, Inc." Federated owns and operates numerous major department stores throughout the country, including Macy's.

In 1999, Federated established a pre-employment screening requirement for the employees of general contractors and their sub contractors working on construction or renovation jobs occurring on the premises of Burdines. Included in this requirement was a provision for Burdines to conduct a criminal background check and what steps to take if a check revealed a "hit". Burdines' failure to enforce or audit the background investigation requirement in the Licensing Agreement is inconsistent with policies used by other firms in industries where the employees or subcontractors come into contact with the general public or require access to an individual's home.

There are numerous commercial firms throughout the United States that provide background investigation services, including criminal history checks, for employment purposes.

A web search through a popular search engine reveals over 1,000,000 hits for the term "background investigation" and there are hundreds of companies that perform such services that advertise in local and regional periodicals, magazines, etc. The process is timely, can normally be completed within 72 hours or faster, and can cost as little as \$7.00 for a county criminal history check.

In addition, there are numerous government-sponsored web sites that offer free access to information that is helpful in determining the suitability of an applicant for employment. In Florida, for example, the Florida Department of Law Enforcement has a site dedicated to known sexual predators in the state. As indicated above, the practice of conducting background investigations to determine employee suitability is well established in the business community and regulated by federal law, primarily the FCRA.

There are no legal or practical hindrances to any firm to prevent them from conducting background checks on prospective employees. There was no legal or practical impediment to prevent Adler from conducting criminal history background checks on applicants for employment or on existing employees.

Burdines' clear written requirements, along with the testimony of their senior Risk Management official, indicates that senior company officials were fully aware of the danger posed to customers by sending individuals with criminal records into customer's homes.

The company's continued failure to provide even a minimum level of oversight to ensure compliance with such a crucial requirement, represents willful negligence and conscious disregard or indifference for the life, safety and rights of its customers, and directly contributed to the murder of Sue Weaver.