



COLLECTION OF CHARGED-OFF DEBT NOT SUBJECT TO PENNSYLVANIA'S CONSUMER LICENSED LENDER STATUTE

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The U.S. Court of Appeals for the Third Circuit affirmed the district court holding that the Pennsylvania Consumer Discount Company Act ("CDCA") was not implicated in the collection of charged-off debt that related to a loan made by a CDCA licensee.

The debtor alleged violation of the Fair Debt Collection Practices Act ("FDCPA") after the collector filed a proof of claim in the debtor's bankruptcy proceeding to collect on the balance of the charged-off loan account. The debtor claimed the filing was unlawful because the debt originated with a CDCA-licensed lender who sold it to an unlicensed third party, allegedly in violation of the CDCA. The CDCA provides that a licensee may not sell contracts to a person not holding a license under the CDCA without prior written approval of the regulator. Once the loan account was charged-off no additional interest or fees were imposed.

The court explained that the CDCA imposes restrictions on unlicensed small-dollar lenders "in the business of negotiating or making loans or advances of money on credit," who may not "charge, collect, contract for[,] or receive interest" at an annual interest rate above 6%. The court stated that when a consumer defaults on a CDCA-regulated loan and the account is subsequently charged off, the CDCA's regulatory framework no longer applies.

The court found that based on the language of the CDCA, the intent of the statute is to protect consumers from small-dollar lenders "in the business of negotiating loans." Accordingly the court found it reasonable to infer that the term "contract" in the CDCA refers to loan contract. Thus, a licensee that sells a charged-off debt obligation is not selling a defaulted loan contract that required prior approval if sold to an unlicensed entity. Rather, according to the court, the lender is selling unsecured debt.

As the CDCA was not violated, the alleged violation of the CDCA could not serve as the basis of the borrower's FDCPA claim. The case recognizes the important distinction between the sale of a loan contract and the sale of charged-off debt.

Please let us know if you have questions regarding licensed lender statutes or debt collection practices. ☐

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