

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

VORCELIA OLIPHANT,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	3:03cv2038 (SRU)
	:	
JENNIFER SIMBOSKI and REINER,	:	
REINER & BENDETT, P.C.,	:	
Defendants.	:	

RULING ON MOTION FOR ATTORNEYS’ FEES AND/OR SANCTIONS

Vorcelia Oliphant sued the law firm Reiner, Reiner & Bendett, P.C. and one of its attorneys, Jennifer Simboski, alleging violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.* Summary judgment entered in favor of the defendants, who have now moved under Rule 11 of the Federal Rules of Civil Procedure and 15 U.S.C. § 1692k(a)(3) for attorneys’ fees and/or sanctions against Oliphant’s counsel, Joanne Faulkner. That motion (doc. # 45) is denied.

Defendants’ motion complains principally about Faulkner’s settlement demands, notes that she is experienced in FDCPA litigation, and recounts the grant of summary judgment.

Based upon the facts of this case, and the outrageous repeated settlement demands by Attorney Faulkner, it is clear that this action was brought and/or pursued frivolously, without merit, without reasonable investigation, in bad faith, and for the specific purposes of harassment and attempting to extract a large fee from the Defendants, without a reasonable basis therefore.

Defendant’s Motion, ¶ 20.

Defendants’ motion fails for several reasons. First, with respect to the Rule 11 motion, it appears that Defendants have failed to comply with the procedural prerequisites for filing such a motion. Fed. R. Civ. P. 11(c)(1)(A) (“safe harbor” provision requires service and a twenty-one day waiting period prior to the filing of a Rule 11 motion). Second, although this lawsuit was

ultimately unsuccessful, it was not frivolous. Nor does the record support a finding that the lawsuit was harassing or that Faulkner caused unnecessary delay or needless expense in her handling of the litigation. It is difficult to characterize the modest settlement demands in this case as harassment when the statute provides for the collection of attorneys' fees by a successful plaintiff. Finally, for similar reasons, the motion fails to surmount the "brought in bad faith or for the purpose of harassment" standard of a defendant's motion under 15 U.S.C. § 1692k(a)(3). The record does not support a finding of either subjective or objective bad faith on Faulkner's part.

Accordingly, the motion for attorneys' fees and/or sanctions (doc. # 45) is denied.

It is so ordered.

Dated at Bridgeport, Connecticut, this 19th day of April 2005.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge