

GIFTED DISMISSAL: Judge Dismisses TCPA Claim Based on Argument Made by the Plaintiff

Article By:

Maxwell Levins

I have an interesting update regarding Mark Dobronski, an individual who has put himself on the plaintiff-end of [numerous TCPA lawsuits](#). On a motion for summary judgment, he recently saw five out of the six claims he had made against the defendant thrown out. *Dobronski v. Fortis Payment Systems, LLC*, No. 23-cv-12391, 2025 WL 486667, *1 (E.D. Mich. Feb. 13, 2025) (order granting in part and denying in part motion for summary judgment). Unsurprisingly, all of the plaintiff's claims in this case were related to telemarketing communications. *Id.*

For a quick procedural backdrop here, the motion for summary judgment was referred to a magistrate judge, who issued a report and recommendation. Magistrate judges are judges appointed by district court judges, to help them in certain types of cases—such as discovery disputes and dispositive motions.

After a magistrate judge issues a report and recommendation, parties generally have an opportunity to file objections to that report and recommendation before the district judge issues the final decision at the trial court level. Here, the district judge was doing just that—reviewing the parties' objections to the magistrate judge's report and recommendation.

In this action, the plaintiff filed four TCPA-related claims. *Id.* The magistrate judge recommended dismissal of two out of those four TCPA-related claims. *Id.* The defendant did not object to the non-dismissal of the remaining two TCPA claims. *Id.* Amazingly, the district judge dismissed one of those claims anyway, dismissing five out of the plaintiff's six total claims. *Id.* at *3-4.

But, how did the district court decide on its own to dismiss one of those claims without an objection by the defendant?

In the **plaintiff's** objection to the dismissal of one of his state law claims, the plaintiff pointed to the magistrate judge's analysis of one of his TCPA claims and effectively said, because **that** TCPA count survived, the analogous state law claim should also survive the motion for summary judgment. See *id.* at *4.

The district judge took a closer look at that TCPA Claim—for failure to honor a Do-Not-Call ("DNC") request—and found the exact opposite. See *id.* Not only should the analogous state law claim still be

dismissed, but the TCPA claim actually must go too—as the plaintiff failed to present any evidence that the defendant **received** a request not to call the plaintiff. *Id.*

The surviving claim on this action was for a traditional TCPA DNC violation. *Id.* at *2. Still, it is pretty surprising to see an extra claim thrown out by a district judge, where the defendant did not even object to the magistrate judge’s ruling on that claim.

It can seem straightforward. But in many actions such as this one, alleging multiple types of violations, plaintiffs can sometimes let required parts of their claims slip through the cracks. That is what happened here. And although defense counsel should have raised the issue of whether they **received** the DNC request on their own in their motion for summary judgment, the district court effectively gifted them a dismissal.

Best practice—do not rely on any court to do that for you!

© 2025 Troutman Amin, LLP

National Law Review, Volume XV, Number 48

Source URL: <https://natlawreview.com/article/gifted-dismissal-judge-dismisses-tcpa-claim-based-argument-made-plaintiff>