

FINANCIAL SERVICES LITIGATION

ALERT

MARCH
2019

Third Circuit: A business whose reason for existence is obtaining payment on debts is a debt collector under the FDCPA

By Stephen J. Shapiro

The purchase and sale of debt was not a common practice at the time Congress enacted the Fair Debt Collection Practices Act (“FDCPA”) and the Third Circuit has observed that that “the proliferation of debt buying [has led to] questions about the boundaries of the statute’s definitions.” One such question arose in the case [Barbato v. Greystone Alliance, LLC](#), in which the Third Circuit held that the boundaries of the FDCPA encompass businesses that purchase debt.

In *Barbato*, a consumer failed to pay the entirety of a credit card debt. The creditor charged-off the debt and defendant Crown Asset Management purchased it. Crown does not itself collect the debts it purchases, but rather engages vendors to do so. The debt collection agency that Crown hired to collect the debt at issue, Turning Point Capital, Inc., sent the debtor a letter and left her two voicemails. Although Crown did not directly communicate with the debtor and did not approve Turning Point’s collection letter, the debtor nevertheless sued Crown for alleged violations of the FDCPA.

The FDCPA, which protects consumers from unfair debt collection practices, governs the conduct of “debt collectors.” The Act defines “debt collectors” alternatively as those engaged “in any business the principal purpose of which is the collection of any debts” and those “who regularly collect [debts] owed or due another.” The question in *Barbato* was whether Crown, which did not itself collect debts but rather engaged others to do so, nevertheless qualified as a

“debt collector” on the grounds that its “principal purpose” was the collection of debts.

The Third Circuit held that Crown was a “debt collector” within the meaning of the FDCPA. The Court explained that “an entity that has ‘the collection of any debts’ as its ‘most important’ ‘aim’ is a debt collector.” The focus of the inquiry, the Court observed, should not be on “the *act* of collecting [but rather on] *what* is collected.” The Court held that “[a]s long as a business’s *raison d’être* is obtaining payment on the debts that it acquires, it is a debt collector. Who actually obtains the payment or how they do so is of no moment.” Applying these principles, the Court concluded that Crown was a debt collector because its “only business is the purchasing of debts for the purpose of collecting on those debts, and . . . without the collection of those debts, Crown would cease to exist.”

This is the second case in the past year in which the Third Circuit had held that debt purchasers are subject to the FDCPA. Indeed, in [Tepper v. Amos Financial LLC](#), the Court held that debt buyers are “debt collectors” within the meaning of the FDCPA even though they own the debts they are collecting. As these cases make clear, debt buyers would be well-advised to assume that they will be subject to the provisions of the FDCPA, at least in courts in the Third Circuit. ♦

This summary of legal issues is published for informational purposes only. It does not dispense legal advice or create an attorney-client relationship with those who

read it. Readers should obtain professional legal advice before taking any legal action.

For more information about Schnader's Financial Services Litigation Practice Group or to speak with a member of the firm, please contact:

*Stephen J. Shapiro
Co-Chair of the Litigation Services Department
215-751-2259
sshapiro@schnader.com*

*Stephen A. Fogdall
Co-Chair, Financial Services Litigation Practice Group
215-751-2581
sfogdall@schnader.com*

*Jonathan W. Hugg
Co-Chair, Financial Services Litigation Practice Group
215-751-2527
jhugg@schnader.com*

www.schnader.com

© 2019 Schnader Harrison Segal & Lewis LLP
All rights reserved.

* See: www.schnader.com/jakarta