

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

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DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

RECEIVABLES PERFORMANCE
MANAGEMENT LLC,

Respondent.
-----X

SUPERSEDING CONSENT ORDER

Violation No.: 05349396

License No.: 1291891

1. Respondent Receivables Performance Management LLC (“RPM” 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 2008 under license No. 1291891 (“License”).
2. Respondent seeks renewal of its debt collection agency license No. 1291891.
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 by Respondent.
4. The Department’s findings are annexed as Attachment A.
5. Respondent does not admit these violations, but consents to a Consent Order with the Department to obtain a renewal of Respondent’s 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 February 12, 2007 between the Respondent and the Department.
6. Howard L. George, as CEO, represents and warrants that RPM 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. Upon notice from the Department that its license has been revoked or suspended, Respondent shall immediately cease collection activities.
10. Upon execution of this Consent Order, compliance with paragraph 23, and satisfaction of all licensing requirements, Respondent's License will be renewed through January 31, 2017.
11. Respondent shall provide complete and truthful responses in its license renewal application materials and all other documents submitted by Respondent to the Department.
12. Respondent shall require 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.
13. Upon the termination of Respondent's license by expiration, surrender, operation of law, or upon notice of the termination of Respondent's license by revocation, suspension, or denial, 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

14. 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, regardless of where the loan originated. For purposes of this Consent

Order, A New York City consumer is a natural person residing in the City of New York (counties of Kings, Queens, Richmond, Bronx, and New York) at any time relevant to the collection of a debt.

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. Respondent 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," "Check," "Instant," "Advance," "Fast," "Now," or "Quick."
17. Within twenty (20) days of the execution of this Consent Order, with regard to any New York City consumer's debt that arises from a usurious loan (including the payday loan accounts referenced in paragraph 1 of Attachment A of this Consent Order), Respondent shall close the account, permanently terminate collection efforts with respect to the specific debt, and submit to any consumer reporting agency ("CRA") to which Respondent furnishes information, a request for deletion of any negative information placed by Respondent (if any) from the consumer's credit report. Respondent shall not be liable for any negative information reported by any other person or entity, unless reported at Respondent's request.

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 RPM becomes aware that a New York City consumer questions, disputes, or challenges the information Respondent is relying to collect or attempt to collect a debt, Respondent shall either:
 - i. Close the account, permanently terminate its collection efforts with respect to the specific debt, and request the deletion of any item of information reported by Respondent to a CRA from the consumer's credit reporting file; or
 - ii. Report that item of information as disputed to any CRA to which the information was previously reported by Respondent and conduct a reasonable investigation into the accuracy 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. It shall not be a violation of this section if Respondent is not the owner of the debt and the original creditor or the owner of the debt sells or assigns the debt to another agency for collection after Respondent has returned the account to the owner.

- 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 CRA to which Respondent furnishes information, a request that any negative information on the consumer's credit report be removed or appropriately updated as "Settled" or "Paid in Full."
- c. It shall not be a violation of this section if the CRA fails to remove such information from the consumer's report after Respondent has requested the removal or update of the consumer report.
- d. Respondent must maintain for seven (7) years and make available for the Department's inspection, upon request, a record of each request sent to each CRA for deletion, modification, or correction of a New York City consumer's credit reporting file.

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 on or after the 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 or complete documentation and proper chain of title has been provided to Respondent. 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.

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; and
- e. upon becoming aware of any failure to follow the terms of this Consent Order by its employees, Respondent shall 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 _____, 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: _____

a. The telephone number of such Compliance Officer is: _____

b. The address of such Compliance Officer is: _____

c. The email address of such Compliance Officer is: _____

22. 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 ten (10) days of such change.

23. Within thirty (30) days of the execution of this Consent Order, Respondent shall provide the Department with a sworn statement affirming that Respondent requested, in writing, that each CRA delete any trade line provided by Respondent for the accounts referenced in paragraph 1 of Attachment A of this Consent Order, as required by paragraph 17.
24. 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.
25. Respondent shall respond to all subpoenas and document requests issued to it by the Department.
26. 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.
27. 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.
28. 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.
29. 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: 2015 Consent Order

Email to: [REDACTED]

30. 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

31. 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.
32. 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.
33. Respondent's failure to produce any of the documents required by this Consent Order, the Admin. Code, or the Rules shall constitute prima facie, but rebuttable 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.

PENALTIES; RESTITUTION; AND OTHER TERMS AND CONDITIONS

34. Respondent shall pay \$45,000 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: Shannon Bermingham, 42 Broadway, 9th Floor, New York, New York 10004.
35. Upon execution of the this Consent Order, Respondent shall provide the Department with the name, the last known address, and phone number (if known) of each of the four New York City consumers from whom Respondent collected on payday loan accounts (the "Consumers") and the amount collected from each of the Consumers. Respondent and the Department agree that this information is being provided to the Department pursuant to the Department's

authority under the Licensing Law and Rules, Admin. Code Section 20-101 *et seq.* and 6 R.C.N.Y. 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.*

36. Upon execution of this Consent Order, Respondent shall pay \$1,513.85 to be held by the Department in a Consumer Restitution Fund (the "Fund") and distributed by the Department to the Consumers.
37. Any excess restitution shall revert to the Department as fines one year from the date of execution of this Consent Order.
38. This Consent Order shall constitute a final order pursuant to Section 6-42(c) of the Rules.

WAIVER OF APPEALS

39. Respondent waives Respondent's right to a hearing on, appeal of and/or any challenge of, in any forum, the facts in Attachment A 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

40. 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.
41. The acceptance of this Consent Order resolves the findings made in this Consent Order in Attachment A. Respondent does not admit to the findings made by the Department in Attachment A. This Consent Order does not limit the Department's ability to bring charges for violations occurring after the date of the execution of this Consent Order.
42. The acceptance of this Consent Order does not limit the Department's ability, nor Respondent's obligation to respond to or investigate consumer complaints that arose prior to the date of this Consent Order as set forth in the "Agreement Dated" field below.
43. 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.
44. Unless otherwise agreed in writing between the Department and the Respondent this Consent Order will expire by its own terms four (4) years after date of the execution hereof.

Agreed to for the Respondent by:

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

Howard L. George
Print Name

[Redacted]
Staff Attorney

CEO
Title

[Redacted]

[Handwritten Signature]
Signature

4/21/2015
Date

4/16/15
Date

Agreement Dated: 4/21/2015

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, 1st 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 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 the Respondent. Based on this review, the Department makes the following findings:

(1) RPM 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: "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."
- c. Question 26(C) of the 2013 Renewal Form states: "If the answer to (A) is yes, attach 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. RPM answered "Yes" to Question 26(A) in its Amended 2013 Renewal Form, stating in its response to Question 26(B) that it collected or attempted to collect from New York City consumers "2" payday loan accounts in 2012; "94" payday loan accounts in 2011; "61" payday loan accounts in 2010; and "5" payday loan accounts in 2009." RPM therefore admits that it collected or attempted to collect 162 payday loan accounts from New York City consumers in the past five years.
- e. In response to Question 26(C)(i), RPM identified the creditors on whose behalf it had collected payday loans and included their addresses.
- f. In response to Question 26(C)(ii), RPM stated that it "has not received any placements for payday loans in 2013 . . ." and claimed that "[p]ursuant to Gov. Andrew Cuomo's February 22, 2013 press release, RPM will not attempt to collect on any payday loans in the state of New York."
- g. By declaration, dated January 30, 2014, RPM's Chief Financial Officer (CFO) Christopher A. Vittoz stated that 87 of the loans identified were not payday loans, but credit card debts mistakenly included in RPM's response to Question 26(B).
- h. "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).

- i. “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).
- j. “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) (“The maximum interest rate permissible on a loan is 16% per annum, and any interest rate in excess of that amount is usurious.”).
- k. “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.”).
- l. 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.”
- m. 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 . . . (14) . . . the false representation of the character, amount or legal status of any debt . . .”
- n. RPM 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. RPM violated 6 RCNY § 5-77(d)(4) and (14) by collecting or attempting to collect on 75 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.”
- p. RPM collected a total of \$1,513.85 on four accounts, which were originated as payday loans.

q. RPM has not returned to consumers payments wrongfully collected from consumers.

(2) RPM Failed to Identify the Originating Creditor in Written Communications to Consumers.

- a. Question 20(B)(iii) of the 2013 Renewal Form asks: “[I]n each written communication to a New York City consumer, do you provide the consumer with: . . . the originating creditor of the debt?”
- 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 originating creditor of the debt”
- c. RPM answered “No” to Question 20(B)(iii). In RPM’s Supplemental Response to Question 20(B)(iii), RPM stated that a small number of its written communications to New York City consumers, did not identify the originating creditor of the debt. RPM stated that this occurred on accounts where a debt buyer was the creditor.
- d. RPM violated Admin. Code § 20-493.1(a) by failing to identify the “originating creditor of the debt” in written communications with New York City consumers.

(3) RPM Breached the 2007 Consent Judgment Order:

- a. By the Consent Judgment Order that RPM entered with the Department dated February 12, 2007 in PL001049928 (“2007 CJO”), RPM agreed to, among other things, the following terms:

[RPM] 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, [RPM] 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.

In the event of any material breach on the part of [RPM] with regard to any of the terms of this Consent Judgment/Order, it shall be the basis for the Department to seek maximum fines and penalties, including suspension or revocation of [RPM]’s license for a lack of fitness.

2007 CJO, ¶ 9.

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