

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY, ATTORNEY GENERAL,

Plaintiff,

v.

Civil Action No. _____
Judge _____

BAYSIDE CAPITAL SERVICES, LLC,
a New York limited liability company,
and JOHN MAX WERTH, its sole member
and owner,

Defendants.

COMPLAINT FOR INJUNCTION, CONSUMER RESTITUTION,
DISGORGEMENT, CIVIL PENALTIES, AND OTHER APPROPRIATE RELIEF

Plaintiff, the State of West Virginia ex rel. Patrick Morrisey, Attorney General ("the State" or "Attorney General"), files this Complaint asking the court to temporarily and permanently enjoin the above-named Defendants, Bayside Capital Services, LLC and John Max Werth ("Bayside" or "Defendants"), from violating the West Virginia Consumer Credit and Protection Act ("WVCCPA"), W. Va. Code §§ 46A-1-101, *et seq.*, and other applicable consumer protection laws and regulations, and to enter a final order awarding the State all equitable relief as may be necessary to secure complete justice in this matter as authorized by W. Va. Code § 46A-7-108.

I. PARTIES

1. Plaintiff Patrick Morrisey is the Attorney General of the State of West Virginia and is empowered to enforce the provisions of the WVCCPA, W. Va. Code §§ 46A-1-101, *et seq.*, including the provisions that govern the purchase and collection of consumer debts.

2. Defendant Bayside Capital Services, LLC ('Bayside') is a New York-based limited liability company that was organized on November 5, 2014, by John Max Werth ("Werth") that is engaged in the purchase and collection of defaulted consumer accounts.

3. Bayside's mailing address is 2516 Delaware Avenue #112, Buffalo, New York 14216, which is a private mail box located at UPS Store 0682 in Buffalo, New York.

4. Bayside represents that its actual business office is located at 210 John Glenn Drive, Suite 11, Amherst, New York 14228.

5. Defendant John Max Werth ("Werth") is the sole member, owner, and operator of Bayside.

6. Upon information and belief, Werth resides at 340 Hammocks Drive, Orchard Park, New York.

II. JURISDICTION AND VENUE

7 This court has jurisdiction to hear this matter pursuant to Article VIII, Section 6 of the West Virginia Constitution, W. Va. Code § 51-2-2, and W. Va. Code § 53-5-3.

8. Venue is proper in this court pursuant to W. Va. Code § 46A-7-114 and W. Va. Code § 56-1-1(a) (6).

III. INTRODUCTION

9. Bayside is and was engaged in the purchase and collection of defaulted consumer accounts from individuals residing in West Virginia under the direction and management of Werth at all times pertinent hereto.

10. However, Bayside does not have a collection agency license from the State Tax Department and Bayside and does not have a certificate of authority from the West Virginia Secretary of State that are required to engage in the business of debt collection in West Virginia.

11. Bayside engaged in a wide range of violations of the WVCCPA in the collection of debts from consumers in West Virginia as shall be described more specifically here below, including the following: failing to notify consumers of their right to dispute debts within five days after the first debt collection contact; demanding payment in full before expiration of the 30-day dispute period; demanding payment of debts without any proof of the alleged debt in its possession; contacting consumers at their place of employment after they request that such contacts cease; threatening to make personal visits to consumers at their places of employment to demand payment of debts; making unannounced visits to consumers at their homes to demand payments; threatening that nonpayment will result in arrest or criminal prosecution; and collecting debts arising from loans that are unlawful in West Virginia.

IV. BACKGROUND AND APPLICABLE LAW

12. In 1974, the Legislature enacted the West Virginia Consumer Protection Act (“WVCCPA”), W. Va. Code §§ 46A-1-101 *et seq.*, which “is a remedial statute intended to protect consumers from unfair, illegal and deceptive business practices and must be liberally construed to accomplish that purpose.” *Fleet v. Webber Springs Owner’s Association*, 772 S.E. 2d 369, 377 (W. Va. 2015). In addition to establishing a private right of action for consumers, the Legislature authorized the Attorney General to enforce the WVCCPA, W. Va. Code § 46A 7 102.

13. The WVCCPA contains an all-encompassing, blanket prohibition against “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of

any trade or commerce” W. Va. Code § 46A-6-104. The WVCCPA delineates at least 15 types of conduct that constitute per se violations. *See* W. Va. Code § 46A-6-102(7). The statutory list is not intended to be all inclusive. *Id.*

14. The collection of debts in West Virginia is primarily governed by the federal Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1601 *et seq.*, and the WVCCPA, W. Va. Code §§ 46A-1-101 *et seq.*

15. The FDCPA governs the conduct of professional “debt collectors,” which include both third party collection agencies and debt buyers, but the WVCCPA governs the conduct of **all** debt collectors, including creditors collecting their own debts, W. Va. Code § 46A-2-122(d). *See also Thomas v. Firestone Tire and Rubber Co.*, 164 W.Va. 763, 266 S.E.2d 905 (W.Va. 1980).

16. The WVCCPA prescribes a wide range of conduct that it deems illegal, fraudulent, unconscionable, unfair, or deceptive in consumer transactions, including conduct related to the collection of debts. The prohibited debt collection conduct is found generally in W. Va. Code §§ 46A-2-122 through 129(a).

17. The WVCCPA largely mirrors the prohibited conduct found in the FDCPA but the two laws are not identical. However, any violation of the FDCPA is deemed to be an unfair or deceptive act or practice, 15 U.S.C. § 1692l(a). As such, any violation of the FDCPA is an unfair or deceptive act or practice as defined by the WVCCPA, W. Va. Code § 46A-6-104.

18. The West Virginia Collection Agency Act (“Collection Agency Act”), W. Va. Code §§ 47-16-1 *et seq.*, requires a person or firm engaging in the business of a “collection agency” in West Virginia to have a business registration certificate and to post a \$5,000.00 surety bond with

the State Tax Department before it may commence the collection of debts in West Virginia, W. Va. Code § 47-16-4(a) and (b).

19. If the collection agency is a foreign corporation or limited liability company, it must also have a certificate of authority from the Secretary of State before it may collect debts in West Virginia, W. Va. Code § 31D-15-1501.

20. The State Tax Department has issued a directive declaring that all debt buyers, including those who engage in so-called “passive” debt collection, must comply with the licensing, bonding, and other provisions of the Collection Agency Act. *See* West Virginia State Tax Department, Administrative Notice 2010-19, Treatment of Debt Purchasers Pursuant to the West Virginia Collection Agency Act of 1973, as amended, issued April 26, 2010, Ex. A.

21. As a company that is and was engaged in the purchase and collection of consumer accounts originally owed to others, Bayside is a "debt collector" as defined by the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692a(6) and the WVCCPA, W. Va. Code § 46A-2-122(d).

22. Bayside is also a "collection agency" as defined by the Collection Agency Act, W. Va. Code § 47-16-2(b).

23. The debt collection activities of Bayside and its agents arising from consumer transactions are subject to the regulatory authority of the Attorney General under the WVCCPA, W. Va. Code §§ 46A-7-101 *et seq.*

24. By engaging in the collection of debt related to a consumer financial product or service, Bayside is also a “covered person” as defined by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), 12 U.S.C. §5481 (6)(A), 15(A)(x).

25. The Dodd-Frank Act prohibits covered persons from engaging in “any unfair, deceptive, or abusive act or practice,” 12 U.S.C. § 5536(a) (1) (B).

26. Attorneys general and state regulators are empowered to enforce the provisions of the Dodd-Frank Act and the regulations issued by the Consumer Financial Protection Bureau (“CFPB”), 12 U.S.C. §5552(a)(1).

27. The CFPB issued a Compliance Bulletin urging covered entities to refrain from in-person collections as they may be likely to cause substantial injury to consumers, such as the unlawful disclosure or publication of the debt to third parties; and when such contacts occur at consumers’ places of employment, they may also result in negative employment consequences. *See* CFPB Compliance Bulletin 2015-07, Ex. A.

28. The violation of any state or federal law or regulation intended to protect the public and foster fair and honest competition is deemed to be unfair or deceptive act or practice, W. Va. Code § 46A-6-101.

29. A defendant found by a court to have engaged in a course of repeated and willful violations of the WVCCPA may be assessed a civil penalty of **up to \$5,000.00** for each violation, W. Va. Code § 46A-7-111(2).

30. The actions of the individual defendants make them individually liable, beyond the protections afforded to members of a limited liability company. The West Virginia Supreme Court held that the veil of a limited liability company may be pierced and its members or managers held personally liable for the company’s unlawful actions if it is established “that (1) there exists such unity of interest and ownership that the separate personalities of the business and of the individual member(s) or managers(s) no longer exist

and (2) fraud, injustice, or an inequitable result would occur if the veil is not pierced.” Syl. Pt 7, *Kubican v. The Tavern, LLC*, 752 S.E.2d 299, 301 (W.Va. 2013).

V. STATEMENT OF FACTS

31. The Attorney General commenced an investigation of Bayside in 2019 after receiving a complaint from a Mason County, West Virginia woman who reported she was abused and harassed by Bayside. Among other things, she said that Bayside repeatedly called her at work after she asked the calls to stop and that Bayside threatened to bring a collection letter in person to her at work. She also reported that Bayside contacted her by phone only and refused to send a collection letter identifying itself or verifying the alleged debt.

32. Upon further investigation, consumers from Nicholas and Randolph counties, West Virginia, reported that a representative from Bayside called and threatened that a warrant would be issued for their arrest if they did not pay the debt. Another consumer, a woman from Mingo County, West Virginia, reported that a representative from Bayside made an in-person visit to her home to demand payment of a debt.

33. Further investigation by the Attorney General disclosed that Bayside did not have a collection agency license from the State Tax Department or a certificate of authority from the Secretary of State that are required to collect debts in West Virginia.

34. After repeated requests to Bayside’s owner, Werth, finally disclosed that Bayside had collected payments totaling \$6,367.84 on at least 12 West Virginia accounts. The records show that these consumers resided in Cabell, Jefferson, Kanawha, Marshall, Mason, Mingo, Nicholas, Randolph, Wayne, and Wood counties. Bayside did not disclose the actual

number of persons it contacted, such as the Mason County complainant, from whom it did not collect any payments.

35. The limited information Bayside provided also disclosed that it collected accounts originally owed to Internet lenders who were not licensed to make loans in West Virginia and whose loans charged triple digit, usurious interest rates.

36. After further negotiations, Bayside agreed to sign a formal agreement, called an Assurance of Discontinuance, in which it promised to comply with all applicable laws, to make a full refund of all payments it collected from West Virginia consumers, and to pay a civil penalty.

37. Despite its written promise to sign the Assurance of Discontinuance, Bayside reneged on its agreement, which prompted the Attorney General to file this Complaint in order to enforce the WVCCPA and to obtain relief for consumers aggrieved by Bayside.

38. Upon information and belief, the LLC Defendant, Bayside Capital Services, is an empty shell that owns no assets, no property, and has no actual office other than Werth's personal residence and the private mail box located at a UPS Store in Buffalo which is leased in Werth's name. Accordingly, there is such unity of interest and ownership that the separate personalities of Bayside and Werth no longer exist, and in fact, have never existed. If Werth is allowed to be shielded from personal liability for violation of the WVCCPA by the sham veil of the LLC, then injustice will occur and the public will be left without remedy for Werth's unlawful acts.

VI. THE ATTORNEY GENERAL'S ENFORCEMENT POWERS

39. West Virginia Code § 46A-7-102 authorizes the Attorney General to enforce the WVCCPA. In order to meet this obligation, the Legislature authorized the Attorney General to

conduct formal investigations, W. Va. Code § 46A-7-104, and to bring a civil action for an injunction and “other appropriate relief,” W. Va. Code § 46A-7-108. The term “other appropriate relief” means the Legislature intended that the “full array of equitable relief” be available in suits brought by the Attorney General to enforce the WVCCPA. *State ex rel. McGraw v. Imperial Marketing*, 506 S.E.2d 799 (1998). Thus, such relief may include consumer refunds, disgorgement, debt cancellation, and such other measures as may be necessary to secure complete justice. *Id.*

40. A circuit court is authorized by its power to grant equitable relief and by statute to award attorney's fees to the State for the successful prosecution of an enforcement action under the WVCCPA. *See CashCall, Inc., et al v. Morrissey*, No. 12-1274, 2014 WL 2404300, at *19 (W.Va. Supreme Court, May 30, 2014) (memorandum decision) (award of \$446,180 in attorney's fees to the State unanimously affirmed).

41. The Attorney General is also authorized by W. Va. Code § 46A-7-111(2) to recover a civil penalty of up to \$5,000.00 for each violation of the WVCCPA “if the court finds that the defendant has engaged in a course of repeated and willful violations of this chapter.” The term “willful” means “conduct that was intentionally engaged in [as opposed to involuntarily] that had as its consequences the violation of law.” *State v. Saunders*, 638 S.E.2d 173,174 (W. Va. 2006).

42. In addition to the Attorney General’s statutory powers under the WVCCPA, the U.S. Supreme Court has recognized that a state has the common law power and duty under a legal doctrine known as *parens patriae* (“parent of the country”) to protect the “health and well-being – both physical **and economic** – of its residents in general.” *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 600 (1982) (emphasis added).

43. The Attorney General’s common law power to protect West Virginia citizens has been affirmed by federal courts and by the West Virginia Supreme Court. *See State ex rel. McGraw v. CVS Pharmacy, Inc.*, 646 F. 3d 169, 179 (4th Cir. 2011) and *State ex rel. Discover Financial Services, Inc. v. Nibert*, 744 S.E. 2d 625, 649 (W.Va. 2013) (the Attorney General retains “inherent common law powers, when not expressly restricted or limited by statute”).

VII. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION (Collecting Debts Without a Collection Agency License)

44. The State reasserts each and every allegation in paragraphs 1 through 43 in this Complaint as if set forth fully herein.

45. A person or entity may not engage in the business of a collection agency in West Virginia without first obtaining a license and surety bond from the State Tax Department as required by the Collection Agency Act, W. Va. Code § 47-16-4(a) and (b).

46. Bayside collected debts in West Virginia at all times pertinent hereto without a collection agency license and surety bond from the State Tax Department as required by the Collection Agency Act.

47. Bayside engaged in an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104 **in each instance** when it collected or attempted to collect a debt from West Virginia consumers without the required collection agency license and surety bond.

SECOND CAUSE OF ACTION (Collecting Debts Without a Certificate of Authority)

48. The State reasserts each and every allegation in paragraphs 1 through 43 in this Complaint as if set forth fully herein.

49. A foreign corporation or limited liability company may not engage in the business of collecting debts in West Virginia without first obtaining a certificate of authority from the West Virginia Secretary of State, W. Va. Code § 31D-15-1501(a) and (b)(7), 1501(b) (7).

50. Bayside engaged in the business of collecting debts in West Virginia at all times pertinent hereto without a certificate of authority from the West Virginia Secretary of State.

51. Bayside engaged in an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104 **in each instance** when it collected or attempted to collect a debt from West Virginia consumers without the required certificate of authority.

THIRD CAUSE OF ACTION
(Failing to Send Consumers Notice of their Debt Validation Rights)

52. The State reasserts each and every allegation in paragraphs 1 through 43 in this Complaint as if set forth fully herein.

53. A debt collector is required to send consumers a written notice of their debt validation rights within five days after its first contact with the consumer, 15 U.S.C. § 1692g(a) and W. Va. Code § 46A-6-104.

54. Any violation of the FDCPA is an unfair or deceptive act or practice. *See* 15 U.S.C. § 1692l (a).

55. Upon information and belief, Bayside did not send West Virginia consumers a written notice of their debt validation rights within five days of their initial communication or at any time thereafter.

56. Bayside engaged in an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104 **in each instance** when it failed to send consumers written notice of their debt validation rights within five days after its initial contact with the consumers.

**FOURTH CAUSE OF ACTION
(Failing to Verify Alleged Debts when Disputed by Consumers)**

57. The State reasserts each and every allegation in paragraphs 1 through 43 in this Complaint as if set forth fully herein.

58. When a consumer disputes a debt within the 30-day dispute period, a debt collector is required to cease collection of the debt, or any disputed portion thereof, until the debt collector obtains and mails verification of the debt or judgment to the consumer, 15 U.S.C. § 1692g(b) and W. Va. Code § 46A-6-104.

59. Upon information and belief, Bayside does not cease collection or mail verification of alleged debts to consumers when they dispute debts during the 30-day dispute period or at any time when collecting alleged debts.

60. Bayside engaged in an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104 **in each instance** when it continued collection or failed to mail verification of the alleged debt or judgment when disputed by consumer.

**FIFTH CAUSE OF ACTION
(Collecting Debts Without Proof of the Alleged Debt in its Possession)**

61. The State reasserts each and every allegation in paragraphs 1 through 37 in this Complaint as if set forth fully herein.

62. A debt collector must have in its possession verifiable proof of an alleged debt or the ability to promptly obtain it before commencing debt collection activity in West Virginia, W. Va. Code § 46A-2-127 and W. Va. Code § 46A-6-104.

63. Upon information and belief, Bayside does not possess any proof or the ability to obtain proof of the alleged debts that it seeks to collect from consumers in West Virginia.

64. Bayside engaged in an unfair or deceptive act or practice in violation of W. Va. Code § 46a-6-104 **in each instance** when it collected or attempted to collect a debt in West Virginia without verifiable proof of the alleged debt or the ability to obtain verifiable proof of the alleged debt.

SIXTH CAUSE OF ACTION
(Continuing to Make Unwanted or Impermissible Calls to Consumers at Work)

65. The State reasserts each and every allegation in paragraphs 1 through 43 in this Complaint as if set forth fully herein.

66. A debt collector may not repeatedly contact consumers at their places of employment after they are advised that such calls are not permitted and when the consumers ask that such calls stop, 15 U.S.C. § 1692c(a)(1), W.Va. Code § 46A-2-125(d), and W.Va. Code § 46A-6-104.

67. Upon information and belief, Bayside continues to call consumers at their places of employment when they know or should know that such calls are unwanted or not permitted and when consumers have asked the calls to stop.

68. Bayside violated W.Va. Code § 46A-2-126(c) and engaged in an unfair or deceptive act or practice in violation of W.Va. Code § 46A-6-104 **in each instance** when it continued to

call consumers at their places of employment when it knew or should have known that such calls are unwanted or not permitted and when consumers asked such calls to stop.

SEVENTH CAUSE OF ACTION
(Threatening Actions that Subject Consumers to Embarrassment, Humiliation, Ridicule or Disgrace or that Risk Disclosure of Indebtedness to Third Parties)

69. The State reasserts each and every allegation in paragraphs 1 through 43 in this Complaint as if set forth fully herein.

70. A debt collector may not take any action that subjects consumers to embarrassment, humiliation, ridicule or disgrace, or that risks disclosure of alleged indebtedness to third parties, W.Va. Code § 46A-2-124(b), W.Va. Code § 46A-2-126(c), and W.Va. Code § 46A-6-104.

71. Bayside violated W.Va. Code § 46A-2-124(b), W.Va. Code § 46A-2-126(c), and W.Va. Code § 46A-6-104 in each instance when it threatened to bring a collection letter to consumers at their place of employment or when it took or threatened to take any other action that would subject consumers to embarrassment, humiliation, ridicule or disgrace, or that risked disclosure of alleged indebtedness to third parties.

EIGHTH CAUSE OF ACTION
(Making In-Person Visits to Consumers at their Homes to Demand Payments)

72. The State reasserts each and every allegation in paragraphs 1 through 43 in this Complaint as if set forth fully herein.

73. The CFPB has warned that debt collectors run a heightened risk of committing unfair or deceptive acts or practices, such as disclosure of debts to third parties, harm to their reputations, and negative employment consequences, when conducting in-person debt

collection visits to consumers at their homes or places of employment. *See* CFPB Compliance Bulletin 2015-07, Ex. B.

74. Bayside threatened to visit consumers at their places of employment and, on at least one documented instance, Bayside made an unannounced visit to a consumer at her home to demand payment of an alleged debt.

75. Bayside engaged in an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104 and W.Va. Code § 46A-2-126 in each instance when it made, or threatened to make, in-person visits to consumers at their homes or places of employment to demand payment of alleged debts.

NINTH CAUSE OF ACTION
(Threatening that Nonpayment may Result in Arrest or Criminal Prosecution)

76. The State reasserts each and every allegation in paragraphs 1 through 43 in this Complaint as if set forth fully herein.

77. A debt collector may not threaten or imply that nonpayment of an alleged debt may result in arrest or criminal prosecution or in other actions that are unintended or prohibited by law, W. Va. Code § 46A-2-124(e)(1) and (f).

78. Bayside threatened consumers that nonpayment of an alleged debt would result in arrest or criminal prosecution.

79. Bayside violated W. Va. Code § 46A-2-124(e) (1) and (f) in each instance when it threatened that nonpayment of an alleged debt would result in criminal prosecution or threatened to take other actions that were unintended or prohibited by law.

TENTH CAUSE OF ACTION
(Collecting Unlawful Debts in West Virginia)

80. The State reasserts each and every allegation in paragraphs 1 through 43 in this Complaint as if set forth fully herein.

81. A debt collector may not collect debts originally owed to Internet or other lenders that are not licensed to make loans in West Virginia or that charge usurious interest rates, W. Va. Code §47-6-6 and W. Va. Code § 46A-6-104. *See CashCall, Inc., et al v. Morrissey*, No. 12-1274, 2014 WL 2404300, at *18 (W.Va. Supreme Court, May 30, 2014) (memorandum decision) (usurious loans made by an unlicensed lender are void and unenforceable).

82. The account records produced by Bayside disclose that it collected or attempted to collect debts from West Virginia consumers that were originally owed to lenders that were not licensed to make loans in West Virginia and that charged usurious interest rates.

83. Bayside engaged in an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104 in each instance when it collected or attempted to collect debts from West Virginia consumers that were originally owed to lenders that were not licensed to make loans in West Virginia and that charged usurious interest rates.

PRAYER

WHEREFORE, the State respectfully prays that this court enter a final order:

(a) finding that the Defendants have violated the WVCCPA as alleged herein and permanently enjoining the Defendants, and anyone acting for or on their behalf, from violating the WVCCPA and from engaging, directly or indirectly, in the collection of consumer debts from residents of West Virginia;

(b) finding that the Defendants have engaged in a course of repeated and willful violations of the WVCCPA as alleged in the causes of action set forth herein above

and that Defendants be assessed a civil penalty of up to \$5,000.00 to the State for each and every such violation as authorized by W. Va. Code § 46A-7-111(2);

(c) awarding the State a judgment against the Defendants in the amount representing all payments collected from West Virginia consumers, including consumers currently known and those who may become known through the course of this litigation, as authorized by W. Va. Code § 46A-7-108;

(d) finding that (i) there is such unity of interest and ownership that the separate personalities of the fictional entity, Bayside, and its owner, Werth, do not exist, and (ii) injustice would result unless the veil of the limited liability company is pierced and Werth is held personally liable for all of the actions as alleged in this Complaint;

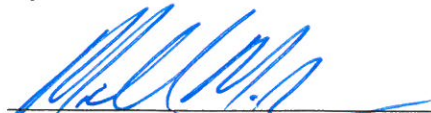
(e) awarding the State a judgment for all its costs, including reasonable attorney's fees, incurred in the investigation and litigation of this matter as authorized by W. Va. Code § 46A-7-108; and

(f) awarding the State such other and further equitable relief as may be necessary to secure complete justice in this matter.

Respectfully submitted,

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL, Plaintiff

By Counsel



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STATE OF WEST VIRGINIA

Department of Revenue
State Tax Department

Joe Manchin III
Governor

FILED
Craig A. Griffith
Acting Commissioner
2010 APR 26 PM 3:19

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ADMINISTRATIVE NOTICE 2010-19

SUBJECT: Treatment of Debt Purchasers Pursuant to the West Virginia Collection Agency Act of 1973, as amended.

The West Virginia Collection Agency Act of 1973 (hereafter "the Act"), West Virginia Code § 47-16-1 *et seq.*, requires that a person, firm, corporation or association shall not establish or conduct the business of a "collection agency" within the state of West Virginia except as authorized by the Act. See W. Va. Code § 47-16-3.

The Act in pertinent part defines "collection agency" to mean and include:

"(a) persons, firms, corporations and associations... (d)irectly or indirectly engaged in the business of soliciting from or collecting for others any account, bill or indebtedness originally due or asserted to be owed or due another..."
Emphasis added. See W. Va. Code § 47-16-2(b) (2003).

Collection agencies sometimes purchase defaulted accounts, bills and other indicia of indebtedness for collection. Certain "debt purchasers" have inquired with the Tax Department as to whether they are collecting debts "for others" within the meaning of the Act, based on the proposition that they have purchased debt accounts, and so "own" the accounts when their collection efforts proceed.

Other "debt purchasers" have inquired whether they must comply with the Act if they only engage in "passive" debt collection. "Passive debt collection" is the practice of employing licensed third party collection agencies to engage in collection activities on behalf of the debt purchaser.

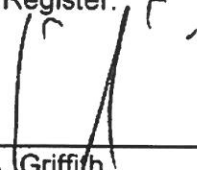
The West Virginia State Legislature amended the Act in 2003 by adding the word "originally" to the statutory definition of the term "collection agency" (quoted above). This amendment broadened the definition of "collection agency" to include "debt purchasers."

The Act has always covered both "direct" and "indirect" debt collection.

It is the determination of the West Virginia Tax Department that debt purchasers must comply with the licensing, bonding, and other provisions of the Act. This determination includes debt purchasers who engage in "passive" debt collection as defined above. Debt purchasers who engage in "passive" debt collection, are engaging in collection agency business operations within the meaning of the Act, and must comply with the licensing, bonding, and other provisions of the Act.

Notice of this determination will be filed in the State Register.

Issued: April 26, 2010



Craig A. Griffith
Acting State Tax Commissioner
West Virginia State Tax Department

State Tax Department
Taxpayer Services Division
P.O. Box 3784
Charleston, WV 25337-3784

Operator on duty 8:30 am – 5:00 pm
Monday through Friday
Phone: (304) 558-3333 or 1-800-982-8297
Fax: (304) 558-3269
TDD Service/Hearing Impaired 1-800-282-9822



1700 G Street, N.W., Washington, DC 20552

CFPB Compliance Bulletin 2015-07

Date: December 16, 2015
Subject: In-Person Collection of Consumer Debt

In response to recent practices observed during supervisory examinations and enforcement investigations, the Consumer Financial Protection Bureau (CFPB or Bureau) issues this compliance bulletin to provide guidance to creditors, debt buyers, and third-party collectors about compliance with sections 1031 and 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) and the Fair Debt Collection Practices Act (FDCPA) when collecting debt from consumers.

As discussed in more detail in CFPB Bulletin 2013-07,¹ the Dodd-Frank Act prohibits covered persons or service providers, including first-party and third-party debt collectors, from committing or engaging in unfair, deceptive, or abusive acts or practices (collectively, UDAAPs) while collecting or attempting to collect consumer debts. In addition, the FDCPA prohibits third-party debt collectors and others subject to that Act from, among other practices, communicating with a consumer at any time or place that is known or which should be known to be inconvenient to the consumer, or at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication, from communicating with any person other than the consumer (and other specified parties, except in certain circumstances) in connection with the collection of any debt other than to acquire location information in accordance with the FDCPA, from "us[ing] unfair or unconscionable means to collect or attempt to collect any debt," and from "engag[ing] in any conduct the natural consequences of which is to harass, oppress, or abuse any person in connection with the collection of a debt."²

Dodd-Frank Act

First-party and third-party debt collectors may run a heightened risk of committing unfair acts or practices in violation of the Dodd-Frank Act when they conduct in-person debt collection visits, including to a consumer's workplace or home. An act or practice is unfair under the Dodd-Frank Act when it causes or is likely to cause

¹ See CFPB Bulletin 2013-07, Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts (July 10, 2013), *available at* http://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf.

² 15 U.S.C. §§ 1692b, 1692c, 1692d, and 1692f.

substantial injury to consumers which is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or competition.

Depending on the facts and circumstances, in-person collections may cause or may be likely to cause substantial injury to consumers. For example, in-person collection visits may result in third parties, such as consumers' co-workers, supervisors, customers, roommates, landlords, or neighbors learning that the consumers have debts in collection. When such information is revealed to such third parties, it could harm the consumer's reputation and, with respect to in-person collection at a consumer's workplace, result in negative employment consequences. In addition, depending on the facts and circumstances, in-person collection visits may result in substantial injury to consumers even when there is no risk that the existence of the debt in collections will be disclosed to third parties. Such injury may result when, for example, a collector goes to a consumer's place of employment when the consumer's employer prohibits the consumer from having personal visitors there, which could also result in negative employment consequences. As with other types of collection, in-person visits may also be likely to cause substantial injury to a consumer if, based on the facts and circumstances, a likely or actual consequence of the visits is to harass the consumer.

In a recent public enforcement action, based on the facts and circumstances in that matter, the Bureau alleged that the disclosure or risk of disclosure of debts to third parties during in-person collection visits, as well as going to a consumer's place of employment when the creditor knew or should have known that personal visitors were not permitted or that going to the consumer's place of employment was inconvenient to the consumer, was unfair in violation of the Dodd-Frank Act.³ The Bureau's examiners have also found in one or more examinations unfair acts or practices with respect to in-person collection workplace visits.⁴

Fair Debt Collection Practices Act

In addition, third-party debt collectors and others subject to the FDCPA who engage in in-person collection visits may violate a variety of FDCPA provisions.

First, section 805(a)(1) and (3) of the FDCPA makes it illegal for third-party debt collectors and others subject to that Act to communicate with a consumer in connection with the collection of any debt "at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer" or "at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication." Consumers may find in-person collection visits to be inconvenient and collectors may know or should know of this inconvenience; similarly, collectors

³ See *In re EZCORP, Inc., et al.*, File No. 2015-CFPB-0031 (the Bureau ordered the company to pay redress and a penalty and prohibited the company from conducting future in-person collection visits to consumers' homes and workplaces).

⁴ See, e.g., Supervisory Highlights, Spring 2014 edition at p. 18.

may know or have reason to know that a consumer's employer prohibits the consumer from receiving such communication at the workplace. For example, a consumer may indicate that an in-person collection visit to a consumer's workplace would be likely to disrupt the consumer's workplace, interfere with the consumer's ability to do his or her job, or is prohibited by the consumer's employer. In-person collection visits therefore may pose a heightened risk of collectors violating section 805(a)(1) and (3) of the FDCPA.

Second, subject to certain exceptions, section 805(b) of the FDCPA prohibits third-party debt collectors and others subject to that Act from communicating with any person other than the consumer in connection with the collection of any debt. Depending on the facts and circumstances, in-person collection visits may result in collectors communicating with others about the debt in violation of section 805(b).⁵

Finally, sections 806 and 808 of the FDCPA prohibit, respectively, a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person, and from using unfair or unconscionable means to collect or attempt to collect any debt. In-person collection visits may pose a heightened risk that collectors will violate these provisions.

If the CFPB determines that a company has engaged in acts or practices that violate the Dodd-Frank Act, the FDCPA, or other Federal consumer financial law, it will take appropriate supervisory or enforcement actions to address the violations and seek all appropriate corrective measures, including remediation of harm to consumers and assessment of civil money penalties.

This compliance bulletin summarizes existing requirements under the law and findings the Bureau has made in the course of exercise of its supervisory and enforcement authority and is a non-binding general statement of policy articulating considerations relevant to the Bureau's exercise of its supervisory and enforcement authority. It is therefore exempt from notice and comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.⁶ The Bureau has determined that this compliance bulletin does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq.

⁵ The FDCPA permits debt collectors to communicate in a manner that would otherwise violate Sections 805(a)(1) and (a)(3), as well as Section 805(b), if they obtain the "prior consent of the consumer given directly to the debt collector."

⁶ See 5 U.S.C. § 603(a), 604(a).