UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

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DIST. OF SOUTH CAROLINA

IN RE:

Nathaniel Harrell, Jr. and Valerie Harrell,

Debtors.

C/A No. 98-06980-W

Adv. Pro. No. 98-80266-W

Federal Trade Commission,

Plaintiff,

v.

Nathaniel Harrell, Jr. and Valerie Harrell,

Defendants.

JUDGMENT

Chapter 7

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Plaintiff's Motion for Summary Judgment is granted. Pursuant to 11 U.S.C. § 523(a)(2)(A), the $235, 609.50 debt owed, jointly and severally, by Defendants Nathaniel Harrell, Jr., and Valerie Harrell to the FTC is not dischargeable.

John E. Waites
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
April 22, 1999.

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UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

FILED 99 APR 22 PM 2:26 U.S. BANKRUPTCY COURT DIST OF SOUTH CAROLINA

IN RE: Nathaniel Harrell, Jr. and Valerie Harrell, Debtors.	C/A No. 98-06980-W Adv. Pro. No. 98-80266-W
Federal Trade Commission, Plaintiff, v. Nathaniel Harrell, Jr. and Valerie Harrell, Defendants.	**ORDER** Chapter 7

THIS MATTER comes before the Court upon the Motion for Summary Judgment filed by the Plaintiff Federal Trade Commission (hereinafter "FTC") in this adversary proceeding seeking a determination that a debt owed to the FTC arising out of District Court litigation is not dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).[1] Based on the presentations of counsel for the FTC and counsel for the Defendant/Debtors, the pleadings to date, transcripts of sworn testimony, affidavits and other exhibits filed in this matter, the Court makes the following Findings of Fact and Conclusions of Law. The Court notes that to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

[1] Further references to the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, shall be by section number only.

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FINDINGS OF FACT

On February 26, 1998, the FTC filed a complaint in the United States District Court for the District of South Carolina, alleging, *inter alia*, that the Defendants had made untrue and misleading statements to induce consumers to purchase credit repair services in violation of Section 404(a)(3) of the Credit Repair Organizations Act (hereinafter "CROA"), 15 U.S.C. § 1679b(a)(3). In addition, the complaint charged that the Defendants had engaged in deceptive acts or practices in the advertising, marketing, promoting, offering for sale, or sale of their credit repair services, thereby violating Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a). The FTC alleged that the Defendants' false and untrue representations that they could obtain removal of negative information from credit reports, even when it was accurate and not obsolete, violated both CROA and the FTC Act and sought equitable relief to remedy consumer injury caused thereby.

On February 26, 1998, the District Court granted the FTC's motion for *ex parte* temporary restraining order enjoining the Defendants' deceptive practices, and freezing their assets.

On March 5, 1998, the District Court entered a Stipulated Order for Preliminary Injunction as to the Defendants Nathaniel Harrell, Jr. and Valerie Harrell ("Stipulation for Preliminary Injunction"). The Stipulation for Preliminary Injunction was signed by Nathaniel Harrell, Jr., Valerie Harrell and their attorney, Curtis Murph, Jr. Esquire. In the Stipulation for Preliminary Injunction, the Defendants agreed to cease misrepresenting to consumers that the Defendants could improve credit reports by removing or obtaining removal of negative information that is accurate and not obsolete. The Defendants also agreed to provide certain

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information to the FTC and to not transfer their assets.

Despite the appearance through the March 5, 1998 Stipulation for Preliminary Injunction, and at the hearing leading thereto, the Defendants did not file an answer to the complaint and on April 23, 1998, the Clerk of the Court entered a default against the Defendants for failing to plead or otherwise defend the action under Fed. R. Civ. P. 55(a). Thereafter, the Defendants did not ask the District Court to set aside the entry of the default.

The District Court subsequently issued a Rule to Show Cause against Mr. Harrell for failing to comply with the March 5, 1998 Stipulation for Preliminary Injunction and scheduled a hearing on May 6, 1998. Mr. Harrell did not appear at the hearing and on May 7, 1998, the District Court issued an order finding Mr. Harrell in contempt of court and ordered him to pay a fine in the amount of $200.00 per day until he complied with the March 5, 1998 Stipulation for Preliminary Injunction. The District Court further scheduled an additional contempt hearing for May 26, 1998. Additionally, the Order of May 7, 1998 provided as follows.

> Additionally, the plaintiff has filed a motion for a default judgment, suggesting that the defendants have failed to file an answer or other responsive pleadings within the appropriate time, and asking the court to enter an order granting permanent injunctive relief and monetary damages. Although the defendants are in default, they appeared at the motion for a preliminary injunction, and, because of this, they are entitled to notice and an opportunity to be heard at the damages hearing.

The District Court then scheduled the damages hearing along with the contempt hearing. Shortly before the May 26, 1998 hearing, the District Court was advised that counsel for the Defendants had been hospitalized and continued the hearing to June 19, 1998.

During the course of the June 19, 1998 damages and contempt hearing, testimony of six

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witnesses, including Defendant Nathaniel Harrell, Jr., was received. The evidence of a seventh witness was introduced by affidavit. In addition, numerous exhibits were introduced.

The exhibits established that the Defendant Nathaniel Harrell, Jr., did business as "Compass Northeast Credit Service" (hereinafter "Compass"). His wife, Defendant Valerie Harrell, also worked at Compass. Nathaniel Harrell was the president while Valerie Harrell was a manager. Compass was located in Columbia, South Carolina. Through Compass, the Defendants offered and sold services to remove negative information from, or improve, consumers' credit histories and credit reports (hereinafter "credit repair services"). The Defendants offered their credit repair services for sale for fees ranging from approximately $450 to $800. The evidence before the District Court established that from at least July, 1996, until February, 1998, the Defendants and their agents falsely promised that they could improve the credit reports of consumers by obtaining permanent removal of negative credit information, even where such information was accurate and not obsolete. The evidence also established that the Defendants' knew that their representations that they could cause removal of accurate nonobsolete negative information from credit reports was false when they made the representations and that the representations were made with the intent to deceive. The evidence before the District Court also established that consumers justifiably relied upon these false representations. Consumers paid substantial fees to the Defendants to obtain the removal of negative information in their credit reports that was accurate and nonobsolete thereby showing their reliance on the false representations. Additionally, the Defendants' misrepresentations were material because they concerned the central nature of the "service" being sold, i.e., the removal of negative credit information and these misrepresentations caused injury to the consumers.

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Referring to the testimony of consumers at the hearing, the Honorable Joseph Anderson, Jr., stated the following: "These people who have come in here today are all struggling to get back on their feet after bankruptcy and the money they paid is money that came very dearly to them. They didn't have that money to lose."

On July 2, 1998, "[a]fter receiving testimony, carefully considering all of the evidence, weighing the credibility of the witnesses, reviewing the exhibits and briefs, and studying the applicable law," United States District Judge Joseph F. Anderson, Jr., granted the FTC's motion for default judgment and entered a Final Judgment and Order for Permanent Injunction against the Defendants. The Court held that the Defendants had injured consumers and that they had been unjustly enriched in the amount of $240,630.25 as a result of their violations of the CROA, 15 U.S.C. § 1679 *et seq.,* and Section 5(a) of the FTC Act, 45 U.S.C. § 45(a). In the July 2, 1998 order, the District Court gave the Defendants credit for $5020.75 of previously paid refunds and found the Defendants jointly and severally liable for $235,609.50.

On August 13, 1998, the Debtors filed a voluntary Chapter 7 petition. On November 19, 1998, the FTC filed the within adversary proceeding seeking a determination of the dischargeability of the District Court's judgment.

CONCLUSIONS OF LAW

A. Standard for Summary Judgment

Under Fed. R. Civ. P. 56(c), summary judgment is appropriate in those cases in which there is no genuine issue of material fact. Summary judgment should be granted if "there is no genuine issue as to any material fact and if the moving party is entitled to judgment as a matter of law." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 250 (1986). "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electric Industrial Co., Inc., v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). "In the language of the Rule, the nonmoving party must come forward with 'Specific facts showing that there is a *genuine issue for trial.*'" *Id.* at 587 *citing* Fed. Rule Civ. P. 56(c). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Id.* In this regard, the standard under Rule 56(c) "mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a), which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict." *Anderson*, 477 U.S. at 250.[2]

B. Nondischargeability Under 11 U.S.C. § 523(a)(2)(A)

In order to establish that a claim is non-dischargeable under § 523(a)(2)(A), a creditor must establish five elements: (1) that the debtor made a representation; (2) that at the time the representation was made the debtor knew the representation was false; (3) that the debtor made the representation with the intention of deceiving; (4) that the representation was relied upon; and (5) that the alleged loss and damage was the proximate result of the false representation. *See Mills v. Hyman (In re Hyman)*, 219 B.R. 699, 701 (Bkrtcy. D. S.C. 1998). The creditor has the burden of proving these five elements by a preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279 (1991).

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[2] In their opposition to the FTC's motion for summary judgment, the Defendants have argued that it is only necessary for the nonmoving party to submit a "scintilla" of evidence to defeat a motion for summary judgment. This argument is contrary to controlling Supreme Court authority that has rejected the standard urged by the Defendants, in favor of the one set forth in the text above. *Anderson*, 477 U.S. at 250-51.

C. Collateral Estoppel

The Supreme Court has held that collateral estoppel applies to dischargeability proceedings under Section 523(a). *Grogan v. Garner*, 498 U.S. 279, 284 n. 11 (1991). The collateral estoppel doctrine has been defined as follows:

> Prior judgment between same parties on different causes of action is an estoppel as to those matters in issue or points controverted, on determination of which finding or verdict was rendered. *E.I duPont de Nemours & Co. v. Union Carbide Corp.*, D.C. Ill., 250 F.Supp. 816, 819. When an issue of ultimate fact has been determined by a valid judgment, that issue cannot be again litigated between the same parties in future litigation. *City of St. Joseph v. Johnson*, Mo. App. 539 S.W. 2d 784, 7845.

Black's Law Dictionary 237 (5th ed. 1979). The issue before this Court is whether to apply the doctrine of collateral estoppel in this case in which the underlying judgment of liability arose by way of a default judgment.

When applying collateral estoppel to preclude the relitigation of a matter decided by a state court judgment in a subsequent dischargeability proceeding, the bankruptcy court must apply the state law of the forum state in which the judgment was entered.

> We have previously explored the proper approach to this question, explaining:
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>> In *Grogan v. Garner*, [498 U.S. 279, 284 & n. 11, 111 S.Ct. 654, 658 n. 11, 112 L.Ed.2d 755 (1991)] the Supreme Court concluded explicitly that principles of collateral estoppel apply in dischargeability proceedings in bankruptcy. In determining the preclusive effect of a state-court judgment, the federal courts must, as a matter of full faith and credit, apply the forum state's law of collateral estoppel.... "Congress has specifically required all federal courts to give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do

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> so."
> *Hagan v. McNallen (In re McNallen)*, 62 F.3d 619, 624 (4th Cir.1995) (quoting *Allen v. McCurry*, 449 U.S. 90, 96, 101 S.Ct. 411, 415-16, 66 L.Ed.2d 308 (1980)). Thus, in order to determine whether the bankruptcy court correctly applied collateral estoppel principles, we must examine the law of Virginia, where the judgment relied upon originated.

In re Ansari, 113 F.3d 17 (4th Cir. 1997). However, in this adversary proceeding, the default judgment arose from federal court litigation and because the full faith and credit statutes are not triggered, the Court must look to federal law, not state law, in its application of collateral estoppel.

The general rule on the application of collateral estoppel pursuant to federal law is that federal courts are reluctant to apply collateral estoppel to default judgments. Donald, Collateral Estoppel in Section 523(c) Dischargeability Proceedings: When is a Default Judgment Actually Litigated?, Bankruptcy Developments Journal, Vol. 12, Number 2, 1996 at 327. However, there appear to be two exceptions to this rule. The first exception appears to be when a party substantially participated in the federal court proceeding and had a full and fair opportunity to defend the complaint on the merits but chose not to.

> We find *Daily* [47 F.3d 365, 368-69 (9th Cir.1995)] persuasive. Where a party has substantially participated in an action in which he had a full and fair opportunity to defend on the merits, but subsequently chooses not to do so, and even attempts to frustrate the effort to bring the action to judgment, it is not an abuse of discretion for a district court to apply the doctrine of collateral estoppel to prevent further litigation of the issues resolved by the default judgment in the prior action. Bush had ample warning from the prior court and could reasonably have foreseen the conclusive effect of his actions. In such a case, collateral estoppel may apply to bar relitigation of the issues resolved by the default judgment. *See Klingman v. Levinson*, 831 F.2d 1292, 1296 (7th Cir.1987) (quoting 1B. J. Moore, J. Lucas & T. Currier, Moore's

> Federal Practice ¶ 0.444[1], at 794 (2d ed. 1984)) ("Justice, then, is probably better served if ... collateral estoppel does not apply to ... default judgments ... unless it can be said that the parties could reasonably have foreseen the conclusive effect of their actions.") (emphasis added).

Bush v. Balfour Beatty Bahamas, Ltd. (In re Bush), 62 F.3d 1319 (11th Cir. 1995). This concept has been recognized by the Fourth Circuit Court of Appeals.

> Recently, the Fifth, Eleventh, and Ninth Circuits have held that when a party has appeared and litigated a matter, a default judgment subsequently entered for discovery violations can act as collateral estoppel in a later case. *See Gober v. Terra + Corporation (In re Gober)*, 100 F.3d 1195, 1205- 06 (5th Cir.1996) (fact that state court default judgment was entered "only after Gober had repeatedly impeded the course of the proceedings by refusing to comply with discovery and by defying court orders" bolstered court's conclusion that the bankruptcy court "properly afforded collateral estoppel effect" to the state default judgment); *Bush v. Balfour Beatty Bahamas, Ltd.*, 62 F.3d 1319, 1325 (11th Cir.1995) ("Where a party has substantially participated in an action in which he had a full and fair opportunity to defend on the merits, but subsequently chooses not to do so, and even attempts to frustrate the [proceedings] a district court [may] apply the doctrine of collateral estoppel to prevent further litigation of the issues resolved by the default judgment in the prior litigation."); *FDIC v. Daily (In re Daily)*, 47 F.3d 365, 368 (9th Cir.1995) ("A party who deliberately precludes resolution of factual issues through normal adjudicative procedures may be bound, in subsequent, related proceedings involving the same parties and issues, by a prior judicial determination reached without completion of the usual process of adjudication.").

In re Ansari, 113 F.3d at 21.

The second exception to the general rule that federal courts are reluctant to apply collateral estoppel to default judgments is when a default judgment as to liability is entered but the party participates in the damages determination. Professors Wright, Miller and Cooper state that when the court holds a hearing to determine appropriate relief and the hearing is contested, issue "preclusion is . . . fully appropriate as to any issues resolved after a full-scale contest on issues of damages." 18 Charles Alan Wright, Arthur R. Miller, Edward H. Cooper, *Federal Practice and Procedure* § 4442 (1981).

In the motion for summary judgment before the Court, both exceptions seem to apply. As stated in the Findings of Fact, on March 5, 1998, the District Court entered the Stipulation for Preliminary Injunction which was signed by Nathaniel Harrell, Jr., Valerie Harrell and their attorney, Curtis Murph, Jr. Esquire. In the Stipulation for Preliminary Injunction, the Defendants agreed to cease misrepresenting to consumers that the Defendants could improve credit reports by removing or obtaining removal of negative information that is accurate and not obsolete. The Defendants also agreed to provide certain information to the FTC and to not transfer their assets. However, despite this appearance, the Defendants for whatever reasons, chose not to file an answer to the complaint. For these reasons, the Court finds that the Defendants had a full and fair opportunity to participate in the litigation and to defend themselves but chose not to do so.

Additionally, Judge Anderson conducted a damages hearing on June 19, 1998 in which the Defendants, with the aid of counsel, actively participated. During the course of the June 19, 1998 damages and contempt hearing, testimony of six witnesses, including Defendant Nathaniel Harrell, Jr., was received. The evidence of a seventh witness was introduced by affidavit. In addition, numerous exhibits were introduced. This testimonial and documentary evidence established the elements necessary for a finding of non-dischargeability. At the damages hearing on June 19, 1999, the FTC introduced evidence establishing the representations made by the Defendants, that the Defendants made those representations knowing them to be false, that the Defendants made the representations with intent to deceive, that consumers justifiably relied on the misrepresentations, and that injury in the amount of $240,630.25 was the proximate result of the false representations. These issues were litigated before the District Court and the District Court found the Defendants individually liable for monetary and equitable relief and ordered that relief under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). By ordering this relief, the District Court necessarily concluded that the Defendants had "behaved either knowingly or recklessly with respect to the false representations which were made." *FTC v. Austin* (*In re Austin*), 138 B.R. 898, 907 (Bkrtcy., N.D. Ill. 1992). This follows because, in order to find defendants liable for monetary restitution, courts "have required the FTC to establish some degree of bad faith on the part of the defendant." *Id.* at 908. More specifically, courts have held that this "knowledge requirement may be fulfilled by showing that the individual had 'actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of such misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth.'" *FTC v. Amy Travel Service, Inc.*, 875 F.2d 564, 574 (7th Cir. 1989) (quoting *FTC v. Kitco of Nevada, Inc.*, 612 F.Supp. 1282, 1292 (D. Minn. 1985)). As a result, by making its determination of damages, the District Court implicitly concluded that the Defendants had knowledge of the misrepresentations establishing that they "acted knowingly or recklessly with respect to the misrepresentations."[3] *Austin*, 138 B.R. at 908. Ample evidence to support such a finding was introduced by the FTC at the damages hearing before the District Court and the Defendants had a fair opportunity to dispute, litigate and defend the identical issue which is now before the Court. As a result, the Defendants' knowledge of their false claims is established and they are

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[3] Awareness of a high probability of fraud along with an intentional avoidance of the truth is a form of recklessness. *Austin,* 138 B.R. at 908.

collaterally estopped from disputing the issue in the context of non-dischargability under § 523(a)(2)(A).

Similarly, by finding injury and ordering the monetary and equitable relief, the District Court implicitly found that victims relied on the false representations made by the Defendants. This follows because reliance must be shown to justify monetary and equitable relief under Section 13(b) of the FTC Act. As the Eighth Circuit has held, "[t]o satisfy the reliance requirement in actions brought under section 13(b)" of the FTC Act, the FTC must "show that the misrepresentations or omissions were of a kind usually relied upon by reasonable and prudent persons, that they were widely disseminated, and that the injured consumers actually purchased the defendants' products." *FTC v. Security Rare Coin & Bullions Corp.*, 931 F.2d 1312 (8th Cir. 1991). Evidence establishing such reliance was introduced at the damages hearing, argued by counsel for the FTC, and found by the District Court in ordering the monetary relief. The identical issue of reliance is now before the Court and § 523(a)(2)(A), like Section 13(b) of the FTC Act, allows reliance "to be proven by circumstantial evidence of reliance." *First Bank of Colorado Springs v. Mullet (In re Mullet)*, 817 F.2d 677, 679 (10th Cir. 1987); *accord Cowman v. Phillips (In re Phillips)*, 804 F.2d 930, 933 (6th Cir. 1986). For these reasons, reliance is established and the Defendants are collaterally estopped from relitigating the issue.

The falsity of the Defendants' claims was also put in issue at the damages hearings. Moving the District Court to exercise its equitable authority under Section 13(b) of the FTC Act, by enjoining future deception and ordering monetary equitable relief to redress past injury to consumers, the FTC did not rely solely on the fact that the Defendants had defaulted. Instead, the FTC introduced substantial evidence through testimony, affidavit, tape recording and documents that the Defendants and their agents had made false representations. The FTC also introduced the Defendants' business records showing their receipt of money from consumers and then introduced evidence by testimony and affidavit that misrepresentations had been made to the consumers whose funds were recorded in the business records, thus establishing the injury. In response, the Defendants cross-examined and called their own witnesses. The Defendants had "'a fair opportunity procedurally, substantively and evidentially' to contest the issue" of the falsity of the claims made to consumers. *Bush*, 62 F.3d at 1323 (quoting *Overseas Motors, Inc. v Import Motors Ltd.,* 375 F.Supp. 499, 516 (E.D. Mich, 1974)). The falsity of the Defendants' representations was necessarily litigated at the damages hearing because it was inextricably part of other issues relevant to relief under Section 13(b) of the FTC Act. Those issues were the injury caused to consumers by the false representations in issue, the Defendants' knowledge of the falsity of the representations and consumers' reliance on the false representations. Because falsity of the representations was a necessary part of all these issues that were found by the District Court in ordering relief under Section 13(b) of the FTC Act, the fact that the Defendants made false representations is also established. The Defendants are collaterally estopped from relitigating the issue of falsity.

The next element for a finding of non-dischargability under § 523(a)(2)(A), intent to deceive, is also established on the basis of facts that have already been litigated. Evidence presented at the damages hearing established the Defendants' intent to deceive in numerous ways. For example, the Defendants' own sales brochure showed that the Defendants were aware that their claim, that they could obtain permanent removal of negative credit information that was accurate and not obsolete from credit reports, was false. The brochure actually stated the specific time parameters during which consumer reporting agencies were able to report accurate negative information under the Fair Credit Reporting Act (hereinafter "FCRA"), 15 U.S.C. § 1681 et seq.[4] Despite, this knowledge, the Defendants made their false claims. In addition, the record establishes that the Defendants were warned of the falsity of their representations by customers, by the South Carolina Department of Consumers Affairs, and by orders of the District Court prohibiting the false representations, and yet the Defendants continued to make those representations. Under § 523(a)(2)(A), "intent to deceive can be inferred from the totality of the circumstances, including the debtor's reckless disregard for the truth." *Insurance Co. of North America v. Cohn (In re Cohn)*, 54 F.3d 1108, 1118-9 (3d Cir. 1995). *Accord Equitable Bank v. Miller (In re Miller),* 39 F.3d 301, 305 (11th Cir. 1994); *Driggs v. Black (In re Black)*, 787 F.2d 503, 506 (10th Cir. 1986); *Martin v. Germantown (In re Martin),* 761 F.2d 1163, 1167 (6th Cir. 1985). In addition, "intent to deceive may logically be inferred from a false representation which the debtor knows or should know will induce another to advance money to the debtor." *In re Austin*, 138 B.R. at 914. In this case, the Defendants' intent to deceive is clear from the facts already established, and the Defendants are collaterally estopped from relitigating their intent. The Defendants and their agents falsely promised that they could improve the credit reports of consumer by obtaining permanent removal of negative credit information, even where such information was accurate and not obsolete. They did this with the intent of inducing those consumers to buy their credit repair service. The Defendants acted knowingly or recklessly in

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[4] The FCRA allows consumer reporting agencies to report bankruptcies for up to ten years after entry and without limitation as to time in certain defined situations. 15 U.S.C. §§ 1681c(a)(1) and (b). It also allows consumer reporting agencies to report other information up to seven years after entry and without limitation as to time in certain defined situations. 15 U.S.C. §§ 1681c(a) and (b).

making the false representations at issue.

For all of these reasons, Court concludes that there is no genuine issue of fact that the Defendants intended to deceive their customers.

Injury resulting from the false representations, the final element for a finding of non-dischargeability, has also been established. During the damages hearing before the District Court, the Defendants' business records showed the Defendants' receipt of $240,630.25 from customers between the period of October 17, 1996, to February 27, 1998. The Defendants' counsel cross-examined the sponsoring witness of those business records. Several consumers whose money was recorded as received in the business records testified at the hearing or by affidavit as to their injury as a result of purchasing credit repair services from the Defendants. Defendant Nathaniel Harrell, Jr., also testified contesting the amount of injury asserted by the Plaintiff and his counsel also argued the point. The District Court has held that the Defendants injured consumers to the extent of $240,630.25. Giving the Defendants credit for refunds of $5020.75, the District Court found the Defendants jointly and severally liable for $235,609.50.

The determination of the injury to consumers was essential to the prior judgment because the FTC sought equitable relief to redress injury to consumers under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). Because the identical issue was fully litigated, the District Court's determination of the issue is taken as established for this proceeding. The Defendants are collaterally estopped from disputing that their false representations caused injury in the amount previously determined by the District Court.

For all of these reasons, the Defendants are collaterally estopped from disputing the elements of non-dischargability under § 523(a)(2)(A). Moreover, beyond reliance on collateral estoppel, the Court finds that the evidence submitted by the parties in this matter establishes that there is no genuine issue of fact as to elements of non-dischargability under § 523(a)(2)(A). As a result, on these two alternate bases, the Court grants the Commission's motion for summary judgment.

CONCLUSION

For all of the reasons stated within, it is therefore,

ORDERED, that the Plaintiff's Motion for Summary Judgment is granted. Pursuant to 11 U.S.C. § 523(a)(2)(A), the $235, 609.50 debt owed, jointly and severally, by the Defendants Nathaniel Harrell, Jr., and Valerie Harrell to the FTC is not dischargeable.

AND IT IS SO ORDERED.

John E. Waites
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
April 22, 1999.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the District of South Carolina hereby certifies that a copy of the document on which this stamp appears was mailed on the date listed below to:

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DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

JUDY G. SMITH

Deputy Clerk

UST
Stringer
Couillou
Bailey
Judex
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