

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
NORTH AMERICAN CAPITAL CORPORATION,)	
a New York corporation,)	
)	
Defendant.)	
)	

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 the 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 Western 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 North American Capital Corporation (“NACC”) is a New York corporation with its offices and places of business located within the Western District of New York at One Technology Center, 45 Oak Street, Buffalo, NY 14203-2697. At all times relevant to this Complaint, Defendant has transacted business in the Western District of New York.

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. § 16921, 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 third parties, including parents, children, co-workers, 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).

9. 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, using 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.

10. 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 Defendant has not intended to take such action, in violation of Section 807(4) of the FDCP Act, 15 U.S.C. § 1692e(4);

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); and

c) Defendant has used false representations or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer, in violation of Section 807(10) of the FDCP Act, 15 U.S.C. § 1692e(10).

CIVIL PENALTY AND INJUNCTION

11. 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).

12. 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. § 1692j, 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.

13. 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.

14. 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 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 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:

This company must comply with a federal law that provides consumers with certain rights. One of these is the right to have us stop communicating with you about this debt. If you write to us and ask us to stop communicating with you about this debt, we will. But if you owe this debt, you will still owe it and the debt may still be collected from you. If you have any concerns with the way we are collecting this debt, you may write to our CONTACT CENTER, [current address] or call us toll-free at 1-800- [current phone number] between 9:00 A.M. Eastern Time and 5:00 P.M. Eastern Time Monday - Friday;

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
Regional Director

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

ROBIN E. EICHEN
Attorney
Federal Trade Commission
Northeast Region
One Bowling Green, Suite 318
New York, NY 10004

DENISE E. O'DONNELL
United States Attorney
Western District of New York

Assistant United States Attorney
138 Delaware Avenue
Buffalo, NY 14602

RICHARD N. GOLDBERG
Attorney
Office of Consumer Litigation
Civil Division
U.S. Department of Justice
Washington, D. C. 20530
(202) 307-2532