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

In the Matter of:

ANDREWS, BENSON and ASSOCIATES,

Respondent.

Docket No. 2021-9-03

ORDER TO CEASE AND DESIST

The State of Idaho, Department of Finance staff (Department), pursuant to the Idaho Collection Agency Act, Idaho Code § 26-2221 *et seq.* (the Act), represents the following facts that constitute a basis for the issuance of an order pursuant to § 26-2244(1) of the Act, requiring Andrews, Benson and Associates (Respondent), to immediately cease and desist from violating the Act.

RESPONDENT

1. Respondent conducts third party collection activity from a Nevada address at 2300 W. Sahara Avenue, Suite 800, Las Vegas, Nevada 89102. The Department's Consumer Affairs Officer (Department CAO), however, was unable to locate or confirm that Respondent is a registered entity with the Nevada Secretary of State.

2. On March 5, 2021, the Department CAO reviewed Respondent's website, www.andrewbensonandassociates.com (although the website is no longer active), and it represented the following to potential clients, "Our staff balances the need to resolve our Client's outstanding financial accounts with the Consumers' unique situation...Maximum recovery is not always simply a decision as to whether a Consumer should be sued in Court or not...." and "We at Andrews, Benson and Associates have the experience, knowledge and resources to understand the appropriate collection option, and we have the ability to create workable, real world solutions depending upon a Consumer's unique situation."

ACTIVITY

3. The Respondent has never applied for nor ever been issued any license under the Act.

4. On January 21, 2021, Idaho resident, J.T. filed a complaint with the Department regarding Respondent's collection activity against his wife, D.T.

5. In his complaint, J.T. stated that on the previous day a representative for Respondent named "Anthony McConnell" contacted D.T. by phone indicating that Respondent had been retained by Bank of America to collect a debt in the amount of \$1,534.31 and that there was pending litigation against D.T. in "Ada County." J.T. also indicated that Mr.

McConnell had relayed personal information about D.T. to her, such as her previous address, date of birth, and driver's license number and told D.T. that Respondent originally sent her a letter that went unanswered. J.T. stated that D.T. asked that the letter be sent to her at an email address she provided to Mr. McConnell. J.T. provided a copy of that letter, dated October 19, 2020, to the Department. At the closing of the letter, Mr. McConnell indicates that his title is "Litigation Support Specialist."

6. J.T. added that after D.T. got off the phone with Mr. McConnell, he called Mr. McConnell back to request validation of the debt and to verify who had retained Respondent to collect the alleged debt against D.T. In this phone conversation, J.T. stated that Mr. McConnell told him that "Shaffer and Associate[s]" retained Respondent to collect against D.T.

7. J.T. further explained that he contacted Shaffer and Associates to verify the debt and the representative was unable to locate any records regarding D.T. Following this, J.T. contacted the alleged original creditor, Bank of America (B of A), and "Michael" from B of A's collection department confirmed by looking up the account number listed on Respondent's letter to D.T. that the debt had existed at one time, but that it was sold in 2007 and no active collections were on file.

8. The consumer is unaware of any litigation against her for the debt referenced above, and the Department has not located any evidence of any such litigation against the consumer in Ada County, Idaho.

9. On January 28, 2021, the Department sent a certified letter to Respondent at the address listed on the letter it sent to D.T. regarding its unlicensed debt collection activity in Idaho. In that letter, the Department requested all of Respondent's documents relating to the

assignment of the debt against D.T. The Department also directed Respondent to cease all collection activities in Idaho and to provide information necessary for the Department to determine the extent of Respondent's unlicensed debt collection activities in Idaho. Further, that letter advised Respondent of the license requirement for engaging in collection activities regulated under the Act in Idaho, and informed Respondent of the possible sanctions under the Act for unlicensed activity. The letter also informed Respondent of the process for obtaining a license. The Department required that Respondent provide all of the requested information by February 18, 2021. The Department received signed confirmation that the January 28 letter addressed to Respondent was delivered, however no response was received.

10. On March 1, 2021, the Department sent a second certified letter, along with a copy of the letter dated January 28, 2021, requesting that Respondent respond by March 15, 2021, to Respondent's alleged unlicensed third-party collection activity in Idaho. No signed delivery confirmation was received for this second letter.

11. Using the information that J.T. and D.T. provided to the Department regarding Respondent, a Department staff member contacted Mr. McConnell directly by phone on March 5, 2021. Mr. McConnell did not confirm receipt of the letters the Department sent to Respondent, but he did verify that he was Respondent's representative assigned to D.T.'s collection account, but that Respondent primarily conducts "mitigation activities, not collections." The Department staff member requested Mr. McConnell provide in writing a clarification of what Respondent's activities are. Mr. McConnell, in turn, requested time to confirm receipt of the Department's correspondence and to review the matter with

Respondent's compliance manager and indicated that he would respond to the Department's letter.

12. To date, Mr. McConnell and Respondent have failed to respond to the Department's correspondence or file an application for licensure with the Department.

13. Based on information provided to the Department and described above, the Respondent has engaged in debt collection activity in Idaho and is not licensed, in violation of the Act.

CONCLUSIONS OF LAW AND VIOLATIONS

UNLICENSED COLLECTION ACTIVITY IN IDAHO

14. The allegations set forth in paragraphs 1 through 13 above are fully incorporated herein by this reference.

15. Idaho Code § 26-2223 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:

- (1) Operate as a collection agency, debt counselor, credit counselor, or credit repair organization in this state.
 - (2) Engage, either directly or indirectly, in this state in the business of collecting or receiving payment for others of any account, bill, claim or other indebtedness.
 - (3) Solicit or advertise in this state to collect or receive payment for another of any account, bill, claim or other indebtedness.
- * * *
- (5) Engage in any activity in this state which indicates, directly or indirectly, that a third party is or may be involved in effecting any collection.
 - (6) Engage or offer to engage in this state, directly or indirectly, in the business of collecting any form of indebtedness for that person's own account if the indebtedness was acquired from another person and if the indebtedness was either delinquent or in default at the time it was acquired.

16. "Collection activities" is defined in Idaho Code § 26-2222(3) as the activities enumerated in Idaho Code § 26-2223.

17. Respondent's acts of engaging in collection activities in Idaho without a license, as referenced above, constitute violations of Idaho Code § 26-2223. Each contact made by Respondent to the Idaho resident for the purposes of collection constitutes a separate violation.

18. Idaho Code § 26-2229A(1) provides: "Every licensee or person required to be licensed under this act and its agents shall deal openly, fairly, and honestly without deception in the conduct of its business activities in this state under this act." Idaho Code § 26-2229A(9) provides:

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.

19. The acts of Respondent in representing that Idaho consumer D.T. had a debt that was owed to Respondent violated Idaho Code § 26-2229A.

20. The acts of Respondent representing that litigation for the referenced debt was pending against Idaho consumer D.T. violated Idaho Code § 26-2229A.

21. The acts of Respondent including, but not limited to, the failure to provide any evidence or verification of alleged debts, misrepresentation of extant litigation, and false implication that it was a law firm violated the Fair Debt Collection Practices Act (FDCPA), including 15 U.S.C. §§ 1692d, 1692e, 1692f, and 1692g. Idaho Code § 26-2229A(2) authorizes the Director to enforce any provisions of the FDCPA that are not inconsistent against licensees or those required to be licensed under the Act.

22. Idaho Code § 26-2244(1) provides that whenever it appears to the Director that it is in the public interest, she may order any person to cease and desist from acts, practices, or omissions which constitute a violation of the Act.

ORDER

The Director, having reviewed the foregoing, good cause being shown, and the public interest being served thereby,

NOW, THEREFORE, the Director HEREBY FINDS that Respondent has violated the Idaho Collection Agency Act as set forth above.

Pursuant to Idaho Code § 26-2244(1), IT IS HEREBY ORDERED that Respondent and its agents and employees immediately CEASE AND DESIST from acts, practices, or omissions which constitute a violation of the Act, including specifically from engaging in collection activity in Idaho without the license required by the Act.

This ORDER TO CEASE AND DESIST is effective upon issuance.

IT IS SO ORDERED.

DATED this 18th day of May 2021.



STATE OF IDAHO
DEPARTMENT OF FINANCE

A handwritten signature in cursive script, appearing to read "Patricia R. Perkins".

PATRICIA R. PERKINS, Director

NOTICE

Respondent is HEREBY NOTIFIED that this ORDER TO CEASE AND DESIST is a final order of the Director.

Respondent may file a motion for reconsideration or request for hearing concerning this final order within twenty-one (21) days of the service date of this order. Any such motion for reconsideration or request for hearing must be in writing, addressed to:

Erin Van Engelen
Consumer Finance Bureau Chief
Idaho Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031

A copy of such motion for reconsideration or request for a hearing shall also be served on the Department's counsel, Thomas A. Donovan, Deputy Attorney General, at the same address. Alternatively, the Respondent may email any request for reconsideration or hearing to: CFLegal@finance.idaho.gov.

The Department will dispose of a motion for reconsideration within twenty-one (21) days of the receipt of a motion for reconsideration, or the motion will be considered denied by operation of law. Idaho Code § 67-5246(4); Idaho Rules of Administrative Procedure of the Attorney General (IRAP) at IDAPA 4.11.01.740.02.a.

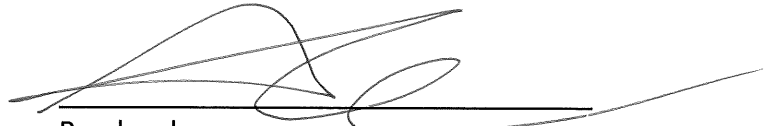
Should Respondent make a timely request for a hearing, the Director will vacate this final order and appoint a hearing officer to review the matter de novo and issue a preliminary order and the matter shall proceed pursuant to the Administrative Procedures Act and IRAP.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of May 2021, I caused a true and correct copy of the foregoing fully-executed ORDER TO CEASE AND DESIST to be served on the following by the designated means:

Andrew, Benson and Associates
2300 W Sahara Ave, Ste 800
Las Vegas, NV 89102

- U.S. mail, postage prepaid
- certified mail
- facsimile: 844-593-7433
- email:



Paralegal