

United States Supreme Court Clarifies When the Statute of Limitations for FDCPA Claims Begins to Run

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In May 2018, [we wrote about](#) an interesting Fair Debt Collections Practices Act ("FDCPA") case in the Third Circuit. In that case, the *en banc* Third Circuit unanimously held that the FDCPA's one-year statute of limitations begins to run on the date that the violation occurs, not on the date that the plaintiff discovers the violation. The plaintiff in that case first learned about the defendant's alleged FDCPA violation approximately five years after it had occurred. The District Court dismissed the case on statute-of-limitations grounds, and the Third Circuit affirmed.

But the case didn't end there. The plaintiff sought review in the United States Supreme Court. Because two other federal courts of appeal had faced the same question and reached the opposite conclusion as the Third Circuit, the Supreme Court agreed to hear the case. Earlier this month, the Court issued its opinion, agreeing with the Third Circuit.

The FDCPA's statute-of-limitation language: claims may be brought "within one year from the date *on which the violation occurs*." 15 U.S.C. § 1692k(d). In the face of this clear language, the plaintiff argued that the "discovery rule" should apply. In rejecting this argument, the Court noted that if Congress wanted a discovery rule, it would have written the statute that way (as it did for several other statutes of limitations in the Federal Code). The power to rewrite the statute belongs to Congress, not to the Court.

The plaintiff also asserted a separate argument: the defendant's fraud was the cause of the plaintiff's delay in learning about the alleged violation. Under these circumstances, fairness dictates that the defendant shouldn't be allowed to benefit from his or her fraudulent conduct. While the Court may have been more sympathetic to this argument, it held that the plaintiff failed to preserve this argument below and, as a result, waived it.

Thus, *Rotkiske v. Klemm*, -- S. Ct. -- (2019) left open the question of whether a plaintiff can avoid the one-year statute of limitations by establishing that the delay in bringing the claim was caused by the defendant's fraudulent conduct. The answer to that question will have to await a case where the plaintiff properly preserves the argument on appeal. On a related note, the case reminds attorneys to ensure that they preserve all of their clients' arguments at all stages of a case.

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, when it applies, what penalties might be involved, or how it may affect you or your business, we are here to assist you. Feel free to call **Anthony M. Fassano** at 856-616-2618 or email at afassano@archerlaw.com or 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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