STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of BAYVIEW ASSET GROUP, LLC , Respondent.	Case No. CA-20-0011 FINAL ORDER TO CEASE AND DESIST, AND FINAL ORDER ASSESSING CIVIL PENALTIES

HISTORY OF THE CASE

On February 24, 2020, the Department of Consumer and Business Services, Division of Financial Regulation, Finance and Corporate Securities (Division) issued an Order to Cease and Desist, Proposed Order Assessing Civil Penalties, and Notice of Right to an Administrative Hearing to Bayview Asset Group, LLC (Respondent). On March 9, 2020, Jeff Carlisle, Respondent's Director of Operations, requested a hearing.

On February 23, 2021, the Division referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Dove L. Gutman to preside at hearing.

On April 12, 2021, ALJ Gutman held a prehearing telephone conference. Assistant Attorney General Tyler Anderson represented the Division. Respondent and its representative did not appear. ALJ Gutman scheduled a hearing for September 8, 2021, at the OAH in Salem, Oregon.

On April 13, 2021, ALJ Gutman issued a letter to the parties, notifying them of the issues for hearing, the burden of proof, the date to exchange witness lists and exhibits for hearing, and the date, time and location of the contested case hearing. In the letter,

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ALJ Gutman also notified the parties that if the hearing could not be held in-person due to the COVID-19 pandemic, the hearing would be converted to a video conference hearing via Webex.

On May 24, 2021, the Department of Justice notified the OAH and Respondent that Assistant Attorney General Jacob Gill had been assigned to represent the Division in the above-entitled case.

On August 12, 2021, ALJ Gutman issued a letter to the parties, notifying them that the in-person hearing scheduled for September 8, 2021, was being converted to a video conference hearing via Webex. On August 16, 2021, the OAH issued to the parties an Amended Notice of Video Conference Hearing and a Cisco Webex Video Conference link for the hearing.

On September 8, 2021, ALJ Gutman convened a video conference hearing via Webex. Mr. Gill represented the Division. Noah Olson appeared on behalf of the Division. Respondent and its representative did not appear for hearing. After ALJ Gutman found Respondent in default, the Division put on a *prima facie* case.[1] Joyce Pierce, Compliance Specialist III with the Division, testified on behalf of the Division. ALJ Gutman closed the record at the conclusion of the hearing.

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ISSUES

1. Whether, in 23 instances, Respondent operated as a collection agency in Oregon without registering with the Division, in violation of ORS 697.015.

2. Whether Respondent violated ORS 697.058(1) by deleting the records of Oregon consumers from Respondent's system such that those records could not be produced in response to the Division's request for information.

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[1] *See* OAR 137-003-0670(3)(a)-(c).

3. Whether Respondent should be ordered to cease and desist from violating ORS 697.015 and ORS 697.058(1). ORS 697.093(1).

4. Whether Respondent should pay civil penalties totaling $23,400 as follows: $22,400 for 23 violations of ORS 697.015; and $1,000 for violating ORS 697.058(1). ORS 697.095(1), OAR 441-810-0140.

EVIDENTIARY RULINGS

The Division's Exhibits A1 through A24 were admitted into the record without objection.

FINDINGS OF FACT

Background Information

1. Respondent is a limited liability company organized in Delaware on April 24, 2019. In its government filings and on its internet website, Respondent lists its business address as 1050 West Lake Drive #225, West Covina, CA, 91790. (Test. of Pierce; *see* Exs. A2 at 1, A22 at 1, A23, A24.)

2. Respondent identifies itself as a "Debt Recovery Company." (*See* Ex. A2 at 1.)

3. Respondent has never been registered with the Oregon Secretary of State to do business in Oregon. Respondent has never been registered with the Division as a collection agency in Oregon. (Test. of Pierce; *see* Ex. A22 at 2.)

The Complaint

4. On or about June 11, 2019, K.C. Thomas (Thomas), an employee of Respondent, contacted an Oregon resident identified as LH. Thomas informed LH that Respondent was collecting a debt for a third party. Thomas stated that Respondent had sent a letter to LH containing a court summons and asked if LH had received the summons. When LH stated that he had not received the summons, Thomas stated that she could settle LH's debt for $2,982.13, but only if LH paid by credit card within the next three hours. Thomas also warned LH that if he declined this offer Respondent would take LH to court and that he

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would have to pay in excess of $14,000 to resolve the debt. (Test. of Pierce; *see* Exs. A1 at 1-2, A22 at 1.)

5. On or about June 11, 2019, LH contacted the original creditor and learned that they had ceased operations in the United States more than seven years previously. LH then filed a complaint against Respondent with the Division. (Test. of Pierce; *see* Exs. A1 at 1-2, A22 at 1.)

The Investigation

6. On June 11, 2019, Joyce Pierce, Compliance Specialist III with the Division, began an investigation based on LH's complaint. Ms. Pierce learned that Respondent was not registered as a collection agency in Oregon. Ms. Pierce also learned that the address given by Respondent in its government filings and on its website was the location of a Regus virtual office, and that Respondent was not a tenant and had not entered into an agreement with Regus to receive mail at that location. (Test. of Pierce; *see* Ex. A22.)

7. By letter dated June 11, 2019, Ms. Pierce notified Respondent that it needed to stop all unregistered collection activity in Oregon. (Ex. A3.) In the letter, Ms. Pierce stated, in part:

> Bayview Asset Group has come to the attention of the Oregon Division of Financial Regulation ("Division") for allegedly conducting collection agency activities without proper licensing with the State of Oregon.
>
> Oregon Revised Statute ("ORS") Chapter 697 defines a collection agency as any business which solicits or collects third-party debts or if they engage in purchasing charged-off debt for the purpose of collecting it or hiring another to collect it, and requires a license before such activities can take place. ORS 697.091 and 697.095 list actions which can be taken and penalties which can be levied for violations of this law.

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> **Therefore, Bayview Asset Group must immediately stop all solicitation, collection activity, and/or repossession activity with Oregon consumers until Bayview Asset Group has submitted an application and been issued a license by the Division. Violations may result in the imposition of civil penalties.**
>
> * * * * *
>
> Finally, please provide the Division with a written response which should include a list of all Oregon consumers, the consumers[’] contact information, [and] any money [] that you have received as a result of your collection agency activities. **Please provide the requested information to my attention no later than 5:00 p.m. on July 3, 2019[.]**
> (*Id*. at 1; emphasis in original.)

8. By letter dated July 26, 2019, and received by the Division on August 2, 2019, Jeff Carlisle, Respondent’s Operations Manager, responded to the Division’s request and stated the following:

> In regards to the [] letter we received, our offices are conducting an investigation [as] to how any out of state accounts got into our system and were worked. Our office has closed any and all Oregon accounts and pulled the files or complete portfolios that contained the out of state accounts and forwarded any [and] all information to the issuing party we received it from. No further correspondence of any form has been made or will be made by our office or a third party of ours. Again, we want to reiterate that these account[s] [have] been closed by our office and all information pertaining to it, if any, has been forwarded to the issuing party. We do apologize for any inconvenience or misunderstanding in regards to the complaint that we received. If there were consumer complaints made from your state please get us their information and we will provide refunds or return any money we collected in violation. We hope that all reasonable requests that were made in the complaint have been satisfied. Again, if any consumers are looking to receive a refund we would gladly accommodate that request. (Ex. A12 at 1.)

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9. By letter dated August 8, 2019, Ms. Pierce requested that Mr. Carlisle provide to the Division a list of all Oregon consumers from which Respondent had solicited a claim for collection, or had collected or attempted to collect a claim that was owed to another person. Ms. Pierce requested that the list include the consumers' contact information, and the amount that Respondent had collected from each consumer. Ms. Pierce requested that Mr. Carlisle provide the information to the Division by August 22, 2019. (Test. of Pierce; *see* Ex. A14 at 1.)

10. By letter dated August 12, 2019, and received by the Division on August 19, 2019, Mr. Carlisle responded to the Division's request for information, stating the following:

> As I explained in my previous response [], our office has closed this entire portfolio and forwarded any [and] all information to the issuing party. No further correspondence of any form has been made or will be made by our office or a third party of ours. Again, we want to reiterate that these Oregon accounts and the portfolio they were sold with have been closed by our office and all information pertaining to them has been forwarded to the appropriate party. We do apologize for any inconvenience or misunderstanding in regards to this situation. We do however have an issue providing details on consumers that might have paid money to us. This is due to us immediately closing the entire portfolio that included the Oregon accounts and returning it to the seller. When we did this purge to remove the accounts from our system, as expeditiously as possible, we did lose the information notes and account details. I was able to pull pieces of information from our database that did contain some Oregon consumers and their information prior to the file being returned but was unable to see if any of them paid [due] to the loss of notes and account details. If there are any consumers looking to receive a refund we would gladly accommodate that request. I did however include the list of Oregon consumers and their information that I was able to find as well as additional notes that I was able to see and provide. All other information was purged out of our system

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> to eliminate the chance of it being worked and returned to the seller. (Ex. A15 at 1.)

The incomplete list of Oregon consumers that Mr. Carlisle provided to the Division included the names and contact information of 22 Oregon consumers from which Respondent had directly or indirectly solicited a claim for collection, or had collected or attempted to collect a claim that was owed to another person. The list did not include LH's name. (*Id*. at 2-3; test. of Pierce.)

CONCLUSIONS OF LAW

1. In 23 instances, Respondent operated as a collection agency in Oregon without registering with the Division, in violation of ORS 697.015.

2. Respondent violated ORS 697.058(1) by deleting the records of Oregon consumers from Respondent's system such that those records could not be produced in response to the Division's request for information.

3. Respondent must cease and desist from violating ORS 697.015 and ORS 697.058(1).

4. Respondent must pay civil penalties totaling $23,400 as follows: $22,400 for 23 violations of ORS 697.015; and $1,000 for violating ORS 697.058(1).

OPINION

The Division contends that in 23 instances, Respondent operated as a collection agency in Oregon without registering with the Division, in violation of ORS 697.015. The Division also contends that Respondent violated ORS 697.058(1) by deleting the records of Oregon consumers from Respondent's system such that those records could not be produced in response to the Division's request for information. The Division contends that Respondent should be ordered to cease and desist from violating ORS 697.015 and ORS 697.058(1). The Division further contends that Respondent should pay civil penalties totaling $23,400 for the violations. The Division bears the burden of proving its allegations

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by a preponderance of the evidence. ORS 183.450(2) and (5); *Reguero v. Teachers Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on Commission in disciplinary action). The standard of proof that generally applies in agency proceedings, including license-related proceedings, is the preponderance standard. *Dixon v. Board of Nursing,* 291 Or App 207, 213 (2018). Proof by a preponderance of the evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp*., 303 Or 390, 402 (1987).

1. *Whether, in 23 instances, Respondent operated as a collection agency in Oregon without registering with the Division, in violation of ORS 697.015.*

ORS 697.015 is titled "Registration requirement" and provides:

> A person shall not operate as a collection agency in this state unless the person registers with the Department of Consumer and Business Services under ORS 697.031 and maintains the registration in accordance with that section.

ORS 697.005 provides, in part:

> (1)(a) "Collection agency" means:
>
> (A) A person that engages directly or indirectly in soliciting a claim for collection, or collecting or attempting to collect a claim that is owed, due or asserted to be owed or due to another person or to a public body at the time the person solicits, collects or attempts to collect the claim[.]

As indicated above, a person shall not operate as a collection agency in this state unless the person registers with the Division under ORS 697.031 and maintains the registration in accordance with that section. "Person" means an individual, firm, partnership, trust, joint venture, association, limited liability company or corporation. ORS 697.005(8). Respondent is a limited liability company and therefore a "person" for purposes of ORS 697.015.

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The evidence adduced at hearing establishes that between April 24, 2019, and July 26, 2019, Respondent directly or indirectly solicited claims for collection, or collected or attempted to collect claims that were owed to another person from 23 Oregon consumers. The evidence also establishes that Respondent engaged in those collection agency activities without being registered with the Division as a collection agency in Oregon.

Accordingly, the Division has proven that in 23 instances Respondent operated as a collection agency in Oregon without registering with the Division, in violation of ORS 697.015.

2. *Whether Respondent violated ORS 697.058(1) by deleting the records of Oregon consumers from Respondent's system such that those records could not be produced in response to the Division's request for information.*

ORS 697.058 provides, in part:

> (1) Except as provided in subsection (9) of this section, every collection agency shall keep a record of all sums collected by it, and of all disbursements made by it, and shall maintain and keep all such records and all customers' funds within this state. Collection agencies shall maintain accounting records of collections for and payments to customers for a period of six years from the date of the last entry thereon. Collection agencies shall keep other records for a period of two years from the date of the last entry thereon. Collection agencies, or any employee thereof, shall not intentionally make any false entry in any collection agency record or intentionally mutilate, destroy or otherwise dispose of any such record within the time limits provided in this section. This subsection does not apply to out-of-state collection agencies.

As previously discussed, between April 24, 2019, and July 26, 2019, Respondent operated as a collection agency in Oregon without registering with the Division. On August 8, 2019, Division staff requested that Mr. Carlisle, Respondent's representative, provide to the Division a list of all Oregon consumers upon which Respondent had conducted

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collection agency activities. By letter dated August 12, 2019, Mr. Carlisle notified the Division that Respondent had closed all Oregon accounts, returned the client files to the underlying creditors, and purged the account information out of its system.

By deleting the Oregon accounts from its system, Respondent intentionally destroyed accounting records of collections that it was required to keep for a period of six years from the date of the last entry thereon. *See* ORS 697.058(1). In addition, because the Oregon accounts were deleted from Respondent's system, Mr. Carlisle was unable to produce in response to the Division's request a complete list of Oregon consumers upon which Respondent had conducted collection agency activities.

Consequently, the Division has proven that Respondent violated ORS 697.058(1) by deleting the records of Oregon consumers from Respondent's system such that those records could not be produced in response to the Division's request for information.

3. *Whether Respondent should be ordered to cease and desist from violating ORS 697.015 and ORS 697.058(1).*

ORS 697.093(1)

> (1) The Director of the Department of Consumer and Business Services may:
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> * * * * *
>
> (d) If the director has reason to believe that a person has:
>
> (A) Violated, is violating or is about to violate ORS 697.015, 697.031, 697.045, 697.058, 697.091, 697.105 or 697.115 or a rule adopted under ORS 697.031, 697.085 or 697.086, issue an order to cease and desist from the violation.

As previously determined, Respondent violated ORS 697.015 and ORS 697.058(1). Pursuant to ORS 697.093(1), the Director of the Department of Consumer and Business Services has the authority to issue an order directing Respondent to cease and desist from further violations of ORS 697.015 and ORS 697.058(1).

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Therefore, Respondent must cease and desist from violating ORS 697.015 and ORS 697.058(1).

4. *Whether Respondent should pay civil penalties totaling $23,400 as follows: $22,400 for 23 violations of ORS 697.015; and $1,000 for violating ORS 697.058(1).*

ORS 697.095 is titled "Civil penalties" and provides, in part:

> (1) In addition to any other penalty provided by law, a person who violates any provision of ORS 697.015 or 697.058 or any rule adopted under ORS 697.031, 697.085 or 697.086 is subject to forfeiture and payment of a civil penalty to the Department of Consumer and Business Services in an amount of not more than $1,000 for each offense.

OAR 441-810-0140 is titled "Civil Penalties" and provides:

> Civil penalties shall be $400 for the first offense and $1,000 for each subsequent offense.

The Division has proven 23 violations of ORS 697.015 and one violation of ORS 697.058(1). Pursuant to the authority cited above, Respondent must pay to the Division civil penalties of $400 for the first offense and $1,000 for each subsequent offense.

Accordingly, Respondent must pay to the Division civil penalties totaling $23,400 as follows: $22,400 for 23 violations of ORS 697.015; and $1000 for one violation of ORS 697.058(1).

EXCEPTIONS

The Proposed Order provides that the adverse party may file exceptions and argument within 30 days from the date this order was sent to the party. Neither the Division nor Respondent filed exceptions to the Proposed Order.

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ORDER

Now, therefore, the Director issues the following ORDERS:

Cease and Desist Order

1. Pursuant to ORS 697.093(1)(d)(A), the Director hereby ORDERS Respondent, and all entities owned or controlled by Respondent, its successors and assignees, to CEASE AND DESIST from violating any provision of the Oregon Collection Agency Law, ORS 697.005 to 697.115 or any administrative rule adopted by the Director under those statutes.

Order Assessing Civil Penalties

2. Pursuant to ORS 697.095 (1), the Director imposes CIVIL PENALTIES against Respondent in the total amount of $23,400:

A. $22,400 for operating as a collections agency in Oregon without registering with the Division, as required under ORS 697.015, in 23 instances; and

B. $1,000 for destroying records of collections activity in Oregon, in violation of ORS 697.058 (1).

IT IS SO ORDERED.

Dated this 17th day of March, 2022.

Andrew R. Stolfi, Director
Department of Consumer and Business Services

s/ Dorothy Bean

Dorothy Bean, Chief of Enforcement
Division of Financial Regulation

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NOTICE OF RIGHT TO JUDICIAL APPEAL

You are entitled to judicial review of this order in accordance with ORS 183.482. You may request judicial review by filing a petition with the Court of Appeals in Salem, Oregon, within 60 days from the date this order is served.

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