

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

-----X
DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

PROGRESSIVE FINANCIAL SERVICES, INC.
d/b/a PFS OF ARIZONA,

Respondent.
-----X

SUPERSEDING CONSENT ORDER

Violation No.: LL05349309

License Nos.: 1109138, 1250510, and
1250549

1. Respondent Progressive Financial Services, Inc. ("PFS" 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 2002.
2. Respondent seeks renewal of its debt collection agency licenses, Nos. 1109138, 1250510, and 1250549.
3. The Department has reviewed Respondent's license renewal applications, public records and records maintained by the Department, Respondent's 2013 Renewal Information and Documentation Form, and information provided to the Department by the Respondent.
4. The Department has made the findings annexed as 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. This Consent Order supersedes the Consent Order dated June 29, 2007 between the Respondent and the Department.
6. Robert Prince, as CEO, represents and warrants that Barbara A. Hoerner, Corporate Counsel, 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 Section 20-101 *et seq.* and Title 6 of the Rules of the City of New York ("6 R.C.N.Y." or "the Rules") Sections 1-01 *et seq.*; (b) the Debt Collection 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.*

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 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 are likely 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 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.

DISPUTED DEBT; CREDIT REPORTING

16. 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 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 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, which may be extended by up to fifteen (15) additional days if Respondent receives information from the consumer during that period that is relevant to the investigation, 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 that the account be marked paid in full or settled in full.

COLLECTION OF DEBTS OWED TO DEBT BUYERS

17. 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 on or after that date of this Consent Order includes 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 New York City Law or Rules regarding documentation that must be obtained, maintained or transferred with a debt. While Respondent is obligated to comply with New York City Law and Rules, this provision does not mandate that Respondent secure account documentation from its debt buyer clients prior to commencing collection activity.

POLICIES, PROCEDURES AND TRAINING

18. 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

19. Respondent shall appoint Barbara A. Hoerner, 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: Corporate Counsel/Chief Compliance Officer.
 - a. The telephone number of such Compliance Officer is: 602-453-8610.
 - b. The address of such Compliance Officer is: 1919 W. Fairmont Dr., Bldg. 8, Tempe, AZ 85282.
 - c. The email address of such Compliance Officer is: bhoerner@progressivefinancial.com.
20. If the identity of such Compliance Officer changes, 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.
21. Within twenty (20) 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.
22. Respondent shall respond to all subpoenas and document requests issued to it by the Department.
23. Nothing in this section shall be construed to obviate Respondent's responsibilities pursuant to Admin. Code Section 20-493(b); 6 R.C.N.Y. Sections 1-14, 1-16; and 2-193.
24. 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.

25. 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.
26. 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, 9th Floor
New York, NY 10004

Re: 2014 Consent Order

Email to: legaldebtcoll@dca.nyc.gov

27. 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

28. A finding, after notice and hearing, that Respondent has committed a material 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.
29. 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 up to one thousand dollars (\$1,000) for each violation as well as the Department's costs for investigation and litigation.
30. 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.

31. Respondent agrees that any future violations found after notice and hearing, of the Consumer Protection Law and Rules shall be treated by the Department as knowing violations.

PENALTIES; RESTITUTION; AND OTHER TERMS AND CONDITIONS

32. Respondent shall pay \$65,000 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 Anderson, 42 Broadway, 9th Floor, New York, New York 10004.
33. Respondent has provided the Department with the name, address, and phone number of each of the ten New York City consumers from whom Respondent collected on payday loan accounts (the "Consumers") and the amounts collected from each of the Consumers.
34. Upon execution of this Consent Order, Respondent shall pay \$5,000 to be held by the Department in a Consumer Restitution Fund (the "Fund") and distributed by the Department to the Consumers.
35. Any excess restitution shall revert to the Department as fines one year from the date of execution of this Consent Order.
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 by the above-referenced Notices of Hearing and the Decision and Order 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 the 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:

Barbara Hoerner

Print Name



Print Name

Corporate Counsel

Title

Staff Attorney

Title



Signature



Signature

19 January 2015

Date

1/21/15

Date

Agreement Dated: 1/21/15

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.

ATTACHMENT A

The Department's Findings

The Department has reviewed Respondent's license renewal applications, public records, records maintained by the Department, Respondent's 2013 Renewal Information and Documentation Form, and information provided to the Department by Respondent. Based on this review, the Department makes the following findings:

- (1) Background – PFS Collected or Attempted to Collect From 21,970 New York City Consumers in the Past Two Years:
 - a. 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?”
 - b. PFS answered “Yes” to Question 17(A), answered “11,675 est” to Question 17(B), and answered “10,295 est” to Question 17(C). PFS therefore admits that it collected or attempted to collect at least 11,675 accounts from New York City consumers in 2011 and at least 10,295 accounts from New York City consumers in 2012.
- (2) PFS Violated Prohibitions on Unfair Conduct by Collecting on 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: “[I]ndicate 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.”
 - c. Question 26(C) of the 2013 Renewal Form states: “[A]ttach a statement identifying the names and addresses of: (i) all creditors on whose behalf you collected or attempted to collect a payday loan from a New York City consumer; and (ii) all entities from whom you acquired ownership of a payday loan that you collected or attempted to collect from a New York City consumer.”
 - d. “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).

- e. “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).
- f. “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”).
- g. “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.”).
- h. 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.”
- i. 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”
- j. PFS answered “Yes” to Question 26(A) in its 2013 Renewal Form, and confirmed in a sworn statement provided to the Department that it attempted to collect from New York City consumers 1, 382 payday loan accounts. PFS therefore admits that it collected or attempted to collect an estimated 1,382 payday loan accounts from New York City consumers between 2008 and 2010.¹
- k. As its response to Question 26(C), PFS submitted a statement under Appendix I to the 2013 Renewal Form, which included contact information for two

¹ PFS provided these answers only in its 2013 Renewal Form for license number 1250549, the license associated with PFS’s premises address in Tempe, Arizona.

Texas-based clients, for which only its Arizona Office (PFS Tempe) collected payday loans, and stated that “both contracts ceased in 2010.”

- l. PFS collected a total of \$1,992.81 from New York City consumers on ten accounts, which were originated as payday loans.
- m. PFS has not returned to the ten New York City consumers payments collected from those consumers.
- n. PFS 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.
- o. PFS 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 . . . 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 [a] debt.”

(3) PFS Breached the 2007 Consent Judgment Order:

- a. By the Consent Judgment Order that PFS entered with the with the Department fully executed June 29, 2007 in PL001044991 (“2007 CJO”), PFS agreed to, among other things, the following terms:

[PFS] agrees . . . to comply with all relevant laws and rules relating to debt collection in New York City including, but not limited to, the City’s Debt Collection Agencies Law, Consumer Protection Law, and its rules 6 RCNY 5-01 *et seq.* and 5-76 *et seq.* In addition, Respondent agrees to comply fully with all relevant state and federal laws, including the New State General Business Law, Section 601 (“Debt Collection Procedures”), the Federal Fair Credit Reporting Act, 15 U.S.C. Section 1681 *et seq.*, and the Federal Fair Debt Collection Practices Act, 15 U.S.C. Section 1692 *et seq.*

2007 CJO, ¶ 4.

- b. Based on the above violations, PFS is in breach of the 2007 CJO.