

IN THE MATTER OF
PAY 'N SAVE CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2729. Complaint, Sept. 23, 1975--Decision, Sept. 23, 1975

Consent order requiring a Seattle, Wash., retailer of drugs and toiletries, wearing apparel, hardware, garden supplies and sporting goods, in connection with its debt collection activities, among other things to cease failing to honor agreements it has made to refrain from further legal action in collecting debts from allegedly delinquent debtors. Where debtor violates the agreement, respondent still must give the debtor notice before taking further legal action. Further, respondent is required to inform the court of the existence of any such agreements or any other response to the summons made by debtor.

Appearances

For the Commission: *Randall H. Brooks.*

For the respondents: *Michael R. Rayton, Ryan, Bush, Swanson & Hendel, Seattle, Wash.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Pay 'N Save Corporation, a corporation, and Donald Thoreson, an individual, hereinafter collectively referred to as respondents, have violated

¹ Including a demonstration of excusable neglect and substantial prejudice resulting from denial of the opportunity to file a response.

Section 5 of the Federal Trade Commission Act, and that a proceeding by it would be in the public interest, issues this complaint:

PARAGRAPH 1. Pay 'N Save Corporation (hereinafter referred to as Pay 'N Save) is a Washington corporation, with its principal place of business located at 1511 Sixth Ave., Seattle, Wash.

Donald Thoreson is an attorney admitted to practice in the state of Washington. He formulates, directs and controls, together with the officers of Pay 'N Save, policies, acts and practices of Pay 'N Save related to legal actions, active and threatened, and is directly and personally responsible for the execution of payment agreements as set forth below. He maintains his principal office at 610 Fourth and Pike Bldg., 1424 Fourth Ave., Seattle, Wash.

Allegations below of respondents' present acts and practices include past acts and practices.

PAR. 2. Pay 'N Save is engaged primarily in the business of retail sales of drugs and toiletries, wearing apparel, hardware, garden supplies and sporting goods through stores in the States of Washington, Oregon, Alaska and California, and through outlets of its subsidiaries including Ernst, Malmo, Lamonts Apparel, Incorporated, Seattle Wholesale Nurseries, Incorporated and Seattle Sporting Goods, Incorporated.

PAR. 3. In the course of its business, Pay 'N Save extends credit to consumers in several states through retail installment and revolving charge card agreements (hereinafter "consumer credit obligations"). Pay 'N Save also engages in the collection of alleged debts based on the above consumer credit obligations in several states. Thus, these activities are in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Pay 'N Save regularly resorts to use of judicial process to collect debts. The defendant debtors in such cases are predominantly low-income and middle-income persons not represented by counsel.

PAR. 5. In the course of using judicial process to collect debts, Pay 'N Save causes the service of summonses and complaints upon alleged debtors. Following the service of the summons and complaint, but before entry of any judgment, respondent Thoreson often enters into written or oral agreements with the alleged debtors which provide for the periodic payment of specific amounts of money until the alleged debt is satisfied. Pursuant to the making of such agreements, respondents send or cause letters to be sent to the alleged debtors. Typical, but not all inclusive, of the content of such letters are the following statements and representations:

1. This will acknowledge receipt of your recent payment in the sum of \$——. We shall expect you to make monthly payments of \$——

for the next ——— months until the balance is paid in full. If you follow through with these payments we shall work with you.

2. In line with our agreement we shall expect you to send us a check of \$—— by ——— and we shall also expect you to send us \$—— on the ——— of each month thereafter until the account is paid in full. If these checks are sent as scheduled we will work with you. If not, we will proceed with additional legal steps.

PAR. 6. Through the use of the foregoing statements, and other similar statements, representations, and agreements, respondents have represented, either directly or by implication, that no further legal action would be taken in the cases involved as long as the alleged debtor complied with the payment agreement.

PAR. 7. The statements and representations described in Paragraphs Five and Six have the tendency and capacity to cause alleged debtors, in reliance on these statements and representations, to make substantial payments to Pay 'N Save prior to any final judicial determination of liability and without the protection of statutory garnishment limitations or exemptions to post-judgment executions, and to fail to make a legal appearance in the lawsuit, to obtain counsel, or otherwise take steps to defend or protect their interests.

PAR. 8. In truth and in fact, respondents proceed to take further legal action, including obtaining default judgment without prior notice to the alleged debtor, in cases where the debtor is complying with the terms of the agreement and without regard to the debtor's compliance with the payment agreements. Furthermore, respondents fail to inform the court of the existence of such agreements or of the fact of the debtor's appearance or other response to the summons, whether formal or informal, written or oral, and thus are able to, and do, obtain default judgments without any prior notice to debtor.

Therefore, the statements, representations and practices described above are unfair, false, misleading and deceptive.

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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued

by the Commission, would charge respondents with violation of the Federal Trade Commission Act; 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 aforesaid draft of complaint, 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 thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Pay 'N Save Corporation is a Washington corporation with its principal place of business located at 1511 Sixth Ave., Seattle, Wash.

Respondent Donald Thoreson is an attorney admitted to practice in the State of Washington. He formulates, directs and controls, together with officers of said corporation, the policies, acts and practices of said corporation related to legal actions, active and threatened. His principal office is at 610 Fourth and Pike Bldg., 1424 Fourth Ave., Seattle, 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 Pay 'N Save Corporation (hereinafter Pay 'N Save), a corporation, its successors, assigns, officers, agents, representatives and employees, and Donald Thoreson, an individual, directly or through any other device, in connection with the collection of consumer credit obligations in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Filing any motion for default judgment against an alleged debtor with whom they have entered an agreement, either written or oral, regarding the payment of a consumer credit obligation, subsequent to

service of summons and complaint upon the alleged debtor, unless the alleged debtor is given at least 10 days notice prior to entry of the default judgment.

2. Taking a default judgment in any lawsuit instituted to collect a consumer credit obligation when subsequent to service of summons and complaint upon the alleged debtor

a. the respondents have agreed, either orally or in writing, to a method of payment, and

b. the alleged debtor is complying with the terms of such agreement.

3. Failing to inform the court of any timely appearance or response to the summons, formal or informal, written or oral, made by the alleged debtor subsequent to service of summons and complaint, prior to obtaining a default judgment.

It is further ordered, That where respondents learn subsequent to the filing of a motion for default judgment that the preceding paragraph has not been complied with, they shall forthwith terminate the lawsuit and vacate any default judgment entered therein.

It is further ordered, That Pay 'N Save prepare and maintain records of suits instituted by Pay 'N Save or any of its divisions or subsidiaries, agents or assignees for the collection of consumer credit obligations in which default judgments have been granted which shall include copies of all legal papers relating to the default judgment, copies of all written communication, and summaries of all oral communication between respondents and defendants in such suits during the period of time between service of summons and complaint and the granting of default judgment. Such records shall be maintained for a period of one year after the granting of default judgment and shall be made available to representatives of the Federal Trade Commission for inspection and copying at all times upon reasonable request therefor.

It is further ordered, That Pay 'N Save shall forthwith deliver a copy of this order to each of its subsidiaries, operating divisions and employees engaged in the collection of consumer credit obligations or enforcement of judgments based on consumer credit obligations.

It is further ordered, That Pay 'N Save 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 this order.

It is further ordered, That the individual respondent promptly notify the Commission of the discontinuance of his present business affiliation with Pay 'N Save and/or of any new affiliation with, or representation

of, a business, where such new affiliation or representation involves substantial collections of consumer credit obligations. Such notice shall include respondent's current business address and a statement as to the nature of the new business with which he is affiliated or which he is representing.

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.
