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Posted on Tue, Dec. 06, 2005

A STAR WATCHDOG REPORT

The zombie debt

Collection companies pursue consumers for amounts considered long-past dead

By **PAUL WENSKE**
 The Kansas City Star

Patricia Barnes has learned that some debts never die.

Barnes got a letter in July demanding she pay nearly \$6,500 — which included \$3,500 in interest — on an old “Chase Providian” credit account. Never mind that she said she never owned a Chase or Providian card, much less a “Chase Providian” card, and that she has excellent credit after a 1992 bankruptcy wiped out all her debts.

But NCO Portfolio Management’s letter informed the Topeka woman it had bought the debt, supposedly going back 12 years or more. If she didn’t pay up or respond in 30 days, the letter warned, she would be “subject to further collection” and the debt might be reported “to all national credit bureaus.”

Like thousands of consumers, Barnes was being haunted by what’s called zombie debt. If someone made a movie about the experience, it might be called “Night of the Living Debt” because it can be downright scary.

A boom in the multibillion-dollar debt-buying industry has resulted in thousands of consumers




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getting dunned by collectors trying to cash in on debts so ancient they are no longer enforceable in court or are beyond the seven-year period in which they can be reported to credit bureaus.

A large number have long been charged off by original creditors and sold for pennies on the dollar to aggressive third-party debt collectors who get whatever they can from borrowers.

Industry experts said debt buyers performed a service by reducing business losses and helping consumers pay down debts at a discount. Most debt buyers are ethical, they said, with much of the negative publicity generated by a few bad apples.

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Critics contend, however, that overzealous collectors cross the line, using heavy-handed tactics to go after old debts that were discharged in bankruptcy, owed by someone else or never owed in the first place. Many consumers pay up to escape being hounded by collectors or to preserve their credit ratings.

The Federal Trade Commission, which has sued three big debt buyers in recent years, agrees consumers can be vulnerable.

"The commission has found significant abuses in the collection of old, charged-off debt," said Joel Winston, the FTC's associate director for financial practices.

NCO Portfolio Management was one debt buyer sued, along with its parent, NCO Group Inc. In May 2004, NCO Group paid \$1.5 million to settle FTC claims that inaccurate delinquency dates were affixed to consumer accounts.

As a result, outdated debts — beyond the seven-year reporting period allowed by federal law — were reported to the three big credit bureaus, which can lower consumer credit ratings. The settlement resulted in the largest civil penalty ever obtained in a Fair Credit Reporting Act case, the FTC said.

Government records show that since the settlement, consumers have filed more than 3,000 complaints against NCO, many citing letters similar to the one Barnes received.

Records obtained by *The Kansas City Star* show the trade commission compiled more than 400 pages dealing with complaints against NCO in August alone. Complaints also have been filed with attorneys general in Missouri and Kansas, though most have been resolved, officials said.

NCO officials won't discuss the complaints but deny any wrongdoing. They attribute the 2004 FTC claims to a creditor that gave it bad information about the age of the debts.

"We send out a lot of letters — I can't comment on specific situations," said Brian Callahan, NCO vice president of financial reporting. "Obviously, NCO is a large company. And it follows the Fair Debt Collection Practices Act."

NCO Group has grown from a small business in the 1920s to the largest debt collector in the world, with more than 20,000 employees and 90 offices. Last year it had nearly \$940 million in revenues, up from about \$587 million in 2000.

NCO isn't the only debt collector that has generated complaints, which have soared nationally in recent years.

Consumers last year lodged 58,687 collection complaints. This was up from 13,900 in 2000. Many newer complaints

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focus on companies that buy old debt, an increasingly competitive industry that has grown from a handful of firms in the 1990s to more than 500 last year.

Three key reasons account for the huge growth, said Paul Legrady, director of the research group at Kaulkin Ginsberg, which advises the industry:

- Historic levels of consumer debt.

- An increased willingness by financial, telecommunications and health firms to sell debt portfolios.

- Profitable returns.

According to the Nilson Report, which monitors credit companies, the debt-buying industry has grown from purchasing about \$12 billion worth of consumer debt in 1995 to \$77.2 billion last year.

"A creditor has to do something with bad debt," said Carol Freeland, executive vice president of PRM Inc., a major debt buyer in Addison, Texas, and chairwoman of the asset-buyer division of ACA International, an industry trade group.

Depending on the age of a debt, it will sell for 1.5 cents to 8.5 cents on the dollar. The largest companies that buy "junk debt" are now publicly traded on the Nasdaq.

Most complaints result when consumers simply forget they owe a debt, Freeland said. "In the industry we do make mistakes, but for the most part, people try to correct those mistakes," she said.

Critics, however, said growth and competition contribute to more complaints as debts get sold and resold in large bundles from one company to the next, increasing the difficulty of keeping track of records. Debt buyers can lose documentation or the ability to discern whether a debt is good or who actually owes it.

Making it harder to track debts is the fact that many banks have consolidated. As a result, "you may have no idea who the first creditor was," said Bob Hobbs, deputy director of the National Consumer Law Center.

"It could be a debt you paid off. But the company may not have any of the original papers you signed, so there is no reliable way to determine if it's a debt you had or one you never owed," Hobbs added.

The "Chase Providian" letters NCO sent to Barnes and other consumers suggest a similar scenario. In 2002, Providian sold \$8.2 billion in old credit card debt to J.P. Morgan Chase & Co. NCO's letter to Barnes mentions it bought a "Chase Providian" account, as do similar letters sent to other consumers, FTC records show.

Still, Barnes doesn't know how NCO got her name. She said she never had a Providian card. The only old account card she had was with Citibank, and this debt was erased in her bankruptcy. She said that when she asked, an NCO representative couldn't tell her the name of the original creditor.

Fearful for her good credit, she disputed the old debt. In August, she challenged NCO in a letter to produce documents proving the debt. NCO so far has not responded, Barnes said.

Meanwhile, federal investigators have stepped up enforcement. Last year the FTC sued Capital Acquisitions and Management Corp., claiming the national company pursued people without proof they owed anything and threatened some that if they didn't pay up "we're going to hound you until the day you die."

In court the trade commission called the business "a debt collection company gone wild." Steven Baker, director of the FTC's Midwest bureau, said: "In many cases they had the wrong person, and we alleged they just didn't care."

Attorneys for the company were unavailable to comment. The company has since gone out of business, and its millions of dollars in old debt have been liquidated and sold off to other debt buyers.

Industry officials insist the Capital Acquisitions case is the exception to an industry that has worked hard to improve its image.

“With increased regulatory statutes and educational requirements, positive public perception has actually increased,” said Roger Weis, a spokesman for the Missouri Collectors Association.

Still, even with federal safeguards such as the Fair Debt Collection Practices Act, which limits the tactics collectors can use, lawyers who represent debtors said they were often at the mercy of big debt collection agencies because the onus is initially on them to prove they don’t owe anything.

Lawyers said debt buyers checked credit reports and focused their collection efforts on debtors with financial resources. They said consumers who don’t pay up were increasingly slapped with lawsuits, which, if unchallenged, resulted in default judgments that could be used to garnishee wages or place liens on homes.

“The honest debtor says, ‘I don’t owe it,’ and the debt collector says, ‘You prove it,’” said Joseph A. Mullaney III, a Voorhees, N.J., lawyer who now advertises on the Internet for consumers who have received letters from NCO. “I have debtors call me up in tears. It’s a mess.”

Sometimes the consumer who fights back wins. Mark O. Bridgeman of Kansas City successfully sued NCO in 2002 after it tried to collect a debt involving less than \$500 in disputed medical bills.

According to Bridgeman’s lawsuit, NCO sent him as many as six letters in one day. Even after he told NCO the debt was disputed and that he had hired an attorney, it continued to pressure him to pay the money, in violation of federal debt collection protections, said attorney R. Mark Nasteff Jr.

NCO lawyers said they don’t discuss specific cases. In court documents, NCO denied any wrongdoing or that it had violated provisions of the federal debt collection act.

In 2003, the case resulted in a consent judgment against NCO. A federal judge ordered NCO to pay Bridgeman \$500 in actual damages, \$1,000 in statutory damages and another \$1,000 in attorney fees.

“Even if you owe a debt, you have certain rights, but people are sometimes too embarrassed to enforce their rights,” Nasteff said. “The irony here is that Mr. Bridgeman never owed the debt in the first place.”

Seeking solutions

You are protected under the Fair Debt Collection Practices Act. You have a right:

- **To be treated honestly.** Collectors cannot harass or threaten you with illegal actions. They also cannot misrepresent that they are attorneys or that they work for the government or a credit bureau.
- **To know whom and what you owe.** Within five days after contacting you, a collector must send a written notice of the amount of money you owe and the name of the creditor.
- **To dispute a debt.** After receiving written notice, you have 30 days to challenge the debt and to stop all collections until proof is mailed to you.

■ **To privacy.** Collectors can contact you but not at inconvenient times, such as before 8 a.m. or after 9 p.m. They also are restricted from calling you at work if your employer disapproves.

■ **To stop contact.** You can request the collector stop all contact or go only through your attorney. This may, however, not stop a collector from taking legal action.

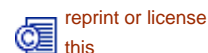
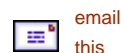
■ **To sue.** If you believe a debt collector violated the law, you can sue for damages, court costs and attorney fees.

■ **To complain to the Federal Trade Commission.** To file a complaint, go to www.ftc.gov or call toll free 1-(877)382-4357.

■ **To complain to private trade associations.** You make a complaint in writing to the Association of Credit and Collection Professionals. For more information, go to www.ACAinternational.org.

Source: *FTC and ACA International*

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