



Sixth Circuit Finds No Injury in FDCPA Mini-Miranda Case

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On February 16, 2018, the U.S. Court of Appeals for the Sixth Circuit decided the case of *Hagy v. Demers & Adams* in which it applied the U.S. Supreme Court's precedent in *Spokeo, Inc. v. Robins* to find that the plaintiff debtors lacked standing to sue a debt collector in federal court over the debt collector's failure to include a mini-Miranda warning in a letter to the debtors' attorney.

The case began in 2010 when James and Patricia Hagy defaulted on a real property secured loan. After the mortgage servicer initiated foreclosure proceedings against them, the Hagys contacted the mortgage servicer's attorney, David Demers, with the law firm of Demers & Adams, in an attempt to reach a settlement with the mortgage servicer. The mortgage servicer agreed to settle the Hagys' debt through a deed in lieu of foreclosure. Demers sent a letter on behalf of his mortgage servicing client to the Hagys' attorney confirming the settlement agreement. The letter did not include the mini-Miranda warning required by 15 U.S.C. § 1692e(11). In 2011, the Hagys sued Demers & Adams for violating the Fair Debt Collection Practices Act. Among other things, the Hagys claimed that Demers's failure to provide the mini-Miranda warning violated the FDCPA. Eventually, both parties moved for summary judgment. In 2013, the district court granted the Hagys' motion and denied Demers's motion. In 2016, after the Supreme Court issued its decision in *Spokeo*, Demers asked the district court to reconsider its decision in light of *Spokeo*, but the district court refused. Demers appealed, and the Sixth Circuit reversed.

Applying *Spokeo*, the appellate court found that the Hagys could not demonstrate that the failure to provide the mini-Miranda warning was more than a "bare procedural violation," or caused them any concrete injury-in-fact. The Hagys admitted that they were pleased by the contents of the letter, which confirmed for them that the mortgage servicer had agreed to a settlement offer and waiver of any deficiency balance. The appellate court further found that Congress's creation of a disclosure requirement, without any articulation of the harms that might flow from a failure to provide the disclosure, cannot form the basis for cognizable injury-in-fact for purposes of Article III standing.

The Sixth Circuit's decision is notable because it bucks a growing trend among federal district courts and some circuit courts that have found that violations of the FDCPA, including its disclosure requirements, are sufficient to establish standing even absent evidence of actual harm. *See, e.g., Zirotiannis v. Seterus, Inc.*, 2017 U.S. App. LEXIS 17818 (2d Cir. (E.D.N.Y.) September 12, 2017); *Church v. Accretive Health, Inc.*, 2016 U.S. App. LEXIS 12414 (11th Cir. (S.D. Ala.) July 6, 2016); *Schweer v. HOVG, LLC*, 2017 U.S. Dist. LEXIS 105034 (M.D. Pa. July 7, 2017). These cases suggest that because the FDCPA creates "substantive" and "informational"

rights, the violation of these rights can be harmful, regardless of whether plaintiffs demonstrate any actual harm. The Sixth Circuit, however, clearly disagrees.

The Sixth Circuit's decision also stands in contrast to the Ninth Circuit's recent 2017 decision in which it applied the Supreme Court's *Spokeo* standard to the facts of the *Spokeo* case and found that even though the allegedly inaccurate information in Robins's consumer report painted him a positive light, Robins nonetheless had standing under the Supreme Court's articulation of injury-in-fact in *Spokeo*. See *Robins v. Spokeo, Inc.*, 2017 U.S. App. LEXIS 15211 (9th Cir. (C.D. Cal.) August 15, 2017). *Spokeo*, seeking to overturn the Ninth Circuit's decision, petitioned the Supreme Court for certiorari, again. The Supreme Court denied *Spokeo*'s petition. But, perhaps as divergent circuit court cases continue to develop, the Supreme Court will ultimately agree to provide further guidance on how courts ought to apply the injury-in-fact requirements in *Spokeo*.

The court's opinion is available at: <http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0032p-06.pdf>.

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