

**TENNESSEE
COLLECTION SERVICE BOARD
MINUTES**

DATE: May 15, 2013

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

PRESENT: Board Members:
Bart Howard, Chairman
Elizabeth Dixon
Steve Harb

ABSENT: Chip Hellmann
Elizabeth Trinkler, Vice-Chairman

PRESENT: Staff Members:
Donna Hancock, Executive Director
Chris Whittaker, Assistant General Counsel
Susan Lockhart, Administrative Services Assistant 4

GUESTS: Erin Bennett, Terrance Bond and Robyn Ryan

CALL TO ORDER: Chairman Howard called the meeting to order at 9:05 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. The agenda for this meeting has been posted on the Tennessee Collection Service Board's website since May 9, 2013 and this meeting has been noticed on the tn.gov website since April 29, 2013."

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

Agenda – Ms. Hancock advised the Board that Misty Nelson (tab 2 on the agenda) had contacted her shortly before the meeting to advise that she would be unable to attend the meeting. Ms. Hancock asked that Ms. Nelson's issue be removed from the agenda and she stated that she would reschedule Ms. Nelson if she calls again for a reappointment. Mr. Hellmann made a motion to adopt the agenda as amended, seconded by Ms. Dixon. **MOTION CARRIED.**

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

CHRIS WHITTAKER, ASSISTANT GENERAL COUNSEL

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

1. 201200571

Year License Issued: 2011
License Expiration Date: 12/20/2013

The complaint alleges harassment, that the Respondent attempted to collect more money than was owed pursuant to the Complainant's auto loan contract, and that the Respondent wrongfully ordered the repossession of the Complainant's vehicle. The Complainant has hired an attorney and his case has been consolidated as part of a class action lawsuit against the Respondent.

Recommendation: Place this complaint into Litigation Monitoring status pending the outcome of the Complainant's civil lawsuit.

2. 2012023211

Year First Licensed: N/A (Unlicensed)
License Expiration: N/A

The Board previously considered this complaint at its January 2013 meeting and authorized settlement of this complaint by Consent Order upon payment of a civil penalty in the amount of \$ 4,000.00 by the Respondent. The complaint alleges that the Respondent engaged in unlicensed conduct by attempting to collect a consumer debt without proper licensure to do so. The investigation revealed that the Respondent does not have a valid Tennessee collection service license, and there appears to be sufficient evidence to substantiate the allegations of unlicensed activity by the Respondent. While discussing the possibility of settling this complaint with the company's president, he apologized for any misunderstanding of the law which may have led to the alleged unlicensed conduct and stated that he fully understands that his company will require a collection service license if it wishes to collect debts in Tennessee in the future. He further requested leniency from the Board in the amount of the civil penalty because his company is small, is experiencing financial difficulties, and because this is the company's first time before the Board. Applicable law requires that economic deterrence be considered as a factor when determining the amount of a civil penalty. As such, provided that the Respondent promptly signs the Consent Order and pays the civil penalty, a \$ 1,000.00 civil penalty is recommended.

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

3. 2012026251

Year First Licensed: N/A (Unlicensed)
License Expiration: N/A

The Board first reviewed this complaint at its March 2013 meeting and requested that additional information be obtained prior to the Board making a recommendation for disposition of the complaint. The complaint alleges that the Respondent engaged in unlicensed conduct by reporting an alleged debt on the Complainant's credit report without a license. The investigation revealed that the Respondent is a passive debt buyer who does not engage in any collection

conduct, and when collection activity becomes necessary, it refers those accounts to a licensed collection agency. Additionally, the Respondent has deleted all entries related to this alleged debt from the Complainant's credit report and will not report this debt to the credit bureaus in the future. Because this company credit reports accounts, the Board asked what happens when a consumer calls the Respondent regarding the debt. According to the attorney for the Respondent, consumers who call in are referred to the collection agency at which the account has been placed, and the additional investigation has revealed no evidence of any legal violations or that the Respondent is anything other than a passive debt buyer. However, the Respondent's attorney believes that a Letter of Warning would greatly assist him in his ongoing efforts to make clear to the Respondent that, despite its desire to provide friendly customer service to consumers who call the Respondent, any efforts to do anything other than immediately refer the consumer to the collection agency could place the Respondent at risk of disciplinary action from the Board for unlicensed conduct. As such, a Letter of Warning is recommended.

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

4. **2012015061**

Year First Licensed: 1993
License Expiration: 12/31/14

The Board previously considered this complaint at its November 2012 meeting and authorized settlement of this complaint by Consent Order upon payment of a civil penalty in the amount of \$ 2,000.00 by the Respondent. The complaint alleges that the Respondent engaged in unlicensed conduct by attempting to collect a debt without proper licensure to do so, and that the Respondent engaged in rude, abusive behavior while attempting to collect the debt in question. The initial investigation revealed that the Respondent does have a valid Tennessee collection service license and that there was some evidence that a representative of the Respondent agency may have engaged in rude, abusive behavior while attempting to collect the debt in question from the Complainant. After the Consent Order was sent to the Respondent, additional evidence was obtained regarding the allegations made in this complaint. The new evidence obtained casts serious doubt on the Complainant's allegations of rude and abusive behavior by the Respondent's account representative. In the absence of recordings of the phone conversations in question and/or other evidence which strongly supports the Complainant's allegations, there is insufficient evidence to pursue a formal hearing relative to any allegations in this complaint. However, a Letter of Warning is recommended to admonish the Respondent to continue to make clear to its employees and representatives that rude and abusive behavior toward debtors will not be tolerated.

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

5. **2013005741**

Year First Licensed: N/A (Unlicensed)
License Expiration: N/A

The complaint alleges that the Respondent attempted to collect money to which it was not entitled while attempting to collect a student loan debt. The Complainant sent a cease and desist communication letter asking the Respondent not to contact her at work, and the Respondent complied with the Complainant's request. The Complainant also requested validation of the

debt, and the Respondent timely responded to the Complainant's request for debt validation. The investigation revealed that the Complainant and the Respondent were ultimately unable to reach an agreement on the amount of money owed by the Complainant. The Complainant contacted the school from which she graduated (the original debtor), and at the Complainant's request, the school recalled the Complainant's account from the Respondent and placed it with another agency. However, a Letter of Warning is recommended to caution the Respondent to collect only money to which it is entitled by law and/or contract, that it must obtain a Tennessee collection service license in order to engage in the debt collection business in the State of Tennessee, and to advise that failure to do so may result in disciplinary action against the Respondent.

Recommendation: Close this complaint upon the issuance of a Letter of Warning that includes Cease and Desist language.

6. **2013003141**

Year First Licensed: 2007 (Expired License)
License Expiration: 03/01/2013

The complaint alleges that the Respondent failed to timely provide proof of surety bond coverage to the Board as required by law. The investigation revealed that the Respondent did not respond to the request for updated surety bond coverage or to the complaint in any way. Moreover, the Respondent's collection service license has expired and is now outside the period for late renewal. As such, the Respondent may no longer lawfully conduct collection service business in Tennessee until and unless it obtains a new license.

Recommendation: Close this complaint upon the issuance of a Cease and Desist letter advising the Respondent that it must apply for a new license if it wishes to conduct collection service business in Tennessee in the future.

7. **2013003181**

Year First Licensed: 2012
License Expiration: 12/25/2014

The complaint alleges that the Respondent failed to timely provide proof of surety bond coverage to the Board as required by law. The investigation revealed that the Respondent did not respond to the request for updated surety bond coverage or to the complaint in any way. Moreover, the Respondent's collection service license has expired and is now outside the period for late renewal. As such, the Respondent may no longer lawfully conduct collection service business in Tennessee until and unless it obtains a new license.

Recommendation: Close this complaint upon the issuance of a Cease and Desist letter advising the Respondent that it must apply for a new license if it wishes to conduct collection service business in Tennessee in the future.

8. **2011000901**

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

The complaint alleges that the Respondent failed to respond to a timely and written request by the Complainant that the Respondent validate the alleged debt in question and that the Respondent attempted to collect the alleged debt in question without validating it despite the Respondent's timely and written validation request. The investigation took quite some time because the Complainant was an active duty soldier at the time the complaint was filed, and it revealed that the Respondent did not attempt to collect the alleged debt in question after receiving the Complainant's validation request. The Complainant advised that, at his request, the alleged debt in question was removed from his credit report, that the Respondent did not object to this removal, and that he considers the matter satisfactorily resolved.

Recommendation: Dismiss the complaint.

9. ~~2012021551~~

Year First Licensed: 2010
License Expiration: 11/23/2014

The complaint alleges that the Respondent attempted to collect money that the Complainant does not owe and that it failed to validate the alleged debt in question upon written request by the Complainant. The investigation revealed that the Respondent did not attempt to collect the alleged debt in question while its request for validation of the debt was pending with its client, and that it deleted previously reported entries on the Complainant's credit report until the debt could be validated. In addition to filing the complaint with the Board, the Complainant also filed a civil lawsuit against the Respondent regarding these same allegations. The civil lawsuit was settled without a trial, and the settlement agreement included no admission of liability and a non-disclosure provision. As such, there is no evidence of any legal violations by the Respondent.

Recommendation: Dismiss the complaint.

10. ~~2012025561~~

Year First Licensed: 1975
License Expiration: 12/31/2014

The complaint alleges that the Respondent attempted to collect money that the Complainant does not owe and that it engaged in harassment by continuing to contact her at work after she asked the Respondent not to do so in writing. The investigation revealed that the alleged debt in question is a credit card debt. The Complainant initially claimed to the credit bureaus that that the account was fraudulent and filed a police report stating that the account was opened without her knowledge. However, when the Respondent contacted her regarding the debt, the Complainant admitted that the card was hers, that she knew who made the charges, and that she had previously made payments on the card, but the person who made the charges disappeared and she could not locate him. Additionally, the original creditor performed two separate investigations regarding the Complainant's fraud claim, and the creditor found no fraud in either investigation. Finally, the investigation revealed that all Respondent contacts with the Complainant at her place of employment were made prior to her request not to contact her at work, and that all subsequent contacts were made on residential and/or cell phones.

Recommendation: Dismiss the complaint.

11. 2013003161

Year First Licensed: 2011
License Expiration: 12/14/2013

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 attached to the Respondent's license renewal application, was not noticed initially, and did not make it into the Respondent's file until after a complaint had been opened.

Recommendation: Dismiss the complaint.

12. 2013003171

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

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 timely proof to the Board of surety bond coverage reflecting no lapse in coverage at any time, but that the documentation was lost in transit between the State's mail room and the Board's office.

Recommendation: Dismiss the complaint.

13. 2013003631

Year First Licensed: 1997
License Expiration: 12/31/2014

The complaint alleges that the Respondent attempted to collect a debt that the Complainant does not owe. The Complainant also states that the Respondent failed to respond to her request for validation of the alleged debt in question. The investigation revealed that the alleged debt was never reported to the credit bureaus and that the Respondent did not attempt to collect the alleged debt after the Complainant's validation request because its investigation could not confirm that the Respondent owed the debt.

Recommendation: Dismiss the complaint.

14. 2013004471

Year First Licensed: 1998
License Expiration: 10/18/2014

The complaint alleges that the Respondent attempted to collect money that the Complainant does not owe. The investigation revealed that the Complainant did submit a timely written validation request to the Respondent as required by the FDCPA. Upon receiving the validation request from the Complainant, the Respondent marked the debt as disputed, ceased all collection efforts, and returned the account to its client.

Recommendation: Dismiss the complaint.

15. 2013004631

Year First Licensed: 1997
License Expiration: 12/31/2014

~~The complaint alleges that the Respondent attempted to collect money that the Complainant does not owe. The investigation revealed that the Complainant did submit a timely written validation request to the Respondent as required by the FDCPA. Upon receiving the validation request from the Complainant, the Respondent marked the debt as disputed, ceased all collection efforts, and returned the account to its client.~~

~~**Recommendation:** Dismiss the complaint.~~

16. 2013004761

Year First Licensed: 1975
License Expiration: 12/31/2014

The complaint alleges that the Respondent engaged in harassment by continuing to contact him at work after he asked the Respondent not to do so. The investigation revealed no evidence to support the Complainant's claim. The Respondent agreed to treat this complaint as the Complainant's request not to contact him at his place of employment, and marked its files "do not contact at POE" to ensure that the Complainant would not be contacted at work regarding this debt.

Recommendation: Dismiss the complaint.

17. 2013005431

Year First Licensed: 2008
License Expiration: 01/27/2015

The complaint alleges that the Respondent attempted to collect a debt that the Complainant does not owe. The investigation revealed that, upon the Complainant's request for validation, the Respondent's own investigation confirmed that the Complainant did not owe the debt. As such, the Respondent apologized for any misunderstanding and inconvenience and did not contact the Complainant again.

Recommendation: Dismiss the complaint.

MOTION: Mr. Hellmann made a motion to accept Legal' s recommendations as amended, seconded by Mr. Harb. **MOTION CARRIED.**

ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR

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

Consumer Financial Protection Bureau Exams – Ms. Hancock presented an article from *The American Banker* regarding the implementation exams by the Consumer Financial Protection Bureau (CFPB) and how it will change the debt collection industry for the board's reference.

Budget Report – Ms. Hancock presented a budget report of the expenditures and revenues for the last three fiscal years along with the current fiscal year-to-date totals. Mr. Hellmann made a motion to accept the budget report as presented, seconded by Ms. Dixon. **MOTION CARRIED.**

SB 0148 – Discussion – Ms. Hancock presented a copy of Senate Bill 0148 advising that it was signed into law and immediately enacted on April 23, 2013. This law eliminated the license requirements for collection service location managers. She further advised the Board that the agency applications awaiting only location manager licenses were being processed; manager applications received prior to the law becoming effective were not being refunded as they were being processed in good faith at the time; and the manager applications received after the enactment were being returned and the fees refunded. Members of the board inquired about the fiscal impact and Ms. Hancock stated that the fiscal note attached to the Bill showed an estimated decrease in revenue of \$30,600 accompanied by an equal decrease in expenditures.

Chairman Howard asked if the board would need to meet as often as a result of these changes. It was decided the board would follow the current meeting schedule in order for complaints to be processed in a timely manner. Chairman Howard also inquired as to whether or not complaints could be heard via teleconference to curb travel expenses. Mr. Whittaker advised teleconferences are generally accepted for emergency matters and the administrations current policy is for boards to meet in person in the spirit of the open public meeting requirements.

Agency Application Form – Ms. Hancock presented a copy of the Collection Agency Application for their review as requested during the last meeting. After some discussion, the board tabled the matter until the next meeting to allow time for members to review the application. Mr. Hellman made a motion for Ms. Hancock and Mr. Whitaker to work on a draft to present at the next meeting based on the comments and suggestions as discussed. Mr. Harb seconded the motion. **MOTION CARRIED.**

NEW BUSINESS OR UNFINISHED BUSINESS:

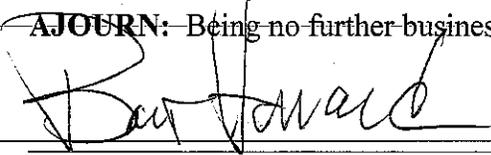
~~Mr. Whittaker advised the board that a recent federal trial case resulted in a disagreement regarding the definition of passive debt buyers and is now pending an appellate decision in~~

federal court. He advised he would follow the case and report the outcome to board as it may have an impact on the board's current clarification statement regarding passive debt buyers.

Chairman Howard inquired about the North American Collection Agency Regulatory Association's (NACARA) next meeting. Mr. Whittaker advised it is scheduled for October 6-8, 2013 in Boston, Massachusetts but the agenda has not been finalized. Ms. Dixon made a motion to submit travel authorization requests for Chairman Howard, Mr. Hellmann and Mr. Whittaker to represent the board at the conference in October. The motion was seconded by Mr. Harb.

MOTION CARRIED.

~~AJOURN: Being no further business to discuss, the meeting adjourned at 12:00 p.m.~~



Bart Howard, Chairman