

## [Attorney's Fees Award Against Counsel is Reversed for Lack of Statutory Authorization](#)

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In [Hyde v. Del Nero, 2009 DJDAR 8329](#) (2009), the [Ninth Circuit](#) clarified whether a lawyer for a party may be liable for fees under [15 U.S.C. Section 1692k\(a\)\(3\) of the Federal Debt Collection Practices Act \("FDCPA"\)](#) (pdf). In 2004, the plaintiffs filed suit against Midland Credit Management, Inc. ("MCM") alleging violations of the FDCPA. Three months before trial, the law firm of Hyde & Swigart was retained to represent one of the plaintiffs after MCM settled with the other plaintiff.

The case was heard as a bench trial. The judge dismissed a number of the remaining plaintiff's claims during trial and eventually rendered an award in favor of MCM. Plaintiff presented only one supporting witness at trial. The district court awarded MCM attorney's fees and costs against the plaintiff and his lawyers, Hyde & Swigart, jointly and severally.

In support of the award, the district court wrote that plaintiff's sole witness was "wholly without credibility" and the case was brought "in bad faith for the purpose of harassment" as defined in Section 1692k(a)(3) of the FDCPA. The law firm appealed the award of fees rendered against it.

On appeal, the lawyers argued that attorney's fees may not be awarded against a plaintiff's attorney under Section 1692k(a)(3). The Ninth Circuit agreed and reversed. The court stated that under Section 1692k(a)(3), a court may award reasonable attorney's fees for an action "brought in bad faith and for the purpose of harassment." The court noted however, there is a general presumption that an attorney is not liable for fees unless a statute explicitly provides for such a liability. The court noted that Section 1692k(a)(3) is silent as to who is responsible for the actual payment of the award. On this basis, the court determined that an award under Section 1692k(a)(3) cannot be against the plaintiff's attorneys as there was no authorization within the statute for such a result. The Ninth Circuit emphasized that although the trial court has discretion to determine reasonable attorney's fees, it had no authority to shift the burden of payment on parties other than the plaintiff, without specific statutory authorization.