

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

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DEPARTMENT OF CONSUMER AFFAIRS,	CONSENT ORDER
<p style="text-align: center;">Complainant,</p>	
-against-	Violation No.: 5349355
J.C. CHRISTENSEN & ASSOCIATES, INC.,	License No.: 995630
<p style="text-align: center;">Respondent.</p>	
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1. Respondent J.C. Christensen & Associates, Inc. ("JCC" or "Respondent") has been licensed by the New York City Department of Consumer Affairs (the "Department") as a debt collection agency pursuant to Section 20-490 of the New York City Administrative Code ("Admin. Code") since 1998.
2. Respondent seeks renewal of its debt collection agency license No. 995630.
3. The Department has reviewed Respondent's license renewal application, public records and records maintained by the Department, Respondent's 2013 Renewal Information and Documentation Form, and information provided to the Department by Respondent:
4. The Department has made findings that Respondent has engaged in certain conduct outlined in Attachment A.
5. Respondent does not admit to these violations, but consents to a Consent Order with the Department to obtain a license and to avoid further investigation and litigation with regard to the specific violations identified in Attachment A for the period from April 24, 2010 to the date of this Consent Order.
6. Chad R. Lemke, as Vice President & Chief Operating Officer, represents and warrants that he is authorized to enter into this Consent Order on behalf of Respondent.

7. This Consent Order shall apply to Respondent, its 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 Respondent 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 Respondent.
8. Respondent agrees to 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 § 20-101 *et seq.* and Title 6 of the Rules of the City of New York ("6 R.C.N.Y." or "the Rules") §§ 1-01 *et seq.*; (b) the Debt Collection Agencies Licensing Law and Rules, Admin. Code §§ 20-488 *et seq.* and 6 R.C.N.Y. §§ 2-190 *et seq.*; and (c) the Consumer Protection Law and Rules, Admin. Code §§ 20-700 *et seq.* and 6 R.C.N.Y. §§ 5-76 *et seq.*

### **LICENSING**

9. Respondent 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.
10. Respondent shall ensure that process server individuals and agencies used in furtherance of its work as a debt collection agency licensed by the Department are licensed by the Department when required by subchapter 23 of the Admin. Code.
11. Upon the termination of Respondent's license by revocation, suspension, expiration, denial, surrender, cancellation, or operation of law Respondent shall immediately cease its debt collection activities with respect to New York City consumers and return its license(s) to the Department.

### **PAYDAY LOANS; USURIOUS LOANS**

12. Respondent shall not hereafter purchase, collect, or attempt to collect debts from New York City consumers if those debts arise from usurious loans, including payday loans.
13. "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.
14. Respondent shall implement policies and procedures corresponding to paragraph 12 that include, but are not limited to, a screening process for debts which have the potential to be usurious payday loans, such as those for which the original creditor's name contains the terms "Payday," "Cash," "Check," "Instant," "Advance," "Fast," "Now," or "Quick."

15. With regard to any New York City consumer's debt that arises from a usurious loan, Respondent shall close the account, permanently terminate collection efforts with respect to the specific debt, and in the event that Respondent has reported to a consumer reporting agency, submit a request for deletion of any negative information from the consumer's credit report.
16. Within ten (10) days of the date of this Consent Order, as set forth in the "Agreement Dated" field below, Respondent shall provide an affidavit from a principal with authority, information and control that attests to the following:
  - a. The person signing the affidavit is a principal of JCC with authority, information, and control (provide his or her title);
  - b. The statements in Respondent's April 25, 2013 reply letter, as supplemented by Respondent's December 17, 2013 reply letter, including supporting documentation, are true and accurate;
  - c. Respondent's answer to Questions 26(A), 26(B), and 26(C) of the 2013 Renewal Form dated February 11, 2013, which stated that Respondent collected payday loan debts from 25 New York City consumers on behalf of Midwest Recovery Fund, are true and accurate as amended by Respondent's December 17, 2013 reply letter.
17. With regard to any New York City consumer's debt that arose from a usurious loan, Respondent has:
  - a. closed the account, permanently terminated collection efforts with respect to the specific debt, and submitted to any consumer reporting agency to which Respondent furnishes information, a request for deletion of any negative information from the consumer's credit report;
  - b. provided restitution and interest in the amount of \$465 to the following consumers: 1. [REDACTED] and 2. [REDACTED]

**DISPUTED DEBT; CREDIT REPORTING**

18. In addition to the requirements in Section 20-493.2 of the Admin Code and Sections 2-190 and 5-77(f) of 6 R.C.N.Y., Respondent shall engage in the following practices:
  - a. Whenever a New York City consumer questions, disputes, or challenges the information on which Respondent is relying to collect or attempt to collect a debt, Respondent shall either:
    - i. Close the account, permanently terminate collection efforts with respect to the specific debt, and if Respondent reported information to

a credit reporting agency, 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 by Respondent and conduct a reasonable and truthful investigation into the accuracy or completeness of such information. If Respondent does not complete its reasonable investigation within thirty (30) days from receipt of the dispute, Respondent shall request deletion of that item from the consumer's credit reporting file and cease collection activities until the reasonable investigation is complete. If after the investigation the Respondent cannot substantiate that the consumer owes the debt, Respondent shall not sell the debt or provide it to any other entity for the purpose of 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, Respondent shall close the account, permanently terminate collection efforts with respect to the specific debt, and submit to any consumer reporting agency to which Respondent furnishes information, a request for deletion of any negative information from the consumer's credit report.

#### **COLLECTION OF DEBTS OWED TO DEBT BUYERS**

19. Respondent 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 Law or Rules regarding documentation that must be obtained, maintained or transferred with a debt.

#### **POLICIES, PROCEDURES AND TRAINING**

20. 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 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, set forth in paragraph 8;
- b. provide training, to officers and any agent 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 8;

- 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 8.

### **COMPLIANCE MONITORING AND REPORTING**

- 21. Respondent shall appoint Chad R. Lemke 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: Vice President & Chief Operating Officer.
  - a. The telephone number of such Compliance Officer is: (320) 534-3629.
  - b. The address of such Compliance Officer is: 200 14<sup>th</sup> Ave E, Sartell, MN 56377.
  - c. The email address of such Compliance Officer is: chad.lemke@arraysg.com.
- 22. If the identity of such Compliance Officer changes at any time within the following year, 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.
- 23. Within ten (10) days of receipt of written notice from the Department, Respondent shall produce the following, electronically or in the format indicated by the Department, which are true and accurate and sworn to under the penalty of perjury:
  - a. Documents related to any provision of this Consent Order, including but not limited to:
    - i. Copies of any complaints Respondent received regarding Respondent's attempts to collect debt purportedly owed by New York City consumers.
    - ii. Transcripts of the recordings required by Section 2-193(b)(2) of the Rules.

- iii. Documents sufficient to identify the manner in which Respondent maintains its records.
24. Respondent shall respond to all subpoenas and document requests issued to it by the Department.
25. Nothing in this section shall be construed to obviate Respondent's responsibilities pursuant to Admin. Code § 20-493(b); 6 R.C.N.Y. §§ 1-14, 1-16; and 2-193.
26. Respondent shall notify the Department of all pending actions, proceedings or investigations by government agencies against it within ten (10) days of being notified of such action, proceeding, or investigation.
27. Respondent 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, Respondent shall respond in writing to the Department regarding those consumer complaints within twenty (20) days of receipt of any complaints.
28. 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  
NYC Department of Consumer Affairs  
42 Broadway, 9<sup>th</sup> Floor  
New York, NY 10004

Re: 2013 Consent Order

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

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

#### **CONSEQUENCES OF BREACH OF CONSENT ORDER**

30. A finding, after notice and hearing, that Respondent has committed a breach of the terms of this Consent Order shall constitute prima facie evidence of Respondent's lack of fitness to hold a license from the Department.

31. Upon a finding, after notice and hearing, that Respondent has committed violations of this Consent Order, the Licensing Law, the Debt Collection Agency Licensing Law, or the Consumer Protection Law, Respondent shall pay one thousand dollars (\$1,000) for each violation as well as the Department's costs for investigation and litigation.
32. Respondent's failure to produce any of the documents required by this Consent Order, the Admin. Code, or the Rules shall constitute prima facie evidence that Respondent has failed to maintain those records and is not in compliance with the underlying terms of the Consent Order, Law, or Rule for which documents are required to be maintained.
33. 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 or Rules, the Debt Collection Agency Law or Rules, or the Consumer Protection Law or Rules, Respondent shall pay two penalties as set forth in Paragraph 31: one penalty for breach of the Consent Order and one penalty for the breach of the applicable Law or Rule.
34. Respondent agrees that any future violations of the Consumer Protection Law and Rules shall be treated by the Department as knowing violations.

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

35. Respondent shall pay \$50,000 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: 2013 Debt Collection Renewal, 42 Broadway, 9th Floor, New York, New York 10004.
36. This Consent Order shall constitute a final order pursuant to Section 6-42(c) of the Rules.

#### **WAIVER OF APPEALS**

37. Respondent waives Respondent's right to a hearing on, appeal of and/or any challenge of, in any forum, the facts alleged in the above-referenced Violation Number 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.

**MISCELLANEOUS**

- 38. The acceptance of this Consent Order by the Department shall not be deemed approval by the Department of any of Respondent's business practices, and Respondent shall make no representation to the contrary.
- 39. The acceptance of this Consent Order resolves the findings made in this Consent Order in Attachment A. This Consent Order does not limit the Department's ability to bring charges for violations outside this time period.
- 40. The acceptance of this Consent Order does not limit the Department's ability, nor respondent's obligation to respond to consumer complaints that arose prior to the date of this Consent Order as set forth in the "Agreement Dated" field below.
- 41. Nothing in this Consent Order shall be construed to limit in any way the authority of the Department to exercise its enforcement powers under Chapter 1, Title 20 or under Chapter 2, Title 20 of the Admin. Code.

Agreed to for the Respondent by:

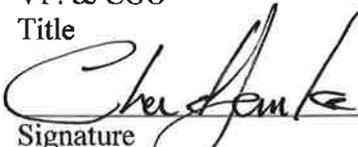
Accepted for Julie Menin, Commissioner of  
Consumer Affairs for the City of New York, by:

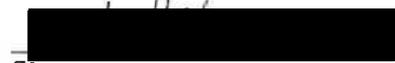
Chad R. Lemke  
Print Name

  
Print Name

VP. & COO  
Title

Agency Attorney  
Title

  
Signature

  
Signature

1-28-15  
Date

2/3/15  
Date

Agreement Dated: 2/3/15

**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).**

# ATTACHMENT A

- (1) Background – JCC Has Collected or Attempted to Collect From New York City Consumers in the Past Two Years Question 17(A) of the 2013 Renewal Form asks: “In the past two years, did you collect or attempt to collect debts from any New York City consumers?” Question 17(B) of the 2013 Renewal Form asks: “[H]ow many accounts did you collect or attempt to collect from New York City consumers in 2011?” Question 17(C) of the 2013 Renewal Form asks: “[H]ow many accounts did you collect or attempt to collect from New York City consumers in 2012?”
- a. JCC answered “Yes” to Question 17(A), answered “17,068” to Question 17(B), and answered “32,841” to Question 17(C). JCC therefore admits that it collected or attempted to collect 17,068 accounts from New York City consumers in 2011 and 32,841 accounts from New York City consumers in 2012.
- (2) JCC Made an erroneous Statement in Response to Question 8(A):
- a. Question 8(A) of the 2013 Renewal Form asks: “In the past five years, has any court judgment been entered against you . . . that was in any way related to the collection of debt?”
  - b. 6 RCNY § 1-01.1(a) provides: “No applicant for a license or a renewal thereof shall fail to provide complete and truthful responses to all the information requested on an application for such license or renewal thereof and any documents related thereto.”
  - c. 6 RCNY § 1-01.1(b) provides: “No applicant for a license or renewal thereof shall conceal any information, make a false statement or falsify or allow to be falsified any certificate, form, signed statement, application or report required to be filed with an application for a license that is to be issued by the department or for a renewal thereof.”
  - d. JCC incorrectly answered “No” to Question 8(A). JCC answered, stating that there were no cases brought against JCC in the past five years, for which a “court judgment [had] been entered against [JCC] . . . that was in any way related to the collection of debt.” However, in September 2009, the United States District Court for the Middle District of Florida entered judgment against JCC after finding that JCC violated the Fair Debt Collection Practices Act in *Hepsen v. J.C. Christensen and Associates, Inc.*, No. 8:07-cv-1935, 2009 WL 3064865 (M.D.Fla. Sept. 22, 2009), which case was initiated in November of 2007. In a later submission to the Department, JCC stated that the error in this answer resulted because JCC erroneously examined only cases initiated against JCC since January 1, 2008. The search should have been extended to any cases having activity since January 1, 2008

- e. JCC failed to comply with 6 RCNY § 1-01.1 by erroneously answering Question 8(A) in its 2013 Renewal Form.
- (3) JCC Violated the Requirement to Include the Name of the Person to Call Back in Written Communications to Consumers and Made a False Statement About its Compliance With That Requirement:
- a. Question 20(B)(iv) of the 2013 Renewal Form asks: “[I]n each written communication to a New York City consumer, do you provide the consumer with: . . . the name of the person to call back?”
  - b. Admin. Code § 20-493.1(a), requires, in relevant part, that a debt collection agency provide “[i]n any permitted communication with the consumer . . . the name of the person to call back.”
  - c. 6 RCNY § 1-01.1(a) provides: “No applicant for a license or a renewal thereof shall fail to provide complete and truthful responses to all the information requested on an application for such license or renewal thereof and any documents related thereto.”
  - d. 6 RCNY § 1-01.1(b) provides: “No applicant for a license or renewal thereof shall conceal any information, make a false statement or falsify or allow to be falsified any certificate, form, signed statement, application or report required to be filed with an application for a license that is to be issued by the department or for a renewal thereof.”
  - e. JCC answered “Yes” to Question 20(B)(iv). JCC’s answer falsely indicated that JCC includes, “in each written communication to a New York City consumer,” “the name of the person to call back.” The Department’s records include at least one dunning letter dated May 5, 2012 from JCC to a New York City consumer that did not contain the name of the person to call back. CD500131899 (2012).
  - f. JCC failed to comply with Admin. Code § 20-493.1(a) by failing to include “the name of the person to call back” in all written communications with consumers.
  - g. JCC failed to comply with 6 RCNY § 1-01.1 by falsely answering Question 20(B)(iv) in its 2013 Renewal Form.

(4) JCC Violated Recordkeeping Requirements for Call Logs:

- a. Question 18(A) of the 2013 Renewal Form asks: “In the past two years, did you collect or attempt to collect debts from New York City consumers by placing telephone calls to consumers?”
- b. Question 31(A)(i) of the 2013 Renewal Form asks: “State whether you maintain each of the following records with respect to your collection of debts from New York City consumers: . . . [a] log of all calls made to consumers, listing the date, time and duration of each call, the number called, and the name of the person reached during the call.”

- c. Question 31(A)(ii) of the 2013 Renewal Form asks: "If the answer to (A)(i) is yes, for how many years do you maintain these records?"
- d. 6 RCNY § 2-193(b)(1) and (d) require, in relevant part, that a debt collection agency maintain "[a] monthly log of all calls made to consumers, listing the date, time and duration of each call, the number called and the name of the person reached during the call" for "six years from the date the record was created by the debt collection agency . . . ."
- e. JCC answered "Yes" to Question 18(A), "Yes" to Question 31(A)(i) and "1 year, 1 month" to Question 31(A)(ii)
- f. In a follow up submission to the Department dated April 25, 2013, JCC stated that the correct response to question 31(A)(ii) is 7 years. JCC further submits that any incorrect statement or incomplete response was unintentional and a result of a misunderstanding of the information requested by the Department.

(5) JCC failed to comply with Prohibitions on Unfair Conduct by Collecting Payday Loans:

- a. Question 26(A) of the 2013 Renewal Form asks: "Have you collected or attempted to collect payday loans from New York City consumers in the past five years?"
- b. Question 26(B) of the 2013 Renewal Form states: "If the answer to (A) is yes, indicate the number of payday loan accounts you collected or attempted to collect from New York City consumers in each of the past five years in the table below."
  - a. "Payday loans' are typically small, short-term loans that the borrower agrees to repay on the borrower's next payday. Because of the short term of the loan, the annual interest rate of a payday loan will invariably exceed the maximum interest rate permitted in New York." *People ex rel. Spitzer v. County Bank of Rehoboth Beach, Del.*, 45 A.D.3d 1136 (3d Dep't 2007).
  - b. "The rate of interest, as computed pursuant to this title, upon the loan or forbearance of any money, goods, or things in action . . . shall be six per centum per annum unless a different rate is prescribed in section fourteen-a of the banking law." N.Y. Gen. Oblig. Law § 5-501(1).
  - c. "The maximum rate of interest provided for in section 5-501 of the general obligations law shall be sixteen per centum per annum." N.Y. Banking Law § 14-a(1). *See also O'Donovan v. Galinski*, 62 A.D.3d 769 (2d Dep't 2009) ("[t]he maximum interest rate permissible on a loan is 16% per annum, and any interest rate in excess of that amount is usurious").
  - d. "All bonds, bills, notes, assurances, conveyances, all other contracts or securities whatsoever . . . and all deposits of goods or other things whatsoever, whereupon or whereby there shall be reserved or taken, or secured or agreed to be reserved or taken, any greater sum, or greater value,

for the loan or forbearance of any money, goods or other things in action, than is prescribed in section 5-501, shall be void . . .” N.Y. Gen. Oblig. Law § 5-511(1). *See also Am. Exp. Travel Related Services Co., Inc. v. Assih*, 26 Misc.3d 1016, 1027 (N.Y. Civ. Ct. 2009) (“Under New York law all usurious contracts are void and the agreement is unenforceable . . . and the lender forfeits both principal and interest due on the transaction.”).

- e. 6 RCNY § 5-77(e)(1) provides, in relevant part: “A debt collector may not use any unfair or unconscionable means to collect or attempt to collect a debt. Such conduct includes: . . . 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.”
- f. 6 RCNY § 5-77(d) provides, in relevant part: “A debt collector, in connection with the collection of a debt, shall not make any false, deceptive, or misleading representation. Such representations include . . . (4) the threat to take any action that cannot legally be taken or that is not intended to be taken; [or] . . . (14) . . . the false representation of the character, amount or legal status of any debt . . . .”
- g. JCC answered “Yes” to Question 26(A) and indicated as its response to Question 26(B) that it collected or attempted to collect “25” payday loan accounts from New York City consumers in 2011 and zero in 2012, 2010, 2009 and 2008. JCC therefore admits that it collected or attempted to collect 25 payday loan accounts from New York City consumers in the past five years. Prior to the accounts being closed (principally in 2011), only two consumers submitted payment, amounting to a combined total of less than \$500.
- h. JCC violated 6 RCNY § 5-77(e)(1) by collecting amounts not “permitted by law” —specifically, payday loans, which are usurious and therefore legally void in New York — from New York City consumers.
- i. JCC violated 6 RCNY § 5-77(d)(4) and (14) by collecting or attempting to collect legally void payday loans from New York City consumers, which necessarily involved false and misleading representations, including “threat[s] to take any action that cannot legally be taken or that is not intended to be taken” and “false representation[s] of the character, amount or legal status of any debt.”