

## Collection Attorneys Beware of New FDCPA Rulings

By Sonya A. Smith-Valentine

The Fair Debt Collection Practices Act (FDCPA) is a federal law that governs what actions a debt collector can take while trying to collect a debt. Collection attorneys are also governed by the FDCPA. As such, collection attorneys should take note of several recent rulings in 2005 from federal courts around the country regarding the FDCPA.

### **Oral Disputes of Debts Count, Too**

The Ninth Circuit has held that debt collectors cannot tell consumers that they will assume a debt is valid unless they receive written notification of a dispute. A consumer can dispute the validity of a debt in writing or orally. Although there are some sections of the FDCPA that require written notice, the Court declined to impose the written notice provision on other sections. The Court reasoned that it would not make sense to read a written notice requirement into §1692g(a)(3) because other sections of the FDCPA require debt collectors to take note of consumers' oral disputes.

The Ninth Circuit followed Supreme Court rulings that have held that courts should not insert language into a statute unless the failure to do so would result in absurd or unreasonable results.

### **Collectors Must Notify Credit Bureaus of Orally-Disputed Debts**

The FDCPA requires a collector to notify the credit bureaus that a debt is disputed if the collector has reason to know the debt is disputed and reports about the debt on a consumer's credit report. This requirement applies even if the consumer disputes the debt orally.

This requirement has been extended by recent court rulings. First, the debt collector does not have the authority to decide unilaterally if a consumer's dispute has any merit. As long as a consumer has disputed the debt, the collector is required to inform the credit bureaus of the dispute.

Second, a simple inquiry by a consumer about the validity of additional charges is an oral dispute of the debt and requires reporting to the credit bureaus that the debt is disputed.

Lastly, a collector has to report that the debt is disputed in a timely manner. Summary judgment was denied for a collector in a recent case in Pennsylvania where the collector took seven months to report that the debt was disputed. The court believed that a jury could find that seven months was an unreasonable delay and a violation of the FDCPA.

### **Affidavits for Garnishments are Covered by the FDCPA**

In an important ruling, the Sixth Circuit has recently held that debt collectors and collection attorneys who sign and file affidavits to obtain garnishments in state courts are fair game for FDCPA lawsuits. Collection lawyers will now have to be more careful about what they and their clients say in these affidavits. In the Sixth Circuit case, the collector's attorney filed an affidavit stating that he had a reasonable basis to believe that the debtor's property was nonexempt and garnishable. The debtor's property, however, was Social Security benefits, which are exempt.

The court also stated that the FDCPA violation was an independent federal claim from the state court action and therefore the Supreme Court's Rooker-Feldman doctrine, which bars federal courts from reviewing state court decisions, did not apply.

### **Repeated or Continuous Telephone Calls Can Mean Trouble**

Recent court decisions reaffirm that repeated or continuous calls to a consumer by a debt collector can bring about FDCPA violations.

In one case, six voice-mail messages left on a consumer's home answering machine over a 10-day period was sufficient to defeat summary judgment and could be viewed as harassment, false threats or unfair practices.

In another case, the debt collector was denied summary judgment where it called a consumer multiple times without leaving any messages. The court determined that the possible FDCPA violation turned on the volume of calls made and on the pattern of the calls.

In yet another case, a debt collector was found to have violated the FDCPA by repeatedly calling a consumer after the consumer had hung up the telephone.

### **The Financial Pain of FDCPA Violations**

Consumers have the right to file a lawsuit against any debt collector or collection attorney who violates the FDCPA. The consumer can recover actual damages, statutory damages of up to \$1,000 and attorney's fees and costs.

Some of the secondary costs to debt collectors and collection attorneys include decreased collection rates, increased insurance rates and the costs of defending a lawsuit, just to name a few. As the recent rulings point out, avoiding FDCPA violations is the best road to travel.

*Sonya A. Smith-Valentine is a member of the Valentine Legal Group, LLC, in Greenbelt, Maryland. She concentrates her practice on violations of the Fair Debt Collections Practices Act (debt collection harassment) and the Fair Credit Reporting Act (credit report disputes).*