

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-136
)
 3 State of New Hampshire Banking)
)
 4 Department,) Consent Order
)
 5 Petitioner,)
)
 6 and)
)
 7 ABC Debt Relief, Ltd. Co.,)
)
 8 Respondent)
)

9
10 CONSENT ORDER

11 I. This Consent Order (hereinafter referred to as "Consent Order") is
 12 entered between the New Hampshire Banking Department ("the
 13 Department") and Respondent ABC Debt Relief, Ltd. Co. ("Respondent").
 14 Respondent does hereby stipulate and agree to the following:

- 15 1. The term "this matter" shall refer to Respondent's alleged
 16 unlicensed debt adjustment activity in the State of New
 17 Hampshire from at least 2007.
- 18 2. The Department is authorized by New Hampshire RSA 399-D:1 to
 19 regulate debt adjustment services performed in the State of
 20 New Hampshire or on behalf of a person located in the State
 21 of New Hampshire.
- 22 3. RSA 399-D:19,IV authorizes the Department to investigate
 23 alleged violations of laws or rules or orders to determine
 24 whether any person has violated or is about to violate any
 25 provision of RSA Chapter 399-D, rule or order given under RSA

1 Chapter 399-D or other applicable state and federal laws and
2 regulations.

3 4. RSA 399-D:22 authorizes the Department to perform
4 examinations of Respondent's debt adjustment business.

5 5. Respondent acknowledges that RSA 399-D:2,IV(e) states the
6 definition of debt adjustment includes a person engaging in
7 the debt adjustment business including but not limited to
8 acting upon outstanding debt adjustment contracts.

9 6. Respondent acknowledges that RSA 399-D:3,I states that any
10 person that, in its own name or on behalf of other persons,
11 engages in the business of debt adjustment in New Hampshire
12 or with New Hampshire consumers shall be required to obtain a
13 license from the Department.

14 7. Respondent acknowledges that RSA 399-D:3,III states that if a
15 person, or a person's members, officers, directors, agents,
16 and employees, violates RSA 399-D:3,I, the debt adjustment
17 contract shall be void and the person shall have no right to
18 collect, receive, or retain any interest or charges
19 whatsoever whether paid or received directly or indirectly.
20 Any such direct or indirect compensation received by the
21 person shall be refunded to the consumer.

22 8. Respondent acknowledges that RSA 399-D:14,I states in part
23 that "No licensee shall be entitled to any fee against the
24 debtor, upon any contract, until the debt adjustment program
25 is arranged and approved by the debtor."

1 9. This matter concerns at least seventy-six (76) New Hampshire
2 consumers ("debtors") whose fees Respondent shall refund
3 pursuant to the Department's initial investigation of this
4 matter.

5 10. The Department and Respondent would like to avoid formal
6 proceedings, and further expense, and to finally resolve this
7 matter under the terms and conditions set forth below.

8 11. The terms of this Consent Order are a fair and reasonable
9 disposition of this matter and are in the public interest.

10 12. In consideration of the mutual promises and representations
11 set forth herein, and in further consideration of the
12 Department's reliance upon the substantial accuracy and good
13 faith of the representations and submissions made to it by
14 Respondent, the Department and Respondent intending to be
15 legally bound herein, agree to the terms and conditions
16 below.

17 II. For purposes of amicably resolving and closing the above-referenced
18 matter, and without admission of any liability or wrongdoing, the
19 above named Respondent and the Department hereby agree to the
20 following terms and conditions:

21 1. Respondent agrees that it has voluntarily entered into this
22 Agreement without reliance upon any discussions between the
23 Department and Respondent, without promise of a benefit of
24 any kind (other than concessions contained in this Consent
25 Order) and without threats, force, intimidation, or coercion

1 of any kind. Respondent further acknowledges its
2 understanding of the nature of the offenses alleged herein,
3 including the penalties provided by law.

4 2. Respondent agrees to waive any and all rights to a hearing
5 and appeal thereof.

6 3. Respondent agrees that it will not deny the factual basis for
7 this Consent Order to which it has stipulated above and will
8 not give conflicting statements about such facts or
9 its involvement in the stipulated facts.

10 4. Respondent agrees that all terms of this Consent Order are
11 contractual and none is a mere recital.

12 5. Respondent represents and warrants that it has all the
13 necessary rights, powers and ability to carry out all of the
14 terms of this Consent Order which are applicable to
15 Respondent.

16 6. Respondent represents and warrants that it can accomplish the
17 full relief contemplated and required herein and that all
18 parents, subsidiaries, affiliates, and successors necessary
19 to effectuate the full relief contemplated by this Consent
20 Order are parties to this Consent Order.

21 7. Respondent represents and warrants that it has obtained all
22 third-party approvals necessary to comply with the Consent
23 Order.

24 8. Respondent acknowledges that the Department is relying upon
25 the representations and warranties of Respondent, stated

1 herein, in making its determination in this matter.

2 9. The Commissioner orders the Respondent to cease and desist
3 from violations of RSA Chapter 399-D and Respondent agrees to
4 comply with RSA Chapter 399-D, and any rules or orders
5 thereunder.

6 10. Therefore, Respondent must obtain a debt adjustment license
7 with the Department and must begin filing an application with
8 the Department contemporaneously with its execution of this
9 Consent Order.

10 11. Subject to the terms of this Consent Order, Respondent
11 consents to the entry of an administrative penalty of
12 \$2,000.00, which shall be paid to the Department
13 contemporaneously with the execution of this Consent Order.

14 12. Subject to the terms of this Consent Order, Respondent agrees
15 to immediately pay \$700.00 to the Department. The amount
16 represents the back license fee of \$500.00 for 2009
17 and \$200.00 for 2007 and 2008.

18 13. Respondent agrees to immediately refund the seventy-six (76)
19 consumers the fees charged (totaling \$131,929.46) minus
20 \$5,924.65 which has already been refunded to Consumers, such
21 amounts of which shall be paid contemporaneously with the
22 execution of this Consent Order. The amounts corresponding
23 to each Consumer as set out in Attachment A shall be herein
24 incorporated by reference.

25 14. Respondent acknowledges the amounts to be paid above exclude

1 any fees incurred as a result of a pre-licensing examination
2 the above named Respondent hereby agree will be paid when
3 such examination is conducted by the Department.

4 15. Respondent agrees to amend its consumer debt adjustment
5 contract ("Contract") for New Hampshire consumers to comply
6 with RSA Chapter 399-D, including but not limited to
7 addressing the following:

8 a. Amend Paragraph 2 of the Contract entitled "Scope of
9 Agreement" to comply with RSA 399-D:14,II and RSA
10 399-D:20;

11 b. Delete the provision in Paragraph 2 of the Contract
12 entitled "Scope of Agreement" concerning an Exhibit
13 A since an Exhibit A does not appear to exist;

14 c. Both Paragraph 8 entitled "Governing Law;
15 Severability" and Paragraph 9 entitled "Arbitration
16 of Dispute" must address the issue that New
17 Hampshire law also applies pursuant to RSA 399-D:1
18 in an administrative hearing brought by the
19 Department or Consumer;

20 d. Amend Paragraph 13 entitled "Cancellation" because
21 the last sentence concerning upfront non-refundable
22 fees does not comply with RSA 399-D:14,IV;

23 e. Amend the Contract to include a payment schedule
24 since compliance cannot be determined with RSA 399-
25 D:15;

1 f. Amend the Contract to include or incorporate by
2 reference a budget analysis as mandated by RSA 399-
3 D:15,II;

4 g. Amend the Contract to include an end date as
5 mandated by RSA 399-D:20;

6 h. Amend Paragraph 11 entitled "Payment to Creditor"
7 and Paragraph 12 entitled "Payment of Fee" to comply
8 with RSA 399-D:14,I, specifically:

9 (1). the fees must be amortized equally over
10 the term of the Contract;

11 (2). the fees cannot be collected by
12 Respondent ABC Debt Relief until the Contract
13 has been in full force for at least 30 days;

14 (3). the Contract cannot be effective until a
15 debtor has made a payment to Respondent ABC
16 Debt Relief for distribution to the debtor's
17 creditors; and

18 (4). fees Respondent ABC Debt Relief receives
19 as expressed in percentages in RSA 399-
20 D:14,III cannot be determined based on the
21 current version of the Contract; and

22 i. Ensure the "Limited Power of Attorney" does not
23 violate RSA 399-D:17.

24 16. Respondent acknowledges that failure to make payment as
25 agreed above may result in civil and/or criminal penalties.

1 17. Respondent agrees to sign and return this Consent Order along
2 with the penalties and monies listed above to the Department
3 on or before 4:30 p.m. on February 5, 2010 or the Department
4 shall withdraw this offer and issue an enforcement order.

5 18. Upon completion of all the requirements within this Consent
6 Order, the Department shall, if all statutory requirements
7 have been met, issue a debt adjuster license to Respondent.

8 19. This Consent Order shall become effective immediately upon
9 the date of its issuance, which is upon the Commissioner's
10 signature.

11 20. The provisions of this Consent Order shall remain effective
12 and enforceable except to the extent that, and until such
13 time as, any provisions of this Consent Order shall have been
14 modified, terminated, suspended, or set aside by the Bank
15 Commissioner or upon an order of a court of competent
16 jurisdiction.

17 III. This Agreement represents the complete and final resolution of, and
18 discharge of any basis for any civil or administrative proceeding by
19 the Department against the Respondent for violations arising as a
20 result of or in connection with any actions or omissions by the
21 Respondent through the date of this Consent Order as it applies to the
22 allegations in this matter; provided, however, this release does not
23 apply to facts not known by the Department or not otherwise provided
24 by the Respondent to the Department as of the date of this Consent
25 Order nor to actions for restitution under RSA 383:10-d

1 (excluding restitution provided previously), or any possible actions
2 related to the examination to be completed prior to licensure with the
3 Department. Such facts would include, but not be limited to, any
4 consumer harm from Respondent's actions. The Department expressly
5 reserves its right to pursue any administrative, civil or criminal
6 action or remedy available to it should the above named Respondent
7 breach this Consent Order or in the future violate the Act or rules
8 and orders promulgated thereunder.

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1 ATTACHMENT A TO THE CONSENT ORDER:

2 ABC Debt Relief, Ltd. Co., et al.

3 DOCKET #09-136

4 The Department hereby presents the following list of Consumers who are
5 entitled to restitution in the form of fees charged and collected when
6 Respondent ABC Debt Relief conducted debt adjustment activity in the State
7 of New Hampshire without a debt adjuster license from 2007 to the present:
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CONSUMER NUMBER	TOTAL RESTITUTION
10 1	\$3,389.94
11 2	\$5,860.90
12 3	\$2,625.00
13 4	\$1,800.00
14 5	\$3,149.99
15 6	\$2,731.38
16 7	\$2,935.50
17 8	\$1,750.00
18 9	\$2,056.30
19 10	\$3,712.49
20 11	\$1,160.99
21 12	\$1,809.54
22 13	\$2,562.64
23 14	\$2,521.74
24 15	\$1,440.51
25 16	\$511.77

1	17	\$2,534.10
2	18	\$2,346.56
3	19	\$1,745.24
4	20	\$1,239.63
5	21	\$2,360.94
6	22	\$2,121.03
7	23	\$1,030.62
8	24	\$2,057.72
9	25	\$3,721.95
10	26	\$639.60
11	27	\$7,598.19
12	28	\$586.38
13	29	\$1,360.18
14	30	\$704.97
15	31	\$1,084.35
16	32	\$2,173.80
17	33	\$1,639.12
18	34	\$1,993.47
19	35	\$2,178.93
20	36	\$227.43
21	37	\$1,815.37
22	38	\$1,334.92
23	39	\$3,585.26
24	40	\$2,190.21
25	41	\$789.61

1	42	\$460.38
2	43	\$847.92
3	44	\$253.61
4	45	\$916.65
5	46	\$1,248.73
6	47	\$733.34
7	48	\$305.56
8	49	\$2,006.03
9	50	\$2,615.48
10	51	\$274.24
11	52	\$1,217.34
12	53	\$122.22
13	54	\$1,226.12
14	55	\$892.26
15	56	\$486.36
16	57	\$591.11
17	58	\$1,786.06
18	59	\$230.60
19	60	\$304.08
20	61	\$2,395.33
21	62	\$1,065.95
22	63	\$1,778.34
23	64	\$1,402.98
24	65	\$2,335.76
25	66	\$568.18

1	67	\$719.36
2	68	\$15.30
3	69	\$1,268.78
4	70	\$823.44
5	71	\$1,726.89
6	72	\$0.00
7	73	\$577.42
8	74	\$5,730.71
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