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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

THOMAS KIMBERLY,
Plaintiff
vs.
GREAT LAKES COLLECTION
BUREAU, INC.,
Defendant

CIVIL NO. 3:91CV00220 (WWE)

RULING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

In this suit for alleged violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq., the plaintiff debtor and defendant collection agency have submitted cross-motions for summary judgment, cf. Rule 56, Fed. R. Civ. P. A single violation suffices to establish liability under the Act, see, e.g., Clomon v. Jackson, 988 F.2d 1314, 1318 (2 Cir. 1993), and violations are tested by the "least-sophisticated consumer" standard, id. at 1318. In any successful action, regardless of the number of violations shown, the plaintiff is entitled to any "actual" damages, 15

U.S.C. § 1692k(a)(1), as well as in any event statutory "additional" damages up to \$1,000.00, § 1692k (a)(2)(A), taking into account such factors as "the frequency and persistence of noncompliance . . . the nature of such noncompliance, and the extent to which . . . [it] was unintentional", § 1692k(b)(1), and the plaintiff is further entitled to reasonable costs and attorney's fees, § 1692k(a)(3). See, e.g., Harper v. Better Business Services, Inc., 961 F.2d 1561, 1563 (11 Cir. 1992); cf. Pipiles v. Credit Bureau of Lockport, Inc., 886 F.2d 22, 27-28 (2 Cir. 1989). See also Clomon, supra at 1321-1322. There is patently at least one violation of the Act in this case.

The pretrial record here shows a form demand letter from the defendant company, computer generated, and dispatched under the name of K.L. Peterson, identified in the letter as "Attorney At Law", and "Corporate Counsel" for defendant. That communication, obviously suggesting that the dunning letter was from an attorney and had received her personal attention, is precisely the misleading mass mailing technique condemned in Clomon v. Jackson, supra at 1320-1321. Because that form communication was plainly fashioned as a matter of company policy, plaintiff is clearly and properly entitled to

the maximum \$1,000.00 in statutory "additional" damages, together with costs and a reasonable attorney's fee.

Plaintiff also complains that a further letter was sent without the required statutory disclosure that it was an attempt to collect a debt, cf. 15 U.S.C. § 1692e(11), but that subsequent letter simply acknowledged payment, and was not a debt collection effort mandating the warning notice. See, e.g., Spinelli v. Great Lakes Collection Bureau, Inc., Civil No. 3:92-254 (JAC), slip op. at 6 (D. Conn. May 11, 1993). Plaintiff's only claim of "actual" damages is raised by conclusory affidavit assertion of emotional distress linked to defendant's alleged additional violation of the Act, through supposedly prohibited telephone communication with plaintiff's mother, which elicited from her a promise to pay her son's debt. For immediate purposes, however, the problem with that final violation claim, and the related claim of some "actual" damages, is that the record permits competing material inferences as to the contents and circumstances of the telephone contact, so that trial hearing and fact-finding would be necessary to determine whether the Act was indeed violated in this additional claimed respect.

Yet since one violation of the Act is manifest, as

already noted, summary judgment may and should be awarded to plaintiff, with the maximum \$1,000.00 in statutory damages, plus costs and a reasonable attorney's fee, to which he has shown entitlement on the record presented. Plaintiff's pending motion for summary judgment is therefore granted to the extent that the in-house counsel form demand letter is held to violate the Act, and that plaintiff is for that violation awarded \$1,000.00 "additional" damages plus costs and reasonable attorney's fees, and defendant's cross-motion for summary judgment is to that extent correspondingly denied. In the course of now-ensuing review proceedings, cf. 28 U.S.C. § 636(b), plaintiff shall submit his up-dated and documented attorney's fee application for review and determination.

Dated at New Haven, Connecticut, this 2nd day of
June, 1993.


ARTHUR H. LATIMER
UNITED STATES MAGISTRATE JUDGE