

IN THE MATTER OF:  
STATE COLLECTION AGENCY LICENSING  
BOARD

BEFORE THE COMMISSIONER OF  
FINANCIAL REGULATION

v.

OAH NO. LABOR-MCA-74-23-29923

CFR-FY2022-0038

DENEFITS, LLC

RESPONDENT

~~PROPOSED FINAL ORDER~~

The Proposed Decision ("~~Proposed Decision~~") of the Administrative Law Judge (the "ALJ"), issued on May 6, 2024, in the above captioned case, having been received, read and considered, it is, by the Commissioner of Financial Regulation (the "Commissioner") this of 1<sup>st</sup> day of July, 2024 ORDERED,

A. That the Proposed Findings of Fact ("FF") listed on pages 4-5 of the Proposed Decision and enumerated as 1 through 9 be, and hereby are, ADOPTED, and that two additional FFs are added as FF 10 and FF 11 which shall state in their entirety as follows:

10. The Respondent received notice in accordance with Maryland law of these proceedings and the hearing scheduled in this matter before the Maryland Office of Administrative Hearings on February 5, 2024, at 9:30 a.m.

11. The Maryland Office of Administrative Hearings timely convened the hearing scheduled in this matter on February 5, 2024, at 9:30 a.m., at which time the Respondent failed to appear.

B. That pursuant to State Government Article, §10-220(d) Annotated Code of Maryland, the Commissioner finds that the Proposed Decision indicates that evidence presented at the hearing in this matter confirms: the Respondent received notice of these proceedings and the hearing scheduled in this matter before the Office of Administrative Hearings for February 5, 2024, at 9:30 a.m. (“Hearing”) in accordance with Maryland law; the Office of Administrative Hearings timely convened the Hearing; and the Respondent did not appear for the Hearing. The Commissioner desires to formalize that information into FF 10 and 11.

C. That the Proposed Conclusions of Law (“CL”) found on Page 9 of the Proposed Decision be, and hereby are, ADOPTED, but are rephrased as CL 1, CL 2, CL 3 and CL 4 as set forth below:

1 Respondent solicited and collected a consumer claim on behalf of another in Maryland and therefore is a “collection agency” within the meaning of Business Regulation Article §7-101(c), Annotated Code of Maryland.

2 Under Business Regulation Article §7-301, Annotated Code of Maryland, a collection agency operating in Maryland must have a license issued by the Maryland

State Collection Agency Licensing Board ("Board") unless exempt or otherwise excepted from licensure under Title 7, Business Regulation Article, Annotated Code of Maryland.

3 Respondent is not exempt from licensure under Business Regulation Article §7-101 et. seq., Annotated Code of Maryland.

4 Respondent violated Business Regulation Article, §7-101 et. seq., Annotated Code of Maryland, by engaging in business as a collection agency in Maryland without being licensed by the Board to do so; or being exempt from licensure under Business Regulation Article §7-101 et. seq., Annotated Code of Maryland.

D. That pursuant to State Government Article, §10-220(d) Annotated Code of Maryland, the Commissioner finds that the evidence presented in this matter and findings and conclusions set forth in the ALJ's stated FF and CL contain the information set forth in the Commissioner's CL 1, CL 2, CL 3, and CL 4. The Commissioner desires to restate the ALJ's CL as CL 1, CL 2, CL 3, and CL 4 for clarity and ease of reference.

E. The ALJ's recommendation for a cease-and-desist order against Respondent be and hereby is ADOPTED.

F. Respondents shall immediately CEASE AND DESIST from operating as a collection agency within the meaning of Business Regulation Article §7-101, Annotated Code of Maryland.

G. The ALJ declined to award a monetary penalty of \$25,000 requested by the Board under Business Regulation Article, §7-205 Annotated Code of Maryland. The ALJ examined BR §7-205 and determined a monetary penalty under that section required the Respondent to have

violated an Order issued by the Board. Because the ALJ concluded the evidence failed to show Respondent violated any order issued by the Board, the ALJ declined to award any penalty. The ALJ did not make a formal FF or CL with respect to the decision not to award a penalty.

The Commissioner does not oppose the ALJ's decision not to award a penalty under Business Regulation Article, §7-205 Annotated Code of Maryland under the facts specific to this matter and the evidence presented. The Commissioner does not conclude, however, that a penalty could not have been sought in this matter. As noted by the ALJ in a footnote to the ALJ's case caption, the Board is a unit within the Office of Financial Regulation ("OFR") (Business Regulation Article, §7-201 Annotated Code of Maryland). The OFR has authority under Financial Institutions Article, §2-115 Annotated Code of Maryland, to impose financial penalties for violations of any law, regulation or rule over which the Commissioner has authority. The Commissioner could have potentially sought a penalty under Financial Institutions Article, §2-115 Annotated Code of Maryland, based on the information found by the ALJ in FF 1-11. Because the Statement of Charges served on Respondent in this matter did not cite Financial Institutions Article, §2-115 Annotated Code of Maryland as a basis for any monetary penalty sought in this matter, the Commissioner declines to consider whether a monetary penalty under Financial Institutions Article, §2-115 Annotated Code of Maryland would be appropriate in this matter.

G. The records and publications of the Commissioner reflect the Proposed Final Order.

Pursuant to COMAR 09.01.03.09, Respondents have the right to file exceptions to the Proposed Final Order and present arguments to the Commissioner. Respondents have twenty

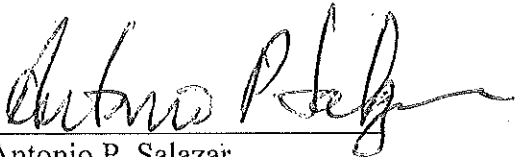
(20) days from the postmark date of this Proposed Final Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner and subject to judicial review pursuant to State Government Article, §10-222 Annotated Code of Maryland

Respondents may have the right to file a petition for judicial review; however, the filing of a petition for judicial review does not automatically stay the enforcement of this order.

Date:

MARYLAND COMMISSIONER OF  
FINANCIAL REGULATION

July 1, 2024

By:   
Antonio P. Salazar,  
Commissioner of Financial  
Regulation

STATE COLLECTION AGENCY  
LICENSING BOARD<sup>1</sup>

v.

DENEFITS, LLC,  
RESPONDENT

\* BEFORE LEIGH WALDER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: LABOR-MCA-74-23-29923  
\* OFR No.: CFR-FY2022-0038

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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On October 2, 2023, the Board issued a Statement of Charges and Order for Hearing (Statement of Charges) charging Deneffits, LLC (Respondent) with violating the Maryland Collection Agency Licensing Act (MCALA),<sup>2</sup> Md. Code Ann., Bus. Reg. § 7-501 (2015). The allegations and charges within the Statement of Charges arose from an investigation conducted by the OFR on behalf of the Board into the Respondent's collection activities in the State of Maryland. In the Statement of Charges, the Board alleged that the Respondent committed 122 violations of section 7-301 of the Business Regulation Article for soliciting and/or collecting a consumer claim on behalf of another without being licensed to do so in the State and without being exempt from licensure.

<sup>1</sup> The State Collection Agency Licensing Board (Board) is a unit within the Office of Financial Regulation (OFR), which is a part of the Maryland Department of Labor (Department). See Md. Code Ann., Bus. Reg. § 7-201 (Supp. 2023).

<sup>2</sup> The MCALA is found in sections 7-101 *et seq.* of the Business Regulation Article.

The Board is statutorily authorized to take enforcement action if there has been a violation of Title 7 of the Business Regulation Article. *See* Md. Code Ann., Bus. Reg. § 7-205 (Supp. 2023). However, in order to do so, it must give the person against whom the action is contemplated notice and an opportunity for a hearing. *See* Md. Code Ann., Bus. Reg. § 7-309(a)(1), (b) (2015). Therefore, on October 23, 2023, the Board transmitted this matter to the Office of Administrative Hearings (OAH) to conduct a hearing and to issue a proposed decision.

On December 6, 2023, the OAH issued a Notice of Remote Hearing (Notice) to the parties. Md. Code Ann., Bus. Reg. § 7-309(b) (2015). Three Notices were mailed to the attention of the Respondent. One Notice was addressed generally to the Respondent, a second Notice was sent to the Respondent's owner (Paul Bola), and a third Notice was sent to the Respondent's registered agent (Paul Nguyen, Esquire). The Notice stated that a hearing in this matter was scheduled for February 5, 2024, at 9:30 a.m., on the Webex videoconference platform (Webex). The Notice advised the Respondent that failure to attend the hearing might result in "a decision against you." All three Notices that were sent to the attention of the Respondent by certified mail were signed as being received by the Respondent.

On February 5, 2024, I held a hearing on Webex, as scheduled. *Id.* § 7-309(a)(2) (2015); Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Kevin McClivern, Assistant Attorney General, represented the Board. I waited until 9:45 a.m. to allow sufficient time for someone to appear on behalf of the Respondent. No one appeared on behalf of the Respondent. I determined that the Respondent received proper notice and proceeded with the hearing. *See* Md. Code Ann., Bus. Reg. § 7-309(e) (2015) ("If, after due notice, the person against whom the action is contemplated does not appear, nevertheless the Board may hear and determine the matter.").

Procedure in this case is governed by the MCALA hearing provisions, the contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH. Md. Code Ann., Bus. Reg. § 7-309 (2015); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); COMAR 09.01.02 and 09.01.03; and COMAR 28.02.01.

### ISSUES

- (1) Did the Respondent solicit and/or collect a consumer claim on behalf of another without being licensed to do so in the State and without being exempt from licensure?
- (2) If so, what is the appropriate fine, penalty, and/or sanction?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits offered by the Board into evidence:<sup>1</sup>

MCA Ex. 1 – Notice, issued December 6, 2023

MCA Ex. 2 – Statement of Charges, issued October 2, 2023

MCA Ex. 3 – Certified Mail Return Receipts, received by the OAH on December 19, 2023

MCA Ex. 4 – Delegation letter from the OFR to the OAH, received by the OAH on October 23, 2023

MCA Ex. 5 – Enforcement Unit Report of Investigation, dated September 20, 2022

MCA Ex. 6 – Enforcement Unit Supplemental Report of Investigation, dated August 3, 2023

MCA Ex. 7 – Subpoena-Duces Tecum, issued June 28, 2022

MCA Ex. 8 – Spreadsheet, undated

No exhibits were submitted on behalf of the Respondent.

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<sup>1</sup> The Board's exhibits were referred to and marked as "MCA" exhibits.



Testimony

Heidi Boyd, Assistant Director for Enforcement, OFR, testified on behalf of the Board.

The Respondent was not present to offer any witness testimony.

**PROPOSED FINDINGS OF FACT**

I find the following facts by a preponderance of the evidence:

1. The Respondent is a collection agency operating out of Irvine, California.
2. Including up until the day of the hearing, the Respondent has never been licensed to collect debts in the State of Maryland, nor has the Respondent registered with the Maryland Department of Assessment and Taxation to conduct business in Maryland.
3. On or about January 28, 2022, the OFR's Consumer Services Unit received a consumer complaint from Quantane L. Higginbotham (Complainant), who reported that the Respondent had repeatedly<sup>4</sup> contacted her seeking to recover a debt the Complainant allegedly owed to Optimal Body, LLC, a weight loss service provider operating out of Bethesda, Maryland. The Complainant also reported that the Respondent had reported her name to the Equifax Credit Bureau.
4. On May 10, 2022, the OFR initiated an investigation into the Respondent's business practices in Maryland.
5. On June 28, 2022, the OFR issued a Subpoena-Duces Tecum (subpoena) seeking documents and information related to the Respondent's debt collection activities in Maryland and impacting Maryland consumers.

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<sup>4</sup> The Respondent sent the Complainant at least fifteen text messages and left eleven voicemails attempting to recover the alleged debt.

6. In response to the subpoena, the Respondent provided the OFR with a spreadsheet detailing the Respondent's debt collection activities in Maryland and impacting Maryland consumers.

7. From January 2021 through May 2022, the Respondent attempted to collect debts from 122 consumers who lived in Maryland.

8. Although the Respondent disclosed to various individuals at the OFR that it would register to become licensed to collect debts in Maryland, it has never done so.

9. On or about August 16, 2022, the OFR instructed the Respondent on behalf of the Board that it needed to cease-and-desist doing business in Maryland, effectively immediately, until it was licensed to operate in Maryland.<sup>5</sup>

## DISCUSSION

### Applicable Law

Section 7-301(a) of the Business Regulation Article requires that "a person<sup>(6)</sup> must have a license whenever the person does business as a collection agency in the State." A collection agency is defined as:

- ... a person who engages directly or indirectly in the business of:
- (1)(i) collecting for, or soliciting from another, a consumer claim;<sup>(7)</sup> or
  - (ii) collecting a consumer claim the person owns, if the claim was in default when the person acquired it;
  - (2) collecting a consumer claim the person owns, using a name or other artifice that indicates that another party is attempting to collect the consumer claim;
  - (3) giving, selling, attempting to give or sell to another, or using, for collection of a consumer claim, a series or system of forms or letters that indicates directly or indirectly that a person other than the owner is asserting the consumer claim; or

<sup>5</sup> The record is unclear if this was conveyed orally or in writing.

<sup>6</sup> "Person" means an individual, receiver, trustee, guardian, personal representative, fiduciary, representative of any kind, partnership, firm, association, corporation, or other entity. Md. Code Ann., Bus. Reg. § 1-101(g) (Supp. 2023).

<sup>7</sup> "'Consumer claim' means a claim that: (1) is for money owed or said to be owed by a resident of the State; and (2) arises from a transaction in which, for a family, household, or personal purpose, the resident sought or got credit, money, personal property, real property, or services." Md. Code Ann., Bus. Reg. § 7-101(e) (Supp. 2023).

(4) employing the services of an individual or business to solicit or sell a collection system to be used for collection of a consumer claim.

Md. Code Ann., Bus. Reg. § 7-101(c) (Supp. 2023).

The Board is statutorily authorized to take enforcement action if there has been a violation of Title 7 of the Business Regulation Article. *See* Md. Code Ann., Bus. Reg. § 7-205 (Supp. 2023). This includes the authority to issue cease and desist orders and imposition of monetary penalties for violations of lawful orders. *See id.* In this matter, the Board seeks a cease-and-desist order and the imposition of a \$25,000.00 monetary penalty.

Reviewing the Department's statutes and regulations, the law is silent as to what party bears the burden of proof in this matter. Therefore, as set out in the OAH's procedural regulations, "[u]nless otherwise provided by law; (1) The standard of proof is by a preponderance of the evidence; [and] (2) A party asserting: (a) A claim, right, or entitlement bears the burden of proof regarding the claim, right, or entitlement . . . ." COMAR 28.02.01.21K(1), (2)(a); *see also* Md. Code Ann., State Gov't. § 10-217 (2021). Here, the Board is claiming that the Respondent violated section 7-301(a) of the Business Regulation Article and that sanctions are warranted. Therefore, the Board bears the burden of proof in this matter. To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

Did the Respondent violate the MCALA?

It is undisputed that the Respondent violated section 7-301(a) of the Business Regulation Article. During no applicable time was the Respondent licensed to collect debts in the State of Maryland, nor was the Respondent registered with the Maryland Department of Assessment and Taxation to conduct business in Maryland. Nevertheless, between January 2021 and May 2022, the Respondent attempted to collect debts from 122 consumers who lived in Maryland.

Ms. Boyd credibly testified that after receiving the Complainant's consumer complaint, the OFR reviewed the National Multistate Licensing System (NMLS) to determine if the Respondent was licensed to collect debts in Maryland. After reviewing the NMLS, the OFR learned that the Respondent was not licensed to collect debts in Maryland, and never had been. Ms. Boyd testified that during the investigation, the Respondent inquired about the process to become licensed in the State of Maryland to collect debts. However, the Respondent never obtained a license to operate in Maryland and remained unlicensed as of the date of the hearing. Based on Ms. Boyd's testimony, which is corroborated by two Investigation Reports, I am persuaded that the Respondent has never been licensed to collect debts in the State of Maryland. *See MCA Exs. 5 & 6.*

The evidence further supports that between January 2021 and May 2022, the Respondent attempted to collect debts from 122 consumers who lived in Maryland. This evidence was furnished directly from the Respondent pursuant to a subpoena that was issued on June 28, 2022. The Respondent provided the OFR with a spreadsheet that detailed its collection efforts impacting 122 consumers who lived in Maryland. *See MCA Ex. 8.* The spreadsheet is highly detailed, containing the consumers' names, home addresses, amounts due, and the name of each business that the consumers allegedly owed their debt.

As a result, the Board has conclusively demonstrated that the Respondent violated section 7-301(a) of the Business Regulation Article because the Respondent solicited and/or collected a consumer claim on behalf of another without being licensed to do so in the State of Maryland. Reviewing Title 7 of the Business Regulation Article, the Respondent does not fall into any exemption from soliciting and/or collecting a consumer claim on behalf of another without being licensed to do so in the State of Maryland.



Sanction

The Board seeks a cease-and-desist order, as well as a monetary penalty against the Respondent of \$25,000.00.

Pursuant to section 7-205(a)(3) of the Business Regulation Article, the Board has the discretion to issue orders, including "to cease and desist from the violation and any further similar violations." Considering that the Respondent attempted to collect debts from 122 consumers who lived in Maryland without ever having been licensed to do so in the State of Maryland, and these actions occurred for almost a year and a half, the Board's request is granted.

Both in the Statement of Charges, as well as at the hearing, the Board cited to section 7-205(b) of the Business Regulation Article as its authority to seek a monetary penalty against the Respondent. This statute sets out:

**If a violator fails to comply with a lawful order issued by the Board, the Board may impose a penalty not exceeding \$10,000 for each violation elted in the order, not to exceed \$25,000, from which the violator failed to cease and desist or for which the violator failed to take affirmative action to correct, as ordered by the Board.**

Md. Code Ann., Bus. Reg. § 7-205(b) (Supp. 2023) (emphasis added). The term "lawful order" is not defined in the MCALEA; however, in reading this enforcement provision of section 7-205(b) of the Business Regulation Article, it seems the Board must first *issue* an order against a violator and, if the violator violates the "order issued" the Board is then authorized to impose a penalty. The Respondent has never failed to comply with a lawful order issued by the Board, because there has not been a prior lawful order issued by the Board to the Respondent. Section 7-205(a)(3) of the Business Regulation Article authorizes the Board to "issue orders," however, under section 7-309(a) of the Business Regulation Article "... before the Board takes any final action under . . . § 7-205 of this title, it shall give the person against whom the action is contemplated an opportunity for a hearing before the Board."

There is no evidence that the Board ever issued an order pursuant to section 7-205(a)(3) of the Business Regulation Article beforehand.

There is evidence that on or about August 16, 2022, the OFR instructed the Respondent that it needed to cease-and-desist doing business in Maryland, effective immediately, until it was licensed to operate in Maryland. *See* MCA Ex. 5. Even *assuming arguendo* that a pre-hearing cease-and-desist order constitutes a "lawful order" as contemplated by section 7-205(b) of the Business Regulation Article, the OFR's instruction to cease-and-desist on August 16, 2022, would be the only lawful order seemingly issued by the Board. There is no evidence that the Respondent violated this lawful order after its issuance. As such, even if the Board did not need to first provide notice and an opportunity for a hearing to obtain a cease-and-desist order as a precondition to seeking a monetary penalty for a violation thereof, there is no evidence in this case establishing that the Respondent violated any order issued by the Board. The Board's evidence reflects that the Respondent attempted to collect debts between January 2021 and May 2022. However, the Board did not direct the Respondent to cease and desist until August 16, 2022, which post-dates the Respondent's violative conduct as proven in this case. Accordingly, the evidence does not establish that the Respondent failed to comply with a lawful order issued by the Board.

#### PROPOSED CONCLUSIONS OF LAW

I conclude that the Respondent solicited and/or collected a consumer claim on behalf of another without being licensed to do so in the State of Maryland and without being exempt from licensure. Md. Code Ann., Bus. Reg. § 7-301(a) (Supp. 2023). I therefore conclude that a cease-and-desist order is appropriate. Md. Code Ann., Bus. Reg. § 7-205(a)(3) (Supp. 2023).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Collection Agency Licensing Board:

ORDER that the Respondent shall immediately CEASE AND DESIST violating section 7-301(a) of the Business Regulation Article.

May 6, 2024

Date Decision Issued

*Leigh Walder*

Leigh Walder  
Administrative Law Judge

LWsh  
#2116