

IN THE MATTER OF:

SMITH HAYNES & WATSON, LLC

Respondent

* BEFORE THE MARYLAND
* STATE COLLECTION AGENCY
* LICENSING BOARD IN THE
* OFFICE OF THE COMMISSIONER
* OF FINANCIAL REGULATION

*
* CFR-FY2010-230
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SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into this 30th day of June, 2011, by and between the Maryland State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation (hereinafter the "Agency") and Smith Haynes & Watson, LLC (the "Respondent"). The Agency and the Respondent ("the Parties") consent to the entry of this Agreement as a final resolution of this matter. All paragraphs below are intended to be part of the contractual obligations of the Parties hereto, so far as they may be so construed, and are not mere recitals to this Agreement.

1. Pursuant to the Maryland Collection Agency Licensing Act ("MCALA"), Md. Code Ann., Bus. Reg. ("BR"), § 7-101 *et seq.*, the Agency is responsible for licensing and regulating persons engaged in collection agency activities in the State of Maryland (the "State"), and for otherwise enforcing the provisions of MCALA and of other federal and State collection laws.

2. At all times relevant to the facts set forth herein, Smith Haynes & Watson, LLC, has been duly licensed under MCALA as a Maryland collection agency as that term is defined in BR § 7-101(c), holding several collection agency licenses.

3. On November 17, 2010, the Agency issued a Summary Suspension of Collection Agency Licenses and Summary Order to Cease and Desist to the Respondent (the "Summary Order"), Case No. CFR-FY2010-230, wherein the Agency alleged that the Respondent had violated certain provisions of MCALA, as well as certain provisions of the Maryland Consumer Debt Collection Act ("MCDCA"), Md. Code Ann., Com. Law ("CL"), § 14-201 *et seq.*, and the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.* The position of the Agency is that it is a violation of the MCDCA, the FDCPA, and MCALA for collection agencies to pursue collection actions against Maryland consumers for loans that were made by unlicensed entities, or to pursue collection actions against Maryland consumers for loans that exceed the permissible interest rate caps under applicable State law (all of Paragraph 3, collectively, the "Allegations").

4. The Respondent does not admit to the Allegations, and denies and disputes the Allegations, but, nonetheless, wishes to resolve the Allegations without the need for an administrative hearing, thereby avoiding the costs associated with such hearing and any potential appeals, and therefore agrees to resolve this matter fully, finally, and completely without an administrative hearing as set forth in this Agreement.

5. The Agency desires to ensure that Respondent will comply with all applicable statutes, regulations, and others laws governing collection agency activities in the State of Maryland, including complying with the MCDCA, the FDCPA, and MCALA, and further wishes to avoid the costs to the taxpayers of an administrative hearing and any potential appeals.

6. Neither this Agreement nor the agreement of the Respondent to make payments to the Agency or to make the refunds set forth below shall be construed as an admission of liability by the Respondent, but is in compromise and settlement of the Allegations.

7. Respondent represents that, as of the date of this Agreement, it is in compliance with the MCDCA, the FDCPA, and MCALA.

8. Respondent agrees to take each and every one of the following actions in exchange for a final resolution of the above-captioned matter:

a. Respondent will make a settlement payment of \$64,000 (SIXTY-FOUR THOUSAND DOLLARS) in the form of a check made payable to the "Commissioner of Financial Regulation" on or before June 30, 2011.

b. For each Maryland Resident from whom the Respondent collected any funds on or after August 1, 2009 (the "Affected Residents"), the Respondents will provide to each Affected Resident a refund in the amount collected from each Affected Resident on or after August 1, 2009, totaling \$44,595 (FORTY-FOUR THOUSAND FIVE HUNDRED NINETY-FIVE DOLLARS) collectively for all Affected Residents, as follows:

(1). Within 60 days of the date this Agreement is fully executed, Respondent shall make payment by mailing to each of the Affected Residents a check in the appropriate refund amount via First Class U.S. Mail to each Affected Resident's last known address, and shall provide written notice to the Agency once all such refund payments have been mailed by providing the Agency with a spreadsheet indicating the name of each Affected Resident, the last known address of each Affected Resident, the social security number of

each Affected Resident (if known), the date of birth of each Affected Resident (if known), the total amount of money collected by Respondent from each Affected Resident on or after August 1, 2009, the total amount of the refund mailed to each Affected Resident at their last known address, and the date on which each refund check was mailed; all with the understanding and intent that providing such information to the Agency will not put the Respondent in violation of either federal or State law related to the disclosure of any such personal information.

(2). Within 150 days from the date this Agreement is fully executed, Respondent shall furnish evidence to the Agency that refunds were received by each Affected Resident in the agreed amount, which evidence shall consist of a copy of the front and back of the cancelled check for each refund payment.

(3). If, within 150 days from the date this Agreement is fully executed, any refund payment checks mailed by the Respondent to Affected Residents in accordance with Agreement are either not cashed or are returned to Respondent as non-deliverable (collectively, the "Undeliverable Refunds"), such Undeliverable Refunds will escheat to the State of Maryland. In such event, Respondent will stop payment on such undeliverable refund payment checks, and shall pay the total amount of all Undeliverable Refunds in the form of a single check made payable and mailed to the "Comptroller of Maryland," with a copy to the Agency, and which shall be accompanied by an update to the spreadsheet referenced in Paragraph 9.b.(1), above, submitted in both hard copy and in an electronic format mutually agreeable to both Parties, indicating which refund checks were cashed, and which refund checks were either not cashed or were returned to Respondent as

non-deliverable. Such action on the part of Respondent shall relieve the Respondent of any further obligation to make refunds to any Affected Resident.

c. If Respondent resumes collection activities involving Maryland residents, Respondent will abide by all applicable State and federal collection-related laws as presently interpreted by the Agency, including but not limited to the MCDCA, the FDCPA, and MCALA, unless and until the Agency's interpretation of the MCDCA, the FDCPA, and MCALA has been successfully challenged in a court of competent jurisdiction.

d. Within two (2) business days of this Agreement being fully executed, Respondent will provide the Commissioner with a stipulation of dismissal with prejudice of all defendants as to all counts in the complaint (titled, "Complaint for Declaratory Relief and Application for a Temporary Restraining Order") filed in the United States District Court for the District of Nevada, Case 2:11-cv-00908-JCM-LRL, which is now moot in light of this Agreement.

10. Respondent acknowledges that it has voluntarily entered into this Agreement with full knowledge of its right to a hearing pursuant to BR § 7-309, pursuant to Md. Code Ann., Fin. Inst. ("FI"), § 2-115, and pursuant to the Maryland Administrative Procedure Act – Contested Cases, Md Code Ann., State Gov't ("SG"), § 10-201 *et seq.*, arising from any charges brought by the Agency based on the Allegations, and that Respondent hereby waives its right to a hearing.

11. Respondent further acknowledges that it has had an opportunity to consult with independent legal counsel in connection with the waiver of its right to hearing and with the

negotiation and execution of this Agreement, and that it has in fact consulted with independent legal counsel.

12. The Parties hereto agree that this Agreement shall be binding upon all Parties and enforceable in a court of competent jurisdiction by the Agency and by the Respondent, shall be admissible in court, if relevant, and shall be binding upon and inure to any of the Respondent's present and future owners, principals, directors, officers, members, partners, managers, agents, successors, and assigns.

13. The Parties hereto acknowledge that this Agreement does not in any way relate to, impact, or otherwise effect the legal rights of, or preclude the Agency from bringing actions against, persons not Parties to this Agreement, except as set forth in Paragraph 14, below.

14. The Office of the Commissioner, including the Agency, agrees that it will not bring an action of any kind, civil or administrative, against the Respondent, or against Respondent's predecessors, successors, or assigns, or against any of Respondent's present or future owners, principals, directors, officers, members, partners, managers, employees, or agents, for any matter arising out of or related to any loan Respondent collected or attempted to collect from a Maryland Resident prior to the date on which this Agreement is fully executed, related to the investigation referred to in the Summary Order, the Allegations, or otherwise covered by this Agreement.

15. The Parties hereto agree that they shall not disparage or undermine this Agreement in any way.

16. The Parties hereto agree that any notices hereunder shall be effectively "delivered" when sent via overnight delivery or certified mail as follows:

a. To the Agency:

Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202-3651
Attention: Anne Balcer Norton, Deputy Commissioner

Copy to:

W. Thomas Lawrie, Assistant Attorney General
Department of Labor, Licensing, and Regulation
500 North Calvert Street, Suite 406
Baltimore, Maryland 21202-3651

b. To the Respondent:

David B. Applefeld, Esq.
Adelberg, Rudow, Dorf & Hendler, LLC
7 St. Paul Street, Suite 600
Baltimore, Maryland 21202-1612

Copy to:

Respondent's Maryland Registered Agent as of the date any such notice is given.

NOW, THEREFORE, it is, by the Commissioner of Financial Regulation on behalf of the Agency, HEREBY

ORDERED that Respondent shall adhere to all terms of this Settlement Agreement; and it is further

ORDERED that Respondent shall use good faith efforts to conduct its collection agency business activities in compliance with all applicable federal and Maryland State laws, including but not limited to MCALA, the MCDCA, and the FDCPA; and it is further

ORDERED that, in the event Respondent, or any of Respondent's successors or assigns, or any of Respondent's owners, principals, directors, officers, members, partners, managers, employees, or agents, violates any provision of this Settlement Agreement, or otherwise engages in the activities which formed the basis for the Allegations, the Agency may, at the Agency's discretion, and subject to Respondent's right(s) to a hearing where applicable, take any enforcement actions available under FI § 2-115, SG § 10-226(c)(2), and/or BR § 7-205, as well as take any other enforcement actions as permitted by, and in accordance with, applicable State law; and that such enforcement actions could include an order to cease and desist, suspension or revocation of a Maryland State collection agency license, civil money penalties of up to \$1,000 for a first violation and up to \$5,000 for each subsequent violation, and an order to provide restitution or to take other affirmative action to correct the violation; and it is further

ORDERED that this Agreement fully supersedes the Summary Order issued to the Respondent on November 17, 2010, and said Summary Order is no longer of any force or effect as of the date this Agreement is fully executed; and it is further

ORDERED that this matter shall be resolved in accordance with the terms of this Settlement Agreement and the same shall be reflected among the records of the Office of the Commissioner of Financial Regulation; and it is further

ORDERED that this document shall constitute a Final Order of the Maryland State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation, and that the Agency may consider this Settlement Agreement in connection with, and in deciding, any action brought by or proceeding before the Agency; and that this

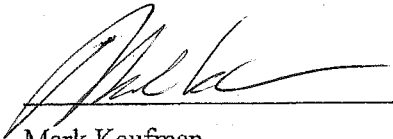
Settlement Agreement may, if relevant, be admitted into evidence in any action brought by or proceeding before the Agency.

It is so **ORDERED**.

IN WITNESS WHEREOF, this Settlement Agreement is executed on the day and year first above written.

MARYLAND STATE COLLECTION
AGENCY LICENSING BOARD IN THE
OFFICE OF THE COMMISSIONER OF
FINANCIAL REGULATION

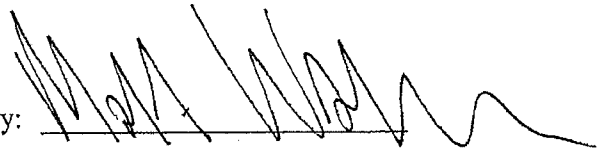
By:



Mark Kaufman
Commissioner of Financial Regulation,
Chairperson, State Collection Agency
Licensing Board

SMITH HAYNES & WATSON, LLC

By:



Matthew Wratten
President