

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

JUN 22 2006

UNITED STATES OF AMERICA,

Plaintiff,

v.

WHITEWING FINANCIAL GROUP, INC.,

CHRISTOPHER B. BADGER,

LYNDA J. BADGER, and

JON P. BADGER,

Defendants.

MICHAEL N. MILBY, CLERK OF COURT

Case No.

H 06 - 2102

COMPLAINT FOR CIVIL PENALTIES, INJUNCTIVE, AND OTHER RELIEF

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("Commission"), by its undersigned attorneys, for its Complaint alleges as follows:

JURISDICTION AND VENUE

1. This is an action arising under §§ 5(a), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a), and the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.*, to obtain monetary civil penalties and injunctive and other equitable relief for Defendants' violations of the FDCPA and Section 5 of the FTC Act.

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 53(b), 57b, and 1692l.

3. Venue is proper in the United States District Court for the Southern District of Texas under 28 U.S.C. §§ 1391(b-c) and 1395(a) and 15 U.S.C. § 53(b).

DEFENDANTS

4. Whitewing Financial Group, Inc. (“Whitewing”) is a Texas corporation with its offices and place of business located within the Southern District of Texas at 1701 S. Dairy Ashford, Houston, Texas 77077. At all times relevant to this Complaint, Defendant Whitewing has transacted business in the Southern District of Texas.

5. Defendant Christopher B. Badger is the President, an Executive Committee member, and a director of Defendant Whitewing. Individually and in his capacity as the President, member of the Executive Committee, and director of Whitewing, Defendant Christopher B. Badger has formulated, directed, and controlled the acts and practices of Whitewing, including the acts and practices alleged in this Complaint. At all times relevant to this Complaint, Defendant Christopher B. Badger has resided or transacted business in the Southern District of Texas.

6. Defendant Lynda J. Badger is the Secretary, the Treasurer, an Executive Committee member, and a director of Defendant Whitewing. Individually and in her capacity as Secretary, Treasurer, member of the Executive Committee, and director of Whitewing, Defendant Lynda J. Badger has formulated, directed, and controlled the acts and practices of Whitewing, including the acts and practices alleged in this Complaint. At all times relevant to

this Complaint, Defendant Lynda J. Badger has resided or transacted business in the Southern District of Texas.

7. Defendant Jon P. Badger is or has been the General Manager, the Chief Executive Officer, and an Executive Committee member of Defendant Whitewing. Individually and in his capacity as General Manager, Chief Executive Officer, and member of the Executive Committee of Whitewing, Defendant Jon P. Badger has formulated, directed, and controlled the acts and practices of Whitewing, including the acts and practices alleged in this Complaint. At all times relevant to this Complaint, Defendant Jon P. Badger has resided or transacted business in the Southern District of Texas.

8. Defendants Whitewing, Christopher B. Badger, Lynda J. Badger, and Jon P. Badger are "debt collectors" as defined in Section 803(6) of the FDCPA, 15 U.S.C. §1692a(5).

COMMERCE

9. At all times material to this Complaint, Defendants have maintained a substantial course of trade in the collection of debts, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS PRACTICES

10. Defendants purchase very old debts and then attempt to collect on these debts. Most, if not all, of these debts are beyond the applicable statutes of limitations. Most are also beyond the time in which they may be reported on credit bureau reports. Many of the debts have been discharged in bankruptcy. Defendants generally pay less than a third of a cent per dollar of the face value of the accounts to purchase these debts.

11. When Defendants purchase the debts, they receive no hard copies of the documents relating to the accounts. The electronic files which accompany the debts often contain incomplete data. For example, such important information as the debtors' Social Security numbers, payment records, and last payment dates are frequently missing. Because the debts are so old and have often been sold several times, data in the files is frequently inaccurate. Lacking sufficient documentation to validate its debts, Defendants tell consumers that their debts are validated by an Affidavit and Assignment ("Affidavit"). This Affidavit, however, is executed by a Whitewing collection supervisor and is based only upon a review of Defendants' incomplete and often inaccurate electronic files.

12. As required by the FDCPA, Defendants send validation notices to consumers that inform the consumers of their right to dispute the debt; however, Defendants frequently take actions that contradict or "overshadow" the validation notice. Defendants make representations that confuse consumers about their rights under the FDCPA, including who has the burden of establishing the validity of the debt. Defendants also pressure consumers to make payments on their debts before they have received the required validation notice.

13. Because there is no legitimate method to enforce payment of its aged debts, Whitewing engages in a variety of misrepresentations. Whitewing collectors often misrepresent the status of the debts they are trying to collect, leading consumers to believe that legal proceedings have already been instituted to collect the debt or that lawsuits to collect debts are not time-barred. Whitewing collectors threaten to take actions that the company cannot or does not intend to take, including telling consumers that the company will make multiple inquiries to credit bureaus, thereby damaging consumers' credit ratings, and implying to consumers that

Whitewing will sue to collect the debt. Collectors make other misrepresentations to consumers, including that Whitewing will report paid-in-full accounts to credit bureaus and that Whitewing collectors are auditors or government officials.

14. In some instances, collectors call consumers at times or places that the collector knows is inconvenient for the consumer, including at their place of employment.

15. In an effort to convince consumers to settle their debts, Defendants have relied on various settlement letters. One that has been used in situations where Defendants believed the consumer might settle stated that “. . . your account will be settled in full and we do not report to any credit reporting agencies.” Another letter threatened that the Defendants intended to proceed “. . . with an appropriate collection program in accordance with state and federal law” and that “. . . you ultimately will be responsible for the full amount due on this account.”

FAIR DEBT COLLECTION PRACTICES ACT

16. In 1977, Congress passed the FDCPA, 15 U.S.C. §1692, *et seq.*, which became effective on March 20, 1978, and has been in force since that date. Section 814 of the FDCPA, 15 U.S.C. § 1692i, authorizes the Commission to use all of its functions and powers under the FTC Act to enforce compliance with the FDCPA by any debt collector, irrespective of whether that debt collector is engaged in commerce or meets any other jurisdictional tests set by the FTC Act. The authority of the Commission in this regard includes the power to enforce the provisions of the FDCPA in the same manner as if the violations of the FDCPA were violations of a Federal Trade Commission trade regulation rule.

17. The term “consumer,” as used in this Complaint, means any natural person obligated or allegedly obligated to pay any debt, as “debt” is defined in Section 803(5) of the FDCPA, 15 U.S.C. § 1692a(5).

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

COUNT I

18. On numerous occasions, in connection with the collection of debts, Defendants have used false, deceptive, or misleading representations or means, in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692e, including, but not limited to, the following:

- a. falsely representing the character, amount, or legal status of debts, in violation of Section 807(2)(A) of the FDCPA, 15 U.S.C. § 1692e(2)(A);
- b. threatening to take actions that cannot legally be taken or that are not intended to be taken, in violation of Section 807(5) of the FDCPA, 15 U.S.C. § 1692e(5); or
- c. using false representations or deceptive means to collect or attempt to collect debts or to obtain information concerning a consumer, in violation of Section 807(10) of the FDCPA, 15 U.S.C. § 1692e(10).

COUNT II

19. On numerous occasions, in connection with the collection of debts, Defendants have engaged in activities that contradicted, obscured, or overshadowed the notification of consumer rights contained in the validation notice required by Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a), in violation of Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a).

COUNT III

20. On numerous occasions, in connection with the collection of debts, Defendants have communicated with a consumer, without the consumer's prior consent given directly to the debt collector or the express permission of a court of competent jurisdiction, at times or places that Defendants knew or should have known to be inconvenient to the consumer, including, but not limited to, communicating with the consumer at the consumer's place of employment when the debt collector knew or should have known that it is inconvenient for the consumer to receive such communications, in violation of Section 805(a)(1) of the FDCPA, 15 U.S.C. § 1692c(a)(1).

VIOLATIONS OF SECTION 5 OF THE FTC ACT

21. Section 5(a) of the FTC Act, 15 U.S.C. §45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

COUNT IV

22. In numerous instances, in connection with the collection of debts, Defendants have made the following representations, expressly or by implication, regarding the character or legal status of a debt:

- (a) legal proceedings to collect the debt have already been instituted;
- (b) there is no time limitation on filing a lawsuit to collect the debt; and
- (c) Defendants possess documentation establishing that the debt is a valid debt of the consumer.

23. In truth and in fact, in numerous of these instances:

- (a) legal proceedings to collect the debt had not been instituted;
- (b) there is a time limitation on filing a lawsuit to collect the debt; and

- (c) Defendants do not possess documentation establishing that the debt is a valid debt of the consumer.

24. Therefore, the representations set forth in Paragraph 22 are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. §45(a).

COUNT V

25. In numerous instances, in connection with the collection of debts, Defendants have made the following representations, expressly or by implication, regarding actions that the Defendants intend to take if the debt is not paid:

- (a) the debt will be reported to a credit bureau if the debt is not paid; and
- (b) legal proceedings will be initiated against the consumer if the debt is not paid.

26. In truth and in fact, in numerous of these instances:

- (a) Defendants did not report the debt that was not paid to a credit bureau; and
- (b) Defendants did not initiate legal proceedings against the consumer if the debt was not paid.

27. Therefore, the representations set forth in Paragraph 25 are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. §45(a).

CIVIL PENALTIES FOR VIOLATIONS OF THE FD CPA

28. Defendants have violated the FD CPA as described above, with actual knowledge or knowledge fairly implied on the basis of objective circumstances, as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

29. Each instance within five years preceding the filing of this Complaint, in which each Defendant has failed to comply with the FD CPA in one or more of the ways described above, constitutes a separate violation for which Plaintiff seeks monetary civil penalties.

30. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), authorizes the Court to award monetary civil penalties of not more than \$11,000 for each violation of the FD CPA.

INJUNCTION FOR VIOLATIONS OF THE FD CPA AND THE FTC ACT

31. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction to ensure that Defendants will not continue to violate the FD CPA and the FTC Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court, acting pursuant to 15 U.S.C. §§ 45(m)(1)(A), 53(b), 1692l, and its own equitable powers:

1. Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this Complaint;
2. Award Plaintiff monetary civil penalties for each violation of the FD CPA occurring within the five years preceding the filing of this Complaint;

3. Order Defendants to include the following disclosure in each written communication with consumers in connection with the collection of a debt:

The law requires us to stop contacting you about this debt if you write to us and ask us to stop. However, under the law, we may still contact you for two reasons:

- to advise you that we or your creditor intend(s) to pursue specific remedies permitted by law; or
- to advise you that our efforts are being terminated.

This law is enforced by the Federal Trade Commission, Washington, D.C. 20580. If you have a complaint about the way we are collecting this debt, you may write to the Federal Trade Commission, Southwest Region, 1999 Bryan Street, Suite 2150, Dallas, Texas 75201, file your complaint online at www.ftc.gov, or call the FTC at 1-877-FTC-HELP.

4. Order Defendant to provide the following notice to each employee having responsibility with respect to the collection of debts, no later than the time the employee assumes responsibility with respect to the collection of debts, and to obtain from each such person a signed statement acknowledging receipt of a copy of the notice:

Debt collectors must comply with the federal Fair Debt Collection Practices Act, which limits your activities in trying to collect money from consumers. Section 805 of the Act prohibits you from contacting a consumer at work if you know or should know it is inconvenient for the consumer. In addition, Section 807 of the Act prohibits you from representing or implying that any action, including legal action, will be taken unless, at the time of the representation, the action is lawful and there is a clear intent to take the action. Further, Section 807 of the Act prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. Also, Section 809 prohibits

you from contradicting, obscuring, or overshadowing the notification of consumer rights contained in the validation notice required by Section 809. Individual debt collectors may be financially liable for their violations of the Act.

5. Enjoin Defendants permanently from future violations of the FDCPA and the FTC

Act; and

6. Award Plaintiff such additional relief as the Court may deem just and proper.

DATED:

June 22, 2006

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