

IN THE MATTER OF:

NATIONAL FOUNDATION FOR
DEBT MANAGEMENT, INC.,

Respondent.

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BEFORE THE MARYLAND

COMMISSIONER OF

FINANCIAL REGULATION

CASE NO. DFR-EU-2009-028

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SETTLEMENT AGREEMENT AND CONSENT ORDER

This Settlement Agreement and Consent Order (this "Agreement") is entered into this 11th day of January, 2011, by and between the Maryland Commissioner of Financial Regulation (the "Commissioner") and National Foundation for Debt Management, Inc., a Florida non-profit corporation located at 14104 58th Street North, Clearwater, Florida 33760 (the "Respondent" or "NFDM"). The Commissioner and the Respondent ("the Parties") consent to the entry of this Agreement as a final resolution of this matter. All paragraphs below are intended to be part of the contractual obligations of the Parties hereto, so far as they may be so construed, and are not mere recitals to this Agreement.

1. Pursuant to the Maryland Debt Management Services Act ("MDMSA," at Financial Institutions Article ("FI"), § 12-901 *et seq.*, Annotated Code of Maryland), the Commissioner is responsible for licensing and regulating persons offering or providing debt management services to Maryland consumers.

2. At all times relevant to the facts set forth herein, Respondent NFDM has been duly licensed by the Office of the Commissioner of Financial Regulation ("OCFR,"

or the “Agency”) as a Maryland debt management services provider as that term is defined in FI § 12-901(h), holding Debt Management Services License Number 14-12.

3. Pursuant to FI § 12-915(b), “[u]nless approved by the Commissioner, a licensee may not change . . . an agent who is acting on behalf of the licensee to manage a trust account, listed on the licensee's application under § 12-908(b)(3) and (6) of this subtitle.”

4. Pursuant to FI § 12-926(a), the Commissioner may, subject to providing an opportunity for a hearing,

... reprimand a licensee, or suspend or revoke the license of a licensee if the applicant or licensee or an owner, officer, director, or principal of the applicant or licensee: ...

(4) [v]iolates any provision of ... [MDMSA] or any regulation adopted under ... [MDMSA]; ... or

(8) [o]therwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the ... licensee has not been or will not be conducted honestly, fairly, and equitably.

5. The Commissioner issued a Charge Letter against Respondent on February 4, 2009 after an investigation by the Agency demonstrated the following:

a. That in 2007, Respondent NFDM entered into an agreement with an unlicensed entity, Plan First Financial Solutions, Inc. (“Plan First”), to provide debt management services for NFDM’s then-existing debt management plan (“DMP”) clients without first obtaining approval from the Commissioner, in violation of FI § 12-915(b).

b. That the Commissioner and Respondent NFDM subsequently entered into a Consent Order, which NFDM signed on November 27, 2007. This Consent Order states, in part, that “NFDM has agreed to revert the Maryland consumers from

PlanFirst [*sic*] Financial back to NFDM for servicing of the Maryland accounts, effective as of the date of this Consent Order.”

c. That, during an examination of Respondent in August 2008, the Agency learned that Plan First had continued to manage the trust accounts of NFDM’s Maryland clients even though NFDM had never obtained approval from the Commissioner for such a change in agency, and that Respondent was thus in violation of the Parties’ November 2007 Consent Order, and in continuing violation of FI § 12-915(b) of the MDMSA (the “violations”).

6. Respondent wishes to resolve these violations without the need for an administrative hearing and to avoid the costs associated with such proceedings and any potential appeals, and therefore agrees to resolve this matter fully, finally, and completely without an administrative hearing. Further, Respondent accepts without condition, and fully agrees to abide by, each and every term set forth in this Agreement.

7. The Commissioner desires to ensure that Respondent complies with all applicable statutes, regulations, and others laws governing Maryland debt management services activities, and further wishes to avoid the costs to the taxpayers of an administrative hearing and any potential appeals.

8. Respondent has agreed to take each and every one of the following actions in exchange for a final resolution of this matter:

a. Respondent will pay a total penalty of FOURTEEN THOUSAND DOLLARS (\$14,000) in the form of checks made payable to the “Commissioner of Financial Regulation” as follows:

(i). Respondent will pay SEVEN THOUSAND DOLLARS (\$7,000) immediately upon this Agreement being fully executed and delivered; and

(ii). Respondent will pay an additional SEVEN THOUSAND DOLLARS (\$7,000) within 180 days of this Agreement being fully executed and delivered.

b. Respondent will also pay a total investigation fee of ONE THOUSAND DOLLARS (\$1,000) in the form of checks made payable to the "Commissioner of Financial Regulation" as follows:

(i). Respondent will pay FIVE HUNDRED DOLLARS (\$500) immediately upon this Agreement being fully executed and delivered; and

(ii). Respondent will pay an additional FIVE HUNDRED DOLLARS (\$500) within 180 days of this Agreement being fully executed and delivered.

9. Respondent acknowledges that it has voluntarily entered into this Agreement with full knowledge of its right to a hearing pursuant to FI § 2-115(b), FI § 12-927, and the Administrative Procedure Act – Contested Cases (State Government Article, § 10-201 *et seq.*, Annotated Code of Maryland), and that Respondent hereby waives its right to a hearing. Respondent further acknowledges that it has had an opportunity to consult with independent legal counsel in connection with its waiver of rights and with the negotiation and execution of this Agreement, and that Respondent has in fact consulted with independent legal counsel.

10. Respondent represents the following:

a. That Plan First no longer manages any of the trust accounts of, or provides any other serving functions for, Respondent's Maryland clients;

b. That Respondent is currently in compliance with all applicable statutes, regulations, and others laws governing the offering or providing of debt management services to Maryland consumers; and

c. That Respondent will continue to act in compliance with all applicable statutes, regulations, and others laws governing the offering or providing of debt management services to Maryland consumers at all future times.

11. The Parties hereto agree that this Agreement shall be binding and enforceable in court by the Commissioner and by the Respondent, shall be admissible in court, and shall be binding upon and inure to any of Respondent's present and future owners, members, officers, employees, successors, and assigns.

12. The Parties hereto agree that any notices hereunder shall be effectively "delivered" when sent via overnight delivery or certified mail as follows:

a. To the Commissioner:

Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202-3651
ATTN: Anne Norton, Deputy Commissioner

Copy to:

W. Thomas Lawrie, Assistant Attorney General
Office of the Attorney General
Department of Labor, Licensing, and Regulation
500 North Calvert Street, Suite 406
Baltimore, Maryland 21202-3651

b. To Respondent:

Ralph R. Dyer, Executive Director
National Foundation for Debt Management, Inc.
14104 58th Street North
Clearwater, Florida 33760

Copy to:
J. Steven Lovejoy, Esq.
Shumaker Williams, P.C.
40 West Chesapeake Avenue, Suite 605
Towson, Maryland 21204

NOW, THEREFORE, it is, by the Maryland Commissioner of Financial Regulation, hereby

ORDERED that Respondent shall adhere to all terms of this Settlement Agreement and Consent Order, the violation of which shall constitute a violation of a Final Order of the Commissioner; and it is

ORDERED that Respondent shall operate its businesses in full compliance with all statutes, regulations, and other laws governing the offering or providing of debt management services to Maryland consumers, and that Respondent shall continue to act in full compliance at all future times; and it is further

ORDERED that, in the event Respondent, or an owner, officer, director, or principal of Respondent, violates any provision of this Settlement Agreement and Consent Order, or otherwise engages in the activities which formed the basis for the violations described above, the Commissioner may, at the Commissioner's discretion, take any enforcement actions available under FI § 2-115 and/or the Maryland Debt Management Services Act, as well as take any other enforcement actions as permitted by, and in accordance with, applicable State law; and that such enforcement actions could include an order to cease and desist, suspension or revocation of an applicable license, civil money penalties of up to \$1,000 for each violation and up to \$5,000 for each subsequent violation,

an order to provide restitution to any aggrieved persons, and/or referral for possible criminal prosecution; and it is further

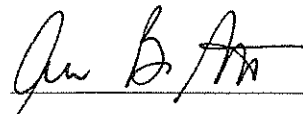
ORDERED that this matter shall be resolved in accordance with the terms of this Settlement Agreement and Consent Order and that the same shall be reflected among the records of the Office of the Commissioner of Financial Regulation; and it is further

ORDERED that this document shall constitute a Final Order of the Maryland Commissioner of Financial Regulation, and that the Commissioner may consider this Settlement Agreement and Consent Order and the facts set forth herein in connection with, and in deciding, any action or proceeding before the Commissioner; and that this Settlement Agreement and Consent Order may, if relevant, be admitted into evidence in any matter before the Commissioner.


It is so ORDERED.

IN WITNESS WHEREOF, this Settlement Agreement and Consent Order is executed on the day and year first above written.

MARYLAND COMMISSIONER OF
FINANCIAL REGULATION

By: 
Anne Norton
Deputy Commissioner

NATIONAL FOUNDATION FOR
DEBT MANAGEMENT, INC.

By: 
Ralph R. Dyer
Executive Director