IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KAREN A. ROCKWELL,	)	**CASE NO. 8:04CV24**
	)	
Plaintiff,	)	
	)	
vs.	)	**JURY INSTRUCTIONS**
	)	
TALBOTT, ADAMS & MOORE, INC., A Texas Corporation,	)	
	)	
Defendant.	)	

INSTRUCTION NO. 1

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of the trial are not repeated here.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

INSTRUCTION NO. 3

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider a witness' intelligence, the opportunity a witness had to see or hear the things testified about, a witness' memory, any motives a witness may have for testifying a certain way, the manner of a witness while testifying, whether a witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 4

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claim or defense depends upon that fact. The party who has the burden of proving a fact must prove it by the preponderance of the evidence. To prove something by the preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that issue has been proved.

The preponderance of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term "proof beyond a reasonable doubt." That is a stricter standard that applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

INSTRUCTION NO. 5

Karen Rockwell claims that Talbott, Adams & Moore violated the Fair Debt Collection Practices Act. To prevail on this claim, Rockwell must prove by a preponderance of the evidence that Talbott, Adams & Moore took one or more of the following actions while attempting to collect the debt from her:

a. Talbott, Adams & Moore, without Rockwell's permission, told Rockwell's father that Rockwell owed the debt;

b. Talbott, Adams & Moore threatened to use violence to physically harm Rockwell's father;

c. Talbott, Adams & Moore made false, deceptive or misleading statements in attempting to collect the debt from Rockwell; or

d. Talbott, Adams & Moore failed to send a written notice to Rockwell on or before August 11, 2003, notifying her of the following: (1) the amount of the debt; (2) the name of the creditor to whom the debt is owed; (3) that Rockwell had 30 days to dispute the validity of the debt or else Talbott, Adams & Moore would have assumed the debt is valid; (4) that if Rockwell notified Talbott, Adams & Moore in writing within 30 days that the debt was disputed, then Talbott, Adams & Moore would obtain verification of the debt and mail a copy of such verification to her; and (5) that if Rockwell made written request upon Talbott, Adams & Moore within 30 days, then Talbott, Adams & Moore would provide her with the name and address of the original creditor, if different from the current creditor.

If you find that Talbott, Adams & Moore took one or more of these actions, you must answer "yes" to Question No. 1 of the Verdict Form. If you find that Talbott, Adams & Moore took none of these actions, then you must answer "no" to Question No. 1 of the Verdict Form.

INSTRUCTION NO. 6

In determining whether Talbott, Adams & Moore has violated the Fair Debt Collection Practices Act, its actions should be viewed through the eyes of an unsophisticated consumer.

INSTRUCTION NO. 7

As used in Instruction No. 5, “false, deceptive or misleading statements” include statements or representations that are not true in a material respect, and that the debt collector either knew were false, deceptive or misleading when they were made, or that the debt collector had reason to believe were false, deceptive or misleading when they were made.

INSTRUCTION NO. 8

If you find in favor of Rockwell on Instruction No. 5, then you must answer the following question on the verdict form: “Has the Defendant Talbott, Adams, & Moore proved by the preponderance of the evidence that all of its violations of the Fair Debt Collection Practices Act were the result of bona fide error as set forth in Instruction No. 8?”

To be entitled to the bona fide error defense, Talbott, Adams, & Moore must show, by a preponderance of the evidence, that:

1) the violation was unintentional; and

2) the violation occurred despite the maintenance of procedures reasonably adapted by it to avoid such violations.

In order to constitute an intentional act for purposes of a claim under the Fair Debt Collection Practices Act, it is necessary that the actor know and intend the consequences of the action itself. It is not necessary that the actor know the act to be illegal, or a violation of statute or otherwise prohibited by law.

INSTRUCTION NO. 9

If you find in favor of Rockwell on Instruction No. 5, and if you find that Talbott, Adams & Moore is not entitled to the bona fide error defense set forth in Instruction No. 8, then you must determine, from the preponderance of the evidence, what sum will fairly and justly compensate Rockwell for any actual damages you find that she sustained as a result of Talbott, Adams, & Moore's violation of the Fair Debt Collection Practices Act. In determining the amount, you should consider any out-of-pocket expenses that Rockwell incurred and the nature and extent of emotional distress, mental anguish, humiliation and embarrassment, if any, that she has suffered as a result of the violation.

Remember, throughout your deliberations you must not engage in any speculation, guess, or conjecture, and you must not award any damages under this instruction by way of punishment or through sympathy.

INSTRUCTION NO. 10

As used in Instruction No. 9, actual damages are “a result of the violation” if they were proximately caused by the violation. A proximate cause is a cause that produces a result in a natural and continuous sequence, unaccompanied by an efficient intervening cause, and without which the result would not have occurred. An efficient intervening cause is a new and independent act that breaks the causal connection between the original wrong and the result.

INSTRUCTION NO. 11

If you find in favor of Rockwell on Instruction No. 5, and if you find that Talbott, Adams & Moore is not entitled to the bona fide error defense set forth in Instruction No. 8, then in addition to actual damages, you may also award statutory damages to Rockwell. In determining the amount of statutory damages, you should consider the frequency and persistence of Talbott, Adams & Moore's non-compliance with the Fair Debt Collection Practices Act, the nature of its noncompliance, and the extent to which its noncompliance was intentional. The amount of statutory damages that you award may not be more than $1,000.

INSTRUCTION NO. 12

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note that is signed by one or more jurors to me through Mr. Champion or someone else in my chambers. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise Mr. Champion or someone else in my chambers that you are ready to return to the courtroom.