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### **Gallagher Sharp Newsflash: Award of Defendant's Costs in FDCPA Lawsuit**

Yesterday, February 26, 2013, the Supreme Court of the United States, in a 7-2 decision, held that a successful defendant in a Fair Debt Collection Practices Act (“FDCPA”) lawsuit is entitled to an award of costs without a finding of bad faith.

In *Marx v. General Revenue Corp.*, Slip Op. No. 11-1175, the plaintiff defaulted on a student loan guaranteed by a division of California’s Student Aid Commission. The division hired the defendant to collect the debt. One month later, plaintiff filed suit against the defendant alleging that the defendant harassed plaintiff with phone calls several times a day and falsely threatened garnishment of her wages from her bank account in violation of the FDCPA.

After prevailing at trial, the defendant was awarded \$4,543.03 in costs for witness fees, travel expenses, and deposition transcript fees, despite no finding of bad faith or harassment. Federal Rule of Civil Procedure 54(d)(1) gives district courts discretion to award costs to prevailing defendants “[u]nless a federal statute ... provides otherwise.” However, 15 U.S.C. §1692k(a)(3) of the FDCPA states that a court must find that the plaintiff brought the action “in bad faith and for the purpose of harassment” before a court may award the defendant attorney fees and costs. The plaintiff filed a motion to vacate the award of costs on the basis that 15 U.S.C. § 1692k(a)(3) sets forth the exclusive basis for the award of costs against a plaintiff in FDCPA cases. The district court denied plaintiff’s motion finding that 15 U.S.C. §1692k(a)(3) does not displace a court’s discretion to award costs under Rule 54(d)(1). The district court also found that costs should be awarded under Rule 68(d). (The Rule 68(d) costs were due to an offer of judgment that the defendant filed at the beginning of the case for \$1,500.)

The Tenth Circuit Court of Appeals affirmed, in part, and held that Rule 54(d)(1) allowed costs pursuant to the district court’s discretion and upheld the award. The Supreme Court of the United States affirmed the Tenth Circuit’s ruling and held that §1692k(a)(3) is not contrary to Rule 54(d)(1) and, therefore, does not displace a district court’s discretion to award costs under the rule. Based on its finding, the Supreme Court did not consider the defendant’s Rule 68 argument.

This decision may help inhibit the filing of frivolous or meritless FDCPA and other consumer actions against debt collectors and attorneys.

A link to the Supreme Court’s opinion can be found at:  
[http://www.supremecourt.gov/opinions/12pdf/11-1175\\_4fc5.pdf](http://www.supremecourt.gov/opinions/12pdf/11-1175_4fc5.pdf).

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