



News

Carlos Ortiz Analyzes in ARM Compliance Digest: Judge Grants Motion for Summary Judgement for Plaintiff in FDCPA Dispute Case

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In the November 23, 2020 edition of the *ARM Compliance Digest*, Hinshaw partner Carlos Ortiz explains the significance of a summary judgment granted to the plaintiff in a Fair Debt Collection Practices Act case, in which a dispute was inadvertently sent to the wrong employee and therefore not logged, with the judge ruling the defendant was not entitled to the FDCPA's bona fide error defense:

This is a tough decision that exemplifies how most courts will heavily scrutinize a debt collector's defense when it is based on bona fide error. Under the FDCPA:

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was (1) not intentional and (2) resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. 15 U.S.C. 1692k(c).

At issue in this case was the maintenance of procedures reasonably adapted to avoid the specific error. The plaintiff alleged that the defendant failed to report the debt as disputed after plaintiff had submitted a written dispute to the debt collector. Although the defendant invested in training its employees in compliance, which included a one-week training session on the FDCPA at the beginning of employment, annual FDCPA testing that must be passed with at least a 95% score, multiple training questions to employees on a weekly basis, and training on the content of the training manual, the court still found that the debt collector did not have procedure reasonably adapted to avoid the error that was at issue. The error was that the written dispute was not sent to the company representative who was charged with flagging debts as disputed before they were credit reported. The court was critical of the defendant for not having any procedure in place that ensured that disputes were actually being routed to the appropriate individual. The court expected there to be redundancies or safeguards to prevent the exact error – misrouting of the dispute. What this tells us that in evaluating whether to defend a case based on bona fide error, it is important to not only look at the overall system a client has invested in to ensure compliance. It is also important to ensure that there was a procedure in place to prevent the very error that occurred. Defending a case based on bona fide error can be very expensive. Thus, it

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is of the utmost importance that careful consideration be given to this at the beginning of the engagement.

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