

copy - WHITFIELD S. DITTO

ORIGINAL

BEFORE THE SUPREME COURT
STATE OF FLORIDA

CHESTER OSHEYACK

Friday, July 6, 2001

Appellant

CASE NO. SC 96439

Lower Tribunal

vs

CASE NO. 990869-TL

JOE GARCIA, etc., et al

Appellees

APPELLANT'S MOTION FOR REHEARING

Statement of Purpose

It is my belief that the ORDER of this Court will have the unintended consequences of permitting a creditor to "lend" or "lease" a debt to another entity which, having powerful non-judicial tools at their disposal, can use them to force collection in an abusive manner. Under conditions approved by the Court in this Case, such transfer of power can be made without passing along proprietary interest, financial risk or contingent liability. Now therefore, this ORDER negates the intent of federal and state laws, which have as their stated objective, "consumer protection". Absent the applicability of law, there can be no regulation. Without regulation, there can be no enforcement and without enforcement, there is no protection.

INSTANT PETITION

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On page (4) of the ORDER, the Court quotes the Commission's "long standing policy that telecommunications consumers should not have to absorb the high costs of bad debt through their telecommunications rates". Since the "policy" specifically addresses debts accrued in connection with long distance calls, it is appropriate that we look at what changes have occurred in the long distance markets during the two-year period since the initial filing in this Case.

(1)

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

When the disconnect authority rule was originally put into place, long distance calls were billed at rates determined on the basis of time and distance, for the most part starting at a low of 25 cents per minute, and with a minimum of 1 minute. There have been substantial changes during the two-years while this Instant Petition lay idle in the hands of this Court. The major long distance carriers have since replaced the "time-distance" standard with flat rates "anytime, anywhere". The flat rates have been lowered to 10 cents per minute, and with special offers of "bundles" of product and service, they are as low as 7 cents per minute. Resellers(aka dial-around carriers) are selling long distance telephone service for as low as 5 cents per minute, while consumers who are sufficiently literate in computer technology, can make calls "anywhere, anytime" for a maximum of 3.9 cents per minute, and even for "free", on the internet. In addition, there are companies providing long distance service now which bill the initial connection to a limit of 3 to 6 seconds instead of "rounding off" this charge to the first full minute. Now therefore, competition in the telecommunications industry has devalued the long distance costs sufficiently to render this above referenced concern of the Commission, totally irrelevant, and therefore its consideration is inconsequential.

Fair Debt Collection Practices
Federal and State Law

The heart of the Court's ORDER in this Case appears to be the precedent established in *Whitaker v Ameritech Corp.*, 129F. 3d 952 (7th Cir. 1997). In deciding "Whitaker", the 7th Circuit Court ruled that Ameritech, a local telephone service carrier in the State of Illinois that bills and collects long distance telephone charges for third parties, is not a "debt collector" under its interpretation of the FDCPA, and therefore not subject to the rules of that law. The basis for its interpretation of the law was stated to be "contracts (between Ameritech) and "long distance and information (service) providers" which dictate that a "debt" is acquired by the billing and collection entity at the moment each telephone call is placed. Thus, the local service entity charged with billing and collecting for the long distance carrier, acquires the debt prior to default,

and in fact even before the customer receives a bill. Given these circumstances, it was ruled that "Ameritech" is not a "debt collector" under the FDCPA.

I have read the Whitaker v Ameritech decision and there are several issues that should be brought to the attention of this Court for consideration in this Case now before it.

The ORDER of this Court in Osheyack v Garcia, presumes that all contracts between long distance and local telephone companies with respect to billing and collection practices are the same. In fact they are not. For example, the regulatory commissions of New York, Pennsylvania, and Ohio are among others, that have repealed the "disconnect authority" rules. The regulatory commission in each state has the codified right to monitor the above referenced contracts between the parties within their jurisdictions and require modifications which they, in their discretion, consider to serve the interests of the people in their state. While it is probable that the long distance carriers would prefer a standard contract form to be used throughout the country, it is a bit of a stretch to assume that the contracts (eg) between Verizon and their clients in Florida are exactly the same as those which guide the relationship between Ameritech and its clients in Illinois, in every detail. Now therefore, since the contracts that control the billing and collection process may not be identical, the relationship between the billing and collection process and the FDCPA must be evaluated on an individual state by state basis. With this distinction in mind, I must call the Court's attention to the following discourse contained in the briefs that I have filed, which was, in all probability inadvertantly overlooked.

In the Appellant's Reply Brief, dtd Feb.16, 2000, pgs (4), (5), and (6), I have provided historic, factual, and legal data which are specific to the situation in Florida as it relates to the FDCPA. I would hope that the Court would reconsider this information, not only from the standpoint of this Case, but also in consideration of the unintended consequences that the decision as it stands could create here in the State of Florida to wit:

FS Ch 367.022 Exemptions

"The following are not subject to regulation by the

Commission (FPSC) as a utility nor are they subject to provisions of this Chapter, except as expressly provided:"

- (5) "Landlords providing service to tenants without specific compensation for service."

This statute has been carried forward to the Florida Counties where landlords of multifamily housing are now permitted to become resellers of water and wastewater service to their tenants without regulation of the billing and collection process. Many, if not most of these landlords also provide billing and collection service to their tenants under contract with cable TV providers. Under the conditions established by this Court's decision in this Case, a carefully written contract could permit the landlord to discontinue water supply to tenants who are in default of payment for cable TV. Here in Hillsborough County, there are over 100 landlords operating under such an exemption from local franchise law and state regulation. An audit was just completed in an "Affordable Housing Complex" in Hillsborough County, where the landlord retained a surrogate to conduct meter reading, billing and collection services for him. Problem was the surrogate didn't read the meters and a recently completed audit showed that the low income tenants were substantially overbilled within the first 5 months of occupancy. However, since there is no state or local controlling legal authority available, there is no responsible government entity to turn to for recourse or remedy. Now therefore, without law there is no regulation. In the absence of regulation there is no enforcement, and without enforcement there is no protection. The only available protection is the FDCPA, which this Court's decision has placed in jeopardy.

The Constitution

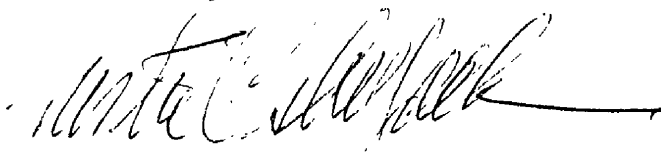
This Appellant raised several Constitutional issues which this Court has failed to address. Ref Appellant's Reply Brief, pg 15, 16, 17, para (12) entitled The Constitution. I would hope that this Court would deal with these issues in the interest of justice.

Summary

I've been given to understand over the many years of my life that an old man with a typewriter should be able to command equal attention before the bar of justice as is available to Kings and Presidents. I would hope that in the twilight of my time on this earth, this time honored manifesto could be proven to be true.

WHEREFORE, this Court should review the record as above referenced and decide the questions associated with the applicability of standards and the interpretation thereof; and remand the Case back to the Commission with their decisions. If appropriate, this Court should also instruct the Commission to bring its "disconnect policy" and the controlling regulations into compliance with "reality on the ground" as it currently exists.

Respectfully submitted by:



Chester Osheyack, pro se

Dated: 7-6-01

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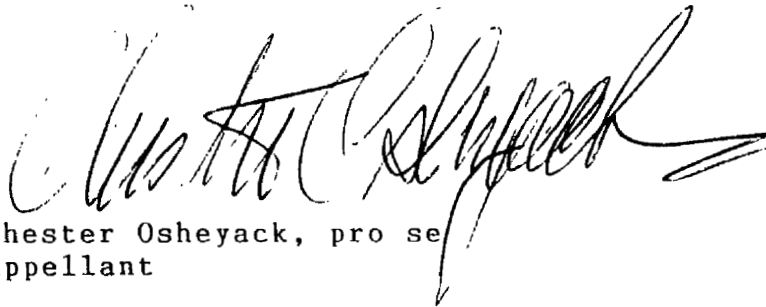
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of
this MOTION has been furnished by U.S. Mail this
3d day of July, 2001, to:

Blanco S. Bayo, Director/Division of Records & Reporting
Martha C. Brown, Associate General Counsel

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In ref: SC 96439
PSC 990869-TL



Chester Osheyack, pro se
Appellant

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