



## *When a Person is Not a Person Under the FDCPA*

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## **The Sixth Circuit Expands the Pool of Potential Plaintiff's Who Can Qualify as a "Person" Under the FDCPA**

*By: Christopher J. Arlinghaus*

The Sixth Circuit of the United States Court of Appeals rendered a novel ruling on July 23, 2015 in *Anarion Investments LLC v. Carrington Mortgage Services, LLC*, whereby the Court seemingly broke new ground in finding a company/ legal entity to be considered a "person" under the Fair Debt Collection Practices Act (FDCPA) for the purposes of bringing a lawsuit against a debt collector.

Anarion Investments LLC was the ultimate assignee of a residential lease and option, obtaining the assignment when the assignor's residence was in foreclosure. Carrington published certain foreclosure notices in a local newspaper stating Brock & Scott was a "substitute trustee" for this bank loan "by an instrument duly recorded." Anarion alleged the instrument did not exist, and claimed misrepresentation under the FDCPA in a lawsuit in Federal District Court, which the Court dismissed. On appeal, the sole issue before the Sixth Circuit Court was whether Anarion is a "person" under provision 15 USC §1692k of the FDCPA providing, "any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person."

Citing the federal Dictionary Act, the Sixth Circuit decided the term "person" in 15 USC §1692k included Anarion, finding the context of use of the word "person" did not indicate otherwise. The Court noted "person" is used twenty-four times in the FDCPA and "sometimes" includes artificial entities. The Court cited examples of the use of "person" in the

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FDCPA and found that, even though the statute notes protections to “physical person, reputation or property of any person,” seemingly indicating a Plaintiff must be a “natural person,” corporations have “reputations” and “property,” so a corporation or business entity could qualify as a plaintiff under the statute. The Court also cited the statute’s definition of “consumer,” which specifically uses the term “natural person,” and opines that when Congress meant to use a limiting definition of person as a “natural person” it used that exact phrase. Finally, the majority discounts that this expansive definition of “person” would frustrate the FDCPA’s purpose, noting the statute does not allow a lawsuit to be brought under the FDCPA for business debts, and that “[n]ormally, therefore, businesses will not have any basis to bring an FDCPA claim.”

The Court also claims that it remained to be seen whether Anarion could bring a lawsuit under the FDCPA, i.e., Anarion qualified as a “person” under 15 USC §1692k, but it had not yet proven whether, for example, “any of the defendants’ representations were made ‘with respect to’ Anarion, as required for relief under §1692k(a) of the Act.” Judge Bernice Bouie Donald wrote a spirited dissent, arguing artificial legal entities do not qualify as persons entitled to a remedy under the FDCPA. The dissent acknowledges the Dictionary Act, but finds the context of the use of “person” within the FDCPA compels the finding that Congress did not mean to afford legal entities protection, citing congressional history of the FDCPA, as well as existing jurisprudence regarding the FDCPA and the Dictionary Act. The dissent observes that the context and history clearly indicate the FDCPA was meant to protect “natural persons” from potential debt collection abuses, citing the FDCPA’s stated purpose. The dissent explains “...the Act is most consistent when one considers debtors to be natural persons, facing creditors and debt collectors of all stripes—from individuals to banks and other companies. This reading is reflected throughout the statutory text, including those sections cited by Anarion and the majority.” Under the Dictionary Act, the context of the FDCPA indicates “person” in 15 USC §1692k must mean natural person, according to the dissent.

The dissent noted that the majority’s analysis might apply as regards the provisions it highlights, but its analysis *also* supports a more context-appropriate interpretation. That interpretation being that the FDCPA aims to protect natural persons from debt collectors of all kinds – individuals and corporations. Furthermore, the dissent opined, “The existing jurisprudence surrounding the FDCPA echoes this more nuanced interpretation. Despite the thousands of claims that have been brought in federal court since the passage of the FDCPA in 1977, neither the majority nor the parties cite a single instance in which a legal entity has sued as a ‘person’ entitled to relief under the Act.”

While this definition expands the pool of potential FDCPA Plaintiff’s it should be noted that a business debt will still not come under the protection of the FDCPA. As the majority noted, the definition of “debt” in 15 USC §1692(a)(5) clearly eliminates business debt from FDCPA protection regardless of the person or entity bringing the claim.

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