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Fifth Circuit's Affirmance of Denial of Attorney's Fees to Successful FDCPA Plaintiff May Aid Collectors in Challenging Unreasonable Fee Requests

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Debt collectors should take note of a recent decision by the U.S. Court of Appeals for the Fifth Circuit holding that a Texas federal district court was justified in relying on "special circumstances" to deny attorney's fees to a successful plaintiff in a lawsuit in which the defendant was found to have violated the Fair Debt Collection Practices Act (FDCPA). The decision suggests that attorney's fees may be disallowed to a prevailing plaintiff if the fee request is exorbitant or the lawsuit was manufactured by the plaintiff and his or her attorneys.

In addition, the decision demonstrates that while prevailing plaintiffs are generally awarded attorney's fees in FDCPA cases, the need for such fees to be reasonable can be used as ammunition against plaintiffs' lawyers whose conduct in litigating the case is questionable—particularly in individual cases where there are no actual damages, just statutory damages.

In this case, [Davis v. Credit Bureau of the South](#), the plaintiff claimed that the defendant had violated the FDCPA by using the words "credit bureau" in its name in an attempt to collect a debt, thereby misrepresenting itself as a credit bureau. The plaintiff, Crystal Davis, identified two incidents in which the defendant allegedly attempted to unlawfully collect the debt—a 2013 water bill for \$107.29. Ms. Davis alleged that in August 2015, the defendant mailed her a collection letter on letterhead that identified itself as "Credit Bureau of the South." The second alleged violation was based on a recorded phone call that Ms. Davis made to the defendant in September 2015, during which she claimed that the defendant misrepresented itself as a credit bureau.

Accepting the magistrate judge's finding and recommendation that the defendant had violated the FDCPA by continuing to use the term credit bureau in its name while engaging in debt-collection activities—despite having previously ceased to be a consumer-reporting agency—the district court granted summary judgment in Ms. Davis' favor and awarded her \$1,000 in statutory damages.

Ms. Davis subsequently filed a motion seeking \$130,410 in attorney's fees, which was denied by the magistrate judge based on his determination that the case involved special circumstances making an award of attorney's fees unjust. According to the magistrate judge, "it appears that this cause of action was created by counsel for the purpose of generating, in counsel's own words, an 'incredibly high' fee request."

While observing that a successful FDCPA plaintiff is ordinarily entitled to attorney's fees to disincentivize future violations, the magistrate judge stated that "the Court is even more concerned about disincentivizing the conduct of Plaintiff's counsel." The magistrate judge stated at the hearing that he found it "suspicious" that Ms. Davis, while employed by the law firm that represented her, asked the defendant to mail a new water bill to her parents' Texas address and then based an FDCPA claim on that action. The record also indicated that the phone call claimed to have violated the FDCPA was made in the presence of Ms. Davis' attorney and recorded using a device owned by his firm.

The Fifth Circuit concluded that the district court did not abuse its discretion in adopting the magistrate judge's

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order denying attorney's fees. Citing precedents by the U.S. Courts of Appeal for the Third and Fourth Circuits, the Fifth Circuit concluded that based on the "outrageous facts in this case" it was appropriate to invoke a "special and unusual circumstances" exception to the FDCPA provision making a debt collector liable for a successful plaintiff's reasonable attorney's fees.

The court also concluded that the district court's finding that no attorney's fees should be awarded was justified based on the poor quality of legal work and excessive number of hours claimed. Noting the concession by plaintiff's counsel at oral argument that there were no actual damages in the case, the Fifth Circuit expressed both its "disapproval of utilizing technical violations of the FDCPA solely as a means for generating attorney's fees" and its view that "grossly excessive attorney's requests directly contravene the purpose of the FDCPA [and] must be deterred."

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