

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-2371

ELIZABETH PANZARELLA; JOSHUA PANZARELLA,
Individually and on behalf of all others similarly situated,
Appellants

v.

NAVIENT SOLUTIONS, INC.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(Civil No. 2-18-cv-03735)
District Judge: Honorable Petrese B. Tucker

Argued February 11, 2022

Before: GREENAWAY, JR., SCIRICA, and RENDELL,
Circuit Judges.

(Filed: June 14, 2022)

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OPINION OF THE COURT

Rendell, *Circuit Judge*.

Elizabeth and Joshua Panzarella (“the Panzarellas”) sued Navient Solutions, LLC (“Navient”), claiming that, among other things, Navient violated the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 (the “TCPA”). The Panzarellas assert that Navient called their cellphones without

their prior express consent using an automatic telephone dialing system (“ATDS”) in violation of section 227(b)(1)(A)(iii) of the TCPA. The District Court granted summary judgment for Navient. It concluded that Navient’s dialing technology did not qualify as an ATDS under section 227(a)(1) of the TCPA because it viewed a particular component of Navient’s dialing technology as separate from its dialing system. As a result, it erred by failing to consider whether Navient’s dialing “equipment” as a whole qualified as an ATDS. *Id.* Even though we do not decide whether Navient’s dialing equipment qualified as an ATDS, we find that Navient did not *use* an ATDS in violation of the TCPA when it called the Panzarellas. Thus, we will affirm the District Court’s order on this alternative ground.

I.

Navient serviced the student loans of Matthew Panzarella, Elizabeth’s son and Joshua’s brother. Matthew listed both his mother and brother as references on student loan applications and promissory notes and, in doing so, provided their cell phone numbers to Navient. Eventually, he became delinquent on his loans and failed to respond to Navient’s attempts to communicate with him. In response, Navient contacted the Panzarellas. Call logs show that, over five months, Navient called the phone number alleged to belong to Elizabeth four times (three of which were unanswered, and one of which may have been answered) and the number alleged to belong to Joshua fifteen times (all unanswered).

During the relevant period, Navient used telephone dialing software developed by Interactive Intelligence Group,

Inc (“ININ”),¹ the “Interaction Dialer.” This software allows a user to “conduct[] campaigns” during which “calls are placed to contacts based upon information read from a contact list.” App. 185. For each campaign, the user may opt to use one of several dialing methods, which employ varying levels of automation. For example, in “Preview” mode, call center agents initiate calls, while, in modes such as “Predictive” and “Power,” the Interaction Dialer automatically dials telephone numbers.²

The Interaction Dialer cannot conduct campaigns on its own. Instead, it “is deployed across servers and workstations that collectively make up the system.” App. 200. Three servers are required: the Outbound Dialer Server, the Central Campaign Server, and a database server. During a campaign these three servers work together to make and process outbound calls. The Outbound Dialer Server makes the outbound calls, while the Central Campaign Server acts like an intermediary gathering data from and passing these data among the system’s servers. The database server, which “often runs on dedicated hardware” yet “can reside on the [Central Campaign Server],” contains “a set of database tables that are created and managed automatically by Interaction Dialer” and the customer-created “contact list.” App. 200, 203. The Interaction Dialer relies on “external data sources for contacts [l]ists and campaign tables,” and these tables “must be

¹ ININ now does business under the name Genesys Telecommunications Laboratories, Inc.

² During the relevant period, Navient used two customized versions of the Interaction Dialer, one with and one without the “Agentless,” “Power,” and “Predictive” dialing modes. To call the Panzarellas, it used the latter version.

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