

Overshadowed and Contradicted: Third Circuit Rules Second Demand Letter Violated FDCPA’s “Validation Notice” Requirement

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The Third Circuit Court of Appeals recently reiterated how a debt collector may run afoul of the Fair Debt Collection Practices Act (“FDCPA”) by sending a misleading follow-up, even if it served a compliant demand letter weeks earlier.

In *Lainado v. Certified Credit & Collection Bureau*, the debtor alleged that a debt collector’s second demand letter “overshadowed and contradicted” the “validation notice” in the first letter sent just three weeks earlier. Section 1692g(a) of the FDCPA requires debt collectors to inform debtors they must dispute a debt within thirty days and in writing, in order to receive verification of the debt and/or the original creditor’s name and address. Upon such a request, collection efforts must cease until the information is provided. The debtor did not dispute the first demand letter’s compliance with the FDCPA. The debtor disputed the second demand letter because that letter did not reference the need to put the dispute of the debt in writing and instead, in capital letters, instructed the debtor to call either a toll-free or 24-hour automated customer service telephone number if he disputed the amount owed. The second demand letter also contained the collector’s mailing address just once, while having five references to three different telephone numbers.

The debt collector argued that the second letter should be read as a “continuation” of the first demand letter, and the trial court dismissed the case. The Third Circuit overruled the trial court’s dismissal. In doing so, the court applied the “least sophisticated debtor” standard described as “less demanding than one that simply considers whether the language would mislead or deceive a reasonable debtor.” The court found that the second letter “overshadowed and contradicted” the first letter’s validation notice because the least sophisticated debtor could reasonably believe calling either number was sufficient to dispute the debt. Because the second letter used language such as “PLEASE CALL,” without even inviting a written dispute, and did not even reference the first letter, the court found that the first letter’s proper validation notice had been “relegated.”

The *Lainado* decision demonstrates not only the low standard required of a “least sophisticated borrower,” but also that courts will scrutinize the form and substance of demand letters: their content, the location, font size, and emphasis of certain text. Moreover, even if a debt collector sends an appropriate first demand letter, any follow up letters sent within that thirty-day period can jeopardize compliance with the FDCPA.

Topics

Third Circuit Court Of Appeals, FDCPA, Debt Collection, Fair Debt Collection Practices Act