IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

ALICIA GOMEZ	:	
	:	
Plaintiff,	:	
	:	**Case No. 308418-V**
v.	:	
JACKSON HEWITT INC.,	:	
	:	
Defendant.	:	

MEMORANDUM AND ORDER

The two-count complaint in this case, a putative class action, was filed on February 4, 2009, by plaintiff, Alicia Gomez ("Gomez"), against defendant Jackson Hewitt, Incorporated ("Jackson Hewitt"). The complaint alleged a violation of the Credit Services Business Act ("CSBA" or the "Act") and a violation of the Consumer Protection Act ("CPA") arising out of Jackson Hewitt's arrangement of Refund Anticipation Loans ("RALs") on behalf of Gomez and other Maryland customers of its tax preparation services.

On March 18, 2009, Jackson Hewitt moved to dismiss the complaint for failure to state a claim (DE #7); Gomez filed her opposition on April 20, 2009 (DE #21). Jackson Hewitt filed a reply to the opposition on May 8, 2009 (DE #33), and Gomez filed a sur-reply on May 22, 2009 (DE #43).

The court held a hearing on June 18, 2009, on the motion to dismiss. At the conclusion of the hearing, the court took the motion under advisement. All submissions have been reviewed, and the motion is now ripe for decision. No further hearing is necessary. *Phillips v. Venker*, 316 Md. 212, 219 & n. 2 (1989).

I. PRELIMINARY PROCEDURAL MATTER

This lawsuit was filed as a putative class action. (Complaint at ¶¶ 28-39). Maryland Rule 2-231(c) directs the court to "determine by order as soon as practicable after commencement of the action whether it is to be maintained as a class action." Ordinarily, questions about the maintainability of a lawsuit as a class action should be determined before any substantive issue, especially when a motion for class certification is pending before the court. *See Kirkpatrick v. Gilchrist*, 56 Md. App. 242, 248-50 (1983). However, no motion for class certification is pending in this case, and, at the scheduling hearing on May 8, 2009, both sides requested the court to rule on Jackson Hewitt's motion to dismiss before considering the question of class certification.

The Court of Appeals has not spoken directly to this procedural question in any of its decision on class actions. However, in *Piven v. Comcast Corp.*, 397 Md. 278, 282 (2007), the Court affirmed the circuit court's dismissal of a putative class action, for improper venue, before any hearing on class certification. *See also Creveling v. Government Employees Ins. Co.*, 376 Md. 72, 82 (2003), in which the circuit court denied a motion to dismiss before considering, and denying, a motion for class certification.

No motion for class certification has been filed in this case, and an early determination of whether the complaint does, or does not, state a viable cause of action would promote the efficient conduct of this litigation. If there is no viable cause of action, then there is no reason for the parties to engage in the expensive and time consuming process of determining whether a class should be certified. In Maryland, "there is no statutory or constitutional right to pursue by way of a class action the various claims that are the subject" of the plaintiff's complaint. *Cutler v. Wal-Mart Stores, Inc.*,

175 Md. App. 177, 188 (2007). To the contrary, Maryland Rule 2-231 is simply "a procedural device, created by the judiciary's adoption of a court rule to facilitate management of multiple similar claims." *Id*.

The court concludes that, in the proper case, it may decide a motion to dismiss or a motion for summary judgment before considering class certification. Such a procedure both is permissible under and consistent with the purposes of Maryland Rule 2-231. Such an approach also is consistent with the federal decisions under Federal Rule 23. *See Cowan v. Bank United of Texas*, 70 F.3d 937, 941 (7th Cir. 1995); *Wright v. Schock*, 742 F.2d 541, 543 (9th Cir. 1984); *Christensen et al. v. Kiewit-Murdock Investment Corp., et al.*, 815 F.2d 206, 214 (2d Cir. 1987); MANUAL FOR COMPLEX LITIGATION § 21.11 (4th ed. 2004). Since Maryland Rule 2-231 was modeled after the 1966 version of Federal Rule 23, *see Philip Morris USA, Inc. v. Christensen*, 394 Md. 227, 253 (2006), federal decisions in this area are persuasive authority. *See* P. NIEMEYER & L. SCHUETT, MARYLAND RULES COMMENTARY 163 (3d ed. 2003).

II. STANDARD OF REVIEW

In considering a motion to dismiss for failure to state a claim, the court "must assume the truth of all well-pleaded relevant and material facts as well as all inferences that reasonably can be drawn therefrom. Dismissal is proper only if the alleged facts fail to state a cause of action." *A.J. DeCoster Co. v. Westinghouse Elec. Corp*., 333 Md. 245, 249 (1994). "[A]ny ambiguity or uncertainty in the allegations bearing on whether the complaint states a cause of action must be construed against the pleader." *Sharrow v. State Farm Mutual*, 306 Md. 754, 768 (1986); *Cf., Berman v. Karvounis*, 308 Md. 259, 263 (1987)("what we consider are allegations of fact and inferences deducible from them,

not merely conclusory charges."). In making its decision, "the court must view all well-pleaded facts and the inferences from those facts in a light most favorable to the plaintiff." *Lloyd v. General Motors Corp.*, 397 Md. 108, 122 (2007); *see also Hrehorovich Harbor Hospital Center, Inc.*, 93 Md. App. 772, 781 (1992). In short, dismissal is proper "only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff." *Arffa v. Martino*, 404 Md. 364, 381 (2008) (*quoting McNack v. State*, 398 Md. 378, 388 (2007)).

Under Maryland Rule 2-303(b), a complaint must state those facts "necessary to show the pleader's entitlement to relief." Unlike Rule 8(a) of the Federal Rules of Civil Procedure, Maryland retains vestiges of code pleading in that a plaintiff must allege sufficient facts to constitute a cause of action. *Ver Brycke v. Ver Brycke*, 379 Md. 669, 696-97 (2004); *Scott v. Jenkins*, 345 Md. 21, 27-28 (1997). Consequently, "a pleading that fails to allege facts, or that fails to demand a particular form of relief, fails to fulfill the purposes of pleading." P. NIEMEYER & L. SCHUETT, MARYLAND RULES COMMENTARY at 180.

Whether to grant a motion to dismiss "depends solely on the adequacy of the plaintiff's complaint." *Green v. H & R Block, Inc.*, 355 Md. 488, 501 (1999). The court's review of the pending motion in this case will be cabined to the four corners of the complaint, the documents appended to the complaint as exhibits and "those facts that may fairly be inferred from the matters expressly alleged." *Bennett Heating & Air Conditioning v. NationsBank of Maryland*, 342 Md. 169, 174 (1996). Because determination of the motion to dismiss requires a review of the substantive law applicable

to the claims plead, the court must review the substantive law on which the plaintiff's claims is based. *See Green*, 355 Md. at 502.

In support of its motion to dismiss, Jackson Hewitt appended and cited to documents that were neither referred to nor incorporated by reference in Gomez's complaint. Specifically, Exhibits 1 and 2 to the motion to dismiss are agreements between Jackson Hewitt and Santa Barbara Bank & Trust ("SBBT"), both dated February 24, 2006, which set forth how Jackson Hewitt will be compensated by SBBT, a national bank, when SBBT makes RALs to Jackson Hewitt customers. Gomez contends that the court cannot consider these documents without converting the dismissal motion to a motion for summary judgment under Maryland Rule 2-501. *See* Maryland Rule 2-322(c). The court agrees. These documents were not clearly referred to in Gomez's complaint at ¶ 15, as Jackson Hewitt claims. This paragraph referred only to Exhibit A of the complaint, which is comprised of Gomez's RAL application, the loan agreement with SBBT and a Truth in Lending Act disclosure.

In contrast with some states, Maryland has no rule allowing the party moving to dismiss to "complete" a pleading by referring to other documents not cited to in the complaint, *see* Maryland Rule 2-303(d), even if they ultimately may be germane to the plaintiff's claim. *Hrehorovich v. Harbor Hospital*, 93 Md. App. at 781-89; *Hudson v. Prime Retail, Inc*., 2004 MDBT 2, 2004 Md. Cir. Ct. Lexis 26 (Circuit Court for Baltimore City, April 1, 2004); *see also Muthukumarana v. Montgomery County*, 370 Md. 447, 474-75 (2002). As a consequence, the court will not consider these exhibits on a motion to dismiss. *See Smith v. Danielczyk*, 400 Md. 98, 104-05 (2007); *Green*, 355 Md. at 501-02. The court will, however, consider all of the documents referred to in the

complaint and take cognizance of the extent to which, if any, their terms are inconsistent with the complaint's allegations.

III. THE COMPLAINT

As indicated above, for purposes of Jackson Hewitt's motion to dismiss, the court will assume the truth of all well-pleaded factual allegations in the complaint and consider the documents Gomez referred to in and appended to the complaint. The court credits facts pleaded in the complaint and reasonable inferences from those facts but not "conclusory charges that are not factual allegations." *Morris v. Osmose Wood Preserving*, 340 Md. 519, 531 (1995).

Plaintiff, Alicia Gomez, is an individual who resides in the State of Maryland. (Complaint, ¶ 2). On February 6, 2007, at Gomez's request, Jackson Hewitt prepared her 2006 federal income tax return. (Complaint, ¶ 10). On that same day, Gomez entered into a Refund Anticipation Loan agreement with SBBT. (Complaint, ¶ 11). The plaintiff elected to use part of her RAL from SBBT to pay Jackson Hewitt's tax preparation fee of $284.00.

Gomez claims that Jackson Hewitt receives payment for arranging RALs "on behalf of Maryland consumers without meeting the requirements of Maryland law," (Complaint at ¶ 1). But nowhere in her complaint does not say how such payments are determined or received, or the amount of any such payment. In short, Gomez does not allege in the complaint that she paid Jackson Hewitt to assist her in obtaining a RAL from SBBT.

Instead, Gomez avers that she "*indirectly* paid Jackson Hewitt for arranging this RAL in that the credit that Jackson Hewitt obtained for her included in its principal

amount the cost of obtaining this extension of credit" from SBBT. (Complaint ¶ 13)(emphasis added). To support this allegation, Gomez references the RAL loan application and agreement, which, along with the federal Truth in Lending Act disclosure, constitutes Exhibit A to the complaint. (Complaint, ¶¶ 13 & 14). Gomez also alleges that Jackson Hewitt "received money from the lender SBBT in connection with the extension of credit," again referencing the RAL loan application and agreement. (Complaint, ¶ 15). SBBT's RAL agreement with Gomez, which is attached to the complaint as part of Exhibit A, states that "SBBT will pay compensation to Jackson Hewitt Inc. and an affiliate (collectively 'JIH') in consideration of rights granted by JHI to SBBT and the performance of services by JIH on behalf of SBBT."

Gomez's RAL application says that she expected a federal tax refund of $2,323, that she has requested a RAL from SBBT, and that the estimated amount of her loan disbursement is $1,950.97, net of loan fees and the $284 tax preparation fee owed to Jackson Hewitt. The loan agreement Gomez entered into with SBBT is clear that it is for a loan in anticipation of her federal tax refund. In addition to Jackson Hewitt's tax preparation fee of $284.00, Gomez agreed to pay SBBT a handling fee of $29.95 and prepaid finance charges of $58.08. These figures appear both in the loan agreement and in the federal Truth in Lending Act disclosure issued to Gomez by SBBT. Jackson Hewitt contends that the documents Gomez referred to and appended to her complaint make it clear that Gomez only paid SBBT for the RAL, not Jackson Hewitt. Jackson Hewitt also contends that Gomez's assertion that she "indirectly" paid it for arranging the RAL is insufficient to bring this transaction within the ambit of the CSBA and, in any event, such an application conflicts with the plain meaning of the statute.

IV. LEGAL ANALYSIS

Maryland's general principles of statutory construction are well settled. The court's goal "is to identify and effectuate the legislative intent underlying the statute." *Department of Health v. Kelly*, 397 Md. 399, 419 (2007). "To ascertain the Legislature's intent, we first examine the plain language of the statute; if the language is unambiguous when construed according to its ordinary meaning, then we will 'give effect to the statute as it is written.'" *Id.* at 419 (quoting in part *Oakland v. Mountain Lake Park*, 392 Md. 301, 316 (2006)).

"If, however, the language is subject to more than one interpretation, or when the language is not clear when it is part of a larger statutory scheme, it is ambiguous, and we endeavor to resolve that ambiguity by looking to the statute's legislative history, case law, and statutory purpose, as well as the structure of the statute." *People's Insur. Counsel Div., et al. v. Allstate Insur. Co., et al.*, 2009 Md. LEXIS 51, *25 (April 15 2009) (*citing Barbre v. Pope*, 402 Md. 157, 173 (2007); *Kelly*, 397 Md. at 419-20, 918 A.2d at 482; *Smack v. Dep't of Health & Mental Hygiene*, 378 Md. 298, 305, 835 A.2d 1175, 1179 (2003)); *see also Deville v. State*, 383 Md. 217, 223 (2004) ("A statute is ambiguous when there are two or more reasonable alternative interpretations of the statute.").

With "statutory interpretation, our primary goal is always 'to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by a particular provision, be it statutory, constitutional or part of the [Maryland] Rules.'" *Doe v. Board of Elections*, 406 Md. 697, 712 (2008) (quoting in part *Barbre*, 402 Md. at 172 (2007)); *see International Association of Fire Fighters v. Mayor & City Council of Cumberland*, 407 Md. 1, 9 (2008). "In divining this intent, a court must read the

language of the law or ordinance in context and in relation to all of its provisions, and additionally, must consider its purpose." *F.D.R. Srour Partnership v. Montgomery County*, 407 Md. 233, 245 (2009). Even if a statute is unambiguous, a court may review the legislative history to confirm its understanding of the statutory language. *See, e.g., Kramer v. Liberty Property*, 408 Md. 1, 18-19 (2009); *Smith v. State*, 399 Md. 565, 578-79 (2007); *Mayor & City Council of Baltimore v. Chase*, 360 Md. 121, 131 (2000).

A. Maryland Credit Services Business Act

The statute central to this case, The Maryland Credit Services Businesses Act, codified as §§ 14-1901 through 14-1916 of the Commercial Law Article, was enacted on May 14, 1987 as 1987 Maryland Laws, Chapter 469. The statute requires that "credit service businesses" obtain a license from the Commissioner of Financial Regulation of the Department of Labor, Licensing & Regulation, obtain a surety bond, and provide "consumers" with certain documents and disclosures including but not limited to the buyer's rights and detachable copies of a notice of cancellation. §§14-902, 14-908, 14-1904 – 14-1906 of the Commercial Law Article.

Only "credit services business" must adhere to these requirements, and Jackson Hewitt maintains that it is not a "credit services business" as defined by § 14-1901(e) of the Commercial Law Article and Gomez is not a "consumer" as defined by § 14-1901(c). A credit services business is defined as follows:

> (1) "Credit services business" means any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform, any of the following services *in return for the payment of money or other valuable consideration*:
>
> (i) Improving a consumer's credit record, history, or rating or establishing a new credit file or record;

(ii) Obtaining an extension of credit for a consumer; or

(iii) Providing advice or assistance to a consumer with regard to either subparagraph (i) or (ii) of this paragraph.

§ 14-1901(e) of the Commercial Law Article (emphasis added). Jackson Hewitt argues that according to the RAL application form and the TILA statement, attached as exhibits to the complaint, Gomez did not purchase any services from Jackson Hewitt with respect to her RAL. Instead, any money that she paid to Jackson Hewitt was solely for the purposes of tax preparation.

Gomez contends that the plain language of the statute covers the transaction described in the complaint because even indirect payments received by Jackson Hewitt from SBBT are legally sufficient to make it a "credit services business." She says that the court must accept as true her allegation that she made a payment to Jackson Hewitt in connection with obtaining credit from SBBT, albeit indirectly, because she said so in her complaint, even if the exhibits attached to the complaint contradict her contentions.

Jackson Hewitt also contends that Gomez is not a "consumer" as defined by the CSBA. Under the statute, a consumer is defined as "any individual who is solicited to purchase or who purchases for personal, family, or household purposes the services of a credit services business." § 14-1901(c) of the Commercial Law Article. Jackson Hewitt says that according to its plain language, the CSBA clearly does not apply to the RAL, which Gomez obtained from SBBT and not Jackson Hewitt. In its view, Gomez is simply not a "cusumer" under the statute because she did not make (and cannot allege that she made) any payments to Jackson Hewitt, or purchase services from Jackson Hewitt, in connection with her obtaining the RAL from SBBT. The only fee she paid to

Jackson Hewitt was for tax preparation services, which she owed regardless of whether or not SBBT granted her the RAL.

According to Gomez, she is a consumer within the meaning of the CSBA, and the statute applies to her RAL, regardless of whether she paid Jackson Hewitt directly, or Jackson Hewitt was paid "indirectly" by SBBT. In her view, the transaction is covered by the CSBA as long as there was some payment, even if indirect, made in connection with her obtaining credit from SBBT.

Gomez buttresses her contentions that Jackson Hewitt is a "credit services business" and that she is a "consumer" by citing an "Advisory Notice" issued by the Commissioner of Financial Regulation of the Maryland Department of Labor, Licensing and Regulation, on May 15, 2008, which says, without any analysis, that RALs are covered by the Act.[1] The "Advisory Notice" issued by the Commissioner on May 15, 2008 attempts to clarify the plain language of the statute; yet, it does not resolve the conflicting interpretations of the definitions for a multitude of reasons. For example, the advisory notice is not a contemporaneous interpretation of the statute, does not disclose the process by which the agency reached its decision, and contains no cogent discussion of why the Act applies "to tax preparers who are compensated in any manner (either by the consumer or the lender) to assist consumers in obtaining RALs from third-party lenders." *See Marriott*, 346 Md. at 445-46; *Baltimore Gas & Electric Co. v. Public Service Commission*, 305 Md. 145, 161-62 (1986). Moreover, as Judge Garbis noted in

[1] The current "advisory" is similar to one issued on January 24, 2005, which stated that any entity that assisted its customers in obtaining RALs is a credit services business under the Act. However, as Judge Garbis noted in *H & R Block Eastern Enterprises, Inc. v. Turnbaugh*, Civil Action No. MJG-07-1822 (July 29, 2008), the Commissioner's positions on this question have been inconsistent. In that case, Judge Garbis assumed, solely for purposes of deciding a preemption issue, that the Act applied to RALs. In no event did Judge Garbis hold that the Act applied to RALs.

Turnbaugh, the Commissioner's views regarding the applicability of the Act to tax preparation firms has been less than consistent. *See Haigley v. Department of Health and Mental Hygiene*, 128 Md. App. 194, 216-18 (1999); *see also Arrington v. Colleen, Inc.*, 2000 U.S. Dist. Lexis 20651 (D. Md. 2000)(Davis, J.).

Gomez also points to several unreported federal trial court decisions that have denied motions to dismiss similar allegations under comparable state statutes. *See, e.g., Hunter v. Jackson Hewitt, Inc.*, 2007 U.S. Dist. Lexis 82549 (S.D. W. Va., November 6, 2007) (West Virginia law); *Brailsford v. Jackson Hewitt, Inc*., No. C-06-00700 (N.D. Cal., May 26, 2006) (minute order). These unreported federal decisions cited by Gomez provide no persuasive analysis of any reasons why this court should read a Maryland statute to cover the transaction in question; hence, they are of little persuasive value. *See Clancy v. King*, 405 Md. 541, 558 & n. 17 (2008). Additionally, the opinion of the Attorney General referenced by Gomez, 79 Op. Atty Gen. 98 (1994) is neither persuasive nor dispositive because it concerns a wholly different factual circumstance and only mentions the Act in passing.

The court is of the view that CL § 14-1901(c) and (e) are ambiguous because the language can be read in a number of different ways. *See Kelly*, 397 Md. at 419-20; *Deville*, 383 Md. at 223. The statute fails to define the term "payment," and the court finds that both Jackson Hewitt's and Gomez's interpretations of the term are plausible. Resorting to the plain language of the statute, therefore, is simply not dispositive of the questions presented in this case. Accordingly, the court will turn to the legislative history of the statute to discern the legislative intent.

B. Legislative History of the Maryland Credit Services Business Act

When reviewing the legislative history, the court may consider "the particular problem or problems the legislature was addressing, and the objectives it sought to obtain." *Sinai Hospital v. Department of Employment*, 309 Md. 28, 40 (1987); *see Davis v. Slater*, 383 Md. 599, 605 (2004); *Heartwood 88, Inc. v. Montgomery County*, 156 Md. App. 333, 359 (2004). The court also may consider "the consequences resulting from one meaning rather than another, and adopt that construction which avoids an illogical or unreasonable result, or one that is inconsistent with common sense." *Claggett v. Maryland Agricultural Land Preservation Foundation*, 182 Md. App. 346, 374 (2008) (quoting *Chesapeake Charter, Inc. v. Anne Arundel County Bd. Of Educ.*, 358 Md. 129, 135 (2000)). When reviewing the legislative history, the fiscal note and other matters in the legislative bill file are helpful aids to statutory construction. *See Reier v. State Department of Assessments and Taxation*, 397 Md. 2, 27-28 (2007); *Robey v. State*, 397 Md. 449, 457-58 (2007); *Claggett v. Maryland Agricultural Land Preservation Foundation*, 182 Md. App. at 384-86.

When construing a statute, the court gives deference to an agency's interpretation of the statute it administers. *Pridgeon v. License Commissioners*, 406 Md. 229, 238 (2008). Nevertheless, it is the court's "prerogative to determine whether the agency's conclusions of law are correct, and to remedy them if they are wrong." *A T & T v. Comptroller*, 405 Md. 83, 93 (2008) (quoting *Schwartz v. Maryland Dept. of Natural Resources*, 385 Md. 534, 554 (2005)). The court's deference to an agency's construction of a statute is neither automatic nor blind. In *Marriott Employees Federal Credit Union v. Motor Vehicle Administration*, 346 Md. 437 (1997), the Court of Appeals set forth a

number of factors to consider when evaluating an agency's interpretation of a statute, including: (1) the duration and consistency of the agency's interpretation; (2) the degree to which the agency's interpretation has been made public; (3) whether the Legislature was aware of the agency's interpretation when it reenacted or amended the statute; (4) the extent to which, if at all, the agency engaged in a reasoned elaboration in formulating its view; (5) the nature of the process through which the agency arrived at its interpretation; and (6) whether the agency's interpretation was the product of adversarial proceedings or formal rules promulgation. *Marriott*, 346 Md. at 445-46. Here, the "Advisory Notice" issued by the Commissioner of Financial Regulation of the Maryland Department of Labor, Licensing and Regulation attempts to include business such as Jackson Hewitt in the definition of "credit services business," but this inclusion is contrary to the legislative purpose of the CSBA.

A review of the circumstances and legislative history surrounding the passage of 1987 Maryland Laws, Chapter 469, as well as the reason why the CSBA was enacted, "provides significant guidance" on the matter of the Legislature's intent. *Glascoe & Jackson v. State*, 408 Md. 231, 237 (2009). It is clear that the legislature never intended to include business such as Jackson Hewitt in the definition of "credit service business;" instead, the statute was enacted to correct the harms of so called "credit repair agencies."

The CSBA originated as House Bill 472. The bill file makes clear that the legislature intended for the CSBA to regulate credit repair agencies. For example, a a Floor Report from the Act's sponsor, Delegate Harrison of the House Committee on Economic Matters explains: "This bill creates a new subtitle to regulate credit services businesses which accept fees for attempting to improve a consumer's credit record, credit

history or rating, obtaining an extension of credit, or providing advice about either."

Delegate Harrison in the same Floor Report details the harms which the bill intended to cure:

> Proponents claim that some credit service businesses, or 'credit repair agencies' have engaged in unfair and deceptive practices. They claim that the agencies frequently cannot deliver the services offered, or the services offered are such that they can be performed by the consumer with little effort. According to the commissioner of consumer credit, there are at least six credit repair agencies operating in this state. The agencies are subject to the consumer protection act, but are not otherwise regulated.

Several letters from supporters of the Bill also help illuminate the harms which the CSBA was enacted to correct. For example, an Investigator with the Office of Consumer Affairs of Montgomery County submitted a letter to the House Economic Matters Committee in support of House Bill 472. In that letter, dated February 25, 1987, the Office of Consumer Affairs highlights the current state of affairs which the legislature sought to remedy:

> In view of the importance of personal credit a new industry has developed – the so-called "Credit Repair Clinics" which would be regulated by this bill. These businesses make promises they cannot keep to those who are unfortunate enough to have lost their credit, often through regrettable unavoidable circumstance. These businesses guarantee to re-establish your credit by using certain strategies and techniques, such as repairing your credit record on file at the Credit Bureau. However, although these firms make tempting guarantees, they often cannot deliver on those guarantees.

The Consumer Credit Association of Greater Washington wrote a letter to Delegate Casper B. Taylor, Jr., then Chair of the House Economic Matters Committee, dated February 27, 2987, urging passage of House Bill 472. The Consumer Credit Association, which "represents all major consumer credit grantors in the suburban Maryland Area," explained the need for the CSBA: "This proposal would regulate for-

profit 'credit repair' clinics. Our members report quite unpleasant experiences in dealing with for-profit businesses of this nature. A consumer who has experienced credit problems in the past is often the unwary victim of promises and gimmicks to restore an individual's credit rating."

TRW, Inc., one of the largest consumer reporting agencies, also wrote in favor of House Bill 427. In a letter to the House Economic Matters Committee, dated February 27, 1987, its Regional Manager of Government Relations wrote: "The spread of credit repair agencies has resulted in mounting criticisms of their advertising and business practices by consumers and government regulators. Frequently, the agencies cannot deliver the services they advertise or promise to buyers and, in many cases, consumers can perform the same services for themselves at little or no cost." TRW continued: "We believe that Maryland law is necessary to help protect consumers from the questionable practices of credit repair agencies that do not properly disclose the services they provide."

House Bill 472 was approved by the General Assembly on May 14, 1987, and became effective on July 1, 1987. The preamble to the Act stated, among other things, that it was for the purpose of providing "certain protections to the consumers of credit services businesses; requiring credit services businesses to provide certain information to customers; [and] establishing certain requirements for contracts between credit services businesses and customers. . . . .." To date, neither the Court of Appeals nor the Court of Special Appeals has construed the reach of the CSBA.

It is manifest that the reason why the General Assembly passed the CSBA was to protect unsuspecting Marylander's from credit repair agencies who offered to "fix" their credit rating, or to obtain loans for the credit impaired customer, in exchange for a fee.

The CSBA simply was neither intended nor designed to cover firms engaged in the business of selling goods or services to their customers, when such goods or services are not aimed at improving one's credit rating. Nor was it intended to cover the extension of credit by a third-party, not privy to the primary transaction, which is ancillary to the customer's purchase of the goods or services provided by the merchant. More persuasive is the reasoning of decisions of the Illinois appellate courts, which have interpreted a similar statute and held that it did not apply to ordinary retail transactions, as opposed to credit repair transactions. *See Midstate Siding and Window Co. v. Rogers*, 789 N.E.2d 1248 (Ill. 2003); *Cannon v. Williams Chevrolet/GEO, Inc*., 794 N.E.2d 843 (Ill. App. 2003); *see also Thele v. Sunrise Chevrolet, Inc*., 2004 U.S. Dist Lexis (N.D. Ill, may 28, 2004).

The plaintiff is this case neither had a contract with Jackson Hewitt in return for credit services nor a contract for the extension of credit. The documents appended to her complaint make it clear that her contract in this regard was with SBBT and that the fee she paid for the extension of credit was paid by her to SBBT. The only fee Gomez was obligated to pay to Jackson Hewitt was the $284.00 she agreed to pay for the preparation of her income tax returns.

RALs may, as Gomez contends, be imprudent or unwise loans. The General Assembly may be able to regulate them, as long as it does not run afoul of the National Bank Act, 12 U.S.C. §§ 21 *et seq*. *See Turnbaugh, supra*. But the legislature did not

intend to do so under the CSBA for the transaction described in her complaint. Her recourse, if any, is not under the CSBA.[2]

Count I will be dismissed for failure to state a claim. Additionally, because relief under count II is dependent upon a cognizable claim under Count I, it will be dismissed as well.

It is SO ORDERED this 18th day of June, 2009.

_____
Ronald B. Rubin, Judge

[2] Gomez has not alleged that SBBT failed to perform under the RAL agreement; only that Jackson Hewitt should be liability for statutory penalties and attorneys' fees under the Act. Hence, it is questionable whether she has suffered any actual damage.