



# The bona fide error defense to FDCPA claims is alive and well in the Eleventh Circuit

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In the case of *Isaac, et al. v. RMB, Inc., et al.*, No. 14-11560 (11th Cir. March 17, 2015), the Eleventh Circuit recently upheld summary judgment in favor of a debt collector based on the affirmative defense of bona fide error. The case presents a good opportunity to see what type of evidence is needed to prevail on the defense.

The FDCPA prohibits a debt collector from calling a consumer once the consumer asks the debt collector to cease communications. 15 U.S.C. § 1692c(c). It also prohibits calling a consumer repeatedly or continuously with intent to annoy or harass the consumer and it prohibits calling without meaningfully disclosing the caller's identity. *Id.* § 1692d(5), (6). The Isaacs contended that RMB, a debt collector, violated these provisions of the FDCPA by (i) continuing to call them after receiving a cease-and-desist letter; (ii) calling them with the intent to annoy or harass; and (iii) hanging up when some calls were answered without disclosing its identity.

To prevail on the bona fide error defense, a debt collector must prove by a preponderance of the evidence that its violation of the FDCPA was unintentional and was the result of a bona fide error, despite having in place procedures that are reasonably adapted to avoid errors. 15 U.S.C. § 1692k(c). A bona fide error is one that occurs in good faith.

The district court awarded summary judgment to RMB based on the bona fide error defense. Based on the undisputed facts in the record, the magistrate judge found that RMG had two employees specifically trained to process cease-and-desist letters, but one was out on maternity when the Isaacs' letter arrived and the other was out sick, which resulted in a delay in processing the letter. Once the letter was logged, the calls ceased.

Second, the court found that the Isaacs adduced no evidence that RMB called them with the intent to annoy or harass. RMG was simply calling to collect valid debts under the phone number given it and the calls were relatively infrequent.

Finally, RMB used a computer program to detect whether a call reached a live person or an answering machine. The caller would only identify herself if the program detected the call was answered by a live person. One of the Isaacs unusually long-winded greeting when answering the call fooled the program, which erroneously believed the call had been placed into an answering machine, which resulted in termination of the call without the caller identifying herself. Based on the undisputed facts in the record, the Eleventh Circuit held that the magistrate judge did not err in awarding RMG summary judgment on the bona fide error defense.

Accordingly, the bona fide error defense remains an important shield against FDCPA liability for debt collectors – provided they can prove they have reasonable procedures in place and would not have violated the FDCPA but for a good faith mistake.

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