

Owners of Debt Collection Companies Held Personally Liable for \$10M in FTCA/FDCPA Lawsuit

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Written by [Maryia Y. Jones](#), [Alan D. Wingfield](#),
[Ethan G. Ostroff](#) & [David N. Anthony](#) - 2/19/19

In a recent ruling, the Second Circuit Court of Appeals affirmed the district court's \$10 million disgorgement order assessed jointly and severally not only against collection agencies but also their individual owners. The Second Circuit's decision can be found [here](#).

This case involved thirteen debt collection companies that operated pursuant to the same strategy: employee collectors would contact debtors or even their family and friends and identify themselves as "processors," "officers," or "investigators" from a "fraud unit" or "fraud division." The collectors would accuse debtors of a crime, such as check fraud, and threaten them with criminal prosecution if they did not pay their debts. All the companies were owned by two individuals: Mark Briandi and William Moses. After receiving a litany of consumer complaints, the Office of the New York State Attorney General stepped in and its investigation resulted in Briandi and Moses entering, on behalf of themselves and their companies, into an

Assurance of Discontinuance, or “AOD.” Nonetheless, shortly after the AOD, the same unlawful practices continued.

Ultimately, the Federal Trade Commission brought an action against the thirteen companies, Briandi, and Moses under the Federal Trade Commission Act (“FTCA”) and the Fair Debt Collection Practices Act (“FDCPA”). The trial court granted the FTC’s motion for summary judgment and ordered disgorgement of \$10,852,396 against the corporate defendants, as well as Briandi and Moses personally. Both individuals appealed, but Moses’ appeal was dismissed for failure to submit a brief. Accordingly, the Second Circuit’s decision focused on Briandi.

The record before the Court showed that Briandi was responsible for the banking side of the business, personnel matters, maintenance of phone systems and websites, and receipt of payments from consumers, and that he was also in charge of the entity that purchased consumer debts. Briandi’s main defense was that, shortly after signing the AOD, his involvement in the businesses diminished because he decided to become a pastor. He admitted to being physically present in his office but claimed that he spent much of his time praying and taking online Bible classes. Briandi also acknowledged that he would step out on the collection floor and take “hostile” consumer calls, and his employees testified that he had a workspace in the call center and would sometimes spend half the day there.

The Second Circuit analyzed Briandi's personal liability under the FTCA standard which the Court found applicable to the FDCPA claims as well. In particular, the Court concluded that an individual may be liable under both statutes if he has knowledge of the violations and either participates directly in the practices or has authority to control them. The Court also found that knowledge could be established by a showing that the individual was recklessly indifferent to the deceptive nature of the practices and intentionally avoided learning the truth. The Court rejected Briandi's argument that he did not *exercise* control over the corporate defendants' operations because he was focused on his religious practices. The dispositive issue was whether he *possessed* authority to control the operations, not whether he actually exercised it. The Court also found that the amount of the award was not excessive because the evidence showed that the entire operation was permeated with fraud and the defendants did not present any rebuttal evidence to show that some of the revenues were obtained by lawful means.

While this case presents an extreme example, it stands for a more general proposition that applies even in benign cases: individuals who have an ownership interest in debt buyers and collectors are not immune from personal liability, and courts may impose steep penalties against them individually even when the unlawful conduct takes place without their actual knowledge or exercise of any actual control over the operations.

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