IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 96-15995

SHAROLYN CHARLES, Plaintiff-Appellant

v.

CHECK RITE, LTD., INC., LUNDGREN & ASSOCIATES, p.c., and ALVIN R. LUNDGREN, Defendants-Appellees

On Appeal from the United States District Court for the District of Arizona

BRIEF FOR AMICUS CURIAE FEDERAL TRADE COMMISSION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

STATUTES:

LEGISLATIVE MATERIALS

ADMINISTRATIVE MATERIALS

STATEMENT OF INTEREST OF THE FEDERAL TRADE COMMISSION

The Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692n ("FDCPA" or "Act"), under which this case arises, is premised on the congressional belief that "'every individual, whether or not he owes the debt, has a right to be treated in a reasonable and civil manner,'" Baker v. G.C. Services Corp., 677 F.2d 775, 777 (9th Cir. 1982), citing 123 Cong. Rec. 10241 (1977). The Act contemplates a dual scheme of private and public enforcement, in which Congress has assigned the principal public role to the Federal Trade Commission, 15 U.S.C. § 1692l(a).

Practices that contravene the FDCPA constitute "unfair or deceptive act[s] or practice[s] in violation" of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and the Commission may exercise all of its "functions and powers" under the FTC Act to enforce the FDCPA. 15 U.S.C. § 1692l(a). The Commission also reports annually to Congress regarding its administration of the FDCPA, including an assessment of the extent to which compliance with the FDCPA is being achieved, a summary of the Commission's enforcement actions, and any recommendations for change that the Commission believes appropriate. 15 U.S.C. § 1692m.

At issue in the present case is whether the FDCPA applies to third-party efforts to collect debts arising from dishonored checks given by consumers in payment for goods and services. This case and Bass v. Stolper, No. 96-2113 (7th Cir.), awaiting argument in the Seventh Circuit, are the first appellate cases to consider this issue. This Court's decision will, therefore, have a major effect on the scope of the FDCPA's protection of consumers and the scope of the Commission's responsibilities under the Act. Accordingly, the Commission offers this brief (and has recently filed a similar brief before the Seventh Circuit), to assist in resolution of the legal issue presented.

STATEMENT OF ISSUE

Whether the Fair Debt Collection Practices Act applies to efforts by third parties to collect debts arising from dishonored checks given by consumers in payment for goods and services.

STATEMENT OF THE CASE

The complaint, whose allegations must be accepted for purposes of judging a motion to dismiss, alleges that plaintiff, in July 1995, wrote a check for $17.93 to Pancho's #75 for the purchase of a meal. The check was returned for insufficient funds. Subsequently, plaintiff received a series of form letters from defendant Check Rite, demanding payment of $42.93 (Complt., Exhs. A, B), and thereafter, from defendants Lundgren & Associates and Alvin Lundgren, asserting a potential liability of $317.93 if the matter went to court, and demanding payment of $127.93 in "settlement" of this claim (Complt., Exhs. C, E, F, G). Plaintiff's tender of a money order in the amount of the original check was rejected and the form letters continued.

Plaintiff brought a class action alleging that defendants had committed various violations of the FDCPA, including misrepresentations and attempts to collect amounts not authorized by state law. By order of May 9, 1996, the district court granted defendants' motion to dismiss the complaint, on grounds that efforts to collect dishonored checks are not covered by the FDCPA. The court reasoned that "the FDCPA does not pertain to this action because the acceptance of a check in payment for consumer goods does not constitute the extension of credit as contemplated by the FDCPA because there is no agreed-upon deferral of payment." (Slip op. at 2.)

SUMMARY OF ARGUMENT

Neither the plain language of the FDCPA (Point A.), nor its legislative history (Point B.), supports the district court's limitation of the Act to debts that arise from an extension of "credit." Both these sources, as well as the large preponderance of district court case law (Point C.), the Federal Trade Commission's consistent administrative interpretation (Point D.), and considerations of sound public policy (Point E.) demonstrate that third-party collection of debts arising from dishonored checks given by consumers in payment for goods or services is covered by the FDCPA.

ARGUMENT

THE COLLECTION OF DISHONORED CHECKS IS COVERED BY THE FDCPA

A. By the Terms of the Act, the Obligation to Pay Arising from a Consumer Transaction Is a "Debt" and a Third-Party Who Routinely Attempts to Collect Such Debts Is a "Debt Collector."

The FDCPA applies to third-party collection of obligations that arise out of consumer purchases of goods or services, or consumer loans. The FDCPA imposes various restraints upon the activities of third-party "debt collectors," see 15 U.S.C. §§ 1692b-i, 1692k, and defines "debt collector" to mean:

any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

15 U.S.C. § 1692a(6). The FDCPA defines "debt" to mean:

any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

15 U.S.C. § 1692a(5). A "consumer" is "any natural person obligated or allegedly obligated to pay any debt," 15 U.S.C. § 1692a(3).

These statutory definitions cover the present case. The plaintiff, a "natural person," owes a "debt," in that she has an "obligation * * * to pay money arising out of a transaction" in which the "property * * * which [is] the subject of the transaction" (i.e., a restaurant meal) was "primarily for personal, family, or household purposes." In turn, the defendants, who "regularly collect[] or attempt[] to collect" such "debts owed or due * * * another," are "debt collectors." Nothing in these statutory definitions, nor in any others, suggests that the term "debt" is limited to an obligation that arises as the result of an extension of "credit." To the contrary, a "debt" is simply an "obligation to pay" arising from a consumer transaction. That broad formulation easily covers the secondary liability resulting from the dishonor of a check given in payment for consumer goods. E.g., Narwick v. Wexler, 901 F. Supp. 1275, 1281 (N.D. Ill. 1995); In re Schrimpsher, 17 B.R. 999, 1010 (Bankr. N.D.N.Y. 1982); Ariz. Rev. Stat. Ann. § 47-3110 (1995).(1)

B. In Enacting the FDCPA, Congress Understood and Intended that It Would Apply to Collection of Dishonored Checks.

The legislative history of the FDCPA supports this plain-language reading of its text. The Report of the House Banking Committee accompanying H.R. 5294, the version of the FDCPA passed by the House of Representatives, makes clear that the drafters had in mind the collection of dishonored checks when they framed the bill, and did not intend to limit the meaning of "debt" to obligations arising from extensions of "credit." In describing opposition to the bill, the Committee Report observed:

Opponents of this legislation claim that, regardless of the amount of consumer harassment or deception, there should be no legislation because the number of unpaid bills and bad checks keeps increasing. This reasoning is misleading. The issue is not one of uncollected debts, but rather whether or not consumers must lose their civil rights and be terrorized and abused by unethical debt collectors.

H.R. Rep. No. 131, 95th Cong., 1st Sess. 3 (1977) (emphasis added). Later, in describing the meaning of "debt," the House Report stated that "the committee intends that the term 'debt' include consumer obligations paid by check or other non-credit consumer obligations," id. at 4.(2)

The language in the House Report reflects the hearings that preceded it. Congress passed the FDCPA in order to prevent various abusive practices by third-party debt collectors. Such abuses are no less applicable to the collection

of dishonored checks than to the collection of delinquent installment debt. Although most of the discussion in the congressional hearings focused on collection of debts that had arisen from defaults on installment obligations, participants in the debate recognized that dishonored check collection was part and parcel of the practice of debt collection and that the proposed law would apply to check collection as well. For example, the American Collectors Association, Inc. ("ACA"), which represented approximately 2600 collection agencies, issued, and submitted during the House hearings, a series of "Information Papers" that described the dimensions of delinquent debt in the United States, in order to demonstrate the adverse consequences of the proposed legislation. Information Paper No. 1 was entitled "Bad Checks." After describing the scope of the "bad check" problem, the ACA warned that "[f]ederal legislation introduced in Congress recently would make it more difficult for financial collection services to collect or attempt to collect bad checks."(3) The ACA made numerous suggestions for changes in the legislation to minimize its perceived harmful effect on debt collection(4) and ultimately supported the FDCPA after Congress adopted some of the changes that the ACA proposed. See S. Rep. No. 382, 95th Cong., 1st Sess. 2, reprinted in 1977 U.S.C.C.A.N. 1696. Nowhere in its testimony, however, did the ACA ever suggest that the Act be modified to exclude collection of dishonored checks. See Hearings Before the Subcomm. on Consumer Affairs of the House Comm. on Banking, Finance and Urban Affairs on H.R. 29, 95th Cong., 1st Sess. 156-269 (1977).

Likewise, in hearings before the Senate, while most discussion concerned examples of collection practices arising from defaults on installment debt, at least one witness, a Vermont law enforcement official, described abuses arising from interstate efforts to collect dishonored checks by a large check recovery firm as illustrative of conduct that the FDCPA would curb.(5) The ACA, as it had before the House, also testified and referred to Federal Reserve Board reports of "135 million bad checks passed each year," in the course of describing the scope of debt collection activity potentially affected by the proposed legislation.(6) Also, as it had before the House, the ACA made numerous detailed suggestions for changes in the proposed legislation, but made no suggestion that check collection should be excluded from the ambit of activities covered by the law.(7) It is apparent from these examples, and from the report language quoted above, that participants in the congressional debate and the Congress itself understood that dishonored check collection was a routine part of the activities of debt collection agencies and that such activity would be covered by the FDCPA.(8)

C. The Large Preponderance of Apposite Case Law at the District Court Level Supports the Conclusion that the FDCPA Covers Check Collection, While the Third Circuit's Decision in Zimmerman v. HBO Affiliate Group on Which the District Court Here Relied Is Not on Point.

The substantial preponderance of relevant decisional law supports the conclusion that the FDCPA covers collection of dishonored checks. To our knowledge, only a few reported decisions have expressly addressed whether dishonored check collection is covered by the FDCPA. Most have held in the affirmative. See Newman v. Checkrite California, Inc., 912 F. Supp. 1354, 1364 n.7 (E.D. Cal. 1995); Keele v. Wexler, 1995 U.S. Dist. Lexis 13215 *7 (N.D. Ill. Sept. 12, 1995); Narwick v. Wexler, 901 F. Supp. 1275, 1281 (N.D. Ill. 1995); In re Schrimpsher, 17 B.R. 999, 1010 (Bankr. N.D.N.Y. 1982).(9) But see McLean v. Melville Collections, 1995 U.S. Dist. Lexis 16364 (N.D. Ill. Oct. 25, 1995); cf. Perez v. Slutsky, 1994 U.S. Dist. Lexis 17711 (N.D. Ill. Dec. 7, 1994).

There is, however, a much larger body of decided FDCPA cases involving collection of dishonored checks in which courts (without addressing the specific issue presented here) have treated such conduct as covered by the statute. We believe that this body of case law reflects the general understanding of the meaning of "debt" and "debt collector" under the FDCPA.(10)

The Third Circuit's decision in Zimmerman v. HBO Affiliate Group, 834 F.2d 1163 (3d Cir. 1987), on which the district court here relied for its conclusion, is not on point. Zimmerman held that the FDCPA does not apply to third-party efforts to collect tort damages allegedly due cable companies as the result of a consumer's allegedly unauthorized interception of their microwave television signals. In reaching this unexceptionable result, the court suggested the concept of "credit" (which the court defined as the right to "defer payment") as a means of distinguishing the theft of microwave signals from the purchase of cable services and other consumer transactions. 834 F.2d at 1168-69. However, as explained in the preceding sections of this brief, neither the legislative history nor statutory text supports

a limitation of the FDCPA to credit transactions, and it appears from the court's opinion that it did not consider the House Report or other relevant legislative sources cited above in reaching its result.(11) As other courts have recognized, the critical distinction posed by the facts in Zimmerman was not the absence of an extension of credit by the cable companies, but the absence of any consensual "transaction" between the parties whatsoever. See Shorts v. Palmer, 155 F.R.D. 172, 175-76 (S.D. Ohio 1994) (collection of shoplifting debt not covered because "[p]laintiff has never had a contractual arrangement of any kind with any of the defendants. The defendants did not extend him credit or engage in any other transaction with him") (emphasis added)).(12) Zimmerman's statement that the FDCPA is limited to credit transactions is, in any event, pure dictum as applied to the present case -- and unpersuasive dictum as well, for the reasons stated above.

In sum, no court of appeals has yet considered whether dishonored check collection is covered by the FDCPA. However, those district courts presented with FDCPA suits involving dishonored checks have, in predominant measure, either held or proceeded on the clear assumption that dishonored check collection is covered by the FDCPA.

D. Consistent Administrative Practice Has Treated Collection of Dishonored Checks as Covered by the FDCPA.

In performing its statutory responsibilities under the FDCPA, the Federal Trade Commission and its staff have taken the position from the Act's inception that it covers collection of dishonored checks.(13) The Commission has pursued suits and obtained judgments for civil penalties against firms that allegedly violated the FDCPA in collecting on dishonored checks. E.g., United States v. Collectron, Civ. No. JH-80-711 (D. Md. Mar. 27, 1980); United States v. Telecheck, Inc., Civ. No. JH-80-710 (D. Md. Mar. 27, 1980). The Official FTC Staff Commentary on the FDCPA, 53 Fed. Reg. 50097 (Dec. 13, 1988), also takes the position that collection of dishonored checks is covered by the Act.(14) More recently, the Commission itself has affirmed this interpretation in a letter ruling denying a petition to quash compulsory process filed by the targets of a Commission investigation to determine whether violations of the FDCPA had occurred. See Federal Trade Commission Letter Ruling Denying Petition to Quash Civil Investigative Demands, Lundgren & Associates, FTC File No. 952-3127, 6 Consumer Credit Guide (CCH) ¶ 95,295 at 83,711-12 (Apr. 30, 1996).

E. The Public Policy Reflected in the FDCPA Dictates Treatment of Dishonored Check Collection in the Same Fashion as Collection of Other Consumer Debts.

The public policy relevant to construing the FDCPA is that stated expressly by Congress in the statutory preamble, e.g., that "[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors," 15 U.S.C. § 1692(a); that such practices "contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy," id.; that "[m]eans other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts," 15 U.S.C. § 1692(c); and that "those debt collectors who refrain from using abusive debt collection practices [should not be] competitively disadvantaged," 15 U.S.C. § 1692(e).

Each of these stated statutory purposes applies no less forcefully to third-party check collection than to third-party collection of other types of consumer debt. The abusive practices that the FDCPA prohibits may be applied as readily to collection of dishonored checks as to other types of debt collection, and the consequences for the debtor from the exercise of disproportionate remedies may be just as great. Likewise, there are lawful means to collect dishonored checks, and there is no evident reason why those who refrain from the abusive tactics addressed by the FDCPA in collecting dishonored checks should be competitively disadvantaged.

Case law since passage of the FDCPA confirms that debts arising from dishonored checks, and the collection activities resulting therefrom, implicate the same range of concerns as debts that arise from default on installment obligations. For example, collection actions against some consumers may stem from different consumers' use or misuse of a joint account, the situation posed in Bass v. Stolper, supra. Sometimes insufficient fund checks are

written because the consumer misinterprets the bank's policy regarding crediting deposits or honoring overdrafts. See Pearce v. Rapid Check Collections, Inc, 738 F. Supp. 334, 336 (D.S.D. 1990). In other cases involving dishonored checks, consumers may have valid defenses that the FDCPA is designed to let them assert. See McGilvray v. Hallmark Financial Group, Inc., 891 F. Supp. 265 (E.D. Va. 1995) (FDCPA plaintiff dunned for presentation of an insufficient check alleged that she had paid her account in cash). Some targets of dishonored check collection are themselves the victims of check fraud, such as the Vermont consumer whose story was told in congressional hearings (n. 5, supra) and the plaintiff in Byes v. Credit Bureau Enterprises, (n. 10, supra). In still other cases, checks are dishonored because consumers deliberately stop payment on them in the face of seller nonperformance. See Johnson v. Statewide Collections, Inc., 778 P. 2d 93 (Wyo. 1989) (plaintiff paid for rifle with a check; returned the rifle the following morning as defective and demanded return of the check; stopped payment on the check when the store refused to return it; and was subsequently harassed for the check balance and substantial additional charges). And some consumers are unlucky, careless, or irresponsible in the management of their personal finances and find themselves, like the plaintiff here, subjected to claims out of all proportion to the underlying debt.

The Commission holds no brief for individuals who deliberately pass worthless checks. But the remedy for such abuses, when they occur, lies in public enforcement of applicable criminal laws and private enforcement of parallel civil remedies, not in a special license for debt collectors to harass alike the guilty, the careless, the unfortunate, and those who do not owe a debt at all. Congress has chosen to establish in the FDCPA uniform national standards of conduct for third-party debt collectors, and the policy and purpose of the Act warrant treating the collection of dishonored checks no differently from the collection of other consumer obligations.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed and the case remanded for resolution of all remaining issues.

Respectfully submitted,

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Brief Format Certification Pursuant to Circuit Rule 32(e)(4)

Pursuant to Ninth Circuit Rule 32(e)(4), I certify that the answering brief of respondent Federal Trade Commission is proportionately spaced, has a typeface of 14 points, and contains 4454 words.

Ernest J. Isenstadt

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 1996, I served the "Brief for Amicus Curiae Federal Trade Commission" by causing two copies to be sent by first-class mail, postage prepaid, to counsel below:

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1. Defendant Lundgren himself appears to have recognized this fact at one stage of the proceedings. His first letter to the plaintiff recited, inter alia, that "[t]his is an attempt to settle an obligation which may be considered a debt under 15 U.S.C. 1692" (Complt., Exh. C).

2. After passage by the full House of Representatives, H.R. 5294 was referred to the Senate Banking Committee, which substituted the text of its bill for H.R. 5294. This substitute bill subsequently was passed by both houses. See S. Rep. No. 382, 95th Cong. 1st Sess. 1, reprinted in 1977 U.S.C.C.A.N. 1695, 1695-96. However, the definition of "debt" in both House and Senate versions was materially the same. The House bill defined "debt" to mean "any obligation of an individual to pay money arising out of a transaction in which the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes." H.R. Rep. No. 131 at 17. As comparison with the final version reveals, the Senate retained the basic structure of the definition, but modified the text to make clear that it included "alleged" obligations and collection on judicial judgments. In contrast, some versions of the FDCPA that were introduced earlier defined "debt" to mean an obligation arising out of a transaction "in which credit is offered or extended to an individual," see, e.g., H.R. 13720, 94th Cong., 2d Sess. (1976); H.R. 29, 95th Cong., 1st Sess. (1977), but, as noted, all reference to "credit" was omitted from the final House and Senate bills.

3. See Hearings Before the Subcomm. on Consumer Affairs of the House Comm. on Banking, Finance and Urban Affairs, on H.R. 29, 95th Cong., 1st Sess. at 257-61 (1977) (statement of John W. Johnson, Executive Vice-President, American Collectors Association, Inc.).

4. Id. at 184-215.

5. Hearings Before the Subcomm. on Consumer Affairs of the Senate Comm. on Banking, Housing and Urban Affairs on S. 656, S. 918, S. 1130, and H.R. 5294, 95th Cong., 1st Sess. 567-88 (1977) (statement of Jay I. Ashman, Assistant Attorney General, State of Vermont). In his testimony, Mr. Ashman described, inter alia, an episode in which an elderly Vermont consumer had paid for groceries in an Albany, New York supermarket with a $75 check. Before the merchant presented the check for payment, however, several of the consumer's checks were stolen and forged, leaving no balance in the account and no funds with which the consumer could immediately pay the debt. A check collection firm subsequently threatened the debtor with immediate arrest by a sheriff if he did not pay (an entirely unfounded charge, as there was no basis for criminal liability, and, in any event, the power of arrest lay with Vermont public officials, not a New York collection agency). Mr. Ashman testified that the subject check recovery firm had used similar threats in other cases.

6. Hearings Before the Subcomm. on Consumer Affairs of the Senate Comm. on Banking, Housing and Urban Affairs on S. 656, S. 918, S. 1130, and H.R. 5294, 95th Cong., 1st Sess. 146, 163 (1977) (statement of John W. Johnson and William F. Hearne, Jr., Executive Vice-President and Treasurer, respectively, American Collectors Association, Inc.).

7. Id. at 167-76.

8. This legislative history is not contradicted by language from the Senate Report that describes injury inflicted by efforts to collect "past due accounts" and the intention of consumers who "obtain credit" to repay their debts. S. Rep. No. 382, 95th Cong., 1st Sess. 2, reprinted in 1977 U.S.C.C.A.N. 1695, 1696-97. As we have mentioned, there is no doubt that the problems of defaulting installment debtors were the principal focus of the congressional hearings, but nothing in the Senate Report's incidental references to credit transactions suggests a purpose to define the exclusive concern of the Act or to limit its express, expansive coverage.

9. The unpublished district court decision in Bass v. Stolper, No. 95C 0470 (W.D. Wis.), appeal pending, No. 96-2113 (7th Cir.), also holds that check collection is covered by the FDCPA.

10. See, e.g., Shifflett v. Accelerated Recovery Systems, 1996 U.S. Dist. Lexis 8515 (W.D. Va. May 23, 1996) (awarding damages in FDCPA suit involving collection of dishonored checks); Stewart v. Slaughter, 165 F.R.D. 696 (M.D. Ga. 1996) (recipient of threat to sue for dishonored check satisfies typicality requirements for FDCPA class action); Byes v. Credit Bureau Enterprises, Inc., 1996 U.S. Dist. Lexis 2870 (E.D. La. Mar. 5, 1996); Edwards v. National Business Factors, Inc., 897 F. Supp. 455 (D. Nev. 1995); Bakumirovich v. Credit Bureau of Baton Rouge, Inc., 155 F.R.D. 146 (M.D. La. 1994); Hutchinson v. Russian, 1992 U.S. Dist. Lexis 18891 (D. Kan. Oct. 29, 1992); Pearce v. Rapid Check Collection, Inc., 738 F. Supp. 334 (D.S.D. 1990); Holmes v. Telecredit Service Corp., 736 F. Supp. 1289 (D. Del. 1990) (third-party check collection service is "debt collector" within meaning of FDCPA); Taylor v. Checkrite, Ltd., 627 F. Supp. 415 (S.D. Ohio 1986); West v. Costen, 558 F. Supp. 564, 571 (W.D. Va. 1983).

11. The court in Zimmerman did rely on the fact that Congress enacted the FDCPA as an amendment to the Consumer Credit Protection Act, 15 U.S.C. §§ et seq. ("CCPA"), but that fact alone provides no reason to read into the FDCPA's broad definition of "debt" a limitation that is nowhere expressed and that was specifically rejected by the House Committee that fashioned the definition. Indeed, other portions of the CCPA also regulate non-credit transactions. See 15 U.S.C. §§ 1693-1693r ("Electronic Fund Transfer Act," enacted as Title IX of the CCPA).

12. In denying FDCPA coverage for non-consumer debts, this Court, too, has focused on the absence of a "transaction" or a "consumer" relationship between the obligor and obligee. Bloom v. I.C. Systems, Inc., 972 F.2d 1067, 1068 (9th Cir. 1992) (FDCPA "applies to consumer debts and not business loans"); see also Mabe v. G.C. Servs. Ltd. Partnership, 32 F.3d 86, 88 (4th Cir. 1994) (child support obligations not FDCPA "debts" because not incurred to receive consumer goods or services).

13. Although Congress expressly provided that neither the Commission nor any other agency could promulgate rules "with respect to the collection of debts by debt collectors as defined in this subchapter," 15 U.S.C. § 1692l(d),

Congress did assign the Commission numerous responsibilities that require the Commission to interpret the FDCPA, including the responsibility to enforce the Act in both judicial and administrative proceedings, 15 U.S.C. §§ 1692l(a), (c), and the authority to issue advisory opinions (good faith action in reliance on which immunizes a debt collector from civil liability), 15 U.S.C. § 1692k(e).

14. The Commentary states (53 Fed. Reg. at 50102):

Section 803(5) defines "debt" as a consumer's "obligation . . . to pay money arising out of a transaction in which the money, property, insurance, or services (being purchased) are primarily for personal, family, or household purposes. . . . "

1. Examples. The term includes:

- Overdue obligations such as medical bills that were originally payable in full within a certain time period (e.g., 30 days).
- A dishonored check that was tendered in payment for goods or services acquired or used primarily for personal, family, or household purposes.
- A student loan, because the consumer is purchasing "services" (education) for personal use.

2. Exclusions. The term does not include:

- Unpaid taxes, fines, alimony, or tort claims, because they are not debts incurred from a "transaction (involving purchase of) property * * * or services * * * for personal, family or household purposes."
- A credit card that a cardholder retains after the card issuer has demanded its return. The cardholder's account balance is the debt.
- A non-pecuniary obligation of the consumer such as the responsibility to maintain adequate insurance on the collateral, because it does not involve an "obligation* * * to pay money."

The Staff Commentary is not binding on the Commission and has not been followed in every instance by the courts, see Heintz v. Jenkins, 115 S. Ct. 1489 (1995), but it does provide guidance on which many practitioners rely to determine their obligations under the Act.