

Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

CASE NO. DE 18-148

Judith Tompson

v.

Liberty Utilities

VPUC 12FEB19AM11:19

MOTION IN OBJECTION OF MOTION TO DISMISS

The Public Utilities Commission ("PUC") has authority and jurisdiction over the defendant electric distributor in this case. The PUC has jurisdiction over any alleged consumer protection issues and/or complaints, under both state law and federal law, because the PUC has exclusive authority and control of all electric service providers in the state of New Hampshire. The defendant's arguments to dismiss fail and the Motion must be denied.

I. RSA 358 VIOLATIONS

The defendant's conduct rises to the level of unlawful, unfair, and/or deceptive practices. 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."** RSA 358-A:2. The section provides several examples of conduct which meet this standard. RSA 358-A:2, I-XIII. However, 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). The Consumer Protection Act applies to those "types of acts." *Roberts v. General Motors Corp.*, 138 N.H. 532, 538, 643 A.2d 956 (1994). "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. The defendant argues, "That statute [RSA 358-A] expressly exempts companies, like Liberty, that are regulated by the Public Utilities Commission." Motion, p.1, #1. This is the defendant's misapplication of the law. If the PUC regulates the electric service distributor, as in this case, a state consumer protection complaint is ripe for review by the commission. The PUC has exclusive jurisdiction over the defendant, and any issue presented for review, in the form of a complaint against that defendant. The PUC would be remiss in dismissing the claim; which may be reversed on appeal. The exemption defendant claims, in *Rainville*, is incorrectly argued. Motion, p.2, #3. In *Rainville*, the case could not be brought in a **court of law** because it concerns trade or commerce that is subject to the PUC's jurisdiction. *Rainville v. Lakes Region Water Co.*, 163 N.H. 271, 271 (2012). Hence, the PUC has authority over the defendant as well as the RSA 358-A violations alleged in this case. Any person injured by another's act or practice may bring an action. RSA 358-A:10. In this case, against this defendant distributor, jurisdiction is exclusively with the PUC.

II. FDCPA VIOLATIONS

The Fair Debt Collection Practices Act ("FDCPA") does not give debt collectors the authority to determine unilaterally whether a dispute has merit. *Semper v. JBC Legal Group*, 2005 WL 2172377 (W.D. Wash. Sept. 6, 2005). The FDCPA

is to be determined by analyzing it from the perspective of the "least sophisticated" debtor. *U.S. v. National Financial Services, Inc.*, *supra* at 135-36. "The basic purpose of the least-sophisticated-consumer standard is to ensure that the FDCPA protects all consumers, the gullible as well as the shrewd." *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2nd Cir. 1993). The defendant argues, "The commission does not have the authority to enforce its terms [FDCPA]." Motion, p.3.#7. This is false. "To argue that a party can avoid the strictures of the FDCPA simply by acting where it has no legal authority would defy the very purposes of the statute." *Foster v. D.B.S. Collection Agency*, 463 F.Supp.2d 783, 803 (S.D. Oh. 2006); *Sprinkle v. SB & C Ltd.*, 472 F.Supp.2d 1235, 1247 (W.D.Wash.2006). The PUC has exclusive statutory authority, via legislative design, over the defendant. Any alleged FDCPA violations are ripe for review by the PUC against this defendant. **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. The FDCPA states that its purpose, in part, is "to eliminate abusive practices." 15 U.S.C. §1692(e). It is designed to protect consumers, whether or not there is a valid debt. *Baker v. G.C. Services Corp.*, *supra* at 777 (9th Cir. 1982). According to the Seventh Circuit, the relevant time is when the debt was incurred, not when collection is attempted. *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, and Clark, LLC*, 214 F.3d 872, 874 & 75 (7th Cir. 2000). Congress has unambiguously directed our focus to the time the debt was acquired in determining whether one is acting as a creditor or debt collector under the FDCPA. *Pollice v. National Tax Funding, L.P.*, 225 F.3d 385 (5th Cir. 2002). In this case, defendant is attempting to collect alleged prior debt, from a prior electricity distributor of service; which is no longer in operation in the State. **Attempting to collect a known time-barred account violates the FDCPA.** *Lindbergh v. Transworld Systems, Inc.*, 846 F.Supp. 175 (D. Conn. 1994); *Martinez v. Albuquerque Collection Services, Inc.*, 867 F.Supp. 1495 (D.N.M. 1994).

The defendant provides **exclusive electric distribution** in the Town of Salem as authorized by the PUC. A "consumer debt transaction" is 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. The FDCPA arises only in a consumer debt transaction. 15 U.S.C. Sections 1692a(3) and (5); *Creighton v. Emporia Credit Service, Inc.*, 981 F.Supp. 411 (E.D.Va. 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 applies to bad check debts, condominium assessment fees, residential rental payments, municipal water service, sewer service, and **other non-credit consumer obligations.** *Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C.*, 111 F.3d 1322 (7th Cir. 1997); *FTC v. Check Investors*, 502 F.3d 159 (3d Cir. 2007); *Charles v. Lundgren & Associates*, 119 F.3d 739 (9th Cir. 1997), *cert. denied sub nom Checkrite Ltd., Inc. v. Charles*, ___ U.S. ___ (Dec. 15, 1997); *Snow v. Jesse L. Riddle, P.C.*, 143 F.3d 1350 (10th Cir. 1998); *Ladick v. Van Gemert*, 146 F.3d 1205 (10th Cir. 1998); *Romea v. Heiberger & Associates*, 163 F.3d 111 (2d Cir. 1998); *Brand v. Law Firm of Heldenbrand Cohen*, 2006 U.S. Dist. Lexis 6114 (D. Az. 2006); *Ryan v. Wexler & Wexler*, 113 F.3d 91 (7th Cir. 1997); *Brown v. Budget Rent-a-Car Systems, Inc.*, 119 F.3d 922 (11th Cir. 1997); *Newman v. Boehm, Pearstein & Bright, Ltd.*, 119 F.3d 477 (7th Cir. 1997); *Pollice v. National Tax Funding, L.P.*, 225 F.3d 385 (5th Cir. 2002). As long as the underlying obligation is a "debt," the method of collection is irrelevant. *Strange v. Wexler*, 796 F. Supp. 1117 (N.D. Ill. 1992).

Debt collection does not have to be the sole activity of a defendant. It may only be part of its function. In this case, the defendant maintains and controls a **"Credit & Collections/Account Processing"** Department. See Liberty

Utilities Third Party Notification Enrollment Form. 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 FDCPA requires **more** than to follow "the spirit of the law." *Withers v. Eveland*, 988 F. Supp. 942, 947-48 (E.D. Va. 1997). There is no billing dispute resolution via the PUC regulations. There was no billing dispute resolution mechanism through the defendant in this case. The FDCPA is violated if the least sophisticated consumer is uncertain as to her rights. *Talbott v. GC Services Limited Partnership*, 53 F. Supp. 2d 846, 853 (W.D. Va. 1999); *Creighton v. Emporia Credit Service, Inc.*, 981 F.Supp. 411, 416 (E.D.Va. 1997). The FDCPA is violated if the least sophisticated consumer is unsure about his **right to dispute the debt**. *Talbott v. GC Services Limited Partnership*, 53 F. Supp. 2d 846 (W.D. Va. 1999). Adequacy is a question of law tested by the least sophisticated consumer standard. *U.S. v. National Financial Services, Inc.*, 98 F.3d 131, 135 (4th Cir. 1996); *Creighton v. Emporia Credit Service, Inc.*, 981 F.Supp. 411, 415 (E.D.Va. 1997). The FDCPA is violated if demanding payment of illegal amounts or demanding payment of unauthorized amounts. *West v. Costen*, 558 F.Supp. 564 (W.D.Va. 1983). In this case, the issue of alleged debt; which includes amounts claimed, is the basis of the complaint. The complaint filed against defendant is viable under the FDCPA. The PUC has exclusive jurisdiction for review. "The FDCPA is primarily self-enforcing through private causes of action." *West v. Costen*, 558 F.Supp. 564 (W.D.Va. 1983). The FDCPA is a remedial statute to be liberally construed., *Cirkot v. Diversified Financial Systems, Inc.*, 839 F. Supp. 941 (D. Conn. 1993); *Clark v. Capital Credit & Collection Services, Inc.*, 460 F.3d 1162 (9th Cir. 2006). The PUC has exclusive authority, and control, of all electric service providers in the state of New Hampshire. As filed, the defendant's arguments to dismiss under state, and federal, consumer protection laws fail. In this case, the PUC has exclusive jurisdiction over the defendant. The Motion to Dismiss must be denied.

CONCLUSION

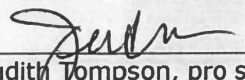
Wherefore, Petitioner respectfully requests the PUC:

1. Deny dismissal of RSA 358 issues raised; and
2. Deny dismissal of FDCPA issues raised; and
3. Grant any other relief deemed proper, just, and equitable by this court.

CONCURRENCE/AGREEMENT IS NOT ATTEMPTED AS IS NOT NECESSARY.

Signed this 11th day of February 2019.

Respectfully Submitted,

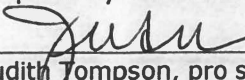

Judith Thompson, pro se
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CERTIFICATION OF SERVICE

I, Judith Thompson, certify that a copy of the attached Motion was sent, via postage prepaid first-class mail, to Liberty Utilities' counsel, Attorney Michael Sheehan at 116 North Main Street in Concord, NH 03301.

Signed this 11th day of February 2019.

Respectfully Submitted,


Judith Thompson, pro se