

CLEMM AND ASSOCIATES, LLC  
Mark C. Clemm, Esquire, I.D. No. 36665  
Katie M. Clemm, Esquire, I.D. No. 320733  
488 Norristown Road, Suite 140  
Blue Bell, PA 19422  
(484) 539-1300  
[mclemm@clemmlaw.com](mailto:mclemm@clemmlaw.com)  
kclemm@clemmlaw.com

Attorneys for Defendants

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GERRELL MARTIN and CURTIS SAMPSON : CIVIL ACTION  
 :  
v. : NO.: 2:17-cv-01139-JHS  
 :  
BART E. LEVY, ESQUIRE and :  
LEVY LAW, LLC :

---

**DEFENDANTS’ BRIEF CONTRA PLAINTIFFS’ MOTION FOR SUMMARY  
JUDGMENT**

Defendants Bart E. Levy, Esquire and Levy Law, LLC, by and through counsel Clemm and Associates, LLC, hereby submit this brief contra Plaintiffs’ Motion for Summary Judgment and request that this Honorable Court deny the Motion.

I. **INTRODUCTION AND SUMMARY OF THE ARGUMENT**

Defendants Bart E. Levy, Esquire and Levy Law, LLC (collectively, “Levy”) were retained by a landlord, Argentina Perez Irineo (the “Owner”) to file a landlord-tenant complaint against Plaintiffs. The Owner (or her agents) indicated to Levy that the Plaintiffs had not paid rent for three months. Therefore, on November 7, 2016, Levy sent a Notice of Default letter to Plaintiffs. On November 8, 2016, Levy, on behalf of the landlord, filed a landlord-tenant complaint (the “LT Complaint”) against Plaintiffs in the Philadelphia Municipal Court (the “LT

Action”). Levy filed the Complaint after having conferred with his client regarding the allegations stated in the LT Complaint.

Other than the Notice of Default and LT Complaint, Levy had no further direct communications with Plaintiffs. Ultimately, the LT Complaint was withdrawn on March 2, 2017.

## II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Mr. Levy began his career as a “tenant lawyer” in landlord-tenant actions, currently represents tenants and landlords, and has represented approximately 7,000 or 8,000 tenants in landlord-tenant matters over his career. (Plaintiffs’ Exhibit “J” at p. 6:6-13). Levy files approximately 2,000-3,000 eviction actions per year. (Plaintiffs’ Exhibit “J” at p. 5:19-22). Mr. Levy spends almost every weekday in landlord tenant court for two sessions per day representing either landlords or tenants. (Plaintiffs’ Exhibit “J” at pp. 5:23-7:3). Because Mr. Levy spends almost every weekday in landlord tenant court, his staff performs a majority of the client intake. (Plaintiffs’ Exhibit “J” at p. 16:1-2). Levy’s firm consists of Mr. Levy, two well-trained paralegals, a receptionist, and one associate attorney. (Plaintiffs’ Exhibit “J” at p. 16:3-8). Either a paralegal or the associate attorney performs client intake if Mr. Levy is not in the office. (Plaintiffs’ Exhibit “J” at p. 16:9-11).

Mr. Levy has a standard procedure for his staff regarding landlord-tenant actions where he has trained his staff to ask clients for the components or elements of the Philadelphia Municipal Court landlord-tenant complaint. (Plaintiffs’ Exhibit “J” at p. 16:14-21). The components of Mr. Levy’s procedure include (1) determining whether there is a landlord-tenant relationship between the parties; (2) determining whether the landlord has a license; (3) determining the landlord’s accounting system; and (4) obtaining or asking questions about the lease. (Plaintiffs’ Exhibit “J” at pp. 16:22-19:12). Levy has a “Paralegal Training Guide” which includes detail regarding the procedures to be used by Levy’s staff in landlord-tenant matters. (Plaintiffs’ Exhibit “M”). Levy also has a “work-flow log” which shows the documents that Levy has obtained and the stage of the litigation in a landlord-tenant action. (Plaintiffs’ Exhibit “J” at p. 57:5-16).

Before Levy sends a Notice to Vacate to a tenant, Levy verifies that there is a property license at the property because a claim will be rejected by the court without a current valid

license. (Plaintiffs' Exhibit "J" at p. 36:2-17). In November 2016, when filing an eviction action, Levy relied on the representations of their clients regarding whether the landlord had a current housing inspection license and whether the property in question was licensed when the action was filed and for the periods during which the landlord was demanding rent and/or other amounts allegedly owed. (Plaintiffs' Exhibit "J" at p. 42:13-18). In November 2016, when reviewing a demand letter, Mr. Levy checked for a Certificate of Rental Suitability, and if he did not find one, he would ask the landlord whether they had a Certificate of Rental Suitability. (Plaintiffs' Exhibit "J" at p. 41:6-18).

In November 2016, Levy relied on the representation of the client landlord regarding whether the Department of Licenses and Inspections ("L&I") issued violations at a property in question. (Plaintiffs' Exhibit "J" at p.53:1-6). The website [phila.gov/LI](http://phila.gov/LI) allows an individual to check a property in Philadelphia regarding whether there are any outstanding L&I violations. (Plaintiffs' Exhibit "J" at p. 53:7-12). However, this website does not report every L&I violation at a property. In fact, very often the website is backdated. Very often the website is unreliable. Very often the website will show no violations when there are violations. Very often the website is down. (Plaintiffs' Exhibit "J" at p. 53:13-21). In November 2016, Mr. Levy would only check the website if his landlord client represented to Levy that the landlord was unable to get a Certificate of Rental Suitability because if the landlord client made this representation, Mr. Levy knew that there had to be some reason that the landlord client could not get a Certificate of Rental Suitability including but not limited to the fact that there may be violations at the property or that the website did not show that a housing inspection license was renewed when in fact the license was renewed. (Plaintiffs' Exhibit "J" at p. 54:7-21). In November 2016, Levy had to rely on the representation of the landlord client regarding whether the property in question was fit for its intended purpose and whether a tenant was actually living in the property. (Plaintiffs' Exhibit "J" at pp. 60:18-21, 61:19-22).

When Levy sends a Notice to Vacate to a tenant, Levy will include a demand for attorney's fees if it is prescribed in the contract or if the landlord tells Levy that the lease involved with the landlord-tenant matter is a Pennsylvania Association Realtors Lease (which contains an attorney's fee provision) and is lost. (Plaintiffs' Exhibit "J" at p. 11:4-12). Levy will not include a demand for attorney's fees in a Notice to Vacate if there is no basis for doing so. (Plaintiffs' Exhibit "J" at p. 11:15-16).

In October or November, 2016, Levy was retained by the Owner who had recently purchased the property located at 1916 Clarence St., Philadelphia PA 19134 (the “Property”). The Owner is Hispanic and spoke little if any English and Mr. Levy and his staff communicated with the Owner through one or more interpreters, some of whom Mr. Levy believes may have been related to the Owner. Levy was retained by the Owner to represent her in connection with certain defaults under a residential lease by Gerrell Martin and Curtis Sampson (the “Tenants”), who at that time were occupying the Property. (Levy Affidavit, ¶¶ 1-7) In this case, the Owner (or her agents) emailed Levy a current housing inspection license for the property in question (the “Property”) sometime prior to the filing date of November 8, 2016 of the LT Complaint. (Plaintiffs’ Exhibit “J” at pp. 70:21-71:2). Based upon Levy’s procedures it is likely that the Owner (or her agent) told Levy that she possessed a Certificate of Rental Suitability prior to November 8, 2016. (Plaintiffs’ Exhibit “J” at p. 72:14-16). At some point prior to November 8, 2016, the Owner (or her agent) represented to Levy that the Property was fit for its intended purpose. (Plaintiffs’ Exhibit “J” at p. 90:2-11). At some point prior to November 8, 2016, the Owner (or her agent) represented to Levy that she was unaware of any open notice issued by L&I alleging that the Property was in violation of one or more provisions of the Philadelphia code. (Plaintiffs’ Exhibit “J” at p. 91:6-17). Mr. Levy is sure that the Owner (or her agent) actually made these representations to Levy because of Levy’s procedures (described above). (Plaintiffs’ Exhibit “J” at p. 92:2-6).

The lease provides for an award of reasonable legal fees. (Exhibit “1”). Levy fully anticipated that this eviction action would cost a minimum of \$500 in legal fees. (Plaintiffs’ Exhibit “J” at p. 85:20-22). Pursuant to the terms of Levy’s engagement as counsel for the Owner, Levy agreed to charge the Owner \$500 for filing the landlord-tenant complaint, appearing at one hearing, obtaining a judgment for possession, obtaining a writ of possession and completing the process by which possession of the Property would be turned back to the Owner. Pursuant to the terms of Levy’s engagement as counsel for the Owner, the Owner was billed and paid Levy \$250 at the commencement of Levy’s engagement with the understanding that the additional \$250 would be paid at the time the possession of the Property was turned back over to the Owner. As of 2017, the normal hourly rate charged by Mr. Levy to most clients was \$350 per hour, which is a reasonable and appropriate rate based upon Mr. Levy’s knowledge of similarly situated attorneys in Philadelphia with similar age and experience. (Levy Affidavit, ¶¶ 8-10)

In Mr. Levy's practice, he utilizes the services of paralegals who report to him and whose services he reviews and directs. As of 2017, the normal hourly rate which Levy charged to most clients for services provided by Levy's paralegals was \$75 per hour, which is a reasonable and appropriate rate based upon Mr. Levy's knowledge of similarly situated individuals who worked with law firms in Philadelphia, with similar age and experience. Prior to filing the landlord-tenant complaint against the Tenants, Levy's paralegals did the intake for the case, spoke with the Owner through an interpreter on several occasions to obtain the facts necessary in order to prepare the Complaint, prepared the Complaint and then filed the Complaint, which took approximately 3.5 hours of their time. Mr. Levy spent approximately one hour reviewing the file and reviewing their work, including the Complaint, before the Complaint was filed. (Levy Affidavit, ¶¶ 11-14)

Based upon the work which was done by Levy's office prior to filing the Complaint, in excess of \$500 had been earned based on the legal services provided by Levy's office for the Owner. Levy typically does not charge an owner the full amount based upon the number of hours spent on a landlord-tenant case because of the significant competition among attorneys in Philadelphia for this type of work and the need to charge limited, flat fees for this type of work. Because Levy handles a number of these types of landlord-tenant cases, charging this type of limited, flat fee for this type of work is appropriate and advisable. However, this does not mean that Levy had not legitimately earned \$500 by the time Complaint was filed; rather, Levy agreed to take a lesser amount for his own business reasons. The Owner was obliged to pay Levy the full \$500 under any circumstances. Because of the difficulties encountered in this case, Levy ended up not collecting the additional \$250 from the Owner. (Levy Affidavit, ¶¶ 15-20)

If the full amount of the legal fees being charged is not included as part of the damages being claimed in the Complaint, the Owner would not be able to recover the full amount of the attorney's fees incurred without filing a new and separate civil action, which would certainly be a waste of time and not be cost effective. If the landlord-tenant case was litigated through the entry of judgment and the issuance of the writ of possession, there is no question that the \$500 total legal fee would not only have been earned but would also have been paid. If the landlord-tenant case had settled prior to the entry of judgment or prior to the issuance of the writ of possession, the parties would have negotiated and agreed to all, some, or none of the attorney's fees being recovered as part of the settlement and therefore the Tenants would have a specific

say, either individually or through counsel, as to how much attorney's fees they would be paying to the Owner. The Tenants in this case were not misled as to the amount of attorney's fees earned and recoverable in the landlord-tenant case, based upon the inclusion of \$500 as recoverable attorney's fees in the Complaint. (Levy Affidavit, ¶¶ 21-24)

Levy verified the information in the LT Complaint verbally with the Owner (or her agent). (Plaintiffs' Exhibit "J" at pp. 92:13-93:4). Levy was unaware of any open L&I violations at the Property prior to filing the LT Complaint. (Plaintiffs' Exhibit "J" at pp. 95-99). When Levy received notice of the L&I violations, he informed the Owner of the violations. (Plaintiffs' Exhibit "J" at p. 101:22-24).

The Fair Housing Commission issued a final order on February 7, 2017. (Plaintiffs' Exhibit "H"). The final order did not prevent the Owner from obtaining a Certificate of Rental Suitability and presenting it to the tenant prior to the March 2, 2017 hearing date in LT Action. (Plaintiffs' Exhibit "J" at p. 114:7-16). The final order did not prevent the Owner from demanding rent for any period of time after which the Owner obtained and presented to the tenants a Certificate of Rental Suitability. (Plaintiffs' Exhibit "J" at p. 116:3-22). Levy, on behalf of the Owner, withdrew the landlord tenant action on March 2, 2017. (Plaintiffs' Exhibit "J" at p. 110:13-15). Levy could not withdraw the landlord-tenant action until the Owner authorized him to do so. (Plaintiffs' Exhibit "J" at pp. 110:23-111:9). Levy was not fully authorized to withdraw the landlord-tenant action until March 2, 2017. (Plaintiffs' Exhibit "J" at p. 111:12-13).

Plaintiffs received a copy of Levy's Notice to Vacate dated November 7, 2016. (Plaintiffs' Exhibit "K" at p. 64:5-6). The November 7, 2016 letter was the first time that Plaintiffs were ever contacted by Levy. (Plaintiffs' Exhibit "K" at p. 64:10-12). Plaintiffs could not remember contacting or being contacted by Levy other than through the Notice to Vacate and when Mr. Levy's name appeared on the LT Complaint. (Plaintiffs' Exhibit "K" at pp. 65:5-11, 68:5-19, 72:1-16, 84:12-18, Plaintiffs' Exhibit "L" at p. 24:15-22, 38:12-23). Plaintiffs were never contacted by Levy via telephone. (Plaintiffs' Exhibit "K" at p. 71:22-24, Plaintiffs' Exhibit "L" at p. 40:15-17). Plaintiff Gerrell Martin ("Martin") is unaware of the substance of conversations between Levy and the Owner (or her agents). (Plaintiffs' Exhibit "K" at pp. 70:18-22, 84:24-85:4, 126:16-127:7, 130:18-21). Martin does not know whether the Owner ever received a violation notice issued by L&I. (Plaintiffs' Exhibit "K" at p. 79:2-11).

Levy never communicated to Plaintiffs that the fact they were not paying rent would result in their arrest. (Plaintiffs' Exhibit "K" at pp. 130:22-131:1). Levy never represented to Plaintiffs that the fact that they were withholding rent would result in the seizure or sale of any property Plaintiffs had. (Plaintiffs' Exhibit "K" at p. 131:2-6). Levy never represented to Plaintiffs that the fact that they were withholding rent would make it so that they would not be able to assert a claim or defense to defend themselves in the landlord/tenant action. (Plaintiffs' Exhibit "K" at p. 131:16-21). Levy never communicated to Plaintiffs that they had in any way committed a crime. (Plaintiffs' Exhibit "K" at p. 131:2-16). Levy never represented to Plaintiffs that Levy would disclose Plaintiffs' credit information to anyone. (Plaintiffs' Exhibit "K" at p. 132:17-20). At her deposition, Martin was unsure whether "Bart Levy" was the name of the attorney who represented her landlord. (Plaintiffs' Exhibit "K" at p. 153:5-7).

Plaintiff Curtis Sampson ("Sampson") never filed any fair housing complaints, never appeared for any court hearings, never contacted L&I, and was not aware of any outstanding violations issued by L&I in 2014. (Plaintiffs' Exhibit "L" at pp. 24:23-26:19, 31:16-24, 33:23-34:18, 40:18-20). Sampson does not remember seeing the Notice to Vacate sent by Levy in November 2016. (Plaintiffs' Exhibit "L" at p. 27:10-12). Sampson does not remember receiving the LT Complaint. (Plaintiffs' Exhibit "L" at pp. 32:9-16, 33:13-19).

Plaintiffs initiated this action on March 15, 2017 by filing a complaint. Defendants filed an answer to the complaint on May 15, 2017. The parties participated in a Pre-Trial Conference on July 13, 2017. The parties participated in a Settlement Conference on October 16, 2017. Discovery has been completed. Plaintiffs filed a Motion for Partial Summary Judgment on March 2, 2018 which is currently at issue.

### III. QUESTIONS PRESENTED

1. Should Plaintiffs' Motion for Summary Judgment be denied because Defendants did not violate the Fair Debt Collection Practices Act ("FDCPA") and, at the least, there are disputed issues of material fact regarding Defendants' liability under the FDCPA?

**Suggested Answer: Yes.**

#### IV. ARGUMENT

##### **A. Standard of Review**

Summary judgment should be granted if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Harris v. Fed. Bureau of Prisons, 2017 WL 2840287 at \*1 (W.D.Pa. 2017) (citing F.R.C.P. 56(a)). The moving party has the initial burden of proving the absence of evidence supporting the non-moving party's claims. Id. (internal citations omitted). The non-movant must then present affirmative evidence – more than a scintilla but less than a preponderance – which supports each element of his claim to defeat a properly presented motion for summary judgment. Id. (citing F.R.C.P. 56(e); Williams v. Borough of West Chester, Pa., 891 F.2d 458, 460-61 (3d Cir. 1989)). When considering a motion for summary judgment, the court is not permitted to weigh the evidence or to make credibility determinations, but is limited to deciding whether there are any disputed issues and, if there are, whether they are both genuine and material. Id. (citing Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 255 (1986)). A fact is material if it might affect the outcome of the suit under the governing law, and a dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Win & Son, Inc. v. City of Philadelphia, 162 F. Supp. 3d 449, 457 (E.D.Pa. 2016) (citing Anderson, 477 U.S. at 248)). Factual disputes that are irrelevant or unnecessary will not be counted. Id. The Court must view the record in the light most favorable to the non-moving party and resolve all reasonable inferences in the non-moving party's favor. Id. (citing Jones v. Sch. Dist. of Philadelphia, 198 F.3d 403, 409 (3d Cir. 1999)).

##### **B. Defendants are not liable under the FDCPA and, at the very least, there are disputed issues of material fact regarding Defendants' liability under the FDCPA.**

A debt collector may not use any false, deceptive or misleading representation or means in connection with the collection of any debt. 15 U.S.C.A. §1692e. Violations include: the false representation of the character, amount, or legal status of any debt; the threat to take any action that cannot legally be taken or that is not intended to be taken; the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a



consumer. 15 U.S.C.A. §1692e(2),(5),(10). A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. 15 U.S.C.A. §1692f. Violations include the collection of any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law. 15 U.S.C.A. §1692f(1). Demanding fees in the collection of debts in a way *contrary to the underlying agreement* is actionable under the FDCPA. Kaymark v. Bank of America, N.A., 783 F.3d 168, 176 (3d Cir. 2015).

Levy did not use any false, deceptive, or misleading representation or means in the collection of the debt at issue. Levy did not use unfair or unconscionable means to collect or attempt to collect the debt. Levy, through one letter and one landlord-tenant action, communicated to Plaintiffs that a certain debt was owed. Plaintiffs could not remember contacting or being contacted by Levy other than through the Notice to Vacate and when Mr. Levy's name appeared on the LT Complaint. (Plaintiffs' Exhibit "K" at pp. 65:5-11, 68:5-19, 72:1-16, 84:12-18, Plaintiffs' Exhibit "L" at p. 24:15-22, 38:12-23). Plaintiffs were never contacted by Levy via telephone. (Plaintiffs' Exhibit "K" at p. 71:22-24, Plaintiffs' Exhibit "L" at p. 40:15-17). Levy never stated to Plaintiffs that the fact they were not paying rent would result in their arrest. (Plaintiffs' Exhibit "K" at pp. 130:22-131:1). Levy never stated to Plaintiffs that the fact that they were withholding rent would result in the seizure or sale of any property Plaintiffs had. (Plaintiffs' Exhibit "K" at p. 131:2-6). Levy never stated to Plaintiffs that the fact that they were withholding rent would prevent them from asserting a claim or defense to defend themselves in the landlord/tenant action. (Plaintiffs' Exhibit "K" at p. 131:16-21). Levy never communicated to Plaintiffs that they had in any way committed a crime. (Plaintiffs' Exhibit "K" at p. 131:2-16). Levy never stated to Plaintiffs that Levy would disclose Plaintiffs' credit information to anyone. (Plaintiffs' Exhibit "K" at p. 132:17-20). In fact, at her deposition, Martin was unsure whether "Bart Levy" was the name of the attorney who represented her landlord. (Plaintiffs' Exhibit "K" at p. 153:5-7).

Sampson never filed any fair housing complaints, never appeared for any court hearings, never contacted L&I, and was not aware of any outstanding violations issued by L&I in 2014. (Plaintiffs' Exhibit "L" at pp. 24:23-26:19, 31:16-24, 33:23-34:18, 40:18-20). Sampson does not remember seeing the Notice to Vacate sent by Levy in November 2016. (Plaintiffs' Exhibit "L" at p. 27:10-12). Sampson does not remember receiving the LT Complaint. (Plaintiffs' Exhibit "L" at pp. 32:9-16, 33:13-19).

Plaintiffs allege that Levy violated the FDCPA by making misrepresentations to Plaintiffs while attempting to evict them; by deceptively misrepresenting the character, amount, and legal status of the debt; and by demanding attorney fees that Plaintiffs did not owe him. However, all of the representations in Levy's November 7, 2016 demand letter were true. (Plaintiffs' Exhibit "E"). The letter indicated that Levy represented the owner of the Property, which was true. (Plaintiffs' Exhibit "E"). The letter indicated that the landlord had decided to file suit in Landlord/Tenant court, which constituted a threat to take an action that could legally be taken and was intended to be taken, which was a true statement and shows that Levy did not violate §1692e(5) of the FDCPA. (Plaintiffs' Exhibit "E"). The letter indicated that the amount of Plaintiffs' debt was \$2,900 which included unpaid rent, late fees, legal fees, and other expenses for which Plaintiffs were responsible under the lease. (Plaintiffs' Exhibit "E"). According to the written lease, the amount of rent was \$750 per month. (Exhibit "1" at Bates stamp Plaintiffs' 000069). Late fees totaled \$50.00 for rent that was more than 5 days late. (Exhibit "1" at Bates stamp Plaintiffs' 000069). The landlord also had the ability to collect legal fees and other damages, losses, or injuries in a landlord-tenant action. (Exhibit "1" at Bates stamp Plaintiffs' 000072). The \$2,900.00 included the proper amount of delinquent rent, late charges, and legal fees in accordance with the Lease. Levy also included the language promulgated by §1692e(11) and §1692g(a) of the FDCPA. (Plaintiffs' Exhibit "E"). When Levy sends a Notice to Vacate to a tenant, Levy will include a demand for attorney's fees if it is prescribed in the contract or if the landlord tells Levy that the lease involved with the landlord-tenant matter is a Pennsylvania Association Realtors Lease (which contains an attorney's fee provision) and [the lease] is lost. (Plaintiffs' Exhibit "J" at p. 11:4-12). The Lease in the landlord tenant action at issue provides for an award of legal fees. (Exhibit "1"). Levy will not include a demand for attorney's fees in a Notice to Vacate if there is no basis for doing so. (Plaintiffs' Exhibit "J" at p. 11:15-16). Levy fully anticipated that this eviction action would cost a minimum of \$500. (Plaintiffs' Exhibit "J" at p. 85:20-22). This was a reasonable amount of attorney's fees (as provided by the lease) and was not contrary to the agreement between Levy and the Owner regarding his fees to be charged to the Owner in collecting the amounts allegedly owed to the Owner. Levy had fully earned at least \$500 as of the time that the Complaint was filed and therefore his representation in the Notice to Vacate and in the Complaint was accurate. The information contained in the letter and the LT Complaint was true according to the landlord and Levy had no reason to disbelieve the

landlord. For the reasons set forth below, Levy did not violate the FDCPA because Levy did not make misrepresentations to Plaintiffs while attempting to evict them, nor did he “deceptively misrepresent” the character, amount, and legal status of the debt.

**1. Levy is not liable to Plaintiffs under the “bona fide error defense” of the FDCPA.**

A debt collector may not be held liable in any action brought under the FDCPA if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. 15 U.S.C.A. §1692k(c). Lawyers can invoke §1692k(c) for violations resulting from qualifying factual errors. Jerman v. Carlisle, 130 S.Ct. 1605, 1619 (2010). To avail itself of the defense, the defendant has to establish (1) the alleged violation was unintentional, (2) the alleged violation resulted from a bona fide error, and (3) the bona fide error occurred despite procedures designed to avoid such errors. Beck v. Maximus, Inc., 457 F.3d 291, 297 (3d Cir. 2006). The first prong of this defense is a subjective test that requires a credibility determination concerning the debt collector’s assertions that the ensuing FDCPA violation was unintentional. Richburg v. Palisades Collection LLC, 247 F.R.D. 457, 467 (E.D. Pa. 2008)(citing Johnson v. Riddle, 443 F.3d 723, 728-29 (10th Cir. 2006)). The second two prongs of the test are objective ones that require a defendant to establish that the underlying error leading to the FDCPA violation was bona fide and that the defendants maintained reasonable procedures designed to avoid such an error. Id. To assess whether a defendant’s procedures satisfy the second and third prongs obliges the Court to inquire whether any precautions were actually implemented and whether such precautions were reasonably adapted to avoid the specific error at issue. Id.

First, Levy did not violate the FDCPA. While the Owner either made misrepresentations in the LT Complaint and/or to Levy or believed the alleged misrepresentations to be true, Levy was justified in relying on the Owner’s representations because she possessed a current valid housing inspection license and there was no reason for Levy to disbelieve her statements. It is unknown whether the Owner knew at the time the LT Complaint was filed that there were open L&I violations regarding the property. (Plaintiffs’ Exhibit “K” at p. 79:2-11). Levy has stated that this alleged misrepresentation of the landlord which Levy included in the LT Complaint was

not intentional on the part of Levy and, if there were any violations of the FDCPA as a result of the landlord's alleged misrepresentation, they resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. (Plaintiffs' Exhibit "B" at p. 13). Here, the only potential violation of the FDCPA is the fact that there were outstanding L&I violations associated with the Property when the Owner indicated in the LT Complaint that she was unaware of any outstanding L&I violations and the Property was fit for its intended purpose. The Owner emailed Levy a current housing inspection license for the property in question sometime prior to the filing date of November 8, 2016 of the LT Complaint. (Plaintiffs' Exhibit "J" at pp. 70:21-71:2). At some point prior to November 8, 2016, the Owner (or her agent) represented to Levy that the subject property was fit for its intended purpose. (Plaintiffs' Exhibit "J" at p. 90:2-11). At some point prior to November 8, 2016, the Owner (or her agent) represented to Levy that she was unaware of any open notice issued by L&I alleging that the property at issue is in violation of one or more provisions of the Philadelphia code. (Plaintiffs' Exhibit "J" at p. 91:6-17). Mr. Levy is sure that the Owner (or her agent) actually made these representations to Levy because of Levy's procedures which are designed to eliminate error. (Plaintiffs' Exhibit "J" at p. 92:2-6). Levy verified the information in the Owner's LT Complaint verbally with the Owner (or her agent). (Plaintiffs' Exhibit "J" at pp. 92:13-93:4). Levy was unaware of any open L&I violations at the Property prior to filing the LT Complaint. (Plaintiffs' Exhibit "J" at pp. 95-99). Therefore, Levy had no reason to believe that the representations of the Owner were untrue. However, there were outstanding L&I violations associated with the Property. When Levy received notice of the L&I violations, he informed the Owner of the violations. (Plaintiffs' Exhibit "J" at p. 101:22-24). Up to this point, it was apparent that Levy was not aware of the fact that there were L&I violations associated with the Property. Therefore, this alleged violation of the FDCPA, if it is deemed a violation, was unintentional, at least on the part of Levy, and resulted from Levy's justified reliance on the specific representations made by his client.. Therefore, the first two prongs of the bona fide error defense are met.

Levy maintained reasonable procedures to avoid this type of error. Levy files approximately 2,000 to 3,000 eviction actions per year. (Plaintiffs' Exhibit "J" at p. 5:19-22). Mr. Levy began his career as a "tenant lawyer" in landlord-tenant actions, currently represents tenants and landlords, and has represented approximately 7,000 or 8,000 tenants in landlord-tenant matters over his career. (Plaintiffs' Exhibit "J" at p. 6:6-13).\_\_Mr. Levy spends almost

every weekday in landlord tenant court for two sessions per day representing either landlords or tenants. (Plaintiffs' Exhibit "J" at pp. 5:23-7:3). Because Mr. Levy spends almost every weekday in landlord tenant court, his staff performs a majority of the client intake. (Plaintiffs' Exhibit "J" at p. 16:1-2). Levy's firm consists of Mr. Levy, two well-trained paralegals, a receptionist, and one associate attorney. (Plaintiffs' Exhibit "J" at p. 16:3-8). Either a paralegal or the associate attorney performs client intake if Mr. Levy is not in the office. (Plaintiffs' Exhibit "J" at p. 16:9-11).

Mr. Levy has a standard procedure for his staff regarding landlord-tenant actions where he has trained his staff to ask clients for the components or elements of the Philadelphia Municipal Court landlord-tenant complaint. (Plaintiffs' Exhibit "J" at p. 16:14-21). The components of Mr. Levy's procedure include (1) determining whether there is a landlord-tenant relationship between the parties; (2) determining whether the landlord has a license; (3) determining the landlord's accounting system; and (4) obtaining or asking questions about the lease. (Plaintiffs' Exhibit "J" at pp. 16:22-19:12). Levy has a "Paralegal Training Guide" which includes detail regarding the procedures to be used by Levy's staff in landlord-tenant matters. (Plaintiffs' Exhibit "M"). Levy also has a "work-flow log" which shows the documents that Levy has obtained and the stage of the litigation in a landlord-tenant action. (Plaintiffs' Exhibit "J" at p. 57:5-16). Before Levy sends a Notice to Vacate to a tenant, Levy verifies that there is a property license at the property because a claim will be rejected by the court without a current valid license. (Plaintiffs' Exhibit "J" at p. 36:2-17). In November 2016, when filing an eviction action, Levy relied on the representations of their clients regarding whether the landlord had a current housing inspection license and whether property in question was licensed when the action was filed and for the periods during which the landlord was demanding rent and/or other amounts allegedly owed. (Plaintiffs' Exhibit "J" at p. 42:13-18).

In November 2016, Levy relied on the representation of the client landlord regarding whether the L&I issued violations at a property in question. (Plaintiffs' Exhibit "J" at p. 53:1-6). The website [phila.gov/LI](http://phila.gov/LI) allows an individual to check a property in Philadelphia regarding whether there are any outstanding L&I violations. (Plaintiffs' Exhibit "J" at p. 53:7-12). However, this website does not report every L&I violation at a property. (Plaintiffs' Exhibit "J" at p. 53:13-21). In fact, very often the website is backdated. (Plaintiffs' Exhibit "J" at p. 53:13-21). Very often the website is unreliable. (Plaintiffs' Exhibit "J" at p. 53:13-21). Very often the

website will show no violations when there are violations. (Plaintiffs' Exhibit "J" at p. 53:13-21). Very often the website is down. (Plaintiffs' Exhibit "J" at p. 53:13-21). In November 2016, Mr. Levy would only check the website if his landlord client represented to Levy that the landlord was unable to get a Certificate of Rental Suitability because if the landlord client made this representation, Mr. Levy knew that there had to be some reason that the landlord client could not get a Certificate of Rental Suitability including but not limited to the fact that there may be violations at the property or that the website did not show that a housing inspection license was renewed when in fact the license was renewed. (Plaintiffs' Exhibit "J" at p. 54:7-21). Based upon Levy's procedures it is likely that the Owner (or her agent) told Levy that she possessed a Certificate of Rental Suitability prior to November 8, 2016. (Plaintiffs' Exhibit "J" at p. 72:14-16). In November 2016, Levy had to rely on the representation of the landlord client regarding whether the property in question was fit for its intended purpose and whether a tenant was actually living in the property. (Plaintiffs' Exhibit "J" at pp. 60:18-21, 61:19-22).

It is clear that these procedures of Levy were in place in 2016 and were reasonably adapted to avoid any potential misrepresentations in a landlord tenant complaint. Levy obtained the documents needed to file a landlord tenant complaint from the Owner. The Owner (or her agents) told Levy that she was unaware of any L&I violations associated with the Property. Levy followed all of its procedures regarding the landlord tenant action before filing the Complaint. As soon as Levy discovered that there were L&I violations associated with the Property, he notified his client.. Therefore, any alleged misrepresentations in the LT Complaint were completely unintentional and resulted from a bona fide error (based upon Levy's legitimate reliance on the representations made by his client) despite Levy's procedures reasonably adapted to avoid errors in landlord tenant actions. Levy did not violate the FDCPA. However, if there was any violation of the FDCPA by the landlord, Levy cannot be found liable pursuant to the bona fide error defense set forth in the FDCPA. At the very least, there exist issues of material fact regarding this issue and Plaintiffs' Motion for Summary Judgment should be denied.

2. **An attorney is justified in relying on the representations of his or her client.**

An attorney's signature certifies that the attorney has satisfied three duties: (1) that he has read the documents; (2) that he has made a reasonable inquiry; and (3) that he is not acting in bad

faith. CTC Imps. and Exps. v. Nigerian Petroleum Co., 951 F.2d 573, 578 (3d Cir. 1991). To determine the reasonableness of an inquiry, the district court applies an objective “reasonableness under the circumstances” standard. Id. (citing Napier v. Thirty or More Unidentified Agents, 855 F.2d 1080, 1090-91 (3d Cir. 1988)). In applying this standard, the court is expected to avoid the wisdom of hindsight and should test the signer’s conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted. Id. (citing Notes of Advisory Committee on Rules, 1983 Amendment, Fed. R. Civ. P. 11, reprinted in 97 F.R.D. 165, 199). An attorney is not required to disbelieve his own client merely on the strength of contrary assertions by opposing counsel nor because the attorney is not yet in possession of all of the facts which full-scale discovery might disclose. Henderson v. Weatherly, 116 F.R.D. 147, 148 (E.D. Pa. 1987).

Levy was justified in relying on the representations of his client. While the Owner may have violated the FDCPA by misrepresenting a fact stated in the LT Complaint, Levy did not because he justifiably relied on the Owner’s statements to him regarding the allegations in the LT Complaint. The allegations contained in the LT Complaint were those of the Owner, and simply verified by Levy where Levy stated that he was:

“an attorney for the plaintiff(s) . . . I hereby verify that I am authorized to make this verification; that I have sufficient knowledge, information and belief to take this verification *or have gained sufficient knowledge, information and belief from communications with the plaintiff or the persons listed below* and that the facts set forth are true and correct to the best of my knowledge, information and belief . . .” (Plaintiffs’ Exhibit “E” at p. 1)(emphasis added).

The information contained in the letter and the LT Complaint was true according to the Owner and Levy had no reason to disbelieve the Owner. Martin is unaware of the substance of conversations between Levy and the Owner. (Plaintiffs’ Exhibit “K” at pp. 70:18-22, 84:24-85:4, 126:16-127:7, 130:18-21). Martin does not know whether the Owner ever received a violation notice issued by L&I. (Plaintiffs’ Exhibit “K” at p. 79:2-11). In November 2016, when filing an eviction action, Levy relied on the representations of their clients regarding whether the landlord had a current housing inspection license and whether property in question was licensed when the action was filed and for the periods during which the landlord was demanding rent and/or other amounts allegedly owed. (Plaintiffs’ Exhibit “J” at p. 42:13-18). In November 2016, Levy relied on the representation of the client landlord regarding whether L&I issued

violations at a property in question. (Plaintiffs' Exhibit "J" at p.53:1-6). In November 2016, Levy had to rely on the representation of the landlord client regarding whether the property in question was fit for its intended purpose and whether a tenant was actually living in the property. (Plaintiffs' Exhibit "J" at pp. 60:18-21, 61:19-22). Based upon Levy's procedures it is likely that the Owner (or her agent) told Levy that she possessed a Certificate of Rental Suitability prior to November 8, 2016. (Plaintiffs' Exhibit "J" at p. 72:14-16). At some point prior to November 8, 2016, the Owner (or her agent) represented to Levy that the subject property was fit for its intended purpose. (Plaintiffs' Exhibit "J" at p. 90:2-11). At some point prior to November 8, 2016, the Owner (or her agent) represented to Levy that she was unaware of any open notice issued by L&I alleging that the property at issue is in violation of one or more provisions of the Philadelphia code. (Plaintiffs' Exhibit "J" at p. 91:6-17). Mr. Levy is sure that the Owner (or her agent) actually made these representations to Levy because of Levy's procedures (described above). (Plaintiffs' Exhibit "J" at p. 92:2-6). Levy verified the information in the Owner's LT Complaint verbally with the Owner (or her agent). (Plaintiffs' Exhibit "J" at pp. 92:13-93:4). Therefore, Levy had no reason to disbelieve his client. (Plaintiffs' Exhibit "J" at p. 130:17-24). Levy read the documents provided to him by the client, made a reasonable inquiry regarding the allegations in the LT Complaint, and was not acting in bad faith. Therefore, Levy was justified in relying on the representations of the Owner, verifying the LT Complaint, and pursuing the LT Action on behalf of his client. While the Owner may have violated the FDCPA, Levy clearly did not. At the very least, there exist issues of material fact regarding whether Levy is liable under the FDCPA and Plaintiffs' Motion for Summary Judgment should be denied.

3. **A landlord may pursue an eviction and/or landlord/tenant action in the Philadelphia Municipal Court as long as the landlord possesses a current valid housing inspection license regardless of whether the landlord had a valid housing inspection license for periods of time for which the landlord is demanding rent and/or the landlord possesses and/or gave to a tenant a Certificate of Rental Suitability.**

The Philadelphia Property Maintenance Code provides that landlords must obtain housing inspection licenses, landlords may not collect rent unless a valid license is issued for the property, landlords must provide tenants with certificates of rental suitability and the partners for good housing handbook, and tenants may bring action against a landlord to compel compliance



with the code. Richetti v. Ellis, 2017 WL 2782001 at \*4 (Pa. Super. Ct. 2017)(referencing Philadelphia Code, PM-102.6.4, 102.7.4). The Code does not provide a means for recovery by tenants for rents paid or damages made while the landlord was not in compliance with the Code, nor does it prohibit landlords from collecting back rent after returning to compliance. Id. Unlike the Housing Inspection License, a landlord in Philadelphia can file a complaint in the Philadelphia Municipal Court seeking a judgment for money, possession, or both against an alleged defaulting tenant even if the landlord does not possess a Certificate of Rental Suitability at the time of filing. City Ordinances Place Additional Burdens on Phila. Landlords, Alan Nochumson, Legal Intelligencer, June 13, 2016 © 2016 ALM Media Properties, LLC, <<http://www.nochumson.com/articles/judge-tenants-entitled-return-rent-money>>.

A lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Pa. Rule of Prof. Conduct Rule 1.4, shall consult with the client as to the means by which they are pursued. Pa. Rule of Prof. Conduct Rule 1.2(a). A lawyer shall abide by a client's decision whether to settle a matter. Id.

Before Levy sends a demand letter to a tenant, Levy verifies that there is a property license at the property because a claim will be rejected by the court without a current valid license. (Plaintiffs' Exhibit "J" at p. 36:2-17). In November 2016, when reviewing a demand letter, Mr. Levy checked for a Certificate of Rental Suitability, and if he did not find one, he would ask the landlord whether they had a Certificate of Rental Suitability. (Plaintiffs' Exhibit "J" at p. 41:6-18).

The Fair Housing Commission issued a final order on February 7, 2017. (Plaintiffs' Exhibit "H"). The final order did not prevent the Owner from obtaining a Certificate of Rental Suitability and presenting it to the tenant prior to the March 2, 2017 hearing date in the LT Action. (Plaintiffs' Exhibit "J" at p. 114:7-16). The final order did not prevent the Owner from demanding rent for any period of time after which the Owner obtained and presented to the tenants a Certificate of Rental Suitability. (Plaintiffs' Exhibit "J" at p. 116:3-22). The fact that the Owner may have been in violation of certain requirements set forth under certain Philadelphia ordinances (which was unknown to Levy) would potentially have been a defense to the LT Action but did not necessarily constitute a violation of the FDCPA by the Owner, and under no circumstances would have constituted a violation of the FDCPA by Levy. When Levy first became aware that there were outstanding Housing Code violations at the Property, he

promptly notified his client. Given the circumstances, Levy apparently notified his client that it made sense to withdraw the Complaint to allow the Owner to come into full compliance before proceeding with the eviction action. However, under the applicable Pennsylvania Rules of Professional Responsibility, Levy could not simply take action to withdraw the Complaint without getting his client's consent and approval. Once Levy did obtain that consent and approval, Levy, on behalf of the Owner, withdrew the LT Action on March 2, 2017. (Plaintiffs' Exhibit "J" at p. 110:13-15). Levy could not withdraw the LT Action until the Owner authorized him to do so. (Plaintiffs' Exhibit "J" at pp. 110:23-111:9). Levy was not fully authorized to withdraw the LT Action until March 2, 2017. (Plaintiffs' Exhibit "J" at p. 111:12-13). The Owner had a colorable claim for all damages and other relief claimed in the LT Action. The fact that the Owner did not possess a valid rental license or Certificate of Rental Suitability for the time periods during which the Owner was demanding rent was a defense which Plaintiffs could have raised in the LT Action, but these facts did not bar the Owner from asserting those claims in the LT Action. As long as the Owner came into compliance with the Philadelphia Property Maintenance Code, she could have been awarded possession and rent by the Philadelphia Municipal Court, even for periods of time during which she was not in compliance with the Philadelphia Property Maintenance Code. The final order did not bar the Owner from collecting rent after she obtained and delivered to Plaintiffs a Certificate of Rental Suitability. Therefore, it was not a violation of the FDCPA for Levy to continue with the LT Action.

The Plaintiffs (and more likely, their attorneys) are apparently seeking to change the law applicable to landlord-tenant actions in the Philadelphia Municipal Court by means of an improper attack on the attorneys who represent Philadelphia landlords. The preliminary paragraphs in the complaint filed by the Plaintiffs in this case, citing alleged abuses in the system and shortcomings of the existing law, confirm this. The primary thrust of the argument being made by the Plaintiffs is that "Philadelphia law sets preconditions on the legal collection of rent and those preconditions were not met" (see Plaintiff's Brief in Support of Motion for Summary Judgment at p. 5) In support of this contention, Plaintiffs do not cite case law or statutory law, but instead reference articles from the Philadelphia Inquirer. Plaintiffs' brief continually refers to alleged actions of the Owner which were in violation of various Philadelphia ordinances. However, Levy is not the Owner and even the Plaintiffs cannot allege that Levy had the responsibility of correcting housing code violations associated with the Property, fixing alleged

deficiencies associated with the Property and obtaining the proper documents, certificates, and/or licenses needed to rent a residential property in the City of Philadelphia. All of these obligations were and are obligations of the Owner alone and not obligations of Levy as counsel for the Owner. The real problem with the Plaintiffs' argument is that their attack and vitriol should be directed toward the landlords. In an improper and ill-advised tactic, Plaintiffs and their attorneys instead are seeking to go after the attorneys who represent those landlords. Of course, the claims and the allegations contained in landlord-tenant complaints belong to the landlords and not to the attorneys for those landlords. The only extremely narrow point referenced in the voluminous brief of the Plaintiffs which involves a direct representation by Levy (as opposed to their client) relates to a charge of \$500 in attorney's fees included by Levy in the LT Complaint which allegedly was a misrepresentation. For the reasons set forth above, the inclusion of \$500 in the LT Complaint was clearly not a misrepresentation.

The information contained in the LT Complaint is all information obtained by Levy from his client. Plaintiffs and their attorneys apparently seek to completely undermine the attorney-client relationship by suggesting that attorneys should not be able to rely upon representations made by a client (which has been the standard for generations). If the arguments of the Plaintiffs and their attorneys are accepted by the Court, every lawyer would have to disbelieve representations made by a client and conduct a thorough investigation into all factual averments which appear in a civil action in order to ensure the truth and accuracy of every such averment. Obviously, the standard is inappropriate, unworkable and beyond the scope of any acceptable attorney-client relationship. An attorney must be able to rely upon representations made by his client. The standard suggested by the Plaintiffs and their attorneys is improper, inappropriate and completely unworkable. The thinly veiled attempt by the Plaintiffs (and more likely their attorneys) to attack Philadelphia landlords, the existing Philadelphia ordinances as well as existing statutory and case law, should not be countenanced by this Court.

V. CONCLUSION

For the reasons stated above, defendants Bart E. Levy and Levy Law, LLC respectfully request that this Honorable Court deny the Motion for Summary Judgment filed by plaintiffs Gerrell Martin and Curtis Sampson and enter the attached Order.

CLEMM AND ASSOCIATES, LLC

Dated: March 20, 2018

By: /s/ Mark C. Clemm  
Mark C. Clemm, Esquire  
Katie M. Clemm, Esquire  
Attorneys for Defendants