

## **ORAL DISPUTES UNDER FDCPA OK**

The U.S. Court of Appeals for the Third Circuit, sitting *en banc*, recently [held](#) that a debtor's dispute of a debt's validity under the FDCPA may be oral (and need not be in writing). By overruling existing Third Circuit precedent, the court resolved a decades-long circuit split between the Third Circuit on the one hand, and the Second, Fourth, and Ninth Circuits on the other, over the interpretation of a key Fair Debt Collection Practices Act (FDCPA) provision.

As background, the FDCPA protects against abusive debt collection practices by imposing certain limitations on third-party debt collectors. This case concerned the interpretation of one of those limitations—15 U.S.C. § 1692g—which requires that a debt collector send a debtor a letter “notifying them of their right to dispute the debt.”

The case was brought by a consumer who fell behind on payments to an oil company. A credit company bought the consumer's debt and sent the consumer a letter notifying her that her account had been assigned to the credit company for collection and that she had 30 days to notify the office, “in writing,” of whether she disputed the validity of the debt. However, the letter also featured three methods by which consumers could contact the credit company: a mailing address, a web address, and a phone number. The consumer sued, alleging that the letter violated FDCPA provision 15 U.S.C. § 1692g(a)(3) by providing her with multiple options for contacting the credit company, rather than explicitly requiring that any dispute be in writing. The credit company agreed that according to Third Circuit case law, it was required to notify the consumer to dispute the debt in writing, but it argued that its letter had satisfied that burden. The credit company moved for judgment on the pleadings, which the district court granted. The consumer appealed to the Third Circuit.

Under 15 U.S.C. § 1692g, a debt collector must include five pieces of specific information in its “validation letter” to the debtor-consumer, including “a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector,” and “a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector.”

The question contemplated by the Third Circuit in this case was whether a consumer's "dispute" of a debt must be submitted in writing, or whether § 1692g(a)(3) permits oral disputes. In answering that question, the Third Circuit overturned a nearly 30-year-old panel decision, *Graziano v. Harrison*, 950 F.2d 107 (3rd Cir. 1991). The three-judge panel in *Graziano* had held that "the entire structure of section 1692g, subsection (a)(3) must be read to require that a[ny] dispute, to be effective, must be in writing." However, in the present case, the Third Circuit has now held that after "reading the statutory text with fresh eyes," and reviewing intervening Supreme Court statutory interpretation case law, it is clear that § 1692g(a)(3) permits oral disputes. First, the Third Circuit pointed out that § 1692g(a)(3) only refers to "disputes," but does not specify whether the disputes must be oral or written. Additionally, the court found that when reading § 1692g, as a whole, it is clear that the statute has specified in other provisions where notification from a debtor-consumer must be written, yet it has not stated that a consumer's disputes regarding the validity of a debt must be written. Instead, the statute calls simply for a consumer to "dispute" the validity of debts. The Third Circuit also stated that other provisions in the FDCPA require notice of "dispute[s]," but do not specify a method of communication. The court found that this "inter-section variation amplifie[d] the variation within § 1692g" between specific requirements for "written" disputes and non-specified methods of submitting disputes.

The court followed the plain language of the statute and applied the "rule against surplusage," finding that when reading the text of § 1692g(a)(3) in context with the rest of the provision—and the rest of the FDCPA—"allowing oral disputes makes sense" because "it provides debtors multiple methods to dispute debts while assigning various rights depending on the method." Further, the court explained that it would be improper to "shoehorn a written requirement into § 1692g(a)(3)," and that doing so would violate the Supreme Court's guidance in *Lamie v. United States Trustee*, 540 U.S. 526, 530-38 (2004), wherein the Court refused to "read an absent word into [a] statute" despite "an apparent legislative drafting error" that rendered the statute "awkward, and even ungrammatical."

Accordingly, finding that *Graziano* was no longer good law, the court held that 15 U.S.C. § 1692g permits debtors to submit both oral and written disputes regarding a debt's validity, and affirmed the lower court.