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November 30, 2010

***Re: Statement of Policy Regarding Communications in Connection with Collection  
Of a Decedent's Debt***

Dear Federal Trade Commission:

The FTC has asked for public comment on its Statement of Policy Regarding Communications in Connection with Collection of a Decedent's Debts. Please accept this letter as the undersigned's comment in response.

The FTC has thoroughly and accurately set forth the issues which exist in the Administration of an Estate and the vast numbers of probate laws and procedures throughout the United States. The FTC has also accurately stated that all third party processing of Probate claims on behalf of creditors must at all times be consistent with the FDCPA.

I would like to provide comment in two specific areas to the FTC's Statement of Policy and would very much appreciate the FTC taking these comments into account in adoption of its final decision.

1. Information to be provided in correspondence.

I believe that the FTC is being both unfair and more importantly inconsistent in its intention to limit what may be included in written correspondence addressed "To the Estate of....", or "The Executor or Administrator of...." (Footnote 36). Letters of this nature should only be received by and opened by the person to whom they are addressed. If somebody is receiving mail to that address and it is addressed in that manner then the only way that there is information revealed to a third party who is not the person who is the correct Estate representative would be the recipient of the envelope opens it even though not addressed to them (a violation of postal law?).

The FTC states that having someone acknowledge that they open the decedent's mail is not evidence of authority. In this instance the mail is not the decedent's mail, but is its Estate's mail. If an unauthorized person is opening mail that is addressed not to the decedent, but "To the Estate of...." or "To the Executor or Administrator of..." they are doing so without authority.

If the mail is addressed to be opened specifically by an authorized person, then that correspondence should be entitled to list the name of the Creditor, and specific information about the debt including the amount.

How does the FTC address a situation where there is a living debtor and a letter is properly addressed to that person with all of the information about the debt, but then the envelope is opened by someone other than the debtor? Clearly this is not a violation of the FDCPA since the opening of that envelope by someone to whom it is not addressed is outside the control of the debt collector and not intended. This situation is no different.

A letter addressed to the Estate of or the Executor or Administrator of serves multiple purposes, none of which are violations of any law including the FDCPA. One purpose is initiate dialogue with the proper legally authorized representative of the Estate. A second purpose is to get information concerning the debts of the Estate into that person's hands as quickly and efficiently as possible to hopefully expedite payment from the Estate. It is probably not unusual for the recipient to merely refer that letter to their attorney. The more information in that letter the less expensive to the Estate and the quicker the attorney can deal with that claim.

I would agree with the FTC's interpretation if a letter were addressed "To the Family of...", or even directly to the decedent (assuming the debt collector knew the person was deceased). Just because they are a family member does not vest them with authority to address the debts and disclosure to them would not be appropriate. Similarly many people may attempt to review a decedent's mail that is addressed just to them as the FTC correctly points out.

If properly addressed then correspondence should be able to have complete information about the debt (and of course be consistent with all other provisions of the FDCPA including having all required disclosures).

2. Footnote 37.

The FTC asked for specific public comment in Footnote 37 on what whether certain limited reference to debt to a third party in trying to identify the proper person would result in harm to the decedent's privacy or reputation. I would submit that as long as the information is as limited as is noted in Footnote 37 then it will not.

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The FTC probably understates the extent to which "current" debts are the ones to be addressed. Statistically speaking those who pass away while current on their obligations most likely closely mirror the same percentage of current to delinquent debt amongst the living population. Unless somebody has paid their last debt the moment before death then everyone has some current debt when they die. This includes their car payment, their mortgage payment and even for those who pay off their credit card each month, charges made since their last closing date. In other words, everyone. To imply that someone has some debt is almost never going to intrude on the decedent's privacy (especially given that no information is being given out to the wrong third party) nor impact their reputation (having debt in one's life is not a tarnish on one's reputation given that everyone has some level of debt at any given time).

In conclusion, I agree with what the FTC hopes to accomplish. Debt collectors should not reveal information to unauthorized individuals. Nor should debt collectors mislead third parties into believing that they have responsibility to pay a debt that is not theirs. I do believe that in the 2 instances above the FTC is becoming too restrictive and is acting inconsistently and it is my hope that the FTC slightly adjusts its position to address my concerns.

Very truly yours

Scott S. Weltman