

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DE 18-148

LIBERTY UTILITIES (GRANITE STATE ELECTRIC) CORP.
d/b/a LIBERTY UTILITIES

Complaint by Judith Tompson against Liberty Utilities

Liberty's Motion to Dismiss

Liberty Utilities (Granite State Electric) Corp., through counsel, respectfully asks the Commission to dismiss Ms. Tompson's claims for violations of New Hampshire's Consumer Protection Act, RSA 358-A, and the federal Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.*, because the Commission does not have authority to address such claims and because the alleged facts do not state claims under either statute as a matter of law.

In support of this motion, Liberty represents as follows:

Consumer Protection Act, RSA 358-A

1. Ms. Tompson alleged that Liberty violated RSA 358-A, New Hampshire's Consumer Protection Act ("CPA"). That statute, however, expressly exempts companies, like Liberty, that are regulated by the Public Utilities Commission.
2. RSA 358-A:3, I states:

The following transactions shall be exempt from the provisions of this chapter:

I. Trade or commerce that is subject to the jurisdiction of the bank commissioner, the director of securities regulation, the insurance commissioner, the public utilities commission, the financial institutions

and insurance regulators of other states, or federal banking or securities regulators who possess the authority to regulate unfair or deceptive trade practices.

(Emphasis added.)

3. This exemption means that Liberty is simply not subject to claims under the CPA. In *Rainville v. Lakes Region Water Co.*, 163 N.H. 271, 275 (2012), the Supreme Court held that the exemption of RSA 358-A:3 meant that a water utility could not be held liable under the CPA for distributing unsafe water: “Accordingly, the plaintiffs’ claim may not be brought under the CPA because it concerns trade or commerce that is subject to the PUC’s jurisdiction and is exempt from the CPA.”
4. In addition, the only entities statutorily authorized to enforce the CPA are the Department of Justice (“The provisions of this chapter shall be administered and enforced by the consumer protection and antitrust bureau, department of justice,” RSA 358-A:4, I) and the courts (“Any person injured by another’s use of any method, act or practice declared unlawful under this chapter may bring an action for damages and for such equitable relief, including an injunction, as the court deems necessary and proper,” RSA 358-A:10, I).
5. “The New Hampshire Supreme Court has held that ‘[t]he PUC is a creation of the legislature and as such is endowed with only the powers and authority which are expressly granted or fairly implied by statute.’ *Appeal of Public Service Company of New Hampshire*, 122 NH 1062, 1066 (1982).” *RCC Minnesota, Inc.*, Order No. 24,245 (Dec. 5, 2003).
6. Since the Legislature did not grant the Commission authority to enforce the CPA, Ms. Tompson’s claims alleging violations of the CPA should be dismissed.

Fair Debt Collection Practices Act, 15 U.S.C. §1692

7. Ms. Tompson also alleged that Liberty violated 15 U.S.C. §1692, the federal Fair Debt Collection Practices Act (“FDCPA”). This claim should also be dismissed because it does not apply to Liberty and because the Commission does not have authority to enforce its terms.
8. The FDCPA only applies to “debt collectors.” *See, e.g.*, 15 U.S.C. §1692b (“Any debt collector ... shall ... identify himself, state that he is confirming or correcting location information ...”); 15 U.S.C. §1692c(a) (“Without the prior consent of the consumer ... a debt collector may not communicate with a consumer in connection with the collection of any debt ... at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer”), and 15 U.S.C. §1692d (“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”) (emphasis added).
9. A “debt collector” only includes businesses whose “principal purpose ... is the collection of any debts,” or businesses “who regularly collects or attempts to collect ... debts owed or due ... another.” 15 U.S.C. 1692(a)(6).
10. Liberty is not a “debt collector” because its principal business purpose is the provision of electric utility services, not the collection of debts, and because Liberty is attempting to collect a debt owed to itself, not another.
11. Since Liberty is not a “debt collector,” the statute does not apply to Liberty and Ms. Tompson’s claims under the FDCPA should be dismissed.

12. In addition, the Commission does not have authority to enforce the FDCPA. The statute states: “An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.” 15 U.S.C. §1692k(d). Of course, the Commission is neither a federal district court nor “any other court of competent jurisdiction.”

13. The Commission should thus dismiss Ms. Tompson’s claims under the FDCPA.

WHEREFORE, Liberty Utilities (Granite State Electric) Corp., through counsel, respectfully asks the Commission to:

- a. Dismiss Ms. Tompson’s claims under RSA 358-a and 15 USC §1692.
- b. Grant any other relief deemed appropriate.

Respectfully submitted,
Liberty Utilities (Granite State Electric) Corp.
By its Attorney,



Date: February 7, 2019

By: _____
Michael J. Sheehan, Senior Counsel #6590
116 North Main Street
Concord, NH 03301
Telephone (603) 724-2135
michael.sheehan@libertyutilities.com

Certificate of Service

I hereby certify that on February 7, 2019, a copy of this motion has been electronically forwarded to the service list and sent by first class mail to Ms. Tompson.



By: _____
Michael J. Sheehan