

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. SJC – 12355

TARA DORRIAN & another,

Plaintiffs – Appellees

v.

LVNV FUNDING, LLC

Defendant – Appellant.

ON APPEAL FROM ORDER AND JUDGMENT OF
THE SUFFOLK SUPERIOR COURT

**BRIEF OF AMICUS CURIAE RECEIVABLES MANAGEMENT
ASSOCIATION INTERNATIONAL, INC.**

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CORPORATE DISCLOSURE STATEMENT

Amicus Curiae, Receivables Management Association International, Inc., is a non-profit corporation, has no parent entity and no publicly held company owns 10% or more of its stock.

STATEMENT OF IDENTITY AND INTEREST

Receivables Management Association International, Inc. ("RMA") is the nonprofit trade association that represents more than 500 companies that purchase or support the purchase of performing and non-performing receivables on the secondary market. Members of RMA include passive and active debt buying companies, third party collection agencies, collection law firms, and financial institutions.¹

RMA is a national leader in promoting strong and ethical business practices within the receivables management industry. RMA requires all its member companies who are purchasing receivables on the secondary market to become certified through RMA's Receivables Management Certification Program ("RMCP") as a requisite for membership (publicly available at <https://rmassociation.org/certification/>).

¹ RMA was known as DBA International prior to February 2017.

The RMCP is a comprehensive and uniform source of industry standards that has been recognized by the collection industry's federal regulator, the Consumer Financial Protection Bureau, as "best practices." Consumer Financial Protection Bureau, Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking, Outline of Proposals Under Consideration, July 28, 2016, p. 38 (publicly available at http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf).²

In addition to requiring that certified companies comply with local, state, and federal laws and regulations concerning collection activity, the RMCP goes above and beyond the requirements of local, state and federal laws and regulations by requiring its member companies to comply with additional requirements not addressed by existing laws and regulations.

² "To establish a baseline for understanding the impacts of the proposals under consideration, this section describes the [CFPB's] understanding or practices of collectors that seek to comply with the FDCPA and follow industry best practices such as those outlined in DBA International's (DBA) certification program . . ."

The debt buying companies certified by the Program hold approximately 80 percent of all purchased receivables in the country, by RMA's estimates.

RMCP certified companies are subject to vigorous and recurring independent, third-party, audits to demonstrate to RMA their compliance with the RMA Certification Program. This audit includes an onsite inspection of the certified companies to validate full integration of RMCP standards into the company's operations. Following a company's initial certification, review audits continue to be conducted every two to three years.

Program certification also requires RMA member companies to engage, at the minimum, a chief compliance officer, with a direct or indirect reporting line to the president, chief executive officer, board of directors, or general counsel of the company. The chief compliance officer must maintain individual certification through the Program by completing 24 credit hours of continuing education every two years.³

INTRODUCTION

³ LVNV Funding, LLC ("LVNV" or "Appellant") has been certified by the Program since 2014 under certification number C1410-1029.

At the state level, RMA works closely with legislators and regulators in the adoption of consumer protection laws. In 2017, RMA was instrumental in the adoption of new consumer protection laws related to debt collection in Colorado and Maine.

In Massachusetts, RMA has also worked with the Massachusetts Division of Banks and Attorney General concerning the regulation of debt buyers. It has highlighted on many occasions the uniqueness and challenges associated with the split regulatory authority in Massachusetts law, with the Attorney General's office regulating passive debt buyers as "creditors" and the Division of Banks regulating active debt buyers as "debt collectors." RMA has expressed its concern that though there are minor differences in the regulations, the potential for conflicting interpretations exposes its members to the possibility of increased litigation even though they follow the directives of the regulators. This is precisely what has occurred in this litigation.

RMA supports Appellant's position in this matter. As discussed more fully below, the decision of the trial court improperly imposes liability upon passive debt buying companies like LVNV who have done no more than

rely upon multiple written opinions of the Massachusetts Division of Banks (the "Division") advising them that they are not an entity subject to licensure under the Massachusetts Debt Collection Practices Act ("MDCPA"). Beyond its opinions, it has been the Division's long-standing practice of not accepting licensing applications from entities like LVNV. See *Amicus Curiae* Brief of Massachusetts Division of Banks, p. 3 ("Division's Brief") (noting that until this matter reached the appellate court, when a passive debt buying company submitted a license application, the Division "would not process such application." (emphasis in the original)).

It is a great injustice to impose liability upon companies like LVNV who followed the directive of the Division's opinions and it causes significant harm to RMA's passive debt buying members.

ISSUES PRESENTED

"Whether a company must register as a 'debt collector' pursuant to the Fair Debt Collections Practice Act, G.L. c. 93, § 24A, where the company derives its income from collecting consumer debt but uses an intermediary company to conduct the collection activity; whether, where a company that is required to

register does not do so in reliance on the advisory opinions of the agency responsible for supervising and licensing debt collectors – in this case, the Division of Banks – the failure to register constitutes a violation of G.L. c. 93A.”⁴

RMA also adopts the issues presented in the Appellant’s Brief (“Brief”). Brief, pp.1-2.

**STATEMENT OF THE CASE AND
STATEMENT OF FACTS**

RMA adopts the statement of the case and statement of facts sections in the Brief. Brief, pp.5-9.

ARGUMENT

It was error for the trial court to conclude that LVNV Funding, LLC (“LVNV” or “Appellant”), a passive debt buyer, was required to obtain a debt collection license from the Massachusetts Division of Banks (the “Division”). For more than a decade, the Division has taken the position that passive debt buyers are exempt from the licensing statute and, in fact, has not accepted license applications from passive debt buyers during that time. As discussed below, the Division’s opinion is

⁴ Amicus Announcements from September 2016 to August 2017, publicly available at <https://www.mass.gov/service-details/amicus-announcements-from-september-2016-to-august-2017>.

reasonable when considering the purpose of the Massachusetts Debt Collection Practices Act, G.L. c. 93, § 24 *et. seq.* ("MDCPA").

Moreover, the Division's interpretation is consistent with the long-standing regulatory scheme implemented by the Legislature, the Division, and the Massachusetts Attorney General (the "AG") to collectively enforce and regulate the Commonwealth's debt collection laws. The trial court's failure to afford substantial deference to the Division's interpretation of the MDCPA, a statute it is charged with regulating and enforcing, was a fatal error that must be rectified and reversed.

Finally, it is fundamentally unjust to impose liability upon LVNV. The Division's practice was to not accept license applications from passive debt buying companies like LVNV.

I. The Division Has Consistently Interpreted the Massachusetts Licensing Statute to Exempt Passive Debt Buyers.

The Division is tasked with regulating and licensing "debt collectors" in Massachusetts. G.L. c. 93, § 24A(d) ("The commissioner may from time to time establish regulation pertaining to the conduct of the business of a debt collector. . . as he considers

necessary"); 209 CMR 18.00 et. seq. The Division has consistently and unequivocally opined that passive debt buyers are not required to be licensed pursuant to G.L. c. 93, § 24A. Specifically, the Division's October 13, 2006 Opinion Letter expressly exempts passive debt buyers from the Division's licensure requirements. See *Smith v. Winter Place, LLC*, 447 Mass. 363, 367-368 (2006) (Advisory Opinions are provided the same deference as Regulation). Therein, the Division stated:

It is the position of the Division that a debt buyer who purchases debt in default but is not directly engaged in the collection of these debts is not required to obtain a debt collector license provided that all collection activity performed on behalf of such debt buyer is done by a properly licensed debt collector in the Commonwealth or an attorney-at-law licensed to practice in the Commonwealth.

Dorrian v. LVNV Funding, LLC, 2017 Mass. Super. LEXIS 34, *7 (March 30, 2017) quoting Advisory Opinion 06-060, effective October 2, 2006.

Similarly, as the trial court noted, the Division's official website defines a passive debt buyer as:

A passive debt buyer purchases delinquent debts for investment purposes only and does not take part in any activities to directly collect on the debt. Commonly, the "passive" debt buyer hires either a licensed debt

collector or any attorney to directly collect the purchased debts. A "passive" debt buyer is not required to obtain a debt collector license in Massachusetts if the collections are done by a properly licensed debt collector or an attorney licensed to practice law in the Commonwealth.

Dorrian, 2017 Mass. Super. LEXIS 34, at *10-11.

That a passive debt buyer does not require licensure has been the Division's position for more than a decade and continues through today. See <https://www.mass.gov/service-details/debt-collections>.

("Licenses are not required for passive debt buyers if a licensed debt collector or an attorney collects the debt.") (last accessed on December 19, 2017).

As discussed in detail below, the Division's interpretation of the licensing requirement is logical when viewed in relation to the purpose of the MDCPA and the regulatory scheme implemented by the agencies charged with enforcing the debt collection laws in Massachusetts. Specifically, under the Massachusetts debt collection laws, passive debt buyers are creditors regulated by the AG, whereas "debt collectors," the entities that interact with Massachusetts residents, are regulated and licensed by the Division. See, 940 CMR 703; 209 CMR 18.02. The Division's opinion reflects its interpretation of the MDCPA as well as the Division's

belief that its "examination practices would be inapplicable to passive debt buyers, who, for example, do not interact directly with consumers." Division's Brief, p. 2.

II. The Court Must Give Substantial Deference to the Division's Reasonable Interpretation of G.L. c. 93, §§ 24 & 24A.

It is well settled in Massachusetts that courts must give "substantial deference to a reasonable interpretation of a statute by the administrative agency charged with its administration enforcement..." *Water Dept. of Fairhaven v. Dept. Env't'l Prot.*, 455 Mass. 740, 744 (2010). An agency's interpretation of its own regulation should only be disturbed if "it is 'patently wrong, unreasonable, arbitrary, whimsical, or capricious.'" *Goldberg v. Bd. of Health*, 444 Mass. 627, 636 (2005) (internal citations omitted). "[Courts] accord substantial deference to the agency's regulations and 'apply all rational presumptions in favor of validity of the administrative action and [do] not declare it void unless its provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate." *Biogen IDEC MA, Inc. v. Treasurer Gen.*, 454 Mass. 174, 187 (2009) citing *Consolidated Cigar Corp. v. Department of Pub. Health*,

372 Mass. 844, 855 (1977). "Where the [agency's] statutory interpretation is reasonable,. . .the court should not supplant [its] judgment." *Massachusetts Med. Soc. v. Commissioner of Ins.*, 402 Mass. 44, 62 (1998); *Teamsters Joint Council No. 10 v. Dir. Of Dep't of Labor*, 447 Mass. 100, 110 (2006) (Massachusetts courts should not "impose [their] own judgment where an agency's interpretation of a statute is reasonable.").

"The party challenging an agency's interpretation of its own rules has a formidable burden of showing that the interpretation is not rational." *Ten Local Citizen Grp. v. New England Wind, LLC*, 457 Mass. 222, 228 (2010). "In assessing the reasonableness of an agency's policy, 'it is unimportant whether [the court] would have come to the same interpretation of the statute as the agency.'" *Biogen IDEC MA, Inc. v. Treasurer & Receiver Gen.*, 454 Mass. 174, 187 (2009) citing *Goldberg*, 444 Mass. at 633. It is only "where the agency's interpretation is 'contrary to plain language of the statute and its underlying purpose'" that deference is unwarranted. *Swift v. Autozone, Inc.*, 441 Mass. 443, 450 (2004) (internal citations omitted).

Here, the Division reasonably interpreted the licensing statute to exclude passive debt buyers. As

discussed above, the Division's interpretation is consistent with the goal of the MDCPA and the regulatory scheme implemented to regulate debt collectors and creditors in the Commonwealth. The Division's licensure of debt collectors serves to facilitate its examination of their direct interactions with consumers. Division's Brief, p. 2. The Division reasonably determined that its examination practices are "inapplicable" to entities such as LVNV who do not have direct interactions with consumers. *Id.* LVNV, the Division determined, is not required to be licensed "provided that all collection activity performed on [its] behalf . . . is done by a properly licensed debt collector in the Commonwealth or an attorney-at-law licensed to practice in the Commonwealth." *Dorrian*, 2017 Mass. Super. LEXIS 34 at *7 quoting Advisory Opinion 06-060, effective October 2, 2006. As a practical matter, the Division has no reason to license an entity which has no direct collection communications with consumers. Division's Brief, p. 2. Instead, it examines direct engagements between consumers and licensed debt collectors hired by passive debt buying companies. *Id.*

However, the trial court failed to give the Division's reasonable interpretation the "substantial

deference" required. Multiple other courts have relied on the Division's interpretation in determining that passive debt buyers do not need to obtain a license, signifying that the Division's interpretation is reasonable and worthy of substantial deference.

Requiring passive debt buyers to obtain a license would place an unnecessary burden on the Division, requiring it to regulate entities that do not interact with consumers and that are already regulated by the AG as creditors under 920 CMR 7.03. This duplicative regulation contemplated by the trial court is inefficient and a waste of limited and valuable resources.

i. The Appeals Court and Superior Court Have Deferred to the Division's Interpretation of G.L. c. 93, §§ 24 & 24A.

The Massachusetts Appeals Court and Superior Court have deferred to the Division's interpretation of G.L. c. 93, §§ 24 & 24A.

In *Advantage Assets Inc. II v. Oyegbola*, No. 09-P-973, 2010 Mass. App. Unpub. LEXIS 654 (Mass. App. Ct. June 10, 2010), the Appeals Court affirmed that passive debt buyers are not required to obtain a license from the Division. Although the opinion was issued pursuant to Rule 1:28, it demonstrates that courts in the

Commonwealth have deemed the Division's interpretation to be reasonable.

In *Advantage Assets Inc. II v. Oyegbola*, No. 06-00893, 2009 WL 3508851 (Mass. Super. Ct. March 31, 2009), the trial court undertook an analysis "to determine whether the [licensing statute] required [the plaintiff] to obtain a license from the Commissioner of Banks." After analyzing the statute and its related regulations, the court found that the plaintiff had purchased the defendant's debt and retained a licensed attorney to perform the direct debt collection activities. "As such, [the plaintiff] acted as a passive debt buyer and had no obligation to obtain a debt collector's license." *Id.*, at *2.

The Appeals Court affirmed the trial court's decision. See *Advantage Assets Inc. II v. Oyegbola*, 2010 Mass. App. Unpub. LEXIS 654, *7. After addressing the jurisdictional issues presented on appeal, the Appeals Court undertook to address the merits of each of the defendant's arguments, including that the plaintiff was required to be licensed as a debt collector. The Appeals Court stated that the trial court "accurately and thoroughly disposed of each of the alleged grounds for relief from the original judgment confirming the award.

Therefore, even if [the defendant] were entitled to present those contentions to either the Superior Court or to this court upon appeal, they would not prevail." *Id.* at *3. On August 3, 2010, the Supreme Judicial Court denied any further review. See *Advantage Assets Inc. II v. Oyegbola*, 457 Mass. 1107 (2010).

The holdings in *Asset Advantage* demonstrate that courts in the Commonwealth have found the Division's interpretation of the licensing statute to be reasonable and worthy of substantial deference. Accordingly, the Division's long-standing position that passive debt buyers do not fall under the licensure authority of the Division should be upheld and enforced by the courts.

ii. Federal Courts Analyzing Massachusetts Law Have Also Relied on the Division's Reasonable Interpretation of the Licensing Statute in Determining that Passive Debt Buyers Are Not Subject to Licensure.

The First Circuit Court of Appeals has also reasonably relied on the Division's opinions, noting that passive debt buyers do not need to be licensed in Massachusetts. In *Pilalas v. Cadle Co.*, 695 F.3d 12 (1st Cir. 2012), the First Circuit stated:

Standing alone, passively receiving a payment is seemingly not within the Massachusetts statute. Although the term "collect" could be extended from demanding payment to merely receiving it, see, e.g., Collins English

Dictionary (10th ed. 2009), passive receipt does not involve the vices of harassment that the statute aims to suppress and, more important, the Massachusetts banking authorities who enforce the statute have read it more narrowly, explaining that "a debt buyer who purchases debt in default but is not directly engaged in the collection of these purchased debts is not required to obtain a debt collector license provided that all collection activity performed on behalf of such debt buyer is done by a properly licensed debt collector in the Commonwealth or an attorney-at-law licensed to practice law in the Commonwealth." Mass. Div. of Banks, Op. Letter 06-060 (Oct. 13, 2006) (second emphasis added).

Pilalas, 695 F.3d at 16.

Again, the First Circuit's reliance on the Division's interpretation indicates that it is worthy of substantial deference. Moreover, as discussed below, the *Pilalas* decision also demonstrates that requiring passive debt buyers to be licensed would do nothing to further the objectives of the MDCPA since passive debt buyers do not interact with debtors. See *id.*, at 16 (observing that the purpose of the Legislature's licensing requirement is to bring "non-exempt debt collectors within a regulatory regime, primarily under the supervision of the Massachusetts banking regulators" and to "curb the incessant telephone calls, mailings, and even home visits associated with aggressive debt collection.").

III. The Trial Court Erred in Concluding the Licensing Statute is Clear and Unambiguous; Thus, the Division's Opinions Should be Afforded Substantial Deference.

The trial court's determination that G.L. c. 93, § 24 is "quite specific in its definition of 'debt collector'. . ." is belied by the fact that multiple courts in the Commonwealth, as well as others, have interpreted the statute differently than the trial court.

The trial court erred by failing to consider decisions that actually analyzed Massachusetts law, such as *Advantage Assets* and *Pilalas*, and reasonably concluded that passive debt buyers are not required to obtain a debt collector license in Massachusetts. "Given the two equally plausible readings of the statutory language, [courts] defer to [the agency's] reasonable interpretation." *Town of Falmouth v. Civil Serv. Comm'n*, 447 Mass. 814, 821 (2006). In doing so, the Court is "guided by the familiar principle that "[a] state administrative agency in Massachusetts has considerable leeway interpreting a statute it is charged with enforcing." *Nuclear Metal, Inc. v. Low-Level radioactive Waste Mgt. Bd.*, 421 Mass. 196, 211 (1995). "In reviewing such an interpretation, '[the court] must apply all

rational presumptions in favor of the validity of the administrative action and not declare it void unless its provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate" *Town of Falmouth*, 447 Mass. at 821-822 citing *Massachusetts Fed'n of Teachers, AFT, AFL-CIO v. Board of Educ.*, 436 Mass. 763, 771 (2002).

The fact that several courts have interpreted the licensing statute differently than the trial court indicates that the statute is ambiguous and open to multiple interpretations. As such, this statutory language must be construed narrowly. See *Felix A. Marino Co. v. Commissioner of Labor & Indus.*, 426 Mass. 458, 461 (1998) (holding that ambiguity in statutory scheme including criminal penalties would have permitted court to "construe [the] statute narrowly."); see also G.L.c. 93, § 28 (establishing criminal penalties for violation of G.L. c. 93, § 24).

In these circumstances, Appellees cannot credibly maintain that the Division's interpretation is "patently wrong, unreasonable, arbitrary, whimsical, or capricious." *Goldberg*, 444 Mass. at 636. The Division's interpretation is reasonable. Accordingly, the trial court erred in failing to defer to the Division's

reasonable interpretation that passive debt buyers are not required to be obtain a debt collection license in Massachusetts.

IV. Passive Debt Buyers are Creditors, Not Debt Collectors, Regulated by the Massachusetts Attorney General.

Passive debt buyers are creditors, not debt collectors. The AG is tasked with regulating the collection of debt by creditors in Massachusetts. See, e.g., 940 CMR 7.00 *et seq.* "The purpose of 940 CMR 7.00 is to establish standards, by defining unfair or deceptive acts or practices, for the collection of debts from persons within the Commonwealth of Massachusetts." 940 CMR 7.01. The regulations expressly prohibit unfair and deceptive acts by creditors. See, e.g., 940 CMR 7.04-7.08. The AG defines a creditor as:

Creditor means any person and his or her agents, servants, employees, or attorneys engaged in collecting a debt owed or alleged to be owed to him or her by a debtor and shall also include a buyer of delinquent debt who hires a third party or an attorney to collect such debt provided, however, that a person shall not be deemed to be engaged in collecting a debt, for the purpose of 940 CMR 7.00, if his or her activities are solely for the purpose of serving legal process on another person in connection with the judicial enforcement of a debt.

940 CMR 7.03

Significantly, the AG's definition of a creditor includes "buyer[s] of delinquent debt[,]" such as passive debt buyers, "who hire[] a third party or an attorney to collect such debt..." *Id.* Similarly, the Division defines a creditor as:

"Creditor", any person who offers or extends credit creating a debt or to whom a debt is owed, but the term shall not include a person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of the debt for another.

G.L. c. 93, § 24.

Passive debt buyers are entities to which a "debt is owed," but do not "facilitat[e] the collection of the debt **for another.**" G.L. c. 93, § 24, "Creditor" (emphasis added). Instead, passive debt buyers retain third party licensed debt collectors or licensed attorneys to collect the debts they purchased. As noted by the Division, passive debt buyers:

purchase[] debts for investment purposes only. Passive debt buyers do not directly collect on the debt. Passive debt buyers hire a licensed debt collector or attorney to collect the purchased debts. Licenses are not required for passive debt buyers if a licensed collector or an attorney collects the debt.

Publicly available at <https://www.mass.gov/service-details/debt-collections> (last accessed December 19, 2017).

Therefore, passive debt buyers are creditors, not "debt collectors," under the AG's regulations and the MDCPA, and do not fall under the statutory or regulatory requirement to obtain a license from the Division. G.L. c. 93, § 24A (statute states that "[n]o person shall directly or indirectly engage in the commonwealth in the business of a **debt collector** . . . without first obtaining from the commissioner a license to carry on the business . . .") (emphasis added).

The fact that passive debt buyers are creditors subject to the AG's regulations is consistent with the long-standing regulatory relationship between the AG and Division, and in addition to the statutory language explains why the Division has consistently opined that passive debt buyers are not "debt collectors" under the MDCPA. Specifically, the AG regulates creditors, which expressly includes passive debt buyers, and the Division licenses and regulates "debt collectors." The fact that passive debt buyers have not been (and in fact could not have been (Division's Brief, p. 3)) licensed by the Division, however, does not protect them from liability for engaging in unfair or deceptive acts or practices in the relation to the collection of debt in the

Commonwealth. Instead, passive debt buyers are regulated by the AG and subject to strict penalties for engaging in any unfair or deceptive acts related to the debts they purchase.⁵

V. The AG's and Division's Interpretations are Reasonable in Relation to the Purpose and Enforcement of the MDCPA and Other Debt Collection Regulations.

That passive debt buyers are creditors regulated by the AG, but are not required to be licensed by the Division, is logical considering the purpose of the licensing requirement - "to curb the incessant telephone calls, mailings, and even home visits associated with aggressive debt collection." *Pilalas v. Cadle Co.*, 695 F.3d at 16. "Standing alone, passively receiving a payment is seemingly not within the Massachusetts statute. Although the term "collect" could be extended from demanding payment to merely receiving it [], passive receipt does not involve the vices of harassment that the statute aims to suppress and, more important, the Massachusetts banking authorities who enforce the statute have read it more narrowly. . ." *Id.*

⁵ Passive debt buyers would also be subject to penalties under the MDCPA if they cross the line and directly engaged in the collection of debt.

Requiring passive debt buyers to obtain a license would do nothing to advance the goals of the MDCPA since they do not have any contact with debtors in Massachusetts. Instead, passive debt buyers retain licensed debt collectors or licensed attorneys to attempt to recover amounts owed by Massachusetts debtors. The Division recognized this long ago, which is why they have advised for more than a decade that passive debt buyers are not required to obtain a license and why it has not processed applications from passive debt buying companies. See Division's Brief, p. 3.

The AG and Division work hand in hand to properly regulate creditors (including passive debt buyers) and debt collectors, respectively. Passive debt buyers have not been flying under the radar or operating under some loophole as consumer attorneys would like the Court to believe. Instead, passive debt buyers have, at all relevant times, been regulated by the AG and subject to severe penalties for engaging in any unfair or deceptive acts or practices. The only state body that has not been consistent with this regulatory scheme is the trial court. Accordingly, the decision of the trial court must be reversed and the long-standing position that passive

debt buyers are not required to be licensed reinstated and officially recognized by the courts.

VI. It Would be Fundamentally Unjust to Punish Passive Debt Buyers for Reasonably Relying on The Division's Opinions.

It would be fundamentally unfair to punish passive debt buyers for reasonably relying on the Division's multiple opinions stating that they did not need to obtain a debt collector license. This is especially true given the fact that passive debt buyers could not have possibly obtained a license even if they submitted an application. Prior to the trial court's ruling, the Division routinely rejected license applications from passive debt buyers. See Exhibit "A", Letter dated July 24, 2017, from Merrily S. Gerrish, Deputy Commissioner of Banks and General Counsel, Massachusetts Division of Banks ("[T]he Division has not previously accepted license applications from passive debt buyers . . ."); Division's Brief, p.3 (The division "*would not process such application.*" (emphasis in the original)). Any passive debt buying company seeking to obtain licensure by the Division of Banks simply could not do so because the application would not be accepted. *Id.*

The trial court's decision is unjust because it punishes passive debt buyers who have made every effort

to comply with the law. The trial court's decision must be reversed because "[t]his is peculiarly the duty of the courts where such decision works its injustice by impairing the personal rights of the citizen, or by subjecting him to burdens and penalties which he never justly incurred." *Commonwealth v. Holder*, 9 Gray 7, 8 (Mass. 1857).

The injustice created by the trial court's decision far outweighs any benefit to the public. Residents of Massachusetts do not suffer any damages solely from a passive debt buyer not be licensed by the Division. This is evidenced by the fact that the trial court noted:

These lawsuits are notable in that the only conduct alleged to be unlawful here is LVNV's failure to obtain a license from the Division of Banks. That is, these two cases do not claim that LVNV - or any entity acting on its behalf - has harassed any debtor, or made any false misrepresentations in an attempt to collect on a debt...Instead, the lawsuits focus exclusively on the fact that LVNV is unlicensed.

Dorrian, 2017 Mass. Super LEXIS at *27.

It is difficult to explain how plaintiffs would have been in any different position had LVNV been licensed, given that all the interactions with them would be carried out by persons licensed by the Division. Nonetheless, the trial court seeks to punish passive debt buyers for following the long-standing Division

guidance and practice, not for any actual wrong doing. If the Court believes that passive debt buyers should in fact be licensed, absent a change in the statutory authority, that policy should be employed moving forward, not retroactively. However, since passive debt buyers were not required to be licensed in the past and, in fact, could not have obtained a license, it would be fundamentally unfair to enforce the trial court's decision.

CONCLUSION

For the foregoing reasons, RMA respectfully asks this Court to reverse the decision of the trial court granting summary judgment in Plaintiff's favor on Count I. In the alternative if this Court finds that the Division's interpretation of the MDCPA was incorrect, then it should apply the new interpretation prospectively.

Respectfully submitted,

RMA INTERNATIONAL, INC.

By its attorneys,

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Dated: December 21, 2017

CERTIFICATON UNDER RULE 16 OF MASS.R.A.P.

Now comes, Donald S. Maurice, Jr., counsel for the RMA International, Inc., and he certifies that the Amicus Curiae submitted herewith complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Mass.R.A.P. 16(a) (6) (pertinent findings or memoranda of decision); Mass.R.A.P. 16(e) (references to the record); Mass.R.A.P. 16(f) (reproduction of statutes, rules, regulations); Mass.R.A.P. 16(h) (length of brief); Mass.R.A.P. 18 (appendix to the briefs); and Mass.R.A.P. 20 (form of briefs, appendices and other papers) .

I further attest, that this brief is being filed under rule 13(a), and that the day of mailing is within the time fixed for ling by the court.

Donald S. Maurice, Jr.

Dated: December 21, 2017

ADDENDUM

Text of

G.L. c. 93, § 24
G.L. c. 93, § 24A
G.L. c. 93, § 28
209 CMR 18.02
940 CMR 7.01
940 CMR 7.03
940 CMR 7.04

[ALM GL ch. 93, § 24](#)

Current through Act 109 of the 2017 Legislative Session.

*Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT
[Chapters 1 - 182] > TITLE XV REGULATION OF TRADE [Chapters 93 - 110H] > Chapter 93
Regulation of Trade and Certain Enterprises*

§ 24. Definitions for §§ 24 Through 28.

As used in sections 24 to 28, inclusive the following words shall have the following meanings, unless the context requires otherwise:—

“Commissioner”, the commissioner of banks.

“Consumer”, any natural person obligated or allegedly obligated to pay any debt.

“Creditor”, any person who offers or extends credit creating a debt or to whom a debt is owed, but the term shall not include a person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of the debt for another.

“Debt”, any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not the obligation has been reduced to judgment.

“Debt collector”, any person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of a debt, or who regularly collects or attempts to collect, directly or indirectly, a debt owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (f), debt collector shall include a creditor who, in the process of collecting his own debt, uses any name other than his own which would indicate that a third person is collecting or attempting to collect the debt. Debt collector shall also include a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the enforcement of security interests. Debt collector shall not include:—

(a) an officer or employee of a creditor while, in the name of the creditor, collecting debts for the creditor;

- (b)** a person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for a person to whom it is so related or affiliated and if the principal business of the person is not the collection of a debt;
- (c)** an officer or employee of the United States or a state of the United States to the extent that collecting or attempting to collect a debt is in the performance of his official duty;
- (d)** a person while serving or attempting to serve legal process on another person in connection with the judicial enforcement of a debt;
- (e)** a nonprofit organization which, at the request of a consumer, performs bona fide consumer credit counseling and assists the consumer in the liquidation of debts by receiving payments from the consumer and distributing the amounts to creditors;
- (f)** a person collecting or attempting to collect a debt owed or due or asserted to be owed or due another to the extent the activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by the person; (iii) concerns a debt which was not in default at the time it was obtained by the person; or (iv) concerns a debt obtained by the person as a secured party in a commercial credit transaction involving the creditor;
- (g)** attorneys-at-law collecting a debt on behalf of a client; and
- (h)** an agent or independent contractor employed for the purpose of collecting a charge or bill owed by a tenant to a landlord or owed by a customer to a corporation subject to the supervision of the department of public utilities or the department of telecommunications and cable or the division of insurance insofar as the person collects charges or bills only for the landlord or supervised corporations.

“Register”, filing a notice with the commissioner on a form prescribed by the commissioner that notifies the commissioner of the intent to engage in the activities of a third party loan servicer in this state and the payment of a fee required under this act, along with the other documents, proofs, and fees required by the commissioner.

“Servicing”, receiving a scheduled periodic payment from a borrower pursuant to the terms of a loan, including amounts for escrow accounts, and making the payments to the owner of the loan or other third party of

principal and interest and other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the servicing loan document or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower.

“Third party loan servicer”, a person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of servicing a loan directly or indirectly, owed or due or asserted to be owed or due another.

History

[2003, 130](#); [2008, 522, § 7](#).

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[ALM GL ch. 93, § 24A](#)

Current through Act 109 of the 2017 Legislative Session.

*Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT
[Chapters 1 - 182] > TITLE XV REGULATION OF TRADE [Chapters 93 - 110H] > Chapter 93
Regulation of Trade and Certain Enterprises*

§ 24A. Debt Collector License Required; Third Party Loan Servicer Registration Required.

- (a)** No person shall directly or indirectly engage in the commonwealth in the business of a debt collector, or engage in the commonwealth in soliciting the right to collect or receive payment for another of an account, bill or other indebtedness, or advertise for or solicit in print the right to collect or receive payment for another of an account, bill or other indebtedness, without first obtaining from the commissioner a license to carry on the business, nor unless the person or the person for whom he or it may be acting as agent has on file with the state treasurer a good and sufficient bond.
- (b)** A person shall not directly or indirectly engage in the commonwealth in the business of a third party loan servicer without registering with the commissioner. A registrant shall not be required to comply with sections 24F to 27, inclusive.
- (c)** This section shall not apply to a bank as defined in [section 1 of chapter 167](#), a national banking association, federal savings bank, federal savings and loan association, federal credit union, or any bank, trust company, savings bank, savings and loan association or credit union organized under the laws of any other state of the United States, or any subsidiary of the above; but except as provided herein, this section shall apply to a subsidiary or affiliate, as defined by the commissioner, of an exempted entity and of a bank holding company established in accordance with state or federal law. The commissioner may adopt, amend or repeal rules and regulations, to aid in the administration and enforcement of this chapter.
- (d)** The commissioner may from time to time establish regulations pertaining to the conduct of the business of a debt collector or a third party loan servicer as he considers necessary.

History

[2003, 130.](#)

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[ALM GL ch. 93, § 28](#)

Current through Act 109 of the 2017 Legislative Session.

*Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT
[Chapters 1 - 182] > TITLE XV REGULATION OF TRADE [Chapters 93 - 110H] > Chapter 93
Regulation of Trade and Certain Enterprises*

§ 28. Penalties.

Any person doing any business for which a bond is required by section twenty-four or any member of a partnership or officer of an association or corporation doing such business shall, upon written demand, render a true and complete account to the person, partnership, association or corporation from whom any account, bill or indebtedness was taken for collection and shall turn over to or for such person, partnership, association or corporation the proceeds of such collection within thirty days after such written demand and shall return any claim or claims upon the written demand of such person, partnership, association or corporation within thirty days after such written demand and after the tender of any amounts, if any, as may be due and owing from such person, partnership, association or corporation to the agency.

Whoever fails to comply with any provision of this section or sections twenty-four to twenty-seven, inclusive, or any regulation promulgated in accordance with the provisions of section twenty-four, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than three months, or both.

Failure to comply with any provision of this section or of section twenty-four to twenty-seven, inclusive, or any regulation promulgated in accordance with the provisions of section twenty-four shall constitute an unfair or deceptive act or practice under the provisions of paragraph (a) of section two of chapter ninety-three A.

History

1910, 656, § 7; 1919, 101, § 2; 1970, 883, § 2.

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209 CMR 18.02

This document reflects all regulations in effect as of 11/17/2017

Code of Massachusetts Regulations > TITLE 209: DIVISION OF BANKS AND LOAN AGENCIES > CHAPTER 18.00: CONDUCT OF THE BUSINESS OF DEBT COLLECTORS AND LOAN SERVICERS

18.02: Definitions

Applicant means any debt collector who is required to be licensed under the provisions of [M.G.L. c. 93, § 24A](#). The term shall include partners or members, if the applicant is a partnership or association, and officers, directors and principal employees, if the applicant is a corporation.

Commissioner means the Commissioner of Banks.

Communication or **Communicating** means conveying information regarding a debt directly or indirectly to any person through any medium.

Consumer means any natural person obligated or allegedly obligated to pay any debt.

Consumer Reporting Agency means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties under [M.G.L. c. 93, §§ 50 through 68](#).

Creditor means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

Debt means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not the obligation has been reduced to judgment.

Debt Collector means any person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of a debt, or who regularly collects or attempts to collect, directly or indirectly, a debt owed or due or asserted to be owed or due another. Debt collector shall also include any person who buys or acquires debt that

is in default at the time of purchase or acquisition and who seeks to collect such debt directly. Notwithstanding the exclusion provided by [209 CMR 18.02: Debt Collector](#)(f), debt collector shall include a creditor who, in the process of collecting his own debt, uses any name other than his own which would indicate that a third person is collecting or attempting to collect the debt. Debt collector shall also include a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the enforcement of security interests. Debt collector shall not include:

- (a) an officer or employee of a creditor while, in the name of the creditor, collecting debts for the creditor;
- (b) a person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for a person to whom it is so related or affiliated and if the principal business of the person is not the collection of a debt;
- (c) an officer or employee of the United States or a state of the United States to the extent that collecting or attempting to collect a debt is in the performance of his official duty;
- (d) a person while serving or attempting to serve legal process on another person in connection with the judicial enforcement of a debt;
- (e) a nonprofit organization which, at the request of a consumer, performs *bona fide* consumer credit counseling and assists the consumer in the liquidation of debts by receiving payments from the consumer and distributing the amounts to creditors;
- (f) a person collecting or attempting to collect a debt owed or due or asserted to be owed or due another to the extent the activity:
 - 1. is incidental to a *bona fide* fiduciary obligation or a *bona fide* escrow arrangement;
 - 2. concerns a debt which was originated by the person;
 - 3. concerns a debt which was not in default at the time it was obtained by the person; or
 - 4. concerns a debt obtained by the person as a secured party in a commercial credit transaction involving the creditor;
- (g) attorneys-at-law licensed to practice law in the Commonwealth who are collecting a debt on behalf of a client; and

- (h) an agent or independent contractor employed for the purpose of collecting a charge or bill owed by a tenant to a landlord or owed by a customer to a corporation subject to the supervision of the Department of Telecommunications and Energy or the Division of Insurance insofar as the person collects charges or bills only for the landlord or supervised corporations.

Licensee means any person who is licensed by the Commissioner as a debt collector under [M.G.L. c. 93, §§ 24](#) through [28](#) and [209 CMR 18.00](#).

Location Information means a consumer's place of abode and his telephone number at such place, or his place of employment.

Net Worth means the applicant's or licensee's total assets less total liabilities, omitting the following assets:

- (a) that portion of an applicant's assets pledged to secure obligations of any person or entity other than that of the applicant;
- (b) any asset due from officers or stockholders of the applicant or persons in which the applicant's officers or stockholders have an interest;
- (c) an amount in excess of the lower of the cost or fair market value of mortgage loans in foreclosure, or real property acquired through foreclosure;
- (d) an investment shown on the balance sheet in joint ventures, subsidiaries, or affiliates, which is greater than the fair market value of the assets;
- (e) goodwill or value placed on insurance renewals or other similar intangible value;
- (f) organization costs;
- (g) the value of servicing contracts not determined in accordance with the Financial Accounting Standards Codification Topic 860 "Transfers and Servicing"; and
- (h) any other intangible asset, as may be determined by the Commissioner.

Person means a natural person or an organization, including a corporation, limited or general partnership, limited liability partnership, limited liability company, joint stock company, trust, business trust, profit and not-for-profit incorporated or unincorporated associations, and any other entity authorized under the laws of any state of the United States or any country.

Principal Employee means any person with the power to exercise, directly or indirectly, managerial, supervisory, or policy-making authority or such other controlling influence over the management, policies, or operation of the Licensee.

Register means filing a notice with the Commissioner on a form prescribed by the Commissioner that notifies the Commissioner of the intent to engage in the activities of a third party loan servicer in this state and the payment of a fee required under [M.G.L. c. 93, § 24C](#), along with the other documents, proofs, and fees required by the Commissioner.

Servicing means receiving a scheduled periodic payment from a consumer pursuant to the terms of a loan, including amounts for escrow accounts, and making the payments to the owner of the loan or other third party of principal and interest and other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the servicing loan document or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage, servicing includes making payments to the borrower.

Third Party Loan Servicer means a person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is servicing a loan directly or indirectly, owed or due or asserted to be owed or due another.

Statutory Authority

REGULATORY AUTHORITY

[209 CMR 18.00: M.G.L. c. 93, § 24A.](#)

CODE OF MASSACHUSETTS REGULATIONS

End of Document

[940 CMR 7.01](#)

This document reflects all regulations in effect as of 11/17/2017

Code of Massachusetts Regulations > TITLE 940: OFFICE OF THE ATTORNEY GENERAL > CHAPTER 7.00: DEBT COLLECTION REGULATIONS

7.01: Purpose of Regulation

The purpose of [940 CMR 7.00](#) is to establish standards, by defining unfair or deceptive acts or practices, for the collection of debts from persons within the Commonwealth of Massachusetts.

Statutory Authority

REGULATORY AUTHORITY

[940 CMR 7.00](#): [M.G.L. c. 93A, § 2\(c\)](#).

CODE OF MASSACHUSETTS REGULATIONS

940 CMR 7.03

This document reflects all regulations in effect as of 10/20/2017

Code of Massachusetts Regulations > TITLE 940: OFFICE OF THE ATTORNEY GENERAL > CHAPTER 7.00: DEBT COLLECTION REGULATIONS

7.03: Definitions

Communication or **Communicating** means conveying information directly or indirectly to any person through any medium excluding nonidentifying communications.

Creditor means any person and his or her agents, servants, employees, or attorneys engaged in collecting a debt owed or alleged to be owed to him or her by a debtor and shall also include a buyer of delinquent debt who hires a third party or an attorney to collect such debt provided, however, that a person shall not be deemed to be engaged in collecting a debt, for the purpose of [940 CMR 7.00](#), if his or her activities are solely for the purpose of serving legal process on another person in connection with the judicial enforcement of a debt.

Debt means money or its equivalent which is, or is alleged to be, more than 30 days past due and owing, unless a different period is agreed to by the debtor, under a single account as a result of a purchase, lease, or loan of goods, services, or real or personal property, for personal, family or household purposes or as a result of a loan of money which is obtained for personal, family or household purposes whether or not the obligation has been reduced to judgment.

Debtor means a natural person, or his or her guardian, administrator or executor, present or residing in Massachusetts who is allegedly personally liable for a debt.

Nonidentifying Communication means any communication with any person other than the debtor in which the creditor does not convey any information except the name of the creditor and in which the creditor makes no inquiry other than to determine a convenient time and place to contact the debtor.

Person means any natural person, corporation, trust, partnership, incorporated or unincorporated association and any other legal entity; provided, however, that if a creditor comprises or employs more than one natural person, all such individuals shall be deemed to be one and the same "person" with respect to any debt owed or alleged to be owed to such a creditor.

Time-barred Debt means any debt that is not enforceable in a judicial proceeding because the applicable statute of limitations has run.

Statutory Authority

REGULATORY AUTHORITY

[940 CMR 7.00: M.G.L. c. 93A, § 2\(c\).](#)

CODE OF MASSACHUSETTS REGULATIONS

End of Document

940 CMR 7.04

This document reflects all regulations in effect as of 10/20/2017

Code of Massachusetts Regulations > TITLE 940: OFFICE OF THE ATTORNEY GENERAL > CHAPTER 7.00: DEBT COLLECTION REGULATIONS

7.04: Contact with Debtors

- (1) It shall constitute an unfair or deceptive act or practice for a creditor to contact a debtor in any of the following ways:
- (a) Threatening to sell or assign to another the obligation of a debtor with an attending representation or implication that the result of such sale or assignment would be that a debtor would lose any defense to the claim or would be subjected to harsh, vindictive or abusive collection attempts;
 - (b) Threatening that nonpayment of a debt will result in:
 - 1. Arrest or imprisonment of any debtor; or
 - 2. Seizure, garnishment, attachment, or sale of any property or wages of any person or the taking of other action requiring judicial order without informing the debtor that there must be in effect a judicial order permitting such action before it can be taken or unless such action is lawful and the creditor intends to take such action; or
 - 3. Any action that cannot legally be taken or that is not intended to be taken.
 - (c) Using profane or obscene language;
 - (d) Communicating by telephone without disclosure of the name of the business or company of the creditor and without disclosure of the first and last name of the individual making such communication or a first name and a personal identifier for such individual such as a code or alias, provided however, that any such individual utilizing a personal identifier shall only use one such personal identifier at all times and provided that a mechanism is established by the creditor to identify the person using such personal identifier;
 - (e) Causing expense to any debtor in the form of long distance or collect telephone calls, text messaging, download fees, data usage fees, or other similar charges, except the creditor may place non-collect

telephone calls to the debtor's place of residence, cellular telephone, or other telephone number provided by the debtor as his or her personal telephone number, subject to the limitations set forth in [940 CMR 7.04\(1\)\(f\)](#);

- (f) Initiating a communication with any debtor via telephone, either in person or via text messaging or recorded audio message, in excess of two such communications in each seven-day period to either the debtor's residence, cellular telephone, or other telephone number provided by the debtor as his or her personal telephone number and two such communications in each 30-day period other than at a debtor's residence, cellular telephone, or other telephone number provided by the debtor as his or her personal telephone number, for each debt, provided that for purposes of [940 CMR 7.04\(1\)\(f\)](#), a creditor may treat any billing address of the debtor as his or her place of residence, and provided further, that a creditor shall not be deemed to have initiated a communication with a debtor if the communication by the creditor is in response to a request made by the debtor for said communication;
- (g) Placing telephone calls at times known to be times other than the normal waking hours of a debtor, or if normal waking hours are not known, at any time other than between 8:00 A.M. and 9:00 P.M. eastern time;
- (h) Placing any telephone calls to the debtor's place of employment if the debtor has made a written or oral request that such telephone calls not be made at the place of employment, provided, that any oral request shall be valid for only ten days unless the debtor provides written confirmation postmarked or delivered within seven days of such request. A debtor may at any time terminate such a request by written communication to the creditor;
- (i) Failing to send the debtor the following notice in writing within 30 days after the first communication to a debtor at his or her place of employment regarding any debt, provided that a copy of the notice shall be sent every six months thereafter so long as collection activity by the creditor on the debt continues and the debtor has not made a written request as described in [940 CMR 7.04\(1\)\(h\)](#).

NOTICE OF IMPORTANT RIGHTS

YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN DAYS UNLESS YOU

PROVIDE WRITTEN CONFIRMATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE CREDITOR.

- (j) Visiting the household of a debtor at times other than the normal waking hours of such debtor, or if normal waking hours are not known, at any time other than between 8:00 A.M. and 9:00 P.M., eastern time provided however that in no event shall such visits, initiated by the creditor, exceed one in any 30-day period for each debt, excluding visits where no person is contacted in the household, unless a debtor consents in writing to more frequent visits, provided, further, that at all times the creditor must remain outside the household unless expressly invited inside by such debtor; and provided further, that visits to the household of a debtor which are solely for the purpose of repossessing any collateral or property of the creditor (including but not limited to credit cards, drafts, notes or the like), are not limited under [940 CMR 7.04\(1\)\(j\)](#);
 - (k) Visiting the place of employment of a debtor, unless requested by the debtor, excluding visits which are solely for the purpose of repossessing any collateral or property of the creditor;
 - (l) Confronting or communicating in person with a debtor regarding the collection of a debt in a public place, excluding courthouses, the creditor's place of business, other places agreed to by a debtor, offices of an attorney for the creditor, or places where the conversation between the creditor and a debtor cannot be reasonably overheard by any other person not authorized by the debtor;
 - (m) Stating that the creditor will take any action, including legal action, which in fact is not taken or attempted on such debtor's account, unless an additional payment or a new agreement to pay has occurred within the stated time period. For purposes of [940 CMR 7.04\(1\)\(m\)](#), the time period in connection with such statement shall be presumed to expire 14 days from the date the statement is made, unless otherwise indicated by the creditor;
- (2) Subject to applicable law, after notification from an attorney for a debtor that all contacts relative to the particular debt in question should be addressed to the attorney, a creditor may contact the debtor only to perfect or preserve rights against the debtor or collateral securing the debt;

- (3) [940 CMR 7.04\(1\)\(j\)](#) and (1)(m) and (2) shall not apply to telephone, gas and electric utility companies regulated by M.G.L. c. 164 and the Department of Public Utilities, or the Department of Telecommunications and Cable.

Statutory Authority

REGULATORY AUTHORITY

[940 CMR 7.00](#): [M.G.L. c. 93A, § 2\(c\)](#).

CODE OF MASSACHUSETTS REGULATIONS

End of Document

EXHIBIT

A



COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation
DIVISION OF BANKS

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TERENCE A. MCGINNIS
COMMISSIONER

July 24, 2017

Tamar Yudenfreund
Senior Director of Public Safety
Encore Capital Group, Inc.
311 Camino Del Rio North
Suite 1300
San Diego, CA 92108

Dear Ms. Yudenfreund:

The Division is issuing the following letter memorializing previous discussions regarding Midland Funding LLC ("Midland Funding") and acknowledges receipt of Midland Funding's application for a Massachusetts Debt Collector License submitted on April 19, 2017.

As you are aware, the Division has formally opined in numerous Advisory Opinions, including but not limited to Advisory Opinion 06-060 dated October 13, 2006 and Advisory Opinion Letter 13-020 dated March 4, 2014 (issued in response to an inquiry by Midland Funding), that passive debt buyers such as Midland Funding, who purchase debts in default but are not directly engaged in collection of those debts, are not required to obtain a debt collector license provided that all collection activity performed on behalf of such a debt buyer is done by a licensed debt collector or an attorney-at-law licensed to practice law in the Commonwealth. *See* Division of Banks, Debt Collections, Massachusetts Office of Consumer Affairs & Business Regulation (2017), <http://www.mass.gov/ocabr/banking-and-finance/credit-and-debt/debt-collections/> (confirming that passive debt collectors do not require a debt collector license in Massachusetts subject to the above-referenced qualifications).

The Division has also specifically opined that Midland Funding was not required to obtain a license where its only activity is that it was a named plaintiff in suits against consumers that were filed by attorneys licensed to practice law in Massachusetts and where actual collection activity was undertaken by Midland Credit Management, Inc., a licensed entity. *See* Advisory Opinion Letter 13-020.

Under this framework, the Division had not previously accepted license applications from passive debt buyers such as Midland Funding given its position that a license was not necessary. While the Division still stands by those formal Advisory Opinions and other regulations currently reflecting this position, given the current uncertainty surrounding the applicable licensing requirements in Massachusetts, the Division is currently accepting and processing applications for debt collector licensure from passive debt buyers.

Sincerely,

Merrily S. Gerrish
Deputy Commissioner of Banks
and General Counsel