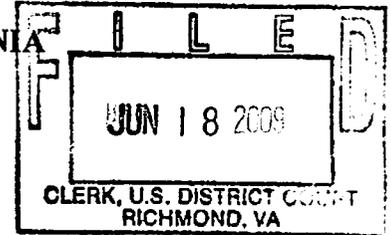


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



JAMES R. HARVEY,

Plaintiff,

v.

Civil Action No. 3:09CV384

JORMANDY, LLC,
SUSAN P. BECKER,
FELANA M. JONES,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

INTRODUCTION

1. This is an action by a consumer alleging damages for Defendant's violations of the Fair Debt Collections Practices Act ("FDCPA"), 15 U.S.C. §§1692 *et seq.*, which prohibits debt collectors from engaging in abusive, deceptive, and unfair collection practices. Despite longstanding dictates from the Fourth Circuit, subsequently fleshed out by this Court and by Judge Kiser in the Western District, Defendants have attempted to collect a consumer debt from the Plaintiff through the use of false or misleading representations in a dunning letter that impermissibly contradicts the mandatory statement of the consumer's right to be given the 15 U.S.C. § 1692g thirty day validation notice in a manner that is not confusing under the objective least sophisticated consumer standard adopted by the Fourth Circuit in *U.S. v. National Financial Services, Inc.*, 98 F.3d 131 (4th Cir. 1996).

When it enacted the FDCPA, Congress found there to be abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Two of Congress' stated purposes in enacting the FDCPA were to eliminate abusive and deceptive debt

collection practices by debt collectors, and to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged. *National Financial Services, Inc.*, 98 F.3d at 135.

JURISDICTION

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, and the FDCPA, 15 U.S.C. §1692k(d).

PARTIES

3. Plaintiff James R. Harvey (“Mr. Harvey”) is a natural person who resides in the Commonwealth of Virginia. Mr. Harvey is a consumer within the meaning of the FDCPA, as defined at 15 U.S.C. § 1692a(3).

4. Defendant Jormandy, LLC (“Jormandy”) is a Virginia corporation, the principal purpose of whose business is the purchase and collection of consumer debts, operating out of 6363 Center Drive, Building 6, Suite 203, Norfolk, Virginia 23502, and has as its registered agent Nicole S. Lang. As stated on its website, “(E)stablished in November, 1998, Jormandy LLC purchases and collects charged-off debt across the Commonwealth of Virginia.

<http://www.jormandy.com/aboutus.html>.

5. As stated on Jormandy’s website, Defendant “Susan P. Becker” (hereinafter “Sue Becker”) became Jormandy’s CEO in 2004. With over 26 years experience in the collection and asset management industry, Ms. Becker brings not only expertise but a large network of the top leaders in the asset management business. Ms. Becker is frequently the recipient of calls from professionals operating within the debt buying/collecting/selling industry who seek her advice and expertise.” <http://www.jormandy.com/aboutus.html>.

6. Defendant Felana M. Jones (“Ms. Jones”) is employed by Jormandy as a Collection Specialist.

7. Defendants regularly collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another, and are “debt collectors” within the meaning of the FDCPA, as defined at 15 U.S.C. § 1692a(6).

STATEMENT OF FACTS

8. Defendants sent Plaintiff a May 11, 2009 dunning letter (the dunning letter), a copy of which is attached marked Exhibit A, that stated in part the following:

Unless you, within 30 days of receipt of this notice, dispute the validity of this debt, or any portion thereof, the debt will be assumed to be valid by the debt collector. If you notify the debt collector within the 30 day period that you dispute this debt or any portion thereof, we will provide verification of this debt and mail you a copy. Upon your written request during the 30 day period, the debt collector will provide you with the name and address of the original creditor, if different from the current creditor.

9. The purported debt, the validity of which Mr. Harvey disputes, was a personal credit card account, and was incurred primarily for personal, family, or household purposes, bringing Defendants’ collection efforts within the purview of the FDCPA. 15 U.S.C. § 1692a(5).

10. A contradiction exists between the demand language and the language of the validation notice required by 15 U.S.C. § 1692g.

11. The contradiction could confuse or mislead the least sophisticated consumer into disregarding or losing his rights under the validation notice. As Judge Spencer has stated, a notice is overshadowing and contradictory if it would make the least sophisticated consumer uncertain as to her rights. *Creighton v. Emporia Credit Service, Inc.*, 981 F. Supp. 411, 416 (E.D. Va. 1997). (As a consequence finding that the validation notice at issue violated § 1692g as a matter of law and granting summary judgment for the consumer on that issue.).

12. The actual disclosure requirements of 15 U.S.C. § 1692g mandate the following disclosures:

§ 1692g. Validation of debts

Notice of debt; contents

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing--

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector *in writing* within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(Emphasis added)

13. Defendants' dunning letter fails to inform the least sophisticated consumer, or any consumer, that the dispute must be in writing in order to trigger the requirement that the debt collector provide the consumer with verification of the debt.

14. Judge Merhige put it this way:

the collection letter instructed (the consumer) to either "contact" the debt collection agency or make payment in full. There is no indication anywhere in the letter whether such "contact" must be in writing or by telephone. Pursuant to § 1692g, however, if a consumer contests a debt by telephone rather than in writing,

the consumer will inadvertently lose the protections for debtors set forth in the FDCPA; the debt collection agency would be under no obligation to verify the debt and cease all collection efforts as required by § 1692g(b).

Withers v. Eveland, 988 F. Supp. 942, 947 (E.D. Va. 1997).

15. Mr. Harvey disputes the purported debt.
16. When he received Jormandy's dunning letter, he had no idea what the debt was that Jormandy was attempting to collect from him.
17. He telephoned Jormandy and spoke with a collector.
18. The collector said that the debt was for a credit card account that Mr. Harvey had with his wife.
19. Mr. Harvey's wife died in 2000.
20. Mr. Harvey told the collector that he knew nothing about the account and that he had never paid on the purported account.
21. The collector told Mr. Harvey that payments had been made on the account between 1998 and 2006, and that Jormandy had purchased the account in April, 2009.
22. Mr. Harvey asked the collector for documents that would verify the debt that Jormandy claimed he owed.
23. The collector told Mr. Harvey that Jormandy did not have this information and that it would take a while to get it.
24. When Mr. Harvey asked how long it would take, the collector said that she did not know.
25. Debt buyers do not typically receive any documents pertaining to the individual accounts bundled into the bulk sales of defaulted debt that they purchase.

26. In the debt buyer industry, such account transaction documents are referred to as “media.”

27. The media that would document an account between an original creditor and a consumer may be available for subsequent purchase by the debt buyer or it may not be available at all.

28. One industry commentator has noted that “it's not uncommon to hear a response to your media request that the item(s) that you have requested are unavailable.” *The Importance and Availability of Media in a Portfolio*, Rick Shell, March, 2006.

<http://www.locateservicesllc.com/AboutUs/RicksNewsandViews/TheImportanceandAvailabilityofMediainaPort/tabid/83/Default.aspx> . Copy attached as Exhibit B.

29. As Mr. Shell notes, despite the fact that a debt buyer “may ultimately need to obtain media in order to validate the debt at the request of a judge,” “(m)edia almost never comes with credit card portfolios,” and “(M)ore often than not, you are forced to pay a fee for each piece of media that you request when it comes to dealing with credit cards. Some places charge as much as \$15.00-20.00 per item.”

30. Compounding the debt buyer's proof problem, “(W)hen dealing with credit card portfolios, you will rarely obtain anything beyond a copy of an application, and the last few statements on file. In many cases, the application is not available, so you're forced to take an affidavit in its place. This is usually okay when you're attempting to validate the debt for a default judgment, but does little for you when a debtor, judge, or magistrate specifically requests a copy of the application.”

31. Speaking to the pennies on the dollar purchase price of defaulted consumer debt portfolios, Mr. Shell offers the following words of consolation: “As a debt buyer, don't be

discouraged when you have trouble with this aspect of debt buying, especially when you're dealing with debt that you're buying at less than two cents on the dollar. Just take it in stride, and know that the price is that low because the portfolio has "issues." It's not uncommon for older portfolios to have a number of issues, so you'll simply need to look for other advantages in the portfolio that will balance out the fact that there may be little or no media available."

32. Defendants knew that they did not have in hand documentation to verify the debt in the event that Mr. Harvey notified them timely and in writing that the purported debt was disputed.

33. Defendants accordingly modified the Congressionally mandated disclosure of Mr. Harvey's thirty day validation rights, by removing therefrom the § 1692g(a)(4) requirement that the consumer notify the debt collector *in writing* within the thirty day validation period that the consumer disputes the debt in order to impose upon the debt collector the obligation to obtain verification of the debt or a copy of a judgment against the consumer and to mail to the consumer a copy of such verification or judgment.

34. Jormandy used this deception contained in its incomplete and misleading § 1692g thirty day validation notice as a means to deprive Mr. Harvey of his § 1692g(4) right to obtain verification of the purported debt.

35. By virtue of this deception, Mr. Harvey has lost his right to obtain written verification of the debt.

36. By virtue of this deception, Mr. Harvey has lost the protection provided to him by § 1692(b), which requires a debt collector to cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt and mails such verification to the consumer.

37. This is the precise deception condemned by Judge Merhige twelve years ago in *Withers v. Eveland*.

38. Defendant Sue Becker, upon information and belief, at all times relevant hereto, personally designed and implemented Jormandy's collection policies, and she directed, operated, dominated, and controlled the policies, finances, business practices and procedures of Jormandy.

39. Moreover, Defendant Sue Becker, upon information and belief, at all times relevant hereto, personally directed, operated, dominated, and controlled Jormandy's finances in such an undercapitalized fashion as to justify disregarding Jormandy's corporate identity, as Judge Turk did in an FDCPA case in *West v. Costen*, 558 F.Supp. 564, (W.D.Va. 1983).

40. As Judge Turk put it, "a victim of a statutory illegality ... may be more entitled to pierce an undercapitalized corporation, because, unlike a contractual creditor, the former's dealings with the corporation are involuntary and uninformed." *Id.* at 586.

41. As a result of the acts and omissions of the Defendants, Mr. Harvey has suffered actual damages and injury, including but not limited to, emotional distress, mental anguish and suffering, loss of peace of mind, and a loss of statutorily protected rights.

42. The foregoing acts and omissions of the Defendant constitute violation of the FDCPA, including, but not limited to, violations of §§ 1692e and g.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court grant the following relief:

1. Declaratory relief that the Defendants violated the Fair Debt Collection Practices Act;
2. Award Plaintiff statutory damages against the Defendants for their violations of the Fair Debt Collection Practices Act;

3. Award Plaintiff reasonable attorneys' fees against the Defendants for their violations of the Fair Debt Collection Practices Act;

4. Award Plaintiff costs against the Defendants for their violations of the Fair Debt Collection Practices Act;

5. Such other relief as may be just and proper.

TRIAL BY JURY IS DEMANDED

Respectfully submitted,
James R. Harvey
By Counsel

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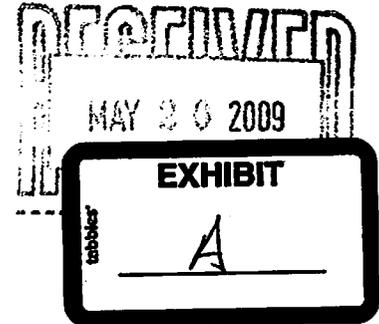


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P.O. Box 13101
Norfolk, Virginia 23506

757.747.6200 office 877.747.6002 toll free 757.747.6007 fax inquiries@jormandy.com www.jormandy.com

May 11, 2009

James R Harvey



Subject: Past due balance on Jormandy, L.L.C. assignee of Maryland National Bank, N.A.
Account Number at Charge Off:
Amount Owed Including Interest:
Our File Number:

Dear James R Harvey:

I am writing in effort to collect the debt referenced above. Your past-due account with Maryland National Bank, N.A. was sold to our company, Jormandy, L.L.C., and the money is now owed to us.

Please contact our office to arrange payment. We will only communicate with you, your spouse or your attorney unless you give us written permission to discuss this matter with another person.

Unless you, within 30 days of receipt of this notice, dispute the validity of this debt, or any portion thereof, the debt will be assumed to be valid by the debt collector. If you notify the debt collector within the 30 day period that you dispute this debt or any portion thereof, we will provide verification of this debt and mail you a copy. Upon your written request with the 30 day period, the debt collector will provide you with the name and address of the original creditor, if different from the current creditor.

We look forward to working with you to resolve this matter. Feel free to use our toll-free number at 877-747-6002 to contact us Monday through Friday between 9:00 a.m. and 5:30 p.m. If these hours are not convenient, we have a 24-hour message center or visit our website at www.Jormandy.com.

Federal law requires us to advise you that this communication is an attempt by a debt collector to collect a debt and any information obtained will be used for that purpose.

Very Truly Yours,

Felana M. Jones
Collection Specialist
Jormandy, L.L.C.

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The Importance and Availability of Media in a Portfolio

Many new debt buyers are shocked when they discover the limited availability of media in the debt buying industry, especially when dealing with the credit card portfolios. That comes as no surprise when you consider the fact that documents are needed to validate debt.

Media (aka: Documents, or Docs) would include any of the following: a copy of the debtor's credit application, a copy of the disclosure statement and promissory note, copies of monthly statements, copies of vouchers, copies of any signed check that the debtor may have submitted as payment on the account, and, essentially, any signed documents that acknowledges an intent to pay the debt by your debtor.

It's hard to imagine that any credit lending institution would fail to keep such items anything but well secured, but even with the potential of losing a claim against the debtor, it's not uncommon to hear a response to your media request that the item(s) that you have requested are unavailable.

Why might you, as a debt buyer, need media? Undoubtedly, if you plan to be in the collection industry for any length of time at all, you will eventually need to deal with the issue of validating a debt at the request of a debtor. In addition to this validation request, and assuming that your organization follows a more legalistic approach in your collection model, you will, in due course, begin qualifying accounts for suit, and may ultimately need to obtain media in order to validate the debt at the request of a judge or magistrate.

Personal and secured portfolios tend to offer a far greater likelihood of acquiring media than do credit card portfolios. It's not uncommon for the media (or a high percentage of the media) to be a part of the portfolio sale when you deal with personal loans. Media almost never comes with credit card portfolios. More often than not, you are forced to pay a fee for each piece of media that you request when it comes to dealing with credit cards. Some places charge as much as \$15.00-20.00 per item.

When dealing with credit card portfolios, you will rarely obtain anything beyond a copy of an application, and the last few statements on file. In many cases, the application is not available, so you're forced to take an affidavit in its place. This is usually okay when you're attempting to validate the debt for a default judgment, but does little for you when a debtor, judge, or magistrate specifically requests a copy of the application.

Signed vouchers are never available. Not ever. So don't expect them. In most cases, vouchers are only kept on file by the original lender for 3 months, and most likely not even available when the account charges off. Don't despair, though. When your debtor request a "complete breakdown of charges," you can always quote *Chaudhry v. Gallerizzo*, United States Court of Appeals for the Fourth Circuit, 174 F.3d 394, 406 which provides that:

"... verification of a debt involves nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed; the debt collector is not required to keep detailed files of the alleged debt. Consistent with the legislative history, verification is only intended to eliminate the...problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid...There is no concomitant obligation to forward copies of bills or other detailed evidence of debt."

As a debt buyer, don't be discouraged when you have trouble with this aspect of debt buying, especially when you're dealing with debt that you're buying at less than two cents on the dollar. Just take it in stride, and know that the price is that low because the portfolio has "issues." It's not uncommon for older portfolios to have a number of issues, so you'll simply need to look for other advantages in the portfolio that will balance out the fact that there may be little or no media available.

Debt buying entities that exercise more of a legalistic approach to their collection efforts may want to concentrate on buying portfolios that have a history of providing higher percentages of media. Some

states require more complete records than others, and you may want to avoid buying accounts from lenders who have a low percentage of providing media. For example, a debt buyer that often pursues accounts in a particular state that is known to require applications may want to avoid buying BankFirst accounts. BankFirst applications are rarely available.

One final thought, do you check each purchase contract that you sign to see if it addresses the availability of media? Just checking...

Rick Shell, March 2006
Originally drafted for CollectionIndustry.com

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