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FDCPA: THE HIDDEN DANGER OF INVITING DEBTORS TO “PLEASE CALL”

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This winter, the United States Court of Appeals for the Third Circuit Court (“Court of Appeals”) vacated a New Jersey District Court’s ruling which granted Health Care Recovery Group, LLC’s (“HRRG”) motion for judgment on the pleadings in a case filed by Ray V. Caprio (“Caprio”) against HRRG for Fair Debt Collection Practices Act (“FDCPA”) violations.

Caprio, who is defined as a debtor by the FDCPA, filed a complaint against HRRG claiming that HRRG’s one page, double sided collection letter sent to Caprio violated 15 U.S.C. §1692(g) and 15 U.S.C. §1692e(10) because the letter included the following sentence: “If we can answer any questions, or if you feel you do not owe this amount, **please call** us toll free at **800-984-9115** or write to us at the above address.” HRRG’s letter to Caprio also included HRRG’s telephone number in an even larger font within the letterhead at the top of the collection letter, while HRRG’s mailing address only appeared in the letterhead in a smaller print than the telephone number. The reverse side of HRRG’s letter included the special notice disclosures required in every collection letter sent by a debt collector pursuant to 15 U.S.C. §1692(g). Caprio argued the language in HRRG’s collection letter misrepresented that Caprio could either call or write to HRRG to dispute the alleged debt, when in reality, the FDCPA requires a debtor to dispute the alleged debt in writing.

The question before the Court of Appeals was a question of law: Does the language in HRRG’s collection letter “contradict or overshadow” the FDCPA validation notice? The position taken by the Court of Appeals was clear: to eliminate abusive debt collection practices, a debt collector’s collection letter will

undergo strict scrutiny to ensure that even the “least sophisticated debtor” can discern his or her rights under the FDCPA. Furthermore, the Court took the position that the contents of the letter cannot “overshadow or contradict” the accompanying disclosure of the debtor’s right to dispute the debt. The “statutory notice must not only explicate a debtor’s rights; it must do so effectively.” *Graziano v. Harrison*, 950 F.2d 107, 112 (3d Cir. 1991).

Amongst other things, 15 U.S.C. §1692(g) requires a debt collector to disclose the following to the debtor: (1) the amount of the debt; (2) the name of the creditor to whom the debt is owed to; (3) a statement that unless the debtor, within 30 days after receipt of the collection letter, disputes the validity of the debt,

the debt will be assumed to be valid by the debt collector; (4) a statement that if the debtor notifies the debt collector **in writing** within the 30 day period that the debt is disputed, the debt collector will provide a verification of the debt; and (5) a statement that upon the debtor’s **written** request within the 30 day period, the debt collector will provide the debtor the name and address of the original creditor. 15 U.S.C. §1692e(10) restricts a debt collector from utilizing

“false, deceptive or misleading representation” in connection with the collection of any debt.

In making its decision, the Court of Appeals yielded to the public policy behind the FDCPA regulations. The Court noted that the FDCPA must be broadly construed in order to give full effect of its purpose to (1) protect the “least sophisticated debtor” from “abusive debt collection practices, which contribute to the number of personal bankruptcies, marital instability, loss of employment, and invasion of privacy”; and (2) to insure

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that those debt collectors who refrain from using such practices are not competitively disadvantaged. In making its ruling, the Court made it clear that the “least sophisticated debtor” includes the “gullible as well as the shrewd,” however, the FDCPA does not provide protection for the willfully blind or non-observant. *Leshner v. Law Offices of Mitchell N. Kay, PC*, 650 F.3d 993, 997 (3d Cir. 2011)

The Court applied law from two previous cases to examine both the form and content of HRRG’s letter to Caprio in determining whether HRRG’s letter “contradicted or overshadowed” the remaining validation notice included in the letter. The Court acknowledged that the FDCPA disclosure notice on the reverse side of HRRG’s letter did accurately provide the correct disclosures to Caprio; however, the Court held that the contents of the letter could be reasonably read to have two or more different meanings thus confusing a less sophisticated consumer. Moreover, the Court reasoned that the “least sophisticated debtor” could reasonably believe that he could effectively dispute the validity of the debt by calling HRRG, despite the fact that 15 U.S.C. §1692(g) requires such disputes be made in writing.

The Court further held that the form of HRRG’s letter to Caprio overshadowed the remaining contents of HRRG’s letter since the words “please call” and HRRG’s phone number were in bold, while in contrast, the words “write us at the above address” were not in bold. Moreover, the Court determined that inclusion of HRRG’s telephone number in an even larger font within the letterhead, while HRRG’s mailing address only appeared in the letterhead in a smaller print than the telephone number could confuse debtors. Accordingly, the Court held that the “least sophisticated debtor” would take the easier route in calling HRRG to dispute the validity of the debt instead of going through the trouble of drafting and mailing a written dispute of the debt. After examining both the form and content of HRRG’s letter, the Court concluded that the contents of HRRG’s letter contradicted and overshadowed the validation notice, as Caprio, the “least sophisticated debtor,” would be uncertain of his rights under the FDCPA.

The Court ultimately held in Caprio’s favor and remanded the case to the District Court for further proceedings. Since the Court remanded the case based on Caprio’s 15 U.S.C. §1692g

claim, the Court found that the case must also be remanded based on Caprio’s 15 U.S.C. §1692e(10) claim as well. This case should serve as an example for all creditors to be very accurate in drafting letters to debtors, especially when inviting debtors to call. Not only do creditors have to provide, in writing, all of the debtor’s rights under 15 U.S.C. §1692(g), but creditors should also be careful that the form and remaining content of the collection letter does not contradict nor overshadow the debtor’s rights. All creditors should draft such correspondence while taking into consideration the broad interpretations of the FDCPA by the courts and the amount of protection the FDCPA provides all consumers, including “the gullible as well as the shrewd.”



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