

David Schultz Analyzes in ARM Compliance Digest: Appeals Court Affirms Ruling in One BFE Case, Overturns Ruling in Another

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Feb 14, 2022

In the February 14, 2022 edition of the *ARM Compliance Digest*, Hinshaw partner David Schultz discusses two rulings by the U.S. Court of Appeals for the Seventh Circuit involving cases involving a bona fide error defense. In the first, the court affirmed a summary judgment ruling in favor of a defendant that was sued for violating the Fair Debt Collection Practices Act, while in the second it overturned a separate summary judgment ruling. The court did rule that the injuries suffered by the plaintiffs, which involved disputes that were not communicated to credit reporting agencies, were concrete enough for them to have standing to sue:

The 7th Circuit *Ewing* opinion packs a lot into it and is a real mixed bag. The opinion combines two cases that presented similar standing and bona fide error issues. At the heart of both suits were claims that agencies did not update credit reports with a dispute, to which the agencies argued they had a BFE – a pretty common claim and defense response.

The 7th Circuit ended a streak of finding no standing in FDCPA cases. It found standing here after first admitting that a key pre-*Ramirez v Transunion* standing case of its was wrong. It then went on a somewhat tortured analysis to distinguish *Ramirez* and hold that there was sufficient injury by communicating the trade line to the bureau without a dispute notation. It seems questionable that the Supreme Court will agree with the analysis.

On the bona fide error defense, it ruled in favor of one agency and against another. These were fact specific rulings but emphasized reasonable procedures that are subsequently followed. A nice tidbit was the discussion of the first element of the defense – “unintentional.” The court ruled: “*But Receivables needed to show only that its FDCPA violation was unintentional, not that its actions were unintentional.*” That is a low bar.

The standing ruling is a head-scratcher but the BFE ruling has some good guidance.

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David M. Schultz

Partner

📞 312-704-3527

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