

Lawrence S. Rubin, Esquire
LR 0931
24 South Broad Street
Woodbury, NJ 08096

337 W State Street
Media, PA 19063-2615
609-848-7774
610-565-6660
Fax 610-565-1912

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Andrew XXXXXX : Civil Action No.

v. :

MRS Associates, Inc. :

Complaint

Jurisdiction

1. This is an action under the **Fair Debt Collection Practices Act**, hereinafter "FDCPA," 15 U.S.C. §1692a.

2. Jurisdiction in this case is founded upon 15 U.S.C. 1692k which grants the United States District Courts jurisdiction to hear this action without regard to the amount in controversy.

Parties

3. The plaintiff is Andrew XXXXXX, a sui juris adult residing at xxxxxxxxx, xx.

4. Defendant MRS Associates, Inc. is a corporation doing business in New Jersey at 3 Executive Campus, Suite 400, Cherry Hill, NJ 08002, primarily as a consumer debt collection firm.

5. Defendant is a debt collector as defined by the FDCPA, 15 U.S.C. §1692a(6).

6. The plaintiff is a "consumer" as defined 15 U.S.C. §1692a(3).

Factual Allegations

7. In or around December 13, 2003 plaintiff was contacted by defendant via mail. A

Lawrence S. Rubin
Attorney
337 W. State Street
Media, PA 19063-2615
610.565.6660
fax 610.565.1912
LRubin@Pennlawyer.com

copy of the letter is attached hereto as Exhibit "A."

8. Defendant was and still is attempting to collect the sum of \$10,925.67 from the plaintiff.

9. At or about that same time period, defendant repeatedly telephoned plaintiff demanding payment of a debt.

10. The said debt was originally the property of MBNA, but was, based upon information and belief, assigned to Lake Cook Partners, LLC.

11. At no time was the plaintiff warned that defendant was a debt collector and information obtained would be used for debt collection purposes.

12. The said letter dated December 13, 2003 was an written initial contact from defendant and afforded plaintiff the requisite 30 day validation period pursuant to 15 U.S.C. §1692g.

13. On or about December 14, 2003, or thereabouts, counsel for plaintiff telephoned MRS and spoke to Mr. D. Grieco. Grieco stated, "So what's the problem here?" Counsel stated that the debt would be dealt with as soon as proof of obligation was produced. Counsel stated his bona fide belief that plaintiff had never requested a charge card from MBNA, never signed a charge card application, never agreed to be liable on the account and had never made a purchase with the card.

14. Counsel further explained Grieco that the card was the obligation of Raphaele XXXXXX, plaintiff's wife, and that that debt had been discharged in bankruptcy.

15. Grieco stated on December 14, 2003, or thereabouts, that the matter "was going to arbitration" within "days," and that "no proof" was required on defendant's part.

16. Grieco stated that it was plaintiff who had the burden of proof at the arbitration to prove that the debts were not his.

17. As of the date of this complaint, some three months later, no arbitration was ever scheduled, or requested by defendant, nor was any litigation commenced as threatened.

18. On December 15, 2003, plaintiff's attorney wrote to MRS and confirmed his

representation.

19. In the same correspondence, plaintiff's attorney directed MRS to cease communication with plaintiff and validate the debt.

20. In the same correspondence, plaintiff's attorney's denied liability on the debt and advised defendant that the debt was solely the debt of plaintiff's spouse, Raphaele XXXXXX, and that the obligation had been discharged in a bankruptcy filed with the U.S. Bankruptcy Court for the District of Delaware.

21. On December 19, 2003, plaintiff himself wrote to defendant and directed it to cease communication and to communicate solely with his attorney, Lawrence S. Rubin, Esquire.

22. On December 26, 2003 Kathy Hansen, an account representative at defendant called attorney for the plaintiff and left a voice mail stating:

"Mr. Rubin, this is Kathy Hansen, with regards to Andrew XXXXXX and with your request for a signed...for the application. Ahhm, quite frankly, we're gonna turn this file over to our general counsel here to see what he's able to do. At this point in time I'm looking at your client's your, *your* client's credit report and this charge card is over 22 years, ohhh, sorry, 21 years old, and I'm not going to request the original application. Umm, if your client is *not* aware of having this bill for over 20 years then, then there's more issues here than, than I certainly am able to deal with at this time. You wanna give me a call back today, I'm in my office until 5, it's 866-709-0957 I'm going to follow through with what I need to do and advise our general counsel what's going on in this case. But, um, it is highly improbable that I would be able to get a signed copy of a document that your client signed over twenty years ago, Um and I'm not sure that it would be required, um, by law. So I'm going to follow through on that manner, and any questions feel free to call me."

23. Plaintiff's counsel thereafter called Hansen and explained again that a validation of the debt was still required. Hansen refused to validate the debt once again, stating that it would be "difficult" and that she was not even going to try.

24. Hansen then stated that all phone calls to MRS were recorded.

25. The recording of telephone calls without the consent of the caller is a violation of Pennsylvania Wiretap laws and counsel advised Hansen that all communications in the future would need to be in writing.

26. Defendant then contacted plaintiff by demand letter of February 6, 2004. A copy

of the letter is attached as Exhibit "B."

27. Defendant, through its agents then re-contacted the plaintiff on February 17, 2004 in open defiance of the plaintiff's and counsel's cease and desist letter.

28. Plaintiff logged approximately eight calls which he believed were from defendant on February 17, 2004.

29. At one point, plaintiff answered the phone and spoke to defendant's agent, which is believed to be Grieco. Grieco proceeded to berate plaintiff with harassing, belittling, humiliating and foul language.

30. Plaintiff is an 82 year old man. Plaintiff was shaken and extremely humiliated by the call.

31. Plaintiff's shame and humiliating experience with defendant, and especially the last phone call, above, caused him to withdraw from his family, lose sleep and become irritable and unsociable.

32. At the end of the call, plaintiff's daughter took the phone from plaintiff, heard defendant on the other end and asked Grieco why he was still harassing plaintiff. Plaintiff stated to Grieco that plaintiff was actively being represented.

33. Additionally, Greico and defendant already knew that plaintiff himself had written a cease and desist letter to defendant.

34. Defendant's repeated phone calls to the plaintiffs' home caused severe and intense emotional distress in both plaintiff and his wife.

35. The next day, Hansen called counsel for the plaintiff, apparently in an uncontrolled rage.

36. Hansen screamed at counsel, "What have you done for your client? Why have you not settled this debt? You are a miserable lawyer!" Counsel explained that he was still waiting for debt validation and terminated the call.

37. Plaintiff continues to be emotionally affected by defendant's unlawful actions.

38. As of the drafting of this complaint, no validation of the debt has ever issued, nor

has defendant even attempted such a validation.

Claim for Relief

39. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.

40. In demanding the sum of \$10-25.87, defendant violated 15 U.S.C. §1692e(2) in that it repeatedly falsely represented the character and amount of the debt.

41. The Defendant violated 15 U.S.C. § 1692e(2)(A), (5) and (10) by repeatedly misrepresenting the imminent nature of legal action by itself against plaintiff.

42. The Defendant violated 15 U.S.C. § 1692g by making a threat of suit and/or arbitration during the debt validation request period in a manner that overshadowed the notice of validation rights and would create confusion for a least sophisticated consumer about his rights.

43. The Defendant violated 15 U.S.C. § 1692e(5) by threatening legal action against defendant, when no such action could legally be taken because no debt was capable of being proved since defendant never requested credit from MBNA, the assignee of Lake Cook Partners, the principal of defendant.

44. The Defendant violated 15 U.S.C. §1692e(11) in that in no telephone contract did they advise either plaintiff that they were attempting to collect a debt and information would be used for that purpose.

45. The Defendant violated 15 U.S.C. §1692e(4) in that it threatened legal action, where such action was not contemplated; was unlawful to take and not permitted by any contractual right, and stated for the sole purpose of terrifying the plaintiff.

46. The Defendant violated 15 U.S.C. §1692e(10) in claiming that the burden of proof was on the defendant and that plaintiff did not have to “prove anything” in order to obtain a judgment, or an arbitration award.

47. The defendant violated 15 U.S.C. §1692f in that their actions were an unfair and/or unconscionable means to collect a debt for the reasons set forth in the paragraphs

immediately preceding.

48. The Defendant violated 15 U.S.C.§1692e(10) by stating plaintiffs would be sued by February 6, 2004, when, in fact, no lawsuit was intended.

49. The Defendant violated 15 U.S.C.§1692g by repeatedly refusing to validate the alleged debt and 1692e in claiming that it was not “legally required” that the debt be validated.

50. The Defendant violated 15 U.S.C.§1692e generally by having non-attorneys, i.e. Hansen and Grieco imply and overtly state that they could control decision to litigate, the timing and scope of same, allegedly to be filed against plaintiffs.

51. The Defendant violated 15 U.S.C.§1692e by indicating that undetermined fees and costs would be collected, and that plaintiff had little chance to defend himself

52. All of the above written and oral statements would be deceptive or misleading to the least sophisticated consumer.

53. The Defendant violated 15 U.S.C.§1692c in that it continued, on multiple occasions, to contact plaintiff notwithstanding the fact that both plaintiff himself as well as plaintiff’s counsel had written cease and desist letters to defendant, requesting them to stop any further contact with plaintiff.

54. Plaintiff has been compelled to hire counsel to prosecute this action.

55. Counsel has 26 years of experience. Reasonable legal fees for an attorney in this community with this much experience is \$225 an hour.

56. As a result of the above violations of the FDCPA, the Defendant is liable to the Plaintiff for declaratory judgment that defendant’s conduct violated the FDCPA, and Plaintiff’s actual damages, statutory damages, and costs and attorney’s fees.

WHEREFORE, Plaintiffs respectfully prays that judgment in a sum less than \$150,000 be entered against the Defendant for the following:

A. Declaratory judgment that Defendant’ conduct violated the FDCPA, and declaratory and injunctive relief against the Defendant;

- B. Actual damages;
- C. Statutory damages pursuant to 15 U.S.C. § 1692k.
- E. Costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k
- F. For such other and further relief as may be just and proper.

Lawrence S. Rubin, Esquire
Attorney for plaintiff
337 W State Street
Media, PA 19063
610-565-6660
Fax 610-565-1912

Lawrence S. Rubin
Attorney
337 W. State Street
Media, PA 19063-2615
610.565.6660
fax 610.565.1912
LRubin@Pennlawyer.com