

WHAT IS IN A NAME? THE THIRD CIRCUIT HOLDS THAT DEBT BUYERS CAN BE DEBT COLLECTORS UNDER THE FDCPA

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"Debt buyers"—entities that purchase debt from original creditors or other downstream assignees—often view themselves as being different from "debt collectors"—entities that act to collect debts from obligors. But in *Barbato v. Greystone Alliance, LLC*, [1] the U.S. Court of Appeals for the Third Circuit disagreed, holding that debt buyers can be debt collectors under the Fair Debt Collection Practices Act ("FDCPA"). Specifically, the Third Circuit ruled that part of the FDCPA's definition of "debt collector" encompasses debt buyers, regardless of whether they outsource collection activities to third parties.

The FDCPA defines "debt collector" as "any person," (1) "who uses any instrumentality of interstate commerce or the mails in any business the *principal purpose* of which is the *collection* of any debts," or (2) "who *regularly collects* or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." [2] In reviewing the question presented, the Third Circuit recognized that the Supreme Court had recently "declined to address whether ... debt buyers could ... qualify as debt collectors under the 'principal purpose' prong of the definition." [3]

Undertaking that analysis for itself, the Third Circuit examined the text of the "principal purpose" prong of the definition. As a result of its review, the court ruled that a debt buyer may be covered by the "principal purpose" prong where its business is involved in the "collection" of debts even if it does not directly collect the debts. [4] The court explained that "[w]hile it is true that 'collection' can be defined as 'the act or process of collecting,' it can also be defined as 'that which is collected.'" [5] Because this shifts "the focus ... from the *act* of collecting to *what* is collected, namely, the acquired debts," the court concluded that "[a]s long as a business's *raison d'être* is obtaining payment on the debts that it acquires, it is a debt collector," and "[w]ho actually obtains the payment or how they do so is of no moment." [6]

The Third Circuit further relied on the "[t]he statutory context of the 'principal purpose' prong to support its reading. According to the court, the statutory context 'casts further doubt ... that Congress meant to limit [the prong] to only those entities that actively collect from consumers.'" [7] Specifically, the court noted that the "regularly collects" prong of the definition "explicitly used the verb 'to collect' in describing the actions of those it intended the definition to cover," unlike the "principal purpose" prong, which used the broader noun "collection" while not "specify[ing] who must do the collecting or to whom the debt must be owed." [8] "Thus, by its terms, the 'principal purpose' definition sweeps more broadly than the 'regularly collects' definition, and we must presume that the legislature says what it means and means what it says." [9]

The Third Circuit was not persuaded by the defendant/debt buyer's contrary arguments. The court disagreed that it was adding duties on entities "indirectly" involved in debt collection. Rather, the court found that the "principal purpose" prong already included such entities: "'Collection' by its very definition may be indirect," covering the purchase of consumer debt and hiring of other collectors to collect it. [10] And the court reiterated that it no longer endorsed the concept that "the terms 'debt collector' and 'creditor'" could be treated "as mutually exclusive." [11] Finally, the court rejected the idea that "Congress did not intend for the statutory definition of 'debt collector' to apply to a 'passive debt owner' ... but only to a repo man who was personally hounding debtors to hand over the money they owe." [12] In the court's view, the "market-based incentives" for a debt buyer are focused solely on getting the consumer to pay the debt, so "that makes [a debt buyer] far more like a repo man than a creditor and gives it every incentive to hire the most effective repo man to boot." [13]

The Third Circuit's holding in *Barbato* brings debt buyers within the scope of the FDCPA unless the principal purpose of their acquisition of debt is something other than collection. Examples the court gave include purchasing debts to forgive them as a charitable effort or purchasing them to resell them for profit without attempting any collection of the amount owed. [14] Most debt buyers, however, will likely want to determine the steps necessary to ensure that their actions, and those of any independent third parties they hire to collect debts, comply with the substantive provisions of the FDCPA.

NOTES

[1] --- F.3d ----, 2019 WL 847920 (3d Cir. Feb. 22, 2019)

[2] 15 U.S.C. § 1692a(6) (emphasis added). The court's analysis in *Barbato* did not reach the "regularly collects" prong of the definition.

[3] *Barbato*, 2019 WL 847920, at *4 (explaining that *Henson v. Santander Consumer USA, Inc.*, 137 S. Ct. 1718 (2017), only concluded that a debt buyer did not meet the "regularly collects" prong because it collected debts "for its own account" rather than for "another").

[4] *Id.* at *6.

[5] *Id.*

[6] *Id.* (emphasis in original).

[7] *Id.*

[8] *Id.*

[9] *Id.* (internal quotations and formatting omitted).

[10] *Id.* at *6-7.

[11] *Id.* at *5 (discussing impact of *Tepper v. Amos Financial, LLC*, 898 F.3d 364 (3d Cir. 2018)).

[12] *Id.* at *7-8.

[13] *Id.*

[14] *Id.*

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