

# Eleventh Circuit Says Merely Acquiring Debt in Default is Not Enough to Qualify As "Debt Collector" Under FDCPA

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In *Davidson v. Capital One Bank (USA), N.A.*, the Eleventh Circuit affirmed a district court's dismissal of an amended complaint against Capital One Bank (USA), N.A. ("Capital One") for alleged violations of the Fair Debt Collection Practices Act (FDCPA), based on its holding that Capital One did not qualify as a "debt collector" under the Act simply because it acquired the debtor's credit card account debt while the account was in default.

The plaintiff, Keith Davidson, filed suit on behalf of himself and other similarly situated individuals, claiming that Capital One's activities in attempting to collect on accounts that it acquired from the original creditor, HSBC, violated the FDCPA. In moving to dismiss the complaint, Capital One argued that it was not subject to the Act because it did not meet the statutory definition of "debt collector." Davidson claimed that because Capital One was attempting to collect a debt that it acquired when delinquent, it fell within the definition of "debt collector."

The FDCPA defines a "debt collector" as (1) "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts," or (2) any person "who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. §1692a(6). The definition also has six exclusionary categories, one of which is the exclusion of any person who is collecting or attempting to collect on any debt owed or due another if the debt was not in default at the time it was acquired. 15 U.S.C. §1692a(6)(F)(iii).

In rejecting the plaintiff's arguments that Capital One was subject to the FDCPA, the Eleventh Circuit noted in *Davidson* that Section 1692a(6)(F)(iii) is "an exclusion; it is not a trap door." The court held that before a person can qualify as a "debt collector," either of the Act's two substantive requirements must be satisfied, and in "applying the plain language of the statute ... a person who does not otherwise meet the requirements of § 1692a(6) is not a 'debt collector' under the FDCPA, even where the consumer's debt was in default at the time the person acquired it."