What’s In Your Wallet? Apparently, A Default Judgment: Statute Of Limitations For FDCPA Claims Runs When The Violation Occurs

Client Advisories

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On Tuesday, the en banc Third Circuit Court of Appeals held, in *Rotkiske v. Klemm*, that the statute of limitations for claims brought under the federal Fair Debt Collection Practices Act (“FDCPA”) begins to run when the alleged violation occurs, and not when the plaintiff discovers the alleged claim, as the plaintiff urged.

The FDCPA was enacted over 40 years ago to protect consumers against “abusive, deceptive, and unfair debt collection practices.” It covers a wide range of conduct, from when and where a consumer can be contacted, the manner and contents of communications with the consumer, and a whole host of other conduct. The FDCPA applies to third-party debt collectors, including attorneys who regularly collect consumer, personal, or household debts. In the event of a violation, an aggrieved party can bring a civil suit for actual damages, a penalty of up $1,000, and costs and attorney’s fees. The statute also empowers the Federal Trade Commission to bring administrative actions for enforcement.

The statute requires that lawsuits to enforce the FDCPA be brought “within one year from the date on which the violation occurs.” In *Rotkiske*, the defendant attempted to collect a debt on a Capital One credit card from the plaintiff. In 2008 and 2009, the defendant attempted to serve the complaint to the plaintiff at an address where the plaintiff no longer lived. On the second attempt, someone at the address accepted service, a fact of which the plaintiff was unaware. The defendant then obtained a default judgment .

The plaintiff allegedly did not learn about the judgment until 2014, when he attempted to obtain a mortgage. Less than a year later, he sued the defendant for, among other things, a violation of the FDCPA’s prohibition against attempting to improperly collect a debt. The district court dismissed the FDCPA claim on statute-of-limitations grounds. The plaintiff appealed and the Third Circuit held oral argument, but before issuing a decision, ordered a rehearing in front of the entire court.

On appeal, the plaintiff argued that the one-year statute of limitations should not begin run until 2014, when he discovered the alleged violations (the so-called "discovery rule"). The Third Circuit rejected this argument, noting that "the Act says what it means and means what it says," *i.e.*, the statute of limitations begins to run on "the date on which the *violation occurs*" (emphasis added).

Although this reading of the statute seems straightforward, it is notable that two other federal circuit courts of appeal- the Fourth and Ninth Circuits-have reached the opposite conclusion and held that the discovery rule applies for FDCPA claims.

In addition, while *Rotkiske* affords debt collectors some protection from exposure to potentially old claims, they should note that the Third Circuit left open the possibility that equitable tolling, a principle similar to the discovery rule, could apply when a claim alleges "fraudulent, misleading, or self-concealing conduct." Since the plaintiff did not raise this question on appeal, the Third Circuit declined to address it.

As explained above, FDCPA violations could expose debt collectors to considerable damages and penalties, as well as legal costs and fees. If you have any questions about the FDCPA in general or how it may affect you or your business, we are here to assist you. Feel free to call any member of Archer's Commercial Collections & Consumer Litigation Practice in Haddonfield, N.J., at (856) 795-2121, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, Pa., at (215) 963-3300, or in Wilmington, Del., at (302) 777-4350.

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Attachments

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