



November 21, 2016

OFFER TO SETTLE TIME-BARRED DEBT DOES NOT VIOLATE FDCPA

The United States District Court for the Eastern District of Michigan held that a debt collector did not violate the federal Fair Debt Collection Practices Act by offering to settle a time-barred debt. *Smith v. Convergent Outsourcing, Inc.*, No. 15-12756, 2016 WL 6524148, at *1 (E.D. Mich. Nov. 1, 2016). The debt collector had sent a consumer a letter to collect a debt that was allegedly beyond Michigan's six-year statute of limitations for breach of contract. The front of the collection letter stated that the creditor would accept less than the total balance due to settle the debt if the consumer paid the settlement amount within 45 days of the letter. The back of the letter contained the validation of debt disclosures required by the FDCPA and certain disclosures regarding the legal status of the debt.

Instead of accepting the settlement offer, the consumer sued the debt collector under the FDCPA and Michigan law. The consumer claimed, among other things, that the use of the phrase "settlement offer" and the words "settlement" and "settle" in the letter was misleading in violation of the FDCPA because those terms suggested that the underlying debt was enforceable in court even though the statute of limitations had run. In support of her claim, the consumer cited to the United States Court of Appeal's decision in *Buchanan v. Northland Group, Inc.*, 2015 WL 149528 (6th Cir. Jan. 13, 2015). As indicated in our Alert dated February 12, 2015, the *Buchanan* court held that a debt collector may have violated the FDCPA using the phrase "settlement offer" in a letter sent to collect a time-barred debt because that term could lead the least sophisticated consumer to believe that the creditor could enforce the debt in court.

The district court concluded that the *Buchanan* case was not directly on point because the collection letter before the court (unlike the collection letter in *Buchanan*) expressly stated that, "We cannot sue to collect this debt and providing a partial payment may revive the creditor's ability to sue to collect the balance." The consumer argued that this sentence was ineffective as a disclosure because it contradicted the debt collector's use of the phrase "settlement offer" and the words "settlement" and "settle." The district court disagreed and explained that this sentence not only disclosed that the creditor could not sue on the debt, but also prevented any potential confusion over whether use of "settle" refers to litigation. After considering the letter as a whole, the district court concluded that the consumer's

interpretation of the language was bizarre, idiosyncratic and nonsensical and inconsistent with how the least sophisticated consumer would interpret the letter. For these reasons, the district court held that the settlement offer was not misleading and fell outside the FDCPA's scope of protection.

FDCPA case law clearly provides that debt collectors may not make statements when collecting on time-barred debts that would mislead the least sophisticated consumer into believing that the debt is enforceable in court. However, the *Smith* case illustrates that "settlement" offers on time-barred debts are not intrinsically misleading. Such offers can be made if appropriate disclosures clearly explain the legal status of the debt. □

✧ *Mike Tomkies and Chuck Gall*

DON'T MISS OUT ON NEXT MONTH'S COLLECTION LAW FROM START TO FINISH SEMINAR.

The National Business Institute is sponsoring a "Collection Law From Start to Finish" seminar on December 12th in Mansfield, Ohio and December 15th in Toledo, Ohio. During the seminar, partner Chuck Gall will provide a general overview of the FDCPA and discuss some of the latest case law developments and regulatory proposals from the Consumer Financial Protection Bureau. Additional speakers will address various topics that establish the legal framework for collecting consumer debt. More information on these seminars is available on the National Business Institute website at www.nbi-sems.com (simply search using the keywords "Collection Law From Start to Finish").

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