

**TENNESSEE  
COLLECTION SERVICE BOARD  
MINUTES**

**DATE:** May 9, 2012

**PLACE:** Andrew Johnson Tower – 2<sup>nd</sup> Floor Conference Room  
710 James Robertson Parkway  
Nashville, Tennessee

**PRESENT:** Board Members:  
Bart Howard, Chairman  
Elizabeth Trinkler, Vice Chairman  
Elizabeth Dixon  
Chip Hellmann

**PRESENT:** Staff Members:  
Donna Hancock, Executive Director  
Laura Betty, Chief Counsel for the Division of Regulatory Boards  
~~Chris Whittaker, Assistant General Counsel~~  
Robyn Ryan, Assistant General Counsel  
Susan Lockhart, Executive Assistant

**GUESTS:** Terrance Bond

**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 and all four (4) members were present.

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

**Minutes** – Mr. Hellmann made a motion to approve the minutes of the March 14, 2012 meeting, seconded by Ms. Dixon. **MOTION CARRIED.**

**Minutes** – Ms. Hancock advised it had recently been brought to her attention that the minutes from the teleconference held in August 2012 had never been submitted for approval per previous counsel but would like to do so at this time. Ms. Trinkler made a motion to approve the minutes of the August 2, 2011 teleconference, seconded by Mr. Howard. Mr. Hellmann and Ms. Dixon abstained from voting as they did not participate in the teleconference. **MOTION CARRIED.**

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**CHRIS WHITTAKER, ASSISTANT GENERAL COUNSEL**

Chairman Howard recognized and welcomed Chris Whittaker as the new Assistant General Counsel for the Board.

Mr. Whittaker a brief history of his experience with the State of Tennessee and advised he also currently serves as the Assistant General Counsel for the Board of Accountancy. He then presented the following Legal Report for the Board's consideration:

1. 2012003061
2. 2012005861
3. 2012005841
4. 2012005881
5. 2012005891
6. 2012005901
7. 2012005911
8. 2012005921
9. 2012005931
10. 2012005941

All of the above-referenced cases involve licensees who have failed to provide proof of an adequate surety bond to the Board as required by law.

**Recommendation:** Close and issue a CEASE and DESIST notice advising the Respondent that it should cease operations in Tennessee until it provides proof of adequate surety bond coverage.

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11. 2012000641

The complaint alleges that the Respondent failed to comply with T.C.A. § 62-20-114 by failing to provide an explanation as to why the Respondent's licensing application showed that the balance owed to clients at the end of every month was zero. Immediately upon learning of the complaint, the Respondent provided a written explanation to the Board, stating that the balance owed to clients is zero at the end of every month because the agency places all collected client funds into client trust accounts at the end of every month.

**Recommendation:** Dismiss the complaint.

12. 2012001431

This complaint centers around the attempted collection of funds owed as a result of payday advance loans taken out by the Complainant. The complaint alleges that the Respondent engaged in unlicensed collection activity and that the Respondent attempted to collect a debt that the Complainant does not know about. The investigation revealed that the Respondent does have a valid, active collection service license. Additionally, it is not a violation of the law for a licensee to attempt to collect a debt that the debtor "does not know about". Further, there is no evidence that the Complainant asked the Respondent to validate the debt, and the payday loan agreements signed by the Complainant specifically grant the debtor the right to report late payments, missed payments, and/or other defaults on the payday loan agreement to credit bureaus. While there is no evidence that the Respondent reported the debt at issue in this case to any of the three major credit bureaus, the Respondent did attempt to help the Complainant obtain information regarding the debt. The Respondent contacted the three major credit bureaus to request that any adverse credit entries on the Complainant's report regarding the debt in question be removed so as to allow the Complainant time to obtain sufficient information about the debt

to determine whether the debt is owed or not. In summary, the Complainant's complaint (as currently constituted) appears to state no claim upon which the Board may take disciplinary action against the Respondent.

**Recommendation:** Dismiss the complaint.

**13. 2012001201**

The complaint alleges that the Respondent attempted to collect a debt that the Complainant did not owe. The investigation revealed that the creditor made a billing error on the Complainant's account, thereby resulting in the Respondent's good faith attempt to collect a debt which was later determined not to be owed by the Complainant. Although the Respondent did close the Complainant's account immediately upon learning that the Complainant did not owe the debt, the file contains no evidence that the Respondent attempted to validate the debt as requested by the Complainant.

**Recommendation:** Close with a Letter of Warning.

**14. 2012003511**

The complaint alleges that the Respondent contacted the Complainant after receiving a letter from the Complainant stating that the debt in question was discharged in a bankruptcy proceeding and asking that the Respondent no longer contact him regarding the debt. The Respondent's internal investigation revealed that it did, in fact, receive the letter, but that the proper notation was not made in the Complainant's account because the Complainant's letter never made it to the person responsible for making such entries. The Respondent took full responsibility for the error, and it implemented a new procedure requiring that all "cease and desist communication" letters be signed for by the staff member(s) responsible for making notations to the accounts of debtors who have requested not to be contacted any further regarding debts assigned to the Respondent.

**Recommendation:** Close with a Letter of Warning.

**15. 2012004021**

The complaint alleges that the Respondent attempted to collect a debt that the Complainant did not owe due to his identity being stolen. The investigation revealed that the Complainant requested that the Respondent verify the debt in writing within 30 days of receiving notice of the debt. Once the Complainant submitted a notarized identity theft affidavit to the Respondent, the Respondent did close the Complainant's account immediately upon learning that the Complainant did not owe the debt. Although the file contains no evidence that the Respondent attempted to validate the debt as requested by the Complainant, there does not appear to be any intent by Respondent to avoid communicating with the Complainant or to simply close the Complainant's account to evade regulatory action. Rather, it appears that the Complainant submitted his identity theft affidavit immediately after requesting verification of the debt. As such, the Respondent, recognizing that this debt related to identity theft, immediately closed the Complainant's account without verifying the debt. A Letter of Warning is appropriate

to advise the Respondent that, upon receipt of a timely, written request for verification of a debt, they should respond to it, even if the response is an explanation that is included with the notice to the alleged debtor that the debtor's account with the agency is being closed.

**Recommendation:** Close with a Letter of Warning.

**16. 2012004631**

The Complainant alleges that the Respondent made threatening phone calls to the Complainant. The investigation revealed no evidence of threatening phone calls, showed that the collection letters sent to the Complainant are in compliance with applicable law, and revealed that the Respondent is continuing to track the Complainant's progress on the payment plan worked out between the Complainant and the debtor (with the Respondent making no further collection calls so long as the Complainant is compliant with the payment plan). Board member Elizabeth Trinkler must recuse herself from voting on the disposition of this matter due to potential personal knowledge of the subject matter of this complaint.

**Recommendation:** Dismiss the complaint.

**17. 2012005141**

The complaint alleges that the Respondent made numerous harassing phone calls to the Complainant. The investigation revealed that the Respondent called the Complainant eleven (11) times before being able to speak with her. The Complainant stated that she had to make multiple phone calls (during which she had to speak with someone in the Philippines) and send an e-mail to the Respondent in order to notify them that they were calling a phone number that did not belong to the debtor from whom the Respondent was seeking to collect the debt at issue in this case. The Respondent stated that they obtained the Complainant's phone number from a third party vendor, but did not know it was a wrong number until the Respondent contacted them. The Respondent apologized for any inconvenience to the Complainant, made a note in their system that the phone number at which they called the Complainant was a wrong number, and immediately ceased all phone calls to the Complainant's phone number.

**Recommendation:** Close with a Letter of Warning stating that any future calls to the Complainant regarding this matter shall result in disciplinary action being pursued against the Respondent.

**18. 2012006531** (*Ms. Trinkler recused herself per Counsel's request*)

The complaint alleges that the Respondent attempted to collect a debt from the Complainant which was not owed. The investigation revealed that, during the first and only phone call received by the Complainant, the Complainant advised the Respondent that the statute of limitations had run on the debt in question, and asked that the Respondent not contact him again in the future regarding this debt. The Complainant also sent a "cease and desist communication" letter to the Respondent regarding this debt. While the Complainant is correct that the expired statute of limitations means that he can't be successfully sued to collect the debt, the debt is still owed and a collection agency may attempt to collect the debt using non-litigation

collection methods (i.e., phone calls, letters, etc.). Immediately upon receiving the Complainant's "cease and desist communication" letter, the Respondent closed the Complainant's account and returned it to the original creditor.

**Recommendation:** Dismiss the complaint.

**MOTION:** Mr. Hellman made a motion to accept Legal's recommendation on all of the complaints as presented, seconded by Ms. Dixon. (Ms. Trinkler recused herself from voting on #16 - 2012004631 per Counsel's request). **MOTION CARRIED.**

*Ms. Ryan left the meeting at 9:55 a.m. upon conclusion of Mr. Whittaker's report.*

#### **ADMINISTRATIVE REPORT - DONNA HANCOCK, EXECUTIVE DIRECTOR**

**Location Manager Exam Contract - Update** - Ms. Hancock introduced Laura Betty, Chief Counsel for the Division of Regulatory Boards. Ms. Betty advised that she has been working with Fiscal Services regarding the Board's contract for administering the location manager exam. She reminded the Board that there were no bids to the first Request for Proposal the Department issued 4/20/11 and this resulted in the Board calling for Emergency Rules regarding the examination fee that the vendor may charge the exam candidates. (Ms. Betty explained that after inquiring, it was found that by statute, the previous vendor declined to submit a proposal because the candidate exam fee was too low.) After the Emergency Rules were in place a second Request for Proposal was issued on 2/21/12. It also failed to receive any proposals.

Ms. Betty further advised that the new rule calling for a candidate exam fee to be negotiated between the board and exam vendor was presented to the legislative committee on Monday, May 7, 2012. The rule was passed and will become effective on June 20, 2012. The Department is now working with a new vendor on a "sole source" contract and working with the previous vendor on obtaining information concerning the previous examination questions. After some discussion, it was determined that the Board could meet via teleconference (given the required notice) to review the proposed exam candidate fee as soon as it is available. Ms. Hancock advised the Board that most likely there will be incurring costs for the new examination development which will result in an increase of expenditures on this fiscal year's budget.

*Ms. Betty left the meeting at 10:08 a.m. upon conclusion of her report concerning the Location Manager Exam Contract.*

**Consumer Financial Protection Proposed Rule - Response from NACARA** - Ms. Hancock presented a letter from the North American Collection Agency Regulatory Association (NACARA) to the Bureau of Consumer Financial Protection (BCFP) in response to and support of the Bureau's proposed rule defining "larger participants" in certain consumer financial product and service markets. She advised that since the Tennessee Collection Service Board is a member of NACARA, she wanted them to be aware of NACARA's positions on all debt collection issues.

**Complaint Status Report** - Ms. Hancock presented a comparison of the complaints pending in May 2011 to those currently pending.

**LOCATION MANAGER APPLICATION REVIEW**

Ms. Hancock presented a request from Mr. **James D. Evans** asking the board to waive a requirement for him to retest on the Location Manager exam. Mr. Evans' license expired 12/31/10 and to return to the industry he must be relicensed and meet all licensing requirements. Mr. Evans passed the location manager exam in 2000 and the exam has not changed.

**James D. Evans** – Ms. Dixon made a motion to approve the waiver request, seconded by Ms. Trinkler. **MOTION CARRIED.**

Ms. Hancock then presented the following Location Manager Applications to the Board for consideration:

**Kevin Dean Wardlow** – Mr. Hellmann made a motion to approve the application, seconded by Ms. Dixon. **MOTION CARRIED.**

**Andrew N. Miller** – Ms. Trinkler made a motion to table the application and staff to request additional information. Seconded by Mr. Hellmann. **MOTION CARRIED.**

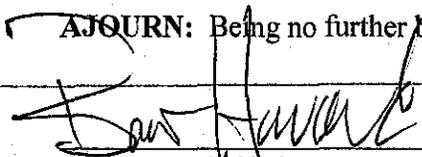
**Eddie Sanchez, Jr.** – Mr. Hellmann made a motion to deny the application pursuant to TCA 62-20-125(3), seconded by Ms. Dixon. **MOTION CARRIED.**

**Matthew T. Gascon.** – Ms. Trinkler made a motion to deny the application pursuant to TCA 62-20-125(3), seconded by Mr. Hellmann. **MOTION CARRIED.**

**NEW BUSINESS OR UNFINISHED BUSINESS:** Terrance Bond, Attorney at Law, appeared on behalf of Barry Gammons, PLLC. He inquired as to the Board's position regarding its current clarification statement listed on the Board's web site regarding debt/judgment purchasers and "passive" debt buyers. The Board reviewed the current statement and advised it would currently stand as written.

Mr. Bond then asked if a business operating as a debt buyer, unaware they should be licensed as a collection agency, would be given leniency or "safe harbor" if the Board became aware of said unlicensed practices. He said that the 'safe harbor' period could be limited to a specific time given to allow the business to become licensed. The Board advised that practices of this nature would be reviewed on a case by case basis and felt that they have historically offered leniency if the business demonstrates it is trying to do the right thing.

**AJOURN:** Being no further business to discuss, the meeting adjourned at 10:55 a.m.

  
Bart Howard, Chairman