

**IN THE MATTER OF:
P. N. FINANCIAL, INC.,
and
NELSON MACWAN,**

Respondents

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

Case No. CFR-FY2014-0040

FINAL ORDER TO CEASE AND DESIST

Pursuant to Md. Code Ann., Bus. Reg. Art. (“BR”), § 7-101 *et seq.*, and Fin. Inst. Art. (“FI”), § 2-115, and for the reasons stated below, the Maryland Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation, in the Department of Labor, Licensing and Regulation, by and through Gordon M. Cooley, Chairman of the Board and the Commissioner of Financial Regulation, issues this Final Order to Cease and Desist to P.N. Financial, Inc. and Nelson Macwan.

The Summary Order to Cease and Desist (“Summary Order”) issued on January 15, 2015 is herein adopted and incorporated by reference.

Background.

1. As described more fully in the Summary Order, the Maryland Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation, hereinafter “the Agency,” undertook an investigation of P.N. Financial, Inc. and Nelson Macwan (collectively, “the Respondents”), as a result of consumer complaints made by Maryland residents.
2. The Agency’s investigation revealed that Respondent P.N. Financial, Inc. is a registered business entity in the State of Illinois and is not licensed in the State of Maryland as a collection agency.

3. The Agency's investigation further revealed that Respondent Nelson Macwan is the owner, director, officer, manager, employee and/or agent of P.N. Financial, Inc.
4. As detailed in the Summary Order, the Agency's investigation revealed that Respondents were engaged in unlicensed debt collection activities involving three Maryland consumers¹ on separate occasions, in April 2012, July 2013, and April 2014. The Respondents engaged in threatening and abusive communications with the Consumers, attempted to collect on debts already satisfied or not owed, attempted to collect on a debt owed to an unlicensed pay day lender, and contacted a consumer's employer in connection with a debt not owed.
5. As a result of the Agency's investigation, on August 28, 2013, a Financial Examiner from the Office of the Commissioner of Financial Regulation sent a letter to Respondents advising them of the licensing requirements for collection agencies in Maryland, that it was illegal in Maryland to attempt to collect on loans made by unlicensed lenders, and that it was illegal in Maryland to attempt to collect on loans where the interest exceeded Maryland's usury rates. Respondents claimed that they were not required to be licensed because they only collect on debts that they had purchased. In September 13, 2013 letter, the Financial Examiner informed the Respondents that, if the debt were in default

¹ Consumer A, Consumer B, and Consumer C are identified more specifically in the Summary Order. The Summary Order also describes in detail the unlawful actions by Respondents against each of the Consumers. See Summary Order at ¶¶ 14-16.

when they purchased it, they were required, under Maryland law, to be licensed as a collection agency.

6. Later, on April 20, 2014, a Financial Examiner in the Office of the Commissioner of Financial Regulation sent a letter to Respondents again advising them of the licensing requirements for collection agencies in Maryland and of Maryland's consumer lending laws. The Financial Examiner again advised Respondents that it was illegal to attempt to collect on loans made by unlicensed entities and to attempt to collect on a loan where the interest rate exceeded Maryland's interest rate caps. Respondents responded, again claiming that they were not required to be licensed because they only collect on debt that they have purchased.
7. As a result of its investigation, the Acting Deputy Commissioner of Financial Regulation (for the Chairman of the Collection Agency Licensing Board and the Commissioner of Financial Regulation) found reasonable grounds to believe that Respondents were engaged in unlawful activity by attempting to collect on usurious loans and loans made by unlicensed entities in Maryland, by attempting to collect on debts already paid in full, and by threatening legal action and criminal charges in order to coerce payment of alleged debts. *See* Summary Order at ¶ 23. The Acting Deputy Commissioner found reasonable grounds to believe that the Respondents were engaged in the unlicensed debt collection activities in Maryland, in violation of the Maryland Collection Agency Licensing Act (MCALA), BR § 7-101 *et seq.* and that such unlicensed activity violated Comm. Law Art. ("CL") § 14-202 of the Maryland Consumer Debt Collection Act (MCDCA), as well as 15 U.S.C. §§ 1692e and 1692f of the Fair Debt

Collection Practices Act (FDCPA). *See also Finch v. LVNV Funding LLC*, 212 Md. App. 748, 760-64 (2013) (filing a collection action without a license constituted an attempt to enforce a right that did not exist, because without a license, a collection agency cannot legally collect a debt). In particular:

- a. The Acting Deputy Commissioner found reasonable grounds to believe that Respondents' activities violated various provisions of MCDCA, CL, § 14-201 *et seq.*, by claiming, attempting, or threatening to enforce a right with knowledge that the right does not exist, by threatening criminal prosecution, contacting a debtor's employer prior to obtaining a final judgment, and communicating with a person in a manner that can be reasonably expected to abuse or harass.
- b. The Acting Deputy Commissioner also found reasonable grounds to believe that Respondents' activities violated various provisions of FDCPA, 15 U.S.C. § 1692e, by making false or misleading representations, based on conduct which involved making false representations about the character, amount, or legal status of any debt, and conduct which involved threatening to take any action that cannot legally be taken or that is not intended to be taken, and 15 U.S.C. § 1692f, by engaging in unfair or unconscionable means to collect or attempt to collect any debt, based on conduct which involved collecting any amount not expressly authorized by agreement or permitted by law.
- c. The Acting Deputy Commissioner of Financial Regulation also found reasonable grounds to believe that Respondents' activities violated various

provisions of the MCALA, BR § 7-308(a)(3)(ii), by engaging in illegal or dishonest activities in connection with the collection of consumer claim, and BR §7-308(a)(3)(iii), by knowingly and negligently violating the MCDCA in connection with the collection of a consumer claim.

8. The Acting Deputy Commissioner of Financial Regulation determined that immediate action was in the public interest and therefor that summary enforcement action under FI § 2-115 was appropriate, and issued the Summary Cease and Desist Order to Respondents.
9. The Summary Order notified Respondents to cease and desist immediately from further violation of Maryland law, as specified therein, and that 1) Respondents were entitled to hearing before the Maryland Collection Agency Licensing Board to determine whether the Summary Order should be vacated, modified, or entered as a final order of the Commissioner; 2) the Summary Order would be entered as a final order if the Respondents did not request a hearing within 15 days of the receipt of the Summary Order; and 3) as a result of a hearing or of Respondents' failure to request a hearing, the Commissioner of Financial Regulation for the Maryland Collection Agency Licensing Board may, in addition to taking any other action allowed by law, enter an order making the Summary Order final, issue penalty orders against Respondents, and issue orders requiring Respondents to take affirmative action to correct violations and to provide restitution to aggrieved consumers.

10. The Summary Order was properly served on Respondents via first class mail and Certified U.S. Mail. Respondents failed to request a hearing in connection with the Summary Order.

NOW, THEREFORE, having determined that Respondents waived their right to a hearing in this matter by failing to request a hearing within the time period specified in the Summary Order, and pursuant to FI § 2-115 and BR § 7-205, it is by the Collection Agency Licensing Board, by the Commissioner of Financial Regulation, hereby:

ORDERED that the Summary Order is entered as a **FINAL ORDER** of the Collection Agency Licensing Board;

FURTHER ORDERED that the Respondents shall permanently **CEASE and DESIST** from engaging, directly or indirectly, in the business of collecting consumer claims from Maryland residents, and from otherwise engaging in the collection agency business in the State of Maryland;

FURTHER ORDERED that the Respondents shall permanently **CEASE and DESIST** from violating the aforementioned laws governing debt collection activities, including attempting to collect on loans made by unlicensed entities, threatening consumers with legal action and criminal charges in order to coerce them into paying alleged debts, attempting to enforce a right with knowledge that the right does not exist, engaging in abusive or harassing communications with the consumer, making false or misleading statements to the consumer in order to collect on a debt, and engaging in unfair, illegal, or dishonest activities in order to collect a debt.

FURTHER ORDERED that all provisions of this Final Order shall also apply to all named and unnamed partners, owners, officers, employees, and/or agents of Respondents;

FURTHER ORDERED that, pursuant to FI § 2-115(b) and upon consideration of the factors enumerated in FI § 2-115(c), Respondents shall pay to the Collection Agency Licensing Board a total civil money penalty in the amount of Twelve Thousand Dollars.

That civil money penalty is calculated as follows:

Prohibited Activity and Violation	Penalty per violation	Number of violations	Penalty
Performing debt collection activities when not licensed as collection agency, BR § 7-301.	\$1,000	3	\$3,000
Threatening to enforce a right with knowledge that the right does not exist, CL § 14-202(8) & 15 U.S.C. § 1692e(5).	\$1,000	3	\$3,000
Threatening criminal prosecution in order to collect a debt, CL § 14-202(2).	\$1,000	1	\$1,000
Abusive or harassing communication in order to collect a debt, CL § 14-202(6).	\$1,000	3	\$3,000
Attempting to collect on loans made by unlicensed entities, CL § 14-202(8); <i>see also</i> CL §§ 11-204 and 11-302.	\$1,000	1	\$1,000
Contacting a debtor's employer prior to obtaining a final judgment on an alleged debt, CL § 14-202 (5).	\$1,000	1	\$1,000
Total			\$12,000

FURTHER ORDERED that Respondents shall pay the Maryland Collection Agency Licensing Board, by cashier's check or certified check made payable to the

“Commissioner of Financial Regulation,” the amount of Twelve Thousand Dollars (\$12,000.00) within twenty (20) days from the date of this Final Order;

FURTHER ORDERED that Respondents shall be and hereby are jointly and severally liable for the payment of penalties under this Final Order;

FURTHER ORDERED that Respondents shall send all correspondence, notices, civil penalties, and other required submissions to the Commissioner at the following address: Commissioner of Financial Regulation, 500 N. Calvert Street, Suite 402, Baltimore, MD 21202, Attention: Proceedings Administrator;

FURTHER ORDERED that, notwithstanding the imposition of civil penalties herein, the Commissioner reserves the right to refer any and all of these violations to the State’s Attorney for consideration of criminal prosecution pursuant to BR § 7-401; and

FURTHER ORDERED that the issuance of this Final Order and the imposition of civil penalties herein do not bar action by a consumer, pursuant to CL § 14-203, for any damages proximately caused by a violation of the Maryland Consumer Debt Collection Act, including damages for emotional distress or mental anguish suffered with or without accompanying physical injury.

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

10/26/2015
DATE

G M Cooley
GORDON M. COOLEY,
COMMISSIONER OF FINANCIAL
REGULATION and CHAIRMAN OF THE
MARYLAND COLLECTION AGENCY
LICENSING BOARD