



## Alerts

### Court Rejects Bona Fide Error Defense by Landlord Law Firm

September 16, 2013

*Lawyers for the Profession® Alert*

*Lee v. Kucker & Bruh, LLP*, Docket No. 12-cv-04662(LGS) (S.D.N.Y. Aug. 2, 2013)

#### Brief Summary

In a case brought by plaintiff tenant under the Fair Debt Collection Practices Act (FDCPA), the U.S. District Court for the Southern District of New York recently denied defendant law firm's *bona fide* error defense arising from an unintentional misrepresentation by the law firm's client of the amount of debt owed.

#### Complete Summary

The law firm commenced an eviction proceeding on behalf of its client — the landlord of a rent-controlled building in which the tenant rented an apartment — based on an alleged rent delinquency by the tenant. The landlord's records in fact showed that it had not credited payment made by the tenant in the rent-controlled amount. Upon learning that the information provided by its client was erroneous, the law firm discontinued the summary eviction proceeding and the tenant's counsel was awarded fees by the New York City Housing Court. The tenant then commenced his federal court action alleging violations of Section 1692e of the FDCPA. The law firm's defense was reliance upon information provided by its client.

Interpreting the FDCPA as a strict liability statute, the court rejected the law firm's argument that the mistake was unintentional. In rejecting *Stonehard v. Rosenthal*, No. 01 Civ. 651, 2001 WL 910771 (S.D.N.Y. Aug. 13, 2001), in which the court had held that a plaintiff must show that the debt collector knowingly misrepresented the amount of the debt in order to state a claim under Section 1692e(2), the court opined that such reasoning is at odds with binding Second Circuit precedent. Furthermore, the court held that "[r]equiring a violation of § 1692e to be knowing or intentional would make superfluous a part of the statutory bona fide error defense . . . which requires a showing that the violation was not intentional as well as other elements."

With respect to its *bona fide* error defense, the court noted the law firm's lack of any procedures "to identify and resolve potential errors that were evident from the client's documents." Merely relying on the accuracy of the information received from a client, without more, is insufficient to establish *bona fide* error.

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In this case, the court also noted that the law firm had no "formal or written procedures, guidelines, or rules regarding the collection of debts." Moreover, the client upon which the law firm had relied for information was a new client and had only been referring matters to the law firm for a few months. The court also focused on the fact that the records provided by the client to the law firm did not reflect credit of payment received from the tenant, which the court deemed to be an obvious error.

The court acknowledged that "the Second Circuit has not addressed, for purposes of the *bona fide* error defense, what procedures might be sufficient to avoid liability for reliance on a client's erroneous information. In this case there is no need to address the more difficult situation where the client's information is incorrect, but nevertheless seemingly proper." The court perceived this case to fall into the easier category: the records were obviously suspect and the law firm lacked any procedures to ascertain the accuracy of the information received.

The law firm's motion for summary judgment was denied and the tenants' cross-motion for summary judgment was granted.

### **Significance of Opinion**

This decision is significant because it places a defendant law firm's reliance on information provided by its clients under closer scrutiny by the courts in evaluating the *bona fide* error defense. Law firms that deal with high volume cases and routinely initiate cases need to have procedures that ensure the accuracy of their allegations.

For more information, please contact [Terrence P. McAvoy](#) or [Concepcion A. Montoya](#).

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