

Law Firm That Pursued Collection of Time-Barred Debt Violated Fair Debt Collection Practices Act (FDCPA), Despite Initial Reliance on Client-Provided Information on Debt Validity

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In the May 2011 HOA Law Update for Community Association Managers, we reported on a case which addressed whether a manager of rental property was subject to the Fair Debt Collection Practices Act (FDCPA). The case of *McCollough v. Johnson, Rodenburg & Lauinger*, also addresses FDCPA issues, though the issue in this case is the level of due diligence that should be exercised to determine that a debt is valid.

In this case, McCollough fell behind in his credit card payments. His credit card company retained the defendant law firm to collect the debt from him. The statute of limitations for this type of case in Montana, where the case was to be filed, was five years from the date of the last payment on the account. In reviewing the file to determine whether to file a lawsuit, an attorney at the defendant law firm saw that the statute of limitations on the debt was approaching. She contacted the credit card company to determine the last payment made on the account, and was told via email, without further documentation, that a payment had been made on June 30, 2004. That information turned out to be incorrect—it was not a payment that had been made on that date, but rather a credit to the account. Thus, a lawsuit had been filed on a debt which was time-barred by the statute of limitations.

Upon being served with the lawsuit, McCollough advised the law firm that the debt was eight and one half years old, and that the statute of limitations precluded the law firm from pursuing him for this debt. After confirming that the claim was indeed time-barred, the law firm continued to prosecute the lawsuit for several months. Although the law firm eventually dismissed the lawsuit against McCollough, it was thereafter sued by McCollough for violating the FDCPA by attempting to collect a time-barred debt.

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The FDCPA prohibits debt collectors from engaging in practices such as pursuing time-barred claims. The FDCPA contains a narrow “bona fide error” defense. However, in this case, the court determined that the error was not the law firm’s inadvertent failure to catch a time-barred claim, despite having procedures in place to guard against this type of error. Rather, the problem was that the law firm relied on information from its client, without independently verifying that information. The court deemed that it was unreasonable for the law firm to rely solely on information from its client, and determined that the law firm had violated the FDCPA by failing to independently verify the information about the debt.

This case is important to those managers who perform assessment collection services on behalf of their Association clients, as well as those who work with our firm in doing so. This case stands for the proposition that it is not enough to rely on a bare statement that a debt is valid—independent confirmation of the debt’s validity should be obtained. In the world of assessment collection for Associations, this includes verifying compliance with the Civil Code requirements for levying and collecting and assessments, confirming that no portion of the debt to be collected has been discharged in bankruptcy, and promptly investigating clues that a debt may in fact be invalid. Having a procedure in place to ensure that all debts to be collected are valid will help debt collectors avoid liability under the FDCPA.