

Does a violation of the Fair Debt Collection Practices Act (of the federal law) constitute a violation of the Massachusetts Consumer Protection Act?

20 January 2015

Yes.

Just before 2014 ended the Court of Appeals for the First Circuit issued *McDermott v. Marcus* ruling that a violation of the Fair Debt Collection Practices Act is a *per se* violation of the Massachusetts Consumer Protection Act, specifically, Mass. Gen. Laws c. 93A § 2. McDermott v. Marcus, Case No. 13-2181 (1st Cir. decided Dec. 29, 2014). This clarifies the issue once and for all in Massachusetts.

What happened in the case was that the defendant law firm contacted the consumer when the consumer was represented by counsel. This violated the Fair Debt Collection Practices Act and the main question on appeal was whether that violation was *per se* a violation of the Massachusetts Consumer Protection Act.

The court logically observed that a violation of the Fair Debt Collection Practice Act is a *per se* violation of the Federal Trade Commission Act, and that Massachusetts had “wholly incorporated” the Federal Trade Commission Act and its interpretation into the Massachusetts Consumer Protection Act. The logic was, if A = B and B = C, then A = C.

What does this mean to a potential litigant? Well, as the case suggested, there can be a difference in damages available under the two laws. Although in most situations, damages will be the same under both the Fair Debt Collection Practices Act and the Massachusetts Consumer Protection Act, there can be differences. The Fair Debt Collection Practices Act has a statutory damages provision allowing the assessment of up to \$1,000.00 in addition to actual damages, with the corresponding Massachusetts provision being only \$25, and is in lieu of actual damages. Another important difference is that the Massachusetts Consumer Protection Act has multiple damages, this means doubling or tripling of the actual damages, where the federal law does not. So, the damages may be very different in some cases.

In the event that you are facing a difficult creditor or involved in a lawsuit/litigation with a creditor and believe you may have a claim, feel free to give this office a call.

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