



## THIRD CIRCUIT: FD CPA'S STATUTE OF LIMITATIONS STARTS WHEN VIOLATION OCCURS

The United State Court of Appeals for the Third Circuit held that the Federal Debt Collection Practices Act's one-year statute of limitations begins to run when a would-be defendant violated the FD CPA, not when a potential plaintiff discovers or should have discovered the violation. *Rotkiske v. Klemm*, No. 16-1668 (3d Cir. May 15, 2018). The Third Circuit reached a different conclusion than the Fourth Circuit and Ninth Circuit.

This case arose from a lawsuit regarding a bank credit card debt. In January 2009, a law firm sent service of process to an address where the debtor no longer lived. Someone accepted service on the debtor's behalf and the law firm obtained a default judgment against the debtor. The debtor discovered the default judgment in September 2014 when he applied for a mortgage. In June 2015, the debtor filed suit alleging a violation of the FD CPA.

The Third Circuit affirmed the lower court's ruling that the debtor's action was untimely because it was filed well after the one-year statute of limitations period ended. The FD CPA provides that an action to enforce any liability created by FD CPA may be brought "within one year from the date on which the violation occurs." The Third Circuit found that the statutory text spoke clearly on when the statute of limitations period begins.

The Third Circuit addressed the conflicting rulings in its sister courts commenting that both the Fourth Circuit and Ninth Circuit "failed to engage the statutory text" when they concluded that the FD CPA's statute of limitations period starts when the debtor discovered or should have discovered the violation.

While the Third Circuit interpreted the FD CPA's statute of limitations period to begin when a violation occurs, the court emphasized that its holding does not affect the doctrine of equitable tolling, which may be appropriate in some cases involving fraud or self-concealing conduct. Equitable tolling can delay the start of the statute of limitations period until the fraud is discovered. □

✧ *Mike Tomkies and Susan Manship Seaman*

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