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The Third Circuit Takes a More Expansive Approach to What Constitutes a Debt Collector under the FDCPA

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On February 22, 2019, the Third Circuit in *Barbato v. Greystone Alliance, LLC*, issued a decision that expands the scope of the Fair Debt Collection Practices Act's (FDCPA) definition of the term "debt collector" to any entity that acquires debt for the purpose of collection, but outsources the actual debt collection activity.

In *Barbato*, Defendant Crown Asset purchased Plaintiff's debt but referred the account to a third-party servicer for collection. The third-party servicer contacted Plaintiff regarding the debt. Crown Asset did not directly communicate with Plaintiff, but Plaintiff argued that Crown Asset qualified as a "debt collector." Crown Asset maintained it did not qualify as a "debt collector" because its principal business purpose is not the collection of debts. The FDCPA defines a "debt collector" as "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts." The Third Circuit held that Crown Asset qualified as a "debt collector" even though it did not perform any debt collection. The Court concluded that a business is a debt collector under the FDCPA so long as it obtains payment on the debts it acquires in default, even though it hires another to perform the collection.

This ruling provides a different perspective on what entities qualify as debt collectors. For example, in *Dorrian v. LVNV Funding, LLC*, the Massachusetts Supreme Judicial Court held that passive debt buyers like Crown Asset do not qualify as "debt collectors" under the Massachusetts Fair Debt Collection Practices Act's (MDCPA) definition, which tracks the FDCPA's definition. The Massachusetts Court determined because passive debt buyers have no employees and no contact with the debtors they are outside of Congress' core concerns in legislating the FDCPA. So we will have to watch which courts decide to follow the *Barbato* analysis and which ones apply the reasoning in *Dorrian*.

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