

IN THE MATTER OF:
SUNSHINE FINANCIAL
GROUP, LLC, and
J. SCOTT MORSE,

Respondents.

* **BEFORE THE MARYLAND**
* **STATE COLLECTION AGENCY**
* **LICENSING BOARD IN THE**
* **OFFICE OF THE COMMISSIONER**
* **OF FINANCIAL REGULATION**
*
* **CFR-FY2011-135**
* **CFR-FY2012-019**

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SETTLEMENT AGREEMENT AND CONSENT ORDER

This Settlement Agreement and Consent Order (the "Agreement") is entered into this 9th day of September, 2011, by and between the Maryland State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation (the "Agency"), and Sunshine Financial Group, LLC and J. Scott Morse (the "Respondents"). The Commissioner and the Respondents ("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. A non-exempt person who acquires consumer claims which were in default at the time of acquisition (a "Consumer Debt Purchaser"), who then attempts to collect on that debt through litigation in Maryland state courts, is conducting business as a “collection agency” in the State under BR § 7-101(c). This applies regardless of whether the Consumer Debt Purchaser is represented in litigation by attorneys who are also licensed as collection agencies. As such, a Consumer Debt Purchaser collecting debts through litigation in Maryland State courts is required to be licensed as a collection agency under MCALA, and is subject to the regulatory authority of the Agency in the conduct of that litigation.

5. A Consumer Debt Purchaser collecting debts through litigation in Maryland State courts also meets the definitions of “collector” under CL § 14-201(b) of the Maryland Consumer Debt Collection Act (“MCDCA”), at Md. Code Ann., Com. Law (“CL”), § 14-201 *et seq.*, and of “debt collector” under 15 U.S.C. § 1692(a) of the Fair Debt Collection Practices Act (“FDCPA”), at 15 U.S.C. § 1692, *et seq.*

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.”

7. 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 FDCPA pursuant to BR § 7-308(a)(3)(ii) (engaging in illegal activities), and for violations of the MCDCA pursuant to BR § 7-308(a)(4). This includes both litigation-related collection activities, as well as non-litigation (i.e. “traditional”) collection activities.

8. Pursuant to BR § 7-205 of MCALA, as a result of a hearing, or of the opportunity for a hearing, the Agency may issue an order requiring persons to cease and desist from engaging in collection-related violations of the law, may issue a monetary penalty, and may require persons to take affirmative action to correct the violations, including providing restitution to all aggrieved consumers. Additionally, pursuant to Md. Code Ann., Fin. Inst. (“FI”) § 2-115(b), as a result of a hearing, or of the opportunity to request a hearing, the Commissioner of Financial Regulation may, in addition any other authorized action taken by the Agency, enter a final order to cease and desist, revoke any collection agency licenses, impose a civil penalty up to \$1,000 for each violation of MCALA, the MCDCA, and the FDCPA (as violations of MCALA), issue a penalty up to \$5,000 for each subsequent violation of these Acts, or may take any combination of the aforementioned actions.

9. The FDCPA provides, in relevant part, as follows:

§ 1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this

section:

* * *

(2) The false representation of--

(A) the character, amount, or legal status of any debt; or

* * *

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

* * *

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

* * *

§ 1692f. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

* * *

10. 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.”

11. Pursuant to a Maryland State collection agency license application submitted on behalf of Sunshine Financial Group, LLC (“Sunshine”) by J. Scott Morse, Esquire, the applicant’s sole member, the Agency conducted an investigation of the business activities of Respondents. The Agency’s investigation demonstrated that Respondents had engaged in activities which violated MCALA, the MCDCA, and the FDCPA, (the “violations”), including but not limited to the following:

a. Filing actions in Maryland courts intended to obtain judgment on affidavit under Md. Rule 3-306, but which contained affidavits that were based, in part, on

the affiant's knowledge, information and belief, a standard insufficient to obtain such judgments or which otherwise failed to comply with the Maryland Rules of Civil Procedure, thereby violating CL § 14-202(8) and U.S.C. §§ 1692(e)(2),(10) and 1692(f);

b. Claiming and receiving unauthorized attorney's fees, since under Maryland law attorneys representing their own business interests are not entitled to collect attorney's fees, and failing to disclose this business interest to the courts and to consumers, which pursuant to the position of the Agency violates CL § 14-202(8) and U.S.C. §§ 1692(e)(2),(10) and 1692(f)(1); and

c. Claiming and receiving prejudgment interest amounts that included compound interest, and misrepresenting the correct amount of principal and interest in the documents filed with their complaints, in violation of CL § 14-202(8) and U.S.C. §§ 1692(e)(2),(10) and 1692(f)(1).

12. Based on these violations, the Agency denied the collection agency license application of Sunshine Financial Group, LLC on July 8, 2011.

13. The present Agreement is intended to resolve all matters forming the basis for the Agency's denial of Sunshine's collection agency license application, thereby permitting reconsideration of Sunshine's license application, 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.

14. Respondents do not admit to the violations set forth herein but, nonetheless, wish to resolve the violations in response to the denial of Respondent Sunshine's collection agency license application and in lieu of a separate administrative action being filed, thereby

avoiding the costs associated with administrative hearings and any potential appeals, and therefore agree to resolve this matter fully, finally, and completely as set forth in this Agreement, and further accept without condition, and fully agrees to abide by, each and every term set forth in this Agreement.

15. Respondents further represent that Sunshine and all persons acting on Sunshine's behalf have completely ceased all collection-related litigation activities in Maryland State courts, as well as all other collection activities in Maryland, and that they will not resume any such activities unless and until Sunshine becomes duly licensed to conduct business in Maryland as a collection agency.

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

17. Respondents agree to take each and every one of the following actions in exchange for a final resolution of this matter:

a. Respondents will pay a penalty of **\$20,000** (TWENTY THOUSAND DOLLARS) in the form of a check made payable to the "Commissioner of Financial Regulation" immediately upon this Agreement being fully executed.

b. Within 15 days of the date this Agreement is fully executed, Respondents will take all necessary actions to dismiss without prejudice each of the 314 active collection-related cases that Respondents previously filed in Maryland State courts on behalf of Sunshine and which were not previously reduced to judgment, and will notify the

Agency once this has been completed. These cases are listed at Attachment 1.

c. Within 30 days of the date this Agreement is fully executed, Respondents will make full restitution to affected Maryland consumers of (i) all attorney's fees claimed by, or awarded to, the Respondents, (ii) all prejudgment interest in cases where the amount claimed or awarded included, in part, compound interest, and (iii) all postjudgment interest in cases where the amount of the judgment included, in part, compound interest, (collectively, the "restitution categories"), as follows:

(1). In all consumer claims owned by the Respondents, whether reduced to judgment or not, where the affected Maryland consumer has paid the pertinent claim or judgment in full or has paid any portion of the claim or judgment attributable to any of the restitution categories, the Respondents shall issue refunds to each affected Maryland consumer in accordance with the following:

(a). Respondents shall mail a check in the total amount of all money paid by the consumer attributable to the restitution categories, via First Class U.S. Mail, to each affected consumer's last known address. Each refund shall be accompanied by a letter indicating that the refund is being issued pursuant to a Settlement Agreement between the Respondents and the Maryland State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation, and that the Settlement Agreement does not in any way affect the consumer's legal rights. Attachment 2 is a spreadsheet providing the name of each affected Maryland consumer, the associated court and case number (if applicable), the amount of money paid by the consumer in each restitution category, and the total amount of money to be refunded to each affected consumer (collectively, the "refund amount").

(b). Additionally, within 60 days of the date this Agreement is fully executed, Respondents shall furnish evidence to the Agency that refunds were tendered to each affected consumer in the agreed amount by providing a copy of the front and back of the cancelled check for each refund payment that was negotiated by the affected consumer.

(c). If, within 90 days from the date this Agreement is fully executed, any refund payment checks mailed by the Respondents to affected consumers in accordance with Agreement are either not cashed or are returned to Respondents as non-deliverable (collectively, the "Undeliverable Refunds"), such Undeliverable Refunds will escheat to the State of Maryland. In such event, Respondents will stop payment on such undeliverable refund payment checks, and shall pay the total amount of all Undeliverable Refunds in the form of a single check made payable to the "Comptroller of Maryland," which shall be submitted to the Comptroller, copy to the Agency, both of which shall be accompanied by an update to the spreadsheet referenced above as Attachment 2, which updated spreadsheet shall be submitted in both hard copy and in an electronic format mutually agreeable to both Parties, and which shall be supplemented with the following additional information for each affected consumer: the last known address of the consumer, the social security number of the consumer (if known), the date of birth of the consumer (if known), the total amount of the refund mailed to each consumer at their last known address, the date on which each refund check was mailed, and an indication of which refund checks were cashed, and which refund checks were either not cashed or were returned to Respondents as non-deliverable. Such action on the part of Respondents shall relieve the Respondents of any further obligation to make refunds to the affected consumers pursuant to

this Agreement.

(2). In all collection-related cases filed by the Respondents in Maryland district courts on behalf of Sunshine that have been reduced to judgment, and where the affected Maryland consumer has not paid any portion of their judgments attributable to any of the restitution categories, the Respondents agree to forfeit the total amount of each judgment award attributable to any of the restitution categories. In such cases, the Respondents will take all necessary actions to ensure that the restitution category awards in each case are reflected as being satisfied with the courts. Attachment 3 is a spreadsheet providing the name of each affected Maryland consumer, the applicable court and case number, the amount of money awarded in each restitution category, and the total amount of the judgment forfeited by the Respondents in each case.

(3). In cases to be dismissed without prejudice pursuant to paragraph 17.b., above, the Respondents agree to forfeit the total amount of each consumer claim attributable to any of the restitution categories. Attachment 1 provides the name of each affected Maryland consumer, the applicable court and case number of the claims to be dismissed, the amount of money originally claimed by the Respondents in each restitution category, and the total amount of the claim forfeited by the Respondents in each case.

(4). With regard to the consumer claims owned by the Respondents where no action has been filed by the Respondents in Maryland district courts and where the Respondents have not received any payment related to any of the restitution categories from the consumers, the Respondents agree to forfeit the total amount of each consumer claim attributable to any of the restitution categories. Attachment 4 provides the name of each affected Maryland consumer, the amount of money previously claimed by the

Respondents in each restitution category, and the total amount of the claim forfeited by the Respondents in each consumer claim.

(5). The sum of all restitution discussed herein, *i.e.*, all money refunded or forfeited in the restitution categories discussed in paragraphs 17.c.(1) through 17.c.(4), above, totals **\$664,838.20** (SIX HUNDRED SIXTY-FOUR THOUSAND EIGHT HUNDRED THIRTY-EIGHT DOLLARS AND TWENTY CENTS).

(6). The Respondents shall not seek, and are not entitled to obtain, releases from consumers in conjunction with the restitution discussed herein.

d. With regard to the 335 consumer claims that Respondents had filed in Maryland district courts but which were previously dismissed, the Respondents agree that, if any of these cases are refiled or reopened for any reason, the Respondents will not seek recovery, directly or indirectly, of any of the restitution categories.

e. With regard to the 1,677 consumer claims currently owned by the Respondents, including both the 1,005 cases previously filed by the Respondents in Maryland district courts and the 672 consumer claims that were never filed in court, the Respondents agree that they shall not sell or otherwise assign the judgments or the underlying consumer claims (the "debt") unless the Respondents ensure that the relevant transaction documents clearly reflect that all future owners of the debt are not entitled to collect or attempt to collect attorney's fees, prejudgment interest, or postjudgment interest on the debt from the affected Maryland consumers.

f. Respondents agree that they are subject to the regulatory authority of the Agency with regard to their consumer collection activities, including their collection-related litigation activities in Maryland State courts.

g. Respondents agree that they will not engage in any future collection activities in Maryland without being duly licensed by the Agency, and that they will take good faith efforts to ensure that all such activities, including but not limited to their collection-related litigation activities, fully comply with all applicable federal and Maryland State laws, including but not limited to MCALA, the MCDCA, the FDCPA, and the Maryland Rules of Civil Procedure.

18. With regard to Respondents' consumer claims discussed above, including cases previously dismissed, cases that are to be dismissed, and claims that have never been filed in court, the Agency does not represent that the Respondents have the right to file, refile, or reopen any such cases. The existence of such right depends on various considerations that will be unique to each case, including but not limited to the legal status of those cases that have been dismissed, the applicable statute of limitations, Respondents' ability to demonstrate the existence of the debt and proof of ownership of that debt, and other pertinent factors.

19. Respondents acknowledge that they have voluntarily entered into this Agreement with full knowledge of their right to a hearing pursuant to the Maryland Administrative Procedures Act – Contested Cases, Md. Code Ann., State Gov't. ("SG"), § 10-201 *et seq.*, and pursuant to Code of Maryland Regulations ("COMAR") 09.01.02.04, BR § 7-303(d), and FI § 2-115 (a)(1), and that Respondents hereby waive their right to a hearing. Respondents further acknowledge that they have had an opportunity to consult with independent legal counsel in connection with their waiver of rights and with the negotiation and execution of this Agreement, and that Respondents have in fact consulted with independent legal counsel.

20. 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 Respondents, shall be admissible in court, if relevant, and shall be binding upon and inure to any of the Respondents' present and future owners, principals, directors, officers, members, partners, managers, agents, successors, and assigns.

21. 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.

22. 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 Commissioner:

Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202-3651
Attn: Anne Balcer Norton, 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 Respondents:

J. Scott Morse, Esquire
Sunshine Financial Group, LLC
9 Newburg Avenue, Suite 201
Catonsville, Maryland 21228

Copy to:

Ronald S. Canter, Esquire
The Law Offices of Ronald S. Canter, LLC
11300 Rockville Pike, Suite 1200
Rockville, Maryland 20852

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

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

ORDERED that Respondents shall use good faith efforts to conduct their collection agency business activities in compliance with all applicable federal and Maryland State laws, including but not limited to MCALA, the MCDCA, and the FDCPA; and it is further

ORDERED that, in the event Respondents, or any of the owners, directors, officers, members, partners, employees, or agents of Respondents, violate any provision of this Settlement Agreement, or otherwise engage in activities similar to those which formed the basis for the violations set forth 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

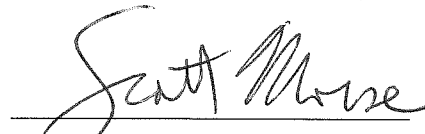
By:



Anne Balcer Norton
Deputy Commissioner of
Financial Regulation

SUNSHINE FINANCIAL GROUP, LLC

By:



J. Scott Morse,
Individually, and Managing Member,
Sunshine Financial Group, LLC

Attachments 1 – 4

Redacted in Full