Third Circuit Holds "Settlement Language" in Collection Letter Can Be Misleading

*Jonathan M. Robbin, Edward W. Chang, and Scott E. Wortman**

In a change of course from its prior holding in *Huertas v. Galaxy Asset Mgmt.*, 641 F.3d 28 (3d Cir. 2011), the U.S. Court of Appeals for the Third Circuit rules that the terms "settlement" and "settlement offer," in connection with collecting of a time barred debt, may connote litigation and thus mislead a consumer. However, the court continues to hold that settlement terms alone do not necessarily constitute deceptive or misleading practices under the FDCPA.

In a unanimous published decision in *Tatis v. Allied Interstate LLC*, No. 16-4022 (3d Cir.) the U.S. Court of Appeals for the Third Circuit reversed the District of New Jersey's granting of a motion to dismiss. The lower court had held that a debt collector's attempt to collect the time-barred debt did not violate the Fair Debt Collection Practices Act ("FDCPA") because the collection letter was not accompanied by a threat of legal action. In its order overruling the lower court, the Third Circuit deviated from its prior holding in *Huertas v. Galaxy Asset Mgmt.*, 641 F.3d 28 (3d Cir. 2011) and instead looked to the more recent decisions from its sister circuits—the Fifth, Sixth, and Seventh—which all held that the term "settle" could mislead a consumer.

The Third Circuit further held that in the context of a collection letter, the least sophisticated consumer may be misled into thinking that the term "settlement of a debt" referred to court proceedings, as opposed to a mere invitation to settle an account. However, the Third Circuit did not go so far as to hold that these terms are misleading as a matter of law.

Background

Plaintiff/Consumer incurred a debt of $1,289.86 to Bally Total Fitness Holding Corp. Thereafter, Defendant Allied Interstate LLC ("Allied") purchased plaintiff's debt and sent him a collection letter that included the following statement: "[The creditor] is willing to accept payment in the amount of $128.99 *in*

*Jonathan M. Robbin, a partner in the New York office of Blank Rome LLP, concentrates his practice on complex commercial and consumer financial service litigation including class action and appellate work. Edward W. Chang, a partner in the firm's Philadelphia office, focuses his practice on consumer financial services and commercial litigation. Scott E. Wortman, a partner in the firm's New York office, focuses his practice on consumer financial services litigation, including individual and class action defense, regulatory proceedings, and administrative investigations. The authors may be reached at jrobbin@blankrome.com, echang@blankrome.com, and swortman@blankrome.com, respectively.

settlement of this debt. You can take advantage of this settlement offer if we receive payment of this amount or if you make another mutually acceptable payment arrangement within 40 days . . .” (Emphasis added). Notably, Allied’s letter did not contain any threat of litigation. Further, at the time Allied sent its letter, the six-year New Jersey statute of limitations applicable to debt-collection actions had already run.

Plaintiff’s complaint asserted that Allied’s letter violated the FDCPA, 15 U.S.C.A. § 1692e, because the word “settlement” should be interpreted under the least sophisticated debtor standard to mean that she had a “legal obligation” to pay the debt. Allied moved to dismiss and the District of New Jersey granted its motion. In dismissing plaintiff’s complaint, the district court relied upon the Third Circuit’s holding in *Huertas*, holding Allied’s use of the word “settlement” without an additional threat of litigation did not violate the FDCPA.

The Third Circuit Decision

In reversing the district court’s decision, the Third Circuit re-visited its decision in *Huertas* in light of its sister circuits’ more recent decisions in *Daugherty v. Convergent Outsourcing, Inc.*, 836 F.3d 507 (5th Cir. 2016); *Buchanan v. Northland Group, Inc.*, 776 F.3d 393 (6th Cir. 2015); and *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010 (7th Cir. 2014). Each of these decisions held that even absent threats of litigation, offers to “settle” time-barred debts could mislead the least-sophisticated debtor and violate the FDCPA. Citing these cases, the Third Circuit held that its prior holding in *Huertas* that a collection attempt violates the FDCPA only if it included a threat of legal action, interposed a requirement that was not found within the language of the FDCPA. Specifically, the court explained that Section 1692e prohibits three discrete categories of conduct: false, misleading, or deceptive representations. Thus, by adding an additional “threat of litigation” requirement to any attempt to collect on a time barred debt, the court had unfairly limited the reach of the FDCPA.

Notably, the Third Circuit made clear that “standing alone, settlement offers and attempts to obtain voluntary repayments of stale debts do not necessarily constitute deceptive or misleading practices.” It also emphasized that there was no specific mandate on the “language debt collectors must use, such as requiring them to explicitly disclose that the statute of limitations has run.” Thus, the court held that the use of the word “settlement” is not misleading as a matter of law.

Conclusion

As a result of the Third Circuit’s change in law, all collection letters seeking to collect on time-barred debt sent in Delaware, New Jersey, and Pennsylvania can no longer rely on the lack of “threat of litigation defense.” All letters should be reviewed to ensure that, when read as a whole, they do not deceive or mislead the debtor into believing that there is an obligation to pay the time-barred debt.