

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

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DEPARTMENT OF CONSUMER AFFAIRS,
Complainant,
-against- Violation No.: 05349300
License Nos.: 1240545, 1240557.
DYCK O'NEAL, INC.,
Respondent.
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1. Respondent Dyck O'Neal, Inc. ("DONI" 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 2006.
2. Respondent seeks renewal of its debt collection agency licenses, Nos. 1240545 and 1240557.
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 Respondent.
4. The Department identified certain findings related to the Respondent's 2013 renewal application annexed as Attachment A. Respondent does not admit to these findings, but consents to a Consent Order with the Department to renew its license and to resolve the findings for the time period from April 24, 2010 to the date of this Consent Order.
5. Bruce Nozick, as  Executive Vice President, represents and warrants that he is authorized to enter into this Consent Order on behalf of Respondent.
6. 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.

7. 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 sections 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

8. 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.
9. 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.
10. 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

11. 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.
12. “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.
13. 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.”
14. 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

15. 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, 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

16. 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

17. 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

18. Respondent shall appoint Bruce Nozick 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: (800) 447-2481 Ext. 2323 (Toll Free).
 - b. The address of such Compliance Officer is: 6060 North Central Expressway, Suite 200, Dallas, Texas 75206.
19. The email address of such Compliance Officer is: bnozick@dycfoneal.com. 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.

20. 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: 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.
21. Respondent shall respond to all subpoenas and document requests issued to it by the Department.
22. 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. section 1-14, 1-16; and 2-193.
23. Respondent shall notify the Department of all pending actions, proceedings or investigations by government agencies against it relating to debt collection practices within ten (14) days of being notified of such action, proceeding, or investigation. For the purposes of this paragraph "investigation means any written communication from a government agency relating to Respondent's debt collection practices, to which Respondent must respond except for individual consumer complaints.
24. 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.
25. 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

26. 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

27. 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.
28. 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.
29. 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.
30. 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 28: one penalty for breach of the Consent Order and one penalty for the breach of the applicable Law or Rule.

PENALTIES AND OTHER TERMS AND CONDITIONS

31. Respondent shall pay \$100,000 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.

32. This Consent Order shall constitute a final order pursuant to Section 6-42(c) of the Rules.

WAIVER OF APPEALS

33. 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 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

34. 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.

35. The acceptance of this Consent Order resolves the findings made in this Consent Order in Attachment A for the time period from April 24, 2010 to the date of this Consent Order. This Consent Order does not limit the Department's ability to bring charges for violations outside this time period.

36. 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.

37. 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:

Bruce Nozick

Print Name
President

Title
Signature *Bruce Nozick*

Date *10/2/2014*

Print Name
Staff Attorney

Title
Signature _____
Date *10/6/14*

Agreement Dated: 10/6/14

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 – DONI Collected or Attempted to Collect From 1,608 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. DONI answered "Yes" to Question 17(A), answered "835" to Question 17(B), and answered "773" to Question 17(C). DONI therefore admits that it collected or attempted to collect 835 accounts from New York City consumers in 2011 and 773 accounts from New York City consumers in 2012.
- (2) DONI Violated Collection Phone Call Requirements:
 - a. Question 18(B)(iii) of the 2013 Renewal Form asks: "[I]n each telephone communication with 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 . . . (i.) a call-back number to a phone that is answered by a natural person, (ii.) the name of the agency, (iii.) the originating creditor of the debt (iv.) the name of the person to call back, and (v.) the amount of the debt at the time of the communication."
 - c. DONI answered "No" to Question 18(B)(iii) of the 2013 Renewal Form, DONI therefore admits in its 2013 Renewal Form answers that that DONI does not affirmatively identify "the originating creditor of the debt" in each telephone communication with a New York City consumer.

- d. DONI cannot confirm it complied with Admin. Code § 20-493.1(a) by identify “the originating creditor of the debt” in each telephone communication with a New York City consumer.

(3) DONI Violated Requirements for Written Communications:

- 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 . . . (i.) a call-back number to a phone that is answered by a natural person, (ii.) the name of the agency, (iii.) the originating creditor of the debt, (iv.) the name of the person to call back, and (v.) the amount of the debt at the time of the communication.”
- c. DONI answered “Yes” to Question 20(A), and “No” to Question 20(B)(iii) of the 2013 Renewal Form. DONI therefore admits in its 2013 Renewal Form that, in the past two years, it “collect[ed] or attempt[ed] to collect debts from New York City consumers by sending letters to consumers,” and that DONI does not identify “the originating creditor of the debt” in each written communication it sends to a New York City consumer.
- d. DONI violated Admin. Code § 20-493.1(a) by failing to identify “the originating creditor of the debt” in written communications it sent to New York City consumers.

(4) DONI Violated Requirements for Written Communications:

- a. 6 RCNY § 1-05 requires, in relevant part: “[a]ny . . . letterhead . . . or other printed matter of a licensee must contain the license number assigned to the licensee by the [Department].”
- 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 . . . (i.) a call-back number to a phone that is answered by a natural person, (ii.) the name of the agency, (iii.) the originating creditor of the debt, (iv.) the name of the person to call back, and (v.) the amount of the debt at the time of the communication.”
- c. 6 RCNY § 2-192(d) provides: “Upon a consumer’s payment of a debt as stated in the debt payment schedule or settlement agreement, the debt collection agency shall, within 21 calendar days after receipt of the final payment, send to the consumer a written confirmation of the satisfaction of the indebtedness that identifies the *originating creditor* and the *original account number* of the indebtedness.” (emphasis added).

- d. With its Renewal Form, DONI submitted three letters (Payoff Statements) – dated November 6, 2012, November 14, 2012, and December 10, 2012 – that identified the Payoff Department, but failed to identify the “name of the person to call back.” Further, DONI submitted three contracts titled, “Compromise Settlement Agreement and Release” – dated July 23, 2012, February 24, 2012, and September 8, 2012 – that failed to identify “a call-back number” and failed to identify DONI’s DCA license number.
 - e. DONI violated 6 RCNY § 1-05 by failing to identify its DCA license number in written communications DONI sent to New York City consumers.
 - f. DONI violated Admin. Code § 20-493.1(a) by failing to identify “the name of the person to call back” in written communications DONI sent to New York City consumers.
 - g. DONI violated 6 RCNY § 2-192(d) by failing to identify the originating creditor and the original account number of the indebtedness in written confirmations of satisfaction of indebtedness sent to New York City consumers.
- (5) DONI failed to identify litigation filed by DONI during the previous two years in Response to Question 27(A) on the Renewal Form: