

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

1999 DEC -1 P 12:52

UNITED STATES OF AMERICA,

Plaintiff,

v.

NATIONAL FINANCIAL SYSTEMS, INC.,
a New York corporation,

Defendant.

IA1340

CV 99 7874
Civil Action No.

**WEXLER
POHOPELSKY, M.**

COMPLAINT FOR CIVIL PENALTIES, INJUNCTIVE, AND OTHER RELIEF

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("Commission"), for its Complaint alleges that:

1. Plaintiff brings this action under Sections 5(m)(1)(A), 9, 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(m)(1)(A), 49, 53(b), and 56(a) and Section 814 of the Fair Debt Collection Practices Act ("FDCP Act"), 15 U.S.C. § 1692~~1~~, to obtain monetary civil penalties and injunctive or other relief for defendant's violations of the FDCP Act.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 49, 53(b), 56(a) and 1692~~1~~.

3. Venue in the Eastern District of New York is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b) - (c) and § 1395(a).

DEFENDANT

4. Defendant National Financial Systems, Inc. is a New York corporation with an office and place of business located within the Eastern District of New York at 972 Brush Hollow Road, Westbury, New York 11590-1707, as well as an office and place of business located at 8895 N. Military Trail, Suite 100C, Palm Beach Gardens, Florida 33410. At all times relevant to this Complaint, defendant has transacted business in the Eastern District of New York and at other locations throughout the United States.

5. Defendant is a debt collector as “debt collector” is defined in Section 803(6) of the FDCP Act, 15 U.S.C. § 1692(a)(6).

6. The term “consumer” as used in this Complaint means any natural person obligated or allegedly obligated to pay any debt, as “debt” is defined in Section 803(5) of the FDCP Act, 15 U.S.C. § 1692a(5).

FAIR DEBT COLLECTION PRACTICES ACT

7. In 1977, Congress passed the FDCP Act, 15 U.S.C. §§ 1692-1692o, which became effective on March 20, 1978, and has been in force ever since that date. Section 814 of the FDCP Act, 15 U.S.C. § 1692i, authorizes the Commission to use all of its functions and powers under the FTC Act to enforce compliance with the FDCP Act by any debt collector, irrespective of whether that debt collector is engaged in commerce or meets any other jurisdictional tests set by the FTC

Act, including the power to enforce the provisions of the FDCP Act in the same manner as if the violations were violations of a Federal Trade Commission trade regulation rule.

VIOLATIONS OF THE FDCP ACT

8. On numerous occasions, in connection with the collection of debts, defendant has communicated with a consumer:

a) at times or places that defendant knew or should have known to be inconvenient to the consumer, including times before 8 AM or after 9 PM local time at the consumer's location, in violation of Section 805(a)(1) of the FDCP Act, 15 U.S.C. § 1692c(a)(1); or

b) at the consumer's place of employment, when defendant knew or had reason to know that the consumer's employer prohibited the consumer from receiving such communications, in violation of Section 805(a)(3) of the FDCP Act, 15 U.S.C. § 1692c(a)(3).

9. On numerous occasions, in connection with the collection of debts, defendant has communicated with third parties, including neighbors, minor children, and employers, for purposes other than acquiring location information about a consumer, without having obtained directly the prior consent of the consumer or the express permission of a court of competent jurisdiction, and when not reasonably necessary to effectuate a post judgment judicial remedy, in violation of Section 805(b) of the FDCP Act, 15 U.S.C. 1692c(b).

10. On numerous occasions, in connection with the collection of debts, defendant has engaged in conduct the natural consequence of which is to harass, oppress, or abuse a person, in violation of Section 806 of the FDCP Act, 15 U.S.C. § 1692d, including but not limited to, the following:

a) defendant has used obscene or profane language, or language the natural consequence of which is to abuse the hearer, in violation of Section 806(2) of the FDCP Act, 15 U.S.C.

§ 1692d(2); and

b) defendant has caused a telephone to ring, or has engaged a person in telephone conversations, repeatedly or continuously, with intent to annoy, abuse, or harass the person at the called numbers, in violation of Section 806(5) of the FDCP Act, 15 U.S.C.

§ 1692d(5).

11. On numerous occasions, in connection with the collection of debts, defendant has used false, deceptive, or misleading representations or means, in violation of Section 807 of the FDCP Act, 15 U.S.C. § 1692e, including but not limited to, the following:

a) defendant has falsely represented or implied that nonpayment of a debt will result in the arrest or imprisonment of a person or the seizure, garnishment, or attachment of a person's wages or property, when such action is not lawful or when neither defendant nor the creditor has intended to take such action, in violation of Section 807(4) of the FDCP Act, 15 U.S.C. § 1692e(4); and

b) defendant has threatened to take an action that cannot legally be taken or that defendant has not intended to take, in violation of Section 807(5) of the FDCP Act, 15 U.S.C. § 1692e(5).

CIVIL PENALTY AND INJUNCTION

12. Defendant has violated the FDCP Act described above, with actual knowledge or knowledge fairly implied on the basis of objective circumstances, as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

13. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), Section 814(a) of the FDCP Act, 15 U.S.C. § 1692~~1~~ and Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, authorize the Court to award monetary civil penalties of not more than \$10,000 (\$11,000 after November 20, 1996) for each violation of the FDCP Act.

14. Each instance within five years preceding the filing of this Complaint, in which defendant has failed to comply with the FDCP Act in one or more of the ways described above, constitutes a separate violation for which plaintiff seeks monetary civil penalties.

15. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction to ensure that defendant will not continue to violate the FDCP Act.

PRAYER

WHEREFORE, plaintiff respectfully requests that the Court, pursuant to 15 U.S.C. §§ 45(m)(1)(A), 49, 53(b), and 1692~~1~~ and to the Court's own equity powers:

1. Enter judgment against defendant and in favor of plaintiff for each violation of the FDCP Act alleged in this Complaint;
2. Award plaintiff monetary civil penalties from defendant for each violation of the FDCP Act occurring within the 5 years preceding the filing of this Complaint;
3. Order that defendant, under Sections 9 and 13(b) of the FTC Act, 15 U.S.C. §§ 49 and 53(b), and the Court's equity powers, include the following disclosures in each written collection communication with consumers in connection with the collection of debts:

Collection agencies must comply with a federal law that provides you with certain rights, including the right to have us stop communicating with you, if you make the request in writing. This law is administered by the Federal Trade Commission, One Bowling Green, Third Floor, New York, NY 10004;

4. Order defendant to provide the following notice in writing to each of its present and future employees involved in the collection of debts and to obtain and retain a signed acknowledgment of receipt of the notice from each such employee:

Debt collectors must comply with the federal Fair Debt Collection Practices Act, which limits our activities in trying to collect money from consumers. Most importantly, Section 806 of the Act prohibits you from harassing, oppressing, or abusing a person, including, but not limited to, using obscene or profane language. In addition, Section 807 of the Act prohibits you from using false, deceptive, or misleading representations. Individual debt collectors may be financially liable for their violations of the Act;

5. Enjoin defendant permanently from violating the FDCP Act;
6. Order defendant to pay the costs of this action; and

7. Award plaintiff such additional relief as the Court deems just and proper.

Dated:

Of counsel:

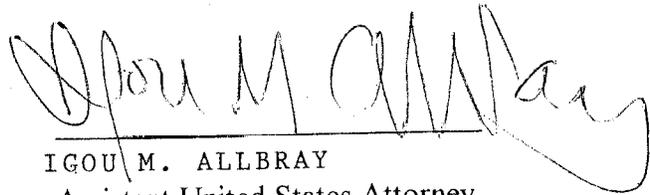
FOR THE UNITED STATES OF AMERICA

BARBARA ANTHONY
Director

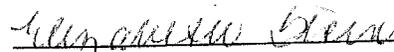
DAVID W. OGDEN
Acting Assistant Attorney General
Civil Division
U.S. Department of Justice

ROBIN E. EICHEN
Attorney
Northeast Region
Federal Trade Commission
One Bowling Green, Third Floor
New York, NY 10004
(212) 607-2803

LORETTA E. LYNCH
United States Attorney
Eastern District of New York



I. GOU M. ALLBRAY
Assistant United States Attorney
147 Pierrepont Street
Brooklyn, NY 11201
(718) 254-6002



ELIZABETH STEIN
Attorney
Office of Consumer Litigation
Civil Division
U.S. Department of Justice
Washington, DC 20530
(202) 307-0486

Civil Action No. CV-

UNITED STATES DISTRICT COURT
Eastern District of New York

UNITED STATES OF AMERICA,

Plaintiff,

- against -

NATIONAL FINANCIAL SYSTEMS, INC.,
a New York corporation,

Defendant.

COMPLAINT FOR CIVIL PENALTIES, INJUNCTIVE AND OTHER RELIEF

LORETTA E. LYNCH

United States Attorney,
One Pierrepont Plaza
Brooklyn, New York 11201

Due service of a copy of the within _____ is hereby admitted.

Dated: _____, 19 _____

Attorney for Defendant
Igor M. Allbray, AUSA
(718) 254-6002/7000

SIR:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the UNITED STATES DISTRICT COURT U.S. Courthouse, 225 Cadman Plaza East, EASTERN DISTRICT OF NEW YORK

Brooklyn, New York, on the _____ day of _____, 19 _____, at 10:30 o'clock in the forenoon.

Dated: Brooklyn New York, _____, 19 _____

United States Attorney,
Attorney for _____

To: _____ Attorney
for _____

SIR:

PLEASE TAKE NOTICE that the within is a true copy of _____ duly entered herein on the _____ day of _____, in the office of the Clerk of the Eastern District of New York, Dated: Brooklyn, New York _____, 19 _____

United States Attorney,
Attorney for _____

To: _____