

David Schultz Analyzes in ARM Compliance Digest: Judge Sets Aside Default Against Defendant Because of COVID-19 Restrictions

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In the January 24, 2022 edition of the *ARM Compliance Digest*, Hinshaw partner David Schultz reports on an Ohio case in which a judge granted a defendant's motion to set aside a default and default judgment that was entered against it in a Fair Debt Collection Practices Act lawsuit after it was unable to respond to the complaint in a timely manner as a result of lockdown provisions that were instituted as a result of the COVID-19 pandemic:

The federal court rules for vacating defaults are fairly reasonable. When the rules are paired with a national disaster (Covid), it is not too surprising that the court agreed to vacate a default judgment. This is especially true when the facts show that service occurred while the agency was shut down by a Nevada state order and the wife of the small business owner was suffering from Covid.

With those basic facts, I was a bit surprised that plaintiff put up such a fight in opposing the motion to vacate. The briefs and numerous exhibits teach a good lesson and likely influenced the court. The exhibits were numerous emails between plaintiff's counsel and the business owner and later the defense lawyer. At times, plaintiff counsel was reasonable and polite. However, in numerous exchanges he was a bit over the top. Plus, the judgment motion sought the maximum statutory damages under the FDCPA and Ohio law and \$2000 in emotional distress for what were not particularly serious claims. The business owner and counsel were generally reasonable and polite in their communications and tried to settle for fair amounts. That record surely helped.

What will now be interesting to see is whether plaintiff can prevail and obtain an award greater than the offers. If not, the fees incurred may not be recoverable.

[Read the full January 24, 2022 edition of the AccountsRecovery.net Compliance Digest.](#)

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David M. Schultz

Partner

☎ 312-704-3527

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