IN THE MATTER OF:	BEFORE THE MARYLAND STATE COLLECTION AGENCY LICENSING BOARD IN THE OFFICE OF THE COMMISSIONER OF FINANCIAL REGULATION
BRAUFMANN, LEIGHMANN & ASSOCIATES L.L.C. d/b/a BERLINSKY, HUFFMAN AND LEVITT **and** **BRIAN BROWN,** Respondents.	**Case No.: CFR-FY2015-0016**

SUMMARY ORDER TO CEASE AND DESIST AND ORDER TO PRODUCE

WHEREAS, pursuant to the Maryland Collection Agency Licensing Act ("MCALA,"), Business Regulations Article ("BR"), § 7-101 *et seq.*, Annotated Code of Maryland, the State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation (hereinafter, the "Agency") is responsible for licensing and regulating persons engaged in collection agency activities in the State of Maryland (the "State"), and for otherwise enforcing the provisions of MCALA and of the Maryland Consumer Debt Collection Act ("MCDCA"), at Commercial Law Article ("CL"), § 14-201 *et seq.*, Annotated Code of Maryland; and

WHEREAS, the Agency finds grounds to allege that Braufmann, Leighmann & Associates L.L.C. d/b/a Berlinsky, Huffman & Levitt ("B L & Associates) and Brian Brown (collectively, the "Respondents") have engaged in acts or practices constituting violations of MCALA and MCDCA; and the Agency finds that action under Financial Institutions Article ("FI"), § 2-115, Annotated Code of Maryland, is appropriate.

NOW, THEREFORE, the Agency has determined, for the reasons set forth below, that the charges be brought against Respondents for violations of Maryland law.

FACTUAL ALLEGATIONS

1. In September 2014, the Agency began an investigation into the activities of the Respondents as a result of a consumer complaint.

2. The Agency's investigation determined that Respondent B L & Associates is a Georgia limited liability company. B L & Associates has not registered to conduct business in the State of Maryland with the State Department of Assessments and Taxation, nor has it registered under any of its trade names.

3. The Agency's investigation determined that Respondent Brian Brown is the owner, director, officer, manager, employee and/or agent of Respondent B L & Associates.

4. None of the Respondents have ever been licensed as a collection agency in Maryland.

5. The Agency's investigation revealed that sometime in September or October 2013, Maryland Consumer [redacted] ("Consumer A") received a call from Respondents, who identified themselves as Berlinsky, Huffmann and Levitt. Respondents informed Consumer A that they were attempting to collect on a payday loan from 2006. Respondents were able to convince Consumer A that they were a legitimate company because they had personal information regarding where she currently banked, where she had banked in the past, and contact information both for Consumer A and her parents. Respondents were also coercive in their communications, yelling at Consumer A and threatening her with arrest and/or service of process if she did not allow Respondents to debit her bank account. As a result, Consumer A agreed to pay Respondents $433.00 to settle the debt and provided Respondents with her bank account information. Respondents debited $105.00 from Consumer A's bank account on October 25,

2013 and an additional $328.00 on November 18, 2013 (for a total of $433.00). On December 19, 2013, even though they had already debited Consumer A's account, Respondents sent Consumer A an email confirming the payment arrangement agreement and asking for her to sign and return the agreement. On December 19, 2013, Respondents also sent Consumer A an email indicating that her account had been settled in full.

LEGAL AUTHORITY

6. BR §7-101 provides, in part, the following definitions:

> (b) *Board.*- "Board" means the State Collection Agency Licensing Board.
> (c) *Collection agency.*- "Collection agency" means a person who engages directly or indirectly in the business of:
> (1) (i) collecting for, or soliciting from another, a consumer claim; or
> (ii) collecting a consumer claim the person owns, if the claim was in default when the person acquired it;
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> * * *
>
> (d) *Commissioner.*- "Commissioner" means the Commissioner of Financial Regulation.
> (e) *Consumer claim.*- "Consumer claim" means a claim that:
> (1) is for money owed or said to be owed by a resident of the State; and
> (2) arises from a transaction in which, for a family, household, or personal purpose, the resident sought or got credit, money, personal property, real property, or services.
> (f) *License.*- "License" means a license issued by the Board to do business as a collection agency.
> (g) *Licensed collection agency.*- "Licensed collection agency" means a person who is licensed by the Board to do business as a collection agency.

7. Pursuant to BR § 7-201, "[t]here is a State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation in the Department [of Labor, Licensing, and Regulation]." Further, BR § 7-203 provides that, "[t]he Commissioner is chairman of the Board."

8. BR § 7-308 provides, in relevant part, as follows:

> (a) *In general.*- Subject to the hearing provisions of § 7-309 of this subtitle, the Board may reprimand a licensee or suspend or revoke a license if the licensee or any owner, director, officer, member, partner, or agent of the licensee:
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> * * *
>
> (3) in connection with the collection of any consumer claim:
> (i) commits any fraud; or
> (ii) engages in any illegal or dishonest activities;
> (4) knowingly or negligently violates the Maryland Consumer Debt Collection Act;
> * * *
>
> (b) *Multiple licenses.*- If the Board finds that a ground for suspension or revocation of a license applies to more than 1 place of business that the licensee operates, the Board may act against:
> (1) each license of the licensee;
>
> * * *

9. BR § 7-401(a) provides that, "except as otherwise provided in this title, a person may not knowingly and willfully do business as a collection agency in the State unless the person has a license.

10. Pursuant to Md. Code Ann., Com. Law ("CL"), § 14-202(8) of the Maryland Consumer Debt Collection Act ("MCDCA"), at CL § 14-201 *et seq.*, "[i]n collecting or attempting to collect an alleged debt," a debt collector (or "collector") may not "[c]laim, attempt, or threaten to enforce a right with knowledge that the right does not exist.

11. The Fair Debt Collection Practices Act ("FDCPA"), at 15 U.S.C. § 1692 *et seq.*, provides, in relevant part, as follows:

> **§ 1692e. False or misleading representations**
> A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:
> * * *
>
> (2) The false representation of--
> (A) the character, amount, or legal status of any debt; or
> * * *

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

* * *

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

* * *

§ 1692f. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

* * *

12. Persons engaged in unlicensed collection activities involving Maryland consumers are in violation of BR § 7-401(a) of MCALA ("except as otherwise provided in this title, a person may not knowingly and willfully do business as a collection agency in the State unless the person has a license"). Engaging in unlicensed collection activities is also a violation of CL § 14-202(8) of the MCDCA ("[i]n collecting or attempting to collect an alleged debt," a collector may not "[c]laim, attempt, or threaten to enforce a right with knowledge that the right does not exist"). Unlicensed collection activities also violate various provisions of the FDCPA: they constitute false or misleading representations, in violation of 15 U.S.C. § 1692(e)(2) (false representations about the "character, amount, or legal status of any debt), (e)(5) ("[t]he threat to take any action that cannot legally be taken or that is not intended to be taken"), and (e)(10) ("[t]he use of any false representation or deceptive means to collect or attempt to collect any debt"); and they constitute unfair or unconscionable means to collect or attempt to collect a debt,

in violation of 15 U.S.C. § 1692(f)(1) ("the collection of any amount that is not permitted by law.")

13. Pursuant to BR § 7-205 of MCALA, as a result of a hearing, or of providing an opportunity for a hearing, the Agency may issue an order requiring persons to cease and desist from engaging in collection-related violations of the law, may issue a monetary penalty, and may require persons to take affirmative action to correct the violations, including providing restitution to all aggrieved consumers. Additionally, pursuant to Md. Code Ann., Fin. Inst. ("FI"), § 2-115(b), as a result of a hearing, or of providing the opportunity to request a hearing, the Commissioner of Financial Regulation (the "Commissioner") may, in addition to any other authorized actions taken by the Agency, enter a final order to cease and desist, suspend or revoke any collection agency licenses, impose a civil penalty up to $1,000 for a first violation of MCALA, the MCDCA, or of the FDCPA (as violations of MCALA), issue a penalty of up to $5,000 for each subsequent violation, or may take any combination of the aforementioned actions against violators.

14. FI §§ 2-114(a) and (b) set forth the Commissioner's general authority to order the production of information, as well as documents and records, while investigating potential violations of laws, regulations, rules, and orders over which the Commissioner has jurisdiction – which is in addition to the Commissioner's specific investigatory authority set forth in various other Maryland statutes and regulations. Thus, for example, FI § 2-114(a)(2) provides that the Commissioner may "[r]equire … a person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all the facts and circumstances concerning the matter to be investigated." Further, pursuant to FI § 2-114(b), "the Commissioner or an officer designated by the Commissioner may," among other things, "take evidence, and require the production of

books, papers, correspondence, memoranda, and agreements, or other documents or records which the Commissioner considers relevant or material to the inquiry."

15. FI §§ 2-115(a) and (b) set forth the Commissioner's authority to issue summary cease and desist orders, and to take additional actions for violations of laws, regulations, rules, and orders over which the Commissioner has jurisdiction, in addition to taking any other action permitted by law, and subject to a hearing or waiver of hearing, providing as follows:

> (a) *Summary cease and desist orders*.- When the Commissioner determines that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, and that immediate action against the person is in the public interest, the Commissioner may in the Commissioner's discretion issue, without a prior hearing, a summary order directing the person to cease and desist from engaging in the activity, provided that the summary cease and desist order gives the person:
> (1) Notice of the opportunity for a hearing before the Commissioner to determine whether the summary cease and desist order should be vacated, modified, or entered as final; and
> (2) Notice that the summary cease and desist order will be entered as final if the person does not request a hearing within 15 days of receipt of the summary cease and desist order.
> (b) *Other authorized actions for violations*.- When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, the Commissioner may in the Commissioner's discretion and in addition to taking any other action authorized by law:
> (1) Issue a final cease and desist order against the person;
> (2) Suspend or revoke the license of the person;
> (3) Issue a penalty order against the person imposing a civil penalty up to the maximum amount of $1,000 for a first violation and a maximum amount of $5,000 for each subsequent violation; or
> (4) Take any combination of the actions specified in this subsection.

16. The Agency issued an Advisory Notice dated July 20, 2009, which notified all collection agencies licensed to conduct business in Maryland that it was a violation of Maryland law for them to pursue collection actions against Maryland residents for loans that were made by unlicensed entities, and that it was a violation of Maryland law for them to collect on loans that exceeded permissible interest rate caps. This notice was also made available to the general public on the Agency's website at: http://www.dllr.state.md.us/finance/advisories/advisory7-09a.shtml.

CHARGES

17. Respondents knowingly collected consumer debts from Maryland residents without obtaining a license in violation of BR § 7-401.

18. Respondents knowingly collected on the loans made by an unlicensed lender to Maryland consumers even after the Agency issued the Advisory Notice of July 20, 2009, which constitutes a violation of CL §14-202(8).

19. By attempting to collect on usurious loans and loans made by unlicensed entities to Maryland consumers, all of which loans were unenforceable and uncollectible, and by threatening Consumer A with arrest and other legal action in order to coerce then into paying alleged debts, Respondents violated various State and federal laws, including but not limited to the following: the MCDCA, including CL § 14-202 (by claiming, attempting, or threatening to enforce a right with knowledge that the right does not exist, threatening criminal prosecution, contacting a debtor's employer prior to obtaining a final judgment, and communicating with a person in a manner that can be reasonably expected to abuse or harass); the FDCPA, including both 15 U.S.C. § 1692e (by making false or misleading representations, based on conduct which involved making false representations about the character, amount, or legal status of any debt,

and conduct which involved threatening to take any action that cannot legally be taken or that is not intended to be taken), and 15 U.S.C. § 1692f (by engaging in unfair or unconscionable means to collect or attempt to collect any debt, based on conduct which involved collecting any amount not expressly authorized by the agreement or permitted by law); and MCALA, including both BR § 7-308(a)(3)(ii) (by engaging in any illegal or dishonest activities in connection with the collection of a consumer claim, namely the above-referenced violations of the MCDCA and the FDCPA), and BR § 7-308(a)(3)(iii) (by knowingly or negligently violating the MCDCA in connection with the collection of a consumer claim).

20. By engaging in unlicensed collection activities in Maryland without being duly licensed by the Agency, Respondents engaged in unlicensed collection agency activities in violation of BR § 7-401 of MCALA. Further, such unlicensed activities violated CL § 14-202(8) of the MCDCA, as well as 15 U.S.C. §§ 1692(e)(2),(5),(10) and 1692(f)(1) of the FDCPA.

PENALTIES

Pursuant to BR § 7-205, as a result of a hearing, or of Respondents' failure to timely request a hearing in the manner set forth below, the Agency may, at the Agency's discretion and in addition to taking any other action authorized by law, take the following actions:

- Issue an order requiring all Respondents to cease and desist from engaging in these violations and any further similar violations;
- Issue a monetary penalty;
- Require Respondents to take affirmative action to correct the violations, including providing restitution to any aggrieved consumers;

Additionally, pursuant to FI § 2-115(b), as a result of a hearing, or of Respondents' failure to timely request a hearing in the manner described above, the Agency, may, in addition to taking any other action authorized by law, take the following actions :

- Enter an Order making this Summary Order final
- Impose a civil penalty against all Respondents up to $1,000 for each violation of MCALA and of the MCDCA
- Issue a penalty up to $5,000 for each subsequent violation of these acts;
- Take any combination of the aforementioned actions against Respondents.

WHEREFORE, having determined that immediate action is in the public interest, and pursuant to the aforementioned provisions of the Annotated Code of Maryland, it is, by Commissioner of Financial Regulation on behalf of the Agency, HEREBY

ORDERED that Respondents shall immediately CEASE AND DESIST from engaging in any collection activities involving Maryland consumers; and it is further

ORDERED that all Respondents shall immediately CEASE AND DESIST from engaging, directly or indirectly, in the business of collecting consumer claims from Maryland residents, and from otherwise engaging in the collection agency business in the State of Maryland; and it is further

ORDERED that Respondents shall immediately CEASE AND DESIST from violating the aforementioned laws governing debt collection activities; and that Respondents should be assessed statutory monetary penalties for all such violations; and it is further

ORDERED that all provisions of this Summary Order to Cease and Desist ("Summary Order"), including all Orders and Notices set forth herein, also apply to all unnamed owners,

partners, members, officers, employees, and agents of all Respondent business entity named above; and it is further

ORDERED that the Resident Agent or Corporate Officer for the Respondent business entity named above shall provide a copy of this Summary Order to all unnamed owners, partners, members, officers, employees and agents of the Respondent business entity; and it is further

ORDERED that, pursuant to the Commissioner's authority under FI §§ 2-114, Respondents shall provide to the Agency within 15 days of the receipt of this Summary Order to Cease and Desist and Order to Produce (hereinafter "Summary Order") the following:

- a detailed list of all Maryland consumers against whom Respondents have pursued collections. Respondents shall include all of the following information for each such debt on which Respondents pursued collections:
  - the name of the Maryland consumer;
  - the consumer's phone number(s), home address, and e-mail address;
  - the name of the original creditor from whom the consumer obtained the loan;
  - the date that the agreement between the consumer and the lender was formed, the date the funds were disbursed, and the date that initial payment was due;
  - the original principal amount of the loan;
  - the fees or interest payments that the consumer was required to make on the loan;
  - the total annual interest rate on the loan;
  - the APR on the loan;
  - the number of times that the loan was refinanced, extended, or otherwise modified, and the resulting new fees, interest payments, or other new terms;
  - the loan number of the original loan, and the loan numbers for any subsequent refinancing, extension, or modification of that loan;
  - the date that Respondents began collecting on the consumer's loan;
  - the date of Respondents' most recent attempt to collect on the loan;
  - the results of Respondents' collection activities on the loan;
  - the total amount of all money paid by the consumer on the original loan and on any refinancing, extension, or other modification of that loan, including any principal, interest, late fees, or any other money paid by the consumer; to the lender, to Respondents, or to any other party (including to other debt collectors or to any other creditors);

- the total amount of money which the consumer paid directly to Respondents, or which the consumer paid directly to the lender or to any other third party as a result of Respondent's collection activities;
- the total amount of compensation which Respondents received from any source for collecting on the loan and on any refinancing, extension, or other modification of that loan; and
- indicate whether the lender, Respondents, or any other party has ever submitted any negative or adverse information concerning the loan to any consumer reporting agency.

- a copy of all letters and other correspondences which Respondents sent to each of the Maryland consumers identified above;
- a copy of the loan agreements between the Maryland consumers and the lenders for each debt described above; and
- a copy of any and all written documents, including but not limited to contracts, agreements, and other correspondences, between Respondents and third party lenders or creditors which describe or specify the amount and method by which Respondents were to be compensated for collecting on the loans involving Maryland consumers described above.

NOTICE OF RIGHT TO A HEARING

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI § 2-115, SG § 10-226(c)(2), and BR § 7-309, Respondents are entitled to a hearing before the Agency to determine whether this Summary Order should be vacated, modified, or entered as a Final Order of the Agency; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI § 2-115, SG § 10-226(c)(2), and BR § 7-309, this Summary Order will be entered as a Final Order of the Agency if Respondents do not request a hearing within 15 days of the receipt of this Summary Order; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to Code of Maryland Regulations ("COMAR") § 09.01.02.08, and State Government Article ("SG") §§ 10-206.1 and 10-207, and in accordance with SG § 10-207(b)(4), each individual Respondent in this matter is

only permitted to request a hearing, and to appear at such hearing, on behalf of himself, or through an attorney authorized to practice law in Maryland at the Respondent's own expense; and further,

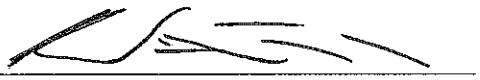
RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to SG § 10-206.1, and in accordance with SG § 10-207(b)(4), business entities are only permitted to request a hearing, and to appear at such hearing, through an attorney authorized to practice law in Maryland at the Respondent's own expense; and further,

RESPONDENTS ARE HEREBY NOTIFIED that any and all requests for a hearing in this matter must conform to the requirements stated above, must be made in the form of a signed, written request, and must be submitted to the following address:

Administrator, State Collection Agency Licensing Board
Office of the Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202;

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

6/11/2015
Date

By: 
Keisha Whitehall Wolfe
Acting Deputy Commissioner of Financial Regulation

For Gordon M. Cooley
Acting Commissioner of Financial Regulation
Chairperson, State Collection Agency Licensing Board