TENNESSEE
COLLECTION SERVICE BOARD
MINUTES

DATE: January 8, 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
Elizabeth Dixon
Steve Harb
Chip Hellmann (*via teleconference)*

PRESENT: Staff Members:
Chris Whittaker, Assistant General Counsel
Kimberly Whaley, Accountant 3
Susan Lockhart, Administrative Services Assistant 4

CALL TO ORDER: Chairman Howard called the meeting to order at 9:40 a.m. and the following business was transacted:

Roll Call – Ms. Whaley then called the roll. All five (5) board members were present. Mr. Hellmann participated in the meeting via teleconference.

Robert's Rules of Order – Chairman Howard advised Robert's Rules of Order are adopted by the Board at the first meeting of each calendar year. Ms. Dixon made a motion to adopt Robert's Rules of Order, seconded by Mr. Harb. **MOTION CARRIED.**

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 December 20, 2013. This meeting was also noticed on tn.gov's public meeting calendar."

Agenda – Ms. Whaley advised she had a collection agency application to add to the agenda marked as tab 12. Mr. Whittaker requested the Legal Report portion of the agenda be moved to the end of the Administrative Report. Mr. Trinkler made a motion to adopt the agenda as modified, seconded by Ms. Dixon. **MOTION CARRIED.**

Minutes – Ms. Dixon made a motion to approve the minutes of the November 13, 2013 meeting, seconded by Ms. Trinkler. **MOTION CARRIED.**

ADMINISTRATIVE REPORT – KIMBERLY WHALEY, ACCOUNTANT 3

Complaint Comparison Report - Ms. Whaley presented a comparison of the complaints pending in January 2013 to those currently pending. She also advised the Department's performance measure for complaint processing sets a benchmark requiring at least seventy-five percent (75%) of complaints to receive formal action by the Board within one hundred eighty (180) days of receipt. She further advised the Collection Service Board's current performance measure of ninety-three and fifty-eight hundredths percent (93.58%) exceeds the benchmark.

Budget Report – Ms. Whaley presented a comparison of revenues generated in the past four (4) fiscal years and the current fiscal year through January 6, 2014 for the Board's reference. She also presented a comparison of the expenditures for the last four (4) fiscal years and the current fiscal year through October 2013.

Request for Review – Attorney Exemption – Ms. Whaley presented a letter, deferred by the Board during their last meeting, from a law firm requesting an opinion from the Board as to whether or not their business practices would be exempt for licensure as a collection service agency along with the additional information requested by the Board. Mr. Harb made a motion that it is the Board's opinion that the business practices as presented meet the exemption as outlined in Tenn. Code Ann. 62-20-103(2). Ms. Trinkler seconded the motion. **MOTION CARRIED.**

Request for Review / Determine – License Requirement Based on Business Practices – Mr. Whittaker requested and the Board agreed to defer this matter until their next meeting. Mr. Harb made a motion to defer this matter until the next scheduled meeting, seconded by Ms. Dixon. **MOTION CARRIED.**

Request for Review / Determine – License Requirement Based on Business Practices – Ms. Whaley presented a letter from an attorney on behalf of a client requesting an opinion from the Board as to whether or not their business practices would be exempt for licensure pursuant to Tenn. Code Ann. 62-20-103. <u>After some discussion, Mr. Whittaker advised it had come to his attention that a roll call vote should be made for every matter considered during the meeting due to Mr. Hellmann's participation via telephone.</u> Therefore, Mr. Harb made a motion that the business practices as presented would be exempt from licensure. The motion was seconded by Ms. Trinkler. (Roll Call Vote: Howard, Trinkler, Dixon, Harb, & Hellmann each voted "Yes") **MOTION CARRIED.**

Mr. Whittaker then asked the board to have a roll call vote confirming the decisions made by the Board during this meeting prior to this point. Mr. Harb made a motion to approve the previous motions and decision by a roll call vote, seconded by Ms. Trinkler. (Roll Call Vote: Howard, Trinkler, Dixon, Harb, & Hellmann each voted "Yes") **MOTION CARRIED.**

Collection Agency Application Review / Determine Eligibility – Ms. Whaley presented two separate collection agency applications marked "Tabs 8 and 9" from the same entity for the Board's review and consideration. After some discussion, Mr. Harb made a motion to deny the applications based on the information submitted regarding discipline against the business in other states along with other civil matters. Mr. Dixon seconded the motion. (Roll Call Vote: Howard, Trinkler, Dixon, Harb & Hellmann each voted "Yes") **MOTION CARRIED.**

Collection Agency Application Review / Determine Eligibility – Ms. Whaley presented an application for a collection agency for the Board's consideration. After some discussion, Ms. Dixon made a motion to table the application and for staff to request additional information

regarding the financial information provided. The motion was seconded by Mr. Harb. (Roll Call Vote: Howard, Trinkler, Dixon, Harb & Hellmann each voted "Yes") **MOTION CARRIED.**

Balance Sheet – Review / Discussion – Ms. Trinkler made a motion to defer this matter until the next meeting, seconded by Ms. Dixon. (Roll Call Vote: Howard, Trinkler, Dixon, Harb & Hellmann each voted "Yes") **MOTION CARRIED.**

Collection Agency Application Review / Determine Eligibility – Ms. Whaley presented an application for a collection agency for the Board's consideration. After some discussion, Ms. Dixon made a motion to approve the application, seconded by Mr. Harb. (Roll Call Vote: Howard, Trinkler, Dixon, Harb & Hellmann each voted "Yes") **MOTION CARRIED.**

LEGAL REPORT - CHRIS WHITTAKER, ASSISTANT GENERAL COUNSEL

Mr. Whittaker advised Mr. Hellmann was not provided a copy of the Legal Report, therefore, he would not participate in the discussions or votes relating to the report.

Mr. Whittaker advised the legislative changes to the Collection Service Act in 2013 that eliminated the location manager requirement for agencies would require rulemaking to repeal and/or delete all location manager references. Ms. Trinkler made a motion to proceed with the rulemaking process as advised, seconded by Ms. Dixon. (Roll Call Vote: Howard, Trinkler, Dixon, Harb & Hellmann each voted "Yes") **MOTION CARRIED.**

Mr. Whittaker further advised recent legislative changes would require the Board to adopt a rule that would expedite the licensure process for members of the armed forces. Ms. Trinkler made a motion to proceed with the rulemaking process and for Mr. Whittaker be prepared to present potential language regarding military applicants as recommended for the Board's review at the next meeting. Mr. Harb seconded the motion. (Roll Call Vote: Howard, Trinkler, Harb & Hellmann each voted "Yes") **MOTION CARRIED.**

Mr. Whittaker then presented the following legal report for the Board's consideration:

1. 2013012931

Year License Issued: 2002
License Expiration Date: Voluntary Surrender 8/8/13

The complaint alleges that the Respondent unlawfully placed adverse entries on the Complainant's credit report and requests that the Respondent removes the entries in question. Upon receipt of the complaint, the Respondent advised that it had already removed the adverse entries pursuant to the Complainant's request and provided proof of same. Moreover, the Respondent has now voluntarily surrendered its license. As such, dismissal is recommended.

Recommendation: Dismiss the complaint.

2. 2013015841

Year First Licensed: 1979

License Expiration: 12/31/2014

The complaint alleges that a representative of the Respondent agency accused the Complainant (an attorney) of misrepresentation and fraud during a collection call and that the same representative was rude to the Complainant during one or more collection calls. The investigation revealed that there was some confusion between the Complainant and the Respondent regarding the identity of the Complainant, but it does not appear that the Complainant intentionally misrepresented himself to the Respondent. The Respondent initially believed that the Complainant was the husband of the debtor, but in reality, the Complainant is the debtor's father and has a power of attorney for his daughter (the debtor). However, a Letter of Warning is recommended so that Respondent may admonish the representative who dealt with that Complainant that harassing or abusive conduct of any kind is not permitted when attempting to collect a debt.

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

3. 2013016161

Year First Licensed: 1997
License Expiration: 03/05/2014

The complaint alleges that the Respondent failed to comply with two (2) cease and desist communication requests (allegedly sent in July 2013 and August 2013) relative to a delinquent student loan debt and that the Respondent communicated with her employer regarding the debt in question despite being advised that such calls to her employer were not allowed. The file contains clear evidence that the Complainant sent the August 2013 cease and desist communication request to the Respondent via certified mail and that the Respondent signed for it. However, there is no evidence of any kind that the July 2013 request was ever actually sent by the Complainant or received by the Respondent. The investigation revealed that the Respondent did place a phone call to the Human Resources department of the Complainant's employer, but the Respondent states that the Complainant's employer willingly provided information relative to the Complainant's employment status and did not advise that the Respondent that no such calls were allowed. Moreover, because the debt in question is a student loan debt, collectors are permitted by federal law to make contact with a debtor's employer during the process of Administrative Wage Garnishment ("AWG"), a process under federal law by which the wages of a delinquent student loan debtor may be garnished in order to satisfy a delinquent student loan debt. The Respondent states that it did receive the Complainant's August 2013 cease and desist communication request after it had already made contact with her employer and that it has engaged in no further collection action of any kind (including phone calls to the Complainant or her employer) since receiving the request. However, although the Respondent did respond to the complaint, its response was filed 10 days late (a Respondent must respond to a complaint within 20 days and the Respondent's response was received within 30 days). As such, a Letter of Warning is recommended.

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

4. 2013017181

Year First Licensed: 2010
License Expiration: 02/11/2014

The complaint alleges that the Respondent failed to timely submit to the Board proof of current surety bond coverage as required by law. The investigation revealed that the Respondent did ultimately supply the required information. In its response, the Respondent stated that it believed it did not have to submit a new surety bond coverage certificate every year because its coverage is a continuation bond which does not expire. The Respondent now understands that it must submit a current surety bond coverage certificate on or before the date that the existing coverage certificate expires. Because the Respondent has no prior complaint history, a Letter of Warning is recommended.

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

5. 2013017211

Year First Licensed: 2009
License Expiration: Voluntary Surrender 10/04/2013

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

Recommendation: Dismiss the complaint.

6. 2013017231

Year First Licensed: 1988
License Expiration: 12/31/2014

The complaint alleges that the Respondent is attempting to collect a debt that the Complainant does not owe, that one or more representatives from the Respondent were rude and disrespectful to him during the attempted collection of a debt, and that the Respondent contacted him regarding the alleged debt at times not allowed by the federal Fair Debt Collection Practices Act ("FDCPA"). The investigation revealed that none of the Respondent's calls were placed a time which is not allowed under the FDCPA. Further, despite the Complainant's claim that he did not owe the debt and does not know where it came from, the Complainant sent a partial payment toward the debt by money order and the Complainant's wife attempted to make multiple payments on the debt via debit card (but all attempts at payment on the debit card were declined by the bank due to insufficient funds). Finally, the file contains insufficient evidence to substantiate the Complainant's claims of unlawful harassment by the Respondent.

Recommendation: Dismiss the complaint.

7. 2013017241

Year First Licensed: 2013
License Expiration: 07/04/2015

The complaint alleges that the Respondent unlawfully attempted to collect a debt that the Complainant does not owe because he already paid it in full. The investigation revealed that the Complainant did pay the debt in question in full, but that there was a data entry error which resulted in a temporary delay in the payment being credited to the Respondent's account, thereby resulting in an additional collection call being placed to the Complainant. The Respondent stated that the debt in question was never reported to the credit bureaus, that the Complainant's account now correctly shows a zero balance, and the Respondent apologizes for any inconvenience caused to the Complainant as a result of its error.

Recommendation: Dismiss the complaint.

8. 2013017731

Year First Licensed: 2008
License Expiration: 10/29/2014

The complaint alleges that the Respondent is unlawfully attempting to collect a debt that the Complainant does not owe because it was paid in full. After receiving sufficient documentation from the Complainant's attorney establishing that the debt in question was paid in full, the Respondent closed the Complainant's account with a zero balance and has advised its client that this debt should not be sold or transferred in the future.

Recommendation: Dismiss the complaint.

9. 2013017741

Year First Licensed: 2002
License Expiration: 12/26/2015

The complaint alleges that the Respondent is unlawfully attempting to collect a debt that the Complainant does not owe because it was paid in full. After receiving sufficient documentation from the Complainant's attorney establishing that the debt in question was paid in full, the Respondent closed the Complainant's account with a zero balance and has advised its client that this debt should not be sold or transferred in the future.

Recommendation: Dismiss the complaint.

10. 2013017751

Year First Licensed: 2010
License Expiration: 01/24/2014

The complaint alleges that the Respondent is unlawfully attempting to collect a debt that the Complainant does not owe because it was paid in full. After receiving sufficient documentation from the Complainant's attorney establishing that the debt in question was paid in full, the Respondent closed the Complainant's account with a zero balance and has advised its client that this debt should not be sold or transferred in the future.

Recommendation: Dismiss the complaint.

11. 2013018071

Year First Licensed: 2009
License Expiration: 06/04/2015

The complaint alleges that the Respondent failed to submit all financial information required as part of the agency's license renewal application. The investigation revealed that the financial information submitted by the Respondent was sufficient to comply with the Board's request for additional information.

Recommendation: Dismiss the complaint.

12. 2013019001

Year First Licensed: 2007
License Expiration: 10/28/2014

The complaint alleges that the Respondent is attempting to collect a debt that the Complainant does not owe because it should have been charged off. The Respondent provided recordings of its phone calls with the Complainant and states that it has closed the account even though its client believes the debt to be legitimately owed by the Complainant because the Complainant appears to have neither the intention nor the ability to pay the debt in question. Because the file contains no evidence of any legal violation(s) by the Respondent, dismissal is recommended.

Recommendation: Dismiss the complaint.

13. 2013016291

Year First Licensed: 2003
License Expiration: 12/31/2014

The complaint alleges that the Respondent is attempting to collect a debt that the Complainant does not owe. The debt in question is a gym contract which was signed by the Complainant and his wife. The file contains a copy of the contract and it does appear to bear the signatures of the Complainant and his wife. The Complainant claims that the contract in question allows for the cancellation of the contract if the residence and employment of the signatory to the contract moves more than thirty-five (35) miles from the gym and that he provided proof of such a move to the gym in writing. However, the contract contains specific requirements for the cancellation of the contract even if the signatory must move more than 35 miles away. The signatory to the contract must provide written notice of cancellation to the gym at the corporate address listed in the contract (which the Complainant appears to have done) and must pay a cancellation fee (which it appears the Complainant did not do). Based on the Complainant's breach of the gym contract, the gym referred the Complainant's account to the Respondent to collect the balance owed under the gym contract and the Complainant's delinquency on this debt was reported to the credit bureaus. A civil lawsuit was ultimately filed against the Respondent's wife for the balance due on the contract (in part because the

Respondent could not successfully locate or serve process upon the Complainant) and a judgment was obtained against the Complainant's wife for all sums owed under the contract. As of the writing of this report, the judgment obtained in the civil lawsuit has not been paid by the Complainant or his wife. Finally, although the Respondent believes that this debt is legitimately owed by the Complainant and/or his wife, the Respondent has deleted all adverse credit report entries that it placed on the Complainant's credit report relative to this debt but states that it has no control over any entries that may be on the Complainant's credit report(s) or profile(s) that he may share with his wife as a result of the civil court judgment obtained against the Complainant's wife. Because the file contains no evidence of any legal violation(s) by the Respondent, dismissal is recommended.

Recommendation: Dismiss the complaint.

14. 2013016511

Year First Licensed: 2008
License Expiration: 03/18/2015

The complaint alleges that the Respondent is attempting to collect a "fraudulent" debt which arose from an apartment lease which the Complainant signed. The investigation revealed that the Complainant terminated her lease early, stating that the area in which the apartment complex and the complex itself were dangerous. However, the lease signed by the Complainant does not appear to allow a resident to terminate her lease early on that basis without penalty. It further appears that the Complainant did not fully comply with the early termination and other move-out procedures contained in the lease. Therefore, the apartment complex charged the Complainant for accelerated rent, an early termination fee, and for damages to the apartment (among other charges) as provided for in the lease. The Complainant has claimed to the Respondent that she possesses a written statement or other documentation from the apartment complex stating that she owes no balance on her lease, but that documentation does not appear in the file and the Respondent states that they have received no such documentation from the Complainant despite its requests that she produce it. As such, dismissal is recommended.

Recommendation: Dismiss the complaint.

15. 2013018431

Year First Licensed: 2009
License Expiration: 04/27/2015

The complaint alleges that the Respondent failed to respond to the Complainant's request for validation of debts relative to two (2) accounts. The investigation revealed that the Respondent did respond to the Complainant's request for validation of the debts in question by sending letters to the Complainant's mailing address. However, the Complainant may not have received the responses because appears to have been incarcerated in another state at the time the responses were sent. According to the Respondent, its client has validated the debts in question, and as such, it will not remove the adverse entries related to these debts that it placed on the Complainant's credit report unless the client instructs it to do so and/or the Complainant provides evidence that the debts are not valid. Because the file contains no evidence of any legal violation(s) by the Respondent, dismissal is recommended.

Recommendation: Amend complaint to reflect the name of correct Respondent and dismiss the complaint.

16. 2013018611

Year First Licensed: 2008
License Expiration: 11/19/2014

The complaint alleges that the Respondent unlawfully credit reported a debt that the Complainant states she does not owe and that a representative at the Respondent agency was disrespectful to the Complainant during a collection call. The investigation revealed that the adverse credit report entry placed on the Complainant's credit report by the Respondent was incorrect due to a math calculation error by the Respondent's client. It appears that the debt in question arose from a medical bill and that the Respondent's client failed to apply an insurance adjustment to which the Complainant was entitled before referring the account to the Respondent. Although the underlying debt was legitimate, the Respondent elected to delete the adverse entry from the Complainant's credit report and did not re-post a new entry with the corrected amount of the debt. As to the Complainant's other claim, the Operations Manager ("OM") at the Respondent agency who deals with escalated calls (such as the one at issue in the complaint) states that the Complainant was consistently hostile and verbally abusive to agency staff over the course of numerous phone calls. During one conversation with the Complainant before the Respondent deleted the adverse credit entry from the Complainant's credit report, the OM stated that the Complainant was getting increasingly upset and demanding that the item be removed from her credit report. The OM states that he attempted to calm her down and asked her to change her tone more than once during the conversation, but that the Complainant would not allow him to speak and continued her hostile behavior. At the conclusion of the conversation, the OM states that the Complainant called him an "a**hole", to which he responded "and so are you" and disconnected the call. The owner of the Respondent agency advised counsel for the Board that, although the OM's frustration with the Complainant was understandable, he should not have allowed the Complainant to upset him to such a degree that he responded to her calling him a swear word as he did. The owner of the agency further states that his agency does not allow its representatives to speak with debtors in that manner regardless of how the debtor acts and that he has counseled his OM and all other agency representatives who interact with the public accordingly. Because the Respondent has not been previously disciplined by this Board, a Letter of Warning is recommended.

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

17. 2013017161

Year First Licensed: 2011
License Expiration: Expired 11/08/2013

The complaint alleges that the Respondent failed to timely submit to the Board proof of current surety bond coverage as required by law. The investigation revealed that the Respondent elected not to renew its license and that it notified the Board office of its intention not to renew its license. As such, no proof of surety bond coverage is required and dismissal is recommended.

Recommendation: Dismiss the complaint.

MOTION: Ms. Trinkler made a motion to accept the Legal Report as presented, seconded by Ms. Dixon. (Roll Call Vote: Howard, Trinkler, Dixon and Harb each voted "yes." Hellmann "abstained"). By a vote of four (4), **MOTION CARRIED.**

21. 2014000211

Year First Licensed:	License Application Filed 9/11/13
License Expiration:	N/A

22. 2014000201

Year First Licensed:	License Application Filed 9/11/13
License Expiration:	N/A

23. 2014000191

Year First Licensed:	License Application Filed 9/11/13
License Expiration:	N/A

The three (3) above-referenced complaints were filed against the three (3) affiliated entities referenced above and contain the same allegation(s). The complaints allege that the Respondents engage in unlicensed collection service conduct prior to filing applications to obtain collection service licenses for each of the three (3) above-referenced entities.

Recommendation: Formal hearing with authority to settle via Consent Order upon payment of a $ 7,000.00 civil penalty by the Respondents.

The Board recessed for break at 10:35 a.m. and reconvened at 10:45 a.m.

NEW BUSINESS OR UNFINISHED BUSINESS:

Unfinished Business: Collection Agency Application Reviews – Chairman Howard presented three (3) collection agency applications that were taken under advisement during the last meeting to allow sufficient time for the Board to review the documents submitted by counsels relative to the application. A court reporter was present to transcribe the proceedings/discussion concerning the applications. A copy of the transcript is on file with the administrative office of the Tennessee Collection Service Board. At the conclusion of the discussion, the Board voted to approve the applications and authorize a consent order regarding the unlicensed activity as identified by the Board during their review.

New Business: Mr. Howard announced Ms. Whaley advised him that she plans to disclose any proposed legislation she is made aware of that may affect the Board and its processes by emailing the Board the link of such legislation so members may track its progress.

ADJOURN: There being no further business to discuss, the meeting adjourned at 11:15 a.m.

Bart Howard

Bart Howard, Chairman