

Complaint

87 F.T.C

IN THE MATTER OF
NORTH AMERICAN COLLECTIONS, INC., ET AL.

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

Docket C-2809. Complaint, Mar. 11, 1976—Decision, Mar. 11, 1976

Consent order requiring a St. Louis, Mo., debt collection agency, among other things to cease misrepresenting the nature, import, or urgency of communications used in the collection of delinquent debts; misrepresenting the initiation of legal action for nonpayment of alleged debts or the effect of nonpayment on credit status of the alleged debtor; and furnishing means and instrumentalities of misrepresentation or deception. Further, the order requires respondent to disclose in correspondence to alleged debtors that respondents do not accept payments nor ordinarily file suits.

Appearances

For the Commission: *John F. LeFevre.*

For the respondents: *Daniel Smith, Arent, Fox, Kintner, Plotkin & Kahn*, Washington, D.C. *Joseph B. McGlynn, McGlynn & McGlynn*, Belleville, Ill.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that North American Collections, Inc., a corporation, and Robert J. Kerr, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent North American Collections, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 734 West Port Plaza, St. Louis, Missouri.

Respondent Robert J. Kerr, is an individual and is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time in the past have been, engaged in the advertising, offering for sale and sale of a service

to assist in the collection of alleged delinquent debts. This service consists of the preparation by respondents of a series of form notices and letters to be mailed to alleged delinquent debtors at regular intervals. Two styles of forms are used in this series: (1) that which bears the letterhead of North American Collections, Inc., and (2) that which is entitled Urgent Message.

PAR. 3. In the course and conduct of their business, respondents are now, and for some time in the past have been, engaged in sending to and receiving from persons, firms and corporations located in various States of the United States, by means of the United States mail, letters, notices, forms and other material for use in the collection of alleged delinquent debts. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said business in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the payment of alleged delinquent debts, the respondents mail or cause to be mailed to alleged delinquent debtors various printed forms and other printed material.

Typical and illustrative of said forms and material is a yellow, printed form styled Urgent Message designed to be inserted in the envelope described in subparagraph 1 of this paragraph.

PAR. 5. By and through the use of the form described in Paragraph Four, the respondents have represented, and are now representing, directly or by implication, that the communication is an urgent message.

PAR. 6. In truth and in fact, the communication is not an urgent message. Rather, it is a printed form letter, mailed to alleged delinquent debtors, which form by its color and appearance, styling, printing and format simulates an urgent message and which, by virtue of said simulation, misleads the recipient as to its nature, import, purpose and urgency.

Therefore, the use by respondents of said form as set forth in Paragraph Four was and is false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, and for the purpose of inducing the payment of alleged delinquent debts, respondents mail, or cause to be mailed, to alleged delinquent debtors various printed forms, letters and other printed material containing certain statements and representations.

Among and typical, but not all inclusive, of such statements and representations are the following:

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NORTH AMERICAN COLLECTIONS, INC. (letterhead)

* * * * *

This courtesy notice is to inform you that your delinquent account with the below named creditor has been placed with this agency for collection. Your creditor directs that you be allowed 10 days to settle this account before collection procedures begin* * *. It is our intention to employ every legal means to collect this account for our client* * *.

* * * * *

* * *Therefore, consider this your notice that North American Collections is beginning collection procedures on behalf of our client and to that end we shall recommend the filing of a suit against you by your creditor in court. The expense incidental to this type of litigation may be charged to you, including court costs, legal fees and other related charges as may be required.

We are recommending that procedures be instituted if you do not make settlement of this account* * *.

* * * * *

* * *Contact creditor immediately to arrange for payment. Imperative to avoid further action available to doctor under provisions of state statutes. If full settlement is not accomplished within 48 hours after receipt of this notice, consult your attorney at once to determine your legal liability* * *.

* * * * *

You are hereby notified that we shall recommend that your doctor advance court costs and file suit immediately* * *. If 72 hours pass without full remittance, and if the attorneys accept our recommendation to begin litigation, you may still be subject to court costs if they are incurred before settlement* * *.

* * * * *

* * *Your failure to appear and comply either in person or by legal representation to protest claim may result in commencement of litigation by doctor* * *.

* * * * *

* * *We are, therefore, recommending that the doctor file suit to recover what is due and a judgment may be rendered against you. Processing of a claim to the lawsuit stage may be accomplished in 7 days* * *. If payment is not made, this information may be turned over to your local retail bureau* * *.

* * * * *

* * *You are further notified that legal proceedings by the doctor following judgment may compel you to bring all your financial records to court to be examined. A writ of execution may be issued. A public auction of property may be held after public advertising of same. Court costs, including fees for subpoenas, sheriffs or constable fees, attachments, judgments, executions, and all other expenses relative to these proceedings may be assessed against the debtor and may become a part of the judgment. Litigation is costly* * *.

* * * * *

PAR. 8. By and through the use of the statements and representations set forth in Paragraph Seven, including the use of the word "collections" in the corporate name, and others of similar import and meaning not expressly set out herein, respondents have represented, and are now representing, directly or by implication, that:

1. the said corporate respondent is a collection agency.
2. delinquent debtors' accounts are referred to corporate respondent by creditors for collection.
3. corporate respondent is prepared to take legal action in the collection of alleged delinquent debts.
4. respondents are prepared to recommend that legal action be initiated.
5. legal action with respect to an alleged delinquent debt is about to be or may be initiated.
6. if payment is not made in response to respondents' demands, the alleged debtor's general credit record may be adversely affected.

PAR. 9. In truth and in fact:

1. the said corporate respondent is not a collection agency.
2. delinquent debtors' accounts are not referred to corporate respondent by creditors for collection.
3. corporate respondent is not prepared to take legal action in the collection of alleged delinquent debts.
4. respondents are not prepared to recommend that legal action be initiated.

On the contrary, respondents' sole business is the preparation and mailing of a series of form letters to alleged delinquent debtors, exhorting them to pay their alleged creditors.

5. legal action with respect to the alleged delinquent debt is neither about to be nor may it be initiated.

On the contrary, while respondents' letter service is being used, it is virtually certain that no legal proceedings are being initiated on the basis of the alleged delinquent debtor's failure to respond to respondents' communications.

6. if payment is not made in response to respondents' demands, the alleged delinquent debtor's general credit record will not be adversely affected.

Therefore, the statements and representations set forth in Paragraphs Seven and Eight were and are false, misleading and deceptive.

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals

engaged in providing services of the same general kind and nature as those provided by respondents.

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and to induce the payment of substantial sums of money by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in or affecting 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 (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, now in further conformity with the procedures 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 North American Collections, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business

located at 734 West Port Plaza, in the city of St. Louis, State of Missouri.

Respondent Robert J. Kerr, is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

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, North American Collections, Inc., a corporation, its successors and assigns, and its officer, and Robert J. Kerr, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce, the payment of alleged delinquent debts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using or placing in the hands of others for use, envelopes, letters, forms or any other materials, which by their appearance misrepresent the nature, import, purpose or urgency of any communication; *provided*, that it shall not be a violation of this order for respondents to use within the message of any communication, in the same type size as is otherwise employed in the message, a truthful reference to or implication of urgency.

2. Representing, directly or by implication, that:

(a) respondents are prepared to recommend, initiate or cause to be initiated, legal proceedings in the collection of an alleged delinquent debt,

(b) legal action with respect to an alleged delinquent debt has been or is about to be initiated; or misrepresenting that legal action is imminent, will be or may be initiated,

(c) nonpayment of the alleged delinquent debt in response to respondents' demands will adversely affect the credit rating, record or status of the debtor with respect to any consumer reporting agency or any other third party; or misrepresenting the impact or effect of nonpayment upon the debtor's credit rating, record or status.

Provided, That it shall be a defense in any enforcement proceeding initiated under Paragraph Two for respondents to establish that such representations are factually correct.

3. Failing clearly and conspicuously to disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. North American Collections, Inc., does not accept payment. North American Collections, Inc., does not ordinarily file suit.

This statement shall be made in prominent type, of a size no smaller than the basic body copy in the letter, form or notice and in a color which contrasts with the color of the stationery and writing or printing in the body of the letter, form or notice.

Provided, however, That the portion of the above statement, either as to accepting payment or the filing of suit, or both, shall not be required where respondent indicates specifically in a particular letter, form or notice that it will accept payment, file suit or institute legal proceedings and respondent does, in fact, accept payment, file suit or institute legal proceedings in that particular case, unless, suit was not filed due to subsequent instructions from the creditor or subsequent information from the debtor indicating nonexistence of the alleged debt.

4. Making any statement in any letter, form or notice to alleged delinquent debtors which is inconsistent with, negates, or contradicts, the affirmative disclosure required by Paragraph Three.

5. Placing in the hands of others the means and instrumentalities to represent any of the matters prohibited in Paragraph Two or which fail to comply with the requirements of Paragraphs Three or Four of this order.

It is further ordered, That the respondent corporation shall distribute a copy of this order to each of its operating divisions or departments and to each of its present and future officers, agents, representatives or employees engaged in any aspect of the offering for sale, sale or distribution of any service or printed matter for use in the collection, or attempting to collect, or assisting in the collection of or inducing or attempting to induce the payment of alleged delinquent debts, and that said respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the respondents notify the Commission at least thirty (30) 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 respondent named herein promptly notify the Commission of the discontinuance of his present business or employment with North American Collections, Inc., and of his affiliation with a new business or employment. Such notice shall

include respondent's new business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, signed by the respondents, setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

POWER'S SERVICE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2810. Complaint, Mar. 11, 1976—Decision, Mar. 11, 1976*

Consent order requiring a Chicago, Ill., debt collection agency, among other things to cease misrepresenting the nature, import, or urgency of communications used in the collection of delinquent debts; misrepresenting the initiation of legal action for nonpayment of alleged debts or the effect of nonpayment on credit status of the alleged debtor; and furnishing means and instrumentalities of misrepresentation or deception. Further, the order requires respondent to disclose in correspondence to alleged debtors that respondents do not accept payments nor ordinarily file suits.

Appearances

For the Commission: *John F. LeFevre.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Power's Service, Inc., a corporation and a wholly-owned subsidiary of Community Systems Corporation, a corporation, and Rosalind M. Mikesell, H.O. Seymour and G.C. Seymour, individually and as officers of said corporations, and J.P. Mikesell, individually and as an officer of Power's Service, Inc., hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Power's Service, Inc. is a corporation and a wholly-owned subsidiary of Community Systems Corporation, a corporation. Both corporations are organized, existing and doing business under and by virtue of the laws of the State of Delaware, with their principal office and place of business located at 202 South State St., Chicago, Illinois.

Respondents Rosalind M. Mikesell, H.O. Seymour and G.C. Seymour are individuals and are officers of both corporate respondents. Respondent J.P. Mikesell is an individual and an officer of corporate respondent Power's Service, Inc. They formulate, direct and control the