

Complaint

87 F.T.C.

IN THE MATTER OF

CONTINENTAL COLLECTION SERVICE, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2811. Complaint, Mar. 11, 1976—Decision, Mar. 11, 1976*

Consent order requiring a Clarissa, Minn., debt collection agency, among other things to cease misrepresenting the nature, import or urgency of any communication utilized in the collection of delinquent debts; misrepresenting the initiation of legal actions; misrepresenting that if debts are paid within a specified time, respondent will absorb the cost of any legal actions initiated; and furnishing means or instrumentalities of misrepresentation or deception. Further, respondents are required to disclose in correspondence to alleged debtors that respondents do not accept payment nor ordinarily file suits.

Appearances

For the Commission: *Roger J. Fitzpatrick.*

For the respondents: *Rodger J. Johnston, Flora & Johnston, Long Prairie, Minn.*

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 Continental Collection Service, a partnership, and Carol Carrick and Morris Perna, individually and as copartners trading and doing business as Continental Collection Service, 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 Continental Collection Service is a partnership organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at Main St., Clarissa, Minnesota.

Respondents Carol Carrick and Morris Perna are individuals and are partners in Continental Collection Service. They formulate, direct and control the acts and practices of Continental Collection Service, including the acts and practices hereinafter set forth. Their business address is Main St., Clarissa, Minnesota and their mailing address is Box 6011, West St. Paul, Minnesota.

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 the 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 is titled TELEGRAM; and 2) that which bears the letterhead of Continental Collection Service.

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, respondents mail, or cause to be mailed, to alleged delinquent debtors various printed forms and other printed material.

Typical and illustrative, but not necessarily all inclusive, of said forms and material are the following:

1. A yellow window envelope on which a return address is printed, with no name. The word TELEGRAM is printed in large black type over the window.

2. A yellow, printed form styled TELEGRAM, printed in large black type, designed to be inserted in the envelope described in subparagraph 1 of this Paragraph.

PAR. 5. By and through the use of envelopes and forms described in subparagraphs 1 and 2 of Paragraph Four, respondents have represented, and are now representing, directly or by implication, that the communication is a telegraphic message.

PAR. 6. In truth and in fact the communication is not a telegraphic 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 a telegraphic 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 envelopes and forms 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

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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:

CONTINENTAL COLLECTION SERVICE (Letterhead)

* * * * *

WE HEREBY GIVE NOTICE THAT WE HAVE BEEN RETAINED BY THE ABOVE NAMED CREDITORS TO COLLECT THE ABOVE DELINQUENT SUM. OUR POLICY IS TO ALLOW SEVEN (7) DAYS BEFORE WE BEGIN COLLECTION PROCEDURES. IT IS IMPERATIVE THAT YOU CONTACT YOUR CREDITOR AND ARRANGE PAYMENTS BEFORE THE LAPSE OF SEVEN DAYS* * *.

* * * * *

* * *You are hereby notified that Continental Collection Service has instituted collection procedures.

Furthermore, we have recommended that our client should commence legal proceedings and obtain a court judgment for the above amount. Satisfaction of such judgement often involves attachment of property and garnishment of wages. To avoid all these costly remedies to yourself, contact your creditor within five (5) days to avoid the legal pursuance of the above action.

* * * * *

We wish to notify you that your creditor has taken our recommendation to begin necessary legal steps to recover the above amount. We would remind you that legal proceedings may involve levies upon your automobile, real estate, bank accounts and all other personal belongings. Such above mentioned property may be held for public auction for the satisfaction of any judgment obtained from the above amount.

Furthermore, you as debtor, may be assessed additional amounts in excess of the above amount to include interest and court costs such as: fees for subpoenas, attachments, garnishments, sheriff's fees, judgment and execution* * *.

* * *Submit payment of this claim within two (2) days and we will recommend that our client absorb any and all costs incurred in the above action as of this date.

* * * * *

It is important that you immediately attend to the above delinquent amount within the next forty-eight (48) hours. If full settlement is not made with your creditor within the time period allotted, we shall recommend that he advance court costs and proceed with the proper legal steps to secure his rightful claim under state statute.

* * * * *

Settlement deadline is twenty-four (24) hours from the receipt of this notice* * *.

If sufficient payments are made to the creditor we will forestall the time period set at the claimant's claim office, your creditor will advise us if you have contacted him,

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whereupon we will take the necessary steps to discontinue any further action, thus eliminating any personal appearance that may have been required by yourself. However, to prevent this, you must act today within twenty-four hours.

* * * * *

* * *Therefore unless the said debtor arranges for adjustment in said indebtedness or appears at the office of the creditor within seven (7) days of this dated notice, suit will be brought for the total amount of the indebtedness, together with interest and costs.

* * * * *

PAR. 8. By and through the use of the aforesaid statements and representations, including the use of the word "collection" in the business name, and others of similar import not expressly set out herein, respondents have represented, are now representing, have caused and are now causing others to represent, directly or by implication, that:

1. respondents' business is a collection agency;
2. delinquent debtors' accounts are referred to respondents by creditors for collection;
3. respondents are prepared to recommend or have recommended that legal action be initiated;
4. legal action with respect to a delinquent debt has been or is about to be initiated on the basis of respondents' recommendation; and
5. respondents will recommend that the creditor absorb the cost of recommended legal action if the debt is paid within a specified time.

PAR. 9. In truth and in fact:

1. respondents' business is not a collection agency;
2. delinquent debts are not referred by creditors for collection;
3. respondents are not prepared to recommend and have not recommended that legal action be initiated;
4. legal action with respect to a delinquent debt has not been, nor is it about to be initiated on the basis of respondents' recommendations; and
5. respondents do not recommend that the creditor absorb the cost of recommended legal action if the debt is paid within a specified time;

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

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 envelopes and forms as set forth in Paragraph Four hereof, has had, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that the said communication is a telegraphic message. Furthermore, 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 Continental Collection Service is a partnership organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at Main St., Clarissa, Minnesota.

Respondents Carol Carrick and Morris Perna are individuals and are partners in said partnership. They formulate, direct and control the policies, acts and practices of said partnership and their address is the same as that of said partnership.

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, Continental Collection Service, a partnership, and Carol Carrick and Morris Perna, individually and as copartners, trading and doing business as Continental Collection Service, or under any name or names, their successors and assigns, 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 a telegraphic communication.

2. Using or placing in the hands of others for use, envelopes, letters, forms or any other materials which 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.

3. Representing, directly or by implication, that:

(a) respondents have recommended, 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) respondents recommend or have recommended that the creditor absorb the cost of legal action if the debt is paid within a specified time.

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

4. 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. Continental Collection Service does not accept payment. Continental Collection Service 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.

5. 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 Four.

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

It is further ordered, That the respondent shall distribute a copy of this order to each of its operating divisions or departments and to each of its present and future partners, 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 partnership respondent such as dissolution, assignment or sale resulting in the emergence of a successor partnership, the creation or dissolution of

subsidiaries or any other change in the partnership 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 employment with Continental Collection Service and of their affiliation with a new business or employment. In addition, the individual respondents named herein shall promptly notify the Commission of their affiliation with a new business or employment whose principal activities include 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, or of their affiliation with a new business or employment in which their own duties and responsibilities involve 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. 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 individual respondents named 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
FISHER FOODS, INC.

Docket 9062. Order, Mar. 17, 1976

Motion by complaint counsel to amend the complaint remanded to the administrative law judge.

Appearances

For the Commission: *Vivian L. Solganik, Aaron H. Bulloff and Melvin H. Wolovits.*

For the respondent: *John F. McClatchey, Thompson, Hine & Flory, Cleveland, Ohio.*

ORDER REMANDING MOTION TO AMEND COMPLAINT

The administrative law judge has certified to the Commission complaint counsel's motion to amend the complaint in this matter by substituting the phrase "in or affecting commerce" for the phrase "in commerce" in Paragraphs Three, Four, and Ten of said complaint.

The Commission believes that the instant motion is within the authority of the law judge to decide since it apparently only seeks "to add examples of practices [already alleged in the complaint] to be unlawful." *Cavanagh Communities Corp.*, Order Granting in Part and Remanding in Part Motion to Serve Supplemental Pleading, January 27, 1976, p. 3, n. 3;* *Capitol Records Distributing Corp.*, 58 F.T.C. 1170, 1173 (1961).

The Commission notes that respondent has argued that the expansion by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, Pub. L. 93-637 (January 4, 1975), of the Commission's jurisdiction to acts "affecting commerce" is not retroactive to alleged violations that occurred prior to the effective date of the statute. However, it may well be that complaint counsel do not intend to introduce evidence of acts, affecting, but not in, commerce that occurred prior to January 4, 1975. In case they do, the law judge is in the best position to decide the issue in the context of a specific offer of proof. Accordingly,

It is ordered, That the aforesaid motion be, and it hereby is, remanded to the administrative law judge.

* Reported in this Volume.