

Sixth Circuit broadens FDCPA verification requirements for debt collectors

Last week, in *Haddad v. Alexander, Zelmanski, Danner & Fioritto, PLLC*, --- F. 3d --- (6th Cir. 2014), 2014 WL 3440174 (6th Cir. Mich. 2014), 2014 U.S. App. LEXIS 13498, the Sixth Circuit expanded the requirement for how a debt collector must respond to a debtor's request for verification of a debt under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (FDCPA), creating the most consumer-friendly verification standard ever.

Under § 1692g(b), if a consumer notifies the debt collector in writing within thirty days of receiving the § 1692g(a) notice that he disputes the debt or any portion of it, the debt collector must stop collecting the debt, or the disputed portion of the debt, and obtain verification of it and mail that verification to the consumer. The *Haddad* Court confronted the meaning of “verification” under § 1692g(b), because that term is not defined in the FDCPA.

Haddad received an initial letter from the defendant law firm notifying him that he owed a delinquent condominium assessment bill. The debtor disputed the amount of the debt in writing within 30 days of receiving the initial letter. In response, the law firm provided verification in the form of an accounting ledger showing the amounts comprising the total and a letter generally explaining the charges. The debtor replied with a letter explaining that there was no support for the beginning \$50 balance or the subsequent fines and that the debt was still disputed as to those amounts. The law firm responded by sending a second letter and ledger providing more details about the charges. The debtor replied by letter again, demanding substantiation of the beginning \$50 balance. The law firm sent a third letter itemizing the debt without explaining the beginning \$50 balance and enclosing a copy of the lien that it later placed on the debtor's condo.

Haddad sued the law firm under § 1692e and § 1692g(b) of the FDCPA, claiming that the law firm had not properly verified the debt before resuming collection activity. The District Court granted summary judgment to the law firm. The Sixth Circuit reversed and granted summary judgment to Haddad and against the law firm, finding that the law firm violated 1692g(b). In so doing, it announced a new standard for verification under § 1692g(b), holding that “the verification provision must be interpreted to provide the consumer with notice of how and when the debt was originally incurred or other sufficient notice from which the consumer could sufficiently dispute the payment obligation.” *Haddad*, 2014 U.S. App. LEXIS 13498 at * 21. The law firm failed this test because it did not provide information about the nature of the \$50 beginning balance that Haddad disputed and instead continued its collection efforts. *Id.* at * 22. The failure to explain the \$50 charge led the Court to conclude that the documents the law firm provided were insufficient to allow the debtor to dispute the debt. *Id.*

In announcing this new standard for verification, the Sixth Circuit reviewed other Circuit's rulings on the same issue and found that those courts had interpreted “verification” as requiring “nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed” and that “the debt collector is not required to keep detailed files of the alleged debt.” *Id.* at * 13-19 (citing *Chaudhry v. Gallerizzo*, 174 F.3d 394, 406 (4th

Cir. 1999); *see also*, *Clark v. Capital Credit & Collection Servs.*, 460 F.3d 1162 (9th Cir. 2006)). However, the Court was quick to point out that in each of those cases and in others the debt collectors had gone beyond the standard verification requirement by sending itemized statements to the debtors which provided sufficient information to allow the consumer to dispute the debt. *Id.* at * 19.

The Sixth Circuit then turned to the 8th Circuit's treatment of verification in *Dunham v. Portfolio Recovery Assocs., LLC*, 663 F.3d 997 (8th Cir. 2011). There, the debt collector did not obtain additional information from the creditor to verify the debt; it responded to the dispute by confirming the debtor's name, address, last four digits of his social security number, the outstanding balance of the debt, the date the debt was incurred, and the date the current creditor had purchased the debt. *Id.* at * 17. The 6th Circuit explained that the 8th Circuit held that the information provided to the consumer was sufficient verification because it provided enough information to put the consumer on notice that he was not the debtor when he realized that the last four digits of his social security number were different from that of the actual debtor. *Id.* at * 18-19. It was important to the 6th Circuit that although the 8th Circuit declined to set a higher threshold for verification than that in *Chaudhry* and *Clark*, it also noted that "under different facts, perhaps a debt collector must do more than what the debt collector did here." *Id.* at * 19 (citing *Dunham* at 1003).

The Sixth Circuit's verification standard appears similar to that of the 8th Circuit. It seems to have adopted the *Dunham* Court's interpretation of "verification" in which it did not attach a specific action to "verification" (such as confirming the amount owed) but ruled that "the verification requirement was satisfied where the debtor could sufficiently dispute the payment obligation." *Id.* at * 19-20. The Sixth Circuit's adoption of this standard appears to be driven by its conclusion that what is sufficient for verification "depends on the facts of a particular situation..." *Id.* at *19.

Although it did not articulate a bright line test for "verification," the Sixth Circuit offered guidance about what it believes would suffice. For example, in those cases where the debtor appears to acknowledge the account belongs to him but disputes owing the balance or any portion of it, the Sixth Circuit stated that "an itemized accounting detailing the transaction in an account that has led to the debt is often the best means of accomplishing that objective." *Id.* at * 19. Then the Sixth Circuit, stating that it believed it was making the debt collector's job easier, said that the information used to verify a debt "does not have to be extensive. It should provide the date and nature of the transaction that led to the debt, such as a purchase on a particular date, a missed rental payment for a specific month, a fee for a particular service provided at a specified time, or a fine for a particular offense assessed on certain date." *Id.* at * 19.

Debt collectors must address several issues in light of *Haddad* to ensure their compliance management systems are updated to meet this new verification standard and otherwise comply with Section 1692g(b). First, because credit reporting may be considered collection activity, debt collectors should not furnish information to the credit reporting agencies until the validation/verification period has expired and the debt collector has not received a dispute. Then the debt collector won't have to request deletion of the trade-line to avoid violating § 1692g(b) in the event it cannot validate the account.

Second, the debt collector must determine the nature of the dispute to know whether proper verification can be provided. The Sixth Circuit's somewhat flexible standard allows for different types of verification depending on the nature of the dispute. For example, where a person claims he is not the debtor but does not provide identification sufficient to support his claim, the debt collector could provide summary information about the account and the last four digits of the responsible party's social security number. Such notice would allow the person to determine that he is, in fact, not the debtor the collector is seeking.

That type of verification will clearly not suffice in response to a debtor who is the right person but disputes the balanced owed, or any portion of it. Verification of that debt will most likely require "an itemized accounting detailing the transaction in an account that has led to the debt." If the debt collector is unsure of the nature of the dispute, nothing prevents it from trying to find out more about the dispute provided the debt collector does not try to collect (including furnishing information to the credit reporting agencies) the debt in the interim. And, of course, there is always the option of closing the account in response to the dispute as permitted by § 1692g(b).

The real difficulty of the *Haddad* ruling will be where to draw the line. The *Haddad* verification standard is a somewhat flexible standard that requires a factual assessment of the details of each debt and assumes that the debtor has a real dispute that he wants to resolve. For debtors who simply want to avoid paying, the *Haddad* verification standard gives them endless opportunities to demand more verification information, hold off collections indefinitely, and badger debt collectors with trivial or irrelevant demands. Debt collectors will need to judge carefully about which demands for verification are frivolous and when the debt collector has met the burden of supplying sufficient verification. The new standard for verification articulated in *Haddad* does not make this task easy. Debt collectors should contact their attorneys for legal advice about how to comply with *Haddad*.