

U.S. Rep. Steve Cohen pushes legislation to set time limit on bill collections

By Bartholomew Sullivan

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WASHINGTON -- As it stands right now, Gwendolyn E. Hall owes Covington Pike Acceptance Co. \$5,503 plus attorneys' fees. Whether she will in the long run is in dispute.

What is clear is that Covington Pike sued her to collect the debt in August 2002, couldn't find her to serve the complaint, then waited almost eight years before obtaining a \$7,337 judgment against her last September in Shelby County General Sessions Court.

That would not have happened if a bill introduced last month by U.S. Rep. Steve Cohen, D-Tenn., had been the law. Cohen's bill would bar lawsuits by creditors who seek to collect a debt after the statute of limitations has run, as Hall's lawyers say it had in her case.

Right now, according to Frank S. Cantrell, general counsel of Memphis Area Legal Services, lawyers for some debtors have to persuade judges such "stale debt" lawsuits violate existing law. Memphis Area Legal Services is representing Hall, 49, of Hickory Hill, who didn't want to talk to a reporter but authorized her lawyers to talk about her case.

Cantrell said there are a considerable number of these old collection cases in Shelby County. Cohen's bill would clarify that they should be dismissed by judges.

"We take the position that it is a violation of the Fair Debt Collection Practices Act and the Tennessee Consumer Protection Act to sue on a stale debt," said Cantrell. But he's had to file lawsuits against debt collectors to make that point. He said they're typically resolved without going to trial.

Wanda W. Cross, the Collierville lawyer who obtained the judgment against Hall last year, did not return phone calls regarding the case.

Craig P. Barnes, another lawyer for the Memphis Area Legal Services, filed a petition in court last week seeking to vacate the \$7,337 judgment, dismiss the case and charge Covington Pike for court costs. The matter is pending.

After reading Cohen's bill, Cantrell, whose office deals largely with low-income clients, added that its passage would lessen the incentive for debt collectors to purchase or attempt to collect on debts they know they have no legal right to

enforce in court.

Under Cohen's bill, debt collectors seeking payment on a debt for which the statute of limitations has expired would not be permitted to sue or threaten to sue the debtor.

In practice, creditors often sell debts in which the statute of limitations has expired to collection companies for pennies on the dollar. In Tennessee, for most debt collection, that period is six years, Cantrell said.

Those collectors often use aggressive tactics to collect the debt. If debtors are persuaded to begin making payments on such debts, they can suddenly be liable for a debt they could have safely ignored.

Last year the Federal Trade Commission fielded more than 140,000 complaints against debt collectors, up 17 percent from the previous year. The industry is now jointly regulated by the FTC and the newly created Consumer Financial Protection Bureau.

Cohen's bill would also require secondary debt collectors communicating with debtors to inform them that they hold the debt, not the original creditor; that because the debt falls outside the statute of limitations, the collector cannot sue to collect it; and warn them that, under some state laws, making any payment on the old debt could obligate the debtor to continue repaying it.

Cohen said he is not intending to relieve consumers of their responsibility to meet their financial obligations but to prevent abusive tactics by the debt collection industry.

Mark A. Schiffman, director of public affairs for the 5,000-member ACA International, an association of credit and collection agencies, said his members are told existing law already prohibits suing on out-of-statute debt. But that doesn't mean they can't attempt to collect on it, he said.

"We need clarity to remind the consumer that, because the debt can't be sued on, it still can be collected on, and it still can be put on your credit report," Schiffman said. "We want to make sure that whatever information is getting in the hands of the consumer, it's not giving them the impression that, because we can't sue, that debt has gone away."

Cantrell said Cohen's bill would also reduce the incentive for debt collectors to try to slip time-barred cases through the judicial system. That's because the requirement of telling the debtor a suit can't be brought would mean the collector would be dealing with an informed consumer.

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