What do you do if you get sued for FDCPA

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The FDCPA

- The Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. (the "FDCPA" or the "Act"), was enacted on September 20, 1977, in an effort to curb abusive debt-collection practices when employed by third-party debt collectors. It was enacted as a new subchapter (Title VIII) to the Consumer Credit Protection Act. 15 U.S.C. 1601-1693.

The FDCPA

- The Act relies on and encourages consumers to act as "private attorneys general" to enforce the public policies intended and expressed in the Act. The Act is a "strict liability" statute, is fine-based, generally allows the award of attorney fees only to the plaintiff, and does not recognize equitable defenses. *See Newman v. Checkrite,* 912 F. Supp.2d 1439 (E.D. Ca. 1995).

“Debt Collectors”

A “debt collector” is any person or entity, including an attorney, who uses any instrumentality of interstate commerce or the mails in any business the **principal purpose of which is the collection of any debts, or who *regularly collects*, directly or indirectly, debts owed to another**.”

Exempt Obligations

- Many types of debts have been held not to involve a “transaction” or to otherwise not involve a transaction “primarily for personal, family or household purposes,” and thus fall outside the purview of the Act

- However, it is possible that even a commercial debt can fall within the FDCPA, if the debt is reported to a consumer credit reporting agency.

Least Sophisticated Consumer

- Most courts have adopted a "least sophisticated consumer" standard in determining compliance with the Act

- The "purpose of the least-sophisticated-consumer-standard is to ensure that the FDCPA protects all consumers, the gullible as well as the shrewd

Required & Prohibited Conduct

- Local Information
- Communications in Connection with the Debt
- Harassment, Oppression or Abuse
- False, Deceptive and Misleading Representations

The "MINI-MIRANDA"

The "Mini-Miranda" requirement prohibits the failure to disclose in the initial written communication with the consumer

Unfair or Unconscionable Practices

- Collection of any amount not expressly authorized.
- Acceptance of post-dated checks
- Communicating by postcard
- Using any word or symbol on an envelope, other than collectors return address

Validation of Debts

- Certain information must be sent to the consumer within 5 days after the initial communication with the consumer
- The first notice must state the amount of the debt and the name of the creditor.
- The notice should be clearly visible and in a type size that is clear and conspicuous to the consumer.

Overshadowing

- A collection letter cannot lead a consumer to ignore his right to take 30 days to dispute or request verification of the debt, such as by including language which would lead the consumer to believe that he must act within a different time period.

Damages under FDCPA

1. actual damages;
2. in an individual action, additional damages not exceeding $1,000; or in a class action, an amount not to exceed the lesser of $500,000 or 1% of the debt collector's net worth; and
3. reasonable attorneys' fees & costs

Attorney's Fees

Of concern is the statutory provision for awarding attorney's fees, usually surpass any actual or statutory damages.

This provision has prompted some consumer attorneys to overwork their cases to generate larger fee awards.

Avoiding Liability

A debt collector may not be held liable … if the debt collector shows by a preponderance of the evidence that the violation was not intentional and a result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such an error.