

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Unlicensed Activity of:

No. 11F-BD135-SBD

3 **JOHN M. OSBORN DBA SECURE**
4 **FINANCIAL SYSTEMS AND**
5 **JOHN M. OSBORN, OWNER**
3165 S. Alma School Road, Suite 29-306
Chandler, AZ 85248

CONSENT ORDER

6 Respondents.

7
8 On June 6, 2011, the Arizona Department of Financial Institutions (“Department”) issued an
9 Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order, alleging
10 that Respondents had violated Arizona law. Wishing to resolve this matter in lieu of an
11 administrative hearing and without admitting liability, Respondents consent to the following
12 Findings of Fact and Conclusions of Law, and consent to the entry of the following Order.

13 **FINDINGS OF FACT**

14 1. Respondent John M. Osborn dba Secure Financial Systems (“SFS”) is an Arizona sole
15 proprietorship that is not authorized to transact business in Arizona as a collection agency within the
16 meaning of A.R.S. § 32-1001 *et seq.*

17 2. Respondent John M. Osborn (“Mr. Osborn”) is the sole proprietor of SFS and is not
18 authorized to transact business in Arizona as a collection agency within the meaning of A.R.S. §§
19 32-1001 *et seq.*

20 3. The nature of SFS’s and Mr. Osborn’s business is that of soliciting assignments of
21 judgments for purposes of collection and collection of judgment creditor claims owed, due, or
22 asserted to be owed, or due, within the meaning of A.R.S. § 32-1001(1),(2)(a).

23 4. SFS and Mr. Osborn (collectively “Respondents”) are not exempt from licensure as a
24 collection agency within the meaning of A.R.S. § 32-1004.

25 5. On or about November 29, 2010, the Department received a complaint from Robert S., a
26 client of SFS, alleging *inter alia* as follows:

- 1 a. On July 9, 2009, Robert S. was awarded a default judgment in the Small Claims
2 Court of Harris County, Texas, Precinct 8, Place 2 (“Judgment”) against Christopher
3 L. in compensation for his losses.
- 4 b. Robert S. contacted Mr. Osborn of SFS after finding his business on the Internet.
5 SFS’s website represented, “We are bonded by the state of Arizona, guaranteeing you
6 swift payment.”
- 7 c. On or about July 21, 2009, Robert S. and Mr. Osborn entered into a written contract
8 (“Judgment Purchase Agreement”), pursuant to which Mr. Osborn agreed to purchase
9 the default judgment awarded to Robert S. However, the purchase price payment
10 would not be owed and due to Robert S. unless Mr. Osborn was successful with the
11 recovery of the judgment or any portion of the judgment from a judgment debtor.
- 12 d. Robert S. executed an Assignment of Judgment to Mr. Osborn and provided Mr.
13 Osborn with a check payable to SFS for \$286.00 to domesticate the Judgment in
14 Arizona.
- 15 e. According to the Judgment Purchase Agreement, Robert S. agreed to sell, transfer,
16 and assign any and all right, title, and interest in the asset of the Judgment to Mr.
17 Osborn, and the purchase price for the Judgment was set at 50% of the principal
18 amount of the Judgment. It was further agreed that “[p]ayments to [Robert S.] shall
19 occur after monies are received from the debtor.” Mr. Osborn would be “entitled to
20 recover all costs expended in connection with enforcement of the Judgment before
21 distribution of any proceeds,” and Robert S. would “fully cooperate in the efforts of
22 [Mr. Osborn] to collect or otherwise recover sums owed by Debtor(s)[.]”
- 23 f. Mr. Osborn filed a notice of foreign judgment in Arizona on or about August 14,
24 2009 in the Superior Court of the State of Arizona, Maricopa County (“Superior
25 Court”), Case Number CV2009-092946.
- 26 g. Subsequently, Mr. Osborn had very little communication with Robert S. Mr. Osborn

1 failed to respond to email messages, phone calls, and letters, wherein Robert S.
2 requested full financial accounting and demanded payment of monies owed to him
3 under the Judgment Purchase Agreement.

4 6. Respondents have engaged directly or indirectly in collection of a claim owed, due or
5 asserted to be owed or due, within the meaning of A.R.S. § 32-1001(1),(2), without a license in
6 violation of A.R.S. § 32-1055(A) based on the terms of the Judgment Purchase Agreement between
7 Mr. Osborn and Robert S. Specifically:

- 8 a. For purposes of collection agency statutes, the term “claim” is defined, in part, as an
9 obligation for the payment of money which is sold or assigned and when either (i) the
10 final payment has not been tendered to the seller or assignor; (ii) title has not yet
11 passed; or (iii) the purchaser or assignee has a right of recourse against the seller or
12 assignor. *See* A.R.S. § 32-1001(1)(b).
- 13 b. The Judgment Purchase Agreement between Mr. Osborn and Robert S. provides that
14 “[p]ayment is contingent on the recovery of the Judgment, or upon the recovery of
15 any portion of the Judgment,” and that Mr. Osborn is “bound to pay seller FIFTY
16 PERCENT (50%) of all **COLLECTED** monies (from debtor) only.” (Emphasis in
17 the original.)
- 18 c. Respondents engaged in collection of a claim within the meaning of collection agency
19 statutes after Robert S. purportedly assigned his rights in the Judgment to Mr. Osborn
20 because no payment (including any final payment) has been tendered to Robert S. in
21 consideration for the assignment, because the parties agreed that any payment to
22 Robert S. was contingent upon collection of amounts due, and because Mr. Osborn
23 retained the right of recourse against Robert S., including his right to recover costs
24 incurred to enforce the Judgment. *See* A.R.S. § 32-1001(1), (2).

25 7. Respondents directly or indirectly have solicited claims for collection within the meaning
26 of A.R.S. § 32-1001(2) without a license in violation of A.R.S. § 32-1055(A) based on SFS’s

1 website (www.securefinancialsystems.com). Specifically:

2 a. Based on SFS's website, Respondents have solicited submission of Arizona cases in
3 need of judgment recovery, which constitutes solicitation of claims for collection.
4 Respondents advertised their services as judgment recovery specialists, describing
5 their services in great detail, including the following:

6 i. "[SFS] has access to many different databases, both public and private. These
7 databases allow us to perform asset searches, skip tracing, and find bank
8 accounts and more. We do all of this in accordance with state law, adhering to
9 Fair Debt Collection Practices Act, as well as any other applicable laws."

10 ii. "When you assign the judgment to us, this gives us the legal right to collect. . . .
11 You sign another agreement with [SFS], guaranteeing you the agreed upon
12 percentage of all collected funds."

13 iii. "Is there any guarantee that you will be successful? No. Sometimes there are
14 simply no assets to seize or wages to garnish, or bank accounts to levy. [SFS]
15 doesn't get paid unless we collect, giving us all the incentive needed. That is
16 why SFS doesn't accept every case offered."

17 8. Although Respondents were successful in collecting amounts due for Robert S.,
18 Respondents failed to render an account of and pay to Robert S. the proceeds collected, less
19 collection charges as agreed. A.R.S. § 32-1055(D)(1). Specifically:

20 a. Respondents received from a garnishee Two Degrees LLC, at least, \$1,788.26—an
21 amount which was larger than their costs of \$534.00, based on Application for Order
22 of Continuing Lien and Statement of Credits, Costs Accrued Interest filed by Mr.
23 Osborn on May 5, 2010 in the Superior Court, Case Number CV2009-092946.
24 Respondents also received payments from a garnishee U.S. Airways.

25 b. Respondents made no payments to Robert S. pursuant to the Judgment Purchase
26 Agreement.

9. On or about April 20, 2011, the Department notified Respondents that as a result of
examination or other investigation, there is reason to believe that SFS violated or is violating
applicable laws, rules or orders. The Department sent a letter to Respondents stating that the

1 Department has received information that Respondents operate as a collection agency which must be
2 licensed and gave Respondents an opportunity to respond. The Department further inquired
3 regarding Respondents' plan to resolve the complaint filed by Robert S. and requested that
4 Respondents disclose all judgments that they purchased during 2010 and through March 31, 2011,
5 including the names of each judgment creditor, the amount of the judgment and amounts received
6 and collected for each judgment creditor no later than April 30, 2011.

7 10. Mr. Osborn has reimbursed Robert S. the \$286.00 fee by sending reimbursement to the
8 Department in May 2011, and all monies which he has calculated are owed under the Judgment
9 Purchase Agreement.

10 11. The Case Information Sheet from the Superior Court's website for Justice Courts lists a
11 number of cases that judgment creditors have assigned to Respondents pursuant to the Judgment
12 Purchase Agreement although Respondents are unlicensed to transact business in Arizona as a
13 collection agency.

14 12. These Findings of Fact shall also serve as Conclusions of Law.

15 **CONCLUSIONS OF LAW**

16 1. Pursuant to A.R.S. Title 6 and Title 32, Chapter 9, the Superintendent has the authority
17 and duty to regulate all persons engaged in the collection agency business and with the enforcement
18 of statutes, rules, and regulations relating to collection agencies.

19 2. By the conduct set forth in the Findings of Fact, Respondents SFS and Mr. Osborn have
20 violated the following:

- 21 a. A.R.S. § 32-1021(A) by failing to make an original application to the Department
22 upon forms prescribed by the Superintendent before conducting collection agency
23 activity;
- 24 b. A.R.S. § 32-1055(A) by conducting collection agency activity in Arizona without
25 having first applied for and obtained a license; and
- 26 c. A.R.S. § 32-1055(D)(1) by failing to render an account of and pay to the clients, for

1 whom collection has been made, the proceeds collected, less collection charges as
2 agreed upon with the client, within thirty days from the last day of the month in
3 which the proceeds were collected.

4 3. Respondents are not exempt from licensure as a collection agency within the meaning of
5 A.R.S. § 32-1004(A).

6 4. The violations set forth above constitute grounds for: (1) the issuance of an order
7 pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and
8 to take the appropriate affirmative actions, within a reasonable period of time prescribed by the
9 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
10 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; and (3) an
11 order or any other remedy necessary or proper for the enforcement of statutes and rules regulating
12 collection agencies pursuant to A.R.S. §§ 6-123 and 6-131.

13 **ORDER**

14 1. Respondents SFS and Mr. Osborn shall immediately stop the violations set forth in the
15 Findings of Fact and Conclusions of Law. SFS and Mr. Osborn:

- 16 a. shall immediately stop all collection agency activity in Arizona;
17 b. shall provide to the Department a complete and accurate accounting of all monies
18 collected on behalf of all judgment creditors;
19 c. shall immediately pay all monies collected and due and owing to the to judgment
20 creditors/sellers under the terms of the Judgment Purchase Agreement

21 2. In the event, the Department receives any complaint(s) from any individual or entity
22 arising from Respondents' unlicensed activity, Respondents shall satisfactorily resolve those
23 complaints, including refunding of unearned fees and other compensation due and owing to the
24 judgment creditors/sellers under the terms of the Judgment Purchase Agreement, so as to bring each
25 case in full compliance with all Arizona statutes and rules regulating Arizona collection agencies
26 (A.R.S. § 32-1001 *et seq.*).

1 COPY mailed/delivered same date to:

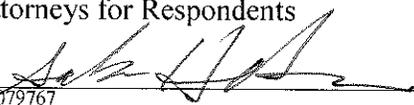
2 Natalia A. Garrett, Assistant Attorney General
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6 Robert D. Charlton, Assistant Superintendent
7 Richard Traveler, Senior Examiner
8 Arizona Department of Financial Institutions
9 ATTN: Sabrina Hampton
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12 AND COPY MAILED SAME DATE by
13 Certified Mail, Return Receipt Requested, to:

14 John M. Osborn
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17 Chandler, AZ 85248
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