TENNESSEE
COLLECTION SERVICE BOARD
MINUTES

DATE: May 11, 2011

PLACE: Andrew Johnson Tower – 2nd Floor Conference Room
710 James Robertson Parkway
Nashville, Tennessee

PRESENT: Board Members:
Bart Howard, Chairman
Elizabeth Trinkler, Vice Chairman
Beth Dixon
James Mitchell

PRESENT: Staff Members:
Donna Hancock, Executive Director
Terrance Bond, Assistant General Counsel
Laura Betty, Assistant General Counsel
Susan Lockhart, Executive Administrative Assistant

GUESTS: Rick Bennett; Keith Kerbyson; Larry White; Eddie Shaw; and Steven C. Poling

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

Roll Call - Director Hancock called the roll. All four (4) board members were present. She informed the Board that ex-member Shannon Polen tendered his resignation from the board on 04/05/11.

AGENDA: Ms. Hancock advised she had some issues to add to the agenda. Ms. Trinkler made a motion to accept the agenda as amended, seconded by Ms. Dixon. **Motion Carried.**

Minutes – Ms. Trinkler made a motion to approve the minutes of the March 9, 2011 meeting, seconded by Mr. Mitchell. **Motion Carried.**

MERCEDES-BENZ FINANCIAL, USALLC – Steven Poling to appear re: applicability
Mr. Poling appeared before the board to explain his company's business practices. After some discussion, Ms. Trinkler made a motion that the activity of the business as currently described does not require licensure as a collection service agency, seconded by Mr. Mitchell. **Motion Carried.**

Chrysler Financial - Ms. Hancock advised that Chrysler Financial, currently licensed as a collection service agency, submitted information regarding their financial statement. After some discussion, Ms. Trinkler made a motion to accept their business practices, as described, in lieu of a trust account, seconded by Mr. Mitchell. **Motion Carried.** Mr. Bond and Ms. Hancock were instructed to write a letter to the company on the Board's behalf advising of their finding and

instructing that the Board should be notified if there are any changes to the financial operations of this company in the future.

LEGAL REPORT – TERRANCE BOND, ASSISTANT GENERAL COUNSEL

Mr. Bond presented the following Legal Report for the board's consideration:

1. 2010000641
First License: 2/4/05
Lic. Exp.: 12/31/12

January 2011 Meeting:

The Complainant alleges that the Respondent used abusive language during a collection-related telephone call. I spoke to the Respondent, and requested a copy of the recorded telephone conversation where the alleged abuse occurred. The Respondent indicated that the recording did exist and indicated that she would forward same to me; however, the Respondent later advised me that the recording would not be released because the Complainant did not reference the telephone call in his original complaint and the release of the telephone recording to me might constitute unlawful "third party" disclosure.

Recommendation: Close with a letter of instruction: scope of the "third party disclosure" rule.

BOARD: Directed counsel to draft a letter to the Respondent advising that release of the tape would not constitute impermissible third-party disclosure and directing the Respondent to release the tape recording to counsel for review and presentation to the board.

UPDATE: I spoke with the Respondent's counsel on 4/8/11 and advised her that the Board rejected the argument that release of the tape might constitute impermissible third-party disclosure. I also provided additional documentation from the Complainant referencing the telephone call at issue, which counsel previously indicated would be sufficient reason to release the tape. As of 5/10/11, I have received neither the requested documentation nor any communication from counsel as to why the tape will or will not be forthcoming.

Recommendation: Authorize formal hearing with authority to settle by Consent Order and payment of a $1,000.00 civil penalty.

2. 2010025061
First License: 12/14/06
Lic. Exp.: 12/31/12

January 2011 Meeting:

The board mailed notice to the Respondent requesting proof that it continued to hold a valid surety bond, to which the Respondent failed to respond despite accepting service of the request.

Recommendation: Authorize formal hearing with authority to settle by Consent Order, payment of a $1,000.00 civil penalty and provision of a valid surety bond.

UPDATE: I received documentation from the Respondent showing that the Respondent was covered via surety bond for the relevant time period.

Recommendation: Close with a letter of warning re: failure to timely provide proof of continuing surety bond coverage.

3. 2010009841
First License: 7/29/02
Lic. Exp.: 12/31/10

January 2011 Meeting:
The Complainant alleges that he received two (2) collection-related telephone calls from the Respondent, wherein the Respondent's agent failed to advise the Complainant that the calls were an effort to collect a debt and that any information obtained would be used for such purposes. In addition, the Complainant alleges that he received a telephone call from the Respondent at 9:27 pm. The Respondent admits that its agent did fail to give the Complainant the "mini-miranda" warning during the telephone calls but denies placing a call to the Complainant after 9 pm.

Recommendation: Close with a letter of warning: required disclosures during a collection call.

BOARD: Directed counsel to draft a letter to the Respondent requesting that the Respondent provide a copy of the account notes for review.

UPDATE: The Respondent's agent promptly provided account notes for the subject account upon my request. The notes and time-date stamps on the call logs do not support the Complainant's allegations that the Respondent placed a collection-related telephone call to him on the alleged date.

Recommendation: Close with a letter of warning re: failure to provide necessary disclosure during a collection-related call.

4. 2010030361
First License: 11/21/05
Lic. Exp.: 12/31/12

March 2011 Meeting
Administrative office complaint alleges that the Respondent failed to provide evidence of a valid surety bond upon request. The Respondent failed to respond to the board's request, despite accepting service of same on Oct 4, 2010. The Respondent's collection service license is now non-renewable.

Recommendation: Issue a CEASE and DESIST letter.

UPDATE: It appears that the Respondent continues to hold a valid collection service license and did provide evidence of continued coverage via surety bond along with its license renewal application, which was submitted on January 4, 2011.

Recommendation: Close with a letter of warning re: failure to provide requested information in a timely manner.

5. 2010032821
First License: 9/11/97
Lic. Exp.: 12/31/12

The Complainant alleges that the Respondent continues pursuing collection (through licensed attorneys) of an allegedly past due account after he made both verbal and written disputes of the validity of the account (the Complainant also suggests that the Respondent continues to report the alleged account as an undisputed obligation). The Complainant further alleges that the Respondent is reporting an unpaid amount that differs from the amount provided in a civil summons he received relative to the alleged account. Administrative office records show that a copy of the complaint and request for response to same within twenty (20) of receipt was served upon the Respondent on October 30, 2010. To date, no response has been filed with the administrative office.

Recommendation: Authorize formal hearing with authority to settle by Consent Order and payment of a $3,000.00 civil penalty.

6. 2010029121
First License: 11/5/09
Lic. Exp.: 11/4/11

The Complainant alleges that the Respondent refuses to lower the interest rate on his account, has made repeated and threatening telephone calls to residence concerning the account and refuses to send him a copy of his payment history relative to the account, leading him to believe that payments he has submitted are being misapplied.

The Respondent states that it is no longer servicing the Complainant's account and that all inquiries concerning payment history and interest should be directed to the creditor. With regard to telephone calls, the Respondent denies harassment, stating that all calls placed to the Complainant were reviewed and found to be non-threatening. The Respondent also provided a copy of its payment records for the Complainant's account, which show an extremely troubled payment history.

Recommendation: Close with a letter of warning re: telephone communication.

7. 2010036211
First License: 10/18/00
Lic. Exp.: 12/31/12

The Complainant alleges that the Respondent continued attempting to collect a debt that was previously settled in full. According to the Complainant, the Respondent first attempted to collect the past due account from her via collection notice dated July 6, 2007. The Complainant responded to such notice by letter dated July 17, 2007, stating that she disputed the amount demanded, but would be willing to tender what she believed to be the reasonable value of the account. To that end, she requested an itemized statement of account from the Respondent that would show how the amount demanded was calculated. In response, the Respondent provided her with a "debt verification" notice dated August 1, 2007, which segregated the amount demanded into "principal" and "collection fees" categories, but did not provide an accounting of the principal balance. On August 13, 2007, the Complainant dispatched to the Respondent a notice that she was tendering a portion of amount demanded in settlement of the account. The words "payment in full" and a reference to the account number of the alleged account were inscribed in the "memo" portion of the payment instrument. The Respondent cashed the payment instrument. On August 15, 2007, the Respondent transmitted another written payment demand to the Respondent. The Complainant responded to same by letter dated August 24, 2007, again reiterating her desire to settle the alleged account in full by prior remittance of the payment instrument. On October 5, 2007 the Respondent sent another payment demand to the Complainant showing that the previously tendered "accord and satisfaction" instrument had been credited toward the previously demanded balance. The notice was labeled a "first notice" of collection and contained the standard initial notice disclosures required by state and federal law. Three days subsequent, the Respondent mailed to the Complainant another payment demand showing the same adjusted balance reflected in the October 5th correspondence; however, this notice was labeled a "settlement offer". The Complainant responded to such notice, indicating to the Respondent that its demand was improper as the alleged account had been settled in August 2007. The Respondent mailed additional payment demands to the Complainant dated May 21, 2010 and November 15, 2010.

The Respondent states that it never intended to accept the Complainant offer of settlement and that it attempted to contact the Complainant by telephone and letter to confirm same. Further, the Respondent states that it has closed the alleged account and requested that credit reporting agencies delete its entries on the Complainant's credit report.

Recommendation: Authorize formal hearing with authority to settle by Consent Order and payment of a $5,000.00 civil penalty.

8. 2010036221
First License: 11/15/99
Lic. Exp.: 12/31/12

The Complainant alleges that the Respondent made misleading statements to him relative to an allegedly past due account. According to the Complainant, the Respondent's agent referred to the agency's alleged attorney after the Complainant asked a question concerning the alleged account. When the Complainant requested the name and contact information for the attorney, the agent provided a name but refused to provide the contact information, suggesting instead that the Complainant should "look it up". After the Complainant persisted, the agent terminated the telephone call. The Complainant called back and the agent allegedly provided him a wrong number.

The Respondent denies placing any telephone calls to the Complainant, stating that the Complainant promptly paid the past due account upon receipt of an initial collection notice.

Recommendation: Close with a letter of warning re: telephone communication.

9. 2010036471
First License: N/A
Lic. Exp.: N/A

The Complainant alleges that the Respondent acted in violation of state and federal law by failing to respond to his request for validation of a disputed account. The Respondent accepted service of the complaint on December 20, 2010. As of this date, the Respondent has not filed its sworn answer to the complaint with the Board's administrative office.

Recommendation: Send a CEASE and DESIST letter.

10. 2011000871
First License: N/A
Lic. Exp.: N/A

The Complainant alleges that the Respondent made deceptive statements to her concerning an alleged past due account. According to the Complainant, the Respondent placed a collection-related telephone call to her and indicated that she had defaulted on a payday loan. When the Complainant indicated that she would like time to check her records and verify the Respondent's assertions, the Respondent allegedly stated that the matter was set for trial in two (2) days. The Respondent advised the Complainant that she could forestall civil proceedings by making immediate payment arrangements, which the Complainant did, as indicated by a "notice of proposed settlement" document (which appears to be drafted by the Respondent's counsel) that the Complainant provided with the complaint. The Complainant states that the Respondent made periodic withdrawals from her checking account, but she never received a settlement letter or any other correspondence from the Respondent indicating that the account had been satisfied. After the Complainant attempted unsuccessfully to verify the status of the account with the Respondent, the Complainant contacted the creditor, who indicated that the Complainant did not have a past due account, as she had previously applied for credit but was denied same. The Respondent accepted service of the complaint on January 24, 2011, but as of this date, has not filed with the Board's administrative office its sworn answer to the complaint.

Recommendation: Send a CEASE and DESIST letter and notice that appropriate law enforcement agencies will be provided a copy of the complaint. Also notify the creditor regarding the Respondent's licensure status and activities in this state.

11. 2011000901
First License: 1/4/90
Lic. Exp.: 12/31/08

The Complainant alleges that the Respondent failed to respond to three (3) written requests for validation of an allegedly past due account that he disputes. The Respondent states that it has

sent two (2) requests to the Complainant for his written permission to provide validation to him. The Respondent asserts that the Complainant's permission is required before it can release the requested information.

Recommendation: Authorize formal hearing with authority to settle by Consent Order and payment of a $2,000.00 civil penalty.

12. 2011001831
First License: 5/17/02
Lic. Exp.: 12/31/12

An administrative office complaint alleges that the Respondent continued conducting collection service business in Tennessee after its location manager's license expired in 2008. The Respondent states it timely mailed the location manager's renewal application in 2008 and was advised by the administrative office in 2009 that nothing further would be required to process the renewal of the agency and location manager license. According to the Respondent, it contacted the administrative office in 2011 after its compliance department alerted it that the renewed license was never received and was advised that the fee for renewal of the location manager license was never received, resulting in the delay in processing the renewal. The Respondent states that the failure to send sufficient monies for renewal of the location manager license was an oversight. The location manager is now re-licensed.

Recommendation: Close with a letter of warning.

13. 2011001941
First License: N/A
Lic. Exp.: N/A

The Complainant alleges that the Respondent, who obtained the servicing rights to the Complainant's account prior to any alleged delinquency, has made misleading statements to him concerning his account. The Respondent asserts that, as it obtained the servicing rights to the Complainant's account pursuant to an ongoing relationship with the creditor shortly after the Complainant entered a contract with the creditor it does not fall within the definition of a "debt collector" under the FDCPA and should not be subject to liability under the Tennessee Collection Service Act.

Recommendation: Close with no action.

14. 2011001951
First License: 10/27/06
Lic. Exp.: 10/26/12

The Complainant alleges that the Respondent continued its efforts to collect a past due account after he mailed the Respondent notice of his dispute and a demand for validation.
The Respondent states that it made a "business decision" to close the alleged account and request that credit reporting agencies delete its entries on the Complainant's credit report.

Recommendation: Authorize a formal hearing with authority to settle by Consent Order and payment of a $1,000.00 civil penalty.

15. 2011001971
First License: 11/20/08
Lic. Exp.: 11/19/12

The Complainant alleges that the Respondent failed to provide proof of its assignment of her allegedly past due account pursuant to federal law and also failed to provide account billing statements. The Respondent accepted service of the complaint on February 4, 2011 and has not, as of this date, provided its sworn answer to the complaint.

Recommendation: Authorize a formal hearing with authority to settle by Consent Order and payment of a $1,000.00 civil penalty.

16. 2011001991
First License: N/A
Lic. Exp.: N/A

The Complainant alleges that the Respondent, who appears to be a credit grantor, made harassing and threatening statements to her while attempting to collect her past due account. The Respondent denies making such statements and asserts that its agent have dealt with the Complainant calmly and attempted to compel her to make voluntary arrangements to restore her account to "current status".

Recommendation: Close with no action.

17. 2011002631
First License: 3/15/82
Lic. Exp.: 12/31/12

The Complainant alleges that the Respondent, who appears to be collecting an account which allegedly arose out of a commercial transaction, continues to pursue collection of the alleged account after she made a timely request for validation of the alleged account. The Respondent states that it provided validation materials to the Complainant (in the form of itemized billing statements) and that it has elected to close the account and return it to its client.

Recommendation: Close with no action.

18. 2011004891
First License: 11/8/07
Lic. Exp.: 11/7/12

An administrative office complaint alleges that the Respondent failed to timely appoint a licensed location manager after its location manager relocated to another company. Respondent states that it diligently attempted to replace its manager and promptly notified the Board office of

its efforts, but that it was unable to appoint a new manager within the one (1) year statutory deadline. The Respondent has now obtained a location manager.

Recommendation: Close with a letter of warning.

19. 2008011701
First License: 8/6/03
Lic. Exp.: 12/31/08

The Board previously authorized formal proceedings against the agency relative to allegations that the agency continued to contact a non-debtor third party concerning a past due account. Administrative office records indicate that the above-referenced agency is now closed for business.

Recommendation: Close and flag the file.

MOTION: Ms. Trinkler made a motion to accept Legal's recommendation on all of the complaints presented as amended, seconded by Ms. Dixon. **MOTION CARRIED.**

CLLA Conference Report – Mr. Bond advised that he recently participated in a panel of State Regulators at the national convention of the Commercial Law League of America (CLLA) regarding issues concerning the regulation of collection activity. He further advised that CLLA is an organization of attorneys and other experts in credit and finance actively engaged in the field of commercial law and gave an oral report concerning the conference.

Laura Betty, Assistant General Counsel, gave an oral report regarding the thirty-two (32) cases currently pending litigation for the Collection Services Board.

ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR

Complaint Status Report - Ms. Hancock presented a comparison of the complaints pending in June 2010 to those currently pending.

FTC 2010 Consumer Complaint Information – Ms. Hancock presented copies of the Federal Trade Commissions List of Top Consumer Complaints in 2010. She pointed out that according to the report debt collection was the second most common category for complaints.

NACARA Conference September 25-27, 2011 – Ms. Hancock advised that the location and dates for the annual NACARA conference has been scheduled. After some discussion, the Board asked that travel authorization requests be submitted for Mr. Howard, Ms. Hancock and Mr. Bond.

TD Bank – Question re: Name Change – Ms. Hancock presented some information regarding the recent acquisition of Chrysler Financial Services Americas, LLC by TD Bank. After some discussion, the Board advised that the information as presented appears to reflect a change of ownership and would require a new application for licensure. Ms. Hancock will respond on the Board's behalf.

Todd Smith – Question re: Collection Fees for Consumer Accounts – Ms. Hancock presented an email from Todd Smith, President of Receivable Solutions Incorporated, regarding the addition of collection fees to consumer accounts. The Board advised that they feel Tennessee Rules and Laws are consistent with the FDCPA regarding unfair practices and find that fees should not be added by the collection agency but by the creditor prior to assignment as authorized by law, contract, or their financial agreement. Ms. Hancock and Mr. Bond were asked to draft a written response to Mr. Smith on the Board's behalf.

Financial Statement Review – Ms. Hancock presented a financial statement submitted by a collection agency upon renewal for the Board's review because the accounts payable exceeded the trust account. After some discussion, Mr. Bond recommended no action at this time. Mr. Howard recused himself. Ms. Trinkler made a motion to accept Legal's recommendation, seconded by Mr. Mitchell. **Motion Carried.**

CGA Question - Ms. Hancock advised that a collection service agency in Kansas submitted a financial statement that was prepared by an accountant located in Canada. The accountant is registered in Canada as a Certified General Accountant (CGA). In Canada accountants are not recognized as CPA's or PA's. However, 62-20-112(b)(3) states that the agency must submit "a current balance sheet prepared by a licensed public accountant (PA) or certified public accountant (CPA)." Ms. Hancock further advised that she consulted with the Executive Director of the Tennessee Board of Accountancy and was advised that they would accept the education of a CGA from Canada for reciprocity purposes but that the applicant would be required to pass the examination for a CPA in order to become licensed in Tennessee. The Board asked Ms. Hancock to advise the collection agency that they will recognize the fact that their balance sheets/financial statements were prepared in the past by a CGA and the board will accept the statement this last time, however, any future reports must be prepared by a U.S. licensed CPA or PA.

Fan Distribution, LLC – Ms. Hancock presented a request from Fan Distribution, LLC for the Board to determine if their business practices meet the definition of a "passive debt buyer" or if they should be licensed as a collection service agency. After some discussion, the Board requested additional information in order for them to determine the company's involvement in reporting to the credit bureaus and filing law suits.

Mr. Bond left the meeting at 11:05 a.m. and returned at 11:10 a.m.

COLLECTION LOCATION APPLICATIONS REVIEW

The following Collection Agency Application was presented for consideration:

Accounts Receivable Management, Inc (Branch Office) – After some discussion, the Board advised that a branch license would not be required but they must have a licensed location manager for this and all other locations doing business in Tennessee.

The Board took a break at 11:15 a.m. and reconvened at 11:20 a.m.

LOCATION MANAGER APPLICATION REVIEW

The following Location Manager Applications were presented for consideration:

Efraim Roa: Ms. Trinkler made a motion to deny his request to waive the retesting necessary for him to reinstate his license, seconded by Mr. Mitchell. **MOTION CARRIED.**

Jerome Andrew Peer: Mr. Mitchell made a motion to deny the applicant's request for reconsideration citing TCA 62-20-125(3), seconded by Ms. Trinkler. **MOTION CARRIED.**

Prateek Pannu: Ms. Trinkler made a motion to deny the applicant's request for reconsideration citing TCA 62-20-125(3), seconded by Ms. Dixon. **MOTION CARRIED.**

Chetna Tauro: Ms. Dixon made a motion to deny the applicant's request for reconsideration citing TCA 62-20-125(3), seconded by Mr. Mitchell. **MOTION CARRIED.**

Savlatore J. Abbot: Mr. Mitchell made a motion to table the application and request additional information within thirty (30) days of notice for the Board to consider at their next meeting. Failure to respond within thirty (30) days will result in denial of the application citing TCA 62-20-125(3). The motion was seconded by Ms. Trinkler. **MOTION CARRIED.**

Bill Giannini, recently appointed Assistant Commissioner of the Division of Regulatory Boards, joined the meeting briefly to introduce himself.

Wendy Ann Downey: Mr. Howard recused himself. Ms. Trinkler made a motion to deny the application citing TCA 62-20-125(3), seconded by Ms. Dixon. **MOTION CARRIED.**

Robert William Loftus: Mr. Mitchell made a motion to deny the application citing TCA 62-20-125(3), seconded by Ms. Trinkler. **MOTION CARRIED.**

Carl Robert Olsson: Ms. Trinkler made a motion to deny the application citing TCA 62-20-125(3), seconded by Ms. Dixon. **MOTION CARRIED.**

Corinne C. Willingham: Ms. Trinkler made a motion to deny the application citing TCA 62-20-125(3), seconded by Mr. Mitchell. **MOTION CARRIED.**

Gary Michael Chamberlain: Mr. Mitchell made a motion to deny the application citing TCA 62-20-125(3), seconded by Ms. Trinkler. **MOTION CARRIED.**

Alireza Alex Mobasher: Ms. Dixon made a motion to deny the application citing TCA 62-20-125(3), seconded by Ms. Trinkler. **MOTION CARRIED.**

Deborah Ann Kaufman: Ms. Trinkler made a motion to deny the application citing TCA 62-20-125(3), seconded by Mr. Mitchell. **MOTION CARRIED.**

Nilnett Gonzalez Shama: Ms. Trinkler made a motion to deny the application citing TCA 62-20-125(3), seconded by Ms. Dixon. **MOTION CARRIED.**

NEW BUSINESS OR UNFINISHED BUSINESS:

Ms. Hancock announced that Steve Majchrzak, former Assistant Commissioner of Regulatory Boards, was recently promoted to Deputy Commissioner for the Department of Commerce and Insurance.

AJOURN: Being no further business to discuss, the meeting adjourned at 11:55 a.m.

Bart Howard, Chairman