

IN THE MATTER OF:

CHANDLER, MCNAIR & ASSOCIATES,
LLC a/k/a CMA, LLC.

CECIL MCNAIR

and

AUBURN CHANDLER

Respondents.

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

Case No.: CFR-FY2011-189

FINAL ORDER TO CEASE AND DESIST

WHEREAS, the State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation, a unit in the Department of Labor, Licensing and Regulation, a principal department of the State of Maryland (the "Agency") undertook an investigation into the business activities of Chandler, McNair & Associates, LLC a/k/a CMA, LLC, (together, "CMA"), Cecil McNair ("McNair") and Auburn Chandler ("Chandler"), (collectively, CMA, McNair and Chandler are the "Respondents"); and

WHEREAS, pursuant to the Maryland Collection Agency Licensing Act ("MCALA"), Md. Code Ann., Business Regulations Article ("BR"), §7-101 *et seq.*, the Agency is responsible for licensing and regulating persons engaged in collection agency activities in the State of Maryland (the "State"), and for otherwise enforcing the provisions of MCALA and the Maryland Consumer Debt Collection Act ("MCDCA"), located at Md. Code Ann., Commercial Law Article ("CL") §14-201 *et seq.*; and

WHEREAS, the Agency finds grounds to allege that Respondents have engaged in acts or practices which constitute violations of MCALA and MCDCA; and the Agency finds that action under Md. Code Ann., Financial Institutions Article (“FI”) §2-115 is appropriate; and

WHEREAS, the Agency issued a Summary Order to Cease and Desist and Order to Produce (the “Summary Order”) against Respondents on June 12, 2013, after determining that Respondents were in violation of the aforementioned provisions of Maryland law, and that it was in the public interest that Respondents cease and desist from engaging directly or indirectly, in the business of collecting consumer claims from Maryland residents, and from otherwise engaging in collection agency business in the State; and

WHEREAS, the Summary Order notified Respondents of, among other things, the following: that Respondents were entitled to a hearing before the Agency to determine whether the Summary Order should be vacated, modified, or entered as a final order of the Agency; that the Summary Order would be entered as a final order if Respondents did not request a hearing within 15 days of the receipt of the Summary Order; and that as a result of a hearing, or of Respondents’ failure to request a hearing, the Agency may, in the Agency’s discretion and in addition to taking any other action authorized by law, enter an order making the Summary Order final, issue a monetary penalty, require Respondents to pay restitution to aggrieved consumers, and to take affirmative action to correct violations; and take other actions related to Respondents’ collection activities; and

WHEREAS, the Summary Order was properly served on Respondents via First Class U.S. Mail and Certified U.S. Mail; and

WHEREAS, Respondents failed to request a hearing on the Summary Order within the fifteen (15) day period set forth in FI §§ 2-115(a)(2) and BR §7-309 or pursuant to State

Government Article §10-226(c)(2) of the Maryland Annotated Code, and have not filed a request for a hearing as of the date of the Final Order to Cease and Desist (the “Final Order”); and

WHEREAS, the Agency began an investigation into the Respondents’ collection activities as a result of a consumer complaints and has based its decision in the Final Order that Respondents engaged in unlicensed collection activity in violation of various provisions of Maryland law, including but not limited to, violation of the MCALA and the MCDCA, on the following determinations:

1. Pursuant to FI §11-204, “[u]nless a person is licensed by the Commissioner, the person may not: (1) [m]ake a loan; or (2) [i]n any way use any advantage provided by the Maryland Consumer Loan Law.”

2. Pursuant to CL §12-302, a “person may not engage in the business of making loans under this subtitle unless the person is licensed under or is exempt from the licensing requirements of Title 11, Subtitle 2 of the Financial Institutions Article, Annotated Code of Maryland, known as the Maryland Consumer Loan Law – Licensing Provisions.”

3. Pursuant to CL §12-301(c), a “lender” means a person who makes a loan under [Title 12, Subtitle 3 of the Commercial Law Article].”

4. Pursuant to CL §12-301(e), a “loan” “means any loan or advance of money or credit made under [Title 12, Subtitle 3 of the Commercial Law Article].”

5. Pursuant to CL §12-303, “[a] lender may not make a loan under this subtitle unless the loan is in an original amount or value which does not exceed \$6,000.”

6. CL §12-306 specifies the maximum interest rates which a lender is permitted to charge on a loan under Title 12, Subtitle 3 of the Commercial Law Article.

a. Section 12-306(a)(6)(i) provides as follows: “For any loan with an original principal balance of \$2,000 or less, 2.75 percent interest per month on that part of the unpaid balance not more than \$1,000.” Therefore, this section permits a lender to charge a maximum annual interest rate of 33 percent on unpaid principal balances up to \$1,000, and 24 percent on unpaid balances over \$1,000.

b. Section 12-306(a)(6)(ii) provides: “For any loan with an original principal balance of more than \$2,000, the maximum rate of interest is 2 percent per month on the unpaid principal balance of the loan.” This section permits a lender to charge a maximum annual interest rate of 24 percent on the unpaid principal balance of the loan.

7. Interest on unpaid loan balances, refinanced loans, and computation of interest are discussed in CL §§12-306(b) through (d), which state the following respectively:

(b) *Interest on balance unpaid after original maturity date.*

If any principal balance remains unpaid 6 months after the loan matures as originally scheduled or deferred, the lender may not contract for, charge, or receive interest at a rate exceeding 6 percent simple interest per annum on the actual unpaid principal balances from time to time.

(c) *Refinanced loan.* If the lender refinances a loan in the ordinary course of business, he may not add to the principal balance or deduct from the proceeds of the new loan more than 60 days’ interest then due.

(d) *Computation of interest.*

(1) The lender shall compute interest on the actual unpaid principal balances outstanding from time to time, and he may not contract for, charge, or received interest in advance or compounded interest.

(2) For each day on which an unpaid principal balance is outstanding, the lender may charge on that unpaid balance 1/30th of the interest permitted under this subtitle to be charged for 1 month.

8. Pursuant to CL §12-313(a)(1), a lender may not “[d]irectly or indirectly contract for, charge, or receive any interest, discount, fee, fine, commission, charge, brokerage, or other consideration in excess of that permitted by this subtitle.”

9. CL §12-314 provides in relevant part, as follows:

(a) *Prohibited.* A person may not lend \$6,000 or less if the person directly or indirectly contracts for, or receives a greater rate of interest, charge, discount, or other consideration than that authorized by the laws of this State.

(b) *Loans unenforceable; exceptions.*

(1) A loan made in the amount of \$6,000 or less, whether or not the loan is or purports to be made under this subtitle, is unenforceable if a rate of interest, charged, discount or other consideration greater than that authorized by the laws of this State is contracted for by any person unless the excess rate contracted for is the result of a clerical error or mistake and the person corrects the error or mistake before any payment is received under the loan.

(2) The person who is neither a licensee nor exempt from licensing may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under this subsection.

* * *

10. Pursuant to CL §12-315, the provisions of Title 12, Subtitle 3 “shall be interpreted and construed to effectuate its general remedial purpose,”

11. BR §7-101 provides, in part, the following definitions:

(b) *Board.* “Board” means the State Collection Agency Licensing Board.

(c) *Collection agency.* “Collection agency” means a person who engaged directly or indirectly in the business of:

(1)(i) collecting for, or soliciting from another, a consumer claim; or

(ii) collecting a consumer claim the person owns, if the claim was in default when the person acquired it;

* * *

(d) *Commissioner.* “Commissioner” means the Commissioner of Financial Regulation.

(e) *Consumer claim.* “Consumer claim” means that:

(1) is for money owed or said to be owed by a resident of the State; and

(2) arises from a transaction in which, for a family, household, or personal purpose, the resident sought or got credit, money, personal property, real property, or service.

(f) *License*. “License” means a license issued by the Board to do business as collection agency.

(g) *Licensed collection agency*. “Licensed collection agency” means a person who is licensed by the Board to do business as a collection agency.

12. Pursuant to BR §7-201, “[t]here is a State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation in the Department [of Labor, Licensing, and Regulation].” Further, BR §7-203 provides that, “[t]he Commissioner is chairman of the Board.”

13. BR §7-308 provided in relevant part, as follows:

(a) *In general*. – Subject to the hearing provisions of §7-309 of this subtitle, the Board may reprimand a licensee or suspend or revoke a license if the licensee or any owner, director, officer, member, partner, or agent of the licensee:

(3) in connection with the collection of any consumer claim:

(i) commits any fraud; or

(ii) engages in any illegal or dishonest activities;

(4) knowingly or negligently violates the Maryland Consumer Debt Collection Act;

(b) *Multiple licenses*. – If the Board finds that a ground for suspension or revocation of a license applies to more than 1 place of business that a licensee operates, the Board may act against:

(1) each license of the licensee;

14. BR §7-401(a) provides that, “except as otherwise provided in this title, a person may not knowingly and willfully do business as a collection agency in the State unless the person has a license.”

15. Pursuant to the MCDCA, and specifically, at CL §14-202(8) “[i]n collecting or attempting to collect an alleged debt” a collector may not: “[c]laim, attempt, or threaten to enforce a right with knowledge that the right does not exist.”

16. Fair Debt Collections Practices Act (“FDCPA”) at 15 U.S.C. §1692 *et seq.*,

provided, in relevant part as follows:

§1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

* * *

(2) The false representation of –

(A) the character, amount, or legal status of any debt; or

* * *

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

* * *

(10) The use of any false representation or deceptive means to collect or attempts to collect any debt or to obtain information concerning a consumer.

* * *

§1692f. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

* * *

17. Persons engaged in unlicensed collection activities involving Maryland consumers are in violation of BR §7-401(a) of the MCALE (“except as otherwise provided in this title, a person may not knowingly and willfully do business as a collection agency in the State unless the person has a license”). Engaging in unlicensed collection activities is also a violation of CL §14-202(8) of the MCDCA (“[o]n collecting or attempting to collect an alleged debt”, a collector may not “[c]laim attempt, or threaten to enforce a right with knowledge that the

right does not exist”). Unlicensed collection activities also violate various provisions of the FDCPA: they constitute false or misleading representations in violation of 15 U.S.C. §1692(e)(2) (false representations about the “character, amount, or legal status of any debt”), (e)(5) (“[t]he threat to take any action that cannot legally be taken or that is not intended to be taken”), and (e)(10) (“[t]he use of any false representation or deceptive means to collect or attempt to collect any debt”); and they constitute unfair or unconscionable means to collect or attempt to collect a debt, in violation of 15 U.S.C. §1692(f)(1) (the collection of any amount that is not permitted by law).

18. The Agency issued an Advisory Notice dated July 20, 2009, (the “Advisory”) which notified all collection agencies licensed to conduct business in Maryland that it was a violation of Maryland law for them to pursue collection actions against Maryland residents for loans that were made by unlicensed entities, and that it was a violation of Maryland law for them to collect on loans that exceeded permissible interest rate caps. This notice was also made available to the general public on the Agency’s website at:

<http://www.dllr.state.md.us/finance/adisories/advisory7-09a.shtml>.

19. The following relevant and credible evidence, obtained pursuant to the Commissioner’s investigation, was considered in the issuance of the Summary Order: internet and e-mail materials; written communication between Respondent and Maryland consumers; public records and Maryland’s licensing records, and statements by Maryland residents who had dealings with Respondents:

a. CMA is a registered business entity in the State of North Carolina. CMA has never been licensed as a collection agency in Maryland.

b. McNair and Chandler manage, direct, operate, supervise, and/or oversee the business activities of CMA.

c. On or about February 15, 2011 the Agency received a complaint related to Respondents' efforts to collect a consumer claim arising from a loan allegedly made to a Maryland resident, [REDACTED] ("Consumer A"). Sometime in August 2010, Consumer A's mother, [REDACTED] ("Consumer B") received a call from someone identifying himself as "Agency Cleveland." Agent Cleveland informed Consumer B that he was calling from CMA to collect on a payday loan that Consumer A allegedly obtained from MyCashNow. Agent Cleveland threatened that if Consumer B did not make payment immediately, he would "lock-up" her daughter (Consumer A). Fearing for her daughter's safety, Consumer B agreed to make two payments of \$668 each on August 23, 2010 and September 15, 2010 respectively.

d. Consumer B made an immediate payment over the phone in the amount of \$668, which was charged to Consumer B's credit card on August 24, 2010. On or about August 23, 2010, Respondents mailed a letter to Consumer B confirming the telephone conversation, the first payment transaction and the second payment arrangement. The letter was signed by Agent Cleveland, Fraud Investigator. Consumer B made a second payment of \$668, via automatic transfer from her bank account on September 16, 2010. On or about October 3, 2010, Respondents sent Consumer B a letter confirming the second payment and informing her that the account was now paid in full.

20. Respondents knew or should have known based on the Advisory that they were prohibited from collecting on loans made by unlicensed lenders to Maryland consumers, and that they were prohibited from collecting on loans made to Maryland consumers which exceed Maryland's permissible interest rate caps.

21. In March 2011 Respondents were directly notified by the Agency that unlicensed payday loans were illegal in Maryland, and that it was illegal for Respondents to collect or attempt to collect on consumer claims arising from those loans, or to collect or attempt to collect consumer debts from Maryland residents without a collection agency license.

22. Suzanne Elbon, an investigator in the Enforcement Unit of the Office of the Commissioner of Financial Regulation (“OCFR”), sent two separate letters, each dated March 8, 2011 to Respondents. One letter advised Respondents that a Maryland collection agency license was required in order to engage in consumer collections activities in Maryland. The second letter set forth Maryland’s consumer lending laws and advised Respondents of, among other things, the following: That is was illegal for them to collect on loans made by unlicensed entities, as well as to collect on loans exceeding Maryland’s interest rate caps; that MyCashNow was not licensed as a lender by the State of Maryland; that MyCashNow was making loans which exceed Maryland’s interest rate caps; and that Respondents were required to stop collecting on the consumer claims involving loans allegedly made by MyCashNow to Consumer A or any other Maryland consumers.

23. Investigator Elbon received a phone call from McNair on March 10, 2011 when he requested an extension of time to respond to the above described letters sent by Investigator Elbon. Although an extension was granted until March 25, 2011, no response has ever been received by the Agency or by Investigator Elbon individually.

24. Respondents knowingly collected consumer debts from Maryland residents without obtaining a license.

25. Respondents knowingly collected on the loans made by MyCashNow to Maryland consumers even after the Agency issued the Advisory on July 20, 2009.

26. By attempting to collect on loans made to Maryland consumers by unlicensed entities, which were unenforceable and uncollectible, and by threatening to “lock-up” Consumer A in order to coerce Consumer B into paying the alleged debts of her daughter, Respondents violated various State and federal laws, including but not limited to the following: the MCDCA, including CL §14-202 (by claiming, attempting, or threatening to enforce a right with knowledge that the right does not exist); the FDCPA including both 15 U.S.C. §1692e (by making false or misleading representations, based on conduct which involved making false representations about the character, amount, or legal status of any debt, and conduct which involved threatening to take any action that cannot legally be taken or that is not intended to be taken), and 15 U.S.C. §1692f (by engaging in unfair or unconscionable means to collect or attempt to collect any debt, based on conduct which involved collecting any amount not expressly authorized by the agreement, or permitted by law); and MCALA, including both BR §7-308(a)(3)(ii) (by engaging in any illegal or dishonest activities in connection with the collection of a consumer claim, namely the above referenced violations of MCDCA and the FDCPA), and BR §7-308(a)(3)(iii) (by knowingly or negligently violating the MCDCA in connection with the collection of a consumer claim).

27. By engaging in unlicensed collection activities in Maryland without being duly licensed by the Agency, Respondents engaged in unlicensed collection agency activities in violation of BR §7-401 of MCALA. Further, such unlicensed collection activities violated CL §14-202(8) of the MCDCA, as well as 15 U.S.C. §§1692(e)(2),(5), (10) and 1692(f)(1) of the FDCPA.

28. **NOW THEREFORE**, having determined that Respondents waived their right to a hearing in this matter by failing to request a hearing within the time period specified in the

Summary Order, and pursuant to FI §§2-115(a), SG § 10-226(c)(2), and BR §7-309, it is by the Commissioner hereby:

ORDERED that the Summary Order to Cease and Desist issued by Maryland State Collection Agency Licensing Board in the Office of the Commissioner of Finance Regulation on June 12, 2013, is entered as a Final Order of the Agency, and Respondents shall permanently **CEASE** and **DESIST** from engaging in any collection activities involving Maryland consumers; and that Respondents shall permanently **CEASE** and **DESIST** from engaging directly or indirectly in the business of collecting consumer claims from Maryland residents, and from otherwise engaging in the collection agency business in the State of Maryland; and that Respondents shall permanently **CEASE** and **DESIST** from violating the aforementioned laws governing debt collection.

ORDERED that, pursuant to FI §2-115(b) and upon careful consideration of (i) the seriousness of the Respondents' violations; (ii) the lack of good faith of Respondents, (iii) the history and nature of Respondents' violations; and (iv) the deleterious effect of Respondents' violations on the public and on the debt collection and collection agency businesses, Respondents shall pay to the Agency a total civil money penalty in the amount of **\$2,000**, which consists of the following:

<i>Prohibited Activity and Violation</i>	Penalty per Violation	x Number of Violations	= Penalty
<i>Unlicensed Collection Activity in Violation of MCALA</i>	\$1,000	2 Md. Consumer	\$2,000
		TOTAL	\$2,000

And it is further,

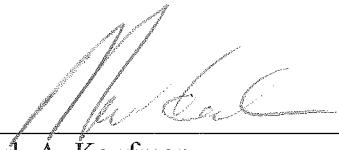
ORDERED that Respondents shall pay to the Commissioner, by cashier's or certified check made payable to the "Commissioner of Financial Regulation," the amount of **\$2,000** within fifteen (15) days from the date of this Final Order; and it is further

ORDERED that, as Respondents' engaged in unlicensed collection activity and collected on an illegal and unenforceable loan, Respondents shall take affirmative action to correct the violation pursuant to BR § 7-205(3)(ii) and reimburse Consumer B the full sum of \$1,336 collected unlawfully by Respondents; and it is further

ORDERED that Respondents shall pay the required monetary reimbursement to Consumer B within 30 days of the date of this Final Order. Respondents shall make payment by mailing a check to Consumer B in the amount specified above via U.S. First Class Mail at the most recent address of Consumer B known to the Respondents. If the mailing of a payment is returned as undeliverable by the U.S. Postal Service, Respondents shall promptly notify the Commissioner in writing for further instruction as to the means of the making of said payment. Upon the making of the required payment, the Respondents shall furnish evidence of having made the payments to the Commissioner within sixty (60) days of this Final Order being signed, which evidence shall consist of a copy of the front and back of the cancelled check for the payment; and it is further

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

6/27/14
Date



Mark A. Kaufman
Commissioner of Financial Regulation