

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Collection Agency License of:

No. 10F-BD029-BNK

3 **U.S. COLLECTIONS WEST, INC. AND**  
4 **DONALD W. DARNELL, PRESIDENT**  
3031 West Northern Avenue, Suite 171  
Phoenix, Arizona 85051,

**CONSENT ORDER**

5  
6 Petitioners.

7 On February 23, 2010, the Arizona Department of Financial Institutions ("Department")  
8 issued a Notice of Hearing, alleging that Petitioners had violated Arizona law. Wishing to resolve  
9 this matter in lieu of an administrative hearing, Petitioners do not admit to any wrongdoing but agree  
10 to cease from engaging in the conduct alleged by the Department. Petitioners consent to the entry of  
11 the following Findings of Fact and Conclusions of Law, and consent to the entry of the following  
12 Order.

13 FINDINGS OF FACT

14 1. Petitioner U.S. Collections West, Inc. ("U.S. Collections") is an Arizona corporation that  
15 is authorized to transact business in Arizona as a collection agency within the meaning of A.R.S. §§  
16 32-1001, *et seq.* The nature of U.S. Collections' business is that of soliciting claims for collection  
17 and collection of claims owed, due or asserted to be owed or due within the meaning of A.R.S. § 32-  
18 1001(2).

19 2. Petitioner Donald W. Darnell ("Mr. Darnell") is the President of U.S. Collections and is  
20 authorized to transact business in Arizona as a collection agency within the meaning of A.R.S. §§  
21 32-1001, *et seq.*

22 3. U.S. Collections and Mr. Darnell are not exempt from licensure as a collection agency  
23 within the meaning of A.R.S. § 32-1004.

24 4. On October 22, 2007, the Department completed an Examination of U.S. Collections'  
25 books and records, policies and procedures, as well as business files to determine compliance with  
26 Arizona statutes and rules regulating collection agencies.

1           5.     In the Department's October 22, 2007 Examination Report, the "Comments" section  
2 noted the following:

3                     There have been a number of lawsuits filed by debtors against the  
4                     Company regarding the Fair Debt Collections Practices Act. The  
5                     Company has fired several collectors who have violated this act and/or  
6                     violated the Arizona Administrative rules and Arizona Revised  
7                     Statutes regarding collection practices for collection agencies. The  
8                     Company must ensure that its collectors are trained and monitored to  
9                     operate with the collection agency laws pertaining to them.

10           6.     Additionally, in the October 22, 2007 Examination Report, the Department noted in the  
11 "Matters Requiring Supervisory Attention" section, "The Company, within thirty days from the date  
12 of the cover letter accompanying the examination report, must advise the Superintendent in writing  
13 of the actions taken to correct the violations of laws and the measures implemented to prevent future  
14 violations."

15           7.     On or about October 31, 2007, the Department received U.S. Collections' response to the  
16 Examination Report and advised the Department that, among other things, "In regards to the civil  
17 suits filed against us. I spoke to you and advised you that 90% of these suits were based on our  
18 clients wrong doing such as charging a fee that was not legally chargeable or turning someone over  
19 for collections that's name was on the contract but they failed to sign the contract... We will continue  
20 to strive to be complaint free."

21           8.     Since the completion of the October 22, 2007 Examination, the Department has received  
22 ten (10) complaints regarding U.S. Collections' collection agency business practices. A review of  
23 the complaints reveals that nine (9) complaints suggest a continuing and ongoing pattern of practice  
24 of U.S. Collections, as noted in the "Comments" section of the Examination Report. More  
25 specifically, in reviewing nine (9) complaints submitted by consumers to the Department, the  
26 Complaints claimed that Petitioners failed to deal openly, fairly and honestly in the conduct of the  
collection agency business in eight (8) instances, including making threats and misrepresenting the  
law, in violation of A.R.S. § 32-1051(3). A complainant claimed the amount of a debt and

1 obligation was misrepresented in one (1) instance, when Petitioners garnished additional funds from  
2 the complainant, in violation of A.R.S. § 32-1051(5)(b). Further, complainants stated that  
3 Petitioners misrepresented the state of the law to a debtor in one (1) instance in violation of A.A.C.  
4 R20-4-1508(1), advised that same debtor they had the power to bypass the legal process in violation  
5 of A.A.C. R20-4-1510(B), and threatened to start legal proceedings against one (1) debtor without  
6 the intent to sue at the time in violation of A.A.C. R20-4-1509(C). Moreover, in four (4) instances,  
7 the complaints asserted Petitioners used unauthorized or oppressive tactics designed to harass people  
8 to pay debts in violation of A.A.C. R20-4-1511(A), used oral communications that ridiculed,  
9 disgraced or humiliated persons in the process of their collection activity in four instances in  
10 violation of A.A.C. R20-4-1511(B), and used obscene or abusive language while attempting to  
11 collect debts in three instances in violation of A.A.C. R20-4-1511(D). Additionally, one (1)  
12 complaint states Petitioners informed third parties of a debt, one (1) debtor was contacted by  
13 Petitioners after notice that the debtor was represented by an attorney in violation of A.A.C. R20-4-  
14 1513, and Petitioners failed to provide that same debtor with disclosure information in violation of  
15 A.A.C. R20-4-1514.

16 9. Finally, Petitioners failed to respond to the Department's inquiries regarding at least five  
17 (5) consumer complaints in a timely manner, in violation of A.A.C. R20-4-1504(D), which requires  
18 information be made available after demand by the Superintendent.

19 10. Based upon the above findings, the Department issued and served upon Petitioners an  
20 Order to Cease and Desist; Notice of Opportunity for Hearing; Consent to Entry of Order on  
21 December 14, 2009.

22 11. The Department received Petitioners' request for a hearing to appeal the Cease and  
23 Desist Order on January 12, 2010.

#### 24 CONCLUSIONS OF LAW

25 1. Pursuant to Title 6 and Title 32, Chapter 9 of the Arizona Revised Statutes, the  
26 Superintendent has the authority and the duty to regulate all persons engaged in the collection

1 agency business and with the enforcement of statutes, rules, and regulations relating to collection  
2 agencies.

3 2. By the conduct set forth in the Findings of Fact, U.S. Collections West, Inc. and Donald  
4 W. Darnell have violated the following:

- 5 a. A.R.S. § 32-1051(3), by failing to deal openly, fairly and honestly in the  
6 conduct of the collection agency business, including by making threats, and  
7 misrepresenting law (see Complaints #4013752, #4013663, #4013190,  
8 #4014152, #4013173, #4012577, #4012564 and #4014449);
- 9 b. A.R.S. § 32-1051(5)(b), by misrepresenting the character, extent or amount of  
10 the obligation of the debtor (see Complaint #4013190);
- 11 c. A.A.C. R20-4-1504(B)(2)(f), by misrepresenting the debtor's current balance  
12 due on the debt (see Complaint #4013190);
- 13 d. A.A.C. R20-4-1504(D), by failing to make records available after demand by  
14 the Superintendent (see Complaints #4013752, #4013190, #4014152,  
15 #4013577 and #4014304);
- 16 e. A.A.C. R20-4-1508(1), by misrepresenting the state of the law to a debtor (see  
17 Complaint #4012577);
- 18 f. A.A.C. R20-4-1509(C), by threatening to start legal proceedings against a  
19 debtor without intending, at the time of the threat, to sue (see Complaint  
20 #4012564);
- 21 g. A.A.C. R20-4-1510(B), by advising a debtor that they had the power to  
22 bypass the legal process (see Complaint #4012577);
- 23 h. A.A.C. R20-4-1511(A), by using unauthorized or oppressive tactics designed  
24 to harass any person to pay a debt (see Complaints #4013752, #4013663,  
25 #4013173 and #4014304);
- 26 i. A.A.C. R20-4-1511(B), by using oral communication that either ridiculed,

1 disgraced or humiliated any person in the process of collection activity (see  
2 Complaints #4013752, #4013663, #4013173 and #4014449);

3 j. A.A.C. R20-4-1511(D), by using obscene or abusive language in efforts to  
4 collect a debt (see Complaints #4013752, #4013663 and #4014449);

5 k. A.A.C. R20-4-1512(B)(2), by informing a third party of debts (see Complaint  
6 #4013752);

7 l. A.A.C. R20-4-1513, by failing to discontinue contacting the debtor after being  
8 told that the debtor is represented by a lawyer and wants the collection agency  
9 to communicate with the debtor through that lawyer (see Complaint  
10 #4014152); and

11 m. A.A.C. R20-4-1514, by failing to provide disclosure information to the debtor  
12 (see Complaint #4014152).

13 3. Petitioners do not meet any of the exemptions to the licensing requirements set forth in  
14 A.R.S. § 32-1004(A).

15 4. Pursuant to A.R.S. § 32-1053(2), Petitioners' actions as set forth above constitute  
16 grounds for suspension or revocation of their license.

17 5. The violations, set forth above, constitute grounds for: (1) the issuance of an order  
18 pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to  
19 take the appropriate affirmative actions, within a reasonable period of time prescribed by the  
20 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and  
21 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the  
22 suspension or revocation of Petitioners' license pursuant to A.R.S. § 32-1053; (4) an order to pay  
23 restitution of any fees earned in violation of A.R.S. §§ 32-1001, *et seq.*, pursuant to A.R.S. §§ 6-  
24 131(A)(3) and 6-137; and (5) an order or any other remedy necessary or proper for the enforcement  
25 of statutes and rules regulating collection agencies pursuant to A.R.S. §§ 6-123 and 6-131.

26 ...

1 ORDER

2 1. U.S. Collections West, Inc. and Mr. Darnell shall immediately stop the violations set  
3 forth in the Findings of Fact and Conclusions of Law. U.S. Collections and Mr. Darnell:

- 4 a. Shall deal openly, fairly and honestly in the conduct of the collection agency  
5 business;
- 6 b. Shall not misrepresent the character, extent or amount of the obligation of the  
7 debtor;
- 8 c. Shall not misrepresent the debtor's current balance due on the debt;
- 9 d. Shall provide timely responses upon the request of the Superintendent;
- 10 e. Shall not misrepresent the state of the law to a debtor;
- 11 f. Shall not threaten to start legal proceedings against a debtor unless the  
12 collection agency actually intends, at the time of the threat, to sue;
- 13 g. Shall not advise a debtor that they have the power to bypass the legal process;
- 14 h. Shall not use unauthorized or oppressive tactics designed to harass any person  
15 to pay a debt;
- 16 i. Shall not use oral communication that either ridicules, disgraces or humiliates  
17 any person in the process of collection activity;
- 18 j. Shall not use obscene or abusive language in efforts to collect a debt;
- 19 k. Shall not inform third parties of debts;
- 20 l. Shall discontinue contacting the debtor if the debtor tells the collection agency  
21 that he is represented by a lawyer and wants the collection agency to  
22 communicate with the debtor through that lawyer; and
- 23 m. Shall provide disclosure information to the debtor.

24 2. U.S. Collections West, Inc. and Mr. Darnell shall immediately pay to the Department  
25 a civil money penalty in the amount of **fifteen thousand dollars (\$15,000.00)**. Petitioners are  
26 jointly and severally liable for payment of the civil money penalty.

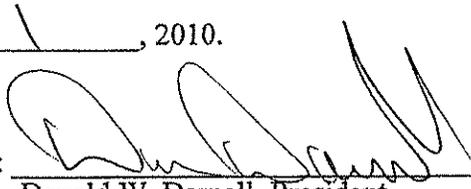


1 is solely to settle this matter and does not preclude this Department, any other agency or officer of  
2 this state or subdivision thereof from instituting other proceedings as may be appropriate now or in  
3 the future.

4 6. Donald W. Darnell, on behalf of U.S. Collections West, Inc., represents that he is the  
5 President, and that, as such, has been authorized by U.S. Collections West, Inc. to consent to the  
6 entry of this Order on its behalf.

7 7. Petitioners waive all rights to seek judicial review or otherwise to challenge or contest  
8 the validity of this Consent Order.

9 DATED this 12<sup>th</sup> day of April, 2010.

10  
11 By:   
12 Donald W. Darnell, President  
13 U.S. Collections West, Inc.

14  
15 ORIGINAL of the foregoing filed this 15<sup>th</sup>  
16 day of April, 2010, in the office of:

17 Thomas L. Wood  
18 Acting Superintendent of Financial Institutions  
19 Arizona Department of Financial Institutions  
20 ATTN: Susan Longo  
21 2910 N. 44th Street, Suite 310  
22 Phoenix, AZ 85018

23 COPY mailed same date to:

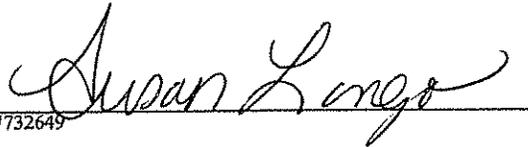
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4 AND COPY MAILED SAME DATE by  
Certified Mail, Return Receipt Requested, to:

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