

## **NO FDCPA ATTORNEYS FEES**

It is well known to financial services practitioners that a “debt collector” under the FDCPA is prohibited from using false or misleading information in furtherance of collecting a debt, and that a debt collector is liable for the claimant’s attorneys’ fees for such a violation. But a recent decision out of the Fifth Circuit serves as a worthwhile reminder that the conduct of a party and its counsel, as well as reasonableness of the fees, matters in considering whether or not to grant recovery of fees.

In *Davis v. Credit Bureau of the South*, the defendant’s name alone reveals a violation of 15 U.S.C. §§ 1692e(10), (16), as it had ceased to be a credit reporting agency years before it attempted to collect a past due utility debt from Ms. Davis under that name. Cross motions for summary judgment were filed, and the Court found that the defendant was liable for statutory damages under the FDCPA for inaccurately holding itself out as a credit reporting agency.

Subsequently, Davis’ attorneys filed a motion for recovery of their fees, relying upon 15 U.S.C. § 1692k(a)(3), which states that a debt collector who violates these provisions of the FDCPA “is liable [ . . . ] [for] the costs of the action, together with reasonable attorneys’ fees as determined by the court.” The motion sought recovery of fees in the amount of \$130,410.00 based upon an hourly rate of \$450.00. The trial court was, as it held, “stunned” by the request for fees and denied the motion. For its holding, the court cited to the fact that there was disposed of by summary judgment with a Fifth Circuit case directly on point, and that there were substantial duplicative and excessive fees charged by Plaintiff’s multiple counsel. The trial court also characterized the rate of \$450.00 as excessive in light of the relative level of difficulty of the case and the fact that the pleadings were “replete with grammatical errors, formatting issues, and improper citations.” From this order, Davis appealed.

In its holding, the Fifth Circuit recognized that the FDCPA’s express language, and several other circuit holdings, suggest that attorneys’ fees to a prevailing claimant are mandatory. However, the Court relied upon other circuits that have permitted “outright denial” (as opposed to a mere reduction) of attorney’s fees for FDCPA claims in “unusual circumstances,” as well as other Fifth Circuit cases with similar conduct under other statutes containing mandatory attorney fee recovery, to deny recovery of fees

altogether. The Court found there was extreme, outrageous conduct that precluded recovery of fees, where the record showed Davis and her counsel had colluded to create the facts giving rise to the action. For instance, Ms. Davis misrepresented that she was a citizen of Texas rather than Louisiana in order to cause the defendant to mail a collection letter, thus “engaging in debt collection activities in the state of Texas.” Furthermore, Davis and her counsel made repeated, recorded phone calls to the defendant asking repetitive questions in order to generate fees. While the FDCPA’s fee recovery provision was intended to deter bad conduct by debt collectors, the Fifth Circuit found it was even more important in this case to deter the bad conduct of counsel.

The *Davis* opinion may be found [here](#) and is a cautionary tale that attorneys’ fees, as well as behavior throughout a case, may be held under the microscope, even where the law suggests that fees are recoverable as a matter of right.