

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DOUGLAS A. DENNING,

Plaintiff,

v.

Case No: 8:21-cv-2822-MSS-MRM

MANKIN LAW GROUP, P.A.,

Defendant.

ORDER

THIS CAUSE comes before the Court for consideration of Defendant's Motion to Dismiss, (Dkt. 11), and Plaintiff's response in opposition thereto. (Dkt. 15) On August 11, 2022, United States Magistrate Judge Mac R. McCoy issued a Report and Recommendation, which recommended that Defendant's Motion to Dismiss be **GRANTED in PART** and **DENIED in PART**. (Dkt. 33) Judge McCoy recommended that Defendant's motion be granted only to the extent that any allegations that Defendant "should have known" that the debt was illegitimate be stricken from paragraphs 104 and 107 of Plaintiff's Complaint. (Id.) Defendant timely filed an objection to Judge McCoy's Report and Recommendation. (Dkt. 36)

In the Eleventh Circuit, a district judge may accept, reject, or modify the magistrate judge's report and recommendation after conducting a careful and complete review of the findings and recommendations. 28 U.S.C. § 636(b)(1); Williams v.

Wainwright, 681 F.2d 732, 732 (11th Cir. 1982). A district judge “shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C). This requires that the district judge “give fresh consideration to those issues to which specific objection has been made by a party.” Jeffrey S. v. State Bd. of Educ., 896 F.2d 507, 512 (11th Cir.1990) (quoting H.R. 1609, 94th Cong. § 2 (1976)). In the absence of specific objections, there is no requirement that a district judge review factual findings *de novo*, Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject, or modify, in whole or in part, the findings and recommendations. 28 U.S.C. § 636(b)(1)(C). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. Southern Ry., 37 F.3d 603, 604 (11th Cir. 1994).

Defendant raises one principal objection to the Magistrate Judge’s Report and Recommendation. Defendant argues the Magistrate Judge erred in concluding the FDCPA and FCCPA prohibit the type of conduct alleged in Plaintiff’s Complaint. (Dkt. 36) In support of this argument, Defendant directs the Court to one reported case, Transamerica Fin. Servs., Inc. v. Sykes, 171 F.3d 553, 555 (7th Cir. 1999), and unreported federal district court cases from three states: Florida, Delia v. Ditech Fin. LLC, No. 6:16-cv-1901, 2017 WL 2379819 (M.D. Fla. June 1, 2017), Arizona, Anderson v. Canyon State Prof’l Servs., 2003 U.S. Dist. LEXIS 26419 (D. Ariz. 2003), and California, Palmer v. I.C. Sys., Inc., No. 5:04-cv-03237, 2005 WL 3001877 (N.D. Cal. Nov. 8, 2005).

The Court is not persuaded by the cases cited by the Defendant because those cases involve factually different situations than the case at bar. Plaintiff's case is different because Plaintiff received a collection letter notifying him of a debt of \$634.36, Plaintiff paid that debt one month after receiving the letter, and now challenges the validity of the \$634.36 debt and the collection methods used to collect it. The Court finds that Defendant's reliance on Forlizzo v. Allied Interstate LLC, No. 8:14-cv-1389, 2014 WL 12617968, at *1 (M.D. Fla. Oct. 20, 2014), is misplaced because Plaintiff did not first attempt to validate the debt, as was the case in Forlizzo, before Plaintiff paid the debt.

Moreover, Plaintiff alleges the Defendant violated the FCCPA and FDCPA because it sought to collect assessments in the amount of \$125, plus interest, despite the existence of declaration that limited assessment increases. Defendant counters Plaintiff's allegation and argues that Plaintiff's Complaint should be dismissed because Defendant has no duty to perform a pre-collection investigation into the validity of a debt before attempting to collect it. The Court finds Defendant's Motion to Dismiss purported to raise the bona fide error defense by claiming Defendant had no duty to perform pre-collection investigative activities. Therefore, the Court finds that because Plaintiff did not raise the bona fide error defense, as was the case in Delia, the Magistrate Judge correctly concluded any consideration of that defense was premature. The Court further finds that Defendant's arguments were properly disposed of by the Magistrate Judge, consistent with binding law and the applicable standard of review. Accordingly, Defendant's objection is **OVERRULED**.

Upon consideration of the Report and Recommendation, in conjunction with an independent examination of the file, the Court is of the opinion that the Report and Recommendation should be adopted, confirmed, and approved in all respects. Accordingly, it is **ORDERED** that:

1. The Report and Recommendation (Dkt. 33) is **CONFIRMED** and **ADOPTED** as part of this Order; and
2. Motion to Dismiss (Dkt. 11) is **GRANTED** to the extent that any allegations that Defendant “should have known” that the debt was illegitimate be stricken from paragraphs 104 and 117 of Plaintiff’s Complaint and **DENIED** to the extent that it seeks any alternative relief.
3. Defendant is **DIRECTED** to Answer the Complaint within **twenty-one (21) days** of the date of this Order.

DONE and **ORDERED** in Tampa, Florida, this 12th day of September 2022.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Person