# TENNESSEE
# COLLECTION SERVICE BOARD
# MEETING MINUTES

**DATE:** May 14, 2014

**PLACE:** Davy Crockett Tower – Conference Room 1-B
500 James Robertson Parkway
Nashville, Tennessee

**PRESENT:** Board Members:
Bart Howard, Chairman
Elizabeth Trinkler, Vice-Chairman
Steve Harb
Chip Hellmann

**ABSENT:** Elizabeth Dixon

**PRESENT:** Staff Members:
Chris Whittaker, Assistant General Counsel
Kimberly Whaley, Director of Licensing
Susan Lockhart, Administrative Services Assistant 4

**GUEST:** Damon Romano, Paralegal

**CALL TO ORDER:** Chairman Howard called the meeting to order at 9:30 A.M. and the following business was transacted:

**Roll Call** – Ms. Whaley then called the roll. Four (4) of the five (5) board members were present. Ms. Dixon was absent.

**Notice of Meeting** – Ms. Whaley read the following statement for the record, "This meeting's date, time and location have been noticed on the Tennessee Collection Service Board's website, included as part of this year's meeting calendar since August 16, 2013. Additionally, the agenda for this month's meeting has been posted on the Tennessee Collection Service Board's website since May 9, 2014. This meeting was also noticed on tn.gov's public meeting calendar."

**Agenda** – Mr. Hellmann made a motion to adopt the agenda as modified, seconded by Mr. Harb. The Board then voted unanimously to approve the motion. **MOTION CARRIED.**

**Minutes** – Mr. Hellmann made a motion to approve the minutes of the March 12, 2014 meeting, seconded by Ms. Trinkler. The Board then voted unanimously to approve the motion. **MOTION CARRIED.**

**SUNSHINE LAW PRESENTATION** – This item was moved until later in the meeting after the Legal Report.

## LEGAL REPORT - CHRIS WHITTAKER, ASSISTANT GENERAL COUNSEL

**Presentation of Legal Report** - Mr. Whittaker then presented the following legal report for the Board's consideration:

**1. 2014005221**

Year First Licensed: N/A
License Expiration: N/A

The complaint alleges that the Respondent attempted to collect a debt in Tennessee without possessing a collection service license. The investigation revealed that the Respondent had a good faith (although mistaken) belief that, because it collects solely commercial (not consumer) debts, it was not required to obtain a Tennessee collection service license. In its written response to the complaint, the Respondent states that it intends to file an application for a license as soon as possible. As such, a Cease and Desist Letter is recommended to advise the Respondent that it must obtain a collection service license prior to engaging in any further collection conduct in Tennessee.

**Recommendation:** Close this complaint upon the issuance of a Cease and Desist Letter.

**2. 2014006481**

Year First Licensed: 2012
License Expiration: 03/14/2016

The complaint alleges that the Respondent failed to validate a debt upon request and that the Respondent harassed the Complainant while attempting to collect a debt. The Complainant further alleges that the Respondent obtained his "unlisted" phone number by "illegal" means. The investigation revealed no evidence to support the allegations that the Respondent failed to validate the alleged debt and that the Respondent somehow obtained the Complainant's phone number unlawfully. Additionally, it appears that the Complainant may have used some abusive language in his phone conversations with the Respondent. Finally, because there appear to be no recordings of the phone calls in questions, it does not appear that sufficient conclusive evidence exists of the Respondent harassing the Complainant to being this complaint to a formal hearing. As such, because the Respondent has no prior complaint history with the Board, a Letter of Warning is recommended to admonish the Respondent that it may not engage in harassing or abusive behavior while attempting to collect debts in Tennessee.

**Recommendation:** Close this complaint upon the issuance of a Letter of Warning.

**3. 2014002591**
**4. 2014002611**
**5. 2014002621**
**6. 2014002671**
**7. 2014002821**
**8. 2014003411**
**9. 2014006421**

**10. 2014007191**
**11. 2014003401**

Year First Licensed: Varies by Respondent
License Expiration: Varies by Respondent

These complaints allege that the Respondents failed to timely submit to the Board proof of current surety bond coverage as required by law. In each case, the investigation revealed that the Respondents, all of whom are relatively new licensees (licensed less than one renewal cycle), experienced internal procedural errors (misrouted correspondence, late arrival of mail etc.) which led to the delay in providing proof of surety bond coverage to the Board. None of these licensees have had any prior complaints filed against them, and each Respondent has provided written assurances that the issues which led to the delay in timely providing proof of surety bond coverage to the Board have been fixed to prevent this from happening again. As such, each complaint should be closed with a Letter of Warning.

**Recommendation:** Close these complaints upon the issuance of Letters of Warning.

**12. 2014001961**

Year First Licensed: 2013
License Expiration: 04/28/15

The complaint alleges that the Respondent attempted to collect a debt from the Complainant that the Complainant does not owe. The investigation revealed that the Complainant was a victim of identity theft, and that the alleged debt in question was one of the debts arising from the theft. Immediately upon confirming that the Complainant does not owe the debt, the Respondent removed the Complainant's name and phone number from its system and notified the original creditor of the fraudulent nature of the debt in order to try to prevent it from being sold or transferred again in the future.

**Recommendation:** Dismiss the complaint.

**13. 2014002101**

Year First Licensed: 2009
License Expiration: 11/23/15

The complaint alleges that the Respondent failed to provide all necessary financial information as part of its license renewal application. The investigation revealed that the Respondent did submit additional financial information to the Board office upon request, and that its license was renewed subsequent to the submission of the additional information. However, due to a math calculation error in its financial information, it appeared that the Respondent had more liabilities than assets. Immediately upon receipt of the second request for additional explanation and/or updated financial information from the Board office, the Respondent provided a revised financial statement which accurately reflected it having more assets than liabilities. As such, dismissal is recommended.

**Recommendation:** Dismiss the complaint.

**14. 2014003591**

Year First Licensed: 2009
License Expiration: 09/13/2015

The complaint alleges that the Respondent attempted to collect a debt from the Complainant that the Complainant does not owe. The investigation revealed that the Complainant was a victim of identity theft, and that the alleged debt in question was one of the debts arising from the theft. Immediately upon confirming that the Complainant does not owe the debt, the Respondent removed the Complainant's name and phone number from its system and notified the original creditor of the fraudulent nature of the debt in order to try to prevent it from being sold or transferred again in the future.

**Recommendation:** Dismiss the complaint.

**15. 2014007011**

Year First Licensed: 2006
License Expiration: 12/13/2014

The complaint alleges that the Respondent is attempting to collect a debt that the Complainant does not owe because it was charged off. The investigation revealed that the original creditor did charge off the debt from its books, but it sold the debt in question, as part of a portfolio of accounts, to the Respondent. In its timely response to the complaint, the Respondent provided a clear chain of title which appears to conclusively prove that it now owns the debt and the right to collect on the debt. Further, after unsuccessfully attempting to collect the debt in question from the Complainant (the Complainant alleges no violations of the law by the Respondent during its collection attempts), the Respondent, through duly licensed counsel, filed a lawsuit to collect the debt. The Complainant was served with notice of the lawsuit and appeared in person at the initial pre-trial hearing of the lawsuit, which is currently set for trial in August 2014. Although the trial in this matter has not yet occurred, there appears to be no evidence of any legal violations by the Respondent relative to its collection efforts against the Complainant. As such, dismissal is recommended.

**Recommendation:** Dismiss the complaint.

**16. 2014006431**

Year First Licensed: 2013
License Expiration: 03/31/15

The complaint alleges that the Respondent, which holds two (2) licenses, failed to timely provide proof of surety bond coverage to the Board as required by law. The investigation revealed that the Respondent inadvertently sent in the surety bond coverage certificate for its other license to the Board office. Because there was no lapse in coverage, because this appears to have been a simple document mix-up and mailing error, and because this Respondent has no prior complaint history with the Board, dismissal is recommended.

**Recommendation:** Dismiss the complaint.

**17. 2014000611**

Year First Licensed: 2006
License Expiration: 12/13/2014

The complaint alleges that the Respondent unlawfully "re-aged" an account and changed dates of payment and delinquency in order to keep the debt in question on the Complainant's credit report for a longer period of time than allowed by law. The investigation revealed that the debt in question was charged off by the original creditor and was purchased by the Respondent. After the debt was purchased by the Respondent, the Complainant entered into a payment plan with the Respondent through a credit counseling agency. It appears that the Complainant is now making regular payments on the account and is reducing the balance. Because there appears to be no evidence of unlawful conduct relative to this debt by the Respondent, dismissal is recommended.

**Recommendation:** Dismiss the complaint.

**18. 2014002681**

Year First Licensed: 03/22/1994
License Expiration: 2014 (Voluntary Surrender)

The complaint alleges that the Respondent failed to timely provide proof of surety bond coverage to the Board as required by law. The investigation revealed that the Respondent voluntarily surrendered its license, but that the surrender paperwork arrived after a complaint had already been opened. As such, dismissal is recommended.

**Recommendation:** Dismiss the complaint.

**19. 2014005201**

Year First Licensed: N/A
License Expiration: N/A

The complaint alleges that the Respondent, a non-licensee, attempted to collect a debt from a Tennessee consumer without possessing a Tennessee collection service license as required by law. The investigation confirmed that the neither the Respondent nor any agents acting on its behalf held a collection service license at all times relevant to this complaint, and there is some evidence to suggest that the Respondent and/or agents acting on its behalf may have disclosed information regarding the debt to an unauthorized third party in violation of the federal Fair Debt Collection Practices Act ("FDCPA"). In its written response to the complaint, the Respondent admits to having contacted the Complainant in writing and by telephone regarding the debt in question.

**Recommendation:** Formal hearing with authorization to settle by Consent Order which requires payment of a $ 1,500.00 civil penalty by the Respondent and contains a Cease and Desist provision applicable to the Respondent and any agents working on its behalf prohibiting the Respondent and its agents from collecting debts in Tennessee until and unless appropriate licensure is obtained.

**20. 2014000601**

Year First Licensed: 02/01/2013
License Expiration: 01/31/2015

The complaint alleges that the Respondent failed to timely provide proof of surety bond coverage to the Board as required by law. The Respondent advised that it believed it had a continuous coverage bond certificate and that it did not need to submit a new certificate with every renewal, but it now recognizes that its coverage certificates have dates on them, and as such, that submitting a new coverage certificate on or before the expiration date of the current policy will be necessary going forward.

**Recommendation:** Close this complaint upon the issuance of a Letter of Warning.

**21. 2014000591**

Year First Licensed: 03/07/2011
License Expiration: 2014 (Voluntary Surrender)

The complaint alleges that the Respondent failed to timely provide proof of surety bond coverage to the Board as required by law. The investigation revealed that the Respondent voluntarily surrendered its license, but that the surrender paperwork arrived after a complaint had already been opened. As such, dismissal is recommended.

**Recommendation:** Dismiss the complaint.

**22. 2014002701**

Year First Licensed: 06/04/2013
License Expiration: 12/31/2014

The complaint alleges that the Respondent failed to timely provide proof of surety bond coverage to the Board as required by law. The investigation revealed that the Respondent believed that its surety bond policy did not expire until later in the year. Immediately upon learning of the complaint, the Respondent provided an updated surety bond coverage certificate reflecting no lapse in coverage.

**Recommendation:** Close this complaint upon the issuance of a Letter of Warning.

**23. 2014002721**

Year First Licensed: 05/26/2004
License Expiration: 12/31/2014

The complaint alleges that the Respondent failed to timely provide proof of surety bond coverage to the Board as required by law. The investigation revealed that the Respondent appears to be out of business. The Respondent's former website is now inoperable and calling the Respondent's former business phone number lead to a company which is not affiliated with the Respondent in any way. As such, a Cease and Desist Letter is recommended to advise the

Respondent (if it is still operating) that it must provide proof of current surety bond coverage to the Board immediately if it wishes to continue operating in Tennessee.

**Recommendation:** Close this complaint upon the issuance of a Cease and Desist Letter.

**24. 2014003381**

Year First Licensed: 03/31/2013
License Expiration: 03/30/2015

The complaint alleges that the Respondent failed to timely provide proof of surety bond coverage to the Board as required by law. The investigation revealed that the Respondent believed that its surety bond policy did not expire until later in the year. Immediately upon learning of the complaint, the Respondent provided an updated surety bond coverage certificate reflecting no lapse in coverage.

**Recommendation:** Close this complaint upon the issuance of a Letter of Warning.

**25. 2014003391**

Year First Licensed: 05/11/2004
License Expiration: 07/24/2014

The complaint alleges that the Respondent failed to timely provide proof of surety bond coverage to the Board as required by law. The investigation revealed that the Respondent did not timely submit proof of such coverage to the Board, that the Respondent did not respond to the complaint as required by law, and that the Respondent provided no explanation (reasonable or otherwise) for its failure to timely provide proof of surety bond coverage to the Board. Because this Respondent has been licensed for more than ten (10) years, which represents five (5) full renewal cycles during which the Respondent did provide proof of surety bond coverage, the Respondent is well aware of the surety bond coverage requirement. As such, a Consent Order with a small civil penalty is recommended.

**Recommendation:** Formal hearing for the revocation of the Respondent's license with authority to settle by Consent Order upon payment of a $ 500.00 civil penalty by the Respondent and upon the Respondent providing proof of current surety bond coverage to the Board.

**26. 2014005761**

Year First Licensed: N/A
License Expiration: N/A

The complaint alleges that the Respondent committed various FDCPA violations while attempting to collect a debt, and that the Respondent attempted to collect a debt in Tennessee without possessing a collection service license. The investigation revealed insufficient evidence to substantiate the Complainant's allegations of FDCPA violations by the Respondent. However, the Respondent does not possess and does not appear to have applied for a Tennessee collection service license. As such, a Cease and Desist Letter is recommended to advise the

Respondent that it must obtain a collection service license prior to engaging in any further collection conduct in Tennessee.

**Recommendation:** Close this complaint upon the issuance of a Cease and Desist Letter.

**27. 2014007001**

Year First Licensed: N/A
License Expiration: N/A

The complaint alleges that the Respondent, a non-licensee, attempted to collect a debt from a Tennessee consumer that the consumer does not owe without possessing a Tennessee collection service license as required by law. The investigation revealed that the Respondent did not specifically respond in writing to the allegations in the complaint. Instead, the Respondent submitted paperwork which it purports to show that the Complainant owes the alleged debt (arising from damage to a rental car). The investigation further revealed that the Respondent does not possess and does not appear to have applied for a Tennessee collection service license.

**Recommendation:** Formal hearing with authorization to settle by Consent Order upon payment of a $ 1,000.00 civil penalty by the Respondent.

**28. 2014005731**

Year First Licensed: 11/21/2011
License Expiration: 11/20/2015

The complaint alleges that the Respondent attempted to collect a debt from a Tennessee consumer that the consumer does not owe because, according to the Complainant, the alleged debt was paid in full several years ago. The investigation revealed that the account in question was inadvertently and incorrectly sent to the Respondent as part of a larger batch of accounts. Pursuant to the Respondent's contract with its client, the Respondent does not handle accounts where the debtor has retained counsel and/or has disputed the alleged debt. The Complainant had disputed the debt and had retained counsel to assist him with disputing the debt prior to the account being placed with the Respondent. Immediately upon determining that the account was not properly placed, the Respondent returned the account to its client and did not attempt to collect the alleged debt from the Complainant any further. Moreover, the Respondent never reported the alleged debt to the credit bureaus. Because the Respondent appears to have taken all available and appropriate steps regarding an account it should never have received, dismissal is recommended.

**Recommendation:** Dismiss the complaint.

Motion to approve the Legal Report as amended was made by Mr. Hellmann, seconded by Mr. Harb. The Board then voted unanimously to approve the motion. **MOTION CARRIED**

**Regulatory Flexibility Analysis for Rules with Preliminary Board Approval** – Mr. Whittaker read the following into the record for the Board's consideration:

At its January 2014 meeting, the Board voted to hold a rulemaking hearing regarding changes to its rules that would remove all references in the rules to the location manager requirement and add a process for expedited licensure for licensees in the military (both of which resulted from statutory changes by the legislature). Prior to initiating a rulemaking hearing, the Regulatory Flexibility Act (T.C.A. § 4-5-401, et seq.) requires the Board to perform a regulatory flexibility analysis regarding any potential rule changes in order to minimize adverse impact from the proposed rule changes on small businesses. Mr. Whittaker read the Board's regulatory flexibility analysis for these rules into the record and requested that the Board adopt the analysis. Ms. Trinkler made a motion to approve the regulatory flexibility analysis, and Mr. Hellmann seconded the motion. The Board then voted unanimously to approve the regulatory flexibility analysis in order to move forward with the proposed rule changes from its January 2014 meeting. **MOTION CARRIED.**

*Ms. Whaley left the room at 10:20 A.M. and returned at 10:22 A.M.*

**Discussion of Attorney Exemption under the Tennessee Collection Service Act** – Mr. Whittaker advised a question has been raised regarding whether or not the exemption for attorneys at law under Tenn. Code Ann. § 62-20-103 only applies to attorneys licensed in Tennessee. After some discussion, Mr. Harb made a motion for Mr. Whittaker to work with Chairman Howard to draft and submit a request for an opinion from the Attorney General's Office concerning the exemption discussed. Mr. Hellmann seconded the motion. The Board then voted unanimously to approve the motion. **MOTION CARRIED.**

*The Board recessed for break at 10:27 A.M. and reconvened at 10:40 A.M.*

## SUNSHINE LAW PRESENTATION

Damon Romano, a Paralegal in the Regulatory Board Legal Office, gave a presentation regarding the Sunshine Law. The presentation included the Open Records Act and Public Meetings Act and how they apply to the board members and their meetings.

*Ms. Lockhart left the room at 10:41 A.M. and returned at 10:44 A.M.*

## ADMINISTRATIVE REPORT – KIMBERLY WHALEY, DIRECTOR OF LICENSING

**Complaint Comparison Report** - Ms. Whaley presented a comparison of the complaints pending in May 2013 to those currently pending. She also advised that the Collection Service Board's current performance measure is 93.40% which exceeds the 75% benchmark required by the Department.

**Budget Report** – Ms. Whaley presented a report of the revenues and expenditures for the current fiscal year thru March 30, 2014.

**Request for Review/Determine – License Requirement Based on Business Practices** – Ms. Whaley presented a letter regarding an entity's business practices and requesting the Board's decision as to whether or not a collection service license would be required. After some discussion, the Board advised Mr. Whittaker to contact the entity's representative to clarify whether or not the entity is the original creditor and if they are collecting their own debt. Based on the information obtained by Mr. Whittaker, he may advise the representative whether or not a collection service license would be required based on the Board's discussion.

**Review of Revised Financial Form** – Ms. Whaley presented a draft of proposed changes to the current balance sheet/financial form required upon renewal. Mr. Whittaker advised these changes were based on his discussions with Mr. Harb per the Board's previous request. After some discussion, Mr. Whittaker advised the additional changes requested by the Board would be made and would be emailed to the individual members for their review.

**LEGISLATIVE UPDATE** - Ms. Whaley presented a copy of Senate Bill 2133 advising that it recently passed both Houses of the Tennessee Legislature and was forwarded to the Governor's Office for action on May 13, 2014. This legislation will have some impact on the licensing of certain collection service agencies. Ms. Whaley advised she will email a copy of SB2133 as presented and a copy of the Public Chapter as soon as it is available.

**NEW BUSINESS** - Chairman Howard advised this would be Ms. Lockhart's last meeting with the Board as she has accepted a promotion to another Department. He and the other members thanked her for her service. Ms. Whaley advised members to contact her regarding any matters for which they would normally have contacted Ms. Lockhart.

**ADJOURN** - There being no further business to discuss, the Board voted unanimously to adjourn the meeting at 12:05 P.M.

Bart Howard

Bart Howard, Chairman