

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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No. 97-1560

WILLIAM E. DUFFY,  
SUSAN M. QUADERER, and  
DENNIS G. HACKEN, Plaintiffs-Appellants

v.

KEVIN W. LANDBERG and NEW CONCEPTS BUSINESS SERVICES, INC., Defendants-Appellees

On Appeal from the  
United States District Court for  
the District of Minnesota

**BRIEF FOR AMICUS CURIAE FEDERAL TRADE COMMISSION**

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## STATEMENT OF INTEREST OF THE FEDERAL TRADE COMMISSION

The Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692n ("FDCPA" or "Act"), under which this case arises, is premised on the congressional belief that "every individual, whether or not he owes the debt, has a right to be treated in a reasonable and civil manner," Baker v. G.C. Services Corp., 677 F.2d 775, 777 (9th Cir. 1982), citing 123 Cong. Rec. 10241 (1977). The Act contemplates a dual scheme of private and public enforcement, in which Congress has assigned the principal public role to the FTC, 15 U.S.C. § 1692i(a).

Practices that contravene the FDCPA constitute "unfair or deceptive acts or practices" in violation of the Act, 15 U.S.C. § 1692e(3)(A). The Act's purpose is to protect consumers from abusive debt collection practices, 15 U.S.C. § 1692(b). The Act's provisions are designed to ensure that debt collectors treat consumers fairly and respectfully, and to provide consumers with the right to dispute debts and to request debt verification. The Act's provisions are designed to ensure that debt collectors treat consumers fairly and respectfully, and to provide consumers with the right to dispute debts and to request debt verification.

Neither the plain language of the FDCPA (Point A), nor its legislative history (Point B), supports the district court's limitation of the Act to debts that arise from an extension of "credit." Both these sources, as well as the only appellate decision on point and the preponderance of district court case law (Point C), the Federal Trade Commission's consistent administrative interpretation (Point D), and considerations of sound public policy (Point E) demonstrate that third-party collection of debts arising from dishonored checks given by consumers in payment for goods or services is covered by the FDCPA.

## **ARGUMENT**

### **THE FDCPA APPLIES TO THE COLLECTION OF DISHONORED CHECKS**

A. By the Terms of the Act, the Obligation to Pay Arising from a Consumer Transaction Is a "Debt" and a Third-Party Who Routinely Attempts to Collect Such Debts Is a "Debt Collector."

The FDCPA applies to third-party collection of obligations that arise out of consumer purchases of goods or services, or consumer loans. The FDCPA imposes various restraints upon the activities of third-party "debt collectors," see 15 U.S.C. §§ 1692b-i, 1692k, and defines "debt collector" to mean:

any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

15 U.S.C. § 1692a(6). The FDCPA defines "debt" to mean:

any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

15 U.S.C. § 1692a(5). A "consumer" is "any natural person obligated or allegedly obligated to pay any debt," 15 U.S.C. § 1692a(3).

These statutory definitions cover the present case. The plaintiff, a "natural perso

The issue is not one of uncollected debts, but rather whether or not consumers must lose their civil rights and be terrorized and abused by unethical debt collectors.

The only appellate decision to address the issue presented in this case concludes that the FDCPA covers check

The Commission's consistent, longstanding, construction of the FDCPA to cover collection of dishonored checks arising from consumer transactions, supported by both statutory text and legislative history, is a further consideration that weighs in favor of plaintiff's position. See Bass v. Stolper, slip op. at 11 n.8.

E. The Public Policy Reflected in the FDCPA Dictates Treatment of Dishonored Check Collection in the Same Fashion as Collection of Other Consumer Debts.

The public policy relevant to construing the FDCPA is that stated expressly by Congress in the statutory preamble, e.g., that "[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors," 15 U.S.C. § 1692(a); that such practices "contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy," id.; that "[m]eans other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts," 15 U.S.C. § 1692(c); and that "those debt collectors who refrain from using abusive debt collection practices [should not be] competitively disadvantaged," 15 U.S.C. § 1692(e).

Each of these stated statutory purposes applies no less forcefully to third-party check collection than to third-party collection of other types of consumer debt. The abusive practices that the FDCPA prohibits may be applied as readily to collection of dishonored checks as to other types of debt collection, and the consequences for the debtor from the exercise of disproportionate remedies may be just as great. Likewise, there are lawful means to collect dishonored checks, and there is no evident reason why those who refrain from the abusive tactics addressed by the FDCPA in collecting dishonored checks should be competitively disadvantaged.

Case law since passage of the FDCPA confirms that debts arising from dishonored checks, and the collection activities resulting therefrom, implicate the same range of concerns as debts that arise from default on installment obligations. For example, collection actions against some consumers may stem from different consumers' use or misuse of a joint account, the situation posed in Bass v. Stolper. Sometimes insufficient funds checks are written because the consumer misinterprets the bank's policy regarding crediting deposits or honoring overdrafts. See Pearce v. Rapid Check Collections, Inc., 738 F. Supp. 334, 336 (D.S.D. 1990). In other cases involving dishonored checks, consumers



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April 28, 1997

### CERTIFICATE OF SERVICE

I hereby certify that on April 28, 1997, I served the "Brief for Amicus Curiae Federal Trade Commission" by causing two copies to be sent by first-class mail, postage prepaid, to counsel below:

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1. In marked contrast to the definition of "debt" adopted by House and Senate, some versions of the FDCPA that were introduced earlier had defined "debt" to mean an obligation arising out of a transaction "in which credit is offered or extended to an individual," see, e.g., H.R. 13720, 94th Cong., 2d Sess. (1976); H.R. 29, 95th Cong., 1st Sess. (1977). Thus Congress was clearly aware of the means by which it could have limited "debt" to "credit" transactions, but eschewed that alternative. See Bass v. Stolper, slip op. at 10.

2. See Hearings Before the Subcomm. on Consumer Affairs of the House Comm. on Banking, Finance and Urban Affairs, on H.R. 29, 95th Cong., 1st Sess. at 257-61 (1977) (statement of John W. Johnson, Executive Vice-President, American Collectors Association, Inc.).

3. Id. at 184-215.

4.

which an elderly Vermont consumer had paid for groceries in an Albany, New York supermarket with a \$75 check. Before the merchant presented the check for payment, however, several of the consumer's checks were stolen and forged, leaving no balance in the account and no funds with which the consumer could immediately pay the debt. A check collection firm subsequently threatened the debtor with immediate arrest by a sheriff if he did not pay (an entirely unfounded charge, as there was no basis for criminal liability, and, in any event, the power of arrest lay with Vermont public officials, not a New York collection agency). Mr. Ashman testified that the subject check recovery firm had used similar threats in other cases.

5. Hearings Before the Subcomm. on Consumer Affairs of the Senate Comm. on Banking, Housing and Urban Affairs on S. 656, S. 918, S. 1130, and H.R. 5294, 95th Cong., 1st Sess. 146, 163 (1977) (statement of John W. Johnson and William F. Hearne, Jr., Executive Vice-President and Treasurer, respectively, American Collectors Association, Inc.).

6. Id. at 167-76.

7. See, Johnson v. CRA Security Systems, Inc., 1997 U.S. Dist. Lexis 4962 (N.D. Cal. 1997) (A.105-08); Ernst v. Riddle, 1997 U.S. Dist. Lexis 4143 (M.D. La. 1997) (A.100-04); Fulcher v. Wexler, 1997 U.S. Dist. Lexis 4229 (D. Conn. 1997) (A.97-99); Newman v. Checkrite California, Inc., 912 F. Supp. 1354, 1364 n.7 (E.D. Cal. 1995); In re Schrimpscher, 17 B.R. 999, 1010 (Bankr. N.D.N.Y. 1982). Cases denying coverage include Sarver v. Capital Recovery Associates, Inc., 951 F. Supp. 550 (E. D.Pa. 1996); Charles v. Checkrite, No. 95-02263 (D. Ariz. May 9, 1996), appeal pending, No. 96-15995 (9th Cir.); and by apparent implication, Cederstrand v. Landberg, 933 F. Supp. 804 (D. Minn. 1996); and Adams v. Law Offices of Stuckert & Yates, 926 F. Supp. 521 (E.D. Pa. 1996).

8. See, e.g., Stewart v. Slaughter, 165 F.R.D. 696 (M.D. Ga. 1996) (recipient of threat to sue for dishonored check satisfies typicality requirements for FDCPA class action); Edwards v. National Business Factors, Inc., 897 F. Supp. 455 (D. Nev. 1995); Bakumirovich v. Credit Bureau of Baton Rouge, Inc., 155 F.R.D. 146 (M.D. La. 1994); Pearce v. Rapid Check Collection, Inc., 738 F. Supp. 334 (D.S.D. 1990); Holmes v. Telecredit Service Corp., 736 F. Supp. 1289 (D. Del. 1990) (third-party check collection service is "debt collector" within meaning of FDCPA); Taylor v. Checkrite, Ltd., 627 F. Supp. 415 (S.D. Ohio 1986); West v. Costen, 558 F. Supp. 564, 571 (W.D. Va. 1983).

9. The court in Zimmerman did rely on the fact that Congress enacted the FDCPA as an amendment to the Consumer Credit Protection Act, 15 U.S.C. §§ 1601 et seq. ("CCPA"), but that fact alone provides no reason to read into the FDCPA's broad definition of "debt" a limitation that is nowhere expressed and that was specifically rejected by the House Committee that fashioned the definition. See Mace v. Van Ru Credit Corp., 109 F.3d 355 (7th Cir. 1997) Indeed, other portions of the CCPA also regulate non-credit transactions. See 15 U.S.C. §§ 1693-1693r ("Electronic Fund Transfer Act," enacted as Title IX of the CCPA); Bass v. Stolper, slip op. at 12-14.

10. In denying FDCPA coverage for non-consumer debts, other Circuits, too, have focused on the absence of a "transaction" or a "consumer" relationship between the obligor and obligee.

Section 803(5) defines "debt" as a consumer's "obligation \* \* \* to pay money arising out of a transaction in which the money, property, insurance, or services (being purchased) are primarily for personal, family, or household purposes \* \* \* ."

1. Examples. The term includes:

- x Overdue obligations such as medical bills that were originally payable in full within a certain time period (e.g., 30 days).
- x A dishonored check that was tendered in payment for goods or services acquired or used primarily for personal, family, or household purposes.
- x