

Federal Appeals Court Upholds Finding that Midland Funding Violated the FDCPA

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The consumer allegedly secured a Gateway credit account in Pennsylvania to purchase a computer for her daughter's college education. The consumer applied for the account, received the computer, paid the account's minimum payments, and eventually defaulted all while living in Pennsylvania. After losing earned income, the consumer could no longer repay the Gateway account.

Four years after the default, the consumer was still living in Pennsylvania. She had not been sued in a collection lawsuit. Pennsylvania generally has a 4-year statute of limitation for breaches of contracts including the kind of credit the consumer obtained from Gateway. On that basis, the consumer could not be sued in Pennsylvania thereafter because the Gateway debt was stale pursuant to Pennsylvania's statute of limitations law.

After 4 years, but before 6 years, the consumer moved to New Jersey to become a resident. New Jersey generally has a 6-year statute of limitations. By time the consumer moved to New Jersey, the Gateway account ultimately ended up in the hands of the junk debt buyer, **Midland Funding**, LLC. Midland Funding then hired Pressler & Pressler, LLP, a debt collection law firm, to sue the consumer in New Jersey. The collection lawsuit was filed in New Jersey after 4 years but within 6 years after the consumer's default.

Midland Funding Ignores the Applicable Statute of Limitations

The consumer advised Midland Funding and Pressler & Pressler on a number of occasions that the New Jersey collection lawsuit was barred by Pennsylvania's 4-year statute of limitations even though New Jersey generally permits collection lawsuits until 6 years after default. Midland Funding balked at the consumer's defense and said only New Jersey's statute of limitations could apply because the collection lawsuit was filed in New Jersey.

Unable to convince Midland Funding or Pressler & Pressler of their unfairness, the consumer hired a consumer rights attorney to level the playing field. On the day of trial, Midland Funding dismissed the collection lawsuit against the consumer, though, before the state court could determine the applicable statute of limitations.

After Midland Funding dismissed the lawsuit and deprived the consumer an opportunity to establish the correct statute of limitations, the consumer filed a federal suit alleging Midland Funding violated the U.S. Fair Debt Collection Practices Act ("FDCPA").

Midland Funding Gets Spanked

The FDCPA states that debt collectors must act fairly when attempting to collect consumer debts. A

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Rules



provision in the FDCPA has been interpreted to mean that neither debt collectors like Midland Funding nor their collection attorneys like Pressler & Pressler can file collection lawsuits based on stale or time-barred debt.

Midland Funding defended itself against the consumer's FDCPA lawsuit claiming that New Jersey's 6-year statute of limitations had to apply. The consumer was successful in convincing the trial court and now the appellate court that such an argument is fundamentally unfair especially since New Jersey allows its own statutes of limitations to be shortened if various criteria apply.

The appeals court held that because the Midland Funding junk debt was barred by Pennsylvania's 4-year statute of limitations *before* the consumer became a resident of New Jersey, New Jersey's own statutes of limitations included an exception for facts such as those.

Once the appeals court found that Midland Funding's collection lawsuit was barred by New Jersey's statute of limitation, it was easy to also find that Midland Funding committed a *Kimber* violation. A *Kimber* violation is a particular violation under the FDCPA that prevents Midland Funding from filing collection lawsuits barred by a statute of limitations. See [*Kimber v. Federal Financial Corp.*, 668 F. Supp. 1480 \(M.D. Ala. 1987\)](#).

Midland Funding Gets Acquainted with Kimber Violations

The FDCPA does not allow *Kimber* violations because an unsophisticated consumer might not know that he or she can defend against Midland Funding's stale debts using an applicable statute of limitations. Although the consumer in this action knew something was amiss, she was unable to articulate the facts and law in such a way to be taken seriously either by Midland Funding or Pressler & Pressler. Once she hired a consumer rights attorney, however, Midland Funding learned a very, very expensive lesson: Don't violate the FDCPA when [Consumer Litigation Group](#) is watching.

[If Midland Funding or Pressler & Pressler has filed a time-barred collection lawsuit against you, please call us at 610-616-5303 or 856-861-4241 or contact us via our web form.](#)

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