

**DEPARTMENT OF CONSUMER AFFAIRS  
CITY OF NEW YORK**

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

**Benjamin & Williams Credit Investigators, Inc.**

5485 Expressway Drive North,  
Holtsville, NY 11742

429 Atlantic Avenue  
Freeport, New York 11520

Respondents.

X  
CONSENT ORDER

Violation No.: PL05349336

- X
1. Benjamin & Williams Credit Investigators, Inc (“Respondent”) enters into this Consent Order with the Department of Consumer Affairs (“the Department”) to settle the above captioned matter.
  2. On December 1, 2014, the Department issued Notice of Hearing PL05349336 to Respondent, charging Respondent with violating Section 20-490 of the New York City Administrative Code (“the Admin. Code”) by engaging in unlicensed debt collection activity.
  3. William Mecca, as President, represents and warrants that he is authorized to enter into this Consent Order on behalf of Respondent.
  4. This Consent Order shall apply to Respondents, their directors, officers, employees, representative agents, assignees, and successors. For the purposes of this Consent Order, “employee” means any person employed for hire or permitted to work by Respondents including, but not limited to, any person who manages or oversees the work of another and any person whose earnings are based in whole or in part on commission for work performed for Respondents.
  5. Respondents shall comply fully with all relevant laws and rules related to debt collection from New York City consumers including, but not limited to: (a) the Licensing Law and Rules, Admin. Code Section 20-101 *et seq.* and Title 6 of the Rules of the City of New York Sections 1-01 *et seq.*; (b) the Debt Collection

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Agencies Licensing Law and Rules, Admin. Code Sections 20-488 *et seq.* and 6 R.C.N.Y. Sections 2-190 *et seq.*; and (c) the Consumer Protection Law and Rules, Admin. Code Sections 20-700 *et seq.* and 6 R.C.N.Y. Sections 5-76 *et seq.*

### **DEFINITIONS**

#### **For the purposes of this Consent Order:**

6. "Debt" shall be defined as set forth in Section 20-489(c) of the Admin. Code.
7. The term "debt collection agency" shall be defined as set forth in Section 20-489(a) of the Admin. Code.
8. The term "New York City consumer" means any natural person who resides or resided in New York City at any time relevant to the collection of a debt.
9. The term "reasonable investigation" shall mean an investigation in which Respondents objectively evaluate, weigh, and document the relevant information and circumstances which may include: the reliability of the information on which Respondents rely in collecting or attempting to collect the debt, including the credibility of the source of that information; the accuracy and completeness of any information from the credit originator, taking into account the reliability and source of the information; the accuracy and completeness of any information Respondents have obtained or may obtain from third party sources, including data aggregators, brokers or consumer reporting agencies; the strength and credibility of any information provided by the consumer questioning, disputing, or challenging the accuracy or completeness of such information or otherwise obtained by Respondents and the responsiveness of the consumer to reasonable requests for information; the nature and frequency of disputes received by Respondents about accounts within the same portfolio; with respect to information obtained from the consumer, the methods used by Respondents to collect the information, which shall be in compliance with all applicable laws; and any other reliable information that confirms, contradicts, or calls into question the accuracy or completeness of such information.

### **INJUNCTIVE RELIEF**

#### **Licensing**

10. Within thirty (30) days of execution of this Consent Order, Respondents shall submit to the Department's Licensing Division a complete and truthful application for a Debt Collection Agency License.

11. Respondents shall not act as a debt collection agency as defined in Section 20-489 of the Admin. Code at any time without holding a valid license from the Department.
12. Respondents shall ensure that process server individuals and agencies used in furtherance of their work as a debt collection agency licensed by the Department are licensed by the Department when required by subchapter 23 of the Admin. Code.
13. Upon termination of the Respondents' license by revocation, suspension, expiration, denial, surrender, cancellation, or operation of law, Respondents shall immediately cease their debt collection activities with respect to New York City consumers and return their license(s) to the Department.

**Payday Loans; Usurious Loans**

14. Respondents shall not purchase, collect, or attempt to collect debts from New York City consumers if those debts arise from usurious loans, including payday loans.
15. "Usurious loan" is a loan with an initial principal of less than \$250,000, for which the annual percentage rate of interest exceeds the rate specified by Section 14-a of the New York Banking Law, that is void under Section 5-511 of the New York General Obligations Law.
16. Respondents shall implement policies and procedures corresponding to paragraph 14 that include, but are not limited to, a screening process for debts which are likely to be usurious payday loans, such as those for which the original creditor's name contains the terms "Payday," "Cash," "Instant," "Advance," "Fast," "Now," or "Quick."
17. With regard to any New York City consumer's debt that arises from a usurious loan, Respondents shall close the account, permanently terminate collection efforts with respect to the specific debt, and submit to any consumer reporting agency to which Respondents furnish information, a request for deletion of any negative information from the consumer's credit report.

**Disputed Debt; Credit Reporting**

18. If Respondents are granted a license from the Department, Respondents shall, in addition to the requirements in Section 20-493.2 of the Admin. Code and Sections 2-190 and 5-77(f) of the Rules, engage in the following practices:
  - a. Whenever a New York City consumer questions, disputes, or challenges the information on which Respondents are relying to collect or attempt to collect a debt, Respondents shall either:
    - i. Close the account, permanently terminate collection efforts with respect to the specific debt, and request deletion of that item of information from the consumer's credit reporting file; or

- ii. Report that item of information as disputed to any consumer reporting agency to which the information was previously reported and conduct and complete a reasonable investigation into the accuracy or completeness of such information. If such disputes are raised during a telephone call with the consumer, Respondents may reasonably provide responsive information or pose reasonable questions to the consumer, in a manner that complies with applicable law, in an effort to resolve any such disputes raised by the consumer. If Respondents do not substantiate that the consumer owes the debt following a reasonable investigation, Respondents shall close the account, permanently terminate collection efforts with respect to the specific debt, and request deletion of that item of information from the consumer's credit reporting file. If Respondents do not complete its reasonable investigation within thirty (30) days from receipt of the dispute, Respondents shall request deletion of that item from the consumer's credit reporting file and cease collection activities until the reasonable investigation is complete. If as a result of their decision to permanently terminate collection efforts or if following a reasonable investigation, Respondents do not substantiate that the consumer owes the debt, Respondents shall not sell the debt or provide it to any other entity for the purpose of collection or attempted collection.
- b. With regard to any New York City consumer's debt that has been paid in full or settled pursuant to an oral or written agreement, Respondents shall close the account, permanently terminate collection efforts with respect to the specific debt, and submit to any consumer reporting agency to which Respondents furnish information, a request for deletion of any negative information from the consumer's credit report.

#### **Collection of Debts Owed to Debt Buyers**

- 19. Respondents shall not collect or attempt to collect a debt owed or asserted to be owed to any buyer of delinquent debt from a New York City consumer unless each agreement transferring ownership of the debt included terms in which the seller warranted and represented that the information about the debt and the documentation supporting the debt were accurate and complete. This shall not limit any other requirements under the New York City Law or Rules regarding documentation that must be obtained, maintained or transferred with a debt.

#### **Record Keeping**

- 20. If Respondents are granted a license by the Department, Respondents shall maintain the following records:
  - a. All records required by Section 2-193 of the Rules.
  - b. A record identifying all employees, including name, address, phone number, email address, title responsibilities, and any alias used for collection purposes.

- c. A record of any disciplinary actions against its employees, identifying the employees.
  - d. A log of employee training, identifying each employee.
  - e. A record of all debt portfolios purchased by Respondents.
  - f. A record of insurance policies that provide coverage for litigation or investigations related to debt collection.
  - g. Copies of certified financial statements for Respondents.
  - h. A record of all calls monitored as required by Paragraph 23.f), including the date, time, and duration of each call, the number called, the number from which the call was made, and the name of the person reached during the call, and any notes taken during the call by either the monitor or the caller.
21. Respondents shall maintain the records described in this section for six (6) years from the date created or obtained by Respondents, except that recordings of conversations with consumers shall be retained for one (1) year after the date of the last conversation recorded on each completed recording tape.

**Prohibited Debt Collection Practices**

22. If Respondents are granted a license from the Department, Respondents shall not:
- a. Collect or attempt to collect debts from New York City consumers unless it has obtained: (i) a copy of the debt document issued by the originating creditor or an original written confirmation evidencing the transaction from which the debt to the originating creditor arose, either of which must have been created or generated before default on the debt; and (ii) a copy of the final statement of account issued by the originating creditor and a document itemizing: (1) the total amount remaining due on the total principal balance of the debt to the originating creditor and (2) each additional charge or fee alleged to be due that separately: (A) lists the total for each charge or fee and the date that each charge or fee was incurred; and (B) identifies and describes the basis of the consumer's obligation to pay it.
  - b. Falsely represent to any New York City consumer that they or their representative is an attorney.
  - c. Threaten the arrest of any New York City consumer for purported nonpayment of a debt.
  - d. Disclose the existence of any debt allegedly owed by a New York City consumer on an answering machine or voicemail message.

- e. Collect or attempt to collect debts from New York City consumers if those debts have been paid in full or settled pursuant to an oral or written agreement.
- f. Use any name other than an actual or fictitious name they have registered with the New York Department of State.
- g. Sell or provide to any other entity for the purpose of collection or attempted collection:
  - i. Any debt of a New York City consumer for which Respondents do not have the documentation described in Paragraph (a), whether or not the debt is contained in a debt portfolio.
  - ii. Any debt of a New York City consumer that has been paid in full, settled pursuant to an oral or written agreement.
  - iii. Any debt of a New York City consumer that is more than six (6) years old.

**Policies, Procedures, and Training**

23. If Respondents are granted a license by the Department, within thirty (30) days of execution of this Consent Order, Respondent shall:
- a. Implement and disseminate policies and procedures, to officers and any agent or employee having responsibility with respect to the collection of any consumer debts from New York City consumers, to ensure compliance with the terms of this Consent Order and the requirements of all New York City Laws and Rules as set forth in paragraph 5;
  - b. Provide training, to officers and any agency or employee having responsibility with respect to the collection of consumer debts, on the requirements of this Consent Order and the requirements of all New York City Laws and Rules, set forth in paragraph 5;
  - c. Provide periodic refresher training, to officers and any agent or employee having responsibility with respect to the collection of consumer debts, no less frequently than once each year and more frequently if any New York City Laws and Rules are amended;
  - d. Provide periodic refresher training, to all new officers and any agent or employee, no later than five (5) days from the time the employee assumes responsibility with respect to the collection of debts;
  - e. Take and document appropriate disciplinary action against any employee who fails to comply with this Consent Order and the requirements of all New York City Laws and Rules, set forth in paragraph 5;

- f. Conduct oversight and monitoring of employees, including monitoring of at least 5% of its employees' debt collection telephone calls, in such a manner that its employees do not know when they are and are not being monitored.

**COMPLIANCE WITH THIS CONSENT ORDER**

- 24. Respondent shall appoint William Mecca, who is a senior executive, to serve as the Compliance Officer responsible for ensuring adherence to the terms of this Consent Order. Such Compliance Officer has the following title: President.
  - a. The telephone number of such Compliance Officer is: 631 941-3300.
  - b. The address of such Compliance Officer is: 1393 Veterans Memorial Highway Ste 202S Hauppauge NY 11788.
  - c. The email address of such Compliance Officer is: dwdebtcollector@aol.com.
- 25. If the identity of such Compliance Officer changes at any time, Respondent shall provide to the Department the name, title, telephone number, address, and email address of the replacing Compliance Officer within five (5) days of such change.
- 26. Respondents shall submit a sworn affidavit, together with a Compliance Report from its Compliance Officer three (3) months following the execution of this Consent Order describing and documenting Respondents' compliance with this Consent Order.
- 27. Respondents shall submit a sworn affidavit, together with a Compliance Report from their Compliance Officer every six (6) months from the date of licensure describing and documenting Respondents' compliance with this Consent Order.
- 28. Respondents shall produce the following, electronically in the format indicated by the Department, within ten (10) days of receiving a request from the Department:
  - a. Copies of any complaints Respondents receive regarding Respondents' attempts to collect debt purportedly owed by New York City consumers.
  - b. Copies of any complaints Respondents receive regarding Respondents' attempts to collect debt purportedly owed by consumers in other jurisdictions.
  - c. The records Respondents are required to keep by this Consent Order or Section 2-193 of the Rules.
  - d. Transcripts of the recordings required by Section 2-193(b)(2) of the Rules.
  - e. Documents sufficient to identify the manner in which Respondents maintain their records.

29. Respondents shall respond to all subpoenas and document requests issued to them by the Department.
30. Nothing in this section shall be construed to obviate Respondents' responsibilities pursuant to Sections 1-14, 1-16, and 2-193 of the Rules.
31. Respondents shall report to the Department all pending actions, proceedings or investigations by government agencies against them within ten (10) days of being notified of such action, proceeding, or investigation.
32. Respondents shall make all possible efforts in good faith to resolve all consumer complaints filed with the Department within twenty (20) days of receipt of copies of those complaints, but in all instances, Respondents shall respond in writing to the Department regarding those consumer complaints within twenty (20) days of receipt of any complaints.
33. For the purposes of this Consent Order, Respondent shall, unless otherwise directed by the Department, send by first class mail, and contemporaneously by email, all notifications required by this Consent Order to the Department to the following addresses:

First Class Mail to:

LEGAL DIVISION  
Attn: Emily L. Anderson  
NYC Department of Consumer Affairs  
42 Broadway, 9<sup>th</sup> Floor  
New York, NY 10004

Re: 2014 Consent Order

Email to: [legaldebtcoll@dca.nyc.gov](mailto:legaldebtcoll@dca.nyc.gov)

34. For purposes of the compliance reporting and monitoring required by this Consent Order, the Department is authorized to communicate directly with the Respondent.

#### **NON-COMPLIANCE WITH THIS CONSENT ORDER**

35. A finding, after notice and hearing, that Respondents have committed a breach of the terms of this Consent Order shall constitute prima facie evidence of Respondents' lack of fitness to hold a license from the Department.
36. Any breach of any provision of this Consent Order shall constitute proof that no person who has an equity interest of 10% or more in Respondents' business, and/or significant managerial responsibility for the operation of Respondents'

business, possesses the characteristics, including integrity, honesty, and fair dealing, required of persons who hold any license issued by the Department.

37. Upon a finding, after notice and hearing, that Respondents have committed violations of Section 20-490 of the Admin. Code, Respondents agree that there shall be a presumption that Respondents engaged in continuous unlicensed activity from the day of execution of this Consent Order. Upon a finding, after notice and hearing, that Respondents have committed violations of this Consent Order, the Licensing Law, the Debt Collection Agency Law, or the Consumer Protection Law, Respondent shall be subject to an additional penalty of one thousand dollars (\$1,000.00) for each violation as well as the Department's costs for investigation and litigation.
38. Respondents' failure to produce any of the documents required by this Consent Order, the Admin. Code, or the Rules shall constitute prima facie evidence that Respondents have failed to maintain those records and that they are not in compliance with the underlying terms of the Consent Order, Law or Rule for which documents are required to be maintained.
39. Specific breaches of this Consent Order shall, in addition to a breach of this Consent Order, constitute independent and separate violations of any applicable Law or Rule. If the same conduct gives rise to both a breach of this Consent Order and a breach of the Licensing Law, the Debt Collection Agency Law, or the Consumer Protection Law, Respondents shall pay two (2) penalties as set forth in Paragraph 37: one (1) penalty for breach of the Consent Order and one (1) penalty for the breach of the applicable Law or Rule.

#### **PENALTIES AND OTHER TERMS AND CONDITIONS**

40. Respondent shall pay \$1,000 to the Department, due upon execution of this Consent Order. Payment shall be made by bank check, certified check, or money order in the full amount made payable to the New York City Department of Consumer Affairs, and delivered to the New York City Department of Consumer Affairs, Legal Division, Attn: Emily L. Anderson, 42 Broadway, 9th Floor, New York, New York 10004.
41. This Consent Order shall constitute the final disposition of the above-captioned matters only if this Consent Order is fully executed and the settlement amount is received by the Department by January 22, 2015.
42. This Consent Order shall constitute a final order pursuant to Section 6-42(c) of the Rules.

**WAIVER OF APPEALS**

43. Respondents hereby agree to waive any further right to a hearing and appeal on any of the matters referred to herein under Sections 20-104 and 20-105 of the Admin. Code or under Article 78 of the New York State Civil Practice Law and Rules.

**DEPARTMENT'S AUTHORITY**

44. The acceptance of this Consent Order by the Department shall not be deemed approval by the Department of any of Respondents' business practices, and Respondents shall make no representation to the contrary.

**MISCELLANEOUS**

45. Respondents affirm that their current address is 1393 Veterans Memorial Highway Ste 202S Hauppauge NY 11788 and that their current telephone number is 631 941-3300 and that their current email address is dwdebtcollector@aol.com.

Agreed to for the Respondent by:

Accepted for Julie Menin, Commissioner of  
Consumer Affairs for the City of New York, by:

William Mosca  
Print Name

  
Print Name

As President  
Title

Staff Attorney  
Title

  
Signature

  
Signature

1-1-2015  
Date

1/8/15  
Date

Agreement Dated: 1/8/15

**Businesses licensed by the Department of Consumer Affairs (DCA) must comply with all relevant local, state and federal laws. Copies of New York City licensing and consumer protection laws are available in person at DCA's Licensing Center, located at 42 Broadway, 5th Floor, New York, NY, by calling 311, New York City's 24 hour Citizen Service Hotline, or by going online at [www.nyc.gov/consumers](http://www.nyc.gov/consumers).**