



News

David Schultz Analyzes in ARM Compliance Digest: Judge Grants MTD in FDCPA Case Over Alleged Conflicting, Overshadowing Language in Letter

October 11, 2021

In the October 11, 2021 edition of the *ARM Compliance Digest*, Hinshaw partner David Schultz discusses a case in which a District Court judge in Illinois granted a defendant's motion to dismiss after it was sued for violating the Fair Debt Collection Practices Act by allegedly making conflicting and overshadowing claims in a collection letter:

Chisom v AFNI has some great quotes for defending lawsuits that raise "ticky tacky" language claims, especially relating to initial letters and out of statute language. The lawsuit challenged AFNI's initial letter, which had fairly standard language about what it would send in response to a verification request and added carefully crafted language for the out of statute debt. Plaintiff's raised a litany of 1692e, f and g alleged violations. The court did not buy any of them and did a thorough job of citing relevant 7th Circuit authorities.

A few of the quotes that I thought were particularly helpful (without internal quotations and cites) are:

(1) as to validation information, "[Collector} would obtain either verification of the debt or a copy of a judgment, depending on which circumstance obtained. That is how ordinary English speakers, sophisticated or not, use the word 'or'.... [The collector] used the phrase 'a judgment,' not 'the judgment,' and no formal education is needed to understand that the indefinite article 'a' leaves unaddressed whether or not a judgment exists."

(2) as to overshadowing, "Language encouraging debtors to pay their debts by notifying them of the potential negative consequences of default does not, without more, overshadow; indeed, during the validation period, the debtor's right to dispute coexists with the debt collector's right to collect."

All totally commonsense interpretations, as opposed to the hyper-technical allegations.

The CFPB Regulation F language should help for initial letters. Unfortunately, it did not provide suggested language for out of statute debt. This case helps with that language.

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