

SCOTUS Holds Mistake of Law No Defense to FDCPA Liability

April 22, 2010

Yesterday, the Supreme Court [issued a decision](#) in *German v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA* ("*German*") (Docket 08-1200) that resolves a circuit split regarding the scope of the Fair Debt Collection Practices Act's bona fide error defense and disposes of a key defense to FDCPA liability for debt collector defendants.

The FDCPA's "bona fide error" defense allows a debt collector defendant to avoid liability for FDCPA violations if it "shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." 15 U.S.C. §1692k(c). While the majority view has been that this defense is available for clerical and factual errors only, a number of circuits, including the Sixth Circuit, have held that it also applies to mistakes of law so long as the debt collector had reasonable procedures in place to avoid such mistakes, such as ongoing FDCPA training, procuring the most recent case law, and/or having lawyers dedicated to ensuring FDCPA compliance.

In 2006, *German* brought a class action complaint against the defendant debt collector, a law firm, alleging that the firm's debt validation notice violated the FDCPA by misinforming debtors that any dispute of a debt must be made *in writing*. The firm moved to dismiss, arguing that debt disputes do need to be in writing and that the notice was therefore accurate. The district court, while acknowledging some divergence of authority on the issue, held that the FDCPA does not require disputes to be in writing and that the notice was deceptive in violation of the Act. The firm then moved for summary judgment, arguing that its violation was the result of an honest mistake of law and thus a bona fide error. The firm provided evidence of procedures reasonably adapted to avoid such mistakes, including a firm lawyer dedicated to ensuring FDCPA compliance, regular attendance of debt collection CLE's, and subscriptions to relevant legal periodicals. The district court entered summary judgment in the firm's favor, and the Sixth Circuit affirmed, holding that a mistake of law can qualify as a bona fide error under the FDCPA.

The Supreme Court's decision in *German* reverses the Sixth Circuit, holding that a mistake of law, no matter how genuine, can never qualify as a bona fide error. The Court cited the long recognized legal maxim that that "ignorance of the law will not excuse any person, either civilly or criminally."

The decision should be a warning to all debt collectors and law firms regularly engaged in debt collection. As Justice Kennedy noted in his dissenting opinion, "[a]fter [yesterday's] ruling, attorneys can be punished for advocacy reasonably deemed to be in compliance with the law or even required by it." No matter what procedures such firms have in place to ensure accurate FDCPA compliance, mistakes of law will not be excused. Debt collectors and lawyers for debt collectors should take special care to keep abreast of FDCPA case law and legal developments, and where there are splits of authority, err on the side of caution.