



December 1, 2008

Federal Trade Commission
Office of the Secretary, Room H-135 (Annex Z)
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Debt Settlement Industry – Public Workshop: FTC Matter No. P084808

Ladies and Gentlemen:

The Consumer Bankers Association (“CBA”)¹ commends the Federal Trade Commission (“FTC”) on conducting its inquiry into the developments of the for-profit debt settlement industry. CBA submits the following comments to be included in the FTC’s record.

The FTC’s September 25, 2008, workshop on debt settlement focused on the fact that many consumers are facing more and more unpaid bills and are looking for a way out from under their mounting debt. Consequently, a growing number of these consumers are attracted by advertisements from debt settlement companies promising help. These advertisements often inform consumers that they will pay significantly less than they owe, improve their credit scores and stop harassing collection efforts. The services are often advertised as costing consumers little or nothing. According to the FTC workshop, some debt settlement companies fall short of their promises and some consumers are left in a worse financial state than before they started.

Over the past two years, the debt settlement industry has seen significant growth and this development has drawn the increasing attention of consumer groups, federal and state law enforcement agencies, and regulators. The FTC has reported that complaints concerning the practices of debt settlement companies have dramatically increased. It noted that some of these companies charge large fees in exchange for questionable

¹ The Consumer Bankers Association is the recognized voice on retail banking issues in the nation’s capital. Member institutions are the leaders in consumer financial services, including auto finance, home equity lending, card products, education loans, small business services, community development, investments, deposits and delivery. CBA was founded in 1919 and provides leadership, education, research and federal representation on retail banking issues such as privacy, fair lending, and consumer protection legislation/regulation. CBA members include most of the nation’s largest bank holding companies as well as regional and super community banks that collectively hold two-thirds of the industry’s total assets.

services. It reported that consumers could be left with greater debt, a worse credit score, unknown tax consequences and, at times, the burden of dealing with legal actions taken by their creditors.

As discussed at the FTC workshop, a heavily scrutinized practice of some debt settlement companies is their use of deceptive advertising which often brings consumers into debt settlement programs with promises of eliminating the consumer's debt, improving the consumer's credit report and doing it all over a predetermined period of time for a fraction of what the consumer owes to the creditor. Workshop panel discussion focused on how these advertisements often do not properly disclose the adverse effects that a debt settlement program can have on a consumer's financial standing.

Many of the panelists participating in the workshop maintained that some debt settlement companies do not inform consumers that they charge substantial upfront and monthly fees, or that they send no payments to a consumer's creditors until the consumer has accumulated enough to settle. Consumer groups, regulators, and law enforcement agencies contend that once a consumer's debts have accumulated additional interest over time, and factoring in the increased taxes the consumer must pay on forgiven debt, the consumer may not be saving much, if any, money at all. These organizations further argue that a consumer's credit rating is often worsened by the debt settlement process due to the lack of timely payments and the eventual final payment of an amount less than the originally owed balance.

Another topic of discussion at the workshop was the interference with the bank-customer relationship by some debt settlement companies. Debt settlement companies often utilize *cease and desist orders*, or limited power of attorneys, which effectively prohibit and terminate all communication between the bank and the customer.² These demands are often merely form letters that banks receive in mass amounts from debt settlement companies.

Some banks maintain that, by terminating communication, some debt settlement companies can do harm to the customer because he/she has little idea of what is or is not being done by the debt settlement company. The bank has this information, but because direct communication has been cut off between the bank and the customer, it cannot inform the customer if the debt settlement company is taking any action to resolve the balance owed. The bank also cannot inform the customer of accruing late fees and interest charges due to the lack of payments from the debt settlement company.

Additionally, some banks maintain that debt settlement companies may interfere with normal banking operations by perpetrating large volumes of frivolous or invalid

² Attached as **Exhibit I**, please find an example of a letter prohibiting communication (highlighting and handwritten notes were made for illustrative purposes).

“dispute” letters, which question the actual amount owned by a customer to a bank.³ These letters appear not to be legitimate attempts to resolve any actual amount-owed dispute, and are often the same balance disputes received over and over again no matter what the customer’s circumstances. Much like the use of *cease and desist letters*, these disputes are often form letters that banks receive in mass quantities.

By way of example, one of CBA’s largest member banks has informed that in 2008, they received between 500 and 600 of these dispute letters per month. This bank’s total volume for 2008 is projected to be 6,500 letters. That number can be compared with volumes in 2007 of 3,850 and in 2006 of 800. According to the bank, these letters are extremely burdensome because they require a great deal of resources to investigate as they request a large amount of information for large numbers of customers that do not, in fact, dispute the balance owed.

Additionally, debt settlement companies may advise consumers to discontinue payments. Some banks note that many of the letters received from debt settlement companies do not explicitly say the customer will not continue paying, but they do imply it.⁴ These letters often request that the banks be patient and wait for a settlement offer that will come when the customer has collected sufficient funds. Some banks report that they often experience a discontinuation of payments immediately following the arrival of these letters.

Lastly, as discussed at the workshop, many banks maintain that debt settlement companies cannot do anything more than a consumer can do on their own. If the consumer can save money for a settlement and negotiate a settled amount, then that consumer can settle his/her own debts, without the assistance of a debt settlement company, simply by contacting their creditor.

In conclusion, CBA believes that the problems associated with debt settlement companies will only worsen without proper intervention to regulate their activities. Debt settlement companies should be required to adhere to a certification process, allowing for state or federal licensing. As addressed above, one of the greatest issues with some debt settlement companies is the lack of transparency in their claims to consumers. CBA advocates for strong disclosure requirements in advertising and promotion of services. At the beginning of the enrolment process and before any money is paid, the consumer should be fully aware of all fees and payment structures, how their creditor(s) will be paid, the continuing accrual of interests and fees by the creditor, the affects of debt settlement on their credit report and the possibility of defending a law suite brought by their creditor(s). Furthermore, CBA asks that the FTC continue to examine the activities

³ Attached as **Exhibit II**, please find an example of a dispute letter (highlighting and handwritten notes were made for illustrative purposes).

⁴ Attached as **Exhibit III**, please find an example of a payment letter (highlighting and handwritten notes were made for illustrative purposes).

of debt settlement companies, including the dispute practices utilized by these companies that may be both deceptive to consumers and burdensome to creditors.

Thank you allowing CBA the opportunity to provide comment. If you have any questions, please feel free to contact me.

Sincerely,

David Pommerehn
Counsel, Legislative & Regulatory Affairs
Consumer Bankers Association
703.276.1750

Date: 10/24/2008 Time: 9:08 AM To: @ [REDACTED]
Page: 003

CEASE COMMUNICATION

From: [REDACTED]
To: [REDACTED]
Re: Account No.: [REDACTED]

CEASE & DESIST
REQUEST

To Whom It Concerns, legally responsible collector:

I have been receiving calls from your firm to collect on my unpaid balances for my credit card. I'm sorry, but I just don't have any money at this time - and I don't make much money or have any real assets of value. So I'm trying to figure out how to pay you back. While I figure out how to come up with some money to pay you, please do not call or harass me until I can figure out how to pay off these debts. I apologize, but I cannot keep getting calls. Also, this is formal notice not to call me at home or at work.

Thanks for your concern. I will contact you when I figure out how to pay you for what I owe, and I am working on a way to resolve these debts.

Sincerely,

Signature: [REDACTED]
Name: [REDACTED]
Date: 10-24-08

LIMITED POWER OF ATTORNEY

I / We _____, as the Principle(s) have the right and as such appoint [Debt Settlement Company] (hereinafter know as "ATTORNEY IN FACT") with full power and authority to perform each and every act which may be necessary or convenient to connect with the following tasks, as fully, and for all intents and purposes as I might or could do if personally present, hereby ratifying and confirming all that my said ATTORNEY IN FACT shall lawfully do or cause to be done in my name or behalf; to wit:

TO PROACTIVELY INTERCEDE AND/OR INTERVENE AND/OR NEGOTIATE, MEDIATE, OR ARBITRATE THE SETTLEMENT OF ANY AND ALL OF MY CREDITOR CLAIMS, SUITS, LIENS, JUDGMENTS, AND/OR DISPUTES.

Be it further known and understood that I/We consider the failure of any creditor, third party agent (collection agent or member of the bar) to recognize this power of attorney to intentionally be acting to interfere with my/our prospective contractual advantage, which may be legally actionable in tort.

NOTICE:

A. In accordance with the section 805(B) of the Fair Debt Collection Act, 15 U.S.C. 1692c, I/we hereby authorize all future communications from any all government agencies, creditors, collection agents, attorneys, credit bureaus, or any other third parties to be directed to the ATTORNEY IN FACT, stated above.

Communications with Debt settlement Company only

B. In accordance with the 805(C) of The Fair Debt Collection Act, 15 U.S.C. 1692c, the recipient of an original, photocopy or facsimile of this document is specifically instructed by me/us in any manner whatsoever and to direct all future communications to the designated ATTORNEY IN FACT stated above.

C. This limited power of attorney is effective upon signing of the principal(s) and specifically authorizes the recipients authorized agent upon receipt to disclose, talk about, communicate about, convey documents to and to otherwise provide the above stated ATTORNEY IN FACT, anything and any information that they would otherwise provide to and disclose as information concerning any payable, debt, account, lien, suit, or judgment for which I/we are allegedly responsible, disputed or otherwise.

D. The recipient of this LIMITED POWER OF ATTORNEY FORM, whether by original, photocopy or facsimile, is specifically instructed by the undersigned PRINCIPAL(S) to contact the designated ATTORNEY IN FACT at the addresses set forth below; in addition, under the general laws under the Fair Debt Collections Practice Act, and the Fair Credit Reporting Act, as a creditor or third party agent of a creditor, you do not have the ability to refuse to work with my/our designated ATTORNEY IN FACT, for such would constitute a refusal to work with me/us. If you so choose, you do so at your own risk.

ATTORNEY IN FACT: [Debt Settlement Company Name]
[Address, City, State, Zip Code]
[Debt Settlement Company Phone Numbers]

2

Executed this 14th day of May, 2008.

EXHIBIT II

May 20, 2008

ATTN: [REDACTED]

RE: [REDACTED]

Dear [REDACTED]

Dispute ←

I am writing on behalf of my client [REDACTED]. The account listed is in dispute and in accordance with the Fair Credit Billing Act, there may not be any pressure on my client by you or any other financial institution to collect any amount or impose any finance charges until the matter is settled. In addition, in accordance with the Fair Credit Billing Act, my client is entitled to all copies or documents related to the obligor's indebtedness. Therefore, I am requesting that you send all such documentation to my attention at the address above.

Furthermore, it is unlawful under the Fair Credit Reporting Act for any erroneous information to be submitted to any credit reporting agencies during the period of this dispute. Therefore, my client's current alleged obligations may not be reported to any agency that may result in prejudice to my client's credit history at the present time or in the future.

My client is also requesting that there is to be no communication by your institution or its agents with the detailed exceptions set forth in the the Fair Debt Collections Practices Act. Section 805 (c) of the Act requires that a creditor cease communication with a consumer with a few exceptions. This section states:

"If a consumer notifies a debt collector in writing that a consumer refuses to pay a debt or that a consumer wishes the debt collector to cease further communication with the consumer the debt collector shall not communicate further with the consumer with respect to the debt, 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."

Application of the law prevents your institution and its agents from contacting my client with the exception of one of the three specified reasons above. Thus, there should be no phone calls to my client and no recordings of any communications by my client. This includes any and all attempts to make any further demands for payment upon my client. All further correspondence and/or phone communications should be directed to the address above.

If there is any reporting of erroneous information to any credit reporting agencies, I will not hesitate to file a complaint with the Federal Attorney General's Office and the Federal banking authorities regarding your institution's illegal acts.

If my client has previously agreed to arbitration with your institution, then that agreement has been rescinded, and only the state and county of which my client resides will be the jurisdiction.

If your institution intends to file a complaint against my client, it should be directed to the address previously set forth. However, if there is a complaint filed against my client, the following will occur. First, in accordance with the Fair Credit Billing Act, I will request all documentary evidence of the alleged indebtedness. This does not include statements or charges because those do not provide proof of debt. I will be requesting any promissory notes, contracts or agreements between your institution and my client. If no debt can be proven, then pursuing this complaint would violate federal banking laws. I will also be requesting accounting records demonstrating funds were debited from one account and credited to my client's account. Without such documentation, there is no evidence of any transference of money, therefore, no loan or debt against my client. Therefore, such a lawsuit would be frivolous and will necessitate a complaint filed with the Attorney General's Office on that basis.

Up to this point, my client has enjoyed the banking relationship with your institution. However, at this time, my client no longer wishes to have any accounts with your institution. I have advised my client to destroy all of the credit cards in question. The credits given to my client should be removed and the balance closed at zero. Please close the aforementioned accounts and report such closure to the credit reporting agencies as a closed balance of \$0.00.

Please complete collect disclosure statement enclosed.

Sincerely,

COPY

EXHIBIT III

[Debt Settlement Company]

"Courtesy Engagement Notification"
Debtor Representation

October 27, 2008

Re:
ACCOUNT NO:
Reference Number:

To whom it may concern,

This letter is to inform you that [redacted] has been appointed as the *negotiating and debt settlement agent* for the above mentioned client. As a result of circumstances beyond our client's control, which have curtailed their ability to meet their normal payment schedules, our client has been forced to engage [redacted] for the sole purpose of debt management assistance. The client has acknowledged the need for financial assistance and has engaged the services of [redacted] as a measure of dealing with ALL of their credit and not just one individual account. The number of credit accounts the client holds has become entirely overwhelming, and the resolutions that each different creditor wants simply does not fit within the realm of the client's finances. [redacted] has recommended a strict economic budget and savings plan to our client, in order to settle all of their outstanding unsecured debt. This has been recommended, taking into consideration our client's budget and the desire of all parties involved, to accomplish this in as timely a manner as possible. Since our client has multiple creditors enrolled in our program, [redacted] as the agent, with "Limited Power of Attorney", will contact your office as money becomes available with a proposal for debt settlement. Please be advised, should our client's financial situation improve at any point within our program, will notify your office for a settlement proposal, ahead of the recommended schedule.

[redacted] will continue to maintain an open line of communication between our offices to ensure the client's willingness to make restitution to the best of their ability. We simply ask out of professional courtesy, please be patient, as you WILL receive a settlement proposal as soon as money becomes available. For your records, we have attached a "LIMITED POWER OF ATTORNEY" signed by our client. Please update your records to record the fact of our Power of Attorney in order to expedite communications between our offices. Thank you very much for your cooperation in this matter, and we look forward to contacting you to resolve this account as soon as possible. Should you have any questions or concerns regarding this account, please redirect your calls to our offices at [redacted] and we will be more than happy to discuss any details of our program or other information that will assist you in your decision making process.

- payments will continue in the future.

Sincerely,

[redacted] Settlement Department

** **PLEASE NOTE:** At the account holder's request, if the above stated account has not already previously been closed, we professionally ask your office to please close account [redacted] and notify in writing, the above-mentioned client and all credit reporting agencies to which you report, the account has been closed at the account holder's request. **Thank you in advance for your courtesy and professional cooperation in dealing with this matter.**

