

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

VICKI L. HIGGINS

No.

Plaintiff,

vs.

PATENAUDE & FELIX, A.P.C.,
GREGG L. MORRIS, ESQUIRE,
TARGET NATIONAL BANK and
ADAM GRIM

Defendants.

COMPLAINT

INTRODUCTION

1. Defendants named Vicki Higgins (“Higgins”) as a defendant in a collection lawsuit without probable cause and for an improper purpose.
2. Defendants’ conduct is part of a pattern and practice of unlawful collection abuse thereby warranting punitive damages.
3. Defendants unlawful conduct caused Higgins to suffer emotional distress in the form of fear, anxiety, anger and stress.
4. Higgins is filing this lawsuit in order to recover statutory, actual and punitive damages against Defendants pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (“FDCPA”), the Pennsylvania Fair Credit Extension Uniformity Act, 73 P.S. § 2270.1 *et seq.* (“PFCEUA”), which prohibit debt collectors and creditors from engaging in abusive, deceptive, and unfair practices, as well as the Pennsylvania Dragonetti Act, 41 Pa.C.S.A. § 8351.

JURISDICTION

5. The Court has jurisdiction. 28 U.S.C. § 1331, 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1367.

PARTIES

6. Higgins is an adult living in Westmoreland County, Pennsylvania.

7. Higgins is a “consumer” as that term is defined in the FDCPA, 15 U.S.C. § 1692a(3).

8. Defendant, Patenaude & Felix, A.P.C. (P&F) is a professional law corporation with its main office at 4545 Murphy Canyon Road, 3rd Floor, San Diego, California 92123.

9. P&F collects debt nationwide maintaining offices in California, Nevada, Oregon, Pennsylvania and Washington.

10. P&F is a debt collector as that term is defined in the FDCPA, 15 U.S.C. § 1692a(6).

11. Defendant Gregg L. Morris, Esquire (“Morris”) is an attorney employed by P&F in its Pennsylvania office located at 213 East Main Street, Carnegie, Pennsylvania 15106.

12. Morris is licensed to practice law in the Commonwealth of Pennsylvania and is a “debt collector” as that term is defined in the FDCPA, 15 U.S.C. § 1692a(6).

13. P&F establishes the policies and procedures for collection of debts by its attorneys, including Morris.

14. P&F is liable for the actions of Morris.

15. Defendant Target National Bank (“Target”) is a corporation with a place of business located at 3901 W 53rd Street, Sioux Falls, South Dakota 57106.

16. Target is a creditor as that term is defined in the PFCEUA, 73 Pa.C.S.A. § 2270.3).

17. Defendant Adam Grim (“Grim”) is employed by Target as an Assistant Secretary.

18. Target is liable for the actions of Grim.

FACTS

19. Morris sent Higgins an unsigned form collection letter dated November 24, 2008 and identified in the lower left hand corner as PF_03Ltr Initial Demand. In the letter, Morris claims Higgins was obligated to Target for a balance due in the amount of \$5,695.25. Attached hereto as Exhibit “A” and incorporated herein by reference is a copy of the letter.

20. Higgins sent P&F a letter dated November 30, 2008 advising she did not have an account with Target National Bank or Target Department Store and requested documentary proof. Attached hereto as Exhibit “B” and incorporated herein by reference is a copy of the letter.

21. Morris sent Higgins a form letter dated December 3, 2008 and identified in the lower left hand corner as PF_27 Fraud Affidavit Ltr, which states:

You represent to our office that the above-referenced debt from a revolving charge account with TARGET NATIONAL BANK was not incurred by yourself or anyone authorized by you. Further, you represent that you never received a TARGET NATIONAL BANK credit card or a loan or check bearing account number 4352371726401160. Instead, you believe your identity was stolen and someone else applied for and used the revolving charge account with TARGET NATIONAL BANK.

For your convenience, attached to this letter is an Affidavit of Identity Theft. Please complete this document and return the Affidavit along with a copy of a police report within the next ten (10) days. If we do not hear

from you, we will presume the debt is valid and will continue with our collection efforts.

Attached hereto as Exhibit “C” and incorporated herein by reference is a copy of the letter.

22. At no time did Higgins tell the defendants she believed her identity was stolen. Rather, she advised Morris she never had an account with Target National Bank or Target Department Store.

23. Morris wanted Higgins to complete a false affidavit of identity theft and file a false police report.

24. Morris sent Higgins a form letter dated February 16, 2009 and identified in the lower left hand corner as PF_26 Validation Ltr. Enclosed with the letter was an “office copy” of a statement purportedly from Target National Bank with a closing date of November 8, 2008. P&F’s reference number (08-88050) is handwritten on page one (1) of the statement. Attached hereto as Exhibit “D” and incorporated herein by reference is a copy of the letter along with the enclosure.

25. Morris never provided copies of actual account statements, the account application or any document with Higgins’ signature.

26. On February 24, 2009, Higgins wrote to P&F’s Carnegie, Pennsylvania office:

You continue to send me accusations about a delinquent account with Target. I requested some type of confirmation that this account belonged to me. Now months later you sent me a copy of a past due bill from Target Visa that has my name and address on it. If the company puts my name and address on a past due bill at your request it doesn’t make me liable for the delinquency. I am contacting my attorney to find out if it was legal for you to do that.

In the meantime, I contacted Target who verified that this is not my account. I will proceed with legal actions if I continue to be harassed about this issue.

Attached hereto as Exhibit "E" and incorporated herein by reference is a copy of the letter.

27. On April 21, 2009, Target commenced suit against Higgins in the Court of Common Pleas of Westmoreland County, Pennsylvania docketed at number 3908 of 2009. Attached hereto as Exhibit "F" and incorporated herein by reference is a copy of the complaint.

28. The complaint was signed by Morris as counsel for Target and verified by Grimm as authorized agent of Target National Bank.

29. In the Complaint, it was alleged, among other things, that Higgins was obligated to Target for a balance due on a revolving credit account in the amount of \$5,685.94, plus interest at 19.99% and costs.

30. Morris wrote to Higgins by form letter dated April 28, 2009:

We are writing to you regarding your claim that you are not responsible for the debt in questions because you are a victim of identity theft.

Pursuant to our obligation under the law to investigate your claim, our client, TARGET NATIONAL BANK, has reviewed and considered all of the information you provided and other information available in our file and in our client's file. In doing so, our client has made a good-faith determination that the information does not establish that you are not responsible for the debt in question. Therefore, we will recommence collection activities in this matter.

If you have any questions or comments, or if you wish to submit any other documentation for consideration, please do not hesitate to contact us.

Attached hereto as Exhibit "G" and incorporated herein by reference is a copy of the letter.

31. Morris sent Higgins an “Important Notice” by letter dated April 29, 2009. The notice was sent despite the fact that Higgins was not yet served with the complaint.

32. On May 11, 2009, Higgins wrote to Morris advising she learned a lawsuit was filed against her. Higgins once again told Morris that the subject account did not belong to her and requested dismissal of the complaint. Attached hereto as Exhibit “H” and incorporated herein by reference is a copy of the letter.

33. Morris sent a form letter to Higgins’ attorney, Jeffrey D. Monzo, dated May 12, 2009:

You represent to our office that the above-referenced debt from a revolving charge account with **TARGET NATIONAL BANK** was not incurred by your client, VICKI L HIGGINS or anyone authorized by him. Further, you represent that your client never received a **TARGET NATIONAL BANK** credit card or a loan or check bearing account number **4352371726401160**. Instead, you believe your client’s identity was stolen and someone else applied for and used the revolving charge account with **TARGET NATIONAL BANK**.

For your convenience, attached to this letter is an Affidavit of Identify Theft. Please have your client complete this document, and return the Affidavit along with the police report to me within the next twenty (20) days. In the meantime, I have granted you an extension of time to file an Answer, if necessary. We have agreed If we do not hear from you, we will presume the debt is valid and will continue with our collection efforts.

Attached hereto as Exhibit “I” and incorporated herein by reference is a copy of the letter.

34. Despite the fact that she never alleged identity theft and thinking she had no choice, on May 26, 2009, Higgins completed a “TARGET AFFIDAVIT OF UNAUTHORIZED USE” and “ID THEFT AFFIDAVIT.” In the Target affidavit, Higgins listed P&F as the individual who utilized her account number, credit card or personal information without her authorization. In the ID THEFT AFFIDAVIT, Higgins wrote, “[T] his account had no connection to me until Patenaude & Felix began

contacting me Shortly thereafter someone changed the address on the account to my address.” Attached hereto collectively as Exhibit “J” and incorporated herein by reference are copies of the affidavits.

35. Morris wrote to Monzo on June 27, 2009. The letter states in part:

We are writing to you regarding your client’s claim that she is not responsible for the debt in questions because she is a victim of identity theft.

Pursuant to our obligation under the law to investigate your claim, we sent you a fraud affidavit to be completed and returned to us with a copy of a police report. We have not received this material. We reviewed the claim in light of all material available to us, without the affidavit or supporting police report the fraud claim is denied. Therefore, we will recommence collection activities in this matter.

Attached hereto as Exhibit “K” and incorporated herein by reference is a copy of the letter.

36. As stated above, Higgins never claimed fraud. Rather, she was of the belief that Target had her mixed up with another Vicki Higgins.

37. Morris reinstated the complaint on July 2, 2009.

38. Monzo spoke with Morris and told him Higgins wasn’t the person who applied for and used the Target Credit Card. Monzo also submitted the affidavits completed by Higgins.

39. Monzo was advised that P&F was continuing to pursue the collection action against Higgins.

40. Higgins had no choice but to defend the case.

41. Morris wrote to Monzo on July 18, 2009 advising him that collection activities would recommence and they had not received a completed affidavit or police report. Attached hereto as Exhibit “L” and incorporated herein by reference is a copy of the letter.

42. Higgins was served with the complaint on July 20, 2009.

43. Monzo wrote to Morris on July 23, 2009 enclosing a copy of his Praeipe for Appearance. Monzo advised he forwarded the affidavits and requested an additional 20 days to respond to the complaint. The letter was sent by fax. Attached hereto as Exhibit "M" and incorporated herein by reference is a copy of the letter.

44. Morris wrote to Monzo on July 24, 2009 advising he did not receive the completed affidavit or copy of a police report. The letter was sent by fax. Attached hereto as Exhibit "N" and incorporated by reference is a copy of the letter.

45. On August 11, 2009, Morris sent an "Important Notice."

46. Higgins filed an answer to the complaint on August 21, 2009. Attached hereto as Exhibit "O" and incorporated by reference is a copy of the answer.

47. On August 31, 2009, Monzo served discovery requests on P&F seeking documentary proof of the allegations set forth in the complaint. The discovery requests are attached hereto as Exhibit "P" and incorporated by reference

48. In response, on September 2, 2009, Defendants dismissed the complaint without prejudice.

49. Monzo called Morris on several occasions in order to find out why the case was discontinued. Morris never returned the calls.

50. Despite requesting the documents substantiating the viability of this action commenced against Higgins from P&F on multiple occasions, Defendants failed to provide such supporting documentation for the suit.

51. Higgins was not legally liable for the damages claimed in the suit against her.

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT

HIGGINS V. P&F and MORRIS

52. Plaintiff hereby incorporates by reference paragraphs 1-51 of this complaint as if each were set forth herein at length.

53. In the suit against Higgins, P&F and Morris falsely represented the character, amount and legal status of the alleged debt owed by Higgins in violation of 15 U.S.C. § 1692e(2)(A).

54. In the suit against Higgins, P&F and Morris attempted to collect amounts from Higgins, including interest and costs, for which Higgins was not liable to Target, in violation of 15 U.S.C. § 1692f(1).

55. As a result of these unfair and false representations by P&F and Morris, Higgins suffered damages consisting of legal fees incurred in defending the action brought against her, emotional distress in the form of anxiety, worry, stress, anger, embarrassment, statutory damages, costs and reasonable attorneys fees incurred in the prosecution of this action.

COUNT II

PENNSYLVANIA FAIR CREDIT EXTENSION UNIFORMITY ACT

HIGGINS V. TARGET NATIONAL BANK

56. Plaintiff hereby incorporates by reference paragraphs 1-56 of this complaint as if each were set forth herein at length.

57. Target violated the PFCEUA, 73 Pa.C.S.A. § 2270.4(b)(5)(ii) by falsely representing the character, amount and legal status of the alleged debt it claimed was owed by Higgins in its lawsuit against her.

58. Plaintiff hereby incorporates by reference her damages set forth in paragraph 55 as if set forth herein at length.

COUNT III

WRONGFUL USE OF CIVIL PROCEEDINGS, 41 Pa.C.S.A. § 8351

HIGGINS V. DEFENDANTS

59. Plaintiff hereby incorporates by reference paragraphs 1-58 of this complaint as if each were set forth herein at length

60. At the time the complaint was filed against Higgins, the Defendants did not have in their possession admissible evidence to establish that Higgins owed Target the amount set forth in the complaint.

61. At the time the complaint was filed against Higgins, the Defendants did not reasonably believe that the facts in their possession established a valid cause of action against Higgins under either existing or developing law.

62. The filing of the complaint by Defendants was done in a grossly negligent manner, without probable cause, and for an improper purpose.

63. The admissible facts and documentary substantiation for the claim brought by Defendants against Higgins that was in Defendants' possession at the time of the filing of the complaint did not form a reasonable basis that Target had a valid claim against Higgins.

64. The complaint brought by Defendants against Higgins was terminated in favor of Higgins.

65. Defendants' conduct as detailed herein is malicious, wanton, willful, or oppressive, or shows a reckless indifference to the interests of others, thereby warranting punitive damages.

66. As a result of the acts of Defendants, Higgins has been forced to suffer damages consisting of attorneys fees incurred in defending herself in the litigation brought by Defendants and emotional distress.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Vicki L. Higgins, respectfully requests the following relief from Defendant:

- a) actual damages;
- b) statutory damages;
- c) Punitive damages;
- d) Reasonable Attorney Fees;
- e) Costs; and
- f) For such other and further relief as the Court may deem just and proper.

May 6, 2010

Respectfully Submitted,

JEFFREY L. SUHER, P.C.

/s/ Jeffrey L. Suher

Jeffrey L. Suher, Esquire

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JURY TRIAL DEMANDED