

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

Senate Committee on
Agriculture and
Environmental
Resources
(SC-AER)

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

- Appointments ... Appt
-
- Clearinghouse Rules ... CRule
-
- Committee Hearings ... CH
-
- Committee Reports ... CR
-
- Executive Sessions ... ES
-
- Hearing Records ... HR
- 97hr_ab0329_pt02
- Miscellaneous ... Misc
-
- Record of Comm. Proceedings ... RCP
-



State of Wisconsin
Department of Financial Institutions

Tommy G. Thompson, **Governor**

Richard L. Dean, **Secretary**

February 17, 1998

FEB 23 1998

The Honorable Alice Clausing
Wisconsin Senate
State Capitol
Madison, WI 53702

Re: Complaints by Farmers

Dear Senator Clausing:

This letter responds to your February 5, 1998 letter in which you asked for "any records in our possession relating to complaints by farmers regarding unfair debt collection practices by creditors and other violations of the Wisconsin Consumer Act."

This Department categorizes complaints by:

- 1) the type of business that is the subject of the complaint;
- 2) the issue involved; and
- 3) the manner in which the complaint was resolved.

We do not categorize complaints by the type of complainant. Therefore we cannot determine how many complaints we have received from farmers. In addition, many agricultural credit transactions are in excess of \$25,000 and therefore exempt from the Wisconsin Consumer Act, pursuant to §421.202(6), Wis. Stats.

Nevertheless, we searched our records for complaints with a business type of "agricultural" (a category generally made up of farm co-operatives). The search by that identifier produced five records or complaints since January, 1994. Copies of those five complaints are enclosed.

If there is any further information which we can provide you on this issue please do not hesitate to contact me.

Sincerely,

Richard L. Dean
Secretary
Department of Financial Institutions



2/16/98

WCA File Summary

9:14 am

INDEX#: 86120
RESPONDENT: Cloverbelt Cooperative Services

Page 1

PO BOX: 1327
STREET: 1202 N First Street
CITY: Wausau STATE: WI ZIP: 54401

WCA:	Y	TYPE:	100	LOGGED:	10/01/96
C/I/V:	V	ISSUE:	201	WRITTEN:	10/16/96
EXAMINER:	PCR	RESOLUTION:	310	CLOSED:	10/16/96
		REFUND:			

SUMMARY: 86120 A collection fee was added to a co-op bill sent to a collection agency. We informed the attorney that the charge was not permitted.

ASCHENBRENER, WOODS, LAMIA & SCHMID, S.C.

ATTORNEYS AT LAW
208 W. GREEN BAY STREET
SHAWANO, WISCONSIN 54166
WITTENBERG OFFICE



Phone: (715) 526-3191
Toll Free: (800) 527-3191
FAX: (715) 524-3526

DANIEL F. ASCHENBRENER
J. EDISON WOODS, JR.
ALAN J. LAMIA
TIMOTHY J. SCHMID

THOMAS R. MARLIER
CHARLES A. PUTZER

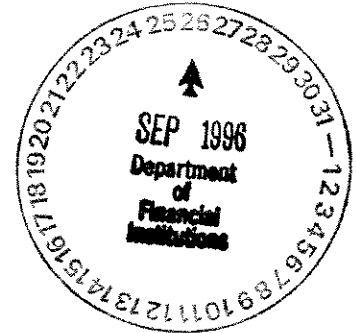
STEVEN E. ASCHENBRENER, Retired

VINAL STREET,
WITTENBERG, WI 54499
(715) 253-6321
HOURS:
Wed. and Fri., 9:00 - 4:00

September 23, 1996

State of Wisconsin
Banking Commissioner
101 East Wilson Street
Madison, Wisconsin 53703

Re: David G. Jahnke
N8386 Regina Road
Bowler, Wisconsin 54416



Dear Sir/Madam:

I represent the above individual on his unpaid open-end credit transaction with Cloverbelt Cooperative Services of Wausau. My client is a local farmer having a business located in Shawano County.

The 1996 Winter was very difficult on my client. He was placed in a position where he did not have enough feed for his animals and he had to buy feed and had to charge it from Cloverbelt Cooperative Services. He has done business with Cloverbelt and has always attempted to pay his bills on time, but the present business climate for farmers does not permit him to do so.

He received an invoice from Cloverbelt Cooperative Services on **August 22, 1996** showing an unpaid balance of **\$1,405.73**. Mr. Jahnke was not able to pay it in one (1) lump sum.

Cloverbelt referred the bill for collection to Nationwide Recovery Systems out of Dallas, Texas. Once they received the bill, it increased by **\$468.53**, making the bill **\$1,874.26**. See telecopy to me dated **September 9, 1996**. My client was perplexed and he came to see me.

I reviewed Chapter 422 of the Consumer Code and more particularly 422.411(1) and 422.413(1). The extra **\$468.53** is obviously some type of a collection or attorney's fees. I reviewed my client's charge account agreement with Cloverbelt (see copy attached). I do not see anything in it which would allow actual attorney's fees to be passed on to my client by contract which would also be contrary to Chapter 422 of the Wisconsin Statutes.

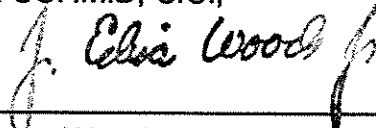
September 19, 1996
Page Two

As I look at Chapter 425 and more particularly 425.305, it is my belief Nationwide Recover Systems has violated Chapter 422 of the Wisconsin Statutes and my client would have the right to avail himself to the protection afforded him under 425.305, both (1) and (2). Please review the enclosures to determine whether or not you agree with me.

Thanking you in advance for your anticipated cooperation, I remain

Very truly yours,

ASCHENBRENER, WOODS,
LAMIA & SCHMID, S.C.,

By  _____
J. Edison Woods, Jr.

JEW:djs

Enc.

cc: Mr. David G. Jahnke

NRS & ASSOCIATES

214-732-9311

TELECOPY

TO: J Edison Woods

DATE: 9-9-96

ATTN: _____

FROM: Paul Rogers

FAX: 214-732-9320

NO. OF PAGES SENDING

1 ()
(INCLUDING THIS ONE)

Balance \$ 1,874.26

REF: David G Jahnke vs. Cloverbelt CO-OP

Invoice Bal \$ 1405.73, Fees = \$ 468.53 - collection Fees

Paul Rogers

214-732-9311

2550 MIDWAY RD STE 200 CARROLLTON, TX 75006

Wittenberg Feed.

363-231



CLOVERBELT COOPERATIVE SERVICES

1202 NORTH FIRST STREET • P.O. BOX 1327 WAUSAU, WISCONSIN • PHONE A/C 715-845-7351

363231 DAVID G JAHNKE RT. 1 BOX 155 BOWLER WI 54416

7351 - LAWN & PET 358-8800 • MERRILL FEED 538-8544

INITIAL PURPOSE STATEMENT ACCOUNT AGREEMENT • FAIR BILLING NOTICE

DAVID G JAHNKE RT. 1 BOX 155 BOWLER WI 54416

8/2/94

Birthdate 6/19/38

Present Street Address: Rt Box 155 Years there: 56

City: Bowler State: WI Zip: 54416 Tel: 719-793-422

Social Security #: 393-38-1741 Driver's License #: J-520-1473-8219-C

Previous Street Address: NONE Years there: -

City: State: Zip: Tel: NONE

Present Employer: SELF (FARM) Years there: 10 Tel: NONE

Position or Title: owner/operator Name of Supervisor: -

Employer's Address: SAME

SECTION B - INFORMATION REGARDING JOINT APPLICANT, USER, OR OTHER PARTY

[Use separate sheets if necessary.]

Full Name: NINA Birthdate: 1/1/

Relationship to Applicant (if any): -

Present Street Address: - Years there: -

City: State: Zip: Tel: -

Social Security #: - Driver's License #: -

Present Employer: - Years there: - Tel: -

Position or Title: - Name of Supervisor: -

Employer's Address: -

SECTION C

COMPLETE THIS SECTION IF APPLICANT IS MARRIED AND APPLICANT'S SPOUSE HAS NOT SIGNED THE APPLICATION:

Name and Address of Spouse: Dorothy M. JAHNKE ADDRESS - SAME

I agree that this account will be used in the interest of the marriage or family.

David Jahnke

SECTION D - CREDIT INFORMATION

Please list financial institutions, outstanding open accounts and credit cards.

Table with 5 columns: NAME, ADDRESS, PHONE #, MONTHLY PAYMENT, BALANCE. Rows include Wittenberg Feed, Valley Bank, Mid County Bank, Associated Bank.

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you're... YOU ARE AUTHORIZED TO CHECK MY CREDIT AND EMPLOYMENT HISTORY.

CLOVERBELT COOPERATIVE SERVICES
 1202 N. First Street
 P.O. Box 1327
 Wausau, WI 54402-1327

B-J-L (T3)
 NR_CSUM.PRG
 10/24/94

CLOVERBELT COOPERATIVE SERVICES
 B.J.L. ACCOUNTING SYSTEM

08/22/96
 13:07:21

CUSTOMER STATUS

363231	DAVID G JAHNKE				1,405.73	<= BALANCE
DEPT	BTCH	DATE	TICKET	TRAN	DEBIT	CREDIT
						<u>1,405.73</u>

CURRENT	30-60	60-90	90-180	180-1YR	OVER-1YR
20.77	20.47	20.16	678.97	665.36	

F5 => Print F6 => Cust Summary F7 => View Ticket F9 => Return

B-J-L (T3)
 NR_CSUM.PRG
 10/24/94

CLOVERBELT COOPERATIVE SERVICES
 B.J.L. ACCOUNTING SYSTEM

08/22/96
 13:07:21

CUSTOMER STATUS SUMMARY

Customer: DAVID G JAHNKE
 RT. 1 BOX 155
 BOWLER WI 54416
 Phone: 715/793-4229

Last Check Date/Amt: 03/29/96 240.00
 High Balance Date/Amt: 01/31/96 1,455.36

Credit Limit: 101
 Credit Remaining: -1,304.73

Prepay Balance: 0.00
 Budget Balance: 0.00

Year-to-Date Sales: 883.95
 Previous Year Sales: 3,192.32

Press any key to continue ...

2/16/98

WCA File Summary

9:03 am

INDEX#: 61780
RESPONDENT: Jacobson Farmers Supply Inc

Page 1

PO BOX: 158
STREET:

CITY: Brownsville

STATE: WI ZIP: 53006

WCA:	Y	TYPE:	100	LOGGED:	5/09/95
C/I/V:	C	ISSUE:	253 286	WRITTEN:	5/12/95
EXAMINER:	KPH	RESOLUTION:	309	CLOSED:	7/28/95
		REFUND:			

SUMMARY: 61780 Cs atty reported that R had obtained a default judgment against C and had included 18% APR on an open-end charge account without providing proper disclosures or obtaining Cs signature. Rs atty responded by stating that C had received the disclosure statement showing disclosures, chose not to sign it, and did not refute the 18% during the court proceedings. We informed Cs atty of our interpretation of S422.305(1) Stats, and also informed him that we do not have the authority to dispute a court decision.

Fortune Law Office, S.C.

Mike P. Fortune admitted to Bar in Wisconsin and Florida

Telephone:
(414) 929-6599

101 Camelot Drive, Suite One
P.O. Box 589
Fond du Lac, Wisconsin 54936-0589

Facsimile:
(414) 929-8726

May 4, 1995

MAY 5 1995

41780

Mr. Paul Egide
Banking Commission
P.O. Box 7876
Madison, WI 53707-7876

Dear Mr. Egide:

This will confirm our telephone conference of Wednesday, May 3, 1995.

Please be advised that I represent Elmer Zimdahl, Jr. who is engaged in the farming business in Campbellsport, Fond du Lac County, Wisconsin.

While engaged in the farming business, my client purchased farm supplies and feed from Jacobson Farmers Supply, Inc., P.O. Box 158, Brownsville, WI 53006.

My client never entered into a contract or any type of written agreement with Jacobson relative to the interest which was to be charged on the open account arrangement of the parties.

Notwithstanding the fact that the parties did not have an agreement before the open account transaction was consummated, Jacobson charged interest at the rate of 1 1/2% per month for all amounts which were not paid within said 30 day period. I suspect that Jacobson has been charging its other customers on the same basis even though it has no written agreement with its other customers consenting to the interest being charged at the rate of 1 1/2% per month. As you are aware, the case of Severson Agri-Service, Inc. v. Lander, 172 Wis. 2d 269, 273-4, 493 N.W. 2d 23 (Ct. App. 1992) specifically held that Section 422.302(2), Wis. Stats., requires that when a creditor and a customer establish an open-end credit account, all information required by subsection must be disclosed before the transaction is consummated. Under sec. 422.308(1) and (2), Wis. Stats, the required disclosures for entering into open-end credit accounts includes all interest rates and charges and fees which may be levied on the account. Jacobson never provided my client with this information, including the interest rate to be charged on said open account, until after the account was opened by setting forth the interest rate which would be charged on the

Mr. Paul Egide
Re: Elmer Zimdahl, Jr./Jacobson Farmers
Supply, Inc.
May 4, 1995

Page 2

invoices sent by Jacobson to its customers. Because such notification is untimely under secs. 422.302(2) and 422.308(1) and (2), enforcement of Jacobson's interest claim is barred by sec. 425.306, Wis. Stats.

As set forth in the Severson case, therefore, interest is to be recalculated at 5% annually under sec. 138.04, Wis. Stats.

I suspect that Jacobson has engaged in this practice with all of its customers, and in all probability, its customers who were required to pay interest at 1 1/2% per month should be refunded any amount in excess of the 5%.

I would appreciate your investigating this matter and keeping me advised as to the status of your investigation. If you need any additional information from me or my client, please do not hesitate to contact me.

Very truly yours,



MIKE P. FORTUNE

MPF:mjz
cc: Mr. Elmer Zimdahl, Jr.

Summary

Farmer (Lander) vs Coop (Severson)

Appeals

Court - stated Coop could ^{not} charge 24% interest on open-end credit because Coop failed to comply with:

422.302(2) - shall disclose of all info required by subchp before consummation

422.308(1) - requires open-end disclosures (APR etc)

422.308(2) - basically same as above, except application is not required

Coop could only charge 5%/yr

Trial court - (which was overturned by Appeals Court) stated 24% was ok because monthly notices became contract because Farmer did not object.

Appeal Court said because disclosures were not made before consummation, interest more than 5%/yr could not be assessed

Appeal Court said customers (Farmers) are not required to sign an agreement (OCB disagrees) but only to give disclosures. (See Part III of Decision)

OCB + Footville decision says customers must sign an agreement

Fortune Law Office, S.C.

Mike P. Fortune admitted to Bar in Wisconsin and Florida

Telephone:
(414) 929-6599

101 Camelot Drive, Suite One
P.O. Box 589
Fond du Lac, Wisconsin 54936-0589

Facsimile:
(414) 929-8726

June 21, 1995

22

Ms. Kathleen Hanna
Office of Commissioner of Banking
P.O. Box 7876
Madison, WI 53707-7876

Dear Ms. Hanna:

Re: Jacobson Farmers Supply
Open-End Credit Account
OCB File #61780

I received a copy of your letter dated May 12, 1995, to Harry A. Jacobson of Jacobson Farmers Supply. As I had previously indicated, I represent Elmer and Christine Zimdahl who had been charged 18% per year on an open-end customer account even though they had not received any disclosure of the credit terms prior to the commencement of the open end arrangement.

Jacobson Farmers Supply, Inc. initiated a lawsuit against my clients and a default judgment was entered against my clients prior to my having represented them. The amount of the judgment was based on the interest rate of 18% per annum and, therefore, certainly should be voidable.

Would you please advise as to the status of this matter because if it can be resolved it would eliminate my petitioning the Court to have it reviewed and re-opened based upon the invalidity of the judgment.

Very truly yours,


MIKE P. FORTUNE

MPF:mjz

AVERBECK & HAMMER, S.C.

ATTORNEYS AT LAW

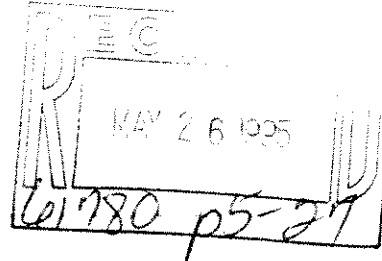
104 SOUTH MAIN ST., SUITE 611
P.O. Box 1577
FOND DU LAC, WISCONSIN 54936-1577
(414) 923-2220

CHARLES W. AVERBECK
RONALD P. HAMMER

FAX: (414) 923-2557
GEORGE J. LAIRD
(1950 - 1981)

May 25, 1995

Ms. Kathleen Hanna
State of Wisconsin
Office of the Commissioner
of Banking
P.O. Box 7876
Madison, WI 53707-7876



RE: Open-End Credit Accounts
OCB File #61780

Dear Ms. Hanna:

Our client Jacobson Farmers Supply, Inc. has referred your letter of May 12, 1995, relating to the above referenced file to us for response.

Jacobson Farmers Supply, Inc. has been aware for many years of the requirement to supply certain information and obtain written agreements to pay interest from the customers under the Wisconsin Consumer Act. Since the mid-1980's, Jacobson Farmers Supply, Inc. has been using a charge account agreement with its customers. I am enclosing a copy of this charge account agreement for your information and review. You will note that, as indicated at the bottom of the form, the format was prepared by the Wisconsin Feed, Seed and Farm Supply Association. It is our understanding that the Association obtained an opinion from your office that this agreement complied with the requirements of the Wisconsin Consumer Act before distributing it to its various members. We believe that the enclosed charge account agreement complies with the requirements of §422.302(3), Stats.

In your letter, you also cited the requirements of §422.308(1) Stats. relating to notice to the customer prior to consummation of the credit agreement. It is my understanding that these requirements apply in two situations. The first is when an application is taken from the customer before entering into the credit agreement, and the second is when no application is taken but the customer is given the opportunity to enter into the open-end credit plan while present on the merchant's premises.

Jacobson Farmers Supply, Inc. does not use an application with its customers, and it has not been giving a written notice to its customers of the information required in §422.308(1) Stats. aside from the information contained in the charge account agreement itself.

In the majority of cases, Jacobson Farmers Supply, Inc. has mailed the charge account agreement to the customer who then signs it at his or her home or business establishment and mails it back. In other cases, the agreement is taken to the customer's farm with the first delivery and signed by the customer at his or her farm. In a small minority of cases, customers have signed these agreements at the business establishments of Jacobson Farmers Supply, Inc.


We are of the opinion that the notice requirements of §422.308 Stats. apply only in this last circumstance, that is when the customer signs the charge account agreement on the premises of Jacobson Farmers Supply, Inc. I would appreciate the benefit of your opinion on that point also. We are also of the opinion that the charge account agreement itself serves as the notice required under §422.308(1) Stats. when the customer signs at the premises of Jacobson Farmers Supply, Inc., because the charge account agreement contains all of the information required by the cited statute. I would also appreciate it if you could furnish us with the Commissioner's opinion on that point.

I can assure you that Jacobson Farmers Supply, Inc. has expended considerable time, effort and resources over the years in attempting to comply in all respects with the requirements of the Wisconsin Consumer Act, and that it takes its obligations under the Act very seriously. If after reviewing our situation, you feel that changes need to be made in our procedures, I can assure you that we will comply immediately.

I look forward to your response.

Very truly yours,

AVERBECK & HAMMER, S.C.



Charles W. Averbeck

CWA/lb
c Harry A. Jacobson
Enc.

CHARGE ACCOUNT AGREEMENT

I agree that the following terms will govern any purchases made or authorized by me which are charged to this account:

1. I will pay the cash price (including taxes) of goods charged to this account together with applicable FINANCE CHARGES.
2. The FINANCE CHARGE shall be determined by applying a periodic rate of 1 1/2% per month (ANNUAL PERCENTAGE RATE is 18%).
3. *Balance on which FINANCE CHARGE is Computed.* The FINANCE CHARGE will be computed upon the adjusted balance of the account which shall be the previous balance at the beginning of the billing cycle less all payments, credits and refunds during the billing cycle.
4. *Minimum Amount Due.* Within 25 days of the closing date I will pay the new balance or minimum amount due which shall be the greater of \$100 or 25% of the previous balance. If the new balance is less than the \$100 minimum, the minimum amount due shall be the new balance. If I pay the new balance within 25 days of the closing date I will not be assessed a finance charge in the succeeding billing cycle.
5. *Default.* If I default by failing to pay the minimum amount due when due on two occasions within any twelve month period, and I do not cure the default within 15 days of written notice of default in accordance with applicable law, my entire balance may, at your option, become due and payable. Your waiver of any default shall not operate as a waiver of any other default.
6. *Application of Payments.* Each payment shall be applied first to unpaid FINANCE CHARGES; then, as to merchandise and services purchased on different dates, the first purchased shall be deemed the first paid; as to merchandise and services purchased on the same date, the lowest priced shall be deemed the first paid.
7. All parties agree that this account is governed by the provisions of the Wisconsin Consumer Act, as amended, and the creditor may amend the terms of this account upon notice to the customer in accordance with the applicable law.

DATED _____

Accepted:

JACOBSON FARMERS SUPPLY

Customer's Signature

By _____
Creditor

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

(This form a service of Wis. Feed, Seed & Farm Supply Assn.)

CHARGE ACCOUNT AGREEMENT

I agree that the following terms will govern any purchases made or authorized by me which are charged to this account:

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2. The FINANCE CHARGE shall be determined by applying a periodic rate of 1 1/2% per month (ANNUAL PERCENTAGE RATE is 18%).
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DATED _____

Accepted:

JAGOBSON FARMERS SUPPLY

By _____

Creditor

Customer's Signature

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(This form a service of Wis. Feed, Seed & Farm Supply Assn.)

Tommy G. Thompson
Governor



Richard L. Dean
Commissioner

James O. Huff
Deputy Commissioner

State of Wisconsin • Office of Commissioner of Banking

101 East Wilson Street • 5th Floor • PO Box 7876 • Madison, Wisconsin 53707-7876 • (608) 266-1621 • FAX (608) 267-6889

July 28, 1995

Mike P. Fortune, Attorney
Fortune Law Office, S.C.
101 Camelot Drive, Suite 1
P.O. Box 589
Fond du Lac, WI 54936-0589

Re: Jacobson Farmers Supply
OCB File #61780

Dear Mr. Fortune:

This letter is to inform you that the complaint you filed on behalf of your client, Elmer Zimdahl, Jr. is now closed. A copy of the reply we received from the attorney for Jacobson is attached.

It appears that Mr. Zimdahl did receive the original account agreement from Jacobson, but chose not to sign it. Mr. Zimdahl charged against the account for several years and did receive monthly statements showing the applicable finance charge.

While it is our interpretation of §422.305(1), Stats., that to be obligated in a consumer credit transaction, the customer must sign the writing evidencing the obligation, the Court of Appeals, District IV, in Severson Agri-Service v. Lander, No. 92-1277-FT, ruled that the Section applies only to guarantors. In any event, this Office is not in a position to dispute the validity of the default judgment obtained against your client.

If you feel this matter is of significant importance, we can only suggest that you take steps to dispute the validity of the decision on your client's behalf.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Kathleen Hanna'.

Kathleen Hanna, Consumer Aide
Consumer Affairs

KPH:kph
Enclosure

cc: Charles W. Averbeck, Attorney

Tommy G. Thompson
Governor



Richard L. Dean
Commissioner

James O. Huff
Deputy Commissioner

State of Wisconsin • Office of Commissioner of Banking

101 East Wilson Street • 5th Floor • PO Box 7876 • Madison, Wisconsin 53707-7876 • (608) 266-1621 • FAX (608) 267-6889

May 12, 1995

Harry A. Jacobson
Jacobson Farmers Supply
P.O. Box 158
Brownsville, WI 53006

Re: Open-End Credit Accounts
OCB File #61780

Dear Mr. Jacobson:

This Office has received a report alleging that your company is assessing a finance charge in the amount of 1.5% monthly (18% per year) on open-end customer accounts without giving proper written disclosure of the credit terms prior to consummation of the credit agreement as required by §422.308(1), Stats.

The report also alleges that your company does not provide a written agreement which is signed by the customer to obligate them to the terms of the agreement before payment is due as required by §422.302(3), Stats. Copies of the cited statutes are enclosed.

Please respond to these allegations within 15 days. Your cooperation is appreciated.

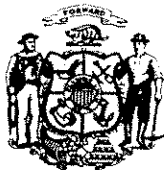
Sincerely,

A handwritten signature in cursive script, appearing to read 'Kathleen Hanna'.

Kathleen Hanna, Consumer Aide
Consumer Affairs

KPH:kph
Enclosure

Tommy G. Thompson
Governor



Richard L. Dean
Commissioner

James O. Huff
Deputy Commissioner

State of Wisconsin • Office of Commissioner of Banking

101 East Wilson Street • 5th Floor • PO Box 7876 • Madison, Wisconsin 53707-7876 • (608) 266-1621 • FAX (608) 267-6889

June 29, 1995

Charles W. Averbeck
Averbeck & Hammer, S.C.
104 South Main Street, #611
P.O. Box 1577
Fond du Lac, WI 54936-1577

Re: Jacobson Farmers Supply, Inc.
OCB File #61780

Dear Mr. Averbeck:

Thank you for your May 25, 1995 reply to our letter and the copy of the charge account agreement used by Jacobson Farmers Supply, Inc.

My initial letter was in relation to a report we received from attorney Mike Fortune, who represents Elmer Zimdahl, Jr. Mr. Fortune stated that his client did not receive or sign the charge account agreement Jacobson Farmers Supply, Inc. uses in credit transactions.

Jacobson Farmers Supply, Inc. obtained a judgment on the unpaid balance owed by Mr. Zimdahl in an amount including a finance charge at the rate of 18% per year. The attorney contends that the finance charge should be reduced to 5% since his client was not notified of the finance charge when the account was opened.

We would appreciate your response concerning the contention that Mr. Zimdahl did not receive a notice of the charge when the account was opened, and that the rate should be reduced to 5%.

The charge account agreement you sent complies with the requirements of the Wisconsin Consumer Act, however, there have been a number of amendments to the Act since the form was prepared. We are enclosing general information we provide merchants who intend to start an open-end credit plan which your client may find it helpful if he wishes to update his agreement.

With respect to §422.308(1) Stats., regarding the notice given to customers before entering into a credit transaction, we are correcting your interpretation. The information required by that Section must be given to a customer when a written credit application is obtained from the customer or, where there is no written application, the information must be provided if the customer comes into the merchant's establishment to obtain credit. If a merchant does not come to the merchant's establishment to obtain credit, no notice is required.

Averbeck:#61780

June 29, 1995

Page 2 of 2

The information required by §422.308(1) is in addition to the information required to be disclosed in the charge account agreement. While this would appear to be redundant, the statute requires the information to be provided in both places. Your client is in violation of the Act if the information is not provided in those instances where the customer signs the agreement on your client's premises. We request an assurance that a chart, such as the example in Exhibit 1 of the enclosures, will be given to the customer where applicable.

We also question whether your client provides the "tattletale notice" required by §766.56(3)(b), Stats., when only one spouse applies for credit. Page 3 of the enclosure explains the necessity to provide that information.

Please respond to the issues in this letter within 15 days. Thank you for your time and cooperation.

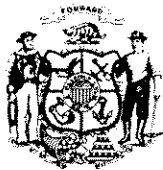
Sincerely,



Kathleen Hanna
Consumer Aide

KPH/PCR:kph
Enclosures

Tommy G. Thompson
Governor



Richard L. Dean
Commissioner

James O. Huff
Deputy Commissioner

State of Wisconsin • Office of Commissioner of Banking

101 East Wilson Street • 5th Floor • PO Box 7876 • Madison, Wisconsin 53707-7876 • (608) 266-1621 • FAX (608) 267-6889

June 22, 1995

Charles W. Averbeck
Averbeck & Hammer, S.C.
104 South Main Street, #611
P.O. Box 1577
Fond du Lac, WI 54936-1577

Re: Jacobson Farmers Supply, Inc.
OCB File #61780

Dear Mr. Averbeck:

Thank you for your May 25, 1995 reply to our letter concerning the open end credit agreements of your client, Jacobson Farmers Supply, Inc. We have the following comments.

We understand that: 1) the majority of your client's customers sign the CHARGE ACCOUNT AGREEMENT at their home, either by mail or with a delivery; 2) infrequently the customer will sign the agreement at your client's place of business, and; 3) no "credit application" precedes either 1 or 2.

The agreement has been reviewed, and we have the following comments.

The general form of the agreement is in compliance with §422.302(3), Stats., however, §422.308(1) provides that every open-end credit plan from this state "shall be appropriately divided." EXHIBIT 1 of the sample forms packet enclosed with this letter gives an example showing how the "divisions" may be shown. In either 1 or 2 (above) this form of disclosure must be given to the customer. It ^{could} not be printed directly on the charge account agreement, but ~~must be~~ presented to the customer in addition to the agreement itself when the agreement is signed.

In situations where a married customer signs the charge agreement in the absence of the spouse, the marital property notice required by §766.56(3)(b), Stats., must be given to the nonapplicant spouse in accordance with that Section (enclosed).

Whether a result of 1 or 2, the customer must either receive an exact copy of the document evidencing their obligation to pay; §422.305(1), or a separate instrument explaining the customer's obligation as required by §422.305(1)(a-f), Stats.

Your client may wish to print a separate form showing both the divided disclosure and the marital property "tattletale" notice to be given to each customer.

*and includes etc
Per Tom...
disclosures*

Averbeck:#61780

June 22, 1995

Page 2 of 2

The language in item 7 of the CHARGE ACCOUNT AGREEMENT is outdated. May we suggest that your client substitute that item with the language in item 8 of EXHIBIT 2 of the sample packet.

Your client may wish to use EXHIBIT 2 to create a new charge agreement, however, the notice of billing rights under the signature placement may be excluded, as well as item 7 which refers to security interest.

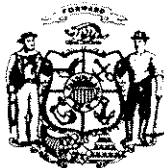
Please respond to the issues in this letter within 15 days. Thank you for your time and cooperation.

Sincerely,

Kathleen Hanna
Consumer Aide

KPH/kph
Enclosures

Tommy G. Thompson
Governor



Richard L. Dean
Commissioner

James O. Huff
Deputy Commissioner

State of Wisconsin • Office of Commissioner of Banking

101 East Wilson Street • 5th Floor • PO Box 7876 • Madison, Wisconsin 53707-7876 • (608) 266-1621 • FAX (608) 267-6889

July 28, 1995

Mike P. Fortune, Attorney
Fortune Law Office, S.C.
101 Camelot Drive, Suite 1
P.O. Box 589
Fond du Lac, WI 54936-0589

Re: Jacobson Farmers Supply
OCB File #61780

Dear Mr. Fortune:

This letter is to inform you that the complaint you filed on behalf of your client, Elmer Zimdahl, Jr. is now closed. A copy of the reply we received from the attorney for Jacobson is attached.

It appears that Mr. Zimdahl did receive the original account agreement from Jacobson, but chose not to sign it. Mr. Zimdahl charged against the account for several years and did receive monthly statements showing the applicable finance charge.

While it is our interpretation of §422.305(1), Stats., that to be obligated in a consumer credit transaction, the customer must sign the writing evidencing the obligation, the Court of Appeals, District IV, in Severson Agri-Service v. Lander, No. 92-1277-FT, ruled that the Section applies only to guarantors. In any event, this Office is not in a position to dispute the validity of the default judgment obtained against your client.

If you feel this matter is of significant importance, we can only suggest that you take steps to dispute the validity of the decision on your client's behalf.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Kathleen Hanna'.

Kathleen Hanna, Consumer Aide
Consumer Affairs

KPH:kph
Enclosure

cc: Charles W. Averbek, Attorney

AVERBECK & HAMMER, S.C.

ATTORNEYS AT LAW

104 SOUTH MAIN ST., SUITE 611
P.O. Box 1577
FOND DU LAC, WISCONSIN 54936-1577
(414) 923-2220

61780 p 7-15

CHARLES W. AVERBECK
RONALD P. HAMMER

FAX: (414) 923-2557
GEORGE J. LAIRD
(1950 - 1981)

July 18, 1995

Ms. Kathleen Hanna
State of Wisconsin
Office of the Commissioner
of Banking
P.O. Box 7876
Madison, WI 53707-7876

RE: Jacobson Farmers Supply, Inc.
OCB File #61780

Dear Ms. Hanna:

Thank you for your letter of June 29, 1995. I have reviewed it with my client and have the following information for you.

With respect to the Elmer Zimdahl, Jr. account, in your letter you say that you were told by Mr. Fortune that his client "did not receive or sign the charge account agreement Jacobson Farmers Supply, Inc. uses in credit transactions." This is only partially correct. Mr. Zimdahl did receive this agreement. It was sent to him in the mail for his signature. However, he refused to sign the agreement. He nevertheless did business with Jacobson Farmers Supply, Inc. for a period of years after receiving this agreement and received regularly monthly statements showing the finance charge computed at an annual percentage rate of 18%. During this time, he never raised any objection to the assessment of those finance charges.

I am also enclosing for your information a copy of the judgment that was rendered against Mr. and Mrs. Zimdahl on February 18, 1991. Please note that this was a default judgment entered over four years ago. Mr. Zimdahl never raised any objection or defense in that action and merely let the matter proceed by default.

On several occasions, Mr. Jacobson has spoken with Mr. Zimdahl about his account and has offered to take a very substantial reduction of the judgment amount in exchange for payment. However Mr. Zimdahl has never taken him up on any of these offers. While we recognize that there has been technical noncompliance with the consumer act notice and charge account agreement requirements in this case, we nevertheless believe that Mr. Zimdahl was very well aware of the terms of his credit arrangement with Jacobson Farmers Supply and acquiesced in it over a period of many years. Jacobson Farmers Supply remains willing to substantially discount its judgment in exchange for payment by Mr. Zimdahl.

We are in agreement with your interpretation of Wis. Stat. 422.308(1). You have the assurance of Jacobson Farmer Supply, Inc. that it will provide a separate notice at the time it signs the charge account agreements with its customers similar to that included in Exhibit 1 of the materials that you provided with your letter of June 29, 1995.

Similarly, you may also be assured that a "tattletale notice" required by Wis. Stat. 766.56(3)(b) will be sent to each customer's spouse when only one spouse signs a credit application.

Very truly yours,

AVERBECK & HAMMER, S.C.

A handwritten signature in cursive script, appearing to read "Charles W. Averbeck".

Charles W. Averbeck

CWA/lb
Enc.
c Harry Jacobson