

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JASON R. TOMES : CIVIL ACTION
 :
 v. :
 :
 GORDON & BERGER, P.C., et al. : NO. 03-00912

MEMORANDUM AND ORDER

Fullam, Sr. J.

March , 2004

The defendants are attorneys who regularly collect debts owed to the University of Pennsylvania. They sued plaintiff, on behalf of the University, in the Court of Common Pleas of Philadelphia County, to recover a balance due on plaintiff's student loan. Plaintiff then brought this action, alleging that the defendants violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (FDCPA) because in correspondence addressed to the plaintiff, and in their state court complaint on behalf of the University, they sought to recover excessive attorneys fees (50% of the amount of the debt). Plaintiff seeks to maintain this action as a class action on behalf of all persons who owed money to the University of Pennsylvania, and who, within one year prior to the institution of this lawsuit, received from the defendants similar demands for excessive attorneys fees.

The Common Pleas Court action has been settled. Plaintiff's debt to the University of Pennsylvania has been paid.

In the settlement, however, it was stipulated that plaintiff could continue to pursue his claims against the lawyers in the present case.

At issue is plaintiff's motion for class certification, which is opposed by the defendants. I conclude that the proposed class is sufficiently numerous, that common questions of law or fact predominate, and that a class action would be superior to a myriad of individual lawsuits. And, although plaintiff sensibly seeks injunctive relief as well as damages, thus requesting class certification under both Rule 23(b)(2) and 23(b)(3), I conclude that the FDCPA does not authorize private lawsuits for injunctive relief (a remedy reserved to the Federal Trade Commission, see 15 U.S.C. § 1692; see, e.g., Sibley v. Fulton DeKalb Collection Service, 677 F.2d 830, 834 (11th Cir. 1982); but see Oslan v. Collection Bureau Hudson Valley, 206 F.R.D. 109, 112 (E.D. Pa. 2002, Schiller, J.)). I therefore conclude that, if a class is to be certified, it should be a Rule 23(b)(3) class.

Such a class would indeed be certified, but for the fact that, in my view, the named plaintiff is not a suitable representative of such a class, for two reasons: (1) it is undisputed that plaintiff resides in Japan. His personal participation as a representative of the class would be, obviously, fraught with difficulties. It seems unreasonable to have him act as class representative, when, presumably, other

more convenient representatives would be readily available. (2) More important, plaintiff has already settled his underlying debt obligation, and has not been required to pay an unreasonable attorney's fee. It is therefore clear that he cannot claim to have suffered any actual damages and, at most, could recover statutory damages. His enthusiasm for pressing claims of other members of the class for actual as well as statutory damages would seem to have been compromised.

For all of these reasons, plaintiff's motion for class certification will be denied, without prejudice to renewal of such application upon substitution of a suitable and adequate class representative as a named plaintiff.

An order follows.

