

IN THE MATTER OF:
MESSERLI & KRAMER P.A.,
Respondent.

* BEFORE THE MARYLAND
* STATE COLLECTION AGENCY
* LICENSING BOARD IN THE
* OFFICE OF THE COMMISSIONER
* OF FINANCIAL REGULATION
*
* CFR-FY2012-037
*

* * * * *

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into this 15th day of January, 2015, by and between the Maryland State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation (the "Agency"), and Messerli & Kramer P.A. (the "Respondent" or "M&K"). The Agency and the Respondent ("the Parties") consent to the entry of this Agreement as a final resolution of this matter. All paragraphs below are intended to be part of the contractual obligations of the Parties hereto, so far as they may be so construed, and are not mere recitals to this Agreement.

1. Pursuant to the Maryland Collection Agency Licensing Act ("MCALA"), at Md. Code Ann., Bus. Reg. ("BR"), § 7-101 *et seq.*, the Agency is responsible for licensing and regulating persons engaged in collection agency activities in the State of Maryland (the "State").

2. The definition of "collection agency" under BR § 7-101(c) includes, among other things, "a person who engages directly or indirectly in the business of: (1)(i) collecting for, or soliciting from another, a consumer claim; or (ii) collecting a consumer claim the

person owns, if the claim was in default when the person acquired it.”

3. BR § 7-401(a) provides that, “except as otherwise provided in this title, a person may not knowingly and willfully do business as a collection agency in the State unless the person has a license.”

4. The Maryland Consumer Debt Collection Act (“MCDCA”), at Md. Code Ann., Com. Law (“CL”), § 14-201 *et seq.*, defines debt collector (or “collector”) at CL § 14-201(b) as “a person collecting or attempting to collect an alleged debt arising out of a consumer transaction.”

5. The MCDCA provides, at CL § 14-202(8), as follows: “[i]n collecting or attempting to collect an alleged debt,” a debt collector (or “collector”) may not “[c]laim, attempt, or threaten to enforce a right with knowledge that the right does not exist.”

6. Pursuant to BR § 7-308(a), the Agency can bring an action to suspend or revoke the license of a collection agency “if the licensee or any owner, director, officer, member, partner, or agent of the licensee” engages in various prohibited activities, including, among other things, the following: “(3) in connection with the collection of any consumer claim: . . . (ii) engages in any illegal or dishonest activities; or (4) knowingly or negligently violates the Maryland Consumer Debt Collection Act.” Thus, the Agency has the authority to bring actions under MCALA against persons engaged in various prohibited activities in connection with the collection of any consumer claim, including, but not limited to, for violations of the MCDCA.

7. M&K is a Minnesota law firm that collected consumer claims for its clients in Maryland starting in 2008, and thus conducted business as a “collection agency” in the

State under BR § 7-101(c) of MCALA, and as a “collector” under CL § 14-201(b) of the MCDCA. M&K was thus required to be licensed as a collection agency under MCALA, and is subject to the regulatory authority of the Agency under MCALA and the MCDCA.

8. M&K was duly licensed as a collection agency by the Agency from May 28, 2008 through May 28, 2010, at which time its license expired. M&K submitted a preliminary renewal application 11 days before its license was set to expire, but the renewal application was not approved by the Agency because it was incomplete.

9. After receiving a consumer complaint, the Agency conducted an investigation of the Respondent. Based on that investigation, the Agency believed it had reasonable grounds to bring an administration action against the Respondent for violations of MCALA and of the MCDCA (the “alleged violations”) based on M&K continuing to collect on consumer claims in Maryland after its license had expired.

10. Respondent expressly denies the alleged violations. Nonetheless, Respondent wishes to resolve those issues in lieu of an administrative action being filed, thereby avoiding the costs associated with administrative hearings and any potential appeals, and therefore agrees to resolve this matter fully, finally, and completely as set forth in this Agreement, and further accepts and fully agrees to abide by, each and every term set forth in this Agreement.

11. The present Agreement is intended to resolve all matters identified in the Agency’s investigation of the Respondent, as well as to resolve all administrative, judicial, or other legal actions which the Agency could have brought prior to the execution of this Agreement, relating to those issues and pending collection matters which are currently

known to the Parties.

12. Respondent represents that it is in compliance with Maryland law, and agrees that M&K and all persons acting on M&K's behalf will not undertake any collection-related activities requiring a license under Maryland law unless and until M&K becomes duly licensed to conduct business in Maryland as a collection agency.

13. The Agency desires to ensure that Respondent complies with all applicable statutes, regulations, and other laws governing collection agency activities in the State of Maryland, including complying with MCALA and the MCDCA, and further wishes to avoid the costs to the taxpayers of an administrative hearing and any potential appeals.

14. Respondent agrees to take each and every one of the following actions in exchange for a final resolution of this matter and in full and complete settlement of the alleged violations:

a. Respondent will make a monetary payment of \$10,000 (TEN THOUSAND DOLLARS) in the form of a check made payable to the "Commissioner of Financial Regulation" within 14 days of this Agreement being fully executed.

b. Respondent agrees that it will not engage in any future collection activities in Maryland without being duly licensed by the Agency, and that it will fully comply with all applicable federal and Maryland State laws, including but not limited to MCALA and the MCDCA.

15. Respondent acknowledges that it has had an opportunity to consult with independent legal counsel in connection with the negotiation and execution of this Agreement, and that Respondent has in fact consulted with independent legal counsel.

Further, in consultation with its independent legal counsel, Respondent expressly agrees that it will not assert any right that it otherwise may have had to administrative or judicial review of any administrative action contemplated by the Agency based on the alleged violations.

16. The Parties hereto agree that this Agreement shall be binding upon the Parties and enforceable in a court of competent jurisdiction by the Agency and by the Respondent, shall be admissible in court, if relevant, and shall be binding upon and inure to any of the Respondent's present and future owners, principals, directors, officers, members, partners, managers, agents, successors, and assigns.

17. The Parties hereto acknowledge and agree that this Agreement does not in any way relate to, impact, or otherwise affect the legal rights of, persons not Parties to this Agreement.

18. The Agency fully and finally releases, acquits, and forever discharges Respondent, as well as Respondent's predecessors, successors, subsidiaries, affiliates, parents, shareholders, current or former directors, officers, and employees, from any claim, action, suit, or proceeding, whether civil or administrative, the Agency has for conduct occurring prior to the date that this Agreement is fully executed which relates to any allegations of unlicensed activity by the Respondent.

19. The Parties hereto agree that any notices hereunder shall be effectively "delivered" when sent via overnight delivery or certified mail as follows:

a. To the Agency:

Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202-3651
Attn: Keisha Whitehall Wolfe, Acting Deputy Commissioner

Copy to:

W. Thomas Lawrie, Assistant Attorney General
Office of the Attorney General
Department of Labor, Licensing, and Regulation
500 North Calvert Street, Suite 406
Baltimore, Maryland 21202-3651

b. To Respondent:

William C. Hicks
Messerli & Kramer P.A.
3033 Campus Drive, Suite 250
Plymouth, Minnesota 55441

Copy to:

Jefferson Pappas, Esq.
3033 Campus Drive, Suite 250
Plymouth, Minnesota 55441

NOW, THEREFORE, it is, by the Commissioner of Financial Regulation on behalf of the Agency, HEREBY

ORDERED that Respondent shall adhere to all terms of this Settlement Agreement; it is further

ORDERED that, in the event Respondent, or any of the owners, directors, officers, members, partners, employees, or agents of Respondent, violate any provision of this Settlement Agreement, or otherwise engage in activities similar to those which formed the basis for the alleged violations referenced above, the Agency may, at the Agency's discretion, take any enforcement actions available under FI § 2-115 and/or BR § 7-205, as well as take any other enforcement actions as permitted by, and in accordance with, applicable State law; and that such enforcement actions could include an order to cease and desist, suspension or revocation of a Maryland State collection agency license, civil money

penalties of up to \$1,000 for a first violation and up to \$5,000 for each subsequent violation, and an order to provide restitution or to take other affirmative action to correct the violation; and it is further

ORDERED, that this matter shall be resolved in accordance with the terms of this Settlement Agreement and the same shall be reflected among the records of the Office of the Commissioner of Financial Regulation; and it is further

ORDERED that this document shall constitute a Final Order of the Maryland State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation, and that the Agency may consider this Settlement Agreement in connection with, and in deciding, any action or proceeding before the Agency; and that this Settlement Agreement may, if relevant, be admitted into evidence in any matter before the Agency.

It is so **ORDERED**.

IN WITNESS WHEREOF, this Settlement Agreement is executed on the day and year first above written.

MARYLAND STATE COLLECTION
AGENCY LICENSING BOARD IN THE
OFFICE OF THE COMMISSIONER OF
FINANCIAL REGULATION

By: 

Keisha Whitehall Wolfe
Acting Deputy Commissioner of
Financial Regulation

For Gordon M. Cooley
Commissioner of Financial Regulation
Chairperson, State Collection Agency
Licensing Board

MESSERLI & KRAMER P.A.

By: 

William C. Hicks,
Vice President,
Messerli & Kramer P.A.