

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

March 31, 1983

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Montgomery County Government
611 Rockville Pike
Rockville, Maryland 20852

Dear Ms. Miller.

This is in further response to your letter of December 3, 1982 requesting that this office review a form letter used to collect debts by Eastern Credit Association, a debt collector.

The form letter is one which Eastern Credit Association proposes to send to a consumer after Eastern Credit receives a "cease communication" notice as defined by Section 805(c) of the Fair Debt Collection Practices Act (Act). The letter states that failure to pay the account in question could result in the following actions:

... proceedings could be instituted by [Eastern's] client's attorney.

This could mean additional expenses charged to the [consumer] ...

... It could lead to the attachment of the consumer's earnings with the [consumer's] present employer.

As you know, Section 805(c) of the Act provides that, following receipt of a "cease communication" letter from a consumer, a debt collector is prohibited from communicating further with the consumer except:

- "(1) to advise the consumer that the debt collector's further efforts are being terminated;
- (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor;
or
- (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy."

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The question, therefore, is whether any of the three phrases contained in Eastern's letter fall within any of the three exceptions to 805(c) of the Act. If not, inclusion of such language in the letter may violate that Section.

The first phrase implies that failure to pay could result in the institution of legal proceedings by a creditor. The second and third phrases state that such action could result in consequent additional expenses and attachment of earnings that would flow from a successful prosecution of the litigation. Paragraphs 805(c)(1) through (c)(3) of the Act set out the representations that a collector is authorized to make in a letter to a consumer in response to a "cease communication" notice. It is our opinion that these phrases do not fall clearly within any of these narrowly defined exceptions.

First, the phrases do not advise that the collector's efforts are being terminated as set out in paragraph (c)(1). Second, we do not have sufficient information to determine whether the phrases conform to the requirements of paragraph 805(c)(2), *i.e.*, whether they provide notice of specified remedies ordinarily invoked by the creditor. Presumably, the letter at issue is sent to every debtor from whom Eastern Credit Association receives a cease communication notice. In order to determine whether Eastern Credit's letter conforms to the requirements of Section 805(c)(2), it would be necessary to know how frequently the creditor actually does institute legal proceedings against consumers who are allegedly in debt. If the creditor does not ordinarily undertake the specific remedies stated in the collector's letter, the debt collector may not make representations to that effect in a communication such as the letter at issue since such a statement would be contrary to the requirement of paragraph 805(c)(2).

Finally, the phrases contain no statement of present intent on the part of the collector or creditor to invoke a specific remedy. Rather, they are couched in terms of what the creditor could do. Therefore, the phrases do not fall within the exception outlined in paragraph 805(c)(3).

In sum, while the phrases at issue do not fall within paragraphs 805(c)(1) or (3), they may fall within paragraph

805(c)(2), depending upon how often the threatened actions are invoked. Thus, we cannot at this time state whether they are permissible under the Act.

The final paragraph of the Eastern letter states:

"Please send your check or money order at once to avoid further inconvenience."

We believe that this phrase definitely does not fall within any of the exceptions authorized by Section 805(c)(1) through (3) of the Act. Indeed, the entreaty to "send your check or money order at once" is an attempt to continue, not to cease, the collection process. As such, it is not permissible under the terms of Section 805(c) since further communication with the debtor is prohibited except in the three very narrow circumstances previously discussed. For these reasons, therefore, the statement may be in violation of Section 805(c).

The views expressed here are informal and not binding upon the Commission. They do, however, represent the staff's present enforcement position.

Sincerely,

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Division of Credit Practices


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