

Fifth Circuit Rejects Consumer's "Outrageous" FDCPA Attorney's Fee Request

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The Fair Debt Collection Practices Act ("FDCPA") provides that a consumer is entitled to "reasonable attorney's fees" as part of a "successful" claim. See 15 U.S.C. § 1692k(a)(3). While courts have found that this provision mandates an award of attorney's fees to a successful FDCPA consumer, the U.S. Court of Appeals for the Fifth Circuit recently held that even a successful plaintiff may be denied an award under "special circumstances" or for "outrageous" conduct. See *Davis v. Credit Bureau of the South*, No. 17-41136, 2018 WL 6009258 (5th Cir. Nov. 16, 2018).

The plaintiff alleged that the defendant debt collector violated 15 U.S.C. § 1692e(16), by using the term "credit bureau" in its name. Plaintiff based her claim upon a letter she requested from the defendant and a telephone conversation recorded by her attorney. On summary judgment, the district court found that the defendant's use of the term "credit bureau" was a violation of the FDCPA. Lacking any actual damages, plaintiff was awarded \$1,000 in statutory damages. She then requested over \$130,000 in attorney's fees.

The district court completely denied the consumer's fee request finding that it was "incredibly high" and was "concerned about disincentivizing the conduct of Plaintiff's counsel." The court also concluded that counsel's requested hourly rate was "excessive by orders of magnitude." The consumer appealed arguing that an award of attorney's fees was "mandatory" under the FDCPA.

The Fifth Circuit affirmed finding that an award of fees was not obligatory when "unusual circumstances" are present. Initially, the court found that the demand for \$130,000 was "outrageous," and that counsel's actual work was not of the "caliber" to warrant such an "extraordinary" award. The court also found that the consumer and her counsel had "colluded" to establish a cause of action in order to generate an "incredibly high fee request." As a former employee of her own counsel who "essentially created her claim," the court determined that the plaintiff was not the type of party "intended to be protected with the attorney fee-shifting provision," in the FDCPA. Thus, the Fifth Circuit found that the district court was justified in completely denying the consumer's fee request.

Davis places an important check on a consumer's ability to recover attorney's fees under the FDCPA. In the current environment, such claims are frequently based upon technical violations (at best) and are manufactured to generate a substantial fee demand. However, as the Fifth Circuit has now confirmed, "the FDCPA does not support avaricious efforts of attorneys seeking a windfall."

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