

Principles of Construction

1. The FDCPA is a strict liability statute. Russell v. Equifax A.R.S., 74 F.3d 30 (2d Cir. 1996). Proof of only one violation is sufficient to support judgment for plaintiff. Bentley v. Great Lakes Collection Bureau, Inc., 6 F.3d 60 (2d Cir. 1993).

2. Because the FDCPA is a strict liability statute, there are no unimportant violations. Bentley v. Great Lakes Collection Bureau, Inc., 6 F.3d 60, 63 (2d Cir. 1993) (there are no nonactionable violations); Taylor v. Perrin, Landry, deLaunay & Durand, 103 F. 3d 1232 (5th Cir. 1997) (same).

3. The FDCPA is liberally construed in favor of the consumer to effectuate its purposes. Cirkot v. Diversified Financial Systems, Inc., 839 F. Supp. 941, 944 (D. Conn. 1993).

4. The focus of the FDCPA is on the conduct of the debt collector, not on the conduct of the consumer. Keele v. Wexler, 149 F.3d 589, 594 (7th Cir. 1998). Whether or how much plaintiff owed on the debt is not a factor. Id.; McCartney v. First City Bank, 970 F.2d 45 (5th Cir. 1992); Baker v. G.C. Servs. Corp., 677 F.2d 775, 777 (9th Cir. 1982).

5. "At the outset, it should be emphasized that the use of *any* false, deceptive, or misleading representation in a collection letter violates § 1692e -- regardless of whether the representation in question violates a particular subsection of that provision." Clomon v. Jackson, 988 F.2d 1314, 1320 (2d Cir. 1993).

6. The standard used to determine whether something is deceptive or misleading is whether the "least sophisticated consumer" could have been deceived or misled. Clomon, 988 F.2d at 1318. The "least sophisticated consumer" is a naive, credulous,

gullible, ignorant, unthinking, person of "below-average sophistication or intelligence" "with a rudimentary amount of information about the world and a willingness to read a collection notice with some care." Id.

7. A letter is deceptive or misleading if it is subject to an inaccurate yet reasonable interpretation by the least sophisticated consumer. Russell v. Equifax A.R.S., 74 F.3d 30, 36 (2d Cir. 1996)

8. Whether a letter is deceptive or misleading from the perspective of the least sophisticated consumer is ordinarily a question of law for the Court, where a defendant has not conceded liability. Schweizer v. Trans Union Corp., 136 F.3d 233, 237-38 (2d Cir. 1998), citing Russell v. Equifax A.R.S., 74 F.3d 30, 33 (2d Cir. 1996) and Bentley v. Great Lakes Collection Bureau, 6 F.3d 60, 62-63 (2d Cir. 1993).

9. The FDCPA prohibits collection practices that violate other state or federal laws. Picht v. Jon R. Hawks, Ltd., 236 F.3d 446, 448 (8th Cir. 2001); Gaetano v. Payco, 774 F. Supp. 1404, 1414-15 (D. Conn. 1990).

10. Sending the letter, not its receipt, imposes liability. Bartlett v. Heibl, 128 F.3d 497, 499 (7th Cir. 1997); Kuhn v. Account Control Technology, Inc., 865 F. Supp. 1443, 1450 (D. Nev. 1994) ("[The] argument that Kuhn never received the letter or did not read it is of no moment on the issue of whether a violation has occurred. The language of §1692g is clear that a notice of debt must contain the enumerated disclosures; it does not require that a debtor must actually be misled by a failure to do so"); Savino v. Computer Credit, 960 F. Supp. 599, 605 (E.D.N.Y. 1997); Morgan v. Credit Adj. Board, Inc., 999 F. Supp. 803 (E.D. Va. 1998). See also Naas v. Stolman, 130 F.3d 892, 893 (9th Cir. 1997) (a violation is complete when a dunning letter is mailed *because* that date is the

collector's "last opportunity to comply" with the FDCPA); Mattson v. U.S. West Communications, Inc., 967 F.2d 259, 261 (8th Cir.1992) (same).

Emanuel v. American Credit Exchange, 870 F.2d 805 (2d Cir. 1989). A malicious prosecution counterclaim by a collector in a FDCPA action cannot succeed if the FDCPA claim was successful. Fed. R. Civ. P. 11 sanctions denied against collector.

Pipiles v. Credit Bureau Inc., 886 F.2d 22 (2d Cir. 1989). The bona fide error defense did not excuse a mistaken view of the law.