

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED

2005 APR 17 P 8:06

LAURA BRESSLER,)
)
 Plaintiff,)
)
 v.)
)
 SUPERIOR ASSET MANAGEMENT, INC.,)
)
 Defendant.)

No. 05-1047

U.S. DISTRICT COURT
E.D.N.Y.
GARAUFIS, J.

JURY DEMANDED

COMPLAINT

REYES, M.J

Plaintiff Laura Bressler files this Complaint against Defendant Superior Asset Management, Inc. for its deceptive, illegal and unfair collection practices, committed in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, ("FDCPA").

Parties

1. Plaintiff Bressler is a resident of this district.
2. Bressler is a "consumer," as that term is defined by § 1692a(3) of the FDCPA, in that the alleged debt Defendant sought to collect from her is a consumer debt, incurred for personal, family or household purposes and purportedly owed to "MBNA America Bank NA."
3. Defendant, Superior Asset Management, Inc., is a Georgia corporation regularly engaged for profit in the collection of debts allegedly owed by consumers.
4. Defendant's principal place of business is located at 400 Northpark Town Center, 1000 Abernathy Rd. NE, Suite 165, Atlanta, GA 30328.
5. Defendant's current mailing address is P.O. Box 596, Fort Walton Beach, FL 32549.

6. Defendant routinely sends collection correspondence into the State of New York and specifically, sends correspondence and makes telephone calls into this district.

7. The principal purpose of Defendant's business is the collection of consumer debts, through the use of the mail and telephone, and it regularly attempts to collect consumer debts for others.

8. Defendant is therefore a "debt collector," as that term is defined by § 1692a(6) of the FDCPA.

Jurisdiction and Venue

9. This Court has federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as Plaintiff Bressler lives and works in this district, and the acts and transactions that give rise to this action occurred, in substantial part, in this district.

11. Venue is also proper since Defendant transacts business in this district.

Factual Allegations

12. In or around April 2005, Defendant began its efforts to collect an alleged debt from the Plaintiff.

13. On or about April 8, 2005, Defendant sent an initial collection letter to the Plaintiff, a copy of which is attached as Exhibit A.¹

14. Starting on or about April 11, 2005, Defendant's employees began telephoning Plaintiff at her work as many as six times a day, leaving messages demanding that she either contact Defendant's employees immediately or get an attorney to contact Defendant.

¹ Plaintiff's credit card number and address are redacted from Exhibit A for privacy purposes.

15. Defendant's employees would also go into greater detail in their phone calls by, for example, claiming that Plaintiff had "no other alternative choice but to return my call and have a discussion with me, which is required and necessary at this time by law."

16. Most of these messages were left by an employee of Defendant using the name "Ms. Mahoney" and the rest were left by a number of male callers.

17. On or about April 19, 2005, Ms. Mahoney escalated Defendant's harassment of Plaintiff by attempting to contact Plaintiff's boss.

18. When Plaintiff's boss was unavailable, Ms. Mahoney spoke with the boss's secretary.

19. Ms. Mahoney claimed that she was calling from the "Warrant Department" and that she needed to speak to Plaintiff.

20. The secretary responded that Plaintiff was not available at the time.

21. Ms. Mahoney then asked whether the secretary could page Plaintiff.

22. The secretary responded that she could not but that she would give the message to Plaintiff as soon as she returned.

23. On or about April 27, 2005, Plaintiff responded to these repeated phone calls to her and her co-workers by writing a letter to Defendant disputing the debt.

24. In her April 27, 2006 letter, Plaintiff further advised that she is not allowed to receive calls of this kind at work and that all calls to work must stop.

25. Defendant received the dispute letter on May 2, 2005.

26. But instead of verifying the debt and stopping all calls to Plaintiff's workplace, as required by law, Defendant's employees stepped up their efforts and began leaving voicemails in

which Defendant's employees threatened to "expedite" collection by contacting "Human Resources and Payroll."

27. Because neither Defendant nor the creditor on whose behalf Defendant claimed to be acting had even sued Plaintiff, much less obtained a judgment, Defendant was not entitled to contact "Human Resources and Payroll."

28. Because no "warrant" was ever out against Plaintiff, Defendant's sole purpose for using the name "Warrant Department," for attempting to contact Plaintiff's boss, and for speaking with the boss's secretary, was to obtain payment by publicly humiliating Plaintiff.

29. Because Defendant knew where Plaintiff worked, Defendant had no permissible purpose for contacting Plaintiff's boss and co-worker other than to cause Plaintiff public humiliation and stress.

30. Defendant's relentless telephone calls to Plaintiff caused Plaintiff great embarrassment and stress.

31. Defendant's false, misleading, and impermissible calls to Plaintiff's boss and co-worker caused Plaintiff great embarrassment and stress.

COUNT I

Violations of the Fair Debt Collection Practices Act

32. Plaintiff hereby restates, realleges, and incorporates herein by reference paragraphs 1-31 as if set forth fully in this Count.

Section 1692e and its subsections, and Section 1692f

33. Section 1692e and its subsections prohibit debt collectors from using false, deceptive or misleading representations and provides, in relevant part, that the following representations are specifically declared unlawful:

- (4) *The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.*
- (5) *The threat to take any action that cannot legally be taken or that is not intended to be taken.*
- (7) *The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.*
- (10) *The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.*

34. Defendant violated §§ 1692e, e(4), e(5), e(7), e(10) by having its employees relentlessly calling Plaintiff at work, attempting to speak with Plaintiff's boss, speaking with Plaintiff's co-worker, threatening to call "Human Resources and Payroll," claiming that Plaintiff had some obligation to return the endless voicemails, impugning Plaintiff's reputation, and falsely stating that the "Warrant Department" was looking for Plaintiff.

35. Defendant also violated § 1692f by using unfair and unconscionable means to collect a debt.

36. No legal action had been commenced against Plaintiff in April 2005 and, in fact, no legal action has been commenced since then.

37. Section 807(5) of the Federal Trade Commission commentary to the FDCPA states, in relevant part, that:

A debt collector may not state or imply that he or any third party may take any action unless such action is legal and there is a reasonable likelihood, at the time the statement is made, that such action will be taken. A debt collector may state that certain action is possible, if it is true that such action is legal and is frequently taken by the collector or creditor with respect to similar debts; however, if the debt collector has reason to know there are facts that make the action unlikely in the particular case, a statement that the action was possible would be misleading.

See <http://www.ftc.gov/os/statutes/fdcpa/commentary.htm>

(emphasis added)

38. In fact, Defendant's conduct is the same type of conduct that the Federal Trade Commission included in its June 2000 report to Congress as activity that has been a considerable source of complaints.

Threatening dire consequences if consumer fails to pay: Another source of complaints involves the use of false or misleading threats of what might happen if a debt is not paid. These include threats to institute civil suit or criminal prosecution, garnish salaries, seize property, cause job loss, have a consumer jailed, or damage or ruin a consumer's credit rating. Such threats violate the Act unless the collector has the legal authority and the intent to take the threatened action. (Sections 807(4)-(5), 15 U.S.C. §§ 1692e(4)-(5).) The Commission received 567 complaints in 1999 alleging that third-party collectors falsely threatened a lawsuit or some other action that they could not or did not intend to take, and 212 complaints alleging that such collectors falsely threatened arrest or seizure of property.

See <http://www.ftc.gov/os/statutes/fdcpa/fdcpa2000rpt.htm>

(emphasis added)

39. Defendant's false and misleading communications, in connection with its unauthorized discussion with Plaintiff's co-worker, and its attempts to reach Plaintiff's boss, caused Plaintiff to suffer stress and humiliation and gives rise to her claim for actual damages under 15 U.S.C. § 1692k(a)(1).

Sections 1692b and c

40. Section 1692c(b) of the FDCPA prohibits debt collectors from communicating with third parties in connection with a consumer's alleged debt.

41. If a debt collector communicates with a consumer's employer, without the prior consent of the consumer, it can only seek to acquire location information about the consumer, in accordance with Section 1692b. See 15 U.S.C. § 1692c(b).

42. Defendant violated § 1692c(b) by telephoning Plaintiff's boss without Plaintiff's prior consent.

43. Defendant violated § 1692c(b) by telephoning Plaintiff's co-worker without Plaintiff's prior consent.

44. Defendant violated § 1692c(b) by telephoning Plaintiff's boss and co-workers in an attempt to publicly humiliate her to obtain payment through unfair and deceptive means.

WHEREFORE, Plaintiff Laura Bressler respectfully requests that this Court enter judgment in her favor against Defendant Superior Asset Management, Inc. as follows:

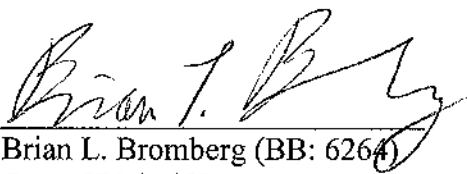
- (A) Statutory damages;
- (B) Actual damages in an amount to be proven at trial;
- (C) Attorneys' fees, litigation expenses, and costs incurred in bringing this action; and
- (D) Any other relief this Court deems appropriate and just under the circumstances.

Demand for Jury Trial

Please take notice that Plaintiff demands a trial by jury in this action.

Dated: New York, New York
April 17, 2006

Respectfully Submitted,

By: 
Brian L. Bromberg (BB: 6264)
One of Plaintiff's Attorneys

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Stacy M. Bardo*
Attorneys at Law
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Chicago, Illinois 60602
(312) 782-5808

* Chicago counsel will move for *pro hac vice* admission as soon as practicable.

Exhibit A

P.O. Box 1205
Oaks, PA 19456

0247480462



SUPERIOR ASSET MANAGEMENT, INC.

OFFICE HOURS:
8am-9pm EST Monday-Thursday
8am-5pm EST Friday
9am-12pm EST Saturday
Toll Free 800-277-1421

PERSONAL & CONFIDENTIAL

480462 COLL
LAURA BRESSLER

ACCOUNT IDENTIFICATION
Re : MBNA AMERICA BANK NA
Client Account # : [REDACTED]
April 08 2005
Total Due : \$10502.95

Dear LAURA BRESSLER,

This letter has been sent to you by Superior Asset Management, Inc., a collection agency for MBNA AMERICA BANK NA. The above account has been placed with this office for collection.

Please advise this office with your intentions.

****IMPORTANT****

This correspondence is being sent to you by a debt collection company.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, we will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will obtain verification of the debt or obtain a copy of a judgement or verification and we will mail such verification to you. If you request this office in writing 30 days after receiving this notice, this office will give you the name and address of the original creditor, if different from the current creditor. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

This collection agency is licenced by the Department of Consumer Affairs, the city of NY licence number 1099326.

Detach and Return with Payment

Enter the requested information in the spaces provided below.

If you wish to pay by credit card, please enter the requested information in the spaces provided.

Check one: Visa MasterCard

Card#: _____

Expiration Date: ___/___/___ Amount :\$ _____

Signature _____

Name : _____

Address : _____

Telephone Number : _____

OUR CLIENT:	MBNA AMERICA BANK NA
CLIENT ACCT#:	[REDACTED]
TOTAL DUE:	\$10502.95
OUR ACCOUNT #:	480462

Enclosing this notice with your payment will expedite credit to your account.

SEND TO:
SUPERIOR ASSET MANAGEMENT, INC.
P.O. BOX 596
FT WALTON BEACH, FL 32549