

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

Arkansas
State Claims Commission
MAR 17 2014

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

RECEIVED

- ☐ Mr.
☐ Mrs.
☐ Ms.
☐ Miss

COOK LAW FIRM, P.A. Claimant

vs.

State of Arkansas, Respondent

AR State Board of Collection Agencies

COMPLAINT

Refund of Expenses

COOK LAW FIRM, P.A.

(Name)

the above named Claimant, of

(Street or R.F.D. & No.)

(City)

County of Pulaski

represented by HAROLD F. COOK

(Legal Counsel, if any, for Claim)

of

(Street and No.)

(City)

(State)

(Zip Code)

says:

State agency involved: ARKANSAS STATE BOARD OF COLLECTION AGENCIES Amount sought: \$13,831.23

Month, day, year and place of incident or service: NOVEMBER 4, 2013 - CONTINUING

Explanation: SEE FACTUAL NARRATIVE

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to my state department or officer thereof?

NO

; when?

N/A

; to whom?

N/A

(Department)

(Yes or No)

(Month)

(Day)

(Year)

and that the following action was taken thereon:

N/A

and that \$ N/A was paid thereon: (2) Has any third person or corporation an interest in this claim? N/A; if so, state name and address

(Name)

(Street or R.F.D. & No.)

(City)

(State)

(Zip Code)

and that the nature thereof is as follows:

N/A

and was acquired on

N/A

, in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

HAROLD F. COOK
COOK LAW FIRM, P.A.
(Print Claimant/Representative Name)

(Signature of Claimant/Representative)

SWORN TO and subscribed before me at

LITTLE ROCK

AR

(City)

(State)

on this

17

day of

March

2014

(Date)

(Month)

(Year)

SARA E. CRITTENDEN

(Notary Public)

My Commission Expires:

10

2016

2016

(Month)

(Day)

(Year)

SARA E. CRITTENDEN
NOTARY PUBLIC-STATE OF ARKANSAS
PULASKI COUNTY
My Commission Expires 06-26-2016
Commission # 12349028

SF1-R7/99

MAR 17 2014

RECEIVED

BEFORE THE ARKANSAS CLAIMS COMMISSION

COOK LAW FIRM, P.A.

CLAIMANT

v.

CLAIM NO. _____

STATE OF ARKANSAS

RESPONDENT

FACTUAL NARRATIVEI. Background

That, on or about November 11, 2013, a Demand for Payment of Judgment letter was provided to the Arkansas State Board of Collections Agencies (hereafter ASBCA) regarding an Order dated November 4, 2013 issued by Pulaski County Circuit Judge Timothy Fox in *Precision Recovery Analytics, Inc. as Assignee of GE Money Bank/Wal-Mart v. Owen McMullen and Lillie McMullen*; Case No. CV-2013-354. (Exhibit A). As a result of a trial held on October 24, 2013, Judge Fox entered the following Finding of Facts and Conclusions of Law:

- (1) Precision Recovery Analytics, Inc. is in receivership and has no assets;
- (2) Precision Recovery Analytics, Inc. violated the Fair Debt Collection Practices Act, 15 U.S.C. 1692, et seq. as enumerated in Lillie McMullen's Complaint.
- (3) Precision Recovery Analytics, Inc. intentionally interfered with the solitude, seclusion and or private concerns and affairs of Lillie McMullen by unlawfully demanding payment for a debt obligation that was not lawfully owed by her, and then instituting an unlawful and improper lawsuit to recover money not owed;
- (4) Precision Recovery Analytics, Inc. breached the duty owed to Lillie McMullen, causing her damages and injury; thus, Precision Recovery Analytics Inc. is found to be negligent in

unlawfully demanding payment for a debt obligation that was not owed by her, and then instituting an unlawful and improper lawsuit to recover money not owed by Lillie McMullen;

(5) Lillie McMullen was not the credit card account holder, owner, co-owner, user, signatory, or a consumer legally obligated or liable for the debt as originally alleged in Precision Recovery Analytics, Inc., as assignee of GE Money Bank/Wal-Mart lawsuit filed on or about November 16, 2012;

(6) The Court hereby assesses liability and damages for injury sustained by Lillie McMullen as a direct, actual and proximate result of conduct by Precision Recovery Analytics, Inc. for violations of federal and state law pertaining to debt collection activities in 2012, and instituting and unlawful and improper lawsuit to recover money on November 16, 2012, as follows:

- (a) Actual damages pursuant to 15 U.S.C. §1692k(a) in the amount of:
\$ 5,000.00
- (b) Statutory damages pursuant to 15 U.S.C §1692k(a)(2)(A) in the amount
of: \$ 1,000.00
- (c) Damages for negligence in the amount of: \$10,000.00
- (d) Damages for invasion of privacy in the amount of: \$10,000.00
- (e) Attorney fees and costs pursuant to 15 U.S.C. §1692k(a)(3)
in the amount of: \$37,666.90

IT IS FURTHER ORDERED that Defendant's surety bond number 20BSBE07644, or any other surety bond, certificate of deposit, or cash bond pursuant to A.C.A §17-24-101, et seq., payable to the Arkansas State Board of Collection Agencies for the use and benefit of the State of Arkansas for payment to any injured party, on account, bill or other indebtedness, is subject to all Writs of Execution for enforcement, collection, payment and judgment under the provisions of the law.

IT IS FURTHER ORDERED that Lillie McMullen shall have all Writs of Execution for enforcement, collection and judgment, and for all other relief to which she may be entitled.

(Exhibit B).

Despite Claimant's November 14, 2013 demand (Exhibit A), ASBCA Executive Director, Peggy Matson, responded on November 14, 2013 that "any action such as this is outside of my authority as Executive Director and must be presented to the Board for its consideration pursuant to statute." (Exhibit C). In addition to being incorrect as to Arkansas state statutory requirements and failing to cite regulatory authority for her erroneous conclusion of law, Ms. Matson decided "I will present your demand to the Board at that time." (Exhibit C).

On January 6, 2014 a written demand to The Hartford for payment of surety bond number 20BSBE07644, payable to the ASBCA, was made on behalf of Claimant. (Exhibit D). On February 6, 2014, Matt Grimes, The Hartford-Bond Claims Department, informed Claimant's legal counsel via email communications that "per discussions with Peggy Matson":

- a) only the ASBCA can make a claim on the bond;
- b) all inquiries should be made to Ms. Matson;
- c) the ASBCA will not be pursuing a claim at this time.

(Exhibit E).

On January 27, 2014, pursuant to numerous written inquiries for an update regarding the payment of surety bond number 20BSBE07644, ASBCA Executive Director Peggy Matson responded stating "... I don't know how to give you an update and I know of no inquiries you have made that I have not addressed." Furthermore stating "You neither responded or attended the Board Meeting." [sic] (Exhibit E). These assertions of fact are inconsistent with previous statements included in Exhibits C & E respectively.

On February 19, 2014 at the ASBCA scheduled meeting, the Board voted unanimously to

not file a claim for forfeiture of surety bond number 20BSBE07644 regarding the aforementioned judgment. (Exhibit B).

On March 14, 2014, Claimant served a Notice of Deposition to ASBCA Board Chairman and Executive Director-Peggy Matson seeking to ascertain documents and the factual and legal basis for the February 19, 2014 ASBCA Board decision to **not** file a claim for forfeiture of surety bond number 20BSBE07644 regarding the aforementioned judgment. (Exhibit G).

On March 10, 2014, Claimant's legal counsel received written correspondence from Arkansas Senior Assistant Attorney General, Scott P. Richardson. In summary, Mr. Richardson's correspondence stated:

a) the Notice of Deposition served on the ASBCA appears to explore the basis for not calling the bond;

b) all licensed collection agencies are required to secure a bond between \$5,000.00 and \$25,000.00;

c) Arkansas statute provides authority for the ASBCA to adopt rules regarding disbursement of bonds to "claimants";

d) The ASBCA has adopted rules for collection and disbursement of bonds "for failure to remit client funds;"

e) The former version of *A.C.A. § 17-24-306* provided that the bonds were subject to payment upon written demand by the entity from whom the "account, bill, or other indebtedness is taken for collection." *A.C.A. § 17-24.306(b) (Repl. 1999)*;

f) The 2009 amendment of repealed statute removed the aforementioned language, but did not include who a "claimant" is who may collect on a bond;

g) ASBCA's rules are consistent with the former 1999 statute, but does not allow

collection on the bond for anyone else such as a consumer, pursuant to 2009 statutory law changes using the wording "claimant."

(Exhibit H).

On January 27, 2014, ASBCA Executive Director-Peggy Matson acknowledged that ten (10) letters regarding the Claimant's attempts to collect the surety bond in *Precision Recovery Analytics, Inc. as Assignee of GE Money Bank/Wal-Mart v. Owen McMullen and Lillie McMullen*; Case No. CV-2013-354. (Exhibit K).

To date, Claimant has expended \$13, 831.23 in costs and attorney fees as a direct result of the acts and omissions of the ASBCA and Executive Director-Peggy Matson to collect the surety bond in *Precision Recovery Analytics, Inc. as Assignee of GE Money Bank/Wal-Mart v. Owen McMullen and Lillie McMullen*; Case No. CV-2013-354.

HAROLD F. COOK**
ATTORNEY

J. R. ANDREWS*
ATTORNEY

LICENSED IN:
ARKANSAS*; MISSOURI*; TENNESSEE*
UTAH*; TEXAS FED. DIST. COURTS*;
UNITED STATES SUPREME COURT*

COOK LAW FIRM

A PROFESSIONAL ASSOCIATION
8114 CANTRELL, SUITE 100
LITTLE ROCK, AR 72227
TELEPHONE: (501) 255-1500
FACSIMILE: (501) 255-1116
ATTORNEYHALCOOK.COM

LITIGATION SECTION:
KIMBERLEY J. CARTER
MICHELEE JESTER

CASE MANAGEMENT
SARA E. DICKSON
JACLYN M. COOK
TERRI L. SINGLETON

November 11, 2013

VIA FACSIMILE & U.S. MAIL

Ms. Peggy Matson, Executive Director
State Board of Collection Agencies
523 Louisiana Street, Suite 460
Little Rock, AR 72201
Facsimile: (501) 372-5383

Arkansas Claims Commission

MAR 17 2014

RECEIVED

Re: Demand for Payment of Judgment
Precision Recovery Analytics, Inc. as Assignee of GE Money Bank/Wal-Mart
v. Owen McMullen and Lillie McMullen;
Pulaski County Circuit Case No: CV-2013-354

Dear Ms. Matson:

This letter is to advise you of the following:

1) Attached please find a copy of the Judgment signed by Judge Timothy Fox in the aforementioned matter. Please note that Judge Fox's Order specifically addresses the issue of the surety bond payable to the ASBCE.

2) Demand is hereby made that the ASBCE remit within five (5) days of receipt of this letter, \$63,666.90, or the maximum amount of the bond, in accordance with the Court's Order.

Payment should be made to: Cook Law Firm, P.A.-IOLTA. Please mail your check to the address listed above.

Should you fail to remit payment within the aforementioned time, a Writ of Execution may be issued, and/or a Motion for Contempt filed with the Court.

Thank you in advance for your prompt assistance in this matter.

Sincerely,

/s/

Harold F. Cook

HFC/kc

w/enclosure-3page

XC: File



IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
6TH DIVISION

PRECISION RECOVERY ANALYTICS, INC.
AS ASSIGNEE OF GE MONEY BANK/WAL-MART

PLAINTIFF/COUNTER-
DEFENDANT

vs.

No. CV-2013-354

OWEN MCMULLEN and
LILLIE MCMULLEN

DEFENDANT/COUNTER-
PLAINTIFF

JUDGMENT

On October 24, 2013, the above cause came before the Court for trial. The Court, having heard the testimony, reviewed the exhibits and pleadings, and argument of counsel, does find, adjudge and order as follows:

- (1) Precision Recovery Analytics, Inc. is in receivership and has no assets;
- (2) Precision Recovery Analytics, Inc. violated the Fair Debt Collection Practices Act, 15 U.S.C. 1692, et seq. as enumerated in Lillie McMullen's Complaint.
- (3) Precision Recovery Analytics, Inc. intentionally interfered with the solitude, seclusion and or private concerns and affairs of Lillie McMullen by unlawfully demanding payment for a debt obligation that was not lawfully owed by her, and then instituting an unlawful and improper lawsuit to recover money not owed;
- (4) Precision Recovery Analytics, Inc. breached the duty owed to Lillie McMullen, causing her damages and injury; thus, Precision Recovery Analytics Inc. is found to be negligent in unlawfully demanding payment for a debt obligation that was not owed by her, and then instituting an unlawful and improper lawsuit to recover money not owed by Lillie McMullen;

Judgment Submitted 10/31/2013

Precision Recovery Analytics, Inc. as assignee of GE Money Bank/Wal-Mart v. Owen McMullen and Lillie McMullen
Page 1 of 2



(5) Lillie McMullen was not the credit card account holder, owner, co-owner, user, signatory, or a consumer legally obligated or liable for the debt as originally alleged in Precision Recovery Analytics, Inc., as assignee of GE Money Bank/Wal-Mart lawsuit filed on or about November 16, 2012;

(6) The Court hereby assesses liability and damages for injury sustained by Lillie McMullen as a direct, actual and proximate result of conduct by Precision Recovery Analytics, Inc. for violations of federal and state law pertaining to debt collection activities in 2012, and instituting and unlawful and improper lawsuit to recover money on November 16, 2012, as follows:

- (a) Actual damages pursuant to 15 U.S.C. §1692k(a) in the amount of:
\$ 5,000.00
- (b) Statutory damages pursuant to 15 U.S.C §1692k(a)(2)(A) in the amount of: \$ 1,000.00
- (c) Damages for negligence in the amount of: \$10,000.00
- (d) Damages for invasion of privacy in the amount of: \$10,000.00
- (e) Attorney fees and costs pursuant to 15 U.S.C. §1692k(a)(3)
in the amount of: \$37,666.90

IT IS FURTHER ORDERED that Defendant Precision Recovery Analytics, Inc. shall prepare a schedule, verified by affidavit, of all Defendant's property, both real and personal, including monies, bonds, insurance, indemnifications, bank accounts, rights, credits and chooses in action held, owned or possessed by Defendant or held on Defendant's behalf by others, or others holding, owning or possessing for the Defendant

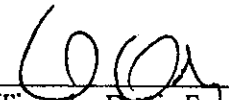
Judgment Submitted 10/31/2013)

Precision Recovery Analytics, Inc. as assignee of GE Money Bank/Wal-Mart v. Owen McMullen and Lillie McMullen
Page 2 of 3

monies, bonds, insurance, indemnifications, bank accounts, rights, credits and chooses in action held, that they specify the particular property which Defendant claims as exempt under the provisions of the law. The schedule shall be filed with the Clerk of this Court within forty-five (45) days of entry of this Order;

IT IS FURTHER ORDERED that Defendant's surety bond number 20BSBE07644, or any other surety bond, certificate of deposit, or cash bond pursuant to A.C.A. §17-24-101, et seq., payable to the Arkansas State Board of Collection Agencies for the use and benefit of the State of Arkansas for payment to any injured party, on account, bill or other indebtedness, is subject to all Writs of Execution for enforcement, collection, payment and judgment under the provisions of the law.

IT IS FURTHER ORDERED that Lillie McMullen shall have all Writs of Execution for enforcement, collection and judgment, and for all other relief to which she may be entitled.

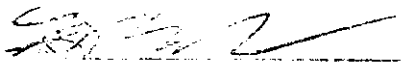


Timothy Davis Fox
Circuit Judge

Dated: _____

11/4/13

APPROVED AS TO FORM:



Harold L. Cook

* * * Communication Result Report (Nov. 11. 2013 11:24AM) * * *

1) COOK LAW FIRM
2)

Date/Time: Nov. 11. 2013 11:22AM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
8273 Memory TX	3725383	P. 4	OK	

Reason for error

m. 1) Hang up or line fail
mm. 3) No answer
mm. 5) Exceeded max. E-mail size

E. 2) Busy
E. 4) No facsimile connection

HAROLD P. COOK**
ATTORNEY
J. R. ANDREWS*
ATTORNEY

LICENSED IN:
ARKANSAS, MISSOURI, TENNESSEE,
UTAH, TEXAS Fed. Dist. Courts,
UNITED STATES SUPREME COURT

COOK LAW FIRM

A PROFESSIONAL ASSOCIATION
8114 CANTRELL, SUITE 100
LITTLE ROCK, AR 72201
TELEPHONE: (501) 255-1300
FACSIMILE: (501) 255-1118
ATTORNEY@HALCOOK.COM

ASSOCIATION MEMBERS
JIMBERLEY J. GARTER
MICHELE JESTER

BARBARA HARRINGTON
BARBARA L. DICKSON
JACLYN M. COOK
TERRIL L. SINGLETON

November 11, 2013

VIA FACSIMILE & U.S. MAIL

Ms. Peggy Matson, Executive Director
State Board of Collection Agencies
523 Louisiana Street, Suite 460
Little Rock, AR 72201
Facsimile: (501) 372-5383

Re: Demand for Payment of Judgment
Precision Recovery Analytics, Inc. as Assignee of GE Money Bank/Wal-Mart
v. Owen McMullen and Little McMullen;
Polaski County Circuit Case No: CV-2013-354

Dear Ms. Matson:

This letter is to advise you of the following:

1) Attached please find a copy of the Judgment signed by Judge Timothy Fox in the
aforementioned matter. Please note that Judge Fox's Order specifically addresses the issue of the
surety bond payable to the ASBCE.

2) Demand is hereby made that the ASBCE remit within five (5) days of receipt of this
letter, \$35,666.90, or the maximum amount of the bond, in accordance with the Court's Order.

Payment should be made to: Cook Law Firm, P.A.-IOLTA. Please mail your check to the
address listed above.

Should you fail to remit payment within the aforementioned time, a Writ of Execution
may be issued and/or a Motion for Contempt filed with the Court.

Thank you in advance for your prompt assistance in this matter.

Sincerely,

/s/
Harold P. Cook

HPC/ka

Enclosure-3page

XC, File



501 372 5383



Arkansas State Board of Collection Agencies

523 South Louisiana, Suite 460
Little Rock, Arkansas 72201
Phone: (501) 376-9814
Fax: (501) 372-5383

PEGGY MATSON
EXECUTIVE DIRECTOR

DIRECT NUMBER: (501) 371-1435
E-MAIL: pmatson@asbca.com

November 14, 2013

Harold F. Cook
Cook Law Firm
8114 Cantrell, Suite 100
Little Rock, AR 72227

VIA Facsimile 255-1116

Re: Precision Recovery Analytics, Inc. et al v. McMullen

Dear Mr. Cook:

I received your letter on November 12, 2013 demanding payment from the State Board of Collection Agencies for the maximum amount of the surety bond posted by Precision Recovery Analytics, Inc. to obtain and maintain a collection agency license.

Any action such as this is outside of my authority as Executive Director and must be presented to the Board for its consideration pursuant to the statute. The Board's next meeting date has not been selected but it is trying to schedule a meeting for December. I will present your demand to the Board at that time.

Yours truly,

Peggy Matson
Executive Director

PM:stl



HAROLD F. COOK**
ATTORNEY

J. R. ANDREWS*
ATTORNEY

LICENSED IN:
ARKANSAS*; MISSOURI*; TENNESSEE*
UTAH*; TEXAS FED. DIST. COURTS*;
UNITED STATES SUPREME COURT*

COOK LAW FIRM

A PROFESSIONAL ASSOCIATION
8114 CANTRELL, SUITE 100
LITTLE ROCK, AR 72227
TELEPHONE: (501) 255-1500
FACSIMILE: (501) 255-1116
ATTORNEYHALCOOK.COM

LITIGATION SECTION:
KIMBERLEY J. CARTER
MICHELEE JESTER

CASE MANAGEMENT
SARA E. DICKSON
JACLYN M. COOK
TERRI L. SINGLETON

January 6, 2014

VIA FACSIMILE & U.S. MAIL

The Hartford-Bond, T-4
P.O. Box 2103
690 Asylum Ave.
Hartford, CT 06115
Fax: 860-757-5835

Re: Demand for Payment of Judgment-Forfeiture of Bond #20BSBEQ7644
Precision Recovery Analytics, Inc. as Assignee of GE Money Bank/Wal-Mart
v. Owen McMullen and Lillie McMullen;
Pulaski County Circuit Case No: CV-2013-354

To Whom It May Concern:

Attached please find a copy of a Judgment signed by Judge Timothy Fox in the aforementioned matter. (Exhibit A). Please note that Judge Fox's Order specifically addresses the issue of the surety bond payable to the Arkansas State Board of Collection Agencies.

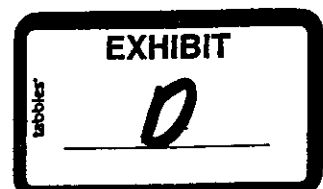
Moreover, a demand has previously been made of the Arkansas State Board of Collection Agencies regarding payment of this judgment and bond forfeiture because Precision is in receivership. (Exhibit B). It is unknown, what, if any action has been taken by the Arkansas State Board of Collection Agencies at this time.

In order to assist you in locating the bond information, enclosed please find a copy of the bond obtained from the files of the Arkansas State Board of Collection Agencies regarding Precision. (Exhibit C).

A demand is hereby being made for payment of \$63,666.90, or the maximum amount of the bond, in accordance with the Court's Order within five (5) business days of receipt of this demand.

Payment should be made to: Cook Law Firm, P.A.-IOLTA. Please mail your check to the address listed above.

Should you fail to remit payment within the aforementioned time, a Writ of Execution may be issued, and/or a Motion for Contempt filed with the Court.



Please contact me upon receipt of this correspondence. Thank you in advance for your prompt assistance in this matter.

Sincerely,

/s/

Harold F. Cook

HFC/kc

w/enclosure-3page

XC: Precision Recovery Analytics International, Inc.
7500 Rialto Blvd. 1, Suite 100
Austin, Texas 78735

Ms. Peggy Matson, Executive Director
State Board of Collection Agencies
523 Louisiana Street, Suite 460
Little Rock, AR 72201
Facsimile: (501) 372-5383

File

Arkansas Claims Commission

MAR 17 2014

RECEIVED

Subj: **RE: Claim #564S5431 - Precision Recovery Analytics, Inc.**
Date: 2/6/2014 8:53:38 A.M. Central Standard Time
From: Matt.Grimes@thehartford.com
To: Hfcook@aol.com
CC: kim@attorneyhalcook.com

Good morning, Attorney Cook:

Per our discussions with Peggy Matson at the AR State Board of Collections, only the Board can make a claim on the bond. You should direct your inquiries to Ms. Matson. In my last telephone conversation with her, she stated it is their position to not pursue a claim at this time.

Kind regards,

Matt Grimes
Bond Claim Department
The Hartford
One Hartford Plaza, T-4
Hartford, CT 06155
PHONE: 860.547.8237; FAX: 860.221.3825
Matt.Grimes@thehartford.com

Please be advised that Hartford Fire Insurance Company continues to reserve any and all rights and defenses that it may have in connection with this matter.

From: Hfcook@aol.com [<mailto:Hfcook@aol.com>]
Sent: Monday, January 27, 2014 1:42 PM
To: Grimes, Matthew J (Middle Market + UW Support)
Cc: kim@attorneyhalcook.com
Subject: Claim #564S5431

Mr. Grimes:

I am in receipt of your letter dated January 27, 2014.

Should you need any information from our files, please let me know.

Please keep me advised of your investigation.

Thank you.

Harold F. Cook
Cook Law Firm, P.A.

Arkansas Office:
8114 Cantrell Road, Suite 100
Little Rock, AR 72227
tel: 501-255-1500
fax: 501-255-1116

Tennessee Office:
Bartlett Executive Square
5705 Stage Road, Suite 197
Bartlett, TN 38134
tel: 901-259-1080
fax: 901-259-1085



501 372 5383



Arkansas State Board of Collection Agencies

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PEGGY MATSON
EXECUTIVE DIRECTOR

DIRECT NUMBER: (501) 371-1435
E-MAIL: pmatson@asbca.com

January 27, 2014

Harold F. Cook
Cook Law Firm
8114 Cantrell Road, Suite 100
Little Rock, AR 72227

VIA Facsimile 255-1116

Re: Precision Recovery Analytics, Inc. v. McMullen
Pulaski County Circuit Court Case No. CV-2013-354

Dear Mr. Cook:

You and I have exchanged 10 letters over the last two and a half months regarding the surety bond posted with the State Board of Collection Agencies ("Board") by Precision Recovery Analytics, Inc. In your letters of January 6 and January 22 you asked for an "update" to your "inquiry." Neither of these letters defines what the "inquiry" is so I don't know how to give you an update and I know of no inquiries you have made that I have not addressed. I have responded to your previous letters and have summarized our correspondence below in hopes that you find my responses to be satisfactory.

<u>Date</u>	<u>Cook's Questions and ASBCA's Responses</u>
-------------	---

- | | |
|---------|---|
| 11/6/13 | <u>Cook</u> : Asked for the Board's written procedures pertaining to payment of the bond. |
| 11/6/13 | <u>ASBCA</u> : Supplied you with copies of Arkansas Code Annotated. §17-24-306 which is the only statute that governs surety bonds made payable to the Board and Section XVIII of the Board's Rules and Regulations which sets forth the procedures regarding collection of surety bonds posted with the Board. |
| 11/7/13 | <u>Cook</u> : Asked for written instructions as to the steps "regarding the Board "calling/forfeiting the bond filed by Precision Recovery Analytics, Inc. with your agency." |
| 11/7/13 | <u>ASBCA</u> : Responded that there were no such documents other than the statute and regulations previously provided to you. |



1-501-372-5383

Harold F. Cook
January 27, 2014
Page 2

- 11/11/13 Cook: Demanded that the Board pay you \$53,666.90 or the maximum amount of Precision's surety bond within five (5) days from the receipt of your letter.
- 11/14/13 ASBCA: Responded that I, the Board's Executive Director, am not authorized to pay funds directly to you or any other claimant and that the request for payment must be made to the Board. I stated that I would present your demand to the Board during its December meeting.
- 11/19/13 Cook: Threatened to obtain a writ of execution.
- 11/20/13 ASBCA: Asked "Shall I [Executive Director] assume you do not want the Board to consider your demand?"

You neither responded nor attended the Board meeting.

If you still feel your inquiries have not been answered fully, please specify the date when the information was requested and why you feel the Board's response was inadequate.

Yours truly,



Peggy Matson
Executive Director

PM:stl

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
6TH DIVISION

PRECISION RECOVERY ANALYTICS, INC.

PLAINTIFF/COUNTER-

AS ASSIGNEE OF GE MONEY BANK/WAL-MART

DEFENDANT

vs.

No. CV-2013-354

OWEN MCMULLEN and
LILLIE MCMULLEN

DEFENDANT/COUNTER-
PLAINTIFF

**NOTICE OF DEPOSITION OF CORPORATE REPRESENTATIVE OF
THE ARKANSAS STATE BOARD OF COLLECTION AGENCIES,
PURSUANT TO ARCP 30(b)(6) and ARCP 60**

TO: Peggy Matson, Executive Director
523 Louisiana Street, Suite 460
Little Rock, AR 72201
Telephone: (501) 371-1435
Facsimile: (501) 372-5383

Arkansas Claims Commission

MAR 17 2014

RECEIVED

PLEASE TAKE NOTICE THAT, pursuant to Rule 30(b)(6) and Rule 60 of the Arkansas Rules of Civil Procedure, Plaintiff by and through counsel, will take the video deposition of the corporate representative of the Arkansas State Board of Collection Agencies (hereinafter designated "Corporate Representative") through its officers, agents, employees or authorized persons most qualified to testify and knowledgeable with respect to not only to the facts, but also to subjective beliefs and opinions, and to research and investigate the corporate knowledge about the designated topic, and to all matters known or reasonably available to the organization as described below.

The deposition will be taken before an authorized court reporter and videographer.

At the time of the deposition, the witness is commanded to bring and produce the documents and things listed in Exhibit "A" attached hereto as incorporated herewith as if fully set forth in length.



Deponent: Corporate Representative of the State Board of Collection Agencies

Date: March 17, 2014

Time: 9:00 am

Place: Cook Law Firm, P.A.
8114 Cantrell Road, Suite 100
Little Rock, AR 72227

and will continue until completed. The deposition may be recorded through stenographic and/or video means.

DEFINITIONS:

A. "Document" means all original written, recorded, or graphic matter whatsoever and all non-identical copies thereof, including, but not limited to papers, books, records, letters, video tapes, photographs, tangible things, correspondence, communications, telegrams, cables, telex messages, memoranda, notes, work papers, transcripts, minutes, reports and recordings of telephone or other conversations, or of conferences or other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, jottings, agendas, bulletins, notices, announcements, advertisements, instructions, charts, manuals, brochures, publications, schedules, price lists, client lists, journals, statistical records, desk calendars, appointment books, diaries, lists, tabulations, programs, data processing input and output, microfilm, books of account, records and invoices reflecting business operations, all records kept by electronic, photographic or mechanical means, any notes or drafts relating to the foregoing, and all things similar to any of the foregoing, however, denominated. In all cases where a "document" is in a language other than English, "document" includes all translations and material related to particular translations. The term "documents" means all the writings of any kind, including the original and all nonidentical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, notes, diaries, statistics, e-mails, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, interoffice and intraoffice communications, notations of any sort of conversations, telephone calls, meetings or communications, bulletins, printed matter, computer printouts, teletypes, telefax, invoices, worksheets, all drafts, alterations, and modifications, changes and amendments of any of the foregoing, graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotapes, recordings, motion pictures) and any electronic, mechanical, or electrical records or representations of any kind (including, without limitation, tapes, cassettes, disks, recordings and computer memories). For the purpose of this deposition, documents shall also mean any electronically stored material in addition to any written material.

B. "Plaintiff" means any person named herein as a Plaintiff, as well as their agents and legal representatives, as well as all persons acting or purporting to act on behalf of any Plaintiff.

C. "Corporate Representative" shall mean any person named, as well as their agents and legal representatives, as well as all persons acting or purporting to act on their behalf.

D. "Or" shall mean and/or.

Arkansas Claims Commission

MAR 17 2014

DEPOSITION TOPICS

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PLEASE TAKE FURTHER NOTICE that, the designated representative(s) of the Arkansas State Board of Collection Agencies (hereafter "ASBCA") must be prepared to testify regarding "matters known or reasonably available to" the Arkansas State Board of Collection Agencies, and possessing knowledge of the overall general business operations, administration, management and day-to-day operations and functioning of the agency. The witness will be required to testify not only to facts, but also to subjective beliefs and opinions and is required to research and investigate the agency knowledge and information about the designated topic(s) and be prepared to testify to all matters "known or reasonably available information" for the agency after conducting a diligent inquiry, including, but not limited to:

- 1) Agency management and supervision, protocols, guidelines, rules, regulations, laws, governing statutes, standards, policies and practices, procedures, policies and practices implementation, procedures directives, programs, equipment, personnel, services, legislative enactments and changes, agency history, agency mission, consumer rights, meeting minutes, records, document destruction and retention policies;
- 2) *Precision Recovery Analytics, Inc. v. McMullen, et al*;
- 3) "Known or reasonably available information" concerning the following matters: All ASBCA Meeting Minutes for 1/1,2011 thru the present; *Precision Recovery Analytics, Inc. v. McMullen, et al*; *Cook Law Firm, P.A. v. ASBCA*; *Cach, LLC. v. McFarland v. Square Two Financial et al.*; *Simpson v. Calvary SPV, LLC.*;
- 4) Policies, procedures, standards and policies utilized to determine the action taken in denying the request for the ASBCA "calling" of the bond for *Precision Recovery Analytics, Inc. v. McMullen, et al*, Judgment;
- 5) Laws, rules and regulations, policies governing the ASBCA;

- 6) Any and all information related to the basis for surety bond issuance and requirements of the ASBCA;
- 7) Attorney Manny Newburger;
- 8) All agency telephone records relating to: telephone call logs, telephone messages, billing statements, itemized incoming and outgoing telephone calls received or placed to Attorney Manny Newburger, including documents and records for any and all agency cellular telephones issued to, or cellular telephone expense reimbursed for use by employees, staff or ASBCA members from 1/1/2011 thru the present date.

DUCES TECUM

PLEASE TAKE FURTHER NOTICE that the designated representative(s) must bring the following documents with them to the deposition:

1. All documents responsive to above identified deposition topics.

YOU ARE FURTHER DIRECTED pursuant to Rule 30 and 34 of the Arkansas Rules of Civil Procedure, to produce the following documents and things a minimum of three (3) days prior to the time of your deposition:

2. Agency written policies and procedures, protocols, guidelines, rules, regulations, laws, governing statutes, standards, policies and practices, procedures, policies and practices implementation materials, procedures and directives, written programs and/or services, legislative enactments and law changes, agency mission statements, consumer rights materials, all ASBCA Meeting Minutes for 1/1/2011 thru the present; all drafts and working SBCA meeting minutes from , records, document destruction and retention policies;
3. *Precision Recovery Analytics, Inc. v. McMullen, et al.*;
4. All information, papers, handwritten notes and documents, including all drafts of work papers and concerning the following matters: All ASBCA Meeting Minutes from 1/1/2011 thru the present, including all drafts and work papers and notes; *Precision Recovery*

Analytics, Inc. v. McMullen, et al; *Cook Law Firm, P.A. v. ASBCA*; *Cach, LLC. v. McFarland v. Square Two Financial et al.*; *Simpson v. Calvary SPV, LLC.*;

5. Policies, procedures, standards and policies utilized to determine the action taken in denying the request for the ASBCA "calling: of the bond for *Precision Recovery Analytics, Inc. v. McMullen, et al*, Judgment;
6. Laws, rules and regulations, policies governing the ASBCA;
7. Any and all information related to the basis for surety bond issuance and requirements of the ASBCA, including all documents, papers and information relating to changes in surety bond language changes, amendments, modifications from 1/1/2007 thru the present date;
8. Attorney Manny Newburger;
9. All agency telephone records relating to: telephone call logs, telephone messages, billing statements, itemized incoming and outgoing telephone calls received or placed to Attorney Manny Newburger, including documents and records for any and all agency cellular telephones issued to, or cellular telephone expense reimbursed for use by employees, staff or ASBCA members from 1/1/2011 thru the present date;
10. Agency written policies and procedures, protocols, guidelines, rules, regulations, laws, governing statutes, standards, policies and practices, procedures, policies and practices implementation materials, procedures and directives, legislative enactments and law changes, documents, papers or records regarding Resolutions, Waivers, or request(s) made of the ASBCA concerning exemptions from licensing by ASBCA from 1/1/2011 thru the present;
11. Official Resolutions filed by the ASBCA from 1/1/2011 thru the present date.

PLEASE TAKE NOTICE that this Request is deemed continuing to and through execution of Judgment in this case. Should you in the future discover any items relating to any of the above matters of this Request, you are required to notify Plaintiff's counsel of said information by way of Supplemental Answers to this Request, or an a Motion for Contempt will be made to the trial court.

Respectfully submitted,
COOK LAW FIRM, P.A.

/s/ Harold F. Cook
Harold F. Cook, AR Bar No. 99118
J. R. Andrews, AR Bar No. 92041
8114 Cantrell Road, Suite 100
Little Rock, AR 72227
Telephone: (501) 255-1500
Facsimile: (501) 255-1116

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served on the following deponent by facsimile, electronic, personal service, or placing same in the United States Mail, properly addressed and postage pre-paid this _____ day of _____, 2014, to:

Rusty Guinn, Chairman
523 Louisiana Street, Suite 460
Little Rock, AR 72201
Telephone: (501) 371-1435
Facsimile: (501) 372-5383

The Honorable Dustin McDaniel
Arkansas Attorney General Office
323 Center Street, Suite 200
Little Rock AR 72201

/s/ Harold F. Cook
Harold F. Cook/JR Andrews



McMullen #1

THE ATTORNEY GENERAL
STATE OF ARKANSAS
DUSTIN MCDANIEL

Scott P. Richardson
Senior Assistant Attorney General

Direct dial: (501) 682-1019
E-mail: scott.richardson@arkansasag.gov

March 10, 2014

Mr. Harold Cook
Cook Law Firm
6114 Cantrell, Suite 100
Little Rock, AR 72227

Arkansas Claims Commission

MAR 17 2014

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Re: Precision Recovery Analytics, Inc. v. Owen McMullen, et al.
Pulaski Co. Cir. Ct. No. CV-2013-354

Dear Mr. Cook:

Two notices of deposition to officials of the Arkansas State Board of Collection Agencies under the style of the above-referenced case have been forwarded to me for response. The notices request production of a sweeping range of documents and testimony on a similarly wide swath of subjects. It appears, however, that the main purpose is to explore the ASBCA's basis for not "calling" a bond held by Precision Recovery Analytics, Inc.

Pursuant to Arkansas Code Annotated section 17-24-306, all licensed collection agencies are required to secure a bond of between \$5,000 and \$25,000. The statute provides the ASBCA authority to adopt rules regarding the disbursement of bonds to claimants. Ark. Code Ann. § 17-24-306(d). The ASBCA has adopted rules for collection and disbursement of bonds "for failure to remit client funds." A copy of the applicable rule is enclosed. In short, the rule provides the ASBCA may call a bond "upon finding [that] a licensee has failed to pay its client." Rule XVIII. ASBCA understands the statute and its rules to allow it to call a bond in favor of the client of the collection agency; that is the account-holder who assigned the account to the agency for collection, here, GE Money Bank/Wal-Mart.

The statute further provides that the ASBCA, in its discretion, may "require the sureties to deal directly with the claimants." Ark. Code Ann. § 17-24-306(d)(3). The former version of the statute provided that the bonds were subject to payment upon written demand by the entity from whom the "account, bill, or other indebtedness is taken for collection," i.e. the account-holder, here GE Money Bank/Wal-Mart. Ark. Code Ann. § 17-24-306(b) (Repl. 1999). The 2009 amendment of the statute removed this language, but did not define who a "claimant" is who may collect on the bond. ASBCA's rules are, however, consistent with the former version of the statute, which allows ASBCA to collect on the bond only for the benefit of the account-holder and not anyone else such as a consumer.

323 Center Street • Suite 200 • Little Rock, Arkansas 72201
(501) 682-2007 • FAX (501) 682-2591



Mr. Harold Cook
March 10, 2014
p. 2 of 2

ASBCA's rules, thus, do not allow it to collect on this bond for the benefit of a consumer. Because of the rule's silence regarding other potential claimants to the bond, however, a consumer who believes that he or she may collect on the bond may deal directly with the surety. In other words, while ASBCA's rules do not allow it to collect Precision Recovery's bond for your client, you may deal directly with the bond-holder on behalf of your client.

ASBCA is not a party to the above referenced case. A notice of deposition is not effective as against non-parties, here the Board members or its staff. In addition, the two people noticed are not available on that date and time. Therefore, the persons identified in the notices will not be appearing for the depositions. However, I hope that the information provided in this letter addresses the concerns that gave rise to the notices. If not, please do not hesitate to contact me.

Best Regards,



Scott P. Richardson
Senior Assistant Attorney General

SPR/lf

cc: Ms. Peggy Matson

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with said verification being conducted by the Board of Directors or employees or agents of the SBCA. The SBCA may be reimbursed for actual and necessary expenses associated with such investigations.

- (B) The SBCA may request that anyone being investigated pursuant to a license application, renewal or complaint personally appear before the Board to answer questions and concerns related to the above.
- (C) The SBCA may require such authorizations, financial statements and/or references of all applicants for a license or licensees as it deems necessary and make an investigation or cause an independent investigation to be made concerning the Agency's reputation, integrity and/or net worth pursuant to A.C.A. §17-24-303 and Act 1276 of 1997. The cost of any investigation may be borne by the Agency and shall be payable in such manner and time as the Board of Directors may direct.
- (D) The SBCA may investigate the collection records of a licensee, and for that purpose the SBCA shall have free access to the books and/or papers of a licensee relating thereto.

XVIII. COLLECTION/DISBURSEMENT OF BOND FOR FAILURE TO REMIT CLIENT FUNDS.

The SBCA, upon finding a licensee has failed to pay it's client or clients, shall collect the surety bond required pursuant to A.C.A. §17-24-306. When the SBCA has collected under this bond, it shall proceed to disburse the funds in accordance with these Rules.

- (A) The SBCA or its representative shall cause notice of the noncompliance to be given. This notice shall contain the name and address of the collection agency (licensee) whose bond has been collected; name and address of the owner or owners if the licensee was proprietorship or partnership; address of the SBCA; address where claims are to be sent; who may file a claim; requirements for a proper claim, and time to file.
- (B) Individual notice to interested persons need to be given only when the SBCA has reasonable cause to believe that such person possesses a claim against the licensee's surety bond.
- (C) The notice requirement of this section may be served in any or all of the following manners:

- (1) By certified mail, return receipt requested to all who have expressed a complaint of noncompliance. Such notice shall be



mailed to the business address of the claimant.

- (2) By certified mail, return receipt requested to all others that the SBCA has reason to believe have a claim as to the bond; or
 - (3) By publishing once a week for two consecutive weeks in a newspaper that has a statewide circulation and in a newspaper in the county or the licensee with a countywide circulation, if there is such a paper.
- (D) Once notice is given, any claim must be filed within ninety (90) days of the date of the first publication. A claim must state the name and address of the claiming party; an itemized list of the amounts claimed; and attach the requisite proof that the licensee has received this amount. All claims must be timely filed or the claimant shall be forever barred and precluded from receiving any benefits in the surety bond.
- (E) Requisite proof means proof in the form of a cancelled check, money order, receipt or such other proof as the claimant may possess and must be provided to the SBCA by the claimant before any claim will be considered.
- (F) All expenses incurred in giving notice under this provision shall be paid from the proceeds of the bond.
- (G) At the expiration of ninety (90) days, the SBCA shall hold a hearing to determine the amount, if any, to be awarded on all claims. Notice of this hearing shall be given by first class mail to all who filed timely claims.
- (1) At the hearing, the SBCA may hear evidence to determine the validity of any or all claims and shall either approve or deny all claims properly filed.
 - (2) In the event that the bond is insufficient to pay all claims found to be valid by the SBCA, disbursement shall be made on a pro rata share. In the event that a bond surplus arises, the funds may be returned to the bonding company, at the discretion of the Board of Directors.
 - (3) Payment to those claimants which the SBCA has found to have valid claims shall be made within a reasonable time thereafter.

Amended 10/16/97

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas

As Engrossed: H3/27/09 S4/7/09

87th General Assembly

A Bill

Regular Session, 2009

HOUSE BILL 2228

By: Representative Cash

For An Act To Be Entitled

AN ACT TO ENACT THE FAIR DEBT COLLECTION
PRACTICES ACT; AND FOR OTHER PURPOSES.

Arkansas Claims Commission

MAR 17 2014

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Subtitle

TO ENACT THE FAIR DEBT COLLECTION
PRACTICES ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 17, Chapter 24, is amended to add an additional subchapter to read as follows:

17-24-501. This subchapter shall be known and may be cited as the "Arkansas Fair Debt Collection Practices Act".

17-24-502. Definitions.

As used in this subchapter:

(1) "Communication" means the conveying of information regarding a debt directly or indirectly to a person;

(2) "Consumer" means a natural person obligated or allegedly obligated to pay a debt;

(3)(A) "Creditor" means a person:

(i) Who offers or extends credit, creating a debt;

or

(ii) To whom a debt is owed.

(B) "Creditor" does not include a person to the extent that he or she receives an assignment or transfer of a debt in default solely to facilitate collection of the debt for another;



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1 (4) "Debt" means a obligation or alleged obligation of a
2 consumer to pay money arising out of a transaction in which the money,
3 property, insurance, or services that are the subject of the transaction are
4 primarily for personal, family, or household purposes, whether or not the
5 obligation has been reduced to judgment;

6 (5)(A) "Debt collector" means a person who uses an
7 instrumentality of interstate commerce or the mails in a business whose
8 principal purpose is the collection of debts or who regularly collects or
9 attempts to collect, directly or indirectly, debts owed or due or asserted to
10 be owed or due another.

11 (B) Except as provided in subdivision (5)(D)(vi) of this
12 section, "debt collector" includes a creditor who, in the process of
13 collecting his or her own debts, uses a name other than his or her own that
14 would indicate that a third person is collecting or attempting to collect the
15 debts.

16 (C) As used in § 17-24-507(b)(6), "debt collector"
17 includes a person who uses an instrumentality of interstate commerce or the
18 mails in a business whose principal purpose is the enforcement of security
19 interests.

20 (D) "Debt collector" does not include any:

21 (i) Officer or employee of a creditor while, in the
22 name of the creditor, collecting debts for the creditor;

23 (ii) Person while acting as a debt collector for
24 another person, both of whom are related by common ownership or affiliated by
25 corporate control, if the person acting as a debt collector does so only for
26 persons to whom it is so related or affiliated and if the principal business
27 of the person is not the collection of debts;

28 (iii) Officer or employee of the United States or a
29 state to the extent that collecting or attempting to collect a debt is in the
30 performance of his or her official duties;

31 (iv) Person while serving or attempting to serve
32 legal process on another person in connection with the judicial enforcement
33 of a debt;

34 (v) Nonprofit organization that, at the request of
35 consumers, performs bona fide consumer credit counseling and assists
36 consumers in the liquidation of their debts by receiving payments from the

1 consumers and distributing the amounts to creditors; or

2 (vi) Person collecting or attempting to collect a
3 debt owed or due or asserted to be owed or due another to the extent the
4 collection activity:

5 (a) Is incidental to a bona fide fiduciary
6 obligation or a bona fide escrow arrangement;

7 (b) Concerns a debt that was originated by the
8 person;

9 (c) Concerns a debt that was not in default at
10 the time it was obtained by the person; or

11 (d) Concerns a debt obtained by the person as
12 a secured party in a commercial credit transaction involving the creditor;
13 and

14 (6) "Location information" means:

15 (A) A consumer's place of abode and his or her telephone
16 number at the consumer's place of abode; or

17 (B) The consumer's place of employment.

18
19 17-24-503. Acquisition of location information.

20 A debt collector communicating with a person other than the consumer to
21 acquire location information about the consumer shall:

22 (1) Identify himself or herself, state that he or she is
23 confirming or correcting location information concerning the consumer, and,
24 only if expressly requested, identify his or her employer;

25 (2) Not state that the consumer owes a debt;

26 (3) Not communicate with the person more than one (1) time
27 unless:

28 (A) Requested to do so by the person; or

29 (B) The debt collector reasonably believes that:

30 (i) The earlier response of the person is erroneous
31 or incomplete; and

32 (ii) The person now has correct or complete location
33 information;

34 (4) Not communicate by postcard;

35 (5) Not use a language or symbol on an envelope or in the
36 contents of a communication effected by the mails or telegram that indicates

1 that the debt collector is in the debt collection business or that the
2 communication relates to the collection of a debt; and

3 (6) After the debt collector knows the consumer is represented
4 by an attorney with regard to the subject debt and has knowledge of or can
5 readily ascertain the attorney's name and address, not communicate with a
6 person other than that attorney unless the attorney fails to respond to
7 communication from the debt collector within a reasonable period of time.

8
9 17-24-504. Communication in connection with debt collection.

10 (a) Without the prior consent of the consumer given directly to the
11 debt collector or the express permission of a court of competent
12 jurisdiction, a debt collector may not communicate with a consumer in
13 connection with the collection of a debt:

14 (1)(A) At a unusual time or place or a time or place known or
15 which should be known to be inconvenient to the consumer.

16 (B) In the absence of knowledge of circumstances to the
17 contrary, a debt collector shall assume that the convenient time for
18 communicating with a consumer is after 8:00 a.m. and before 9:00 p.m. local
19 time at the consumer's location;

20 (2) If the debt collector knows the consumer is represented by
21 an attorney with respect to the debt and has knowledge of or can readily
22 ascertain the attorney's name and address, unless:

23 (A) The attorney fails to respond within a reasonable
24 period of time to a communication from the debt collector; or

25 (B) The attorney consents to direct communication with the
26 consumer; or

27 (3) At the consumer's place of employment if the debt collector
28 knows or has reason to know that the consumer's employer prohibits the
29 consumer from receiving the communication.

30 (b) Except as provided in § 17-24-503, without the prior consent of
31 the consumer given directly to the debt collector or the express permission
32 of a court of competent jurisdiction, or as reasonably necessary to
33 effectuate a post-judgment judicial remedy, a debt collector may not
34 communicate in connection with the collection of a debt with a person other
35 than the consumer, his or her attorney, a consumer reporting agency if
36 otherwise permitted by law, the creditor, the attorney of the creditor, or

1 the attorney of the debt collector.

2 (c) If a consumer notifies a debt collector in writing that the
3 consumer refuses to pay a debt or that the consumer wishes the debt collector
4 to cease further communication with the consumer, the debt collector shall
5 not communicate further with the consumer with respect to the debt, except:

6 (1) To advise the consumer that the debt collector's further
7 efforts are being terminated;

8 (2) To notify the consumer that the debt collector or creditor
9 may invoke specified remedies that are ordinarily invoked by the debt
10 collector or creditor; or

11 (3)(A) When applicable, to notify the consumer that the debt
12 collector or creditor intends to invoke a specified remedy.

13 (B) If the notice from the consumer is made by mail,
14 notification is complete upon receipt.

15 (d) As used in this section, "consumer" includes the consumer's
16 spouse, parent if the consumer is a minor, guardian, executor, or
17 administrator.

18
19 17-24-505. Harassment or abuse.

20 (a) A debt collector may not engage in a conduct the natural
21 consequence of which is to harass, oppress, or abuse a person in connection
22 with the collection of a debt.

23 (b) Without limiting the general application of subsection (a) of this
24 section, the following conduct is a violation of this section:

25 (1) The use or threat of use of violence or other criminal means
26 to harm the physical person, reputation, or property of a person;

27 (2) The use of obscene or profane language or language the
28 natural consequence of which is to abuse the hearer or reader;

29 (3) The publication of a list of consumers who allegedly refuse
30 to pay debts, except to a consumer reporting agency or to persons meeting the
31 requirements of 15 U.S.C. § 1681a(f) or 15 U.S.C. § 1681b(3) as they existed
32 on January 1, 2009;.

33 (4) The advertisement for sale of a debt to coerce payment of
34 the debt;

35 (5) Causing a telephone to ring or engaging a person in
36 telephone conversation repeatedly or continuously with intent to annoy,

1 abuse, or harass a person at the called number; or

2 (6) Except as provided in § 17-24-503, the placement of
3 telephone calls without meaningful disclosure of the caller's identity.

4
5 17-24-506. False or misleading representations.

6 (a) A debt collector may not use a false, deceptive, or misleading
7 representation or means in connection with the collection of a debt.

8 (b) Without limiting the general application of subsection (a) of this
9 section, the following conduct is a violation of this section:

10 (1) The false representation or implication that the debt
11 collector is vouched for, bonded by, or affiliated with the United States or
12 a state, including without limitation the use of a badge, uniform, or
13 facsimile thereof;

14 (2) The false representation of:

15 (A) The character, amount, or legal status of a debt; or

16 (B) Any services rendered or compensation that may be
17 lawfully received by a debt collector for the collection of a debt;

18 (3) The false representation or implication that an individual
19 is an attorney or that a communication is from an attorney;

20 (4) The representation or implication that nonpayment of a debt
21 will result in the arrest or imprisonment of a person or the seizure,
22 garnishment, attachment, or sale of a property or wages of a person unless
23 the action is lawful and the debt collector or creditor intends to take the
24 action;

25 (5) The threat to take an action that cannot legally be taken or
26 that is not intended to be taken;

27 (6) The false representation or implication that a sale,
28 referral, or other transfer of an interest in a debt will cause the consumer
29 to:

30 (A) Lose a claim or defense to payment of the debt; or

31 (B) Become subject to a practice prohibited by this
32 subchapter;

33 (7) The false representation or implication that the consumer
34 committed a crime or other conduct in order to disgrace the consumer;

35 (8) Communicating or threatening to communicate to a person
36 credit information that is known or that should be known to be false,

1 including without limitation the failure to communicate that a disputed debt
2 is disputed;

3 (9) The use or distribution of a written communication that
4 simulates or is falsely represented to be a document authorized, issued, or
5 approved by a court, official, or agency of the United States or a state or
6 that creates a false impression as to its source, authorization, or approval;

7 (10) The use of a false representation or deceptive means to
8 collect or attempt to collect a debt or to obtain information concerning a
9 consumer;

10 (11) The failure to disclose:

11 (A) In the initial written communication with the consumer
12 and, in addition, if the initial communication with the consumer is oral in
13 the initial oral communication, that the debt collector is attempting to
14 collect a debt and that any information obtained will be used for that
15 purpose; and

16 (B) In subsequent communications, that the communication
17 is from a debt collector, except that this subdivision (b)(11) does not apply
18 to a formal pleading made in connection with a legal action;

19 (12) The false representation or implication that accounts have
20 been turned over to innocent purchasers for value;

21 (13) The false representation or implication that documents are
22 legal process;

23 (14) The use of a business, company, or organization name other
24 than the true name of the debt collector's business, company, or
25 organization;

26 (15) The false representation or implication that documents are
27 not legal process forms or do not require action by the consumer; or

28 (16) The false representation or implication that a debt
29 collector operates or is employed by a consumer reporting agency as defined
30 by 15 U.S.C. § 1681a(f) as it existed on January 1, 2009.

31
32 17-24-507. Unfair practices.

33 (a) A debt collector may not use unfair or unconscionable means to
34 collect or attempt to collect a debt.

35 (b) Without limiting the general application of subsection (a) of this
36 section, the following actions of a debt collector violate this section:

1 (1) The collection of an amount including interest, a fee, a
2 charge, or an expense incidental to the principal obligation unless the
3 amount is expressly authorized by the agreement creating the debt or
4 permitted by law;

5 (2) The acceptance by a debt collector from a person of a check
6 or other payment instrument postdated by more than five (5) days unless the
7 person is notified in writing of the debt collector's intent to deposit the
8 check or instrument not more than ten (10) nor less than three (3) business
9 days before the deposit;

10 (3) The solicitation by a debt collector of a postdated check or
11 other postdated payment instrument for the purpose of threatening or
12 instituting criminal prosecution;

13 (4) Depositing or threatening to deposit a postdated check or
14 other postdated payment instrument before the date on the check or
15 instrument;

16 (5) Causing charges to be made to a person for communications by
17 concealment of the true purpose of the communication, including without
18 limitation charges for collect telephone calls and telegrams;

19 (6) Taking or threatening to take a nonjudicial action to effect
20 dispossession or disablement of property if:

21 (A) No present right exists to possession of the property
22 claimed as collateral through an enforceable security interest;

23 (B) No present intention exists to take possession of the
24 property; or

25 (C) The property is exempt by law from the dispossession
26 or disablement;

27 (7) Communicating with a consumer regarding a debt by postcard;
28 or

29 (8) Using a language or symbol other than the debt collector's
30 address on an envelope when communicating with a consumer by use of the mails
31 or by telegram, except that a debt collector may use his or her business name
32 if the name does not indicate that he or she is in the debt collection
33 business.

34
35 17-24-508. Validation of debts.

36 (a) At the time of the initial communication or within five (5) days

1 after the initial communication with a consumer in connection with the
2 collection of a debt, unless the consumer has paid the debt, a debt collector
3 shall send the consumer a written notice containing:

4 (1) The amount of the debt;

5 (2) The name of the creditor to whom the debt is owed;

6 (3) A statement that unless the consumer within thirty (30) days
7 after receipt of the notice disputes the validity of the debt or a portion of
8 the debt, the debt will be assumed to be valid by the debt collector;

9 (4) A statement that if the consumer notifies the debt collector
10 in writing within the thirty-day period that the debt or a portion of the
11 debt is disputed, the debt collector will obtain verification of the debt or
12 a copy of a judgment against the consumer and a copy of the verification or
13 judgment will be mailed to the consumer by the debt collector; and

14 (5) A statement that, upon the consumer's written request within
15 the thirty-day period, the debt collector will provide the consumer with the
16 name and address of the original creditor if different from the current
17 creditor.

18 (b) If the consumer notifies the debt collector in writing within the
19 thirty-day period described in subsection (a) of this section that the debt
20 or a portion of the debt is disputed or that the consumer requests the name
21 and address of the original creditor, the debt collector shall cease
22 collection of the debt or a disputed portion of the debt until the debt
23 collector obtains verification of the debt or a copy of a judgment or the
24 name and address of the original creditor, and a copy of the verification or
25 judgment or name and address of the original creditor is mailed to the
26 consumer by the debt collector.

27 (c) The failure of a consumer to dispute the validity of a debt under
28 this section is not an admission of liability by the consumer.

29
30 17-24-509. Multiple debts.

31 If a consumer owes multiple debts and makes a single payment to a debt
32 collector with respect to the debts, the debt collector may not apply the
33 payment to a debt that is disputed by the consumer and, if applicable, shall
34 apply the payment in accordance with the consumer's directions.

35
36 17-24-510. Legal actions by debt collectors.

1 (a) A debt collector who brings a legal action on a debt against a
2 consumer shall:

3 (1) For an action to enforce an interest in real property
4 securing the consumer's obligation, bring the action in the county where all
5 or part of the real property is located; or

6 (2) For an action not described in subdivision (a)(1) of this
7 section, bring the action only in the county:

8 (A) In which the consumer signed the contract sued upon;

9 or

10 (B) In which the consumer resides at the commencement of
11 the action.

12 (b) This subchapter does not create a cause of action by a debt
13 collector.

14
15 17-24-511. Furnishing certain deceptive forms.

16 (a) It is unlawful to design, compile, and furnish a form knowing that
17 the form would be used to create the false belief in a consumer that a person
18 other than the creditor of the consumer is participating in the collection of
19 or in an attempt to collect a debt the consumer allegedly owes the creditor,
20 when in fact the person is not participating in collecting or attempting to
21 collect the debt.

22 (b) A person who violates this section is liable to the same extent
23 and in the same manner as a debt collector is liable under § 17-24-512 for
24 failure to comply with this subchapter.

25
26 17-24-512. Civil liability.

27 (a) Except as otherwise provided by this section, a debt collector who
28 fails to comply with this subchapter with respect to a person is liable to
29 the person in an amount equal to the sum of:

30 (1) An actual damage sustained by the person as a result of the
31 failure;

32 (2)(A) In the case of an action by an individual, the additional
33 damages as the court may allow not exceeding one thousand dollars (\$1,000);

34 or

35 (B) In the case of a class action;

36 (i) The amount each named plaintiff could recover

1 under subdivision (a)(2)(A) of this section; and

2 (ii) The amount the court may allow for all other
3 class members without regard to a minimum individual recovery not to exceed
4 the lesser of five hundred thousand dollars (\$500,000) or one per cent (1%)
5 of the net worth of the debt collector; and

6 (3)(A) In the case of a successful action to enforce the
7 foregoing liability, the costs of the action, together with a reasonable
8 attorney's fee as determined by the court.

9 (B) If the court finds that an action under this section
10 was brought in bad faith or for the purpose of harassment, the court may
11 award to the defendant attorney's fees reasonable in relation to the work
12 expended and costs.

13 (b) In determining the amount of liability in an action under
14 subsection (a) of this section, the court shall consider among other relevant
15 factors:

16 (1) In an individual action under subsection (a)(2)(A) of this
17 section, the frequency and persistence of noncompliance by the debt
18 collector, the nature of the noncompliance, and the extent to which the
19 noncompliance was intentional; or

20 (2) In a class action under subsection (a)(2)(B) of this
21 section, the frequency and persistence of noncompliance by the debt
22 collector, the nature of the noncompliance, the resources of the debt
23 collector, the number of persons adversely affected, and the extent to which
24 the debt collector's noncompliance was intentional.

25 (c) A debt collector may not be held liable in an action brought under
26 this subchapter if the debt collector shows by a preponderance of the
27 evidence that the violation was not intentional and resulted from a bona fide
28 error notwithstanding the maintenance of procedures reasonably adapted to
29 avoid the error.

30 (d) An action to enforce a liability created by this subchapter may be
31 brought in a court of competent jurisdiction within one (1) year from the
32 date on which the violation occurs.

33 (e) A provision of this section imposing liability shall not apply to
34 an act done or omitted in good faith in conformity with an advisory opinion
35 of the Federal Trade Commission addressing appropriate conduct under the
36 Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.,

1 notwithstanding that after the act or omission has occurred, the opinion is
 2 amended, rescinded, or determined by judicial or other authority to be
 3 invalid for a reason.

4
 5 SECTION 2. Arkansas Code § 17-24-101 is amended to read as follows:

6 17-24-101. Definition.

7 As used in this chapter, unless the context otherwise requires,
 8 "collection agency" means any person, ~~who works with or employs one (1) or~~
 9 ~~more other persons, or any partnership, corporation, or association, limited~~
 10 liability corporation or firm which engages in the collection of delinquent
 11 accounts, bills, or other forms of indebtedness, owed or due or asserted to
 12 be owed or due to another or any person, partnership, corporation, ~~or~~
 13 association, limited liability corporation or firm using a fictitious name or
 14 any name other than their own in the collection of their own accounts
 15 receivable, or any person, partnership, corporation, ~~or~~ association, limited
 16 liability corporation or firm which solicits claims for collection or any
 17 person, partnership, corporation, association, limited liability corporation
 18 or firm that purchases and attempts to collect delinquent accounts or bills.

19
 20 SECTION 3. Arkansas Code § 17-24-102 is amended to read as follows:

21 17-24-102. Exemptions.

22 (a) ~~The provisions of this chapter shall not be applicable~~ This
 23 chapter does not apply to:

- 24 (1) Regular employees of a single creditor;
- 25 (2) Banks;
- 26 (3) Trust companies;
- 27 (4) Savings and loan associations;
- 28 (5) Abstract companies doing an escrow business;
- 29 (6) Licensed real estate brokers and agents when the claims or
 30 accounts being handled by the broker or agent are related to or in connection
 31 with the broker's or agent's regular real estate business;
- 32 (7) Express and telegraph companies subject to public regulation
 33 and supervision;
- 34 (8) Attorneys at law ~~handling claims and collections in their~~
 35 ~~own names and not operating a collection agency under the management of a~~
 36 ~~layman or under names other than their own~~ who use their own names or the

Arkansas Claims Commission

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1 names of their law firms to collect or attempt to collect claims, accounts,
2 bills or other forms of indebtedness owed to them individually or as a firm;

3 ~~(9)(8)(A)~~ Persons, firms, corporations, or associations, limited
4 liability corporations or partnerships handling claims, accounts, or
5 collections under an order of any court.

6 (B) However, child support collection agencies not
7 operating pursuant to Title IV-D of the Social Security Act are not exempt
8 from this chapter and shall be subject to licensure; and

9 ~~(10)(9)~~ Any person, firm, corporation, ~~or~~ association, limited
10 liability corporation or partnership which, for a valuable consideration,
11 purchases accounts, claims, or demands of another which were not in default
12 or delinquent at the time of acquisition and then, in the purchaser's own
13 name, proceeds to assert or collect the accounts, claims, or demands.

14 (b) Nothing in § 17-24-301, § 17-24-309, § 17-24-401, or this ~~section~~
15 chapter with respect to licensure by the State Board of Collection Agencies,
16 or limitations of fees for collection services, shall include or be
17 applicable to attorneys at law licensed to practice in the State of Arkansas
18 who are engaged in rendering legal services for clients in the collection of
19 accounts, debts, or claims, nor shall § 17-24-301, § 17-24-309, § 17-24-401,
20 or this section amend or repeal in any way the exemptions set out in
21 subsection (a) of this section.

22 (c)(1) Nothing in this chapter shall include or be applicable to the
23 foreclosure of real property under the provisions of § 18-49-101 et seq. or §
24 18-50-101 et seq.

25 (2) Foreclosure of real property is not deemed to be debt
26 collection as defined in the federal Fair Debt Collections Practices Act, 15
27 U.S.C. § 1692a(6), as in existence on January 1, 2005.

28
29 SECTION 4. Arkansas Code § 17-24-103 is amended to read as follows:
30 17-24-103. Penalties.

31 (a) ~~Any person, partnership, corporation, or association~~ collection
32 agency which engages in the business activities of a collection agency
33 without a valid license issued pursuant to this chapter and any person,
34 partnership, corporation, or association who shall violate any provision of
35 this chapter shall be deemed guilty of a misdemeanor and upon conviction
36 shall be fined in any sum of not less than fifty dollars (\$50.00) nor more

1 than five hundred dollars (\$500). Each day of the violation shall constitute
2 a separate offense.

3 (b)(1) The State Board of Collection Agencies is authorized to impose
4 monetary fines as civil penalties to be paid for failure to comply with the
5 provisions of this chapter or the regulations promulgated pursuant thereto.

6 (2) Prior to the imposition of monetary fines, the board shall provide
7 notice and opportunity to be heard in accordance with hearing procedures in
8 effect for the revocation, suspension, or refusal of licensure.

9
10 SECTION 5. Arkansas Code § 17-24-104 is amended to read as follows:
11 17-24-104. Sanctions.

12 (a) ~~Any A collection agency required to be licensed under this~~
13 ~~chapter, which that~~ fails to remit to its client funds collected for the
14 client within the calendar month following the month of collection, shall not
15 be entitled to a collection fee and shall remit the total funds collected to
16 the client.

17 (b) ~~In instances where If a collection agency has failed fails to~~
18 ~~remit funds collected to its client within the calendar month following the~~
19 ~~month of collection, if the collection agency and~~ does not remit the total
20 funds collected for the client to the client within sixty-one (61) days of
21 the date of collection, the ~~collection agency's license shall be subject to~~
22 ~~suspension or revocation by the State Board of Collection Agencies may:~~

23 (1) Suspend or revoke the license of the collection agency; and

24 (2) Impose a civil penalty under § 17-24-103.

25
26 SECTION 6. Arkansas Code § 17-24-301 is amended to read as follows:
27 17-24-301. License required.

28 ~~It shall be unlawful for any person, partnership, association, or corporation~~
29 ~~to conduct within this state a collection agency or engage within this state~~
30 ~~in the business of collecting claims for others, or of soliciting the right~~
31 ~~to collect or receive payment for any other person of any claim, or~~
32 ~~advertise, either in print, by letter, in person, or otherwise, the right to~~
33 ~~collect or receive payment for another of any claim, or seek to make~~
34 ~~collection or obtain payment of any claim on behalf of another person without~~
35 ~~having first applied for and obtained a license from the State Board of~~
36 ~~Collection Agencies.~~

1 Unless licensed by the State Board of Collection Agencies under this
2 subchapter it is unlawful to:

3 (1) Engage in the collection of delinquent accounts, bills, or
4 other forms of indebtedness;

5 (2) Use a fictitious name or any name other than their own in
6 the collection of their own accounts receivable; or

7 (3) Solicit claims for collection; or

8 (4) Purchase and attempt to collect delinquent accounts or
9 bills.

10
11
12 SECTION 7. Arkansas Code § 17-24-303 is amended to read as follows:

13 17-24-303. Application – Issuance – Transferability.

14 (a) The State Board of Collection Agencies shall have the authority to
15 require an applicant for a license to submit an application in writing
16 containing such information as it shall deem necessary and pertinent and may
17 require the character and business references which it deems appropriate.

18 ~~(b) So long as a licensee's license is in full force and effect and in~~
19 ~~good standing, a licensee shall be entitled to a branch office certificate~~
20 ~~for any branch offices operated by the licensee upon the payment of the fee~~
21 ~~herein provided for the original licensee.~~

22 ~~(c)(b)~~ Licenses issued by the board are not transferable.
23

24 SECTION 8. Arkansas Code § 17-24-305(a), concerning licensing fees of
25 the State Board of Collection Agencies, is amended to read as follows:

26 (a) The State Board of Collection Agencies may charge an annual
27 license fee not to exceed one hundred twenty-five dollars (\$125) for
28 licensing each collection agency and an annual fee of fifteen dollars
29 (\$15.00) for licensing registering each employee of the licensed collection
30 agency who as an employee solicits, collects, or attempts to collect any
31 delinquent account or accounts by telephone, mail, personal contact, or
32 otherwise.
33

34 SECTION 9. Arkansas Code § 17-24-306 is amended to read as follows:

35 17-24-306. Bond.

36 (a) The State Board of Collection Agencies shall require each licensee

1 to secure a surety bond in an amount not less than five thousand dollars
2 (\$5,000) nor more than twenty-five thousand dollars (\$25,000) for each
3 location, with the security on the bond to be approved by the board. ~~It is~~
4 ~~the specific intent of this chapter to permit the posting of a surety bond,~~
5 ~~certificate of deposit, or cash bond.~~

6 ~~(b) This bond shall provide that the person, partnership, association,~~
7 ~~or corporation giving the bond shall, upon written demand, pay and turn over~~
8 ~~to or for the person, partnership, association, or corporation from whom any~~
9 ~~account, bill, or other indebtedness is taken for collection in accordance~~
10 ~~with the terms of the agreement upon which it was received for collection.~~

11 ~~(e)~~ (b) The aggregate liability of the surety for all breaches of the
12 conditions of the bond shall, in no event, exceed the amount of the bond.
13 The surety shall have a right to cancel such bond upon giving thirty (30)
14 days' notice to the board and thereafter shall be relieved of liability for
15 any breach of condition occurring after the effective date of the
16 cancellation.

17 ~~(d)~~ (c) ~~This~~ The bond shall be made payable to the State Board of
18 Collection Agencies.

19 ~~(d)~~ (1) The board may promulgate ~~regulations under which it can~~ rules
20 to:

21 (1) disburse Disburse bond funds to claimants;
22

23 (2) If the bonds bond proceeds are insufficient to satisfy all
24 legitimate claims, ~~the board shall~~ distribute the funds pro rata among the
25 claimants; or

26 (3) In the discretion of the board, it may require the sureties
27 to deal directly with the claimants pursuant to regulations promulgated by
28 the board.

29 SECTION 10. Arkansas Code § 17-24-307(12), concerning grounds for
30 revocation, suspension, or refusal of a license, is amended to read as
31 follows:

32 (12) No licensee shall address Addressing a letter to or telephone any
33 telephoning a debtor at his or her place of employment unless a good-faith
34 attempt has been made to contact the debtor at his or her usual place of
35 abode by letter and the mail has not been returned and no answer has been
36 received; or

1
2 SECTION 11. Arkansas Code § 17-24-309 is amended to read as follows:
3 17-24-309. Collection charges - Limits.

4 (a) ~~No person, partnership, association, or corporation~~ collection
5 agency mentioned in ~~§ 17-24-301~~ § 17-24-103 shall charge as a collection
6 charge or fee an amount in excess of fifty percent (50%) of the total amount
7 actually collected on all accounts ~~held by the person, partnership,~~
8 ~~association, or corporation for collection~~ for any one (1) client, nor more
9 than fifty percent (50%) of the total amount actually collected on any one
10 (1) account, nor shall a minimum charge in excess of one dollar (\$1.00) be
11 made on any partially or totally collected account.

12 (b) All contracts providing for a greater collection charge or fee or
13 a greater minimum charge than provided in this section entered into between
14 any creditor in this state and any ~~person, partnership, association, or~~
15 ~~corporation~~ collection agency covered by this chapter shall be void. The
16 creditor shall have, in addition to all other remedies now or hereafter
17 provided by law, a cause of action to recover all amounts collected by the
18 ~~person, partnership, association, or corporation~~ collection agency on the
19 creditor's account or accounts.

20
21 /s/ Cash

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Arkansas State Board of Collection Agencies

523 South Louisiana, Suite 460
Little Rock, Arkansas 72201
Phone: (501) 376-9814
Fax: (501) 372-5383

PEGGY MATSON
EXECUTIVE DIRECTOR

DIRECT NUMBER: (501) 371-1435
E-MAIL: pmatson@asbca.com

January 27, 2014

Harold F. Cook
Cook Law Firm
8114 Cantrell Road, Suite 100
Little Rock, AR 72227

VIA Facsimile 255-1116

Re: Precision Recovery Analytics, Inc. v. McMullen
Pulaski County Circuit Court Case No. CV-2013-354

Dear Mr. Cook:

You and I have exchanged 10 letters over the last two and a half months regarding the surety bond posted with the State Board of Collection Agencies ("Board") by Precision Recovery Analytics, Inc. In your letters of January 6 and January 22 you asked for an "update" to your "inquiry." Neither of these letters defines what the "inquiry" is so I don't know how to give you an update and I know of no inquiries you have made that I have not addressed. I have responded to your previous letters and have summarized our correspondence below in hopes that you find my responses to be satisfactory.

<u>Date</u>	<u>Cook's Questions and ASBCA's Responses</u>
-------------	---

- | | |
|---------|---|
| 11/6/13 | <u>Cook</u> : Asked for the Board's written procedures pertaining to payment of the bond. |
| 11/6/13 | <u>ASBCA</u> : Supplied you with copies of Arkansas Code Annotated, §17-24-306 which is the only statute that governs surety bonds made payable to the Board and Section XVIII of the Board's Rules and Regulations which sets forth the procedures regarding collection of surety bonds posted with the Board. |
| 11/7/13 | <u>Cook</u> : Asked for written instructions as to the steps "regarding the Board "calling/forfeiting the bond filed by Precision Recovery Analytics, Inc. with your agency." |
| 11/7/13 | <u>ASBCA</u> : Responded that there were no such documents other than the statute and regulations previously provided to you. |




Harold F. Cook
January 27, 2014
Page 2

- 11/11/13 Cook: Demanded that the Board pay you \$53,666.90 or the maximum amount of Precision's surety bond within five (5) days from the receipt of your letter.
- 11/14/13 ASBCA: Responded that I, the Board's Executive Director, am not authorized to pay funds directly to you or any other claimant and that the request for payment must be made to the Board. I stated that I would present your demand to the Board during its December meeting.
- 11/19/13 Cook: Threatened to obtain a writ of execution.
- 11/20/13 ASBCA: Asked "Shall I [Executive Director] assume you do not want the Board to consider your demand?"

You neither responded nor attended the Board meeting.

If you still feel your inquiries have not been answered fully, please specify the date when the information was requested and why you feel the Board's response was inadequate.

Yours truly,


Peggy Matson
Executive Director

Arkansas Claims Commission

MAR 17 2014

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STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 13,831.23

Claim No. 14-0714-CC

Attorneys

Cook Law Firm, P.A. Claimant
vs.

Harold F. Cook, Attorney Claimant

AR State Board of Collections Agencies
State of Arkansas Respondent

Scott P. Richardson, Attorney Respondent

Date Filed March 17, 2014

Type of Claim Refund of Expenses

FINDING OF FACTS

The Claims Commission hereby unanimously grants the Respondent's "Motion to Stay," pending the pursuit and exhaustion of possible alternative remedies. Therefore, the Respondent's "Motion to Stay" is hereby unanimously granted.

IT IS SO ORDERED.

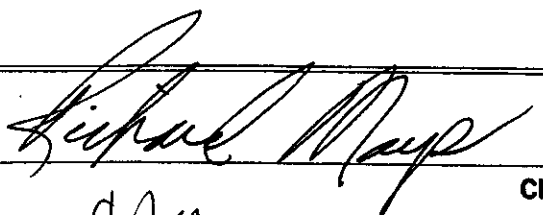
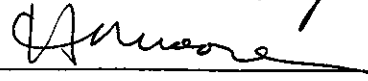
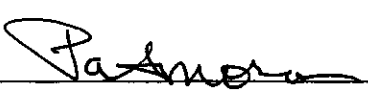
(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously grants the Respondent's "Motion to Stay," pending the pursuit and exhaustion of possible alternative remedies. Therefore, the Respondent's "Motion to Stay" is hereby unanimously granted.

Date of Hearing May 8, 2014

Date of Disposition May 8, 2014


Chairman

Commissioner

Commissioner

NOTICE(S) WHICH MAY APPLY TO YOUR CLAIM: #1 Claims awarded at hearing (in the amount of \$7,500.00 or less) by the Commission are held forty (40) days from the date of disposition before payment will be processed (this does not apply to agency admissions of liability and negotiated settlement agreements by the parties.) #2 Either party has forty (40) days in which to file a "Motion for Reconsideration" of a Claims Commission decision back to the Commission. The forty (40) day period begins the third (3rd) day following the postmarked (mail) date of the decision. #3 If applicable, a state warrant (check) in payment of this claim will be issued by the Respondent agency if ordered to pay. If you do not receive payment within six (6) weeks from the postmarked date of this opinion, please contact the Commission and not being held forty (40) days should be mailed to the Claimant within three (3) weeks following the date of the hearing.

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

**LILLIE MCMULLEN
COOK LAW FIRM**

**CLAIM NO. 14-0713-CC
CLAIM NO. 14-0714-CC**

CLAIMANTS

V.

**ARKANSAS STATE BOARD OF
COLLECTION AGENCIES**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the motion filed by the Arkansas State Board of Collection Agencies (the “Respondent”) to dismiss the claims of Lillie McMullen and the Cook Law Firm (collectively, the “Claimants”). At the hearing held on June 13, 2019, Claimants were represented by Jeff Wood. Reid Adkins appeared on behalf of Respondent.

Based upon a review of the pleadings, argument of the parties, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. On November 4, 2013, the Pulaski County Circuit Court entered a judgment in McMullen’s favor against Precision Recovery Analytics, Inc. (“PRA”) related to the collection agency’s actions in unlawfully attempting to collect a debt from McMullen which she did not owe. The Pulaski County Circuit Court found that PRA’s actions violated the Fair Debt Collection Practices Act (FDCPA), invaded McMullen’s privacy, and constituted negligence. As part of the judgment, the circuit court judge ordered PRA’s surety bond subject to writs of execution.
2. McMullen made demand upon Respondent to call the bond.
3. McMullen also made demand upon the surety for payment.
4. While the facts regarding the agency’s actions are not entirely clear, Respondent did not call the bond, and the surety denied McMullen’s claim.

5. McMullen filed her claim against Respondent on March 17, 2014, seeking \$25,000.00 in damages allegedly caused by Respondent's inactions, specifically:

- Respondent's failure "to incorporate by act or omission mandatory statutory law enactments to A.C.A. § 17-24-306;"
- Respondent's failure "to incorporate by act or omission mandatory statutory law enactments to A.C.A. § 17-24-306(d)(1);"
- Respondent's failure "to change and/or amend ASBCA Rules XVIII providing for compliance with Arkansas Legislative enactments to include the broader and all inclusive wording of 'claimants' who can collect on ASBCA bonds;"
- Respondent's failure "to change and/or amend ASBCA Surety Bond language to comply with mandatory statutory law enactments;" and
- Respondent's failure "by act or omission to amend, modify or change ASBCA Surety Bond language to include the broader and all inclusive wording of 'claimants' who can collect on ASBCA bonds."

6. The Cook Law Firm filed its claim against Respondent on March 17, 2014, seeking \$13,831.23 in attorney's fees related to the firm's efforts in collecting the surety bond.

7. Respondent filed answers denying liability as to both claims and asking the Claims Commission to hold the claims in abeyance pending adjudication of certain issues in state court. Both claimants objected to holding the claims in abeyance. However, the Claims Commission granted the motion to stay on May 8, 2014, and placed the claims in abeyance.

8. Respondent also filed motions to dismiss in both claims, arguing, *inter alia*, that the Claims Commission does not have jurisdiction over these claims because claimants are challenging Respondent's "implementation of its governing law" and, as such, should seek judicial review in circuit court pursuant to the Administrative Procedures Act (APA). Ark. Code Ann. § 25-15-212.

9. The claims were set for hearing multiple times between 2014 and 2019, but Claimants requested that each hearing be rescheduled at a later date. Respondent did not object to any of Claimants' requests.

10. On February 13, 2019, Respondent filed motions to dismiss in both claims, arguing that dismissal was proper based upon Claimants' failure to prosecute the claims and a lack of jurisdiction on the part of the Claims Commission to hear the claims. As to the jurisdiction argument, Respondent asserted that Claimants' remedy is through judicial review of Respondent's actions pursuant to the APA and that pursuant to Ark. Code Ann. § 19-10-204(b)(2)(A), because Claimants have a circuit court remedy, the Claims Commission does not have jurisdiction.

11. Claimants filed substantively identical responses to the motions to dismiss. As to the failure to prosecute, Claimants argued that agreed continuances should not be construed as a failure to prosecute. As to the jurisdiction argument, Claimants stated that there are no other remedies available to pursue and that, under *Board of Trustees v. Andrews*, 2018 Ark. 12, 535 S.W.3d 616 (2018), the Claims Commission is the proper venue for these claims.

12. Respondent filed reply briefs, arguing that Claimants have not provided the Claims Commission with a report detailing the attempts to exhaust alternative remedies and that under *Arkansas Oil & Gas Com'n v. Hurd*, 2018 Ark. 397, 564 S.W.3d 248 (2018), the doctrine of sovereign immunity does not prohibit appeals of agency adjudications under the APA. Respondent argued that *Arkansas Bd. of Collection Agencies v. McGhee*, 372 Ark. 136, 271 S.W.3d 512 (2008) applies, in which the Arkansas Supreme Court held that Respondent's decisions are reviewed pursuant to the APA.

13. Claimants filed substantively identical sur-replies, arguing that *Hurd* is distinguishable because it involved an appeal of an administrative decision, whereas these claims are original actions.

14. Respondent filed sur-sur-replies, arguing that Claimants have not exhausted their administrative remedies through Respondent to receive an agency adjudication, which could then be appealed pursuant to the APA.

15. The Claims Commission subsequently asked the parties to produce a full copy of the Pulaski County Circuit Court order entered in the *McMullen v. Precision Recovery Analytics, Inc.* lawsuit, as well as any documentation from Respondent's minutes regarding Claimants. Both parties produced the requested information.

16. The Claims Commission then scheduled a hearing on Respondent's 2019 motions to dismiss.

17. At the hearing, Respondent relied upon its briefing for the failure to prosecute argument. As to the jurisdiction argument, Respondent asserted that Claimants did not exhaust their administrative remedies and detailed the procedure for doing so through the Arkansas Code and the rules promulgated by Respondent. Respondent also argued that even if Claimants had exhausted their administrative remedies, Claimants' next step would be, as outlined in *McGhee*, an APA appeal. Respondent conceded that the status of APA appeals post-*Andrews* was questionable until *Hurd* provided clarity that APA appeals remain a viable option.

18. Upon a question from a commissioner, Respondent stated that because the Claims Commission has a rule regarding dismissal for failure to prosecute, the Arkansas Rules of Civil Procedure are inapplicable to that issue.

19. Upon a question from a commissioner, Respondent stated that even if Claimants' demand was denied, Claimants have to go through the internal administrative process to obtain a final order prior to going to circuit court pursuant to the APA.

20. Upon a question from a commissioner as to why Respondent did not help Claimants, Respondent stated that its position was that Claimants were not "clients" under

Respondent's rules and that the bond was intended to protect the creditor that hired the collection agency.

21. Claimants argued that *McGhee* is ten years old and that *Hurd* is distinguishable because the instant claims are original actions, not appeals of agency decisions. Claimants also argued that previous counsel for Respondent directed Claimants to deal directly with the surety and that Claimants do not have a decision of Respondent to appeal. As to the failure to prosecute argument, Claimants stated that the extensions were agreed to by Respondent.

22. Upon a question from a commissioner, Claimants asserted that the demand letter constituted a claim.

23. Upon a question from a commissioner, Claimants asserted that Respondent denied the demand letter through inaction.

24. Upon a question from a commissioner, Claimants stated that the Claims Commission was not being asked to sit as a circuit court to review a decision or non-decision of Respondent because previous counsel for Respondent directed Claimants to deal directly with surety, which was unsuccessful. Claimants stated that there was nothing to appeal and that the instant claims are based upon Respondent's failure to change the language of the bond, which would have allowed Claimants to recover. Claimants also stated that Respondent ignored the intent of the legislature.

25. Respondent argued that *McGhee* is not canceled out because of *Hurd* and that *McGhee* is factually on point. Respondent also argued that when the surety denied the claim, Claimants should have gone through Respondent's administrative procedure instead of filing the instant claims.

26. Upon a question from a commissioner, Respondent stated that it is a complicated analysis to determine whether Respondent was required under the FDCPA to change its definitions.

27. The Claims Commission disagrees with Respondent that the claims should be dismissed for failure to prosecute. While the Claims Commission finds the number of continuances requested by Claimants to be concerning, there was no objection by Respondent at any point prior to the filing of the motion to dismiss.

28. The Claims Commission agrees with Respondent that Claimants failed to exhaust their administrative remedies, although it finds that Respondent's rules are confusing. Respondent's current Rule XX (which was formerly Rule XVIII) provides that Respondent, "upon a finding a licensee has failed to pay its client or clients, shall collect the surety bond . . . [and] shall proceed to disburse the funds." However, Rule XX does not specify how Respondent makes a finding as to whether a licensee (collection agency) has failed to pay its "clients," which term is not defined in Respondent's rules. Likewise, the rules do not specify how McMullen or any other party could request or demand that Respondent make such a finding.

29. However, it does not appear that Claimants made any attempt to present the demand to Respondent's board despite an invitation to do so. In a letter from Respondent's executive director to the Cook Law Firm on January 31, 2014, Respondent's executive director stated that:

As to the status of your demand for payment, you did not respond to my offer to present your demand to the Board and you did not attend the Board meeting, which was re-scheduled on your behalf. Simply put, your demand has not been presented to the Board and therefore, it has not taken any action on it.

The Board will meet on Wednesday, February 19 at 10:00 a.m. . . . and the Chairman of the Board is willing to consider your demand at that time. If you do not wish that the Board consider your demand, please let me know.

Respondent's February 19, 2014, meeting minutes suggest that Claimants did not attend to present their demand:

Precision Recovery Analytics, Inc. v. Owen McMullen and Lillie McMullen. Ms. Matson stated that Mr. Cook who represents Ms. McMullen had asked that the Board make a claim on the surety bond that Precision Recovery Analytics, Inc. posted with the Board to obtain and maintain a collection agency license. Ms. McMullen obtained a judgment against Precision Recovery Analytics, Inc. but had been unable to collect it to help satisfy a judgment that Mr. Cook had obtained against Precision Recovery Analytics, Inc. on behalf of Ms. McMullen.

30. Despite the confusion in the rules, Claimants were invited to attend Respondent's board meeting and to present the demand at that time. Claimants failed to do so. Had Claimants done so, it is reasonable to expect that the meeting minutes would have reflected both the presentation of Claimant's demand, as well as Respondent's decision with regard to the demand. At that point, Claimant would have an agency decision to appeal to circuit court under the APA.

As stated in Ark. Code Ann. § 25-15-212(h):

The court may affirm the decision of the agency or remand the case for further proceedings. It may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the agency's statutory authority;
- (3) Made upon unlawful procedure;
- (4) Affected by other error or law;
- (5) Not supported by substantial evidence of record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion.

31. The Claims Commission finds that APA appeals of agency decisions survived post-*Andrews*, as evidenced by the *Hurd* decision. The Claims Commission also finds that Claimants' attempt to distinguish *Hurd* fails because although the instant claims are original actions, they

should not have been. Had Claimants pursued administrative remedies through Respondent, Claimants could have filed an APA appeal in circuit court.¹

32. The Claims Commission finds that the *McGhee* case is factually on point, including the Arkansas Supreme Court's finding that decisions made by Respondent are to be "reviewed pursuant to the Administrative Procedure Act." The Claims Commission finds that *McGhee* is still good law.

33. As such, because these claims could be litigated in a court of general jurisdiction, the Claims Commission finds that it does not have jurisdiction to consider this claim. Ark. Code Ann. § 19-10-204(b)(2)(A). To hold otherwise would be to subvert the intent of the APA, and the Claims Commission is unwilling to do so in the absence of an express holding from the Arkansas appellate courts or a change in applicable statutes.

34. Respondent's motion to dismiss is GRANTED, and Claimants' claims are DISMISSED for lack of jurisdiction.

¹ Moreover, even if Claimants were correct that they made a proper demand that was denied in error by Respondent, Claimants should have appealed that denial to the Circuit Court rather than filing a claim with the Claims Commission.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Dexter Booth



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Co-Chair

DATE: June 24, 2019

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(b). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(b)(3). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(b). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).



COOK & COSSIO
ATTORNEYS

620 W. 3rd Street, Suite 404
Little Rock, AR 72201
Phone: (501) 255-1500
Fax: (501) 255-1116

JEFF WOOD
jeff@cookandcossio.com
(501) 255-1500 ext. 204

August 1, 2019

Arkansas
State Claims Commission
AUG 02 2019

VIA FAX & MAIL

Ms. Kathryn Irby
Director – AR State Claims Commission
101 East Capitol Ave, Suite 410
Little Rock, AR 72201
Phone: (501)682-1619
Fax: (501)682-2823

RECEIVED

RE: *McMullen v. ASBCA*
Arkansas Claims Commission Case No. 14-0713-CC
&
Cook Law Firm v. ASBCA
Arkansas Claims Commission Case No. 14-0714-CC

Dear Ms. Irby:

Pursuant to A.C.A. §19-10-211(b)(1), Claimants in the above captioned claims wish to appeal the decisions in the Order dated June 24, 2019, to the Arkansas General Assembly.

Please do not hesitate to contact me with further instruction on this appeal and with any questions or concerns. I appreciate your assistance with this matter.

Sincerely,

Jeffrey D. Wood, Esq.

JW/jd

Cc: Mr. Reid Adkins via fax only: (501) 682-2591