



News

David Schultz Analyzes in ARM Compliance Digest: Judge Grants MTD in FDCPA Case Over Potentially Incorrect Balance in Underlying Collection Suit

February 27, 2024

In the February 26, 2024, edition of the *ARM Compliance Digest*, Hinshaw partner David Schultz discussed how a New York District Court Judge dismissed a Fair Debt Collection Practices Act class-action lawsuit due to lack of standing to sue. The plaintiff claimed that she was sued in state court for an unpaid debt with an incorrect balance.

Schultz writes:

Collection lawsuits are fertile grounds for FDCPA claims. We often see the FDCPA claim brought in the state court collection action as a counter claim and/or third-party action. Perhaps or more common is for the debtor to file a parallel action in federal court that asserts the FDCPA claims. This is often done if there is a challenge to some alleged error in the collection case, such as the debt amount is not right, there is a chain of title defect, an affidavit is erroneous, or some other procedural error. That is what happened in *Bristol v Forster & Garbus*; plaintiff claimed the debt amount in the collection case was wrong.

However, the court in *Bristol* put an end to the parallel FDCPA case based on Article III standing grounds. It reasoned that plaintiff at most alleged a threat of future harm that the state court judgment will be in the wrong amount, which the court said seems unlikely. This is another example of the benefits from the recent wave of favorable Article III cases – it ended the rush to federal court based on an alleged error in state court.

The parallel federal FDCPA case can cause problems for the defendant. It results in increased fees, which will likely be much more significant than what it would cost to just prosecute a collection case. It also allows the debtor's counsel to increase fees that the defendant may have to pay. It provides the debtor with leverage to avoid the state court judgment. Of course, the claims could still be brought in state court as a counter claim. But the costs to litigate that will be less, it creates less leverage, and the state court judge may not be impressed with a claim that it does not know what should be a proper judgment.

Read the full February 26, 2024 edition of the *AccountsRecovery.net Compliance Digest*.

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