

**TENNESSEE
COLLECTION SERVICE BOARD
MINUTES**

DATE: March 14, 2012

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

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

ABSENT: 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

CALL TO ORDER: Chairman Howard called the meeting to order at 9:35 a.m. and the following business was transacted:

Roll Call - Director Hancock called the roll. Four (4) of the five (5) board members were present. Ms. Testerman was absent.

Agenda – Ms. Trinkler made a motion to adopt the, 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. Trinkler. **MOTION CARRIED.**

Minutes – Ms. Trinkler made a motion to approve the minutes of the January 11, 2012 meeting, seconded by Ms. Dixon. **MOTION CARRIED.**

Chairman Howard recognized Mr. Bond, thanked him for his service and wished him well in his future position in the private sector. Mr. Bond advised he would be resigning as President of the North American Collection Agency Regulatory Association (NACARA) but hoped the Board would continue its participation with the organization. He further advised NACARA is planning the next annual conference for October 2012 and the Board authorized Ms. Trinkler to attend as their representative if possible.

TELECONFERENCE – PAUL MORA, LOCATION MANAGER APPLICANT

Ms. Hancock presented Mr. Mora's application for the Board's consideration. After some discussion, Mr. Hellmann made a motion to approve the application, seconded by Ms. Trinkler.
MOTION CARRIED.

TERRANCE BOND, ASSISTANT GENERAL COUNSEL

Legal Report –

Mr. Bond gave an oral report on regarding the Request for Proposal (RFP) for the location manager examination vendor. He advised two (2) notices of intent to submit proposals have been received and the contract process should be finalized April 4, 2012.

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

1. **200900808-1**
 201001077-1
 201001554-1
 201001559-1
 201002524-1
 201002625-1
 201003409-1
 201003514-1
 201102275-1
 201102320-1
 201002742-1

The above-cited cases were previously reviewed by the Board and authorized for formal action (with authority to settle by Consent Order and civil penalty payment) based on the Board's determination at the time that sufficient evidence existed to sustain a finding of probable cause against the Respondent. Both counsel and litigation counsel have reviewed the files in preparation for litigation and believe--after additional review--that, while the evidence available at first presentation may have been sufficient for a probable cause determination, such evidence (combined with other available evidence obtained after the probable cause determination) would not be sufficient to secure a favorable ruling at trial. Given the costs that the state must bear in pursuing an administrative hearing, as well as the dearth of resources that exist to try meritorious cases, both Board and litigation counsel share the opinion that pursuit of formal action in these cases is neither feasible nor desirable at this time.

Recommendation: Close and flag.

2. **200901232-1**

This complaint, wherein the Complainant alleged that the Respondent engaged in unlicensed activity by contacting him by telephone on multiple occasions in pursuit of payment on an ~~allegedly delinquent commercial account without first obtaining a collection service license, was~~

previously reviewed by the Board and authorized for formal hearing with authority to settle by Consent Order and payment of a \$9,000.00 civil penalty. The matter was ultimately set for formal hearing after the Respondent failed to respond to the Consent Order; however, the Respondent has now, through counsel, proposed and signed an Agreed Order of Settlement wherein the Respondent will: 1) Admit unlawful conduct; 2) Pay a \$4,700.00 civil penalty (inclusive of all hearing costs borne by the state through the present date; 3) CEASE and DESIST any and all unlawful collection activity in this state; 4) comply with the terms of the Tennessee Collection Service Act and all rules pertinent thereto, including applying for and obtaining a collection service license, before commencing or continuing any collection service business in this state.

Recommendation: Authorize counsel to sign the Agreed Order of Settlement on behalf of the Board.

3. 201000983-1

This complaint, wherein the Complainant alleged that the Respondent engaged in unlicensed activity by entering into a contract to perform judgment recovery services on his behalf without first obtaining a collection service license, was previously reviewed by the Board and authorized for formal hearing with authority to settle by Consent Order and payment of a \$20,000.00 civil penalty (The civil penalty was calculated according to the number of days which the Respondent had actual authority from the Complainant to perform judgment recovery services and the apparent willful and deceptive nature of the Respondent's conduct). The matter was being prepared for formal hearing after the Respondent rejected the proposed Consent Order ; however, the Respondent has now, through counsel, proposed that the matter be informally resolved by a Consent Order wherein the Respondent will: 1) Admit unlawful conduct, 2) Pay a \$2,000.00 civil penalty; 3) CEASE and DESIST any and all unlawful collection activity in this state; 4) comply with the terms of the Tennessee Collection Service Act and all rules pertinent thereto, including applying for a collection service license before commencing or continuing any collection service business in this state. Respondent's counsel states that the proposed settlement penalty is the maximum amount that the Respondent can afford to pay.

Recommendation: Authorize counsel to draft and sign a Consent Order incorporating the above-referenced terms.

4. 201102995-1

The complaint documents four (4) attempts by the Respondent to collect an allegedly past due account from the Respondent. Certified mail notifying the Respondent of the complaint and requesting a response was returned marked "unclaimed".

Recommendation: Authorize formal hearing with authority to settle by Consent Order and payment of a \$4,000.00 civil penalty and instructions to CEASE and DESIST conducting collection service business in this state until it has obtained a collection service license. Draft separate notice to the Respondent's client advising it of the Respondent's licensure status in the state of Tennessee.

An administrative office complaint alleges that the Respondent failed to maintain on file with the Board office proof that it maintained adequate surety bond coverage after September 10, 2011. On October 12, 2011, two (2) days after a response to the Board office's inquiry was due, the Board office received proof that the Respondent continues to maintain such coverage without interruption.

Recommendation: Close with no action.

6. 201200071-1

The Complainants allege that the Respondent, a creditor's rights law firm representing offices in Massachusetts and Tennessee and whose managing partner is a Tennessee-licensed attorney, engaged in abusive and harassing behavior toward them during one or more collection-related telephone calls relative to a debt that they admit owing. According to the Complainants, the Respondent's agents have, on at least two (2) occasions, yelled at them and threatened them with court proceedings while attempting to collect debt from them.

The Respondent states that, given that its managing partner is a Tennessee-licensed attorney and also that it maintains an in-state business office, its alleged actions toward the Complainants are exempt from review by the Board. The Respondent states further that it is willing to assist the Complainants in obtaining a favorable payment arrangement relative to its account.

Recommendation: Close with a letter notifying the Complainants of alternative filing options.

7. 201102953-1

The Complainant alleges that the Respondent's made repeated demands from her for payment on an allegedly dishonored check. According to the Complainant, the Respondent repeatedly threatened to swear out a criminal complaint against her if payment was not received by the stated deadline. During one conversation, the Respondent allegedly advised the Complainant that authorities had been dispatched to her home to arrest her for failing to submit payment and indicated that she should arrange for childcare during her detention.

The Board office attempted to send correspondence to the Respondent at its purported address; however, the item was returned and marked "undeliverable" as addressed. The office has attempted to locate a proper address for the Respondent, but has been unsuccessful.

Recommendation: Forward a copy of the complaint to the proper legal authority for review and investigation.

8. 201103144-1

An administrative office complaint alleges that the Respondent holds inadequate surety bond coverage. According to the office, the Respondent submitted proof of \$15,000.00 in current coverage for its nineteen (19) employees. The controlling statute requires at least \$25,000.00 in

coverage for an agency employing ten (10) or more persons. The agency was duly served notice of the complaint on December 21, 2011; however, there is neither any record of the Respondent's response to the complaint nor evidence that the Respondent is in compliance with the applicable surety bond provision.

Recommendation: 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.

9. 201103147-1

The Complainant alleges that she received two (2) collection-related telephone calls from the Respondent relative to an account she owes, during which the Respondent's agents allegedly threatened to appear at her work or home if she did not make suitable arrangements to pay the past due account.

The Respondent admits that it previously owned the Complainant's account but that such account was sold prior to the telephone calls the Complainant allegedly received.

Recommendation: Close with no action.

10. 201103172-1

The Complainant alleges that the Respondent is misrepresenting the amount due on his automobile contract and that it is attempting to coerce him into accepting a loan modification agreement by threatening to repossess his vehicle if he does not accept the modification agreement. Further, the Complainant alleges that the Respondent charged him a convenience fee ordinarily charged for payments by telephone (which the Complainant made) after verbally agreeing to the waiver of such charge prior to completing the payment by telephone.

The Respondent denied that it unlawfully inflated the Complainant's account balance, stating that the current balance represented several added fees occasioned by the Complainant's request for multiple loan extensions, payment deferments and the continued accrual of interest on the account. The Respondent provided documents validating the amount demanded from the Complainant. In addition, it appears that that Respondent obtained full servicing rights, including the right to collect delinquent amounts from the Complainant's original creditor at the time it became involved with the Complainant's account. It does not appear that the Complainant's account was delinquent at the time the Respondent became servicer of the account.

Recommendation: Close with no action.

11. 201103252-1

The Complainant alleges that the Respondent placed numerous collection-related telephone calls to him during which the Respondent repeatedly demanded his name, date of birth and social security number. According to the Complainant, the Respondent accelerated its call frequency after he refused to provide such information = calls occurred between six (6) and eight (8) times

daily. The Complainant allegedly made repeated verbal demands for the Respondent to cease communicating with him, which the Respondent ignored.

The Respondent states that it communicated with the Respondent on thirteen (13) occasions from October 20, 2011 to December 27, 2011 – According to the Respondent, more than half of such contacts were initiated by the Complainant. The Respondent admits requesting identifying information from the Complainant, stating that it requests such information in order to prevent inadvertent disclosure of confidential information to a third party in violation of the FDCPA. The Respondent denies ever receiving a verbal or written request from the Complainant to cease communications. The Respondent provided a copy of its account notes, which appear to substantiate its claims relative to the number of communications between its agents and the Complainant.

Recommendation: Close with no action.

12. 201102810-1

The Board previously reviewed this complaint, wherein the Complainant alleges that the Respondent was attempting to collect a medical services account that was wrongfully assigned for collection. Upon review of the case, the Board authorized a formal hearing (with authority to settle by Consent Order and payment of a civil penalty) against the Respondent, primarily based on the Respondent's failure to respond to the complaint.

After receiving notice of the Board's preliminary finding, the Respondent requested a copy of the complaint, stating that it never received a copy of the complaint (despite a certified mail return receipt indicating that an individual at the Respondent's mailing address accepted service of the complaint). The Respondent ultimately submitted its response to the complaint, wherein it states that its procedures for the handling of mail were not followed relative to the Complainant's complaint. Further, with regard to the Complainant's allegations, the Respondent states that upon receiving notice of dispute from the Complainant, it forwarded the Complainant's account file to its client for further review. After it received word from its client that the Complainant was eligible for insurance benefits on the day the account was created, the Respondent closed its account and returned it to the client for further processing.

Recommendation: Close with no action.

13. 201102752-1

The Complainant alleges that the Respondent, who acquired the rights to service his automobile installment contract, has threatened and initiated a repossession of his automobile despite the fact that his account was nearly paid in full and had never been delinquent. According to the Complainant, the Respondent sent him a loan modification agreement at his loan maturity and threatened to repossess his vehicle if he did not enter into the modification. The Respondent was served with notice of the complaint on October 17, 2011, but failed to submit a response to the complaint.

Recommendation: Close with a letter of warning re: failure to respond and refer the matter for further review to the appropriate legal authority.

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

The Board recessed at 10:30 a.m. for break and reconvened at 10:40a.m.

Letter Language – Mr. Bond presented a question from Bob McReynolds of Revenue Recovery regarding the inclusion of state specific license information. After some discussion, the Board advised it was their intent to remove the Board's mailing address from collection notices as payments were erroneously being sent to the Board. Ms. Trinkler made a motion to allow the addition of state specific license information as required by law but to exclude the Board's mailing address. The motion was seconded by Mr. Hellmann. **MOTION CARRIED.**

Ms. Ryan left the meeting at 10:45 a.m. upon conclusion of Mr. Bond's reports.

ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR

FYI – Exam (RFP) Scheduled of Events – Ms. Hancock presented a copy of the schedule of events for the current location manager examination contract process for the Board's reference. The Board appointed Ms. Trinkler as their representative to work with the contractor during the examination development phase and review the examination content on their behalf.

Reciprocity Exemption Request – Board to Determine – Ms. Hancock presented a request from Robert Powell requesting consideration of possible exemptions for location managers licensed in other states. After some discussion, the Board determined it does not have the statutory authority to allow such exemptions.

Working from Home Primarily – Board to Determine – Ms. Hancock presented a request from Jesse Cook asking for the Board's opinion regarding working primarily from home and part-time in the main office as necessary. After some discussion, the Board advised it is their opinion the majority of a location manager's time must be spent in the office to effectively supervise daily operations. Mr. Bond advised there may be an Attorney General's Opinion concerning this scenario therefore he would request his predecessor to look into it on the Board's behalf.

Exemption from Agency License – Board to Determine – Ms. Hancock presented a request from Matt Kiefer of Patient Account Services (PAS) regarding their business model and asking the Board's opinion as to whether, or not, a collection agency license would be required. After some discussion, Mr. Hellmann made a motion for a response to be drafted and sent on the Board's behalf advising Mr. Kiefer that it is the Board's opinion, based solely and exclusively on the information presented, that an agency license would not be required pursuant to T.C.A. 62-20-103(3). The Board further requested that the letter include a reminder that it is the agency's responsibility to ensure that no part of their activity is to ever meet the definition of a collection agency pursuant to TCA 62-20-103(3) as doing so would place them under the authority of the Board. The Board also determined that if the agency intends to use a 3rd party to engage in

collections in Tennessee a license will be required. The motion was seconded by Ms. Dixon.
MOTION CARRIED.

Mortgage Servicer – Determine License Requirement – Ms. Hancock presented a request from Jeffrey Barringer of McGlinchey Stafford PLLC regarding their business model as a “mortgage servicer” asking the Board’s opinion as to whether or not a collection agency license would be required. After some discussion, Mr. Hellmann made a motion for a response to be submitted on the Board’s behalf advising it is the Board’s opinion based solely and exclusively on the information presented that a license would not be required given the fact that the accounts are processed before they become delinquent. He further requested the letter include a reminder that it is the business’s responsibility to ensure that no part of their activity would meet the definition of a collection agency placing them under the authority of the Board in the future. The motion was seconded by Ms. Trinkler. **MOTION CARRIED.**

Envelope & Letter – Determine Requirement – Ms. Hancock presented a request from Robin Kluge with Butler, Robbins & White for the Board’s review of the inclusion of the business name on collection notice envelopes and a draft of their collection validation notices. The Board advised the envelope cannot list the business name if it discloses existent of a debt pursuant to Fair Debt Collection Practices Act (FDCPA) 15 USC, 1693(b) Section 804(5). After some discussion, Mr. Hellmann made a motion that a response be submitted on the Board’s behalf advising it is out of the scope of the Board’s duties to review letters for compliance and please refer to the FDCPA or seek private counsel for further information. The motion was seconded by Ms. Dixon. **MOTION CARRIED.**

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

FTC – Nationwide Complaint Statistics – Ms. Hancock presented a copy of the Federal Trade Commission’s report on complaint category statistics for calendar year 2011 for the Board’s reference noting debt collection related complaints are ranked second nationwide.

FTC Report – Halting Fake Debt Collector Operation – Ms. Hancock presented a copy of a recent press release from the Federal Trade Commission (FTC) concerning a court ruling to halt alleged fake debt collector calls from India and granting the FTC’s request to stop defendant who often pose as law enforcement.

Attorney Exemption Statement – Ms. Hancock presented a statement recently drafted by Mr. Bond that was in response to a question regarding agency license exemptions for certain attorneys. After some discussion, Ms. Trinkler made a motion to adopt the statement as the Board’s opinion and it be posted on the Board’s website. The motion was 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:

Andrew Rae – Ms. Trinkler made a motion to approve the application, seconded by Mr. Hellman. **MOTION CARRIED.**

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

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

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

Gary Herman – Ms. Trinkler made a motion to deny the application pursuant to TCA 62-20-125(3). Seconded by Ms. Dixon. **MOTION CARRIED.**

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

Saket Sahoo – Ms. Trinkler made a motion to deny the application pursuant to TCA 62-20-125(3), seconded by Mr. Hellmann.

Heather Peavey – Chairman Howard recused himself from the review of this application. Ms. Dixon made a motion to deny the application pursuant to TCA 62-20-125(3), seconded by Mr. Hellmann. **MOTION CARRIED.**

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

Shailesh Etekar – Mr. Hellmann made a motion to approve the application, seconded by Ms. Trinkler. **MOTION CARRIED.**

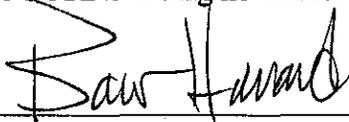
Parikshit Shirsat – Ms. Trinkler made a motion to deny the application pursuant to TCA 62-20-125(3), seconded by Mr. Hellmann. **MOTION CARRIED.**

COLLECTION AGENCY APPLICATION REVIEW

Harris & Harris, LTD – Ms. Hancock presented their collection agency application for the Board's consideration. After some discussion, Ms. Trinkler made a motion to ask for more information regarding the FDCPA violations alleged in the current civil action authorizing the application to be approved administratively upon a satisfactory review of the information requested. The motion was seconded by Mr. Hellmann. **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 12:00 p.m.



Bart Howard, Chairman