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**BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE
OF THE STATE OF IDAHO**

STATE OF IDAHO, DEPARTMENT OF
FINANCE, CONSUMER FINANCE BUREAU,

Complainant,

vs.

WALL & ASSOCIATES, INC., a Virginia
corporation,

Respondent.

Docket No. 2019-9-10

**VERIFIED COMPLAINT FOR ORDER TO
CEASE AND DESIST AND FOR MONETARY
PENALTY**

AND

**NOTICE OF THE OPPORTUNITY TO
REQUEST A HEARING**

The State of Idaho, Department of Finance, Consumer Finance Bureau (Department), pursuant to the Idaho Collection Agency Act, Idaho Code § 26-2221 *et seq.* (the Act), hereby alleges the following facts that constitute a basis for the issuance of an order pursuant to Idaho Code § 26-2244(1) of the Act, requiring WALL & ASSOCIATES, INC. (Respondent) to immediately cease and desist from violating the Act, to include engaging in unlicensed debt and credit counseling activity in Idaho, and further for an order pursuant to Idaho Code § 26-2244(2)(a)

against Respondent for a civil penalty of not more than \$5,000 per violation. The Department also provides the underlying notice of the opportunity for hearing.

ALLEGATIONS

1. The Director of the Idaho Department of Finance has jurisdiction over this matter.
2. Respondent is a Virginia corporation engaged in the business of debt or credit counseling and is focused on negotiating tax debts and liens with state and federal taxing authorities from its principal office listed with the Virginia State Corporation Commission as PO Box 747, Marshall, Virginia 20116 and online via wallandassociates.net. The Virginia State Corporation Commission identifies Respondent's Registered Agent as Edward S. Culbertson, 10482 Armstrong Street, Fairfax, Virginia 22030.
3. Respondent has never applied for, nor ever been issued, any license under the Act, to include, specifically, a license authorizing it to engage in the business of debt settlement as a debt counselor or credit counselor. Respondent is not registered with the Idaho Secretary of State to do business in Idaho.
4. Respondent advertises and holds itself out as an entity that solves tax problems throughout the country, including in Idaho. Respondent represents that it has "local offices covering all 51 states," which presumably means local offices in all 50 states and the District of Columbia. This representation is misleading in that the operations of Respondent are conducted in offices located in Virginia and Tennessee. The only local offices Respondent has in other states, including in Idaho, consist of temporary rental space where a salesperson will meet consumers to sell them Respondent's services and enter into a services agreement. Once an agreement is

entered into between a consumer and Respondent, no additional services are conducted or provided to the consumer from that “local office.”

5. The “local office” of Respondent in Boise, Idaho as advertised on its website is 950 W. Bannock Street, # 1100, Boise, Idaho 83702. This office is not exclusive to Respondent, but is rather a temporary rental space owned and operated by Regus and made available to Respondent as well as others.

6. In the agreements it drafts and enters into with consumers, Respondent requires consumers to agree that the exclusive jurisdiction for any action to enforce the agreement or concerning the services or payments under the agreement is in Fairfax County, Virginia. This is an improper contractual term to be used with Idaho consumers and is void, and thus is misleading. Idaho Code § 29-110(1) provides that: “Every stipulation or condition in a contract, by which any party thereto is restricted from enforcing his rights under the contract in Idaho tribunals, or which limits the time within which he may thus enforce his rights, is void as it is against the public policy of Idaho.”

7. On or around January 11, 2011, Idaho residents A.M. and V.M. entered into a written Agreement with Respondent whereby A.M. and V.M. agreed to pay approximately \$6,000 initially (four payments of \$1,500 each between mid-January and late-February 2011) plus approximately \$550 monthly to Respondent. The Agreement with A.M. and V.M. also provided that they would pay Respondent 10% of any tax savings after such savings had been realized. It appears that A.M. and V.M. actually paid approximately \$3,000 initially and then monthly payments of \$500 thereafter. The written Agreement provided that Respondent agreed to “represent [A.M. and V.M.] administratively before the taxing authorities for ...personal income

tax ... for [the] state of Idaho and federal ...” taxing authorities, that is the Idaho State Tax Commission and the Internal Revenue Service. Respondent was further authorized in paragraph 8 of the Agreement with A.M. and V.M., “to take all steps deemed by us to be advisable in any matter, including negotiation, compromise, and settlement . . .” on their behalf.

8. On or about September 26, 2011, A.M. & V.M. filed a complaint with the Department concerning their dealings with Respondent. In their complaint, A.M. & V.M. alleged that they paid \$7,800 to Respondent and that Respondent had stopped communicating with them and done very little work on their behalf. They sought a full refund of all \$7,800 paid to Respondent. They asserted that they had paid Respondent almost as much as the taxes due.

9. Ultimately, A.M. sued Respondent in the Fourth Judicial District, Ada County, Idaho, Small Claims Court and obtained a default judgment, which proceeding was appealed. Following a trial *de novo*, at which Respondent appeared via telephone, A.M. obtained a Judgment on Trial *de Novo* dated October 18, 2012, against Respondent in the amount of \$5,000 plus costs of \$102 in Case No. CVSC-2012-07080. A copy of this Judgment on Trial *de Novo* is attached and incorporated herein as Exhibit A.

10. Respondent sought to appeal and obtain relief from the judgment reflected in Exhibit A, but the District Court entered an Order Denying Appellant’s Motion for Relief From Judgment on October 21, 2013, which is attached hereto and incorporated herein as Exhibit B.

11. The Department directly and through its counsel exchanged correspondence in 2011 and 2012 with Respondent and its counsel, Edward S. Culbertson, regarding the nature of its business. The Department maintained that Respondent should be licensed as a debt counselor or credit counselor because it appeared to be engaged in the business of debt or credit

counseling, or other debt negotiation services, to Idaho debtors under the Act and specifically Idaho Code § 26-2223(7). Respondent initially disagreed with the view of the Department that it was required to obtain a license as a debt counselor, and ultimately responded that it did not believe it was required to obtain a bond.

12. On or about January 16, 2019, the Department received the written complaints of two Idahoans (MP) and (MG), forwarded from the Consumer Protection Division of the Idaho Office of Attorney General (OAG). MG's complaint was received by the OAG on approximately March 6, 2018, and MP's complaint was received by the OAG on approximately January 3, 2019.

13. Consumer MG alleged in his complaint that Respondent accepted \$2,500.00 down and \$400.00 per month for tax negotiation services. MG alleged that after paying the above referenced amounts, which MG stated totaled \$4,500.00, he was not given the services that were represented to him and believed Respondent had "scammed him." The OAG processed MG's complaint and received a reply from Respondent's counsel Nicholas J. Giles of McGuire Woods, LLP. Attorney Giles' letter of April 25, 2018, stated that Respondent believed MG's complaint was unfounded, but had agreed to waive one monthly fee of \$400.00 and reduced future monthly fees by \$100.00. The OAG closed its file regarding the matter on approximately May 3, 2018.

14. In her complaint, consumer MP listed payments made to Respondent, which totaled \$5,200.00 for tax debt negotiation and resolution services. MP also alleged that Respondent had lied to her or made misrepresentations in that it led her to believe it was an attorney service, represented that it would complete her tax returns using staff accountants, and failed to provide the promised tax negotiation services. The OAG processed MP's complaint and

received a reply from Attorney Culbertson on behalf of Respondent on March 4, 2019. Attorney Culbertson stated that, without an admission of fault, Respondent agreed to refund MP's full fees. MP elected to not accept the offer of full refund in exchange for dropping her complaint.

15. The fees that Respondent agreed to collect and actually received from Idaho consumers and the fees retained after contracts were canceled may have exceeded the amounts permitted under, and therefore constitute violations of, Idaho Code § 26-2229(3)(b). The Department asserts the right to conduct discovery regarding all allegations herein and specifically the allegation contained in this paragraph.

16. Idaho Code § 26-2222(9) defines "debt counselor" or "credit counselor" as "any person engaged in any of the activities enumerated in subsection (7) of section 26-2223" of the Act. Such definition encompasses the unlicensed credit counseling and debt settlement services provided by Respondent to Idaho consumers as referenced herein.

17. Idaho Code § 26-2223(7) provides as follows, in pertinent part:

26-2223. Collection agency, debt counselor, credit counselor, or credit repair organization – License required. -- No person shall without complying with the terms of this act and obtaining a license from the director:

...

(7) Engage or offer to engage in this state ... in the business of providing counseling or other services to debtors in the management of their debts, or contracting with the debtor to effect the adjustment, compromise, or discharge of any account, note or other indebtedness of the debtor.

18. Respondent's acts of entering into written agreements to effect adjustments, compromises, or discharges of tax debts of Idaho consumers and engaging in debt or credit counseling activities regarding tax debts in Idaho regarding three specific Idaho consumers as alleged above constitute violations of Idaho Code § 26-2223(7). Each agreement with an Idaho

consumer to seek to compromise a tax obligation and each act of credit counseling or other services to Idaho consumers in the management of their tax debts constitutes a separate violation.

19. Even though it is not a requirement to show in order to obtain the relief sought herein relative to unlicensed activity, Idaho consumers have suffered harm as a result of Respondent's unlicensed activity and its statements to induce consumers in Idaho to use its services. Many of Respondent's statements or representations to consumers, including those described above in paragraphs 4, 5, 6, and 14 were misleading. This is in violation of Idaho Code § 26-2229A(9), which states "No person licensed or required to be licensed under this act shall make a representation or statement of material fact, or omit to state a material fact, in connection with the offer, sale or performance of any service authorized under this act, if the representation, statement or omission is false or misleading or has the tendency or capacity to be misleading."

20. The Department reserves the right to amend this Verified Complaint or seek a new action against Respondent should it learn of new facts demonstrating additional unlicensed or other activity in violation of Idaho law for which the Department has enforcement authority.

PRAYER FOR RELIEF

21. The Department requests and prays for the entry of an order by the Director pursuant to Idaho Code § 26-2244(2):

- a. Finding that Respondent, Wall & Associates, Inc., has engaged in business in Idaho constituting that of a debt counselor without a license as required from the Department, and further directing Respondent to cease and desist its

unlicensed debt counselor activity in Idaho unless and until it obtains a license therefor;

- b. Requiring Respondent to pay a civil monetary penalty in the amount of \$5,000 per violation for unlicensed activity, in the subtotal amount of \$15,000;
- c. Should the facts warrant and the Department prove that Respondent charged or retained fees from Idaho consumers in excess of the amounts authorized by Idaho Code § 26-2229(3)(b), requiring Respondent to pay a civil monetary penalty in the amount of \$5,000 per violation for improper fees, in the subtotal amount of \$15,000;
- d. Awarding the Department reasonable attorney fees and investigative costs as determined by the Director; and
- e. Imposing such further and additional relief as the Director deems appropriate.

NOTICE OF DUTY TO ANSWER AND NOTICE OF RIGHT TO HEARING

22. Pursuant to Idaho Code § 26-2244(2), Idaho Code § 67-5242, and IDAPA 04.11.01.270.01, a hearing will be granted to Respondent if a written Answer is received by the Department, within twenty-one (21) days following the mailing of this Notice, the date of which is set forth in the below Certificate of Mailing. The Answer must be mailed to the Department's counsel:

Thomas A. Donovan
Deputy Attorney General
Idaho Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031

Alternatively, the Applicant may email the request for hearing to:
CFLegal@finance.idaho.gov.

23. Upon receipt of the Answer, the Director will appoint a Hearing Officer. The Hearing Officer shall set the time and place for the hearing and the procedures for the hearing shall be in compliance with the Idaho Administrative Procedures Act (title 67, chapter 52, Idaho Code) and the Idaho Rules of Administrative Procedure (IDAPA 04.11.01).

24. Failure of Respondent to file and serve an Answer within the time prescribed shall be deemed a waiver of the opportunity for a hearing and to contest the allegations in the Complaint, and the Department will seek to have the Director enter a default order granting the relief sought in this Notice and imposing civil monetary penalty.

DATED this 3rd day of December, 2019.

STATE OF IDAHO
OFFICE OF ATTORNEY GENERAL



By THOMAS A. DONOVAN
Deputy Attorney General

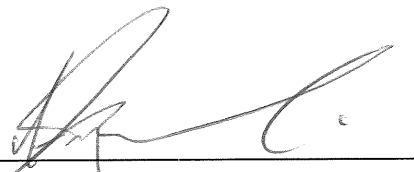
VERIFICATION

STATE OF IDAHO)
) ss.
County of Ada)

ANTHONY POLIDORI, Consumer Finance Bureau Chief of the Department of Finance, State of Idaho, being first duly sworn, deposes and says:

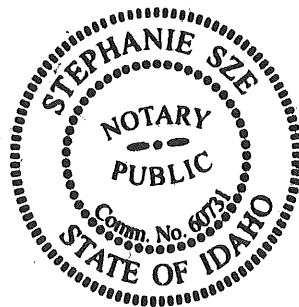
I have read the foregoing Verified Complaint for Order to Cease and Desist and For Monetary Penalty and Notice of the Opportunity to Request a Hearing, and know the contents thereof; and that the same are true to the best of my knowledge and belief.

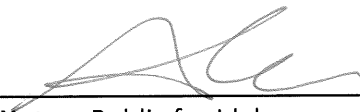
DATED this 3 day of December, 2019.



ANTHONY POLIDORI

SUBSCRIBED AND SWORN to before me this 3rd day of December, 2019.





Notary Public for Idaho
Residing at: Boise, ID
My Commission Expires: 11/30/2024

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of December, 2019, I caused a true and correct copy of the foregoing fully-executed VERIFIED COMPLAINT FOR ORDER TO CEASE AND DESIST AND FOR MONETARY PENALTY AND NOTICE OF THE OPPORTUNITY TO REQUEST A HEARING to be served on the following by the designated means:

Edward S. Culbertson
10482 Armstrong Street
Fairfax, Virginia 22030

U.S. mail, postage prepaid
 certified mail
 facsimile

Wall & Associates, Inc.
PO Box 747
Marshall, VA 20116

U.S. mail, postage prepaid
 certified mail
 facsimile

Paralegal

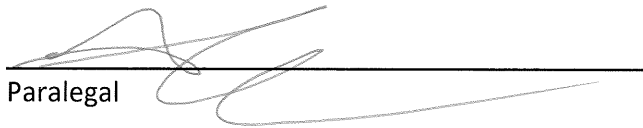


EXHIBIT A

Filed 10/19/2012 10:15 AM
 CHRISTOPHER D. RICH
 CLERK OF THE DISTRICT COURT
 By [Signature]
 Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH
 JUDICIAL DISTRICT, STATE OF IDAHO
 ADA COUNTY SMALL CLAIMS DEPARTMENT

Aaron McEachern)

CASE NO. AVSC18-07080

Present: Yes No PLAINTIFF(S),)

JUDGMENT

vs.)

Wall Associates, Inc)

in
Trial de NOVO

Present: Yes No DEFENDANT(S).)

It appears from the court's file that service of process has been made upon the defendant.

Judgment is entered in favor of the plaintiff on the claim in the amount of \$ 5,000 with costs in the amount of \$ 102,010 for a total judgment of \$ 5,102.

Judgment is entered in favor of the plaintiff for recovery and possession of the following personal property which the Defendant is hereby ordered to return to the Plaintiff,

_____ and for costs in the amount of \$ _____

After the defendant has paid the money required by the judgment, and returns any personal property required by the judgment, the defendant has *satisfied* the judgment. The Plaintiff is ordered to complete and file a Satisfaction of Judgment with the court clerk within 30 days after the judgment is satisfied.

- This is a default judgment.
- This judgment is based on the agreement of the parties.
- Judgment is entered in favor of the defendant. The plaintiff's claim is denied.
- The plaintiff's claim is dismissed without prejudice.
- The plaintiff's claim is dismissed with prejudice.

Date: 10/18/12 Patricia S. Young
 Magistrate Judge

Copy served on plaintiff by P hand-delivery mailed to address shown in court files.
 Copy served on defendant by hand-delivery P mailed to address shown in court files.

Date 10/18/12 [Signature]
 Deputy Clerk

DISMISSAL BY PLAINTIFF

- The plaintiff acknowledges full satisfaction of the claim, and dismisses the claim in this case.
- The defendant has not filed an answer, and the plaintiff dismisses the claim in this case without prejudice pursuant to I.R.C.P. 41(a)(1).

Date: _____ Plaintiff _____

EXHIBIT B

RECEIVED

OCT 16 2013

Ada County Clerk

Robin M. Long
FOLEY FREEMAN, PLLC
974 W. Corporate Lane, Ste 101
P.O. Box 1059
Nampa, ID 83653
Phone: 208.466.6781
Fax: 208.466.3529
State Bar No. 5082

Attorney for Plaintiff/Respondent

NO. _____ FILED _____
A.M. _____ P.M. 3:10

OCT 21 2013

CHRISTOPHER D. RICH, Clerk
By AMY EDWARDS
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AARON MCACHRAN,

Plaintiff/Respondent,

vs.

E. KENNETH WALL & ASSOCIATES,
INC,


Defendant/Appellant.

Case No. CV^{SC}~~CS~~-2012-07080

ORDER DENYING APPELLANT'S
MOTION FOR RELIEF FROM
JUDGMENT

THIS MATTER, having come before this Court on Appellant's Motion for Relief From Judgment, and with good cause therefore appearing, IT IS HEREBY ORDERED THAT the motion is DENIED.

DATED This 21 day of October, 2013.



HONORABLE McLaughlin
Judge

CLERK'S CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 22nd day of October, 2013, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Robin M. Long
FOLEY FREEMAN
PO Box 1059
Nampa, ID 83653

Mailed

Erin Wynne
Wynne & Mello, PLLC
PO Box 1771
Boise, ID 83701

Mailed


Deputy Clerk 