

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

REYNALDO JOMARRON, :
Plaintiff, :
v. : No. 3:05cv0094 (MRK) (WIG)
NASCO ENTERPRISES, INC., :
Defendant. :

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RECOMMENDED RULING ON DAMAGES

Following the granting of Plaintiff's Motion for Judgment Upon Default against Defendant, Nasco Enterprises, Inc., this matter was referred to the Undersigned for a hearing on damages. On July 15, 2005, a hearing was held, at which counsel for Plaintiff appeared and represented to the Court that she had served notice of the hearing on counsel for the Defendant, who did not appear.

At the hearing, Plaintiff relied upon the allegations in the complaint¹ and two affidavits filed with the Motion for Judgment Upon Default in support of his damage claims. In his complaint, Plaintiff alleged that Defendant, which has its place of business in Houston, Texas, engaged in collection efforts and communicated with Plaintiff regarding a disputed personal account for FDS

¹ A default having entered against the Defendant, the well-pled factual allegations of Plaintiff's complaint are deemed admitted. Au Bon Pain Corp. v. Artect, Inc., 653 F.2d 61, 65 (2d Cir. 1981).

Bank/Burdine's, without being licensed, as required by Connecticut law. Plaintiff asserted claims under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 et seq., the Connecticut Creditors' Collection Practices Act, Conn. Gen. Stat. §§ 36a-645 et seq., Connecticut's Consumer Collection Agency Act, Conn. Gen. Stat. §§ 36a-800 et seq., and the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. §§ 42-110a et seq. In his sworn affidavit, Plaintiff stated that he had received a letter from Defendant, dated May 6, 2004, seeking to collect his personal account regarding FDA Bank/Burdines. Citing to a state government website, <http://www.state.ct.us/dob/pages/collect.htm>,² Plaintiff stated that Defendant was not licensed as a consumer collection agency in Connecticut. Although Plaintiff did not provide the Court with a copy of the letter he received, he stated that the letter did not provide him with the information and disclosures mandated by the FDCPA.

At the hearing, Plaintiff's Counsel also presented evidence that Defendant was part of a family of companies, operating under

² This website lists the consumer collection agencies licensed in Connecticut. Although the Court has confirmed that Nasco Enterprises, Inc., is not listed on the current list posted on this website, it was not able to determine whether it was listed as of May 6, 2004. According to a letter from J. David Laman, Esq., of Houston, Texas, who represents Nasco, Nasco went out of business and ceased operations on July 12, 2004. See Pl.'s Mot. for Default at 2.

the same roof, which engage in similar businesses. Unlike Defendant, however, the other companies are licensed to engage in collection activities within the State of Connecticut. Thus, she argued, Defendant's actions were intentional and in reckless disregard of Connecticut's Consumer Collection Agency licensing law, Conn. Gen. Stat. § 36a-801(a).

The Court finds that Defendant violated the FDCPA, which prohibits the use of debt collection practices in violation of state law, 15 U.S.C. § 1692e(5), by attempting to collect a debt in Connecticut without being properly licensed to do so. See Conn. Gen. Stat. § 36a-801(a); Goins v. JBC & Associates, P.C., 352 F. Supp. 2d 262, 270 (D. Conn. 2005); Gaetano v. Payco of Wisconsin, Inc., 774 F. Supp. 1404, 1415 (D. Conn. 1990) (holding that unlicensed debt collection agency that demanded payment of the debt and stated that it would use all means to enforce collection violated FDCPA by threatening to take action that legally could not be taken).³

_____ Additionally, the Court finds that Defendant's conduct constituted a violation of CUTPA, Conn. Gen. Stat. § 42-110b(a), which prohibits any person from engaging in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. Based upon the Supplemental

³ The Court makes no findings as to whether the substance of Defendant's letter violated the FDCPA since the letter was not presented to the Court.

Affidavit of Plaintiff, the Court is satisfied that Plaintiff has met the threshold "ascertainable loss" requirement of CUTPA.⁴ See Gervais v. Riddle & Associates, P.C., 363 F. Supp. 2d 345. 356-58 (D. Conn. 2005) (holding that case that the plaintiff had established an "ascertainable loss" for purposes of CUTPA by alleging that the defendant's conduct, which violated the FDCPA, deprived him of the benefit of his bargain with MBNA that any attempt by MBNA or its successor in interest to collect upon his consumer credit account would be in accordance with federal and state law)._____

Based on the evidence presented, the Court recommends awarding Plaintiff the maximum statutory damages under the FDCPA of \$1,000 for Defendant's violation of FDCPA. See 15 U.S.C. § 1692k(a)(2)(A). Under this section, damages are awarded at the discretion of the Court and do not require proof of actual damages. Id.; see Spicer v. Lenehan, No. 3:03CV1810, 2004 WL 3112554, at *2 (D. Conn. Sept. 14, 2004). In determining the amount of damages to be awarded, the Court "shall consider, among other relevant factors . . . the frequency and persistence of

⁴ CUTPA provides "[n]o person shall engage in . . . unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen. Stat. § 42-110b(a). "Any person who suffers any ascertainable loss of money or property . . . as a result of the use or employment of a method, act or practice prohibited by Section 42-110b, may bring an action . . . to recover actual damages," Conn. Gen. Stat. § 42-110g(a), and may recover attorneys fees and punitive damages as well.

noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional." 15 U.S.C. § 1692k(b)(1). The Court finds that Defendant intentionally undertook collection activities in the state of Connecticut without obtaining the required license and in reckless disregard of the law and the rights of Plaintiff. Accordingly, the Court recommends an award of damages of \$1,000 under the FDCPA.

Additionally, under CUTPA, Plaintiff may recover punitive damages, as well as such equitable relief as the Court deems necessary or proper. See Conn. Gen. Stat. § 42-110g(a); United Technologies Corp. v. American Home Assurance Co., 118 F. Supp. 2d 174, 176 (D. Conn. 2000). Based on the evidence presented at the hearing, the Court recommends an award of \$10,000 in punitive damages under CUTPA to deter future violations. The Court also recommends that the Defendant be enjoined from engaging in further collection activities in the state of Connecticut without first obtaining the required license.

Finally, the Court has reviewed Plaintiff's counsel's fee affidavit. Under the FDCPA, as well as CUTPA, a successful plaintiff is entitled to recover the costs of the action, together with a reasonable attorney's fee as determined by the court. 15 U.S.C. § 1692k(a)(3); Conn. Gen. Stat. § 42-110g(d) (providing for costs and reasonable attorneys' fees based

on the work reasonably performed and not on the amount of the recovery). Based on the Court's familiarity with fee awards in this District and the rates charged in this District by counsel with similar experience as Plaintiff's Counsel, the Court finds Counsel's requested rate of \$300/hour and the requested hours (4.5 hours) to be reasonable. Her requested rate of \$300/hour has been previously approved in other cases and is in keeping with other fee awards in this District. In addition to the fees requested in the affidavit, the Court recommends an award of \$350 to cover Counsel's travel to and from Bridgeport for the hearing, preparation for and attendance at the hearing, thus bringing the total fee award to \$1,700.00. Additionally, Plaintiff is entitled to recover costs of the action, which are \$192.22, representing filing and service fees. Thus, the Court recommends a fee award of \$1,700.00 and an award of costs in the amount of \$192.22.

Conclusion

Based on the foregoing, the Court recommends that judgment enter against the Defendant, Nasco Enterprises, Inc., and in favor of the Plaintiff, Reynaldo Jamarron, in the amount of \$12,892.22 (representing \$1,000.00 in statutory damages, \$10,000.00 in punitive damages, \$1,700.00 in attorney's fees, and \$192.22 in costs) and that Defendant be enjoined from engaging in collection activities in the state of Connecticut without the

appropriate licenses.

Any party may seek the District Court's review of this recommendation. See 28 U.S.C. § 636(b). Written objections must be filed within ten days after service of this recommended ruling. See Fed. R. Civ. P. 6(a), 6(e) & 72; D. Conn. L. R. 72.2(a) for Mag. Judges. Failure to object within ten days may preclude appellate review. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; FDIC v. Hillcrest Assocs., 66 F.3d 566, 569 (2d Cir. 1995); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992).

SO ORDERED, this 4th day of August, 2005, at Bridgeport, Connecticut.

/s/ William I. Garfinkel
WILLIAM I. GARFINKEL
United States Magistrate Judge