What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR

Caren Enloe leads Smith Debnam' s consumer financial services litigation and compliance group. In her practice, she defends consumer financial service providers and members of the collection industry in state and federal court, as well as in regulatory matters involving a variety of consumer protection laws. Caren also advises fintech companies, law firms, and collection agencies regarding an array of consumer finance issues. An active writer and speaker, Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American Bar Association's Consumer Financial Services Committee. She is also a member of the Defense Bar for the National Creditors Bar Association, the North Carolina State Chair for ACA International's Member Attorney Program and a member of the Bank Counsel Committee of the North Carolina Bankers Association. Most recently, she was elected to the Governing Committee for the Conference on Consumer Finance Law. In 2018, Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor*, a national trade publication. Caren oversees a blog titled: Consumer Financial Services Litigation and Compliance dedicated to consumer financial services and has

$1.90 Can't Buy You an FDCPA Violation

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A consumer who sued a debt collector over an inaccurate statement as to the amount of a settlement offer recently saw his complaint dismissed for lack of standing. In *Allgire v. HOVG, LLC*, the plaintiff was contacted regarding a medical debt and offered a settlement for the discounted sum of $318.00. Allgire v. HOVG, LLC, C.A. No. 1:16-cv-961, 2017 U.S. Dist. LEXIS 37739 (S.D. Ind. Mar. 16, 2017). The debt collector advised Mr. Allgire that the settlement amount represented a 25% discount off the balance owed. In reality, a 25% discount on the amount owed was $316.10, not $318.00, a difference of $1.90.

In his complaint, Mr. Allgire contended the statement misled him "by describing the discounted settlement amount to be equal to 25 percent of the total amount of the debt when the dollar amount stated was $1.90 more than 25 percent of the debt." *Allgire* at *3. Allgire further contended the representation violated both 15 U.S.C. 1692e(2)(A) and e(10) which prohibit a debt collector from using any false, deceptive or misleading representation or means to collect a debt and prohibit the false representation of the character, amount or status of any debt. Problematic for Mr. Allgire, however, was his acknowledgment that he did not accept the offer to settle. The debt collector moved to dismiss asserting Allgire did not have standing to bring the claim.

In reviewing Allgire's Article III standing, the court was quick to point out that it is possible to allege statutory violations of 15 U.S.C. 1692e without any resulting harm or risk of harm; however, in order to be actionable under the FDCPA, the representations must be material. "The court, therefore, concluded that "bare allegations of the types of violations alleged by the Plaintiff do not entail a degree of risk sufficient to establish a concrete injury." *Id.* at * 9.

The court was equally dismissive of the consumer's assertion that he was confronted with the threat of concrete harm and specifically, that he "had no reason to believe that the settlement offer given was valid or would be honored by the Defendant." As the plaintiff acknowledged that he did not pay the settlement amount, the court noted that such harm was, at best, conjectural and hypothetical and not sufficient to establish an actual injury in fact.

The case continues a trend of good news for the ARM industry as courts continue to use

been published in a number of publications including the Journal of Taxation and Regulation of Financial Institutions, California State Bar Business Law News, Banking and Financial Services Policy Report and Carolina Banker.

standing as a basis to dismiss hyper-technical violations of the FDCPA and other consumer protection statutes.

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