
IN THE MATTER OF
COMMERCIAL SERVICE COMPANY, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2717. Complaint, Aug. 20, 1975--Decision, Aug. 20, 1975

Consent order requiring a Seattle, Wash., debt collection agency and an affiliated firm, among other things to cease filing suits in courts located in counties other than those in which defendants reside or signed the contract sued upon; failing to disclose clear explanations or what their summonses mean and how a defendant should respond to avoid a default judgment; and misrepresenting that letters and forms come from an attorney when such is not the case.

Appearances

For the Commission: *Randall H. Brooks.*

For the respondents: *Warren A. Doolittle, Schwepp, Doolittle, Krug, Tausend, Beezer & Beierle, Seattle, Wash.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Commercial Service Company, Inc., a corporation, and Commercial Collectors, a partnership, and Glen B. Faulk and Richard R. Swaffield, individually, as copartners doing business as Commercial Collectors, and as officers of said corporation, and Vincent A. Retacco, an

individual, hereinafter referred to as respondents, have violated Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, issues this complaint:

PARAGRAPH 1. Commercial Service Company, Inc., (CSC) is a Washington corporation with its office and principal place of business located at 811 First Ave., Seattle, Wash.

Commercial Collectors (CC) is a Washington partnership with its office and principal place of business located at 811 First Ave., Seattle, Wash. Its activities are closely interrelated with, or indistinguishable from, those of CSC.

Glen B. Faulk and Richard R. Swaffield are co-partners in CC and officers of CSC. They formulate, direct and control the policies, acts and practices of said corporation and partnership, including those hereinafter set forth. Their addresses are the same as that of CSC.

Vincent A. Retacco is an attorney admitted to practice in the State of Washington. He formulates, directs and controls, in cooperation with the other individual respondents, policies, acts and practices of CSC and CC related to legal actions, real or threatened, including the acts and practices set forth below. His principal office and place of business is located at 30640 Pacific Hwy. S., Federal Way, Wash.

PAR. 2. Respondents are engaged in the business of pursuing collection activities against individuals for various retail installment and other creditors, acting as agents or assignees of such creditors. Allegations below of respondents' present acts or practices include past acts or practices.

PAR. 3. In the course of their business, respondents solicit and accept accounts from creditors located in various States. Respondents act as agents or assignees of various out-of-Washington creditors. Respondents' collection accounts include debts incurred outside of Washington and involve debtors resident outside of Washington. Thus respondents maintain a course of business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents regularly resort to use of judicial process in cases not resolved by private settlement. The defendant debtors in such cases are predominantly low-income or middle-income persons not represented by counsel. Respondents usually obtain default judgments. CSC sues in its own name as assignee of various creditors.

PAR. 5. Excepting most cases against defendants resident in Seattle, respondents commence almost all their collection lawsuits in the Superior Court of King County, Wash. In many such suits defendants reside, and have incurred the underlying obligations, outside of King County, in places up to 300 or more miles from the court. Courts located in the county where defendants reside or where they incurred the

underlying obligations could be used for these suits. Through the use of distant or inconvenient forum, respondents effectively deprive defendants of a reasonable opportunity to appear, answer and defend the lawsuits. Therefore, such use of distant or inconvenient forum is unfair.

PAR. 6. For their superior court lawsuits, respondents use confusingly worded summonses which give defendants inadequate or misleading directions as to the proper procedure for responding. These summonses have the tendency to mislead defendants into defaulting. Thus, respondents effectively deprive defendants of a reasonable opportunity to appear, answer and defend the lawsuits. Therefore, such use of confusingly worded summons is unfair and deceptive.

PAR. 7. In the course of their business, respondents cause to be sent from their place of business, letters or forms to alleged debtors representing that their account has been referred to an attorney to institute suit or take other action. Many of these letters and forms have been previously signed in blank by Mr. Retacco, and then placed in the control and custody of employees of CSC. Typical, but not all inclusive, of such letters or forms is CSC's so-called "Attorney Assign" form letter which contains the following statements:

Dear (Alleged Debtor):

The above account has been handed to me * * * with instructions to institute immediate suit and attachment against you * * * *

I have delayed doing this with the hope * * * Also, it is my policy to withhold suit * * * *

* * * *

I am returning my file on this matter * * * and am requesting on your behalf, an extension

If you should fail to [pay], I will of course be compelled to follow the instructions of my client and begin suit against you. Hoping this will not be necessary, I remain

Sincerely,

(Attorney's signature)

Through the use of the foregoing statements or representations, respondents have represented, directly or by implication, that the account has been referred to an attorney, that the letter or form was sent by an attorney, that files have been transmitted to an attorney, or that an attorney is actively involved in collecting or reviewing that account in preparation for institution of suit.

In truth and in fact no referral has been made, no letter has been sent by an attorney, no files have been transmitted, and no attorney is actively involved, at this stage of collection activity. Therefore, the statements, representations and practices described in this Paragraph were and are false, misleading and deceptive.

PAR. 8. The use of the false, misleading and deceptive statements and representations described in Paragraph Seven has the tendency and

capacity to mislead and deceive alleged debtors and to coerce and intimidate such debtors into paying claimed amounts under the erroneous and mistaken belief that the statements and representations are true.

PAR. 9. The acts and practices alleged above are all to the prejudice and injury of the public and constitute unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Commercial Service Company, Inc. (CSC) is a Washington corporation with its office and principal place of business located at 811 First Ave., Seattle, Wash.

Respondent Commercial Collectors (CC) is a Washington partnership with its office and principal place of business located at 811 First Ave., Seattle, Wash. Its activities are closely interrelated with, or indistinguishable from, those of CSC.

Respondents Glen B. Faulk and Richard R. Swaffield are co-partners in CC and officers of CSC. They formulate, direct and control the policies, acts and practices of said corporation and partnership. Their addresses are the same as that of CSC.

Respondent Vincent A. Retacco is an attorney admitted to practice in

the State of Washington. He formulates, directs and controls, in cooperation with the other individual respondents, policies, acts and practices of CSC and CC related to legal actions, real or threatened. His principal office and place of business is located at 30640 Pacific Hwy. S., Federal Way, Wash.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Commercial Service Company, Inc. (CSC), a corporation, its successors and assigns, and its officers, and Commercial Collectors, a partnership, and Glen B. Faulk and Richard R. Swaffield, individually, as co-partners doing business as Commercial Collectors, or under any name(s), and their successors and assigns, and as officers of CSC, and respondents' agents, representatives and employees, hereinafter collectively "respondents," directly or through any corporation, subsidiary, division or other device, in connection with the collection of credit obligations of individuals, excluding individual obligations for corporate debts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Instituting suits except in the county where defendant resides at the commencement of the action, or in the county where the defendant signed the contract sued upon. This provision shall not preempt any rule of law which further limits choice of forum or which requires, in actions involving real property or fixtures attached to real property, that suit be instituted in a particular county.

It is further ordered, That where respondents learn subsequent to institution of suit that the preceding paragraph has not been complied with, they shall forthwith terminate the suit and vacate any default judgment entered thereunder. In lieu of such termination, respondents may effect a change of forum to a county permitted by the preceding paragraph, provided that respondents give defendants notice of such action and opportunity to defend equivalent to that which defendants would receive if a new suit were being instituted. In all cases respondents shall provide defendants with a clear explanation of the action taken and of defendants' rights to appear, answer and defend in the new forum.

It is further ordered, That, where respondents terminate a suit or vacate a judgment pursuant to the preceding paragraph, they shall give notice of such termination or vacation to each "consumer reporting agency," as such term is defined in the Fair Credit Reporting Act (15 U.S.C. §603), which respondents have been informed or have reason to know has recorded the suit or judgment in its files. Additionally,

respondents shall furnish such notice to any other such person or organization upon request of the defendant.

It is further ordered, That when respondents institute suit in any superior court in Washington State, they shall attach, to any summons served upon defendants, a notice which gives defendants adequate directions as to the proper procedure for responding to the suit and avoiding default. The notice shall use clear and unconfusing language, and appear clearly, conspicuously, and in type at least as large as typewriter pica type. Should superior court rules or procedures change respondents shall forthwith modify the notice accordingly. The initial form and adequacy of the notice has been approved, and any modifications thereof shall be subject to approval, by authorized representatives of the Federal Trade Commission.

It is further ordered, That respondents prepare and maintain a summary of superior court suits instituted, pending or terminated, in which CSC is a plaintiff. This summary shall contain each defendant's name, address and county of residence; county where the contract sued upon was signed by the defendant, if the suit was not instituted in the residence county; county where served; date served; date filed; docket number; name and location of court in which filed; name of original creditor; amount claimed; and whether or not a default judgment has been entered. Where a suit has been instituted in a county other than where defendant resides or signed the contract, the reason for this choice of forum shall be explained. This summary shall cover a continuous two-year period commencing with service upon respondents of this order. A copy of this summary shall be submitted to the Federal Trade Commission on a quarterly basis.

In subsequent paragraphs "respondents" shall include the above-named respondents and Vincent A. Retacco, an individual, and his agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device.

It is further ordered, that respondents do forthwith cease and desist from representing in writing, orally, visually or in any other manner, directly or by implication, that:

1. An account has been referred to an attorney until and unless such representation is true.
2. Communications to an alleged debtor are from an attorney when such is in fact not true.
3. That any files have been removed, transferred, or reviewed, or directions issued, or other action requested, authorized or directed, to or by an attorney, when such is in fact not true.

It is further ordered, That respondents shall forthwith deliver a copy

of this order to each of their subsidiaries, operating divisions and employees.

It is further ordered, That respondents notify the Commission at least thirty days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment, in the event of such discontinuance or affiliation. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

It is further ordered, That the respondents herein shall within sixty days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.
