



July 27, 2005

CCPA2005-1NA

Dear *Name**,

This is in response to your letters of May 20 and October 21, 2004, addressed to Kristine Iverson, Assistant Secretary for Congressional and Intergovernmental Affairs, on behalf of your constituent, *Name** of *Name**. The Employee Benefits Security Administration of the U.S. Department of Labor referred to the Wage and Hour Division *Name** complaint that the *Name** Circuit Court violated the Consumer Credit Protection Act ("CCPA"), 15 U.S.C. 1671 et seq., by ordering, as part of *Name** divorce settlement, that all of his "commission income" be garnished.

*Name** indicates in his correspondence that the "100% garnishment" of his "commission income" was carried out by a court-appointed receiver of his property and assets. In this regard, *Name** submitted with his correspondence a copy of an April 10, 2000, letter from the receiver, *Name**, to *Name**. In the letter, *Name** directs the firm, pursuant to the Circuit Court's Order Appointing Receiver, to transfer to him "all funds being held" by the firm and "any future monies that would be otherwise disbursed to [*Name**]." *Name** asserts that this action violated the garnishment restrictions of the CCPA .

Title III of the CCPA (copy enclosed), limits the amount of an employee's disposable earnings that may be garnished and protects an employee from being fired if pay is garnished for only one debt. The Wage and Hour Division administers Title III. This Division has no other authority with regard to garnishments. Questions over issues other than the amount being garnished or termination should be referred to the court or agency initiating the withholding action.

Section 303 of the statute, 15 U.S.C. 1673(a), provides, subject to certain exceptions not pertinent here, that the maximum part of an individual's aggregate disposable earnings for any workweek that is subject to garnishment may not exceed 25 percent of his disposable earnings for the week or the amount by which his disposable earnings for that week exceed thirty times the current minimum wage established by the Fair Labor Standards Act, 29 U.S.C. 201 et seq., whichever is less.

Section 302 provides the pertinent statutory definitions. Section 302(a) defines the term "earnings" as "compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program." 15 U.S.C. 1672. Section 302(b) defines "disposable earnings" as "that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld." 15 U.S.C. 1672(b). Section 302(c) defines "garnishment" as "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt." 15 U.S.C. 1672(c).

Courts have further explained the statutory terms. In Kokoszka v. Belford, 417 U.S. 642 (1974), the U.S. Supreme Court held that the terms "earnings" and "disposable earnings" are generally limited to periodic payments of compensation. The Court emphasized that Congress' goal in the CCPA was to "regulate garnishment in its usual sense as a levy on periodic payments of compensation needed to support the wage earner and his family on a week-to-week, month-to-month basis." Id. at 651. Thus, the Court affirmed the appellate court's determination that a tax refund was not "earnings" or "disposable earnings" under the CCPA.

Also, in Usery v. First National Bank of Arizona, 586 F.2d 107 (9th Cir. 1978), then Judge Kennedy, writing for the U.S. Court of Appeals for the Ninth Circuit, held that the CCPA's garnishment restrictions do not apply to banks and other financial institutions that are in possession of a debtor's monies, even though the sums may be traceable to earnings. The Act's restrictions are limited to garnishments served on the debtor's employers or those who stand in the position of employers by virtue of paying or owing compensation for services to the debtor. The CCPA does not apply to an employee's bank accounts comprised of earnings already received by the employee. See, e.g., Long Island Trust Co. v. U.S. Postal



Service, 647 F.2d 336, 342 (2d Cir. 1981) (CCPA has no application to assets other than earnings before they are paid out by the employer). See also, Guidry v. Sheet Metal Workers International Association, 10 F.3d 700, 715 (10th Cir. 1993) (assuming, without deciding, that the protections of the CCPA do not extend to earnings that have been received).

Consequently, while the statutory definition of “earnings” expressly includes compensation denoted as “commission,” absent information that **Name*** “commission income” was held by **Name*** as his employer (or as one who stands in the place of an employer) and was compensation for personal services payable on a periodic basis, such monies are not protected by the garnishment limitations of the CCPA.

Name* may contact our **Name*** district office, located at **Name***, telephone ****, fax. **** to discuss his situation in greater detail.

Sincerely,

Rosemary E. Sumner
Office of Enforcement Policy

Enclosure: CCPA

** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*