

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of Desist and Refrain Order, Claim
for Ancillary Relief, and Order Levying
Penalties:

THE COMMISSIONER OF BUSINESS
OVERSIGHT OF THE STATE OF
CALIFORNIA,

Complainant,

v.

Commercial Debt Counseling Corporation,
doing business as, AmerAssist Turnaround
Management Corporation, Turnaround
Management Corp., AmerAssist Corp.,
www.businessdebtcounseling.com,
www.turnaroundmgmt.com, and
www.amerAssist.biz, and Kenneth Monnett,

Respondents.

Case No. 11884

OAH No. 2014040633

ORDER OF DECISION

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated April 13, 2015, is hereby adopted by the Commissioner of Business Oversight as her Decision in the above-entitled matter, with the following technical and minor changes pursuant to Government Code section 11517(c)(2)(C):

1. In the title of the action, change "THE CALIFORNIA COMMISSIONER OF OVERSIGHT" to "THE CALIFORNIA COMMISSIONER OF BUSINESS OVERSIGHT."
2. On page 3 of the Proposed Decision, paragraph 5 of Factual Findings, line 1, change "October 23, 2013" to "October 14, 2013".

3. On page 3, of the Proposed Decision, paragraph 5 of Factual Findings, line 17, change “Commission” to “Commissioner.”
4. On page 3 of the Proposed Decision, paragraph 6 of Factual Findings, line 3, change “October 23, 2013 Action” to “October 14, 2014 Action.”
5. On page 4 of the Proposed Decision, paragraph 8 of Factual Findings, lines 2 and 3, change “October 23, 2013 Action” to “October 14, 2014 Action.”
6. On page 4 of the Proposed Decision, paragraphs 9 and 10 of Factual Findings, change all references to “Mr. Hornick” to “Ms. Hornick” and change all masculine pronouns referring to Frankie Hornick to feminine pronouns.
7. On page 10 of the Proposed Decision, paragraph 3 of Legal Conclusions, line 7, change “122000” to “12200.”

This Decision shall become effective on
IT IS SO ORDERED this 25th day of

July 25, 2015.
June 2015.

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JAN LYNN OWEN
Commissioner of Business Oversight

BEFORE THE
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STATE OF CALIFORNIA

In the Matter of Desist and Refrain
Order, Claim for Ancillary Relief, and
Order Levying Administrative Penalties:

THE CALIFORNIA COMMISSIONER
OF OVERSIGHT,

vs.

Commercial Debt Counseling Corporation,
Doing business as, AmerAssist Turnaround
Management Corporation, Turnaround
Management Corp., AmerAssist Corp.,
www.businessdebtcounseling.com,
www.turnaroundmgmt.com, and
www.amerAssist.biz, and Kenneth
Monnett,

Respondents.

Agency Case No. 11884

OAH No. 2014040633

~~PROPOSED DECISION~~

Marilyn A. Woollard, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), heard this matter on February 24, 2015, in Sacramento, California.

Corporations Counsel Marisa I. Urteaga-Watkins and Senior Corporations Counsel Kirk E. Wallace represented complainant, the California Commissioner of Business Oversight (Commissioner), Department of Business Oversight (DBO or Department).

There was no appearance by or on behalf of respondents.

Oral and documentary evidence was received. At the conclusion of the hearing, the record remained open to allow complainant to submit written argument. On March 13, 2015, complainant timely submitted a post-hearing brief, which was marked for identification as Exhibit 9. The record was then closed, and the matter was submitted for decision on March 13, 2015.

FACTUAL FINDINGS

1. This matter arises under the Check Sellers, Bill Payers and Proraters Law (CSBPPL), Financial Code section 12000 et seq, which, in relevant part, defines a "prorater" as "a person who, for compensation, engages in whole or in part in the business of receiving money or evidences thereof for the purpose of distributing the money or evidences thereof among creditors in payment or partial payment of the obligations of the debtor. . ." (Fin. Code, § 12002.1.)¹ The Commissioner has jurisdiction over bill payers and proraters doing business in California under the CSBPPL.

2. *Mandatory Licensure and Exemptions:* To protect the public, the Legislature has mandated that persons doing business as proraters must either be licensed by the Commissioner, or be exempt from licensure. (Fin. Code, § 12200.) The CSBPPL identifies the persons and transactions which are exempt from its provisions. (Fin. Code: §§12100, 12104.) In any proceeding under the CSBPPL, "the burden of proving an exemption or an exception from a definition is upon the person claiming it." (Fin. Code, § 12101.5.)

3. *Respondents:* At times relevant to this action, respondent Commercial Debt Counseling Corporation, doing business as respondents AmerAssist Turnaround Management Corporation, Turnaround Management Corp., and AmerAssist Corp. (referred to collectively as "CDCC"), are Nevada, Ohio and Indiana state corporations doing business in California, with principal places of business located at: 460 Polaris Parkway, Suite 200, Westerville, Ohio 43082; 8415 Pulsar Place, Suite 250, Columbus, Ohio 43240; 2255-A Renaissance Drive, Las Vegas, Nevada 89119; and 201 North Illinois Street, Indianapolis, Indiana 46204. CDCC is in the business of commercial debt consolidation. CDCC transacts business on the internet via the following websites: www.amerassist.biz; www.turnaroundmgmt.com; and www.businessdebtcounseling.com. CDCC also transacts business by telephone at (877) 900-5300 and (855) 208-6068, and by facsimile at (877) 900-6300.

At times relevant to this action, respondent Kenneth Monnett ("Monnett") is the president of AmerAssist Turnaround Management Corporation and he is a representative of CDCC doing business at 460 Polaris Parkway, in Westerville, Ohio 43082.

4. *Desist and Refrain Order, Claim for Ancillary Relief and Order Levying Administrative Penalties:* The CSBPPL vests the Commissioner with discretion to pursue various enforcement mechanisms and remedies. For example, the Commissioner is authorized to issue desist and refrain orders to any person who, in her opinion, is violating

¹ "Person" includes any person, firm, partnership, association, corporation, company, limited liability company, syndicate, estate, trust, business trust, or organization of any kind. (Fin. Code, § 18.)

the CSBPPL. (Fin. Code, 12103.)² The Commissioner is further authorized to include a claim for ancillary relief, "including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action..." (Fin. Code, 12105, subd. (b).) A claim for ancillary relief is predicated on the Commissioner's determination that "it is in the public interest" to do so. (*Ibid.*) The Commissioner is authorized to levy administrative penalties for violations of this statutory scheme, and related regulations and orders, "in an amount not to exceed two thousand five hundred (\$2,500) per violation." (Fin. Code, 12105, subd. (c).)

5. On October 23, 2013, the Commissioner issued a Desist and Refrain Order (D&R Order), a Claim for Ancillary Relief, and an Order Levying Administrative Penalties (the October 14, 2013 Action) to CDCC and Monnett (collectively, respondents), based on her finding that respondents were operating as unlicensed proraters in California and had engaged in such unlicensed prorater services with at least two California consumers. The D&R Order was based on the DBO's investigation which found that, beginning in at least 2008, respondents had offered services to California consumers and placed advertisements in the media, including on the internet, as a credit services organization, debt negotiator, credit counselor and/or prorater. Respondents promised, *inter alia*, to reduce consumers' existing debt by 25 cents on the dollar, and to negotiate on consumers' behalf with their creditors to reduce the amount of the debt owed and the monthly payments due. Respondents' fee was determined by calculating 33 percent of the reduction of the consumers' debt. Consumers were required to pay over \$2,000 each month to CDCC for its debt reduction negotiation services, with the post-fee remainder applied to the consumers' monthly debt payments. Despite these representations, CDCC did not engage in any debt negotiations with creditors on consumers' behalf and failed to communicate with customers about the status of their accounts.

The Commission ordered respondents to desist and refrain from engaging in prorater services until such time as they were duly licensed under the CSBPPL or determined to be exempt. In the Claim for Ancillary Relief, the Commissioner determined that it was in the public interest to require respondents to disgorge the fees they received from the consumers injured by their unlicensed prorater activities, with interest. The Commissioner further determined that administrative penalties of \$2,500 shall be levied on respondents for each of two violations of Financial Code section 12000, for a total of \$5,000 in administrative fees. Respondents were advised of their right to request a hearing in this matter.

6. On December 2, 2013, attorney Jeffrey Leacox, Greenberg Traurig LLP, submitted a request to Commissioner Jan Lynn Owen on respondents' behalf, for a hearing in response to the October 23, 2013 Action. Mr. Leacox affirmed that respondents expressly waived the statutory time limit for hearing to facilitate settlement discussions.

² Criminal penalties are also available for willful violations of the CSBPPL. (Fin. Code, 12102.)

7. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

8. At the February 24, 2015 hearing, there was no appearance by or on behalf of respondents. After a determination that respondents had been timely served with the October 23, 2013 Action and Notice of Hearing, the matter proceeded as a default pursuant to Government Code section 11520.

Complainants called the following witnesses: Frankie Hornick, Christopher Paul Lewis, Catherine Roteila and William Fuentes. The testimony of these witnesses is paraphrased as relevant below.

Complainant's Investigation

9. *Testimony of Frankie Hornick:* Mr. Hornick works for the DBO as a special administrator with oversight over the CSBPPL. He explained that the CSBPPL is designed to protect consumers who are trying to negotiate their way out of debt, particular following the recent recession. Such consumers are often in desperate situations, trying to maintain small businesses and/or homes through accumulation of debt on their personal credit cards. Such consumers view individuals and entities offering to help consolidate and pay off their debts as professionals in whom they can place their trust. Proraters generally obtain a power of attorney (POA) from their clients, which allow them to step into their shoes as debtors and negotiate on their behalf. Because consumers entrust proraters with significant power over their lives, licensure is essential to prevent fraudulent and unscrupulous conduct. In this case, respondents charged California consumers excessive fees for services which never decreased their debts and left them in worse condition than before the services began.

10. *Respondents' Non-licensure:* Mr. Hornick testified that there are no DBO records indicating that any of the respondents has been or is licensed as a prorater under the CSBPPL. His testimony was corroborated by the January 21, 2015, Certificate of Search declarations signed by DBO's custodian of records Kate Ya. Ms. Ya conducted a diligent search of DBO's official databases and records for each of the respondents (CDCC and Monnett) and certified under penalty of perjury that the Department's official records do not disclose a license as a check seller, bill pay or prorater having been issued under the provisions of the CSBPPL to any of these individuals or entities.

11. *Testimony of Christopher Paul Lewis:* Mr. Lewis is a sworn peace officer and a former Associate Corporations Investigator with DBO. He investigated respondents, performed an "internet shop" by posing as a consumer in need of debt consolidation services, and he located and interviewed consumers harmed by respondents' practices.

As part of his investigation, Mr. Lewis reviewed respondents' website www.businessdebt counseling.com, to determine what services were being offered. On October 3, 2012, Mr. Lewis downloaded a copy of the website, which began with the

notation: "Welcome to Commercial Debt Counseling Corporation." The site offered free consultation and contained the repeated statement: "We Guarantee the amount you repay your creditors in installments, including fees, shall be LESS than what you owe now or our services are free." (Capitalization original.) The website made numerous assertions of its excellence, experience and proven track-record in the area of debt counseling and renegotiation to assist business owners "achieve financial freedom." For example, respondents asserted "We have successfully settled tens-of-thousands of debts with creditors, collection agencies, attorneys, lawsuits and judgments, within the limitations of our clients' ability to pay..." Further, "CDCC workout managers (and staff attorneys when necessary) will succeed in reducing, eliminating or restructuring your business-related debt or our services are free." Respondent Monnett, as CEO of CDCC, discussed respondents' work helping customers "negotiate restructured payment plans with creditors." He was quoted as saying: "Clients decide who gets paid, how much they get paid, and when they get paid." Based on his review of this website, Mr. Lewis determined that respondents were offering prorater services to the public and that none of the respondents were licensed proraters under the CSBPPL.

12. Mr. Lewis traced the different names and website addresses he obtained and he determined that each of respondents' corporations was a for-profit corporation controlled by respondent Monnett. Specifically:

* AmerAssist, Inc. was incorporated in Nevada in October 2002, with respondent Monnett as its President.

* On November 23, 2005, a Certificate of Amendment was filed with the Nevada Secretary of State and signed by Mr. Monnett as president, changing the corporation's name from AmerAssist, Inc. to Commercial Debt Counseling Corporation.

* AmerAssist Turnaround Management Corporation, was a for-profit Ohio Corporation whose Articles of Incorporation were signed February 21, 2008, by authorized agent Heidi Brown. Effective October 1, 2010, this corporation was "merged out of existence" with Turnaround Management Corporation, the surviving entity, incorporated under the laws of the State of Indiana. This document was signed July 23, 2010, by respondent Monnett as President of both corporations.

13. On October 8, 2012, using the name "Chris Smith," Mr. Lewis conducted an internet shop of the website www.turnaroundmgmt.com. This website offered to "*Save your business* by reducing and restructuring burdensome debt." (Italics original.) Using a yahoo internet address, Mr. Lewis requested a free analysis of his business debt. On October 8, 2012, Mr. Lewis received a reply from "DMP@TurnaroundMgmt.com" and was advised that one of its debt counselors would soon contact him with details. On October 9, 2012, Mr. Lewis received a further reply from Gene Antauer, Senior Debt Restructuring Counselor at Commercial Debt Counseling Corporation, with several attachments containing a description of their services and fees, and an invitation to call him for a free analysis and quote. Mr.

Lewis emailed Mr. Antauer back later that day and provided his Sacramento, California address and telephone number.

Mr. Lewis subsequently received a telephone call and several emails from Mr. Antauer/CDCC explaining that "our fees are based on our performance. The more we can save you from the original debt, the more we will earn. Our fee is based on 1/3 of your savings. . ." Respondents offered their services to Mr. Lewis for a fee after knowing he was a California resident.

14. *Testimony of Catherine Rotella:* Mrs. Rotella and her husband Serafino Rotella, owned and operated Hi-Tech Overhead Door Corporation, a small business based in Orangevale, California that employed five workers. Mrs. Rotella was in charge of the company's billing. When the construction boom "busted" in 2008, the Rotellas began making payroll and paying suppliers with their personal credit cards, until they had cumulated approximately \$81,000 in unpaid debt.

In the fall of 2008, Mrs. Rotella received an unsolicited mailing from AmerAssist that advertised its debt reduction negotiation. She had no previous knowledge of respondents or their services. Dayvd Miller, a Debt Restructuring Counselor with "AmerAssist Turnaround Management Corporation," called Mrs. Rotella and was "very compassionate." He described how AmerAssist could help the Rotellas by negotiating the amount of their outstanding debt down by almost fifty percent. Respondents were to: receive money from Mrs. Rotella to distribute to her creditors and pay down her debt; manage her creditor accounts and help her avoid commercial bankruptcy; and provide these services in exchange for fees. Following this initial conversation, Mr. Miller called Mrs. Rotella on a daily basis for a week until the Rotellas finally agreed to accept their services.

On September 27, 2008, Mr. Rotella signed a Debt Mediation and Restructuring Agreement (Agreement) with "Commercial Debt Counseling Corporation, an AmerAssist Corporation." The Agreement provide that CDCC "shall attempt to mediate, restructure and fully satisfy all business-related debts due submitted creditors utilizing only small installments from Client. CDCC shall do so by negotiating significant debt reductions and/or by scheduling deferred payments over time. Thereafter, all payments to submitted creditors shall be administered by CDCC based upon the availability of net funds deposited by Client." As part of the Agreement, the Rotellas agreed to a monthly installment deposit of \$3,160 to be paid to CDCC, which "monthly installment deposits shall continue until all submitted creditors and service fees are paid." Mr. Miller told Mrs. Rotella that they could pay less than \$3,160 a month, if needed. The Agreement provided that "A 33-1/3% fee shall be earned by CDCC on the savings difference between the amount owed and the settlement balance negotiated on unsecured debt..." The Rotellas also signed a limited POA to AmerAssist.

After entering into the Agreement, Mrs. Rotella began receiving calls from some of the six creditors she had submitted to CDCC for negotiation. The creditors stated that they had not been paid. Mrs. Rotella gave the creditors the name and telephone numbers of her

CDCC debt counselors, but this was to no avail. Eventually, the Rotellas were sued by three of their creditors, and they had to file for both business and personal bankruptcy and they lost their home to foreclosure. None of the representations made by respondents about saving their business was fulfilled.

In 2010, Mrs. Rotella filed a complaint against respondents with the Ohio State Better Business Bureau (BBB), requesting a refund of \$7,433.76. Mrs. Rotella requested this amount because, at that time, she believed that respondents had withdrawn a total of \$10,680 from the Rotellas' business accounts and (although she saw no evidence of this) claimed they had paid \$3,246.24 to the Rotellas' six creditors. In the alternative, Mrs. Rotella asked that respondents return her initial deposit of \$3,160. Mrs. Rotella participated in a five-hour telephonic discussion with respondents that was mediated by a BBB representative. In November 2010, at the urging of the BBB representative, Mrs. Rotella accepted a settlement. Respondent Monnett and Mr. Rotella signed a "Mediated Settlement Agreement," by which the parties agreed to terminate the Agreement and respondents agreed to refund \$1,580 to the Rotellas.

On June 24, 2014, Mrs. Rotella advised DBO that respondents "never settled any of our debts, but instead put us into three (3) different lawsuits!" Although respondents represented they would provide legal services to assist their clients, when the Rotellas were sued by creditors, respondents' debt counselors told Mrs. Rotella to hire an attorney. When the Rotellas tried to get their money back, they were told that the Agreement they signed had provisions outlining various administrative fees and funding disruption penalties. Mrs. Rotella testified that they had only received a single-sided copy of the one-page Agreement they signed, and that Mr. Miller never gave them the back pages of their signed Agreement.³ She provided copies of both the Agreement given them by Mr. Miller and the Agreement later provided to them and relied on by respondents. The Rotellas' Agreement had no page numbers on it; the copy of the Agreement respondents later provided had "page 2 of 8" on the upper right hand corner with a date and time stamp.

Mrs. Rotella originally believed respondents withdrew \$10,680 from their accounts. In testimony, Mrs. Rotella explained that respondents actually withdrew a total of \$12,480 from the Rotellas' bank accounts. Mrs. Rotella paid the amount in excess of \$10,680 from her personal credit card via a cash advance. The amount of fees computed by Ms. Ya, as set forth in Exhibit 5, was incorrect.

³ On October 22, 2009, Helen Erushart, CDCC's Senior Client Manager, informed Mrs. Rotella that, in accordance with the contract, the Rotellas owed CDCC \$8,398.94. This figure was based on page two (the back side) of the Agreement, which provided, inter alia, that "in the event of any breach of this agreement, client agrees to pay CDCC ten percent of the amount submitted on any creditor's debts removed or remaining at revocation (less fees already paid) as liquidated damages (unless creditor refuses to negotiate with CDCC), in lieu of all fees. Such liquidated damages are then due immediately and CDCC's obligations under this agreement shall be considered fulfilled."

15. *Testimony of William Fuentes:* Mr. Fuentes has been a licensed California contractor (C classification) since 1976. From 2009 through 2012, he was the owner and President of American Door Company, Inc., a garage door opener company operating in Redding, California. Mr. Fuentes's business became seriously in debt and he found CDCC/AmerAssist on the internet. On September 9, 2009, respondent Monnett sent Mr. Fuentes a letter representing that "Turnaround Management Corporation" would provide him with immediate debt relief, that would "reduce, eliminate, or restructure your business debt," based on a simple monthly payment that would direct all collection calls to and prevent the problem of "litigation, bankruptcy and critical supply line cut offs from key vendors..." Mr. Monnett also provided Mr. Fuentes with AmerAssist brochures which made representations about the services to be provided (e.g., "Guaranteed Debt Relief for Your Company," "A Better Alternative to Bankruptcy").

On September 29, 2009, Mr. Fuentes signed an Agreement with "CDCC, an AmeriAssist Corporation," agreeing to a monthly installment deposit amount of \$3,785, and he gave them a Limited POA. After 18 months, Mr. Fuentes was receiving daily calls from his creditors and had five or six claims filed against the company. Mr. Fuentes' contractor's license was suspended for non-payment of bills. As a consequence, Mr. Fuentes was forced to work directly with an attorney to pay his bills and have his license reinstated. Mr. Fuentes stopped all payment to respondents in 2011.

On July 8, 2011, Mr. Fuentes wrote Heidi Dennis, Senior Account Manager of Client Services, at Turnaround Management Corporation, asking what was going on with this account. Mr. Fuentes wrote: "According to my records, I have paid in over \$70,000.00. According to your statements, only about \$25,000.00 has been paid out in almost 2 years. I do not know why some of the accounts have not been paid off." He indicated he was receiving "constant calls" from creditors. Several weeks later, on July 19, 2011, Mr. Fuentes informed respondents that he was "now dealing directly with Glassberg, so we can get our license out of suspension. We have been shut down for two weeks now. Chase has now put a \$24,000 lien on our property... I do not know why there is a huge balance on the last statement and creditors are not being contacted or paid." Mr. Fuentes realized he had made a "mistake" trusting respondents, and over subsequent months, he began working directly with other creditors who had placed liens on his property and/or threatened legal action against him.

On August 20, 2012, Mr. Fuentes filed a complaint with the Department, explaining that he had paid \$70,223 to respondents and "they have paid less than half of this amount to creditors." Mr. Fuentes wants his money back.

From October 2009 to September 2011, respondents collected \$24,269.60 from Mr. Fuentes in new listing fees, disbursement fees, deferment fees (for creditor payment deferral) and debt reduction fees. In addition, Mr. Fuentes was charged and paid a "funding disruption penalty" in the amount of \$900.88. Mr. Fuentes thus paid respondents a total of \$25,170.48 in fees.

Discussion

16. As discussed above, respondents have engaged in prorater transactions within the State of California with at least two California consumers and, in late 2012, offered prorater services to "Chris Smith" when Investigator Lewis ran an "internet shop." Respondents continued to offer prorater services with knowledge that Mr. Smith was a California resident. Respondents are proraters within the meaning of the CSBPPL and, as such, they are subject to its requirement of licensure. Respondents provided no evidence or argument that they were exempt from licensure.

Complainant established that: (1) respondents have never been licensed as proraters as required by Financial Code section 12200; (2) over a period of years commencing in 2008, respondents have reached out to California consumers to offer prorater services for compensation via regular mail, electronic mail, telephone and internet; (3) respondents were aware that Mrs. Rotella, Mr. Fuentes and "Mr. Smith" were California residents; (4) with this knowledge, respondents offered and contracted to provide prorater services to Mrs. Rotella and Mr. Fuentes for compensation; and (5) respondents received significant sums of money from Mrs. Rotella and Mr. Fuentes for the purpose of distributing money to their creditors in payment or partial payment of their debts.

Complainant persuasively established that ancillary relief in the form of disgorgement of the moneys respondents received as unlicensed proraters from Mrs. Rotella and Mr. Fuentes is in the public interest. As a result of its unlicensed prorater activities with the Rotellas, respondents received \$12,480. The Commissioner is not required to consider the value of a settlement in this disgorgement action; however, she does so as a matter of fairness. With a set off of \$1,500 received, the amount of fees respondents must disgorge for their unlicensed prorater activities in the Rotella transaction is \$10,980. As a result of its unlicensed prorater activities with Mr. Fuentes, respondents received \$25,170.48 in service fees and penalties, which must be disgorged.

Complainant persuasively established that, as ancillary relief, respondents must disgorge a total of \$36,150.48 for the moneys they received as unlicensed proraters from Mrs. Rotella and Mr. Fuentes, and that administrative penalties of \$5,000 are appropriate.

LEGAL CONCLUSIONS

1. Financial Code section 12200 provides:

No person shall engage in the business, for compensation, of selling checks, drafts, money orders, or other commercial paper serving the same purpose, or of receiving money as agent of an obligor for the purpose of paying bills, invoices, or accounts of such obligor, or acting as a prorater, nor shall any person, without direct compensation and not as an authorized agent for

a

utility company, accept money for the purpose of forwarding it to others in payment of utility bills, without first obtaining a license from the commissioner.”

2. The individual or entity seeking exemption from this licensing requirement has the burden of establishing entitlement to that exemption. (Fin. Code, § 12101.5.)

3. As set forth in the Factual Findings and Legal Conclusions as a whole, respondents have acted as proraters within the meaning of Financial Code section 12002.1. Respondents are bound by the mandate of Financial Code section 12200 to obtain a license from the Commissioner when offering such services to California consumers. Respondents have failed to establish that they are exempt from licensure.

Over multiple years, respondents have ignored their obligation to become so licensed and they have violated, and are in violation of, Financial Code section 122000. The Commissioner has persuasively established that the October 14, 2013 Action should be upheld. The Commissioner persuasively established that the total amount of fees to be disgorged shall be \$36,150.48, and that administrative penalties of \$5,000 (\$2,500 per violation for two violations) are appropriate.

ORDER

1. The Commissioner’s October 14, 2013 Desist and Refrain Order, Claim for Ancillary Relief and Order Levying Administrative Penalties is **AFFIRMED**.

2. Respondents and each of them shall desist and refrain from offering, engaging in, and/or providing prorater services to California consumers until such time as they have obtained a license from the Commissioner to do so, or established that they are exempt from such requirement.

3. Within 20 days of the final decision in the matter, respondents shall pay to the Commissioner a total of \$41,150.48, consisting of the following amounts: (a) \$36,150.58 for the Claim for Ancillary Relief; and (b) \$5,000 in Administrative Penalties. Respondents are jointly and severally liable for these amounts.

DATED: April 13, 2015

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MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings