

**TENNESSEE
COLLECTION SERVICE BOARD
MINUTES**

DATE: March 13, 2013

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

ABSENT: Chip Hellmann

PRESENT: Staff Members:
Donna Hancock, Executive Director
Chris Whittaker, Assistant General Counsel
Judy Elmore, Administrative Assistant

GUESTS: Terrance Bond and Robyn Ryan

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

Ms. Hancock 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 September 24, 2012. Additionally, the agenda for this month’s meeting has been posted on the Tennessee Collection Service Board’s website since March 5, 2013. Also, this meeting has been noticed on the tn.gov website since February 22, 2013 and was edited on March 8, 2013.

Roll Call – Ms. Hancock then called the roll. Four (4) of the five (5) board members were present. Mr. Hellmann was absent.

Agenda – Ms. Trinkler made a motion to adopt the agenda, seconded by Ms. Dixon. **MOTION CARRIED.**

Minutes – Ms. Dixon made a motion to approve the minutes of the January 9, 2013 meeting, seconded by Ms. Trinkler. **MOTION CARRIED.**

CHRIS WHITTAKER, ASSISTANT GENERAL COUNSEL

Mr. Whittaker presented the following Legal Report for the Board’s consideration:

1. **2009004601**
2. **2011016071**
3. **2011022391**
4. **2012006181**
5. **2012007721**

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

The complaints against three related entities allege that the Respondents engaged in unlicensed conduct by attempting to collect one or more debts in the State of Tennessee without a license, and that the Respondents attempted to file collection lawsuits in Tennessee courts despite the fact that the Respondents and a majority of the alleged debtors have no connections to Tennessee. The Board authorized these complaints to be referred for a formal hearing, and a Notice of Hearing and Charges was filed against the Respondents. After extensive negotiations with the Respondents' counsel, a tentative settlement agreement was reached, and the formal hearing was continued in order to allow the Board to vote on the proposed agreement. Both the board attorney and the litigation attorney recommend acceptance of the proposed agreement.

Recommendation: Settlement by Agreed Order with the following terms: 1.) Respondents shall admit that, on at least two (2) occasions between 2009 and 2012, that the Respondents engaged in debt collection conduct in the State of Tennessee without possessing a collection service license, and that the Respondents were required to be licensed to engage in such conduct; 2.) That the Respondents pay a civil penalty of One Thousand Seven Hundred Dollars (\$ 1,700.00), which represents a \$ 1,500.00 civil penalty and \$ 200.00 for reimbursement to the Board for the filing costs associated with the formal hearing, the same being payable within ten (10) days after the Agreed Order is accepted by the Board; 3.) That the Respondent shall complete and submit an application for a Tennessee collection service license to the Board no later than one hundred and eighty (180) days from the date the Agreed Order is accepted by the Board; and, 4.) That the Respondent shall cease and desist all collection activity in the State of Tennessee until it obtains a Tennessee collection service license.

6. **2012024151**

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

The complaint alleges that the Respondent engaged in unlicensed conduct by attempting to collect a debt in Tennessee without a license. The investigation revealed that the Respondent is in the process of obtaining a Tennessee collection service license. Additionally, although there is no evidence on file that the Respondent sent any letters or made any phone calls to the Complainant, it does appear that the Respondent posted an adverse credit entry on the Complainant's credit report. The CFO for the Respondent stated that the account in question originated from its California center, and that no credit reporting should have been done relative

to this account because the alleged debtor lives in Tennessee. The Respondent further stated that the issue which led to the inadvertent reporting has been fixed, and apologizes for any inconvenience caused. Further, the Respondent has closed the account, returned the account to its client, has not contacted the Complainant regarding this account since it was closed, and it has removed all entries from the Complainant's credit report

Recommendation: Close this complaint upon the issuance of a Letter of Warning including language instructing the Respondent to cease and desist conducting any collection service business in Tennessee until it obtains proper licensure.

7. 2012026191

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

The complaint alleges that the Respondent placed numerous harassing phone calls to the Complainant's cell phone, home phone, and to her employer. The Complainant further alleges that the Respondent continued to call her after receiving a cease and desist communication letter from the Complainant, and that the Respondent disclosed information regarding the alleged debt in question to the Complainant's employer. The Respondent stated that it only called the Complainant's phone numbers in accordance with applicable law, that it only contacted the Complainant's employer to verify employment in anticipation of filing an administrative wage garnishment (allowable under federal law for student loan debts), and that, immediately upon receiving the Complainant's cease and desist communication request, the Complainant's account was placed in "cease communication" status. The investigation revealed that the Complainant sent two (2) cease and desist communication letters to the Respondent, but there is some question as to whether the Respondent placed phone calls to the Complainant after receiving the first cease and desist communication request. However, when program counsel called the Complainant and identified himself in order to request additional information regarding the complaint, the Complainant refused to speak to program counsel and hung up the phone. As such, a Letter of Warning is recommended to admonish the Respondent that it must stop communicating with a debtor if requested to do so in writing immediately upon receipt of such request.

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

8. 2012008591

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

The complaint alleges that the Respondent engaged in unlicensed conduct by attempting to collect a debt in Tennessee without a license. The Respondent advised that it was unaware of the need for a collection service license to do business in Tennessee, as it is domiciled in a jurisdiction that does not have a state-based regulatory regime regarding debt collection. Further, the Respondent immediately closed the Complainant's account, returned the account to its client, did not contact the Complainant any further, and removed all adverse entries from the Complainant's credit report.

Recommendation: Close this complaint upon the issuance of a Cease and Desist letter ordering the Respondent to cease and desist conducting any collection service business in Tennessee until it obtains proper licensure.

9. 2012022601

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

The complaint alleges that the Respondent engaged in unlicensed conduct and attempted to collect a debt that the Complainant does not owe. The investigation revealed that the Respondent is a passive debt buyer who does not engage in any collection activity and forwards any accounts requiring collection activity to a licensed collection agency. In this case, the Respondent had forwarded the account in question to a law firm, and a civil lawsuit was filed. However, upon receipt of a signed fraud affidavit from the Complainant's attorney, the civil lawsuit against the Complainant was dismissed, and the Respondent will make no further attempts to collect this disputed debt in the future. Additionally, there appears to be no evidence of any violation(s) of applicable state or federal collection law by the Respondent in this case.

Recommendation: Dismiss the complaint.

10. 2012023621

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

The complaint alleges that the Respondent engaged in unlicensed conduct by attempting to collect a debt from the Complainant without a license and that the Respondent is unable to validate the alleged debt in question. The investigation revealed that the Respondent is a servicer for federal student loans under the Dept. of Education. Additionally, it appears that the Complainant had multiple student loans under a master promissory note, and even though the Respondent does not have the physical student loan notes in its records, it provided instructions to the Complainant on how to access those documents online through the Dept. of Education and provided the Complainant a copy of the master promissory note back in November of 2012. It further appears that the Complainant consolidated all of his student loan notes under one consolidated note on or about 1/1/13. Finally, the Complainant claims that he did not authorize the "transfer" of his student loan notes. However, applicable law does not authorize student loan borrowers to prohibit the Dept. of Education from choosing the servicing entity it wishes to service its debts. It appears that the Respondent has done everything possible to validate the debts in question as requested by the Complainant.

Recommendation: Dismiss the complaint.

11. 2012023861

License Status:	Active
Year First Licensed:	2008

License Expiration: 2015

The complaint alleges that the Respondent failed to validate the alleged debt as requested by the Complainant. It appears that the alleged debt arises from damages that the Complainant allegedly caused to an apartment complex which is the Respondent's client in this matter. The investigation revealed that the Respondent sent validation documentation to the Complainant on two different occasions, but the Complainant alleges that she was only provided with statements of amounts owed, not proof that she owed the debt. The lease that the Complainant signed with the Respondent's client authorizes recovery of collection fees incurred if attempting to collect sums owed by the tenant/Complainant. The Respondent's response to the complaint contained dozens of pictures purporting to reflect damage done to the apartment leased by the Complainant. If the Respondent can conclusively prove that the Complainant caused the damages to the apartment in question, then the documents submitted clearly authorize the recovery of the sums sought by the Respondent. However, despite the submission of documents and pictures by the Respondent, the Complainant continues to assert that she did not cause the damages in question and that she owes the Respondent no money. The central question in this matter is whether or not the Complainant caused the damage to the apartment she leased from the Respondent's client, and that is a matter that is appropriately decided in civil court.

Recommendation: Dismiss the complaint.

12. 2012025411

License Status: Active
 Year First Licensed: 2011
 License Expiration: 2013

The complaint alleges that the Respondent is engaged in unlicensed conduct and that the Respondent refused to provide the Complainant with a fax number for the Complainant to send the Respondent a cease and desist communication letter. The investigation revealed that the Respondent does have a Tennessee collection service license, and that the Respondent was unaware that the Complainant wanted its fax number, but that it would have been happy to send the Complainant any contact information she wanted at any time. The Complainant was able to send a cease and desist communication letter to the Respondent, and the Respondent immediately placed all of the Complainant's phone numbers in "cease communication" status. Further, the Respondent closed its account, marked it as disputed, and did not contact the Complainant again regarding the debt.

Recommendation: Dismiss the complaint.

13. 2012026201

License Status: Active
 Year First Licensed: 2000
 License Expiration: 2014

The complaint alleges that the Respondent is attempting to collect a debt that the Complainant does not owe. The investigation revealed that the Complainant co-signed a student loan for his grandson, and the loan went into default. The Complainant claims that the loan was paid in full by a third party loan guarantor, but the Respondent's records indicate no evidence of

any such payments. Additionally, the Respondent did receive validation of the debt from its client and forwarded that documentation to the Complainant. However, because the Complainant has disputed the account, the Respondent elected to close the account, cease all collection efforts on the account, and return it to the client, which is permissible under the FDCPA. There appears to be no evidence of any violation(s) of applicable state or federal collection law by the Respondent in this case.

Recommendation: Dismiss the complaint.

14. 2012026241

License Status:	Active
Year First Licensed:	2010
License Expiration:	2014

The complaint alleges that the Respondent failed to comply with a written cease and desist communication request from the Complainant. The investigation revealed that the Respondent did continue to contact the Complainant after receiving the cease and desist letter. However, the FDCPA only applies to delinquent consumer debts, and since the debt in question is a commercial debt, the FDCPA does not apply.

Recommendation: Dismiss the complaint.

15. 2013001221

License Status:	Active
Year First Licensed:	2009
License Expiration:	2013

The complaint alleges that the Respondent failed to maintain a location manager as required by law. However, the investigation revealed that, at the time the Respondent's previous location manager left, there was no testing contract in place for the location manager exam. Immediately upon learning of the availability of a location manager exam, the Respondent filed a location manager application and had the applicant take the exam.

Recommendation: Dismiss the complaint.

16. 2013000141

License Status:	Expired
Year First Licensed:	1975
License Expiration:	2012

The complaint alleges that the Respondent attempted to collect a debt from the Complainant in error and that the Respondent refused to provide validation of the alleged debt. The investigation revealed that the Respondent could not validate the debt in question because the underlying debt did not belong to the Complainant. The only reason the Complainant received any contact from the Respondent was due to a transcription error in the Respondent's computer system. Additionally, according to the Respondent, they can't send the Complainant most of the requested information she has requested because it is protected health information

belonging to someone else, and this debt was never reported to the credit bureaus. Further, the Respondent has provided a letter to the Board for the Respondent's records stating that all of her information has been deleted from its computer systems.

Recommendation: Dismiss the complaint.

17. 2013001241

License Status: Active
Year First Licensed: 2010
License Expiration: 2014

The complaint alleges that the Respondent attempted to collect a debt that the Complainant does not owe because the alleged debt was the result of identity theft. The investigation revealed that, immediately upon learning that the alleged debt might be fraudulent, the Respondent updated its records accordingly and pursued no further action on the account (which it never reported to the credit bureaus). However, although it appears that another collection agency received this account and did report it to the credit bureaus, the Respondent identified that agency, requested that it delete the credit report entries from the Complainant's credit report, and that the second collection agency did delete its entries from the Complainant's credit report.

Recommendation: Dismiss the complaint.

18. 2013001661

License Status: Active (has been disciplined)
Year First Licensed: 1987
License Expiration: 2014

The complaint alleges that the Respondent attempted to collect a debt that the Complainant does not owe because the alleged medical bill in question should have been covered by the Complainant's health insurance. The investigation revealed that the medical services giving rise to the alleged debt were provided to the Complainant after the termination date of the Complainant's insurance coverage, so the Complainant was responsible for the entire debt. Additionally, immediately upon receipt of a verbal cease and desist communication request from the Complainant, the Respondent blocked the Complainant's phone numbers in its system and did not attempt to contact the Complainant again.

Recommendation: Dismiss the complaint.

19. 20130031011

License Status: Active
Year First Licensed: 2009
License Expiration: 2013

The complaint alleges that the Respondent failed to timely provide proof of adequate surety bond coverage to the Board as required by law. The investigation revealed that the Respondent did provide timely proof to the Board of surety bond coverage reflecting no lapse in

coverage at any time, but that the documentation was not printed out and placed in the Respondent's file until after a complaint had been opened.

Recommendation: Dismiss the complaint.

20. 2013003121

License Status: Active
Year First Licensed: 2011
License Expiration: 2013

The complaint alleges that the Respondent failed to timely provide proof of adequate surety bond coverage to the Board as required by law. The investigation revealed that the Respondent did provide proof to the Board of surety bond coverage reflecting no lapse in coverage at any time, but that the bond coverage was provided late/after the complaint was opened because the employee responsible for sending proof of coverage to the Board left the Respondent shortly before the Respondent's surety bond coverage expired. The Respondent apologized for any inconvenience and stated that it has put systems in place to avoid a repeat occurrence of this oversight. Because the Respondent has no prior complaint history of any kind, dismissal is recommended.

Recommendation: Dismiss the complaint.

21. 2013003151

License Status: Active
Year First Licensed: 2008
License Expiration: 2013

The complaint alleges that the Respondent failed to timely provide proof of adequate surety bond coverage to the Board as required by law. The investigation revealed that the Respondent did not provide proof to the Board of surety bond coverage because it no longer has any accounts in Tennessee, is no longer doing business in Tennessee, and has notified the Board in writing of its intent not to renew its Tennessee license.

Recommendation: Dismiss the complaint and allow Respondent's license to expire.

22. 2013003191

License Status: Active
Year First Licensed: 2010
License Expiration: 2014

The complaint alleges that the Respondent failed to timely provide proof of adequate surety bond coverage to the Board as required by law. The investigation revealed that the Respondent did provide proof to the Board of surety bond coverage reflecting no lapse in coverage at any time, but that the bond coverage was provided late/after the complaint was opened. The Respondent apologized for any inconvenience and stated that it has put systems in place to avoid a repeat occurrence of this oversight. Because the Respondent has no prior complaint history of any kind, dismissal is recommended.

Recommendation: Dismiss the complaint.

23. 2013003761

License Status: Active
Year First Licensed: 1975
License Expiration: 2014

The complaint alleges that the Respondent wrongly reported two accounts to the credit bureaus after the Respondent's client agreed to accept a settlement of less than payment in full for both accounts. The investigation revealed that an employee of the Respondent inadvertently miscoded the Complainant's payments, which led to the accounts in question being reported to the credit bureaus. Immediately upon learning of its error, the Respondent deleted the improper entries from the Complainant's credit report and apologized to the Complainant and to his attorney for the inconvenience.

Recommendation: Dismiss the complaint.

24. 2013004411

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

The complaint alleges that the Respondent engaged in unlicensed conduct by filing a civil lawsuit against the Complainants in an attempt to collect a debt. The investigation revealed that the Respondent is a passive debt buyer, and as such, that the Respondent is not required to possess a Tennessee collection service license provided that it does not engage in collection service activity in Tennessee. The alleged debt in question has been forwarded to a law firm, which is exempt from Tennessee collection service licensing requirements, and the law firm has filed a civil lawsuit against the Complainants. The Complainants also assert that the Respondent and the law firm working on its behalf have not provided them with any documentation regarding the alleged debt. The Respondent's response in the complaint file contains evidence of ownership of the account (but it is allowing the law firm to provide documents regarding the debt to the Complainants to avoid any appearance of unlicensed collection conduct), and the law firm states that it has requested all available documentation regarding the debt from the Respondent and will forward it to the Complainants immediately upon receiving such documentation. As such, there appears to be no evidence of any violation(s) of applicable state or federal collection law by the Respondent in this case.

Recommendation: Dismiss the complaint.

MOTION: Ms. Trinkler made a motion to accept Legal's recommendations as presented with the exception of item #15 which was tabled until the next meeting. The motion was seconded by Ms. Dixon. **MOTION CARRIED.**

ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR

Complaint Comparison Report - Ms. Hancock presented a comparison of the complaints pending in March 2012 to those currently pending.

Budget Report – Ms. Hancock presented a budget report for the closure of FY 11/12 with a comparison for the last three fiscal years. She also presented year-to-date totals indicating current fiscal year revenue and expenditure amounts.

Location Manager Exam Report – Ms. Hancock presented a report on the pass/fail statistics for the location manager examination administered by the current vendor since September 2012. She also advised there are currently two-hundred twelve (212) applicants who have been approved and have not yet tested.

SB 0148 – Discussion – Ms. Hancock presented a copy of Senate Bill 0148 and its amendment currently being considered by the General Assembly. She stated that this was the first opportunity for the Board to discuss the Bill since it had been introduced shortly after their last meeting. She informed the Board that, if passed, the Bill will delete the requirement for a location manager license and will require businesses to notify the Board “in writing of any change in address, management, or ownership of a collection service business.” A discussion ensued; Board members asked to be kept apprised of the Bill’s progress.

Questions Regarding Mortgage Servicer – Licensing Discussion – Ms. Hancock presented an email from Aldrich, Bonnefin & Moore, P.L.C. inquiring as to whether or not their client, a mortgage servicer, would require a collection agency license. After some discussion, Ms. Trinkler made a motion for staff to respond to the inquiry on the Board’s behalf as follows:

“Based upon the Board’s review of applicable law and the facts and circumstances as presented in your letter, the Board ***recommends*** that your company obtain a Tennessee collection service license. The Board has licensed many companies whose business operations are similar to yours, and one of the main reasons those companies chose to obtain a license is to be able to service delinquent consumer accounts in their portfolio if they elected to do so. However, at this time, the Board has declined to ***require*** that your company obtain a collection service license, electing instead to leave that business decision to your company’s judgment. If your company elects not to obtain a Tennessee collection service license, any complaints against your company alleging unlicensed collection service conduct will be handled through the Board’s standard complaint process and will be evaluated on a case by case basis.”

The motion was seconded by Mr. Harb. **MOTION CARRIED.**

Questions Regarding Call Center – Licensing Discussion – Ms. Hancock presented an email from a representative of I.B.M. Daksh and whether or not its business practice as a call center would require licensure as a collection agency. After some discussion, Ms. Trinkler made a motion for staff to respond on the Board’s behalf that a license would not be required based on the information as presented. The motion was seconded by Ms. Dixon. **MOTION CARRIED.**

Ms. Hancock informed the Board that she received an additional inquiry from the same representative regarding the difference between regulations for a commercial and consumer debt collection agency. The Board determined that their laws do not distinguish between a commercial and consumer debt collector.

Information for Website – Ms. Hancock again presented a draft of general consumer information previously tabled by the Board that she had requested their approval on for posting to the Board’s website. She reminded the Board that Mr. Bond requested permission at the last meeting to forward the draft to the Tennessee Collectors Association (TCA) for their review. Ms. Hancock presented a copy of TCA President Michael Rainwater’s response and asked Mr. Bond to report on the consensus. After some discussion, Mr. Harb made a motion not to post the information on the Board’s website and the **MOTION FAILED for lack of a second.** Ms. Dixon made a motion to revisit the verbiage of the document at the next meeting and the **MOTION FAILED for lack of a second.**

LOCATION MANAGER APPLICATIONS REVIEW:

Mr. Harb made a motion to table the review of all location manager applications scheduled to be reviewed on today’s agenda until the next meeting due to proposed Senate Bill 0148. The motion was seconded by Ms. Trinkler. **MOTION CARRIED.**

NEW BUSINESS OR UNFINISHED BUSINESS:

Mr. Harb inquired about the procedure to redesign the collection agency license application form. Ms. Hancock advised she would provide copies of the application for review at the next meeting.

AJOURN: Being no further business to discuss, the meeting adjourned at 11:00 a.m.

Bart Howard, Chairman