

CFPB: Ignorance is No Excuse in FDCPA False, Deceptive, Misleading Violations

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On January 2, 2024, the Consumer Financial Protection Bureau ([CFPB](#)) filed an amicus brief in the case of *Carrasquillo v. CICA Collection Agency, Inc.* where it argued that knowledge (i.e. “scienter”) of a violation of the Fair Debt Collection Practices Act (FDCPA) was not required to be found liable for making a false, deceptive, or misleading representation in connection with the collection of a debt. If accepted, the CFPB’s position could significantly expand the type of actionable conduct against a debt collector under the FDCPA.

In *Carrasquillo*, a consumer filed a putative class action against a debt collector for sending him a collection letter at a time he was under the protection of the bankruptcy code. According to the consumer, this violated the FDCPA’s prohibitions on making a false or deceptive representation in violation of 11 U.S.C. § 1692e. The debt collector moved to dismiss and argued that it could not have violated the FDCPA because it was not aware that the consumer had filed for bankruptcy protection and never received any notice from the bankruptcy court.

The United States District Court for the District of Puerto Rico agreed and dismissed the consumer’s complaint. In reliance on a case from the Third Circuit Court of Appeals, the district court noted that “a debt collector’s unknowing violation of an automatic stay does not transform an otherwise accurate collection letter into a ‘false representation’ within the meaning of § 1692e... .” As the court further noted in reliance on Third Circuit precedent:

the court found that the provision prohibiting debt collectors from using false or misleading representation as to the collection of any debt was not intended to penalize debt collectors for failing to discover a debtor’s bankruptcy filing, because it was intended to prohibit only knowing or intentional conduct by debt collectors.

The consumer appealed the district court’s decision and recently the CFPB filed an Amicus Brief in support of the consumer that directly challenges the district court’s ruling. According to the Bureau, “[s]ection 1692e’s general prohibition does not include a scienter requirement, i.e., Congress did not expressly require that the representation be knowingly or intentionally false, deceptive, or misleading to violate that prohibition.” The Bureau argued that this is consistent with other FDCPA provisions and expressly contrasted to a handful of provisions that does incorporate a knowledge element. See, e.g. 11 U.S.C. § 1692e(8) (prohibiting “communicating or threatening to communicate to any person credit information which is known or which should be known to be false.”)

As well, the CFPB argued that the lack of a knowledge element is consistent with the bona fide error defense a debt collector may have under the FDCPA which provides a defense to an unintentional violation. Finally, the CFPB argued that promulgation of Regulation F, effective in 2021, adopted a strict liability standard for certain FDCPA violations. In support, the CFPB reasoned that imposing a “knows-or-should-know standard” would be inconsistent with Section 1692e, “which does not include an exception or exclusion for debt collectors whose deceptive statements are unintentional.”

Acceptance by the First Circuit Court of Appeals of the CFPB’s interpretation to impose strict liability on debt collectors under all provisions of 1692e could potentially increase the number of FDCPA claims a debt collector may face and could also subject debt collectors to significant penalties (especially on a class-wide basis) for purely unintentional conduct. Debt collectors and those otherwise subject to the FDCPA will want to monitor the First Circuit’s ruling in *Carrasquillo* closely as its holding could have significant implications on businesses subject to the FDCPA.

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