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Old Debts That Won't Die



Larry Mayer for The New York Times

Timothy McCollough stopped making payments on a credit card in 1999 and continues to be haunted by the unpaid balance.

By ANDREW MARTIN
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Timothy McCollough freely admits that he stopped making payments on his Chase Manhattan credit card in 1999. He says he did not have the means to pay after he was disabled by a head injury that cost him his job as a school security guard.

But more than a decade later, Mr. McCollough, who is 52 and lives in Laurel, Mont., is still haunted by the unpaid balance, which was originally about \$3,000.

In 2007, he was sued a second time over the debt, and this time the suit contended that he owed significantly more: \$3,816 in credit card debt, plus \$5,536 in interest and \$481 in legal fees. As he did the first time, Mr. McCollough sent a handwritten note to the court explaining that the statute of limitations on the debt had passed.

"I have had no dealing with any credit card in 8 1/2 years," he wrote to the court. "The pain they caused is worth more than the money they want."

Mr. McCollough is not the only borrower being pursued for a balance that has expired. Such claims are routinely sold on debt collection Web sites, where out-of-statute debt is for sale for a penny or less on the dollar.

In most states, it is legal for collectors to pursue out-of-statute debt, as long as they do not file a lawsuit or threaten to do so.

But some lawsuits are filed anyway, and consumer groups and even some industry consultants argue that collectors routinely harass debtors for unpaid balances that have exceeded the statute of limitations. In some cases, collectors have unlawfully added fees and interest.

"It's so cheap, if you can work it smart, you don't need to collect that much," said John Pratt, a consultant to the debt-buying industry and an author of "Debt Purchasing: An Investor's Guide to Buying Debt" (Morris Publishing, 2005). He said investors in old debt

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generally hoped to recoup two and half times what they paid for a group of claims.

Because collectors cannot sue on old debt, he said, they are more likely to resort to abusive tactics. "Time-barred debt is where the worst abuse has occurred towards the debtor," he said.

In a report issued July 12, the Federal Trade Commission called for "significant reforms" in the debt collection industry and recommended that states change the murky laws that govern out-of-statute debt.

The statute of limitations for debt varies by state, generally from three to 10 years. In many states, collectors can restart the clock if they can persuade the consumer to make even a tiny payment toward the old debt. Debt collectors generally do not tell consumers that making a payment will revive the debt so it can be legally pursued.

"The point of the payments is not so much to get the money" as it is to restart the clock, said Daniel Schlanger, a New York lawyer who represents consumers in cases against debt collectors.

The F.T.C., in its report, recommends that states make sure the statute of limitations for outstanding debt is clear and that collectors filing a lawsuit be required to prove that the debt is not out of statute.

In addition, the agency recommends that states require collectors to tell consumers that they are not entitled to sue on out-of-statute debt and that making a partial payment revives the entire liability.

Rozanne Andersen, chief executive of ACA International, an association of debt collection companies, said she did not believe that old consumer debt should expire at all. The money is owed whether the debt is a month old or 10 years old, she said.

Ms. Andersen says her association opposes filing lawsuits against out-of-statute debt or using trickery to get consumers to pay. But she says she sees nothing wrong with debt collectors pursuing legitimate debts, even if that might spur the borrower to restart the statute of limitations.

In addition, she said it was ridiculous to expect debt collectors to warn consumers that their debts had expired.

"It suggests that if a consumer can avoid paying for a certain period of time, they will enjoy a windfall," she said, adding later, "People are obligated to pay their debts, whether the statute of limitations period has run or not."

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