

Judge Vacates Default Judgment in FDCPA Case, Calls Out Plaintiff's 'Gamesmanship'

RELATED PROFESSIONALS

[Virginia Bell Flynn](#)

Virginia Bell Flynn, a partner in Troutman Pepper Locke's Consumer Financial Services Practice Group, was quoted in the *AccountsRecovery.net Compliance Digest* article, "[Judge Vacates Default Judgment in FDCPA Case, Calls Out Plaintiff's 'Gamesmanship.'](#)"

Not so fast there, Skippy. A Magistrate Court judge in New York has granted a defendant's motion to vacate a default judgment that had been issued against it in a Fair Debt Collection Practices Act case, ruling that if anyone is "guilty" of "tactical maneuvering" and "procedural gamesmanship" it was the plaintiff who rushed to the court to enter a \$301,000 judgment against the defendant less than seven hours after the deadline to respond to the complaint had passed. [More details here.](#)

WHAT THIS MEANS, FROM VIRGINIA BELL FLYNN OF TROUTMAN PEPPER LOCKE: This case highlights the risk surround missing a deadline to respond to Complaint, as well as effective ways to cure such procedural errors.

If a Defendant technically defaults by not responding to the complaint within the time set, a Defendant may move to vacate the default under Federal Rule of Civil Procedure 55(c). To set aside a default, there must be "good cause" which includes having "meritorious defenses." Here, the Court found the default defendant had meritorious defenses which were raised in a Motion to Dismiss, even though that Motion to Dismiss was filed after default had been entered. The Court was correct to consider those meritorious defenses as grounds supporting vacating the default.

Best practice is to timely respond to Complaints before a default is entered. But this case shows defendants have legal avenues to set aside defaults, especially where they have meritorious defenses.

Defendants should seek out counsel that are highly responsive and can work on tight timelines to avoid defaults in the first place. However, if defendants default, good legal counsel can often get defaults set aside, especially where there are meritorious defenses or other grounds for good cause, as occurred in this case.

RELATED INDUSTRIES + PRACTICES

- [Consumer Financial Services](#)