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A Debtor's Rights Primer

How to stop abusive debt collectors

with representative cases and collector references

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False Statements and Fraudulent Debt Collection Practices

A federal statute known as the Fair Debt Collection Practices Act (often called the "FDCPA"), 15 USC 1692, gives you specific legal rights to sue debt collectors who unlawfully threaten, berate, intimidate or harass you; call you during odd hours, make false representations about the debt or their intentions, or otherwise act in ways proscribed by the act (and their are many). False statements may include (and this list is just a small example) threats to:

- Attach your wages when unlawful or not intended-this includes threats to take more wages that is permitted by the federal limitation (wage attachment for a credit card debt, a non-student loan or for an obligation that is not support is generally illegal in Pennsylvania, however, now that law has been expanded to rent and lease damages in some cases-you should check the statute to be sure);
- Contact your employer about the debt;
- Call you "everyday until the debt is paid;"
- Sell the debt to another company for the purposes of continuing collection on a time-barred debt;
- Contact neighbors about the debt;
- Contact the Department of Homeland Security about your alien status;
- Threaten imprisonment or criminal punishment;
- Report a financed vehicle as "stolen" because you missed one or more vehicle payments;
- File or threaten to file criminal bad check charges on a post dated check that the collector solicited from you;
- Immediately evict (by an agent for a landlord); lockout, or seize personal property where such relief is limited by state law;
- Sue, where no suit is intended, e.g. a collector requested "settlement prior to possible legal action" where the collection agency had no authority to sue, or to retain counsel. This action was held to be deceptive and violative of the FDCPA by a federal court in Connecticut.
- Or, a threat implying that the collection agency has multiple employees or investigators working to collect the debt, where only one or two people work for the agency.
- Collect or sue for "collection costs," "attorney's fees," (see also below) interest not pre-agreed to in excess of that allowed by statute, "fines," or any other fee in excess of the actual amount due, unless the original agreement provides for the amount the collector threatens to collect. For instance, the collector cannot threaten to add attorney's fees or his fees where the agreement you signed does not specifically provide for them. Let's say you went to the dentist and just signed consent form and a medical history. You agreed to pay for all charges if your insurance did not. Nothing is mentioned about anything else. The collector cannot add any other fees or even and especially, his costs, ***late fees*** or other charges.
- Add "collection costs, attorney's fees" and similar additional charges have also been held to be deceptive and misleading, because they do not state exactly what debt is being sought.
- Sue or bring any kind of legal action where the threat is not followed through (i.e. a scare tactic), or any number or other threats designed to demoralize, humiliate, degrade; embarrass or intimidate a debtor into payment.
- Or any threat where the collector says he is legal counsel or an attorney/lawyer when he is not;
- Or a threat or attempt to mislead a debtor that a claim will be transferred to an attorney or separate department of a collector (e.g. "This will be transferred to our legal department for further action"). Letters misrepresenting that the account has been transferred to an attorney may include an attorney's letterhead with threats of legal action. Have you ever received a letter from a lawyer who purportedly collects for a major creditor? Has the lawyer been out-of-state? Has the lawyer threatened to sue if payment was not made?
- **Other Little-Known Tactics that are also illegal:**
  - It is unlawful under the FDCPA to **threaten suit if no such action is intended**. This even applies if the collector says if you don't do something within a certain time period, something else *may* happen. See discussion below in the case of Brown v. CSC. The attorney cannot sue you in a state that is not your home state, under the FDCPA. Therefore, the threat is an empty one. Empty threats are punishable under the FDCPA!
  - **Legal letters that are not reviewed by a lawyer**. It is unlawful for such a letter to be sent unless the

lawyer *reviews* the letter? Do you believe that when thousands of letters issue the lawyer reviews each one? Do you also believe in the tooth fairy? Where the correspondence is not reviewed by counsel, the correspondence violates the FDCPA. Look at the letters you receive from lawyers. Were they signed by hand? If not, perhaps they were not reviewed by a lawyer. You may have a case under the FDCPA.

- The collector's threat to "make this go legal" or to "turn the matter over to the legal department" may violate the FDCPA where the collector has no legal department. Do you think that the collector may be a collection operation only? If so, perhaps they have no legal department, i.e., the legal aspect is handled outside of the company. In this scenario is another violation of the FDCPA.
- It is also a violation to **send a letter stating that the collector will "recommend litigation**" or "advise the creditor to sue." Some of such correspondence has been found to violate the FDCPA because it, in essence purports to give legal advice to the creditor. The collector is not permitted to give legal advice, unless, of course, if the collector is an attorney himself.
- **The *Least Sophisticated Consumer Standard***: Did you also know that it does not matter if *you* believed the threats or that a person of your intelligence would not have believed the threats (i.e. the collector threatens to have you arrested for not paying Sears. You as an intelligent consumer believe the threat is ridiculous since the U.S. Constitution prohibits such actions). The FDCPA's standard is the "least sophisticated consumer standard." That is, would *anyone* believe the threat. Perhaps some guy name Cletus living in a shack on a mountain in Arkansas might believe the threat (he also believes he had an alien enema that morning). This would be enough to sustain the standard and your burden of proof if the court believes that the threat occurred. The courts have consistently said: **The concept of deception protects even the ignorant, unthinking and the credulous, least sophisticated consumer**. See discussion below and *Jeter v. Credit Bureau, Inc*., 760 F.2d 1168 (11th Cir. 1985)
- It is also unlawful to **sue a consumer in a remote jurisdiction** that is not where the consumer resides, or the one in which the contract was made. It is also unlawful to **charge for items not due under the contract**.
- **Interesting case**: **PA R&D Enterprises**, and their sister corporation Judgment Busters, Inc. (pretty despicable sounding name, huh?) were in the business of purchases uncollectible judgments for rent. The reason was that although there is no wage attachment in Pennsylvania, generally, rent judgments were an exception.

  In one case, **PA R&D** purchased a judgment for rent against a consumer in Delaware County, PA. PA R&D exported the judgment to Luzerne County, some 115 miles away from the consumer. PA R&D's front man, **Dwayne Gida**, then added more than $1,100 to the judgment as "costs & attorney's fees." There was a slight problem: Neither PA R&D nor its officer was an attorney. In effect, they gave themselves a pay raise, just like Congress!

  PA R&D, acting through Mr. Gida, decided the judgment should be higher than it was because, he testified, "I believe it will take me almost three years to collect the judgment and I have costs of doing business..." Mr. Gida decided that his costs could be simply added to the judgment, so he just added them.

  Now comes the really neat part! Mr. Gida could not collect the extra money he needed alone. No, he needed the help of a Luzerne County, Pennsylvania judge.

  So, he went to see one; by himself.

  Yes, without notifying the debtor, he simply walked into a judges chambers and got the judge to sign. One would think that the debtor might have liked to have his say. Mr. Gida didn't think so. He wanted it his way. Nice and private. And he got it that way. Fortunately, the debtor's employer, Tier DE Inc was smart enough to smell something was not right and contacted this office.

  Since the debtor was in a chapter 13 at the time, the first case was filed as an adversary proceeding (a civil action) before the Bankruptcy Court in Philadelphia. The complaint alleged violations of the FDCPA, Pennsylvania Fair Trade Practices Act, and common law fraud. The matter was dismissed for other non-substantive legal reasons and then re-filed in the U.S. District Court for the Eastern District of Pennsylvania. Here is a copy of the refiled complaint. The result (to date) of the case is below.

  - Update on PA R&D. PA R&D, Judgment Busters and Dwanye Gida are now the target of a class action. There is more information about the suit here. As far as we know, this office was the first to bring legal action against these people.
  - **Award**: A panel of arbitrators in the United States District Court for the Eastern District of Pennsylvania entered this award for **$1,000 in damages and $7,000 in counsel fees for a total of**

$8,000. This is in spite of the fact that the plaintiff never lost a dime in the attempted wage attachment. Note: This was appealed by the defendants.

- **Final Outcome:** The defendant's settled with the plaintiff and concluded the litigation. The plaintiff received his $1000 and this office accepted $5,000 in counsel fees.

The courts have decided thousands of cases on the subject of FDCPA violations and it is impossible to list all prohibited types misconduct and threats. Suffice it to say that if it seems wrong, it is worth speaking to a lawyer in your locale who is familiar with the subject.

There are literally dozens of ways in which a debt collector and often a collector can break the law. Each time a collector breaks the law, you may be entitled to damages in an amount commensurate with the gravity of the violation (however, most courts limit the liquidated damages to one instance in each case-see your lawyer about this). *Some collectors have gone so far as to threaten arrest, jail, or harm to loved ones*, including informing friends and work associates of the debtor's financial embarrassment. They often threaten wage attachment which is generally not permitted in the State of Pennsylvania (your state is most likely different, e.g. NJ & NY both *allow* wage attachments, *as do most states*.). Any threat to do something that is not allowed by law is grievous and actionable (you can bring suit).

Recent case of interest: *Brown v. Card Service Center* , __ F.3d __, 2006 WL 2788476 (Sept. 29, 2006). The facts of the case are simple: The debt collector wrote a letter to the debtor saying that failure to make arrangements to pay the debt within 5 days "could result in our forwarding this account to our attorney with directions to continue collection efforts" and that "[r]efusal to cooperate could result in a legal suit being filed for collection." The debtor sued, claiming that the letter contained "false and misleading" statements "designed to coerce and intimidate the consumer . . . by false threat" and that the complaint suggested a deadline for debtor action that was "false and overstated."

"But, we only said that such action was *possible*, not that we would take such action. What's wrong with that?" said CSC, the defendant. "Nothing," said the District Court, you have only said it was possible, which it is. Having lost the case, Brown appealed to the Court of Appeals for the Third Circuit.

The Court of Appeals *reversed* the District Court. The court found that "it would be deceptive under the FDCPA for CSC to assert that it could take an action that it had no intention of taking and has never or very rarely taken before." The court found that

> "...upon reading the CSC Letter, the least sophisticated debtor might get the impression that litigation or referral to a CSC lawyer would be imminent if he or she did not respond within five days. We do not believe that such a reading would be "bizarre or idiosyncratic," and we thus conclude that further proceedings are warranted to determine if such a reading is "reasonable" in light of the facts of this case. A debt collection letter is deceptive where "it can be reasonably read to have two or more different meanings, one of which is inaccurate."

The court explained that basic purpose of the FDCPA is to **protect "all consumers, the gullible as well as the shrewd," "the trusting as well as the suspicious," from abusive debt collection practices**. So therefore, whether you are an Arkansas hillbilly or a U.S. Supreme Court Justice, you have a right to not be misled, deceived, or lied to, even if you know better! In the Brown, the court remanded the case back to the District Court to figure out if CSC actually ever did refer cases like the Brown case out to an attorney or whether it would just ship it off to a collection agency. The 5 day deadline was found to be deceptive and probably, a totally false statement (but that was an issue for the lower court to determine).

The "Mini-Miranda Warning"

Each time a debt collector contacts you, he must give you what is know as a "Mini-Miranda Warning" This warning received that name because it is reminiscent of the warnings that police should give you if you are arrested, however, "Mini-Miranda Warnings" have nothing to do with criminal law. A "Mini-Miranda Warnings must contain the following words (or words imparting this meaning):

"*Hello, I am _____(name of collector). I am (or this office is) a debt collector representing_____(creditor). Information obtained during the course of this call will be used for the purpose of collecting the debt."*

If the creditor has not been advising you as above, you may have a right to sue.

Letters you receive in the mail from collectors also must contain similar warnings such as:

"This is an attempt to collect a debt. Any information obtained will be used for that purpose. Unless within 30 days of your receipt of this notice, you notify us that you dispute the validity of this debt, it will be assumed to be correct. If you notify us within thirty days that you dispute the validity of the debt, we will obtain verification of the debt or a copy of the judgment. If you request it within 30 days, we will provide you with the name and address of the original creditor (if different from the current creditor)."

If the letter does not state the above, or words similar or close to the above, you may also have a right of action. Furthermore, did you know that no bill collector or creditor has the right to contact any third person about your debt, except to get information solely to locate you? This means that if a bill collector or a creditor tells any except you that you owe them money, they too can be sued.

Debt Collector's Calls at Work

The FDCPA states:

> *Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt -*
>
> * * *
>
> *(3)* ***at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.***

Simply put, anyone can stop collectors from harassing them at work by putting the collector on notice that the employer of the consumer does not permit him or her to receive the calls. Do you think your employer allows you to be harassed at work? Is this why you are paid? Probably not! Tell the debt collector this and confirm it in a letter! Then make notes as to each time the collector violates this warning. Bring your notes to your attorney and have him use it against the collector in court.

Your Rights to Stop Harassment by the Debt Collectors

Insofar as collectors are concerned, you are not required:

1. To discuss anything with a collector unless you want to;
2. To answer a phone for a collector (this works with called ID).
3. To speak with the collector if you do answer.
4. To answer any questions at all posed by the collector (collectors will often demand that you rearrange your finances, or cut back on other expenses to pay them; there is no requirement that you justify your lifestyle to a collector).
5. To say "good-bye" before you hang up.
6. To be truthful about your personal and financial affairs (you do not have to disclose private information about assets or income).
7. Important: There is no reason you need to acknowledge that you owe the money! This is very important if the debt is old. By acknowledging the debt, you may actually extend the time the creditor can sue on it. All states have statutes of limitations on debt collecting. Few states are more than six years. Many are less. You can extend this limitation by acknowledge the debt or *even by making a partial payment*!

In fact, you do not even need a lawyer to stop collectors from calling you (although one is recommended; a lawyer will be able to point out possible lawsuits that you might be able to bring). All you need to do is to mail the creditor or collector a "cease communication" letter (Adobe pdf format). This request can be made any time, but it must be made in writing (and this is important to preserve your rights to litigate later on). It is always preferable to send the request by certified mail and keep a copy. You can click here for postal rates for certified mail. This copy will be proof of your request should you need to sue the creditor. Once the creditor (in most states) or collector receives your letter, he or she can only contact you to inform you of any action he or she intends to take, or to tell you that he is terminating efforts to collect the debt. This letter is enough for you legally stop further contact, including phone calls and dunning letters. Your letter may state that you are refusing to pay for any reason you choose, or are disputing the debt, but is fine and probably even better to just request that the collector terminate contact, and leave it at that. Writing this letter will not protect you from a lawsuit though. Likewise, writing the letter does not excuse you from the debt. Many collectors are not attorneys and *cannot sue you!* This is the reason they harass you in the first place. We think it is analogous to some kind of bizarre sexual frustration (but perhaps you can take up the issue with Dr. Freud ...what?

he what? When did that happen?...1938? How was I supposed to know? Why didn't you tell...oh forget it.)

Validation of debts and Sample Validation Request Form

The FDCPA does not particularly care much for collection of every conceivable debt claim that a collector assets. The Act provides that debts that are pursued by a debt collector be validated. Validation of the debt is every debtor's right. You don't need a reason. The fact that you request validation is quite enough to evoke to protection of the FDCPA. The Act provides that (paraphrasing, see original text here) within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall (unless already provided in the initial contact), 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; and (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt is disputed, the debt collector will obtain verification of the debt.

This means that if you write a **debt validation request,** a sample of which is here, all communications **and enforcement** must stop until the debt is validated. Yes, that means lawsuits also.

What happens if the collector refuses to validate the debt? You should only be so lucky. If after a validation request under the FDCPA, the creditor refuses to cooperate, then the creditor ***may not legally collect the debt.*** If the collector does, then the law is violated and a suit for damages may be brought. Such a suit was brought in federal court in New Jersey against MRS Associates, debt collectors for a company going by the name of Lake Cook Partners. Lake Cook engages in, what is known in the business as, "bottom feeding." Bottom feeding is a term used to mean the acquisition of "dead" or written off debts. Lake Cook purchases the debts from credit card companies (and perhaps other companies) for pennies on the dollar. Lake Cook then uses MRS Associates to make a debtor's life a living hell.

What if the debt collector ignores the request and collects the debt anyway? That happened with MRS Associates. MRS was requested to validate a debt alleged owed by a husband of a client who received a bankruptcy discharge. The husband claimed that he wife had applied for the card, not him. Not that it would matter anyway; the husband was entitled to validation under the law. If validation was not forthcoming, too bad for the collector. MRS believed that the burden was on the debtor since the card had been open for "21 years." MRS refused to obtain validation and told this office so. If you want to hear MRS's response to the debt validation request, go here  (this is an mp3 file). Note the rather condescending tone and snide comment that "if your client is not aware of this" [account after 20 years], "then there are more issues here that I certainly am able to deal with." The fact that it "is highly improbable" that MRS would have been able to get a copy of a document that the debtor signed 20 years ago did not excuse MRS from obtaining what validation that they could get. In this case, MRS did not even attempt to get *anything*. Perhaps MRS did not want to be bothered to comply with federal law. I guess it's easier that way.

Outcome: The foregoing message was in large part the reason that MRS settled with the debtor for $4,500. Needless to say, the debt was never validated. The debtor would have been forced to pay over $10, 000.

You can see a copy of the complaint here.

And now, Lake Cook, II, the sequel.

And as they say on TV, "*But wait, there's more*!"

Not even two weeks after the $4,500 payment, the same client was contacted by Creditor's Interchange, Inc., ("CI") a debt collection outfit in Buffalo, NY. The collector calls this office and this is what transpires:

- A Richard Kerns who says he works for CI calls.
- We answer the phone saying "law offices" as is called for by our business procedure.
- Kerns asked for the debtor (name withheld for privacy).
- I identified himself as "Mr. (debtor's) attorney, Larry Rubin.
- Kerns says, "I did not know he had an attorney."
- Kerns is assured by me that I represent the debtor for all purposes.
- Kerns asks if I am an attorney.
- I tell him that I am and ask for debt validation.
- Kerns then demands payment from the client
- I say, "we are requesting validation of that debt."
- Kerns states, "*Validation? What validation? He owes a debt*!"
- Kerns then states, "Listen smart guy. You know what? I'm going to call your client!"

- He does.
- I learn that Kerns is collecting the ***same debt that MRS was trying to collect***. As a matter of fact, the same creditor, Lake Cook, is now collecting under a different corporate name, Hilco Receivables.
- **Outcome**: CI & Hilco settle the next case for $5,000 for one phone call. That is $9500 in settlements paid to the same client on the same debt.

Back to threat section

Persistent(ly bad) Debt Collectors

Some collectors do just about everything wrong. We recently brought a case against an attorney in New Jersey.

The complaint alleged text book examples of what not to do when collecting a debt and are outlined in the complaint with the appropriate sections alleged to be violated. It should be noted that this debtor sent out a cease and desist letter immediately after the first contact. This collector ignored the notice. The notice was sent by certified mail.

- Initially, the plaintiff's young daughter was tricked into giving out her mother's work number. 15 U.S.C. § 1692e(10)
- The collector then neglecting to advise plaintiff and her daughter that the defendant was a collector and that any information obtained will be used for that purpose. 15 U.S.C. § 1692e(11).
- Then the collector threatened a wage attachment (illegal in Pennsylvania); then threatened to "put a lien" on her income tax refund; then threatened suit; and then threatened to serve legal process upon plaintiff at her place of employment, none of which could be legally accomplished by defendant, because defendant was not an attorney licensed to practice law in Pennsylvania! 15 U.S.C. § 1692e(5)
- The collector then violated 15 U.S.C. § 1692e(10) by suggesting to plaintiff that she could and *should skip payments to her basic utilities payments*in order to pay the defendant instead.
- The collector then violated 15 USC §1692g by making threats of suit during the debt validation period (see above for explanation) in a manner that overshadowed the notice of validation rights. This means that the debt collector told plaintiff in a letter (like he should have) that the plaintiff had the right to have the debt validated if she did so within 30 days. Then the collector demanded payment within 30 days, thus *overshadowing* or nullifying her rights. In a sense, taking away what right she had been advised of. The creditor told plaintiff that she had had *ample time to pay* the creditor.
- The collector then spoke with the employer of the plaintiff in order to get "payroll" information and to advise him that legal process would be served there. In other words, that his employee was a no-good deadbeat. Thus the collector disclosed this private information to a third party, a big "no-no" under the FDCPA. 15 USC §1692c(b)
- At one point, the plaintiff's employer heard her speaking to the collector. The employer took the phone from the plaintiff and told the collector that such calls were not allowed. The collector called back in 10 minutes! 15 USC §1692d(5) and 15 USC §1692c(c) . Clearly the collector knew that he was not to call the plaintiff at her place of work, but did it anyway. The collector the stated he just wanted to know where to serve the "summons", something a New Jersey attorney cannot do in Pennsylvania.

Outcome: Case was settled by defendant.

Another case was recently filed against a collector in Florida. This collector persisted in embarrassing the debtor at work, demanding to speak with the employee's supervisor and actually doing so, calling him out of important meetings with customers, and eventually calling his sister in another state, to keep the pressure on. All of these tactics were egregious and particularly outrageous for what they were. The collector actually phoned the job so much, the debtor was in danger of termination, not to mention the extreme embarrassment and humiliation in front of his peers. A copy of the complaint with all the allegations is here.

Gerald E. Moore and Associates - Phone conversation recording: Is it legal? We often receive complaints from potential clients against Gerald E. Moore and Associates. Our latest civil action filed in the Philadelphia District Court is here. In this case Moore's office requested that the debtor pay an alleged obligation by debit card. the client, wanting to reach an honorable settlement, foolishly gave this collector her debit card number. Moore's office proceeded to charge her a "billing fee" of $8.50. In other words, Moore charged her money, to pay his office. To make matters worse, this additional fee was never disclosed to the client. The client was thus "nickeled and dimed" out of $8.50 for the *privilege* of cooperating with Moore. Besides the normal collector shenanigans that we have come to expect, another disturbing issue arose in this case: an admission that all conversations were being recorded without the knowledge of the debtor.

Is this legal? Since we are a Pennsylvania law office, we cannot and will not offer an opinion as to other states. Pennsylvania, however, prohibits this pursuant to 18 Pa.C.S. §5725 and §5703 (relating to wiretapping). Can out-of-state collectors record Pennsylvania residents? That is the issue. We think that this plaintiff is entitled to

damages just for that alone.

Outcome: Case settled in late September, 2007. Plaintiff agreed to a non-disclosure agreement on the matter.

...and once again, Creditor's Interchange (CI). This firm's name surfaces more times than it should associated with appalling collection tactics. Not that it is the only one; it is just one of the more recent ones. The most recent case arises in the U.S. Bankruptcy Court for the Eastern District of Pennsylvania. The Bankruptcy Court has concurrent jurisdiction with the U.S. District Courts respecting matters raised by persons who are already debtors in a bankruptcy proceeding. The good thing about litigating in Bankruptcy Court is that if you are already a debtor in a bankruptcy proceeding, you can then use that court without paying anything additional in filing fees. That will save you $350 per case (which is the filing fee as of late May, 2008). Not that anyone would file bankruptcy just to save that fee, of course.

In this case (see complaint filed with court) someone identifying himself as "Mr. Zimmer" phoned the plaintiffs' and stated "*We have a problem. You are trying to steal from Chase. You owe $10,700 and are not willing to pay*." Zimmer then tried to terrorize the plaintiffs by telling them that that his company was “in the works of litigation” and that he would “take 27% of [the] husband’s take-home pay each week.” He then claimed that he would “put a lien” on their house and that “PA *is the worst* when accounts went to court,” and whether she was "aware of the number of sheriff sales in PA?"

There are several obvious problems with these threats, the least of which is that none of them are true.

- First: The collector used the word "steal." Stealing is a crime. Borrowing money and not being able to pay it back is not now and has never been a crime in the United States. Threats to bring criminal action is a major violation of the FDCPA and may well be criminal extortion itself.
- Second: It is also a violation of the FDCPA to claim that litigation is "pending" or implying immanency when it is not. Collections agencies generally cannot sue since they are not attorneys. Therefore, any threat of litigation is, in the vast majority of cases, an empty threat.
- Third: At least in Pennsylvania, where these actions took place, no creditor of one spouse can ever get a lien on real property that is jointly held by a husband and wife. Of course, no creditor can ever "place a lien" at all without suing and winning in court. And then it would only become a lien (in PA) if the real property was solely in the name of the person sued.
- Lastly, the statement that PA is the "worst" when accounts go to court, is pulled from thin air and is completely meaningless. "Worst" compared to what? Worse than under Stalin? Perhaps even worse than a North Korean military tribunal? Is Pennsylvania now a military dictatorship? The truth is that, in fact, Pennsylvania has a very good record of upholding consumer rights and has taken many progressive steps to ensure that debtors are protected from abusive collectors, which included expanding consumer's FDCPA rights to include creditors (only debt collectors are covered under the FDCPA), as well as debt collectors. See, 73 P.S. § 2270.4, the Fair Credit Extension Uniformity Act.

Fake Law Offices

Some collectors will claim to be associated with law offices, have attorneys in their offices, have attorneys who will follow their directives. Some will even say the *are* law offices. Such a collector is Paystar International, LLC. In one case, the debtor was contacted by someone named Gary Wallace, who claimed to be an attorney. when he was called by this office, he backed off the claim of *being* an attorney, but now claimed that he *worked* for a firm named "Bailey and Fuller" whose offices were located at 273 Walt Whitman Road, Huntington, New York 11746. This claim was checked out by another collection law firm in New York (a real one). Upon investigation, it was determined that no Bailey and Fuller existed (at least not at that address), and that the only agency at the above address was Paystar, a collection company run, apparently, by Gary Wallace (yes, the "attorney").

Wallace went on the threaten that he, or the law firm, had commenced litigation against the plaintiff in the above amount, plus collection fees, and late fees in the courts of New York State. Wallace further stated that he had a “case number,” and that was “C-104-729.”

Of course, the entire claim was bogus; a complete fabrication meant to intimidate the debtor. what's worse, it was reasonably believed by the debtor and threw his entire household into chaos. Many debt collectors operate in this way; a kind of commercial terrorism. They figure, who pays someone who asks politely? So what's the point if you want to make a living? fortunately, the U.S. Congress has not and still does not agree.

The aggrieved debtor filed a federal court complaint. The case is pending and will be updated. Moral? Lawyers are not in the habit of calling people up and harassing them for money. If someone calls and says he is a lawyer and you owe money, check them out, and seek out your own (real) attorney. Do not make promises to pay and do not send

partial payments without receiving competent legal advice.

Humiliating Envelopes

Unscrupulous collectors can pressure unsophisticated debtors to pay in many ways, one of the more insidious ways is to send embarrassing mailto the debtor. The marking on the outside of an envelope can be such an embarrassment. A letter with a return address such as “collections department” or “deadbeat division” can, in an of itself, pressure people into payment, simply to avoid others seeing the envelope.

The FDCPA states that there can be no indication of indebtedness on the outside of the envelope. The law states:

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

* * *

(8) Using any language or symbol, other than the debt collector’s address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

Perhaps you are unsure as to what is meant by this: Here is an example of an actual envelope received by a debtor. This is an actual company in Chicago that is named CBO Collections Division. Use of the word "collections" on the outside of the envelope clearly indicates that the collector "is in the collections business," and most people would not assume that the word refers to the collection of Beanie Babies. Here, the envelope itself becomes the debt collector in your mailbox.

The envelope referenced above is the basis of an actual lawsuit now (6/24/09) pending. the result of the suit will be published later.

Damages Under the FDCPA

The FDCPA provides for a private right of action against violators. This means that you can get a lawyer and sue for damages. A partial list of damages that are awardable are:

- Statutory damages up to $1,000 for each case. This means that the violator can be charged even though there are no other damages (see below).
- Attorney's fees. You can make the violator pay for your lawyer. This is big advantage; lawyers are expensive!
- Actual damages including:
  - Stress related injuries:
    - Heart attack, angina, chest constrictions;
    - Miscarriage;
    - Ulcers, diabetic flare-up;
    - Shock;
    - Loss of appetite;
    - Crying;
    - Nightmares; insomnia, night sweats;
    - Emotional paralysis;
    - Inability to think or function at work;
    - Headaches;
    - Shortness of breath;
    - Anxiety, nervousness; fear and worry;
    - Hypertension (elevation of blood pressure);
    - Stress to children;
    - Irritability;
    - Hysteria;
    - Embarrassment, humiliation;
    - Indignation and pain and suffering. And this is just a partial list!
  - Monetary damages:
    - Payment of a debt barred by the statute of limitations;
    - Taking one's property unlawfully or intimidating a debtor to return property by violating the FDCPA, e.g. "If you do not return your DVD player to the store, we will bring criminal charges!"
    - Long distance telephone charges for phone calls to a collector who states that you must call him back.
    - Attorney's fees to defend a prior suit brought in violation of the FDCPA;

- Damages for intentional infliction of emotional distress generally (see above).

Your attorney may use medical (psychiatric/psychological) testimony, but does not need to. Damages for emotional distress can be claimed even without medical support. This does not mean they will always be believed, of course. It is up to the judge or jury to decide if the plaintiff is telling the truth. Anyway, the plaintiff in the FDCPA lawsuit starts with a tremendous advantage, proof-wise.

Free Cease Communication Form

Still are not sure what to do? You're in luck. This is your chance to be erudite. Just **go here** (this form will be generated in a new browser window, so come back here when you are done) print out the form, add the relevant information, and mail it to the debt collector. This is an Acrobat PDF form, so you will need Adobe Acrobat Reader. You can get a free copy here. Be sure to keep a copy and mail your form *certified mail* (come on, I know you can spring for it).

Sample FDCPA Cases, Complaint Forms and Their Results

The law states that FDCPA cases can be brought in any court of competent jurisdiction. This means that you can bring actions against harassing collectors, and under some state laws, creditors as well, in small claims court even without an attorney. You do not need to use a small claims court; Federal District Courts are the natural "home" for this type of litigation. It is not recommended that you start an FDCPA lawsuit without an attorney because it takes some fluency in the act to know what to ask of the court.

Many magistrates or small claims court judges are unfamiliar with the act. If you want to go ahead despite this warning, you can see how a typical action was brought in a District Justice Court in Pennsylvania. "DJ" Courts are generally small claims in PA, having jurisdiction up to $8,000. This case was brought against a collector in New York for violations of the FDCPA's verification and cease communication provisions. A copy of the complaint can be inspected here in PDF (Adobe) format. The case settled for a gross sum of $975.00 which included counsel fees of an unspecified amount.

If you are in PA and need a similar (blank) form (this can be used in any type of civil action), go here. This page has filing instructions as well. *Be careful though*. Be aware that if the creditor has a claim against you on a debt, the creditor may **counter sue** you on that debt. This means that it may be better to bring this action as a counterclaim and not as an independent action if you owe more than the claim!

In most cases, it is better to bring the case in U.S. District Court. This office recently sued a national law firm in the District Court in Philadelphia. The name of the firm is withheld out of courtesy, since the case was settled within four days after suing; at least the firm had the integrity to admit the error and correct it. This firm is engaged in debt collection practices on a national scale. They are based in Long Island, NY and has offices in Philadelphia and elsewhere. Their website claims they have "national ability." In reality, this "national ability" previously led to a previous class action against this firm (not brought by this office) which settled for more than $453,000! (E.D. Pa. 2000). This firm, among other things, threatened have an agent of theirs come "come to [the plaintiff's] house" and inventory all of plaintiff's personal property for sale! Jeez! What power! What abuse! Of course, this made plaintiff's wife panic. It also did not sit to well with the plaintiff's nerves, either.

Here is the complaint that was used. Of course the name of the plaintiff is withheld and so is the name of the firm. If you are real clever, perhaps you can solve the name of the mysterious firm. If you do, there is a major cash prize! And by "major cash prize" we mean us saying, "...oh, good for you... [yawn]."

Case outcome: The defendant paid plaintiff $1500, plus $2,000 in attorney's fees (the best part) and also paid off those nasty guys at Ford Motor Credit. Value of settlement all together? About $7,500 +/-. Not bad for a few phone calls and a terse letter (why can't these guys call me?...). Oh yes, by the way, the names of the parties involved in the transaction are real, and Orlando Perez (the man who phoned the client) reportedly lost his job, however, this has not been verified.

Another case involved a man known as "Jack Storm" (probable alias-many collectors have a good reason to avoid their real name) and Collection Specialists, Inc. CSI attempted to add all kinds of extra charges to the debt and collect against a non-obligor. The complaint is here. Exton Dental Health Group was also sued for encouraging and requesting the services of CSI. Exton did not have to pay in the end.

Case Outcome: A flat $5,000 for the plaintiff paid by CSI.

The Debt Collector's Best Friend-

The Credit Card Arbitration Clause

(see updates below..)

As a consumer law attorney, there is nothing more annoying to me that the latest trend in oppressive tactics employed by credit card issuers: compelled arbitration agreements. In short, arbitration "agreements," and I quote that word because most of the time the consumer is unaware he or she has "agreed," deprive the consumer of his right to contest the claim for judgment by a credit card company in court. in other words, the credit card company simply brings its claim to a friendly forum and requests an award. That forum is often the **National Arbitration Forum** ("NAF"). The NAF is one of the country's three largest arbitration companies. Believe it, the NAF is no friend to consumers, and why should they be? Credit card issues have billions of dollars to spend, consumers have, well, they are the ones being sued, after all. The NAF actively courts credit card issuers and often makes no bones about where their sympathies lie. The NAF will almost never dismiss a case brought by a credit card issuer; will never hold that creditor to the same standard of proof that the courts will and you will never see a consumer attorney on an arbitration panel. In short, there would sooner be a Taliban in the Oval Office before they would hire me to be an arbitrator. The NAF has even been sued in the State of California for refusing to disclose its internal operations and follow that state's consumer protection law..

How can an arbitration award be resisted after it is entered against you? This will not work in every state, and in fact, the following was successfully tried by this office in Pennsylvania. The arguments can be tried in other states, however, you are advised to seek the advice of a local attorney before employing this tactic. In other words, there may be other more compelling arguments in your state. In this case, the defendant was brought before the NAF on a debt. He did not participate in the process before the NAF. The NAF entered an award against the defendant. Wolpoff and Abramson, a national debt collection law firm brought a motion before the Common Pleas Court in Scranton, PA. There is presently law in Pennsylvania that limits the viability of arbitration awards. The defendant filed an answer and a motion to vacate the arbitration award. Wolpoff thereafter withdrew their motion. Did the defendant win? Yes, for now. Wolpoff can still sue the defendant, unfortunately. However, then the defendant has all of his defenses in a real court of law.

Update: Private arbitration awards are not enforceable in Pennsylvania except by new court rules.

If you live in Pennsylvania and are sued in the National Arbitration Forum (the "NAF") or before any other private arbitration organization, in most cases, these awards may not be enforceable unless certain procedures are followed. The Pennsylvania Superior Court has affirmed the lower court case of Bank One Delaware N.A. v. Mitchell (and here is the decision affirming it.). In response, the state legislator passed a new set of court rules related to arbitration. What does this mean? It means that as of now a debtor must be represented by competent counsel familiar with these new laws in order to stand any kind of a chance in such a case. It is strongly recommended that you **do not** ignore arbitration notices or any kind of court papers *no matter how they are served upon you*. More that ever it is critical that you hire the right attorney; one who is familiar with this rather complicated process. It is not recommended that you respond or participate in any arbitration proceeding before any private arbitration company without assistance of a lawyer familiar with the consequences. In other words, if you are sued in court or before the NAF or brought before any arbitration company, do not go it alone! **Don't be your own lawyer**!

What if you were already brought before the NAF, or there is already an private arbitration award, or an award that was entered as a judgment? In that case, *immediately* seek legal help. You will need to ask the court that entered the judgment to vacate it. Be aware that a judgment entered upon such an award may be challenged upon a number of grounds, but you need a lawyer who knows what he or she is doing.

Legal theory: If the awards are not enforceable, does the arbitration then violate the FDCPA? I think they do. If you have such a claim, contact this office.

Update: Gerald E Moore and Worldwide Assets' (WWA) use of NAF arbitrations. We recently (May, 2009) brought litigation against Worldwide and Gerald Moore, LLP based upon illegal usage of the NAF, as well as illegal collection activities in their attempt to collect counsel fees and other unauthorized charges (the agreement allowed collection of counsel fees only in the event that Citibank did referred the collection of the account to a lawyer, which it didn't, since it simply sold the account to WWA), as well as the remoteness of the NAF arbitration, violating 15 U.S.C. §1692i. Refer to the complaint for further details. This is a relatively new matter and will be updated.

Latest News Regarding NAF Arbitrations: Thanks to the good work of the Minnesota Attorney General's Office, the NAF has agreed to completely get out of the business of consumer credit card arbitration. See video below (Published : Sunday, 19 Jul 2009, 8:59 PM CDT)

Another Clever Debt Collector Tactic- The "Check by Phone"

Personally, it is my opinion that you would have to have a screw loose somewhere to give anyone (save your mom) your checking information over the phone. Keep in mind that there is no deal, and I mean *no deal* in the collection industry that can't wait three days for a letter to arrive. Let's face it, we are no talking of asteroids crashing into the earth, tsunamis or heart attacks here. We are talking of about *money.* I have never heard of any creditor's business exploding because a check arrived a week late. Understanding this proposition, do not be fooled that the deal you receive is a *limited time offer.* No offer that is so good that a debt collector is willing to make it, will turn unacceptable in a week. Here's an industry trade secret. Please clear the room of persons without top secret clearance. Are you alone? Pssst. *Money does not spoil! That means that there is no reason to give a check by phone. A check by phone hands your checkbook over to the debt collector. Would you trust a debt collector with your checkbook (and of course, you have also signed all your checks in blank).*

What's more, you have just told your adversary where your checking account is! He may have not known this before. in fact, it is very difficult to determine where someone banks. Don't let your creditors know this by:

- *Giving them a check by phone.;*
- *Sending them a personal check on your or your wife's account;*
- *Telling them...duh!*

Keep your private information private dummy! Better yet, why don't you just not talk to them. Better yet, seek out and hire good legal counsel!

I am sometimes asked this question: "*I needed to give the check by phone because the collector refused to accept payment in any other form. I wanted to pay the debt; what was wrong with that*?"

There is absolutely nothing wrong with paying off a legitimate debt. The problem is that you may not actually be paying the proper party; the company you are paying may be a fraudulent organization collecting money by a clever fraud. The person on the phone may not be your creditor; the caller may be a criminal posing as your creditor. **No legitimate company will not take payment by check, money order, other certified funds or cash.**

If the caller will only accept a check over the phone, **this is highly suspect. Do not pay him**! Do not believe that the "deal expires today." No company cannot wait a few days for mail; they have waited this long already, right?

Also be aware that making a partial payment will renew the period of the statute of limitations of your state. If the whole debt is not paid, you have just given the creditor another 4-7 years to collect the debt (depending or your stat's statute). It is always better to ask a lawyer what to do, first.

What If You Cannot Raise an FDCPA Defense or Claim?

The Commonwealth Financial Systems Saga or
"The Debt Buyer Becomes the Debtor"

There is simply not an available FDCPA claim available in every case; some collection cases simply need to be defended. Just because you cannot claim that the collector violated the FDCPA, that does not mean that the

collector should win. This is where skilled defense counsel is critical. Almost any collection case is winnable, given proper representation. Counsel should be familiar with the rules of evidence in your state. For instance, Commonwealth Financial Systems brought a case against a client on a disputed debt. The case was tried before an arbitration panel (court arbitration, not private). Commonwealth lost since they were unable to muster a sufficient foundation for admission into evidence of their financial records. Upon appeal, Commonwealth brought a witness, but was still unable to lay the evidentiary foundation to get satisfy the Pennsylvania Rules of Evidence. Commonwealth's witness, it's vice president, Dan Venditti, testified that although he was familiar with the record keeping procedure of his company, he could not testify as to the computer accounts, the backup methods, the manner of input of the original creditor. In fact, Venditti testified that his company, Commonwealth, was the second owner of the debt. This turned out to be false, since Commonwealth purchases some (or much) of its portfolio from a company known as NCOP. At any rate, now it seemed that Commonwealth was twice removed from the original creditor. Therefore, if they had a tough time testifying about the record keeping practices of the creditor they purchased the debt from, they would have an impossible time testifying about the record keeping practices of the original creditor.

Part of the problem was also that Patricia A. Cobb, Esquire, EVP, signed a verification of the complaint, probably without reading it, since it swore to dates of payments that were contradicted at trial. This proved critical, since the debtor was able to raise a statute of limitations defense, and Venditti, the vice president of the company, was forced to contradict his own boss. This is not an admirable position to be in if you are trying to oppress a consumer with a warmed-over questionable debt claim.

Commonwealth attempted to admit a cardholder agreement into evidence. You know the kind, tiny type, indecipherable language. The agreement called for counsel fees for the party that prevailed in court. Commonwealth then attempted to secure counsel fees for its attorney, Edwin Matzkin, an attorney from Willow Grove, Pennsylvania. What was not anticipated by Commonwealth was that their own cardholder agreement could also be used against them. The court later entered judgment for the defendant and against Commonwealth. Then upon motion, the court ordered counsel fees *for the defendant*.

Commonwealth filed a new trial motion and a motion for reconsideration of the counsel fee order (denied by the court). Commonwealth has not paid the court-ordered counsel fees of $11,552 which they presently owe. Perhaps we need a debt collector...

Commonwealth's motion for post-trial relief (motion for a new trial), was denied by the court *in just one day* after oral argument. At the end of November, 2009, Commonwealth appealed to the Superior Court of Pennsylvania. This appeal is presently pending, but Commonwealth legally still owes the counsel fees, but like the people it sues, ignores the debt. The difference is, the people that Commonwealth sues are usually destitute; Commonwealth is not.

It is supreme irony that Commonwealth claimed that the consumer was "a deadbeat," but the final chapter of this pathetic story is that Commonwealth itself seems to suffer from the same malady.

Eventually, an execution was issued to Commonwealth's bank in Scranton, and the funds were forceably taken from Commonwealth's account over its objection.

Update: Since Commonweath appealed, the Common Pleas Court of Delaware County was obliged to write an Opinion for the Superior Court. The Opinion is a statement of the views and decision of the trial judge. In this case, Judge Burr rendered a very thoughtful, well-reasoned and scathing Opinion, which quite literally decimates the all the legal arguments of Commonwealth's counsel and questions the integrity of Commonwealth's sole witness. The Opinion interestingly calls quantifies the "limits of Venditti's knowledge" as "vast," calls into question whether there ever was a validly proven contract between the original creditor and the defendant, and accuses Commonweath of pawning off "boilerplate" and unsubstantiated assertions as evidence. The court noted with interest Venditti's inconsistencies in claiming that he was an "insider" in the credit industry and in particular, respecting the particular account in question, while at the same time admitting on cross examination that he possessed no knowledge at all about the original creditor, its accounting systems, its record keeping, or the maintenance of its computer files. Venditti covered his utter lack of any knowledge with the "bald-faced presumption that the records proffered as Plaintiff's trial exhibits had been 'SAS-70 qualified'". When pressed as to what that meant, Venditti essentially testified as to what might have been printed on the box that the software came in.

In short, the court was clearly not at all impressed with Commonwealth, its attorney nor its witness. Judge Burr took a bold step to protect consumer rights and to make debt buyers answer to the same standards of proof that any plaintiff would need to meet. Judge Burr found that there was no carve-out exception to the rules of evidence for any party, *not even debt buyers.*

The next step: Commonwealth has filed its brief with the Superior Court of Pennsylvania. We filed our brief, which is here. I would appreciate any comments from any attorney reading it.

Debt Settlement Companies

You have probably heard about these outfits on television, or on the internet (always a reliable source for accurate info - *yes, I am kidding*). They regularly claim to be able to save you thousands, cutting your debt in half, or eliminating it, in a short time period. What could go wrong? Everything.

In the State of Pennsylvania, this is *illegal* (called debt pooling). Even if it were legal, these companies do nothing you could not do on your own, or, better yet, with an attorney, and for a lot less money. Debt settlement companies charge exorbitant sums. I have had clients that have paid up to $5,000 for services that any honest attorney would have charged less than $1,000. Watch the video below. If you are presently working with one of these companies, contact an attorney to learn what rights you may have for a refund of your money. You may also be entitled to legal damages as well.

Recorded Collector Threats

(and why they violate the law)

***Important note**: The following threats were all actual messages left on the answering machine or voice mail of consumers who allegedly owe money to creditors. In some cases, no money was owed but the collector thought so. In all cases, it was the arrogance and stupidity of the collector provided the evidence that would later be used to sink them. It should be stressed that none of these recordings were surreptitious.*

***Threat #1** . The collector (actually this is a repo outfit) is attempting to repossess a vehicle. To listen, **click here** . . What's wrong with what this collector has threatened? This message was left on an answering machine belonging to an individual. The name of the debtor is deleted:*

- *The collector or creditor cannot, "issue a warrant to the sheriff for your arrest."*
- *The collector cannot employ criminal process to collect a civil debt (owing money and refusing to pay it **is not a crime.***
- *The collector cannot threaten to do something he knows he cannot legally do (see above).*
- *The collector cannot leave threats on an answering machine where others can hear it.*
- *The collector may not infer that there is some legal duty that the debtor must call back (..."must hear from you"). There is no legal duty to return a collectors phone calls.*

***Threat #2** Now listen to this next segment and see is you can detect the problem (another repo agent). Click here.*

- *"I gotta hear from you or I'm going to make this thing go legal." The collector may not threaten something he does not intend. The collector does not intend to "make this thing go legal," he only intend to scare the debtor into surrendering his car. The collector has probably not even consulted counsel; his job is to collect the vehicle only.*
- *Again, the collector cannot threaten to harass the debtor every day ("I'm never going away..."). The collector intends that the debtor fear that the collector will come to his home every day (the collector says this, in so many words).*

- *"I will be at your door every evening...." You wouldn't put up with this nonsense even from a relative; why should you stand for it from a goon from a repo outfit? The last time I checked, people do not keep motor vehicles in their living rooms. There is no reason for this man to threaten that he will come to the debtor's door "every evening." The creditor / debt collector has no right to harass the debtor "every evening." Further, a threat to behave like this is itself a form of harassment and is actionable.*
- *"You must call here...." As stated above, the creditor or collector may not infer that the debtor has a duty to call back.*
- *"This is not a threat..." What is it then? An invitation to a happy Fizzies party? This guy knows he is not supposed to be doing this.*

Threat #3 *Here is yet another egregious violation. Click here .*

Listen closely at the beginning: "this is Officer [deleted for privacy]." Wouldn't you believe that this "officer" is a policewoman? Or possibly a police detective? Surprise! She is neither. She is just a debt collector or a repossessor. What she defines as an "officer" could be an officer of her corporation. Or possible a security officer for the repo company or whatever. How gloriously misleading! How unlawful. The FDCPA prohibits misleading conduct of this nature and punishes it. How stupid as well. This message was left on an answering machine! Nobody ever said you need to be a rocket scientist to repo cars.

Next, this "officer" says she will list the vehicle as stolen. Theft is generally defined as an unlawful taking with intent to deprive the owner of the property. The "officer" forgets that the owner of the property is not the finance company, but the borrower. The finance company has a lien, but it is not the owner. The borrower cannot steal property from himself.

This threat is very nearly extortion, which is illegal in every state. It is most definitely punishable under the FDCPA.

Threat #4 *The next poor victim was being harassed by a northern New York attorney's office. This is not the norm. Most attorneys know full well about the FDCPA and will not call debtors just to harass them into paying. A competent attorney will send a letter or two, with full FDCPA warnings, then sue, if it is worth it the costs to the client. Most of the time, lawsuits are not brought (except where significant assets are known or anticipated). In this case, the name of the offending firm has been withheld, since remedial action has already been taken to try to correct to the problem i.e., the collector has been fired and apologies made, along with a proper settlement. The facts are accurately, however. You can hear by their threat by clicking here (format is mp3). The text transcription of the threat is here. They were left on a cell phone voice mail.*

Background: The debtor was previously unlawfully harassed into giving the collector information sufficient for them to take money from the debtor's checking account, e.g. check by phone. The debtor then sought legal counsel at this office for a consumer bankruptcy. Based upon the unlawful coercion, the debtor was advised to take action to invalidate the check. The debtor asked the bank to place a hold on the account pending resolution of the controversy. It was later learned that the collector was just hired from another infamous "law firm" known as Lenehan Law Offices. Lenehan Law Offices is well known for allowing its collectors to threaten people with criminal prosecution for not paying a debt.

The first thing you notice about this threat is that it lacks the "Mini-miranda" warnings, but, no matter, that is really the least of it.

Next, since when is "lying to attorney's office" a crime? Besides, the collector is not even an attorney! The collector did not ask the debtor to take an oath. Lying may be dishonest and immoral, but it is not a crime unless there is a legal obligation to tell the truth, i.e. lying to lawful authorities, lying under a legal oath, lying in court, lying to the U.S. Congress (even they administer an oath), etc. Go ahead, lie all you want, just don't do it to legal authorities or under oath. A bill collector is not a legal authority and neither is an attorney, unless the attorney acts under authority of the court and administers an oath. The debtor here was not given an oath, and did not lie, anyway. The checking account number was true; the debtor later got legal advice and decided to protect assets from a collector using coercive means to collect them. The least sophisticated consumer (see above) would find that this could be a threat a prosecution. Furthermore, the collector says that this lie will be told to a judge. Most people, not to mention the least sophisticated consumer. would find that something much worse that a monetary judgment would befall them. Most people would believe that there would somehow be a greater penalty levied against them.

In fact, what the collector does not say, and probably did not take the time to learn, is that prior negotiations toward settlement, and irrelevant matters such as unpaid checks are not relevant (and not admissible in evidence) to the issue as to whether the debtor owes the creditor money. The only issue the court is concerned about in any collection case is

whether the defendant owes the plaintiff money and how much. In short, this collector has used falsehood and deception to collect a debt. The firm would have been wiser to have never made any calls in the first place and just sued the debtor.

Next, the collector says the debtor must call immediately. Why? Will the debt evaporate? Or is it another veiled threat? What if the debtor calls in two days? Will it be too late? What will be the consequences? Will terminating robots from the future be unleashed? Or is the collector implying that criminal charges will ensue? Who know? Surely not the least sophisticated consumer.

What about that "recorded line?" Did the debtor consent to the wiretap? Recording phone calls in Pennsylvania violates the state's wiretap statute. Guess they were too busy to check that out what with all the people they needed to harass that day. So many victims, so little time.

What about the addition of attorney's fees? Was that permissible under the contract? In what amount? Does the debtor have to guess? Many courts have held that such vague language is itself deceptive; and actionable.

***Threat #5** From the same law firm. Listen to the threat of "prosecution" this time! "The attorneys are under the impression that you are giving out false information to avoid prosecution on this case." Prosecution? And who are these nameless "attorneys that are passing judgment?" All statements here are calculated to terrorize. The firm had no intention of suing in Pennsylvania, where this took place. If they sue anywhere, they are in NY, not Pennsylvania.*

Outcome: The above New York law firm was sued in Bankruptcy Court for the Eastern District of Pennsylvania. Here is the complaint used. Action was commenced on April 29, 2004. It settled for $4,500 in mid-May 2004 (i.e. statutory damages in the amount of $1,000, $1,500 in special damages-emotional distress, etc., and $1,500 in legal fees).

***Threat #6** This was not so much of a threat, but an outright refusal to my office to validate a debt. This was received from a collector called MRS Associates. The sound file is here , but after listening to it, be sure to see above for the problems with this call.*

***Threat #7** Probably one of our most infamous. This Chase Bank collector threatened "fraud" because the debtor had been in bankruptcy, discharged the debt therein, and then had the unmitigated audacity to have been born in Portugal! *gasp!* The collector tried to get at the debtor by saying that she had left her mother "holding the bag." Of course, this was a lie. There was no intent to prosecute for a fraud because there was not debt. The debt was as dead as Monty Python's ex-parrot. Still, somehow, these threats were made. Here's the lyrics sheet to sing along.*

Lawsuits under FDCPA allow for counsel fees, damages, and costs. Each FDCPA violation can net you up to $1,000 plus attorney's fees and actual damages. Repeated conduct will usually receive greater damages and is less likely to a succumb to a defense of "innocent mistake." You should be diligent in protecting your rights. The statute of limitations for bring most federal actions of this nature is only one year unless used as a defense to an action brought against you. Therefore, you should protect your rights before they become unenforceable.

***Threat #8** This threat was also received from Chase. This woman sounds like she has the emotion of a collection terminator. "I'm tired of playing games with you (so I guess she is starting one of her own here). I'll call every neighbor on your block to make sure you're in the right place." Wow! How intimidating! How illegal. Collectors are allowed to obtain locator information. Once the collector knows where you are, which obviously Chase did, after all she was calling her phone, any further calls to neighbors are no longer locator information. They are just unlawful communications with third parties intending to humiliate and embarrass the debtor, which it did. Furthermore, this debtor had just received a discharge in bankruptcy! Threats 7 and 8 make up the most outrageous abuse I had seen in years. Not only were the tactics barred by state law, and the FDCPA, they were also barred by bankruptcy law. The caller then refers to "attorney fees, " which also is misleading and unlawful unless the actual amount if stated. "We have programs to help you, but you can't apply unless you call back." In other words, "we are setting this bear trap on the ground, please cooperate by stepping into it." Here's a little secret: the only help you will ever get from a debt collector, is that collector helping itself to your bank accounts or motor vehicle.*

Threats #9a & b

Threat "9A" was received from Gerald E. Moore & Associates, P.C.

"This is John Andrews. I'm with the attorneys at law of Gerald Moore Assoc PC. The law firm of

> ***Gerald Moore****(see below)* ***has attempted to reach you with several associates contacts, the efforts have been of no avail. And we are going to forward a pending claim for litigation into Bucks County Municipal Court. If you choose to make a statement of deferment instead of a statement of neglect to the court judge you need to reach me at 1-800-4661505 extension 186, I need your immediate return, call."***

What's wrong with the threat? You have some experience now, if you have read the above. See if you can figure it out. If you give up, click here.

****Important note regarding Gerald Moore Law Office: By far, this office gets more phone inquiries about Gerald Moore, than any other collector. On good days, we get 3 or more calls complaining about the activities of this office. Please note however, that just because you have similar experiences with Moore, this does not mean that we can take cases in jurisdictions where Lawrence Rubin is not licensed as an attorney. State laws also prohibit Lawrence Rubin from rendering legal opinions outside of PA and NJ, as this is "practicing law" outside of a jurisdiction where a license is held. We sincerely regret that you may be having a problem with Gerald Moore! You are advised to contact your local bar association's lawyer referral service for a local attorney who can help you. HOWEVER, IF YOU ARE WILLING TO BRING ACTION AGAINST THE GERALD MOORE LAW OFFICES IN PENNSYLVANIA OR NEW JERSEY, THIS OFFICE WOULD BE MORE THAN WILLING TO TAKE THAT CASE PROVIDED THE FACTS MERIT IT.***

Threat "9B"  *was received from the same attorney's office just three days later:*

> ***"Richard and Susan Hanley, this is Attorney Gerald Moore (long pause) and associates law office Atlanta Georgia. Susan, I spoke with you in depth, conversation this past week regarding the severity of your case - is pending with the county municipal court. If your return call is not received by Monday, your attitude will be recorded as neglect. The number is 1-800-466-1505 extension 186. I'll be in today until 12:15 lunch time and Monday about 11 a.m."***

In this threat, the collector begins to try to intimidate the debtor by implying he is an attorney. You need to listen to the cadence and parsing of this statement. "this is attorney Gerald Moore...(pause)... and associates law office.... Is this guy an attorney? Not really, but unless you think about it carefully, you would think he is. Listen to the recording again. He seems to say he's Gerald Moore. The debtor is encouraged to believe this and therefore thinks that the case warrants the attorney himself taking time out of his busy day just to personally collect this debt. The words "severity of your case" is also used to imply that the debtor is in some serious trouble. In actuality, the debtor is not really in serious trouble; the debtor just owes a small debt, which can always be settled with a lump payment, or even discharged in a Chapter 7 or 13 bankruptcy.

Further, this so-called "attorney" doesn't know the meaning of the word pending. He states the matter is "pending with the county municipal court. Perhaps he should have advised the municipal court (if there was one in the county-there is not) that they have such a case pending-which they did not.

Again, the debtors are misled, deceived, and tricked into believing they are being sued and singled out for some greater liability or even punishment. FDCPA violations are generally "in the eye of the beholder." A violation is not judged by what someone with a professional degree would think about the threat. They are judged by what an unsophisticated, uneducated consumer would believe, hence the "least sophisticated consumer standard.

This matter was sued upon and settled for a very fair amount for the debtors, a release of their so-called "debt" (if there ever was one) and for attorney's fees as well. In short, the debtor got everything, Moore and their client got to pay the debtors' attorney fees. Best of all, both of these are out of the debtors life for good. If you are interested, read of a copy of the actual complaint filed with the US District Court for the Eastern District of Pennsylvania.

More on creditor/debt collector protection:

Certain states, such as Pennsylvania, may have laws protecting consumers from harassment even though the FDCPA may not be applicable. These laws may even expand (e.g. Pennsylvania) on the FDCPA, broadening its scope and applicability. To see if your state has such a law, you should consult with a local attorney. If you contact me about this, it is unlikely that I will know about the your state's law, unless you live in New Jersey or Pennsylvania, where I am licensed to practice.

You are informed consumer # 169410 *since 8/14/96.*

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