

# Debt Collection Letter Ruled Deceptive

BY LAZAR EMANUEL

A federal judge has reminded lawyers who write consumer collection letters that they must look carefully at the provisions of the Federal Debt Collection Procedures Act, 15 U.S.C.A. 1692 et. seq.

Lawyers in the office of Mark L. Nichter, a Westchester practitioner, directed a collection letter to the patient of a cardiologist. The letter demanded "immediate payment" of the debt. The federal statute provides a thirty-day window following the collection "communication" during which the debtor may dispute the debt. Notice of this "window" must be included in all consumer collection letters. Section 1692g.

Southern District Judge Colleen McMahon found that the demand for immediate payment was inconsistent with the 30-day opportunity by the debtor to contest the debt. *Barrientos v. Law offices of Mark L. Nichter*, 99 Civ. 2522; N.Y.L.J., 12-22-99, p. 30, col. 5. The judge rejected the law firm's argument that it was experienced in collection matters, that it knew the rules and that the demand for immediate payment was a bona-fide error.

## Statute Must Be Followed Exactly

Judge McMahon's decision confirms the need by lawyers to stick to the spirit and letter of the FDCPA. It follows a decision in the Eastern District in which the court also held that a demand for "immediate payment" violated the 30-day validation provisions of Section 1692g. *DeSantis v. Roz-ber*, N.Y.L.J. 6-11-99, P. 42. COL. 5 (E.D.N.Y.).

Section 1692e of the FDCPA contains a long list of "false or misleading representations", none of which is permitted to a debt collector. Among the actions which are prohibited are:

- (5) The threat to take any action that cannot legally be taken or that is not intended to be taken;...
- (10) The use of any false representation or deceptive means to collect or attempt to collect any debt...

In an article published in the August, 1999 issues of NYPRR, Stewart Wurtzel wrote as follows:

The standard which measures whether a notice is contradictory or overshadowing is: by an objective standard, will the "least sophisticated consumer" be uncertain as to her rights. Courts have routinely held that the "Act is aimed at protecting consumers in general from abusive debt collection practices and the test is how the least sophisticated consumer – one not having the astuteness of a 'Philadelphia lawyer' or even the sophistication of the average, everyday,

common consumer—understands the notice he or she receives.” *Russell v. Equifax* A.R.S. 74 F.3d 30 (2d Cir. 1996). Clearly, the standard is broad and all encompassing.

In *Barrientos*, Judge McMahon applied the “least sophisticated consumer” test in her rejection of the defendant’s arguments. She confirmed the need to recognize the strict liability imposed upon debt-collection lawyers by the FDCPA.

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