

**TENNESSEE
COLLECTION SERVICE BOARD
MINUTES**

DATE: January 14, 2015

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

ABESENT: Board Members:
Chip Hellmann
Elizabeth Dixon

PRESENT: Staff Members:
Anthony Glandorf, Chief Counsel
Keeling Baird Gamber, Assistant General Counsel
Kimberly Whaley, Director of Licensing

Visitors:
Debbie Rust
Becky Givens

CALL TO ORDER: Chairman Bart Howard called the meeting to order at 9:46 a.m. and the following business was transacted:

Roll Call – Ms. Whaley called the roll. Three board members were present.

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 4, 2014. Additionally, the agenda for this month’s meeting has been posted on the Tennessee Collection Service Board’s website since January 8, 2015. This meeting was also noticed on tn.gov’s public meeting calendar.”

RULE MAKING HEARING – See transcript

BOARD MEETING:

Robert’s Rules- Motion to adopt Robert’s Rules was made by Ms. Trinkler, seconded by Mr. Harb.

MOTION CARRIED

Agenda – Motion to adopt agenda was made by Ms. Trinkler, seconded by Mr. Harb.
MOTION CARRIED

Minutes – Mr. Harb made a motion to approve the minutes of the November 12, 2014 meeting, seconded by Ms. Trinkler.
MOTION CARRIED

Tony Glandorf, Chief Counsel, introduced Keeling Baird Gamber, Assistant General Counsel.

LEGAL REPORT – KEELING GAMBER BAIRD

1. 2014014981

Year First Licensed: 6/10/2010
License Expiration: 6/9/2016

This complaint alleges that Respondent harassed Complainant by phone regarding an alleged debt. Complainant alleged that Respondent took out a deferred presentment loan in September 2013. The loan was in the amount of \$1,500 at a 149% interest rate. When it was deposited into Complainant's account it turned out it was only \$1,000, and the other \$500 was taken for a fee that Complainant was unaware she would be paying until after the fact. Complainant alleged that Respondent has a list of 12 numbers from numerous states, all of which are used by Respondent to call Complainant day and night. Complainant alleges that the loan taken out from Respondent should be void and unenforceable, as Respondent is not licensed to do business in the state of Tennessee in regards to conducting business as a deferred presentment service through the use of the internet, facsimile, telephone, or other means. Complainant alleges they have no physical building or address in the state of Tennessee. Beyond the consumer allegations, Respondent applied to the Board for two additional licenses for other office locations, but the Board denied those applications based on Respondent's licensing and disciplinary issues in other jurisdictions. On January 5, 2015, Respondent voluntarily surrendered its license with the Collection Services Board, as it has chosen to cease operations in the state of Tennessee.

Recommendation: Close and Flag.

DECISION: Board authorized that the matter be Closed and Flagged, in case Respondent reapplies for licensure in the future.

2. 2014015201

Year First Licensed: 11/15/1999
License Expiration: 12/31/2016

This complaint was filed by a former employee of Respondent and alleges Respondent is failing to maintain sufficient funds in its trust account to disburse moneys due to all clients. The complaint alleges failure to report and pay clients the net proceeds of all collections made within 30 days, pay past clients payments received, and voiding/deleting client remittance checks. The complaint alleges deleting accounts from the credit reports of individuals in which it has received

funds and not reporting the payments to its clients. The complaint alleges charging debtors a non-sufficient check fee of \$25.00 per check, when the maximum current fee is \$9.00.

Respondent's attorney sent a response to the complaint stating that on or about April 24, 2014, all of the staff of Respondent company left and formed a different company, with little or no notice to Respondent and immediately began contacting Respondent's clients to get its business by spreading false rumors and information related to Respondent and Respondent's owner. Respondent owner received several calls which indicate that Complainant made similar statements to customers as they have made in this complaint. Respondent claims that Complainant then made an effort to try to buy Respondent's clients, which was rejected by Respondent. Respondent attorney stated that Respondent is thriving, despite the challenges it faced due to a lack of employees. Respondent stated that Complainant, as a former employee of Respondent, has violated his duties under the confidentiality agreement relating to customers and debtors, by attempting to take customers upon exiting Respondent company. It is Respondent's belief that this complaint arise from Complainant's concern related to the legalities of his exiting the Respondent company and serve as an effort to create some leverage should a civil suit arise in the matter.

Upon further investigation, it was stated that the CEO of Respondent company told Complainant and employees that Respondent was closing its business, so they may have solicited Respondent's clients under that understanding. Respondent CEO later said he was going to keep doing his business and would not sell accounts to or relinquish clients to the new company started by Complainant and employees.

On November 10, 2014, legal counsel contacted Complainant who stated he wanted to go forward with the complaint. Complainant stated at that time that he would put together more information to substantiate the complaint and submit it to legal counsel by the end of the week. Complainant never provided such information to counsel.

Recommendation: Complainant failed to provide sufficient information to substantiate the complaint to legal counsel. Thus, Counsel recommends that this matter be Closed with no further action. If Counsel receives further information in the future that would substantiate the complaint, a complaint will be re-opened, if necessary.

DECISION: Board authorized Closure with no further action.

3. 2014021471

Year First Licensed: 10/15/2013

License Expiration: 10/14/2015

This complaint alleges that Respondent is attempting to collect a past employer's debt from Complainant, personally, by harassing Complainant with threats, repetitive phone calls, etc. Complainant is a former employee of Respondent company and states he does not owe this debt or any other debt associated with his former employer, regardless of accusations by Respondent that he is responsible for the debt. Complainant stated he is a former marketing director of Respondent company, not an executive or owner and had no access or authority to pay media or any other bills on behalf of the company. Complainant states that he has never received any documents from any creditor for collection of funds owed by a past employer.

Respondent sent a response to the complaint stating that it is the position of Respondent that the complaint filed is unfounded. In order to assure a full determination of Complainant's liability in the matter, it has been referred to Tennessee counsel. Counsel has been directed to determine the rights of both the debtor and creditor so that all such rights may be fully protected within a legal context. If Tennessee law says Complainant is liable, Tennessee counsel will move forward with the case. If no liability is determined, Tennessee counsel will close the case.

Recommendation: Dismissal based on Respondent's referral of the matter to Tennessee counsel for a civil determination. There is nothing in the statutory scheme allowing the Board to regulate the determination as to whether or not a debt is owed.

DECISION: Board authorized Dismissal.

4. 2014024781

Year First Licensed: Not licensed

This complaint alleges Respondent is not licensed by the Tennessee Collection Service Board to do business in the state of Tennessee.

Respondent sent a response stating that it is a small office of 3 collectors, who have an in house developed software system. Respondent stated it has safeguards against collecting in the state of Tennessee. When an account has an address listed in Tennessee, Respondent red flags it. A collector cannot see the phone numbers or request a letter. Respondent stated that in this case its system could have had a glitch with co-makers. This particular account has a co-maker that has lived in Kentucky, and the Social Security Number is not a Tennessee Social Security Number. After investigation, Respondent believes this social is false and does not exist. Respondent was experimenting with sending out letters to co-makers and believes this triggered something that caused this particular account to be open for a brief period. After looking deeper to see how many records this affected, Respondent found 24. 17 had similar issues. Respondent stated it has requested the removal of this account from the credit report and closed the account back to the client to send to a licensed collection agency.

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

DECISION: Board authorized Closure of the matter with a Letter of Warning.

Attorney General's Opinion: Kimberly Whaley presented an Attorney General's opinion which stated that all attorneys, even those licensed outside of Tennessee, may collect debts without a collection license. Tony Glandorf offered to research farther into the scope of practice for licensed attorneys specifically as it relates to the collection of debts and report back at the next board meeting.

ADMINISTRATIVE REPORT – KIMBERLY WHALEY, DIRECTOR OF LICENSING

Complaint Comparison Report - Ms. Whaley presented the Board's performance measure. She stated that the report showed 15 open complaints and the performance measure is 95.87%.

Ms. Whaley stated that there has been a slight slowing in complaints which may indicate better agency practice.

Budget Report – Ms. Whaley presented a revenues and expense for the current fiscal year through November, 2014 for the Board’s reference. This does not represent the revenue from the renewal cycle.

Application Reviews –

Renewal - Ms. Whaley presented a collection agency renewal application for the Board’s review and consideration. Ms. Whaley presented the additional information. After some discussion the board expressed concern about the renewal applicant’s negative equity. The board deferred with request for a financial statement. Mr. Howard moved the application be deferred until the March meeting, seconded by Ms. Trinkler. **MOTION CARRIED**

Collection Question- Ms. Whaley followed up on a question related to the number of licensees who have surrendered their collection licenses. Ten (10) licensees have surrendered their licenses since Collection Services staff began keeping metrics in November. Ms. Whaley will have additional information at the March meeting after the renewal process is complete.

Change of Ownership Question – Ms. Whaley asked the Board to consider going through the rulemaking process to clarify for licensees what constitutes a change in ownership. There has been an increase in questions related to the change of ownership process. After much discussion the board determined that legal should provide guidance on the issue at the March meeting.

Ms. Trinkler made a motion for the attorney to research the issue and provide information at a future meeting, seconded by Mr. Harb.

MOTION CARRIED.

New Business

Mr. Howard inquired about the possibility of presenting applications for collection agencies at future board meetings. Ms. Whaley reminded the board that applicants would have to wait several months for licensure. The board determined that the staff should continue with their license process and the board would open a complaint if they saw an issue with an applicant or new licensee.

Ms. Whaley volunteered to farther investigate application questions for the March meeting.

Legislative Report- There is proposed legislation related to removing the budget requirements for applications. There will be an update in March. Ms. Whaley will keep interested board members up to date.

Meeting was adjourned at 10:45am



Bart Howard, Chairman