



GREATER BOSTON
LEGAL SERVICES
...and justice for all

January 13, 2010

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Comments to the Federal Trade Commission Regarding the Fair Debt Collection Practices Act.

Dear Sir/Madam:

I am a staff attorney at Greater Boston Legal Services and also served as an invited speaker/panelist at the Washington DC roundtable discussion held on December 4th, 2009. GBLS provides free civil (non-criminal) legal assistance to low-income people in Boston and thirty-one additional cities and towns. The help we offer ranges from legal advice to full case representation, depending on client need.

GBLS serves low income families and individuals whose yearly income often does not exceed 125% of Federal Poverty Income Guidelines. A national leader in poverty law, GBLS also undertakes representation and legal advocacy to address the root causes of poverty.

As a result of our contact with low-income elders we are uniquely aware of the challenges faced by individual debtors who are sued in court by third party collectors and creditors. On behalf of debtors, and in support of debt collection reform, we submit these comments to urge changes resulting in such modifications as in the court process and procedure, collection litigation and tactics, as well as modifications in enforcement of judgments.

In considering these comments we ask that the Federal Trade commission through its authority promote practices that would be consistent with the perspective and challenges of low income debtors/litigants, who due to financial constraint and limited resources, are barred from access to justice and quality legal help. We urge the FTC through its enforcement powers to work cooperatively with such agencies and associations that serve debtors to identify and prosecute third party collectors that utilize questionable and unlawful tactics in the pursuit of profit.

Common Problems:

The experience within our practice and the discussion at the roundtable event revealed some common themes around which many jurisdictions are facing similar problems. These common themes included the following, a high incidence of non participation of debtors in the litigation process, an increasing volume of purchase and prosecution of debt brought by third party collectors, and establishing quality standards for litigation and practice.

Each of these various themes raised its own set of unique challenges that were experienced differently in the different represented jurisdictions and solutions varied just as widely. Common is the case where many debtors sued by creditors or debtor collectors failed to appear and participate in the litigation process. Although much debate occurred during the roundtable discussion as to the reason why debtors do not participate in litigation, the conversation focused quickly on the impact of this fact. It is clear that non participation leads to a high incidence of default judgments.

Failure to participate in the litigation process raises other concerning issues such as litigants who do not raise any claims under federal or state consumer protection law. Also, individuals may be experiencing problems accessing the judicial process either due to language or disability issues and the process itself lacks a sense of equity so that individuals can promote their positions pro se.

The increasing volume of debt purchased and prosecuted by third party debt collectors has also raised other unique problems. Issues that were raised included whether third party collectors could establish the validity of the debt, establish the validity of the account holder, whether the action was being timely brought or past the statute of limitations and lastly whether the third party collectors could properly establish a chain of custody to support their legal right of assignment.

The inequity in the collection process and litigation raises issues such as the sufficiency of evidence to warrant the issuance of a default judgment, casts doubt on whether the amounts sought are accurate, and generally is confusing and intimidating to pro se litigants. Third party debt collectors have little to fear from debtors, particularly low income elderly debtors who lack the knowledge or capacity to raise defenses and counterclaims under FDCPA demonstrating the inequitable power dynamic that exists in this process. As FDCPA protections are prescribed they are not useful unless accessed by the debtor, which often presents a problem. This dynamic continues well into the court process where without a clearly defined court system in place, attorneys for third party collectors use the court proceedings to their advantage against pro se litigants. The result of such a one sided process within the court system often leads to pro se debtors entering into unfair agreements or agree to compromise protected income such as Social Security or public benefits.

Highlighted Solutions:

Many ideas were debated during the roundtable discussion however there are a few I would like to point out in their support.

1. **Pro Se Litigants require further support:**

The legal process to pro se litigants can often appear daunting and intimidating. Therefore, changes in the process should be promoted to assist in leveling the playing field. In regarding the commencement of litigation, attorneys for debt collectors & creditors should be required to provide in advance with the complaint as much information as needed to fully establish the authenticity of the debt and the obligation to the debtor as well as further

clarification of the debt amount. This means that collectors should be required to provide a contract or proof of contract/acceptance of credit, charges related to the debt should be separated and spelled out clearly and some certification on the part of the collector's counsel should be required to substantiate that the debt is not time barred as well as establish a proper chain of custody and right of assignment.

To the end of providing sufficient information to support the collection of debt, states should implement a standing order that requires the moving party to provide mandatory discovery in such matters. A mandatory discovery rule would help overcome barriers to the judicial process. Further, during the court proceeding itself, to the extent possible, courts should implement mandatory mediation to provide a more even negotiating forum for pro se litigants and to ensure debtors don't compromise protected/exempted income. The Courts themselves should seek to make connections with legal aid agencies as well as law school clinics that can provide brief service and/or representation in such matters.

2. A reform of the litigation and court process should take place:

Pro se litigants continue to struggle in their ability to access and navigate the judicial process for debt collection. Pro se litigants often are unaware of their rights as a debtor and what income and assets are protected. Steps should be taken to improve the judicial process to further simplify it and better inform debtors' of their rights; such steps can help minimize exploitation. Courts can provide litigants with pre formatted forms that can assist them in completing the answer process as well as discovery requests if applicable.

Clear procedures should be established within the court house that will assist pro se litigants to properly identify and distinguish between court personnel and counsel for third party collectors. Debtors should receive information about their rights at the time of the hearing and attorneys for the moving party should be discouraged from communicating with the debtor until after the call of the docket and basic information about the process and rights within the process has been conveyed, particularly about the implication of entering into an agreement.

3. FTC should step up enforcement of FDCPA:

As indicated above, the FTC should work collaboratively with other debtor advocates to identify debt collectors who engage in unfair and illegal collection practices. As such cases can be difficult to identify and establish, working with advocates on the ground can provide the FTC with the in roads and necessary information needed to begin to establish a case with unscrupulous collectors.

Based on the above we asked that FTC in considering both its enforcement activity and advancement of best practices consider the needs of low income debtors' particularly elderly individuals to be their reference point. Thank you again for the opportunity to be a part of this important discussion and I appreciate your time, consideration and efforts.

Federal Trade Commission

January 13, 2010

Page 4

Sincerely,
Alexander Mitchell-Munevar, Esq.
Staff Attorney
Greater Boston Legal Services