

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MARIA WELLS

Plaintiff,

-- against --

**LAW OFFICES OF ROSE & ROSE,
PLLC**

Defendants.

Civil Action No. 23-CV-1065

**COMPLAINT AND JURY
DEMAND**

Plaintiff Maria Wells hereby alleges, upon personal knowledge as to herself and upon information and belief as to other matters, as follows:

PRELIMINARY STATEMENT

1. Plaintiff Maria Wells (“Ms. Wells”) is a disabled senior citizen and monolingual Spanish-speaker who lives on a limited fixed income. Defendant, a debt collection law firm, sued Ms. Wells for rent arrears of almost \$10,000 for an apartment she had never lived in or signed a lease for. Defendant continued with the litigation against Ms. Wells even after she provided it with a copy of her New York State non-driver identification card, showing that her photo and signature did not match those on the driver’s license attached to the purported rental application for the apartment. At no point in its communications with Ms. Wells did Defendant identify itself as a debt collector or notify her of her right to ask for verification of the debt. Instead, Defendant pressured Ms. Wells to provide more and more personal and confidential information to prove

she was a victim of identity theft, and when she did so, refused to discontinue the action until after she retained counsel. Plaintiff now brings the instant action based on Defendant's violations of the Fair Debt Collection and Practices Act ("FDCPA"), codified at 15 U.S.C. § 1692, *et seq.*.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to the FDCPA, 15 U.S.C. § 1692k(d), and 28 U.S.C. § 1331.
3. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.
4. Venue in this district is proper under 28 USC § 1391(b) because the unlawful conduct complained of herein occurred within the Southern District of New York and Defendant transacts business in the Southern District of New York.

PARTIES

5. Plaintiff Maria Wells is a natural individual who lives in New York County.
6. Ms. Wells is a "consumer" as defined by 15 U.S.C. § 1692a(3).
7. Defendant, the Law Offices of Rose & Rose, PLLC (hereinafter "Rose & Rose"), is a New York professional limited liability corporation with a principal place of business at 291 Broadway, 13th Floor, New York, NY 10007.
8. Rose & Rose filed more than 200 collection lawsuits in 2022 in the Civil Court of New York City on behalf of their clients, primarily landlords, who retain Defendant to collect rent arrears from their tenants.
9. Rose & Rose collect debts from consumers using the mail for service of papers, and upon information and belief, the telephone.
10. Rose & Rose regularly identifies itself as a debt collector on notices it sends to tenants when seeking rent arrears on behalf of its landlord clients.

11. As a law firm whose business consists primarily of representing landlords in actions to collect rent arrears, Rose & Rose regularly collects debts alleged to be due to another.

12. Rose & Rose is a “debt collector” as defined by the FDCPA, 15 U.S.C. § 1692a(6).

STATUTORY FRAMEWORK

The Fair Debt Collection Practices Act

13. Congress enacted the FDCPA to stop “the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.” 15 U.S.C. § 1692(a).

14. The FDCPA applies to consumer debt, which is any obligation to pay money “arising out of a transaction” entered into “primarily for personal, family, or household purposes.” 15 U.S.C. § 1692a(5).

15. Under the FDCPA, “a debt collector may not use any false, deceptive, or misleading representations or means in connection with the collection of any debt.” 15 U.S.C. § 1692e.

Prohibited conduct in violation of this section includes, but is not limited to:

- a. “The false representation or implication of the character, amount, or legal status of any debt.” 15 U.S.C. § 1692e(2).
- b. “The threat to take any legal action that cannot legally be taken or that is not intended to be taken.” 15 U.S.C. § 1692e(5).
- c. “Communicating or threatening to communicate to any person credit information which is known or which should be known to be false.” 15 U.S.C. § 1692e(8).
- d. “The use of any false representation or deceptive means to collect or attempt to collect any debt.” 15 U.S.C. § 1692e(10).
- e. “The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to

collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector.” 15 U.S.C. 1692e(11)

17. A debt collector is further prohibited from the “use of unfair or unconscionable means to collect or attempt to collect a debt”, including but not limited to “[t]he collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.” 15 U.S.C. § 1692f(1).

18. In addition, a debt collector may not “engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.” 15 U.S.C. § 1692d.

19. If a consumer disputes the validity of the debts in writing within thirty days of the debt collector’s initial communication with the consumer regarding the collection of the debt, the debt collector must “cease collection of the debt, or any disputed portion thereof” until the debt collector obtains and sends to the consumer such verification. 15 U.S.C. § 1692g(b).

20. An individual may recover \$1,000 in statutory damages from a debt collector who violates the above provisions of the FDCPA. 15 U.S.C. § 1692k(a)(2)(A).

21. An individual may also recover any actual damages sustained as a result of a debt collector’s violations of the FDCPA. 15 U.S.C. § 1692k(a)(1).

22. In a successful action, an individual may recover costs and reasonable attorney’s fees as determined by the court. 15 USC § 1692k(a)(3).

FACTS RELATED TO THIS COMPLAINT

23. Ms. Wells is a disabled sixty-three-year-old monolingual Spanish speaker whose only income is Social Security.
24. She has lived in her Upper Manhattan apartment for more than thirty years.
25. On January 12, 2022, Rose & Rose filed a debt collection action against Ms. Wells, *1265 Olmstead Avenue LLC v. Maria Wells*, in New York County Civil Court under Index Number CV 000381-22/NY, seeking to recover \$9,965.52 in rental arrears plus a minimum of \$5000 in attorney's fees.
26. The Summons and Complaint (hereinafter the "Complaint") alleged that Ms. Wells breached a written lease agreement for a residential apartment located at 1265 Olmstead Avenue, Apartment 2R, Bronx, NY 10462 (hereinafter the "Bronx Apartment.")
27. On February 10, 2022, Rose & Rose served Ms. Wells with a copy of the Complaint at her residence, an apartment in Upper Manhattan (hereinafter "Actual Residence").
28. Upon information and belief, although Rose & Rose routinely sends debt collection notices in housing court proceedings which identify it as a debt collector and notify tenants of their right to ask verification of the debt, no such notice was attached to the Complaint or mailed to Ms. Wells before or after its service.
29. Ms. Wells could not read the Complaint herself because she is limited English proficient, so she asked her daughter Anel Wells (hereinafter "Anel") to explain what they said
30. Ms. Wells did not understand why she had been sued for rent arrears in a Bronx apartment she had never signed a lease for and had never lived in.
31. Ms. Wells asked Anel to call Rose & Rose on her behalf to tell them they had made a mistake because she had no connection to the Bronx Apartment.

32. Anel called Rose & Rose that same day at the number listed on the Complaint.
33. Anel spoke to a receptionist and was told an attorney would call her back.
34. When no one did, Anel called the law firm again on February 11, 2022, and was finally given an e-mail to write to an attorney.
35. On February 11, 2022, Anel wrote on behalf of Ms. Wells and explained that Ms. Wells had never lived in the Bronx apartment and asked if a mistake had been made.
36. Maulik Sharma, an attorney at Rose & Rose, responded to the e-mail and after confirming Ms. Wells' social security number, forwarded Anel a copy of a tenant application with supporting documents for the Bronx Apartment (hereinafter "Tenant Application") on February 13, 2022.
37. The Tenant Application did not include the lease for the Bronx apartment which the Complaint alleged had been breached.
38. Mr. Sharma cc'd someone named Brett on his e-mail. Upon information and belief, Brett is Brett Klatsky the associate at Rose & Rose who had signed off on the Complaint.
39. Mr. Sharma did not disclose to Anel or Ms. Wells in his e-mail or at any subsequent time that Rose & Rose was a debt collector or that Ms. Wells had a right to ask for verification of the debt.
40. The supporting documents attached to the Tenant Application for the Bronx Apartment included a driver's license, a letter from an employer, a bank account statement, a W-9 form, and a tax return.
41. On its face, the Tenant Application showed signs of fraud, including that the signature on the applicant's driver's license did not match the signatures on the W-9 form or the Tenant Application; that the Tenant Application signature page had been copied so many times it was

almost illegible; that the typed in address for the apartment listed on the application had been stricken from the Tenant Application and replaced with a handwritten street number without indicating what street the apartment was on; and the applicant's driver's license did not conform with changes implemented prior to the issue date of the license, specifically, it was not identified as a Real ID, an enhanced ID or alternatively, bear the endorsement "Not for federal purposes" required on traditional license renewals.

42. Anel identified additional errors in the Tenant Application, including that the applicant's phone number was not Ms. Wells' number; referenced a non-existent son as an apartment occupant; falsely stated that Ms. Wells lived with her brother in his apartment when she did not, and listed his name wrong; stated Ms. Wells did not have a lease in her name, when she did; included a reference letter from an employer Ms. Wells had never worked for; included a copy of a driver's license (hereinafter "fake driver's license") when Ms. Wells has never had a driver's license; and that the photo and signature on the fake driver's license did not match Ms. Wells'.

43. Anel immediately replied to Mr. Sharma's e-mail informing him that the information on the Tenant Application was false and attached a copy of Ms. Wells' New York State non-driver's identification (hereinafter "non-driver id") to show the photo and the signature on the fake driver's license did not belong to Ms. Wells.

44. On February 14, 2022, Mr. Sharma asked Anel for documentation showing where Ms. Wells lived between October 2019 and February 2021, suggesting that she send him copies of leases, mortgages, and utility bills. He once again cc'd Brett, upon information and belief Brett Klatsky, the Rose & Rose Associate who signed the Complaint.

45. Mr. Sharma again failed to disclose in his e-mail that Rose & Rose was a debt collector or that Ms. Wells had a right to ask for verification of the debt.

46. Ms. Wells provided Mr. Sharma with a copy of her 2018-2020 renewal lease, a Con Edison bill dated November 14, 2019, her Social Security award letter dated November 15, 2019, and hospital discharge paperwork dated October 12, 2019, all of which listed her actual home address in Upper Manhattan.

47. The November 2019 Social Security award letter showed that Ms. Wells had been receiving disability benefits since at least December 2018, further demonstrating that the employment information and tax returns attached to the Tenant Application did not belong to Ms. Wells.

48. After she sent him the documents, Anel followed up with Mr. Sharma by e-mail on February 21 and 25, 2022 asking for an update, but received no response.

49. On or about February 26, 2022, Ms. Wells received a notice from New York County Civil Court, which advised her to go to court immediately to answer the Complaint to avoid the entry of a default judgment against her.

50. Anel sent a copy of the court notice to Mr. Sharma on February 26, 2022, asking him to respond and tell them what more they needed to do to prove Ms. Wells did not owe this debt.

51. After waiting a few days without receiving a response, Ms. Wells went to Manhattan Civil Court on March 3, 2022 and spent over two hours trying to answer the Complaint.

52. Ms. Wells traveled by subway and waited on line for a Spanish interpreter, only to find out that when it was her turn that the Clerk could not locate the file and she would have to return the next day.

53. On March 4, 2022, Ms. Wells traveled back to the courthouse, this time by car, accompanied by her niece, Linette Cabrera (hereinafter "Linette").

54. After waiting two hours on line, Ms. Wells was finally able to answer and raised an identity theft defense. She also wrote on the answer that she had suffered stress, shame, and sleepless nights as a result of the court case.

55. The court gave Ms. Wells a return date of April 6, 2022.

56. In the weeks leading up to the court date, Ms. Wells worried about what would happen if the judge did not believe her and she lost her case. She felt anxious because she did not have the money to pay the rent arrears of almost \$10,000 the Complaint alleged she owed.

57. Ms. Wells felt ashamed that she had been sued because she had always worked hard to pay her debts on time. She worried that because the landlord had filed a case against her and a process server had come to her door, people who lived in her building or checked the court's public database would think she owed money to the landlord even though she did not.

58. On the return date of April 6, 2022, Ms. Wells had to wait two hours for her case to be called before the judge.

59. During the preliminary conference, the attorney who appeared for Rose & Rose reiterated the allegations in the Complaint to the judge, but still did not produce a copy of the Bronx Apartment lease it claimed had been breached.

60. Instead, Rose & Rose produced a copy of the Tenant Application in support of its claims.

61. Through an interpreter, Ms. Wells explained that she was the victim of identity theft, had never leased nor lived at the subject premises, and therefore did not owe the debt.

62. Ms. Wells presented her passport and non-driver id to the judge, who compared her photo and signature to the photo and signatures on the Tenant Application and the attached fake driver's license. The judge noted that Ms. Wells was not the person shown on the Tenant Applicant's fake driver's license and that the signatures did not match.

63. Nonetheless, Rose & Rose refused to discontinue the case.

64. The judge adjourned the case to June 23, 2022 for Ms. Wells to consult with an attorney and for Rose & Rose to investigate her claim of identity theft.

65. On June 6, 2022, Ms. Wells retained Manhattan Legal Services to represent her in the civil court action.

66. Manhattan Legal Services helped Ms. Wells file an Identity Theft Report with the Federal Trade Commission and sent a copy to Rose & Rose, along with a letter reiterating Ms. Wells' claim that she was the victim of identity theft.

67. The letter identified problems with the Tenant Application, including that the signature and picture on the Tenant Application's driver's license did not belong to Ms. Wells; that Ms. Wells had never had a driver's license; and that the tax documents presented showed her working as a sales representative at Riverdale Motors, a job she cannot perform due to her disability and the fact that she does not read, write, or speak English.

68. None of the information contained in the letter was new, and many of these inconsistencies had been previously mentioned by Anel Wells in her e-mail correspondence with Defendant in February 2022, were evident from the documents Ms. Wells provided to Defendant, or had been discussed on the court date, several months prior.

69. A week later, Brett Klatsky, the Rose & Rose associate who had signed the Complaint, e-mailed Manhattan Legal Services and agreed to discontinue the debt collection action against Ms. Wells with prejudice after speaking with his client and conducting a "thorough review of their files."

70. The parties entered into the stipulation and the civil court action was discontinued on the return date of June 23, 2023.

71. Throughout the pendency of the litigation, Ms. Wells had difficulty sleeping, had headaches that lasted for days, as well as diarrhea. It affected her appetite and she lost almost thirty pounds over the course of the litigation.

72. Ms. Wells was so upset by being sued that she no longer wanted to spend time with her family or leave the house, and struggled to complete her daily tasks, including taking care of her elderly mother.

73. Ms. Wells brings the instant action asserting that Defendant violated her rights under the FDCPA and seeks statutory and actual damages.

FIRST CAUSE OF ACTION

Violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*

74. Plaintiff restates and incorporates the allegations of paragraphs 1 through 73 as if fully set forth herein.

75. Defendant Rose & Rose violated the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.* Defendants' violations include, but are not limited to the following:

- a) Defendants violated 15 U.S.C. § 1692d by engaging in conduct intended to harass, oppress, or abuse Ms. Wells in the collection of a debt.
- b) Defendant violated 15 U.S.C. § 1692e(2) by falsely representing that Ms. Wells owed the debt;
- c) Defendant violated 15 U.S.C. § 1692e(3) by making false representations and implications that, as attorneys, they engaged in a meaningful review of the Complaint;

- d) Defendant violated 15 U.S.C. § 1692e(5) by threatening to obtain a judgment and attorney's fees their client was not entitled to;
- e) Defendants violated 15 U.S.C. § 1692e(10) by using false representations and deceptive means to attempt to collect the debt;
- f) Defendants violated 15 U.S.C. § 1692f by using unfair or unconscionable means to collect a debt;
- g) Defendant violated 15 U.S.C. §1692 e(11) and 1692(g) by failing to inform Ms. Wells that it was a debt collector and not informing her of her right to request verification of the debt.

76. As a result of the above FDCPA violations, Defendant is liable to Plaintiff for statutory damages in an amount to be determined at the time of trial, but not less than \$1,000 per violation; actual damages, including emotional distress; reasonable attorney's fees; and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court award the following relief:

- (a) Declaratory judgment that Defendant's actions violate 15 U.S.C. §§ 1692d, 1692e, 1692f, and 1692g;
- (b) Actual Damages;
- (c) Statutory damages;
- (d) Treble damages;
- (e) Costs and reasonable attorney's fees to Plaintiff pursuant to 15 U.S.C. § 1692k; and
- (f) Such other and further relief as may be just and proper.

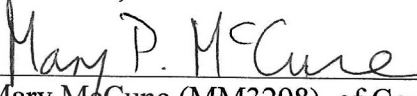
DEMAND FOR A JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury on all issues so triable.

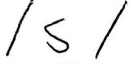
Dated: February 8, 2023

Respectfully submitted,

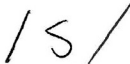
Manhattan Legal Services
Attorneys for Plaintiff
1 W. 125th St., 2nd Fl.
New York, NY 10027



Mary McCune (MM3298), of Counsel
(646) 442-3143
mmccune@lsnyc.org



Sandra Sandoval (5170659) of Counsel
(646) 442-2055



Molly Rockett (5749247), of Counsel
(646) 442-3313