

*Judith Thompson  
Nine Lancelot Court, Unit Eight  
Salem, New Hampshire 03079*

28 January 2019

Public Utilities Commission ("PUC")  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

NH PUC 29 JAN 19 AM 11:22

**RE: DE 18-148**

To whom it may concern:

Please find the following information regarding inaccuracies.

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**INACCURACIES IN THE DE 18-148 SUMMARY OF ALLEGATIONS**

**ISSUES NOT INCLUDED IN THE PUC SUMMARY OF ALLEGATIONS:**

**VIOLATIONS OF PUC 1203**

No utility shall disconnect service to a customer if any part of the service provided accrues to the benefit of one or more parties known by the utility to be residential tenant(s) unless the utility gives written notice to those tenants. Puc 1203.12(c). Written notice of disconnection to tenants shall set forth the date on or after which the utility proposes to disconnect service; a statement that the reason for disconnection is a dispute between the utility and the landlord; a statement that the tenant should contact the landlord for more information regarding the dispute; and a statement that the tenant has a right to put service in his or her own name and thereby become the customer of record. Puc 1203.12(d)(1)(2)(3)(4). Immediately upon learning that a tenant has been erroneously disconnected without notice, the utility shall reconnect service at no cost to the tenant and shall proceed with proper notice pursuant to this section. Puc 1203.12(f). Delivery of written notice shall be made on the tenants **at least 10 calendar days in advance of the proposed disconnection.** Puc 1203.12(g).

Written notice of the proposed disconnection shall be made on the tenants by posting a conspicuously lettered notice at least 10 calendar days prior to the proposed date of disconnection and a utility shall deliver written notice. Puc 1203.12(g)(1)(2). Written notice shall be delivered by one of the following methods:

Written notice shall be delivered by posting or hanging the notice on the front or back door of each tenant's dwelling unit. Puc 1203.12(g)(1)(2)(a). Written notice shall be delivered by sliding the notice under the front or back door of each tenant's dwelling unit. Puc 1203.12(g)(1)(2)(b). Written notice shall be delivered by mail which is postmarked not less than 14 calendar days prior to the proposed date of disconnection and addressed to each tenant by name or to the "occupant" of each affected dwelling unit. Puc 1203.12(g)(1)(2)(c).

**The utility shall provide service to a tenant in the tenant's own name as customer of record.** Puc 1203.12(h). The utility shall provide service to a tenant in the tenant's own name as customer of record if so requested, subject to the terms and requirements of the utility's tariff and this chapter, **without requiring the tenant to pay any part of the landlord's past due balance** as a condition of receiving service. Puc 1203.12(h).

The commission shall order a utility to reconnect service during other than regular business hours when it determines that a medical emergency exists. Puc 1203.13(d)(1).

The commission shall order a utility to reconnect service during other than regular business hours when it determines property damage would occur. Puc 1203.13(d)(2).

The commission shall order a utility to reconnect service during other than regular business hours when it determines other similar unusual circumstances exist which involve significant risk to health, safety or property and which require immediate reconnection. Puc 1203.13(d)(3).

No charge shall be made when the cause for disconnection was not in compliance with Puc 1203.11; 1203.12; and/or 1205. Puc 1203.13(e).

The utility shall provide the names and addresses of those social service organizations in its franchise area, known to the utility as providing possible assistance with the payment of utility bills, to its customers who are experiencing difficulty in paying utility bills. Puc 1203.14(a).

The utility shall make arrangements with social service organizations that might provide assistance so that the utility will receive notice by telephone or in writing that the social service organization will agree to pay the current bill of the customer within 4 business days of a customer's application for assistance. Puc 1203.14(b).

The utility shall continue to provide utility service to the customer during the 4 business days before confirmation by telephone or in writing is received. Puc 1203.14(c).

Upon receipt of the social service organization's notification of its agreement to pay the current bills of the customer, the utility shall treat the social service organization as the party responsible for payment of bills. Puc 1203.14(d).

The utility shall provide the customer with a monthly accounting of his or her billing and payment history during the period when the social service organization is making payments. Puc 1203.14(e).

Notice of disconnection shall not be sent to any customer receiving assistance with the payment of his or her utility bill from a social service organization unless the utility has determined that the customer's assistance from the organization has been exhausted or that the organization has failed to make payments as agreed. Puc 1203.14(f).

If the relevant statute of limitations has not yet run, a utility may deny new service to any applicant due to an outstanding arrearage with that particular utility for prior service. Puc 1203.15(a).

If the relevant statute of limitations has run, a utility may deny new service to any applicant due to an outstanding arrearage with that particular utility for prior service if the utility has pursued recovery of the debt through the court system. Puc 1203.15(b).

If the relevant statute of limitations has run, a utility may, for a period of 3 years after the expiration of the Statute of Limitations, deny new service to any applicant due to an outstanding arrearage with that particular utility for prior service if the utility has made reasonable, verifiable, documented collection efforts during the running of the statute of limitations. Puc 1203.15(c).

#### **VIOLATIONS OF PUC 1204**

In addition to the notice of disconnection required by Puc 1203.11 and Puc 1203.12, during the winter period notice shall be provided to an adult who occupies the affected residence in person or by telephone. Puc 1204.05(a)(1).

If the utility is unable to notify an adult occupant of the affected residence pursuant to (a), the utility shall seek commission approval pursuant to Puc 201.05 before disconnecting service. Puc 1204.05(b).

When seeking commission approval, pursuant to (b), the utility shall inform the commission of the existence of any current or prior medical emergency certifications for the customer or household members. Puc 1204.05(c)(6). The utility shall inform the commission of the existence of any financial hardship, if known. Puc 1204.05(c)(7).

The commission shall not approve disconnection of service to customers when the customer has financial hardship. Puc 1204.05(d)(1).

The commission shall not approve disconnection of service to customers when the customer has made a **good faith** effort to make payments towards the utility bill. Puc 1204.05(d)(2). "Good Faith" is defined as "an intangible and abstract quality with no technical meaning or statutory definition." Black's Law Dictionary, p.477, West Group (1991).

For customers disconnected for non-payment from April 15 through October 15 and whose account remains inactive as of November 1, the company shall send a letter via first class mail no later than November 7 to the last known customer of record for that service address. Puc 1204.06(a).

Where a customer indicates that a household member has a **medical emergency**, as defined in Puc 1202.12, the utility shall inform the customer of his/her rights, as detailed in Puc 1205, and service will be restored upon receipt of a licensed physician's, advanced practice registered nurse's, physician's assistant's or mental health practitioner's certification of medical emergency. Puc 1204.06(f)(1).

### **VIOLATIONS OF PUC 1205**

The provisions of Puc 1205 shall apply to service provided to residential customers by electric utilities; gas, steam and water utilities. The requirements of this section shall be in addition to those requirements of Puc 1203.11 and Puc 1203.12. Where the circumstances triggering the application of Puc 1204 and Puc 1205 occur concurrently, the provisions of Puc 1205 shall govern. Puc 1205.01.

When the utility seeks commission authorization to disconnect service, pursuant to this section, it shall notify the customer in writing of its request and provide a copy of the request for authorization at the same time. Puc 1205.03(14)(d).

The commission shall not approve disconnection of service to customers with a current medical emergency certification when the customer has made a good faith effort to make payments towards the utility bill. Puc 1205.03(14)(e).

Upon approval by the commission of disconnection, the utility shall provide notice to the customers as required in Puc 1203.11 prior to disconnecting service. Puc 1205.03(14)(h).

Puc 1205.05 Disconnection of Service to Customers with Expired Medical Emergency Certifications:

(a) The utility is required to follow the steps set forth in Puc 1205.05 (b) through (i) one time within the 9 month period following the expiration of the medical emergency certification.

(b) The issuance of any notice of disconnection shall be done in accordance with Puc 1203.11(g) and content of the notice shall comply with the provisions of Puc 1203.11(b).

(c) The notice of disconnection shall provide contact information for both the utility and the Commission's Consumer Affairs Division.

(d) No less than 2 calendar days but no more than 8 calendar days prior to the date of the proposed disconnection of service, personal contact must be made with the customer or an adult occupant of the premises. The contact may be made by telephone or in person.

(e) If no personal contact is made as described in (d) above, no disconnection shall occur unless the utility complies with (f) below.

(f) The utility may proceed with a field visit on or after the disconnection date stated on the notice as follows:

(1) If an adult occupant of the residence is not at home, the utility shall leave a notice in a conspicuous location at the premises and shall leave the premises without disconnecting the service; or

(2) If an adult occupant of the residence is at home, the utility shall ask if the medical emergency still exists and inform the adult occupant of the process for providing a certification of medical emergency as described in Puc 1205.02 (b) and (d). If no medical emergency exists, the utility may proceed with the service disconnection in accordance with Puc 1203.11.

(g) The notice required in (f)(1) above shall advise the customer:

(1) The medical emergency certification on the customer's account has expired:

(2) There is an unpaid past due balance on the account;

(3) The utility was at the premises that day to disconnect the utility service;

(4) To contact the utility to make arrangement for payment; and

(5) The utility will return the following week to disconnect service unless the customer contacts the utility.

(h) For the purposes of this section, the 8 business day limitation established in Puc 1203.11(m) shall begin upon the provision of notice pursuant to (f)(1) above.

(i) Prior to disconnecting the service of a customer with whom no personal contact was made, a supervisor at the utility shall review the account.

### **VIOLATIONS OF RSA 358**

RSA 358-A:2 provides that "it shall be unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within this state." The section provides several examples of conduct which meet this standard. RSA 358-A:2, I-XIII. The court's inquiry does not "end with this list because the statute itself states that it is not limited to the listed transactions." *Gautschi v. Auto Body Discount Center*, 139 N.H. 457, 459-60, 660 A.2d 1076 (1995). "Trade or commerce" is defined under the Act as including "the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated." RSA 358-A:1, II.

Fraudulent or deceptive conduct can be actionable under the Act if it occurs in a business setting involving the advertising or sale of a commodity or service as part of the day-to-day business of the defendant. *Snow v. American Morgan Horse Assoc.*, 141 N.H. 467, 471, 686 A.2d 1168 (1996). "To determine whether the Consumer Protection Act applies to a particular transaction, we analyze the activity involved, the nature of the transaction, and the parties to determine whether a transaction is a personal or business transaction." *Hughes v. DiSalvo*, 143 N.H. 576, 578, 729 A.2d 422 (1999). "Remedies under the Consumer Protection Act are not available where the transaction is strictly private in nature and is in no way undertaken in the ordinary course of a trade or business." *Id.*

### **VIOLATIONS OF 15 U.S.C. §1692**

Pursuant to 15 U.S.C. §1692(f); §808 Unfair Practices:

**A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.** Without limiting the general application of the foregoing, the following conduct is a violation of this section:

**(1) The collection of any amount** (including any interest, fee, charge, or expense incidental to the principal obligation) **unless such amount is expressly authorized by the agreement creating the debt or permitted by law.**

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

**(6) Taking or threatening to take any non-judicial action to effect dispossession or disablement of property if --**

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

**(C) the property is exempt by law from such dispossession or disablement.**

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

Unfair methods of competition in or affecting commerce, and **unfair or deceptive acts or practices** in or affecting commerce, are hereby declared unlawful. 15 U.S. Code §45(a)(1). Further, the defendant violated the NH Unfair and Deceptive Practices Act. In NH, "It shall be unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within this state." RSA 358-A:2. The defendant violated the Fair Debt Collection Practices Act ("FDCPA"). The FDCPA covers a natural person obligated to pay any obligation or alleged obligation arising from a transaction the subject of which is primarily for personal,

family, or household purposes. Collections need not be a majority portion of the collector's business. *Garrett v. Derbes*, 110 F.3d 317 (5th Cir. 1997). Under the FDCPA, a "debt collector" is "any person who uses any instrumentality of interstate commerce, or the mails, in any business the principle purpose of which is collection of any debts, or who regularly collects or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. §1692a(6).

The FDCPA is 'self-enforcing' through private causes of action. *West v. Costen*, 558 F.Supp. 564 (W.D.Va. 1983). The Fair Debt Collection Practices Act ("FDCPA") covers a natural person obligated to pay **any obligation** or alleged obligation arising from a transaction the subject of which is primarily for personal, family, or **household** purposes. **Collections need not be a majority portion of the collector's business.** *Garrett v. Derbes*, 110 F.3d 317 (5th Cir. 1997). The underlying debt must arise from a "transaction." *Mabe v. G.C. Services Limited Partnership*, 32 F.3d 86 (4th Cir. 1994); *Zimmerman v. HBO Affiliate Group*, 834 F. 2d 1163 (3rd Cir. 1987); *Hawthorne v. Mac Adjustment, Inc.*, 140 F.3d 1367 (11th Cir. 1998); *Stephens v. Omni Ins. Co.*, 138 Wash.App. 151, 159 P.3d 10 (Wash.App. Div. 1 Apr 23, 2007). The FDCPA arises in a "consumer" "debt" "transaction." 15 U.S.C. §§1692a(3) and (5); *Creighton v. Emporia Credit Service, Inc.*, 981 F.Supp. 411 (E.D.Va. 1997). **Under the FDCPA, a "debt collector" is defined as "any person who uses any instrumentality of interstate commerce or the mails in any business the principle purpose of which is collection of any debts, or who regularly collects or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another."** 15 U.S.C. §1692a(6). In determining whether any particular conduct violates the FDCPA, the courts have used an objective test based on the least sophisticated consumer. *Federal Home Loan Mortg. Corp. v. Lamar*, 503 F.3d 504 (6th Cir. 2007). **The FDCPA is a strict liability statute** and subjects debt collectors to **civil liability** for engaging in debt collection practices prohibited by the Act. 15 U.S.C. §1692(k).

**The FDCPA statutory definitions cover those who collect debts both directly as well as indirectly.** *Romine v. Diversified Collection Services, Inc.*, 155 F.3d 1143 (9th Cir. 1998). A collector must "regularly" **attempt** to collect debts. 15 U.S.C. §1692a(6); *Heintz v. Jenkins*, 514 U.S. 291 (1995); *Wilson v. Draper & Goldberg, P.L.L.C.*, 443 F.3d 373 (4th Cir. 2006). **Collections need not be majority portion of the collector's business.** *Garrett v. Derbes*, 110 F.3d 317 (5th Cir. 1997). "Regularly collecting" occurs when undertaking collection activity "more than a handful of times per year." *Crossley v. Lieberman*, 868 F. 2d 566 (3rd Cir. 1989). The collection offending employees are liable. *West v. Costen*, 558 F.Supp. 564 (W.D.Va. 1983).

## **MISREPRESENTATION AND FRAUD**

**Misrepresentation of "debt" violates the FDCPA.** *Veach v. Sheeks*, 316 F.3d 690 (7th Cir. 2003). The FDCPA broadly **prohibits unfair or unconscionable methods**; conduct which harasses, oppresses or abuses any debtor; **and any false, deceptive or misleading statements, in connection with the collection of a debt.** 15 U.S.C. §§1692d, 1692e, and 1692f. In NH, "It shall be unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within this state." RSA 358-A:2. The use of word "shall" in a statute, or regulation, are considered mandatory in nature. *McFadden v. State*, 580 So.2d 1210, 1215 (Miss.1991). In determining actions, we have employed the "rascality" test. **Under the rascality test, "the objectionable conduct must attain a level of rascality that would raise an eyebrow of someone inured."** *Beckstead v. Nadeau*, 155 N.H. 615, 619, 926 A.2d 819 (2007). The elements of a cause of action for fraud are (1) a misrepresentation, (2) with knowledge of its falsity, (3) with the intent to induce another's reliance on the misrepresentation, (4) actual and justifiable reliance, and (5) resulting damage. *Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 230-231 (Chapman). Fraudulent or deceptive conduct can be actionable under the Act if it occurs in a business setting involving the advertising or sale of a commodity or **service as part of the day-to-day business of the defendant.** *Snow v. American Morgan Horse Assoc.*, 141 N.H. 467, 471, 686 A.2d 1168 (1996).

## **VIOLATIONS OF THE THREE-YEAR STATUTE OF LIMITATIONS**

A cause of action arises when all elements exist. It does not accrue until plaintiff discovers, or should have discovered, both injury and cause. *Id.* The discovery rule states: For actions when injury and its cause not discovered and could not be discovered; the action may be brought within three (3) years of the date plaintiff "discovers" or should have discovered the injury. N.H. Rev. Stat. Ann §508:4(I); *Glines v. Bruk*, 140 N.H. 180 (1995). If a federal statute does not contain express limitation periods, federal courts apply state statute of limitations. *Lowe v. Volkswagen of America, Inc.*, 879 F.Supp. 28,30 (E.D. Pa. 1995). In NH, the statute of limitations is governed by RSA 508:4(I). All personal actions may be brought only within three (3) years. RSA 508:4(I). Under the discovery rule, the statute of limitations does not accrue until (1) plaintiff knows, or should have known, of injury; (2) plaintiff knows, or should have known, the causal connection between injury and alleged conduct. *Kelleher*, 152 N.H. at 824. If the relevant statute of limitations has not yet run, a utility may deny new service to any applicant due to an outstanding arrearage with that particular utility for prior service. Puc 1203.15(a). If the relevant statute of limitations has run, a utility may

deny new service to any applicant due to an outstanding arrearage with that particular utility for prior service if the utility has pursued recovery of the debt through the court system. Puc 1203.15(b).

#### **LIBERTY VIOLATED PUC 1203.12 REGARDING TENANT/LANDLORD SITUATIONS**

Plaintiff was the customer of record. Liberty wrongfully transferred the account without Plaintiff's knowledge or consent. Puc 1203.12 shall apply to utilities, other than sewer or telephone utilities, and situations **where the landlord is the utility's customer of record**. Puc 1203.12(a)(1)(2). A "Tenant" means "a person who rents and occupies a room in a rooming house or a person who rents and occupies a dwelling unit, in a building or mobile home park owned by another, consisting of contiguous living, sleeping, kitchen and bathroom facilities for the exclusive use of that person and his or her immediate family. Tenant specifically excludes a person who rents a unit for short-term, vacation, or recreation purposes." Puc 1203.12(b).

Plaintiff never received Notice. **No utility shall disconnect service to a customer** if any part of the service provided accrues to the benefit of one or more parties known by the utility to be residential tenant(s) **unless the utility gives written notice to those tenants**. Puc 1203.12(c). Written notice of disconnection to tenants shall set forth the date on or after which the utility proposes to disconnect service; a statement that the reason for disconnection is a dispute between the utility and the landlord; a statement that the tenant should contact the landlord for more information regarding the dispute; and a statement that the tenant has a right to put service in his or her own name and thereby become the customer of record. Puc 1203.12(d)(1)(2)(3)(4). Immediately upon learning that a tenant has been erroneously disconnected without notice, the utility shall reconnect service at no cost to the tenant and shall proceed with proper notice pursuant to this section. Puc 1203.12(f).


Delivery of **written notice** shall be made on the tenants **at least 10 calendar days in advance of the proposed disconnection**. Puc 1203.12(g). Written notice of the proposed disconnection shall be made on the tenants by posting a conspicuously lettered notice at least 10 calendar days prior to the proposed date of disconnection and a utility shall deliver written notice. Puc 1203.12(g)(1)(2). Written notice shall be delivered by one of the following methods: Written notice shall be delivered by posting or hanging the notice on the front or back door of each tenant's dwelling unit. Puc 1203.12(g)(1)(2)(a). Written notice shall be delivered by sliding the notice under the front or back door of each tenant's dwelling unit. Puc 1203.12(g)(1)(2)(b). **Written notice shall be delivered by mail which is postmarked not less than 14 calendar days prior to the proposed date of disconnection** and addressed to each tenant by name or to the "occupant" of each affected dwelling unit. Puc 1203.12(g)(1)(2)(c). **The utility shall provide service to a tenant in the tenant's own name as customer of record**. Puc 1203.12(h).

The PUC regulations are silent on the issue of a Landlord, unknown to a tenant, voluntarily transferring an account into his name and assuming debt on the account. "The utility shall provide service to a tenant in the tenant's own name as customer of record if so requested, subject to the terms and requirements of the utility's tariff and this chapter, **without requiring the tenant to pay any part of the landlord's past due balance** as a condition of receiving service." Puc 1203.12(h). In this case, upon transfer of the account, the landlord assumed any alleged debt on the account and Liberty must pursue collections against the "new" owner as landlord.

A current medical certificate exists. The commission shall order a utility to reconnect service during other than regular business hours when it determines that a **medical emergency** exists. Puc 1203.13(d)(1). The commission shall order a utility to reconnect service during other than regular business hours when it determines property damage would occur. Puc 1203.13(d)(2). The commission shall order a utility to reconnect service during other than regular business hours when it determines other similar unusual **circumstances exist which involve significant risk to health, safety or property** and which require immediate reconnection. Puc 1203.13(d)(3). No charge shall be made when the cause for disconnection was not in compliance with Puc 1203.11; 1203.12; and/or 1205. Puc 1203.13(e).

Signed this 28<sup>th</sup> day of January 2019.

Respectfully Submitted,

  
Judith Thompson, pro se  
9 Lancelot Court #8  
Salem, NH 03079

#### **CERTIFICATION OF SERVICE**

I, Judith Thompson, certify a copy of this letter was sent to Liberty Utilities' Attorney Michael Sheehan at 166 North Main Street in Concord, NH 03301 via postage prepaid first-class mail.

Signed this 28<sup>th</sup> day of January 2019.

Respectfully Submitted,

  
Judith Thompson, pro se