

**UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT ALBANESE)
6480 Front Street)
Martins Creek, PA 18063)
on behalf of himself and all others)
similarly situated,)

Plaintiffs,)

vs.)

PORTNOFF LAW ASSOCIATES, LTD)
308 East Lancaster Avenue)
Wynnewood, PA 19096)

MICHELLE R. PORTNOFF, ESQ.)
308 East Lancaster Avenue)
Wynnewood, PA 19096)

and)

DAWN M. SCHMIDT, ESQ.)
315 Solly Avenue)
Philadelphia, PA 19111,)

Defendants.)

C.A. NO. 03-

CLASS ACTION

JURY TRIAL DEMANDED

COMPLAINT - CLASS ACTION

I. INTRODUCTION

1. This is a consumer class action for damages brought on behalf of Pennsylvania consumers against a debt collector law firm and its attorneys for collecting and attempting to collect delinquent trash fees. Defendants employ misleading, unfair and deceptive collection tactics in violation of the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq* (“FDCPA”) and the Pennsylvania Fair Credit Extension Uniformity Act, 73 P.S. § 2270.1, *et seq.* (“FCEUA”), constituting unfair and deceptive acts and practices under the Pennsylvania

Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (“CPL”). These laws prohibit debt collectors from engaging in abusive, deceptive, and unfair collection practices. Defendants’ collection letters, sent to thousands of Pennsylvania consumers, do not advise consumers that the letters are from a debt collector and do not contain the validation notice or verification language required by the FDCPA. In addition, the letters deceptively represent that an attorney is actively and meaningfully involved in the collection of the trash fees debt and has made a considered professional judgment about the consumer’s case when, in reality, collection activities are handled by a staff of clerks, secretaries and paralegals, who sign the attorneys’ names to debt collection letters. Defendants, however, add on and charge consumers with hundreds of dollars of “legal” fees for work performed by these non-attorneys. As a result, Pennsylvania consumers are dunned for more than their true debt, unconscionable and excessive liens are forcibly placed on their homes, encumbering their property and damaging their credit and they are coerced into paying usurious amounts to save their homes from foreclosure and Sheriff Sale.

Plaintiff also brings this case under the Pennsylvania Loan Interest and Protection Law, known as Act No. 6 of 1974, 41 P.S. § 101, *et seq.* (“Act 6”), which prohibits the collection of excess interest and penalties.

Plaintiff seeks certification of a class of Pennsylvania consumers and actual, statutory and treble damages for himself and all persons similarly situated.

II. PARTIES

2. Plaintiff Robert Albanese is an adult individual residing at 6480 Front Street, Martins Creek, Pennsylvania 18063.

3. Defendant Portnoff Law Associates, Ltd. (“PLA”) is a law firm engaged in the

business of collecting debt in this Commonwealth with its principal place of business located at 308 East Lancaster Avenue, Suite 200, Wynnewood, PA 19096. The principal purpose of PLA is the collection of such debt using the mails and telephone, and PLA regularly attempts to collect debt in this Commonwealth.

4. Defendant Michelle R. Portnoff, Esquire (“Portnoff”) is an attorney who is also a shareholder and the President of PLA. Her principal place of business is located at 308 East Lancaster Avenue, Suite 200, Wynnewood, PA 19096. Portnoff regularly engages in the collection of debt in this Commonwealth.

5. Defendant Dawn M. Schmidt, Esquire (“Schmidt”) is an attorney employed by defendant Portnoff Law Associates, Ltd. who resides at and has a place of business located at 315 Solly Avenue, Philadelphia, PA 19111. From that address and from 308 East Lancaster Avenue, Suite 200, Wynnewood, PA 19096, Schmidt regularly engages in the collection of debt in this Commonwealth.

III. FACTUAL ALLEGATIONS

6. Defendants were retained by the Lower Mount Bethel Township to collect delinquent trash fees in the amount of \$1,000.92 that plaintiff allegedly owed in connection with the use of his residential property located at 6480 Front Street, Martins Creek, Pennsylvania.

7. Since August 2002, defendants wrote and sent to plaintiff by U.S. mail standard form collection letters which attempted to coerce plaintiff into paying various sums allegedly due for delinquent trash bills owed to the Lower Mount Bethel Township. The letters did not state that they were from a debt collector and did not contain the validation notice or verification language required by the FDCPA. *See* 15 U.S.C. §§ 1692e(11), 1692g.

8. Unbeknownst to the plaintiff and not disclosed by defendants, the letters

demanded amounts not authorized by the agreement creating the debt or permitted by law, including a \$35 “administrative cost” already imposed by defendants. The \$35 fee was not authorized by the agreement creating the tax debt or permitted by law. *See* 15 U.S.C. § 1692f(1).

9. An attorney’s signature on a debt collection letter implies that the attorney has formed a professional judgment about the debtor’s case.

10. Despite the fact that the letters were purportedly sent by attorney defendants PLA, Portnoff and Schmidt, upon information and belief, defendants Portnoff and Schmidt did not sign the letters, which were instead signed by a non-attorney.

11. The amount of the debt sought to be collected by the letters included charges ranging from \$160.00 to \$175.00 imposed by defendants for allegedly incurred attorney’s fees in the preparation and sending of each of the letters.

12. No attorney inspected plaintiff’s file, made a considered, professional judgment that plaintiff was delinquent on his debt or that he was a candidate for legal action, no attorney was meaningfully or actively involved in the review, preparation, or sending of the letters, and no attorneys had expended any meaningful time or effort in sending the letters.

13. Rather, the letters were not “from” an attorney in any real sense but were instead standardized form collection letters prepared by defendants’ non-attorney staff and sent as a purported letter from an attorney to all consumers from whom defendants sought to collect debt. The letters were thus misleading, unfair, falsely represented or implied that they were from an attorney, and constituted the use of false representations or deceptive means to collect debt.

14. The legal fees charged by defendants were uniform unlawful collection fees charged to all consumers to whom defendants sent the letters.

15. The letters were further false, deceptive, misleading and unfair in that they

misrepresented the amount due to include \$160.00 to \$175.00 for attorney's fees when in fact no attorneys had been involved in the sending or review of the letters and did not incur any attorney's fees to generate the letters.

16. Defendants thus dunned plaintiff for hundreds of dollars in "attorney's fees" for a member of their clerical staff to send out pre-written form letters. The amounts demanded in the letters included charges, interest, penalties and collection costs not authorized by the agreement creating the trash fee debt or permitted by law.

17. The least sophisticated consumer would interpret the communications contained in the letters as being issued, authorized or approved by an attorney.

18. At all pertinent times hereto, defendants acted in a false, deceptive and unfair manner when they designed, compiled and furnished the letters, knowing that they would be used to create the false belief in consumers that lawyers were participating in the sending of the letters and collection of the debt when in fact no such lawyers were so participating.

19. The letters were false, deceptive, misleading and unfair in that they did not advise plaintiff that they were sent by a debt collector in connection with an attempt to collect a debt, and that any information obtained would be used for that purpose as required by section 1692e(11) of the FDCPA, and did not contain the required validation/verification information required within five days of defendants' initial communication with plaintiff, pursuant to section 1692g of the FDCPA.

20. Pursuant to section 2270.4(a) of the FCEUA, defendants are required to comply with all provisions of the FDCPA.

21. By a praecipe for writ of execution dated September 3, 2003 and purportedly signed by defendant Schmidt, defendants sought to collect from plaintiff a money judgment in

the amount of \$4,315.27 for delinquent trash fees, interest, costs and other charges and fees imposed by defendants. *See* Praecipe for Writ of Execution, attached hereto as Exhibit A.

22. Pursuant to a Notice of Sheriff's Sale of Real Property, defendants informed plaintiff that his home is scheduled to be sold at Sheriff's Sale on December 5, 2003 to enforce a court judgment in the amount of \$1,942.82 obtained by the Lower Mount Bethel Township, but that the sale would be canceled if he paid "back payments, late charges, costs and attorneys' fees due and that he should call defendants to find out how much he should pay. A copy of the Sheriff's Notice is attached as Exhibit B hereto.

23. Upon contacting defendants' office on October 7, 2003, plaintiff was sent a computer print-out of the amounts assessed against him. Defendants claimed a total balance due from plaintiff in the amount of \$4,342.52. *See* Exhibit C hereto.

24. The amount demanded by defendants included charges, interest, penalties and collection costs not authorized by the agreement creating the debt or permitted by law. For example, and not by way of limitation, defendants charged ten percent interest on the \$35 administrative fee, in violation of the Pennsylvania Municipal Claims and Tax Liens Law, 53 Pa Stat. Ann. § 7143.

25. Defendants knew or should have known that their actions violated the FDCPA, the FCEUA, the CPL and Act 6. Previous rulings of this Court have advised defendants that their practice violated the FDCPA and the FCEUA. *See Piper v. Portnoff Law Associates, Ltd.*, 274 F. Supp.2d 681 (E.D. Pa. 2003). Defendants could have taken the steps necessary to bring their actions within compliance with the FDCPA, FCEUA, the CPL and Act 6, but deliberately chose not to do so and failed to adequately review their actions to insure compliance with said laws.

26. At all times pertinent hereto, defendants were acting by and through their agents, servants and/or employees, who were acting within the scope and course of their employment, and under the direct supervision and control of the defendants herein.

27. At all times pertinent hereto, the conduct of defendants, as well as that of their agents, servants and/or employees, was malicious, intentional, willful, reckless, negligent and in wanton disregard for the law and the rights of the plaintiff herein.

28. As a result of defendants' conduct, plaintiff and the Class have sustained actual damages including a lien on residential property, payment of unlawful interest, penalties, collection charges, costs, attorneys' fees and out of pocket expenses.

IV. CLASS ACTION ALLEGATIONS

29. This action is brought as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class of individuals: all persons who, as owners of real property located in the Commonwealth of Pennsylvania, received communications from defendants after January 3, 2002 relating to municipal claims for trash assessments (the "Class"). Excluded from the Class are the defendants, their parents, subsidiaries and affiliates, and all governmental agencies.

30. The Class is so numerous that joinder of all members is impracticable. Upon information and belief, defendants continually sent out hundreds if not thousands of dunning letters virtually identical to those sent to plaintiff to consumers throughout the Commonwealth. Thus, although the precise number of Class members is known only to the defendants, defendants regularly collect or attempt to collect consumer debt throughout the Commonwealth. Because the collection tactics are uniform, because defendants do not deny that they have chosen not to conform their practice to the requirements of the FDCPA and because the collection letters

are standard form letters sent to consumers, numerosity may be presumed.

31. There are questions of law and fact common to the Class which predominate over any questions affecting only individual Class members. Among the predominating common questions of fact and law are the following:

a) Whether defendants violated the FDCPA, the FCEUA and the CPL by mailing letters or written communications which did not contain the language required by the FDCPA to consumers during the applicable time period;

b) Whether defendants charged interest upon charges other than the claim for trash fees, such as the \$35 administrative fee, and whether such charging of interest violated Pennsylvania law, including Act 6 and the CPL;

c) Whether defendants' imposition of an attorney's fee of \$160.00 to \$175.00 for a non-attorney's sending of a single form letter to collect debt was an unlawful collection fee in violation of the FDCPA, the FCEUA and the CPL;

d) Whether defendants' collection tactics were false, deceptive, misleading and unfair in violation of the FDCPA, the FCEUA and the CPL where no attorneys were actively involved in the preparation, review or generation of the letters;

e) Whether the collection tactics were false, deceptive, misleading and unfair in violation of the FDCPA, the FCEUA and the CPL in misrepresenting the amount of the debt;

f) Whether defendants' collection of or attempts to collect legal fees and their designing, compiling, furnishing and mailing letters to the Class members during the applicable time period constitute a violation of the FDCPA, the FCEUA and the CPL;

g) Whether defendants' failure to disclose in their initial communications that they were a debt collector attempting to collect a debt and that any information obtained

would be used for that purpose, that the plaintiff had certain validation/verification rights with respect to the debt and defendants' failure to disclose in all communications that they were debt collectors constituted a violation of the FDCPA, the FCEUA and the CPL;

h) Whether defendants have collected interest, penalties, fees, charges and collection costs in excess of the amount permitted by Act 6, the CPL and other applicable law;

i) Whether the interest, penalties, costs, fees and collection charges imposed by defendants are unreasonably large in light of the anticipated or actual harm caused by any breach of the agreement between plaintiff and the Lower Mount Bethel Township to pay for trash collection, and constitute unfair penalties;

j) Whether defendants have become unjustly enriched by their collection of amounts not permitted by law; and

k) Whether plaintiff and the members of the Class are entitled to injunctive relief and damages for defendants' unlawful conduct described herein.

32. Plaintiff's claims are typical of the claims of the Class, which all arise from the same operative facts and are based on the same legal theories, and plaintiff and the members of the Class sustained ascertainable loss in the form of payment of unlawful collection fees and other damages arising from defendants' wrongful conduct in violation of law.

33. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff is committed to vigorously litigating this matter and has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither Plaintiff nor his counsel have any interests which might cause them not to vigorously pursue this claim.

34. This action should be maintained as a class action because the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or

varying adjudications with respect to individual members which would establish incompatible standards of conduct for the parties opposing the Class, as well as a risk of adjudications with respect to individual members which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

35. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

36. Whether a Class member was the subject of defendants' collection tactics can be determined by ministerial inspection of defendants' records. Defendants maintain computer records showing the history of their debt collection attempts as to each Class member.

37. A class action is a superior method for the fair and efficient adjudication of this controversy. The interest of Class members in individually controlling the prosecution of separate claims against defendants is small because the maximum statutory damages in an individual action under the FDCPA is up to \$1,000. Management of the Class claims is likely to present significantly fewer difficulties than those presented in many class claims. The identities of the Class members may be obtained from defendants' records.

V. CLAIMS FOR RELIEF

Count One – Violation of the FDCPA

38. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.

39. Defendants are "debt collectors" as defined by section 1692a(6) of the FDCPA.

40. Plaintiff is a "consumer" as defined by section 1692a(3) of the FDCPA.

41. The letters and other notices sent to the plaintiff by defendants are each a “communication” relating to a “debt” as defined by sections 1692a(2) and 1692a(5) of the FDCPA.

42. Defendants violated the FDCPA. Defendants’ violations include, but are not limited to, violations of 15 U.S.C. §§ 1692e, 1692e(3), 1692e(5), 1692e(9), 1692e(10), 1692e(11), 1692e(14), 1692f, 1692g(a) and 1692j as evidenced by the following conduct:

- (a) Falsely representing or implying that letters were from an attorney;
- (b) Threatening to take action defendants never intended to take;
- (c) The use or distribution of any written communication which creates a false impression as to its source, authorization, or approval;
- (d) Failing to disclose clearly in all communications made to collect a debt or to obtain information about plaintiff, that the defendants are attempting to collect a debt and that any information will be used for that purpose;
- (e) Collecting and attempting to collect amounts not expressly authorized by the agreement creating the debt or permitted by law;
- (f) Failing to send plaintiff all of the required information pursuant to section 1692g(a) of the FDCPA;
- (g) Designing, compiling and/or furnishing any form knowing that such form would be used to create the false belief in the least sophisticated consumer that a person other than the creditor of such consumer is participating in the collection of or is attempting to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating; and
- (h) Using false, deceptive, misleading and unfair or unconscionable means to

collect or attempt to collect an alleged debt.

43. Defendants' acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for plaintiff's rights under the law and with the purpose of coercing plaintiff to pay the alleged debt.

44. As a result of the above violations of the FDCPA, defendants are liable to plaintiff in the sum of plaintiff's statutory damages, actual damages and attorney's fees and costs.

Count Two - FCEUA and CPL

45. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.

46. Defendants are "debt collectors" as defined by section 2270.3 of the FCEUA.

47. Plaintiff is a "debtor" as defined by section 2270.3 of the FCEUA.

48. The letters sent by defendants are "communications" relating to a "debt" as defined by section 2270.3 of the FCEUA.

49. Pursuant to 73 P.S. §2270.4(a), any violation by a debt collector of the FDCPA is a violation of the FCEUA.

50. Defendants engaged in unfair methods of competition and unfair or deceptive acts or practices, as defined by the CPL, by attempting to collect the debt in violation of the FCEUA. Defendants violated the FCEUA and CPL by engaging in the following conduct:

a) Falsely representing the amount of the debt and any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt in violation of section 1692e(2)(A) of the FDCPA;

b) Falsely representing or implying that the letters were from an attorney in violation of section 1692e(3) of the FDCPA;

c) Using false representations and deceptive means to collect or attempt to collect a debt in violation of section 1692e(10) of the FDCPA;

d) Failing to disclose clearly in all communications made to collect a debt or to obtain information about the plaintiff, that the defendants were attempting to collect a debt and that any information would be used for that purpose in violation of section 1692e(11) of the FDCPA;

e) Failing to send plaintiff all of the information required pursuant to section 1692g(a) of the FDCPA;

f) Collecting and attempting to collect unauthorized amounts in violation of section 1692f(1) of the FDCPA; and

g) Otherwise using false, deceptive, misleading and unfair or unconscionable means to collect or attempt to collect a debt.

51. Defendants' acts as described above were done with intentional, willful, reckless, wanton and negligent disregard for plaintiff's rights under the law and with the purpose of coercing plaintiff to pay the debt.

52. Defendants have charged interest on fees and charges other than the trash fees, in violation of Pennsylvania law, and have done so in an unfair and deceptive manner. Defendants' manner of charging plaintiff and the Class for excessive interest was deceptive conduct which created a likelihood of confusion or misunderstanding, in violation of the CPL.

53. As a result of the above violations of the FCEUA and CPL, plaintiff has suffered ascertainable losses entitling plaintiff to an award of statutory, actual and treble damages and attorney's fees and costs.

Count Three - Act 6

54. Plaintiff repeats and realleges all paragraphs above as if fully set forth herein.

55. Under Act 6, a debtor cannot be charged or required to pay interest or charges in excess of that provided by law. 41 Pa. Stat. Ann. §§ 501, 502.

56. Defendants have collected and attempted to collect interest and penalties in excess of the limit allowed by Act 6.

57. Defendants have collected and attempted to collect interest on fees and charges other than the trash fee claim, in violation of Pennsylvania law.

58. Plaintiff has suffered damages as a result of defendants' violations of Act 6.

59. As a result of the violations of Act 6, defendants are liable to plaintiff and the Class for actual damages, triple damages, attorneys' fees and costs, pursuant to sections 502 and 503 of Act 6.

Count Four - Imposition of Illegal Penalty

60. Plaintiff repeats and realleges all paragraphs above as if fully set forth herein.

61. The interest, penalties, costs, fees and collection charges imposed by defendants are unreasonably large in light of the anticipated or actual harm caused by any breach of the agreement between plaintiff and the Lower Mount Bethel Township and constitute unfair penalties.

62. As a result of the imposition of the interest, penalties, costs, fees and collection charges, plaintiff and members of the Class have been harmed entitling them to damages pursuant to the common and statutory laws of Pennsylvania.

Count Five - Unjust Enrichment

63. Plaintiff repeats and realleges all paragraphs above as if fully set forth herein.

64. Defendants have been unjustly enriched at the expense of plaintiff and the Class by their collection of unreasonable interest, penalties, costs, fees and collection charges not allowed by law.

65. As a result, defendants have been unjustly enriched and plaintiff and members of the Class have suffered damages.

VI. JURY TRIAL DEMAND

66. Plaintiff demands trial by jury on all issues so triable.

VII. PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays that relief be granted as follows:

(a) That an order be entered certifying the proposed Class under Rule 23 of the Federal Rules of Civil Procedure and appointing plaintiff and her counsel to represent the Class;

(b) That an order be entered declaring that defendants' actions as described above are in violation of the FDCPA, the FCEUA, the CPL and Act 6;

(c) That an order be entered enjoining defendants from continuing to communicate with plaintiff and members of the Class in violation of the FDCPA, the FCEUA and the CPL;

(d) That judgment be entered against defendants for actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);

(e) That judgment be entered against defendants for statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A) and (B);

(f) That judgment be entered against defendants for actual and treble damages pursuant to 41 P.S. § 502 and 73 P.S. § 201-9.2(a);

(g) That judgment be entered against defendants for statutory damages pursuant to 73 P.S. § 201-9.2(a);

(h) That judgment be entered for punitive damages;

(i) That the Court award costs and reasonable attorneys' fees, pursuant to 15 U.S.C.

§ 1692k(a)(3), 41 P.S. § 503 and 73 P.S. § 201-9.2(a); and

(j) That the Court grant such other and further relief as may be just and proper.

DONOVAN SEARLES, LLC

Dated: October 14, 2003

By: _____

David A. Searles
1845 Walnut Street, Suite 1100
Philadelphia, PA 19103
(215) 732-6067

Attorneys for Plaintiff and the Class