ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

In the Matter of the Collection Agency License of: **NIAGARA CREDIT SOLUTIONS, INC. AND JOHN JANOCSKO, PRESIDENT** 420 Lawrence Bell Drive, Suite 2 Williamsville, NY 14221 Petitioners.	No. 08F-BD018-BNK **SUPERINTENDENT'S FINAL DECISION AND ORDER**

The Superintendent of Financial Institutions (the "Superintendent") having reviewed the record in this matter, including the transcripts of the December 3, 2007 administrative hearing, the Petitioners' January 8, 2008 response to the Superintendent, the Department's January 10, 2008 response to the Superintendent and the Administrative Law Judge Decision attached and incorporated herein by this reference, accepts and adopts the Administrative Law Judge's Findings of Fact and Conclusions of Law and recommended Decision as follows.

ORDER

The Superintendent finds that Licensee Niagara Credit Solutions, Inc. is in violation of A.R.S. §§ 32-1051(1) and 1053(A)(1) and knowingly violated A.R.S. §32-1053(A)(1).

The Superintendent further finds that the information the Licensee has provided post-hearing provides evidence that it has obtained additional capital in an amount sufficient to rectify the negative net worth that existed as of September 30, 2007. However, information regarding the Licensee's net worth as of December 31, 2007 is not available.

Therefore, the Superintendent is unable to find that at the time of this decision the Licensee has a positive new worth and is in compliance with the requirements applicable to Arizona licensed collection agencies.

THEREFORE, IT IS HEREBY ORDERED that collection agency license CA 0907499, held by Niagara Credit Solutions, Inc., is suspended until such time as Licensee has shown to the Superintendent's satisfaction that it has a positive net worth as of December 31, 2007 and is otherwise in compliance with the requirements as set forth in the aforementioned statutes. The suspension will be in effect until further ordered and until Licensee has submitted to the

Superintendent a financial statement compiled by a Certified Public Accountant for the period ending December 31, 2007 showing a positive net worth.

IT IS FURTHER ORDERED that Licensee Niagara Credit Solutions, Inc. shall pay a civil money penalty of $5,000.00 due and payable upon service of this Final Decision and Order.

NOTICE

The parties are advised that this Order becomes effective immediately and the provisions of this Order shall remain effective and enforceable except to the extent that, and until such time as, any provision of this Order shall have been modified, terminated, suspended, or set aside by the Superintendent or a court of competent jurisdiction.

DATED this 28th day of January, 2008.

Felecia Rotellini
Superintendent of Financial Institutions

ORIGINAL filed this 28th day of January, 2008, in the office of:

Felecia Rotellini
Superintendent of Financial Institutions
Arizona Department of Financial Institutions
ATTN: June Beckwith
2910 North 44th Street, Suite 310
Phoenix, Arizona 85018

COPY of the foregoing mailed/hand delivered
This same date to:

Eric A. Bryant, Administrative Law Judge
Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, AZ 85007

Erin O. Gallagher, Assistant Attorney General
Office of the Attorney General
1275 West Washington
Phoenix, AZ 85007

Robert Charlton
Assistant Superintendent
Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

Jack Watson, Senior Examiner
Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

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

John Janocsko
President
Niagara Credit Solutions, Inc.
420 Lawrence Bell Drive, Suite 2
Williamsville, NY 14221

By: June Beckwith

STATE OF ARIZONA

OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Collection Agency License of: **Niagara Credit Solutions, Inc.,** **John Janocsko, President** 420 Lawrence Bell Dr., Suite 2 Williamsville, NY 14221, Petitioners.	No. 08F-BD018-BNK **ADMINISTRATIVE LAW JUDGE DECISION**

HEARING: December 3, 2007 (record held open until December 12, 2007)

APPEARANCES: John Janocsko, President, appeared on behalf of Licensee; the State of Arizona, Department of Financial Institutions (ADFI), was represented by Assistant Attorney General Erin O. Gallagher, accompanied by Assistant Superintendent Robert D. Charlton.

WITNESSES: Jack Watson, Senior Examiner, ADFI; Mike Fowler, Manager of Administration Division, Chief Financial Officer, ADFI; and John Janocsko. Court Reporter Nicola Bauman-Delgado recorded the proceedings.

ADMINISTRATIVE LAW JUDGE: Eric A. Bryant

This disciplinary action brought by the Arizona Department of Financial Institutions ("Department") alleges that collection agency Niagara Credit Solutions, Inc. ("Licensee") has violated its statutory obligations by being insolvent. The Department seeks revocation of the license and a civil penalty. Licensee disputes the violation and, in the alternative, requests lesser sanctions.

The parties presented evidence and testimony at the hearing, including the case file and Exhibits marked Department's Exhibits 1, 2, and 3, and Petitioners' Exhibits A, B, C, D, E, F, and G. Based upon the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law, and Decision finding a violation of statute and recommending suspension of Petitioners' license and a $5,000.00 civil penalty.

FINDINGS OF FACT

Stipulated Facts

At the start of the hearing, the parties stipulated to the following five factual findings, taken from the Notice of Hearing:

1. Petitioner Niagara Credit Solutions, Inc. (hereinafter "Niagara") is a New York corporation authorization to transact business in Arizona as a collection agent, license number CA 0907499, within the meaning of A.R.S. §§ 32-1001, *et seq.* The nature of Niagara's business is that of a collection agency within the meaning of A.R.S. § 32-1001(2).

2. Petitioner John Janocsko ("Mr. Janocsko") is the President of Niagara.

3. On March 15, 2007, the Department conducted an examination of Niagara's business affairs. Based upon that examination, a report was prepared ("Report of Examination") which revealed that Niagara and Mr. Janocsko have:

   a. Failed to maintain a positive net worth, pursuant to A.R.S. § 47-1201(23), specifically:

      i. Niagara's net worth was a negative <$334,260.00> as of October 31, 2006;

      ii. Niagara's net worth was a negative <$415,712.00> as of December 31, 2006;

      iii. The most recent balance sheet for the quarter-ending [sic] March 31, 2007 reflects a negative net worth of <$334,664.00>.

4. Based upon the above findings, the Department issued and served upon Niagara and Mr. Janocsko an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order ("Cease and Desist Order") on September 5, 2007. The Cease and Desist Order also included the imposition of a five thousand dollar ($5,000.00) civil money penalty.

5. On October 2, 2007, Petitioners filed a Request for Hearing.

Further Factual Findings

Based on the testimony and documentation presented at the hearing, the tribunal makes the following factual findings:

6. The March 2007 examination, which found negative net worth, found that Licensee was in compliance with all other statutory duties, including the operation of its trust fund.[1]

7. Since that time, Licensee's negative net worth has remained, although it has recently decreased to <150,723.00> as of August 31, 2007.[2] Petitioners' evidence shows that Licensee has recently been profitable and is reducing its debt.[3]

8. Since receiving the Cease and Desist Order, Licensee has suspended all activity in Arizona.[4]

9. No evidence was presented to show the value of any intangible assets that Licensee may have, including goodwill.

10. Licensee has a surety bond in the amount of $10,000.00.[5] Licensee also has professional liability insurance in the amount of $2,000,000.00.[6]

CONCLUSIONS OF LAW

1. The Department bears the burden of showing, by a preponderance of the evidence, that Licensee has violated the statutes cited in the Notice of Hearing.[7] The Department has met its burden.

Violation

2. A corporation licensed as a collection agent by the Department must meet the financial responsibility requirements imposed by the statutes on collection agencies.[8] One of those requirements is that a licensee not become insolvent.[9] Insolvency is defined, in part, as "being insolvent within the meaning of federal bankruptcy law,"[10] which states that insolvency means, in pertinent part, a "financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair

---

[1] Exhibit 1.
[2] Exhibit 2.
[3] *Id.*
[4] *Id.*; testimony of John Janocsko.
[5] Exhibit 2.
[6] *Id.*
[7] *Culpepper v. State*, 187 Ariz. 431, 437, 930 P.2d 508, 514 (Ct. App. 1996).
[8] A.R.S. § 32-1051(1).
[9] A.R.S. § 32-1053(A)(1).
[10] A.R.S. § 47-1201(23).

valuation. . . ."[11] This is a straightforward requirement for collection agencies to have a positive net worth.

3. The evidence is clear that Licensee does not presently have a positive net worth, and has not had one for at least more than one year's time, since October 2006. Petitioners' attempt to argue that intangible assets should be taken into account is not persuasive because it was not supported by either evidence or legal authority.

4. Because of Licensee's negative net worth, this tribunal finds Licensee in violation of A.R.S. §§ 32-1051(1) and -1053(A)((1).

Sanction

5. The Superintendant has discretion to suspend or revoke a license found in violation of the statutes governing licensure.[12] Revocation is the ultimate sanction, and should be used only when the public cannot be protected with any other sanction. Here, the public can be protected by suspension of the license. Licensee has manifested an intent to comply with Arizona laws; it has just been sluggish about it. Licensee has presented mitigating evidence in the form of its otherwise good examination results, its voluntary cessation of activity in Arizona,[13] its continuing progress to obtain positive net worth, and its other liability protections. This shows a Licensee who is willing to conform to the law. Suspension of its license will allow Licensee to achieve compliance and then conduct business in Arizona, while at the same time protecting the public.[14]

Civil Penalty

6. In order to assess a civil penalty, the Department must prove that Licensee committed a "knowing violation" of an order issued by the Superintendent.[15] This does not mean that the violation has to be intentional. The term "knowingly" is statutorily defined as meaning knowledge of facts showing an act or omission within the statute,

---

[11] 11 U.S.C. § 101(32).

[12] A.R.S. § 32-1053(A).

[13] The Cease and Desist Order did not require Licensee to cease business, but that it correct the negative net worth situation.

[14] It is also important to note that no actual harm was shown by the Department. Although actual harm is not a necessary element for showing a violation (nor should it be, for the protection of the public), when determining an appropriate sanction a licensee who has not caused actual harm should not be equated with one who has caused actual harm. In other words, the lack of a showing of actual harm is a mitigating factor.

not knowledge of the unlawfulness of the act or omission.[16] In other words, to impose a civil penalty the evidence must show that the violator knew of the facts that constitute the violation. The evidence shows that the violation found above is a "knowing" violation. Therefore, a civil penalty of up to $5,000.00 for each violation may be imposed.

7. Here, the Department has not articulated a basis for the maximum amount of civil penalty that it is seeking. Thus, this tribunal is left to its own judgment. While there is mitigating evidence, as stated above, the length of time that the violation has been ongoing warrants a hefty penalty, even to the maximum. Therefore, this tribunal finds the maximum civil penalty to be justified in this case.

DECISION

IT IS RECOMMENDED that the Superintendent find Licensee Niagara Credit Solutions, Inc. in violation of A.R.S. §§ 32-1051(1) and -1053(A)((1).

IT IS FURTHER RECOMMENDED that the Superintendent suspend collection agent license CA 0907499, held by Licensee Niagara Credit Solutions, Inc., until such time as Licensee has shown to the Superintendent's satisfaction that it has a positive net worth and is otherwise in compliance with the requirements applicable to Arizona-licensed collection agents.

. . .

. . .

. . .

[15] A.R.S. § 6-132.
[16] A.R.S. § 1-215(15).

IT IS FURTHER RECOMMENDED that the Superintendent find that Licensee knowingly violated A.R.S. § 32-1053(A)(1).

IT IS FURTHER RECOMMENDED that the Superintendent impose on Licensee a civil penalty of $5,000.00, to be paid in full within 30 days of the effective date of the final order in this matter.

Done this 24th day of December 2007.

OFFICE OF ADMINISTRATIVE HEARINGS

Eric A. Bryant
Administrative Law Judge

Original mailed this 24 day of December 2007, to:

Felecia Rotellini, Superintendent
Arizona Department of Financial Institutions
ATTN: Susan L. Ross
2910 North 44th Street, Suite 310
Phoenix, AZ 85018

By