

**TENNESSEE
COLLECTION SERVICE BOARD
MINUTES**

DATE: January 11, 2012

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

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

ABSENT: Elizabeth Trinkler, Vice Chairman
Cecile Testerman

PRESENT: Staff Members:
Donna Hancock, Executive Director
Terrance Bond, Assistant General Counsel
Robyn Ryan, Assistant General Counsel
Susan Lockhart, Executive Assistant
Hosam William, Paralegal

GUESTS: Scott J. Hanni, Dennis Blackman, Paul Davidson, Carol Brass
and Rick Bennett

CALL TO ORDER: Chairman Howard called the meeting to order at 9:33 a.m. and the following business was transacted:

Roll Call - Director Hancock called the roll. Three (3) of the five (5) board members were present. Ms. Trinkler and Ms. Testerman were absent.

Agenda - Mr. Bond announced an addition to the agenda. Mr. Hellmann made a motion to accept the agenda as amended, seconded by Ms. Dixon. **Motion Carried.**

Adopt Robert's Rules of Order – Mr. Hellmann made a motion to adopt Robert's Rules of Order, seconded by Ms. Dixon. **Motion Carried.**

Minutes – Mr. Hellmann made a motion to approve the minutes of the November 9, 2011 meeting, seconded by Ms. Dixon. **Motion Carried.**

iPad Overview/Demonstration: Susan Lockhart advised the Board to expect the use of iPads in the near future in lieu of the books and documents given to them for their reference during each meeting. She then gave the members a brief demonstration of the iPads and how they will be utilized.

RULEMAKING HEARING – TERRANCE BOND, ASSISTANT GENERAL COUNSEL

Mr. Bond conducted a rulemaking hearing and presented the following proposed amendments for the Board's consideration:

Chapter 0320-01

Licensing

Amendments

Rule 0320-01-.02 Examinations is amended by deleting subsection (1) of the rule in its entirety and substituting instead the following so that, as amended the subsection shall read:

(1) Upon being approved by the Collection Service Board, the candidate shall apply to the approved, independent educational testing organization, on the form supplied by the testing organization, to take the location manager licensing examination.

Authority: Tenn. Code. Ann §§ 62-20-104 and 62-20-108.

Rule 0320-01-.03 Fees is amended by deleting subsection (3) of the rule in its entirety and substituting instead the following so that, as amended, the subsection shall read:

(3) In case of failure, the failing location manager licensing examination candidate shall pay a reexamination fee as set by the board, pursuant to its contract with the testing organization.

The proposed rules were approved by the board unanimously.

WALLER LANDSEN DORTCH & DAVIS, LLP – Paul Davidson & Carol Brass

Paul Davidson and Carol Brass appeared before the Board to determine if their client's business operations would require licensure as a collection service agency. Mr. Bond distributed copies of a written request submitted to the Board from Mr. Davidson outlining his agency's request. After some discussion, Mr. Hellmann made a motion that the entity would not require licensure based on the information presented. The motion was seconded by Ms. Dixon. **Motion Carried.**

LEGAL REPORT – TERRANCE BOND, ASSISTANT GENERAL COUNSEL

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

1. 201103102-1

The Complainant alleges that the Respondent continued to demand payment of a debt from her after she advised the Respondent that the debt had previously been paid to another agency. The Complainant provided copies of multiple letters sent to the Respondent, including a final letter

sent on March 3, 2011 after the Respondent placed a collection-related telephone call to her. In such letter, the Complainant reiterated that she previously mailed proof that the account [Respondent] was attempting to collect had been paid in full and requested again that the Respondent cease communicating with her concerning the account. The Respondent was duly served with a copy of the complaint; however, the Respondent failed to file a response to same.

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

Ms. Lockhart left the meeting at 10:15 a.m.

2. 201103145-1

A duly served administrative office complaint alleges that the Respondent failed to respond to an office inquiry alleging that financial documents submitted with its license renewal application indicated that its assets were insufficient to meet its liabilities. The Respondent failed to file a response to the complaint.

Recommendation: Authorize formal hearing with authority to settle by Consent Order and payment of a \$500.00 civil penalty.

3. 201103160-1

A duly served administrative office complaint alleges that the Respondent failed to respond to two (2) office requests for proof that it continued to maintain surety bond coverage. The Respondent ultimately provided proof that it maintained a bond during the relevant period after the office mailed it notice that a complaint had been filed and requested a response.

Recommendation: Close with a letter of warning.

4. 201103043-1

The Complainant alleges that the Respondent knowingly communicated false information to a credit reporting agency concerning a disputed, unpaid account. According to the Complainant, a mortgage and second mortgage on real property in Shelby County were executed in his wife's name in 1998, with such mortgages being ultimately assigned to the Respondent after the wife's death and subsequent non-payment of the mortgages. The Complainant alleges that the Respondent altered the mortgage documents to suggest that the mortgages were joint obligations instead of the sole obligations of his deceased wife. The Respondent provide copies of the original mortgage agreements, which show both the Complainant's name as well as his wife's name in the "borrower" sections of the agreements.

Recommendation: Close with no action.

5. 201102810-1

The Complainant alleges that the Respondent continues to demand payment of an account he asserts was paid in full prior to its assignment to the Respondent. The complaint was duly served upon the Respondent; however, the Respondent failed to file its response to same.

Recommendation: Authorize formal hearing with authority to settle by Consent Order and payment of a \$500.00 civil penalty.

6. 201103045-1

The Complainant requests the board's assistance in obtaining information relative to a past due account that the Respondent seeks to collect from her. According to the Complainant, she submitted several questions concerning the account to the Respondent on May 28, 2011, and, as of the date she filed the complaint, had not received such information from the Respondent. The Respondent states that it was assigned the Complainant's account on January 7, 2011 and mailed an initial notice of collection and validation notice to the Complainant on January 8, 2011. In addition, the Respondent documented several attempts to reach the Complainant by phone prior to her May 28, 2011 letter. The Respondent submitted along with its response answers to the Complainant's inquiries concerning the account.

Recommendation: Close with no action.

7. 201103091-1

The Complainant alleges that the Respondent's agent made several "rude and accusatory" statements to her while attempting to collect a past due account she allegedly owed. According to the Complainant, when she inquired with the agent concerning the account balance and requested additional documentation, he informed her that he was not obligated to send her anything and that when he obtained the information and contacted her back, that she had "better be ready to pay". The Complainant also alleges that an agent of the Respondent contacted her at 7:56 am concerning her alleged account. The Respondent states that it provided the Complainant the requested information and reprimanded and counseled the accused agent relative to professional courtesy. According to the Respondent, the Complainant's alleged account balance has been adjusted to zero "due to the surrounding circumstances."

Recommendation: Close with a letter of warning.

8. 201103214-1

A duly served administrative office complaint alleges that the Respondent filed a bond that was insufficient to cover the number of employees it employed and that the Respondent failed to respond to a request for proof of continuing bond coverage and bond sufficiency. The Respondent provided a current and sufficient bond approximately sixty (60) days after the office made a request for same. The bond showed that there had been no lapse in coverage.

Recommendation: Close with a letter of warning.

9. 201102901-1

The Complainant alleges that the Respondent unlawfully attempted to collect an unpaid fine resulting from a traffic ticket that the Complainant denies receiving. The Respondent did not file a response to the complaint, despite accepting service of same.

Recommendation: Close with a referral to the appropriate agency in the Respondent's state of operation.

10. 201103016-1

The Complainant alleges that the Respondent, a licensed collection agency with an “early out” division that performs collection activities on accounts aged up to approximately ninety (90) days, unlawfully took assignment of an account while he was making payments to the account creditor pursuant to a payment agreement with same. The Respondent states that its client denies making payment arrangements with the Complainant. The Respondent provided client documentation showing that the Complainant only made a \$5.00 payment toward a substantial outstanding balance prior to its involvement with the account.

Recommendation: Close with a letter of instruction re: use of an unlicensed trade name.

11. 201103027-1

An administrative office complaint which was duly served upon the Respondent alleges that the Respondent committed ongoing trust account violations. Specifically, upon review of the Respondent’s most recent license renewal application, the office reviewed a handwritten addendum to the Respondent’s balance sheet stating that “due to the large percentage of client that are gross, we use the accounts receivable account balance in addition to the cash in trust to back up amounts due to clients.” The Respondent confirmed that the statement accurately described its practices, stating further that its usual practice is to deposit most accounts receivable monies into its trust account.

Recommendation: Close with a strong letter of warning.

12. 201102772-1

The Complainant alleges that the Respondent acted as an unlicensed collection service by filing suit against him on an allegedly past due account. The Complainant provided a copy of a summons served upon him by the Respondent, which showed that the Respondent filed suit against him in Loudon County, Tennessee. The complaint was duly served upon the Respondent; however, the Respondent failed to submit a response to the complaint.

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

13. 201102738-1

A duly served administrative office complaint alleges that the Respondent failed to maintain proof of surety bond coverage in the board office. The office documented two (2) requests to the Respondent for proof of continuing coverage after its then-existing bond was cancelled. The Respondent failed to respond to either of the office’s requests.

Recommendation: Authorize formal hearing with authority to settle by Consent Order, payment of a \$1,000.00 civil penalty and instructions to CEASE and DESIST acting as a collection service in this state until proof of a valid bond is provided. Flag file.

14. 201102807-1

The Complainant alleges that the Respondent unlawfully furnished negative information about her to a credit reporting agency concerning an unpaid, disputed account. According to the Complainant, the information concerned a medical account for her child that was created in 2005 while she was married to the child's father. The Complainant provided a copy of her Marital Dissolution and Child Custody agreements, which were filed in 2011 and state that all future and outstanding medical bills would be the father's responsibility – it is her contention that the Respondent's reporting of the account on her credit report is unlawful because the decrees assign "ownership" of the delinquent account to the father and direct him to remove the Complainant's name from all billing records for existing medical bills for the children. The Respondent states that it was not a party to the Complainant's divorce and is not bound by the terms of the decrees – it is the Respondent's contention that the information concerning the unpaid account was lawfully reported on the Complainant's credit file.

Recommendation: Close with no action.

15. 201102809-1

A duly-served administrative office complaint alleges that the Respondent failed to maintain proof of surety bond coverage in the board office. The Respondent documented proof that it mailed a copy of a updated bond one (1) day after the board mailed a request for same.

Recommendation: Close with no action.

16. 201102710-1

The Complainant alleges that the Respondent conducted unlicensed collection service business in this state. According to the Complainant, Respondent contacted him by telephone and letter following his automobile accident to request certain information relative to his automobile accident in order to assist the service provider. It appeared to the Complainant that the Respondent was acting as a collection service based on the following – 1) The Respondent's notice to him, while stating explicitly that it was not a collection notice, but rather an attempt to identify potential third party claims and coordinate insurance benefits, contained the standard FDCPA validation notice language at the letter's conclusion "in order to comply with federal law"; and, 2) The Respondent's website made references to "collection" of monies.

The Respondent denies that its activities fall within the definition of "collection service", stating that it acts as "an agent of hospitals in assisting healthcare providers with identifying and analyzing potential third-party liability claims, investigating insurance coverage, and coordinating insurance benefits." The Respondent further describes its business functions in the following manner:

“[Respondent] follows up with patients after treatment to identify potential third-party claims for patients. If a claim is found, [Respondent] sends the patient's bill to the appropriate insurance company or companies, files hospital liens and tracks the claim with the adjuster through payment. When [Respondent] determines third-party liability is not available, it ceases work on the account and returns the account back to the healthcare provider.”

The Respondent asserts that, because it acquires patients' claims at a time when such claims are neither due nor delinquent, its activities are not those of a "collection service", which is defined as "any person who engages in, or attempts to engage in, the collection of delinquent accounts, bills, etc...."

Recommendation: Close with no action.

**17. 201102239-1
201101607-1**

The Complainants allege that the Respondent is engaged in the conduct of collection service business in this state without a license. Several documents were provided in support of this assertion, including, an electronic docket roster showing that the Respondent has filed and continues to file numerous collection actions in Shelby County General Sessions Court. In addition, affidavits prepared by the Respondent in which the Respondent identifies itself as a Tennessee corporation entitled to payment of past due debts were provided. The Respondent denies that it is engaged in collection activity in the state of Tennessee, stating that it owns several companies – one of which is a collection agency, but that such company is a Mississippi corporation. Further, the Respondent states that it would not be subject to regulation even if it were a Tennessee corporation because it assigns all accounts it receives to a licensed attorney or collection agency pursuant to the board's clarification statement issued in 2009.

Recommendation: Authorize formal hearing with further authorization for counsel to include in the Notice of Hearing and Charges both previously closed and later-filed cases alleging unlicensed activity by the Respondent.

Ms. Lockhart rejoined the meeting at 10:40 a.m.

**18. 200902051-1
200707814-1
200901654-1
200801187-1
200900910-1
200902436-1**

The above-referenced cases were previously presented to the board and authorized for formal hearing based on a review of the evidence available at the time which suggested that probable cause existed to believe that the Respondents' actions violated the Tennessee Collection Service Act or a related rule. However, upon further review and investigation, it is the opinion of both advisory and litigation counsel that the evidence, while sufficient to find probable cause, is not sufficient to sustain charges through the formal hearing process.

Recommendation: Close and flag.

**19. 201002519-1
201002515-1
201002630-1**

The above-referenced cases all allege surety bond violations. In each case, the Respondent indicated that it had ceased doing business in the state prior to the expiration of the bond. Each

Respondent was requested to sign an Order of Voluntary Surrender memorializing the cessation of each Respondent's business activities in the state. None of the Respondents returned such Orders; however, all of the former licensees licenses are now expired and non-renewable, and there have been no reports of further activities from any of the former licensees. It is the opinion of advisory and litigation counsel that these entities present no identifiable risk of harm to the public and that pursuit of further action is not warranted.

Recommendation: Close and flag.

- 20. 200801827-1
- 201001564-1
- 200901025-1
- 200900636-1
- 200802483-1
- 200900571-1
- 201003118-1
- 200900806-1
- 201000064-1
- 200901517-1

The above-referenced cases were previously presented to the board and authorized for formal hearing with authority to settle by Consent Order. Settlement was not achieved in these cases and the allegations could potentially be sustained at formal hearing; however, given the "technical" and isolated nature of the violations, as well as the limited resources that exist to try cases where unlawful behavior is continuing and presents an actual threat to public welfare, it is the opinion of advisory and litigation counsel that these cases could be adequately resolved by issuance of strong letters of warning.

Recommendation: Close with letters of warning.

- 21. 201101006-1

The Complainant alleges that, during two conversations with the Respondent's agent concerning a past due account in litigation, the agent indicated to him that if he paid the account as early as within ten (10) days of the court date up to the actual court date, negative information concerning the account would not be released to a credit reporting agency. According to the Complainant, he paid the item several days in advance of the court date, but the Respondent still obtained a judgment and furnished negative information concerning the account to a credit reporting agency. The Respondent admits that it obtained a judgment against the Complainant, stating that, while the Complainant did pay the account seven (7) days prior to the court date, the Respondent needed the payment made ten (10) days prior to the court date in order to ensure adequate time to notify counsel of payment. The Respondent states that it did not furnish any negative information concerning the judgment and asserts that a credit reporting agency obtained the information independently and added such information to the Complainant's file. The Respondent states that it is willing to assist the Complainant in updating his credit information.

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

22. 201102808-1

The Complainant alleges that, during conversations with the Respondent's agents concerning his past due account, the agents would threaten to obtain a judgment against him for the past due amount when he would insist that he could not pay the account. The Respondent denies that its agents made such statements, stating during the agents' conversations with the Complainant, [Complainant] repeatedly refused to make payment arrangements. According to the Respondent, the Complainant has now entered into bi-weekly payment arrangements on the account.

Recommendation: Close with no action.

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

The Board recessed at 10:50 a.m. for break and reconvened at 11:00a.m.

Mr. Bond then introduced Robyn Ryan, Assistant General Counsel, and together they presented an oral report on the status of complaints authorized for formal hearings and any pending litigation.

Location Manager Examination Contract – Mr. Bond advised the Rulemaking Hearing held earlier in the meeting should satisfy the emergency rulemaking previously filed by the Board. He further advised the second Request for Proposal regarding the license manager examination contract had not yet been released and should be in the near future. He reminded the Board their recommendation for legislation to eliminate the examination requirement was not submitted in the Governor's legislative package for this session to his knowledge.

Ms. Hancock advised that the office has received several calls from agencies that have either lost their location managers and are attempting to replace them or new agencies that cannot be issued licenses until they have a licensed location manager on staff. Ms. Hancock further advised there are no provisions for issuing licenses to the new agencies that have managers waiting to take the exam which prevents them from doing business in Tennessee until an examination is held.

ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR

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

Passive Debt Buyer Discussion – Ms. Hancock presented a letter from a business previously tabled for consideration inquiring as to the licensing requirements for passive debt buyers. After some discussion, Mr. Hellmann made a motion the business practice as presented would require licensure as a collection service agency, seconded by Ms. Dixon. **Motion Carried.** Mr. Bond advised he would amend the statement previously posted to the Board's website regarding passive debt buyers in light of the applicable Attorney General's Opinion.

Retail Subsidiary Collection Services Discussion – Ms. Hancock presented a letter from a law firm inquiring as to the licensing requirements for their client, a subsidiary of a retail business. After some discussion, Mr. Hellmann made a motion the business practice as presented would not require licensure as a collection service agency, seconded by Ms. Dixon. **Motion Carried.**

AGENCY APPLICATION REVIEW

Ms. Hancock presented the following agency application for the Board's consideration:

DTA Solutions, LLC – Ms. Dixon made a motion to deny the application based on information provided in the required financial statement, seconded by Mr. Hellmann. **MOTION CARRIED.**

LOCATION MANAGER APPLICATION REVIEW

The following Location Manager Application previously denied by the Board was presented for reconsideration at the applicant's request:

David Raul Castillo – After some discussion, the application was tabled pending the Board's request for additional information.

The following Location Manager Applications previously reviewed by the Board including the additional information requested were presented for consideration:

Troy Marvin Dupuis – Mr. Hellmann made a motion to approve the application, seconded by Ms. Dixon. **MOTION CARRIED.**

Paul Mitchell Mora – Mr. Hellmann made a motion to approve the application. **MOTION FAILED for lack of a second.**

The following Location Manager Applications were presented to the Board for their consideration:

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

Erin Ranea Anderson – Mr. Hellmann made a motion to approve the application, seconded by Ms. Dixon. The motion was withdrawn. Mr. Hellmann made a motion to approve the application pending additional information requested by the Board, seconded by Ms. Dixon. **MOTION CARRIED.**

Bridgette Cecelia Bravo – Mr. Hellmann made a motion to approve the application, seconded by Ms. Dixon. **MOTION CARRIED.**

Dwight Andrew Johnson – Ms. Trinkler made a motion to approve the application, seconded by Mr. Hellmann. **MOTION CARRIED.**

Kawanna Elise Coppage – Mr. Hellmann made a motion to approve the application, seconded by Ms. Dixon. **MOTION CARRIED.**

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

NEW BUSINESS OR UNFINISHED BUSINESS: There was no new or unfinished business discussed.

AJOURN: Being no further business to discuss, the meeting adjourned at 11:54 a.m.

Bart Howard, Chairman