



News

Client Success: Portfolio Recovery Associates Prevails at Seventh Circuit

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Hinshaw client Portfolio Recovery Associates (PRA) recently secured a win at the U.S. Court of Appeals for the Seventh Circuit in a case involving Fair Debt Collection Practices Act (FDCPA) and Fair Credit Reporting Act (FCRA) claims. The Court's affirmation of the trial court's ruling with regard to costs and attorneys' fees is an excellent example of the usefulness of strategic FRCP Rule 68 offers of judgement when defending against such claims. Hinshaw's David Schultz represented PRA at trial and on appeal, with assistance from Raven Burke Mackey, Jennifer Weller and Steve Swofford.

At issue were claims by a debtor alleging violations of the FDCPA and FCRA. Within a month of the filing of the lawsuit, PRA invoked Rule 68 in making a formal offer to settle, and subsequently made two additional Rule 68 offers of judgement. The plaintiff never responded to these settlement offers, and later rejected a final offer to settle all claims, costs and attorneys' fees for \$25,000. At trial, the plaintiff prevailed on both his claims, but because the jury determined he had sustained no actual damages, his total recovery was limited to \$1,000 in statutory damages.

Plaintiff's legal counsel then sought to recover \$187,410 in attorneys' fees, plus costs. First, the trial court awarded PRA \$3,064 for expenses incurred after its final Rule 68 offer, since the plaintiff obtained a judgment less than the final Rule 68 offer of judgment. Then, turning to the reasonableness of the plaintiff's requested attorneys' fees, the court cited the plaintiff's decision to reject PRA's final Rule 68 offer, which was more than three times the amount of the plaintiff's eventual recovery. The court determined that only the hours worked by plaintiff's counsel prior to PRA's final Rule 68 offer were reasonable. It rejected as unreasonable all subsequent hours worked, including those spent preparing for and conducting the trial, and awarded \$10,875 using the lodestar method.

The plaintiff appealed to the Seventh Circuit. Noting that "sometimes settling a case is the only course that makes sense" and that "this case provides a good example," the panel held that the trial court did not abuse its discretion in rejecting the plaintiff's request for \$187,410 in fees and instead awarding \$10,875.

This case illustrates how a well-calculated Rule 68 offer can place significant litigation risks on a plaintiff. It was a risk the plaintiff was willing to take in this case, and the Seventh Circuit's ruling is the result.

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The case is *Isaac Paz v. Portfolio Recovery Associates, LLC* (7th Cir.), No. 17-3259.