

FINAL ORDER
DATE 5/14/18

IN THE MATTER OF:

**H&E MANAGEMENT, LTD., a/k/a H&E
MANAGEMENT ASSOCIATES, LTD, a/k/a
H&E MANAGEMENT SERVICES, LLC,**

FREEMAN P. HAIR,

ROBERTA E. HAIR,

and

ELRICK P. HAIR

Respondents.

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

Case No.: CFR-FY2017-0015

ORDER TO CEASE AND DESIST

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 ("Board") in the Office of the Commissioner of Financial Regulation ("OCFR"), within the Department of Labor, Licensing and Regulation ("Department") is responsible for licensing and regulating persons engaged in collection agency activities in the State of Maryland and enforcing the provisions of the MCALA and the Maryland Consumer Debt Collection Act ("MCDCA"), Commercial Law Article ("CL") § 14-201 *et seq.*, Annotated Code of Maryland; and

WHEREAS, the Board finds grounds to allege that H&E Management, LTD, a/k/a H&E Management Associates, LTD, a/k/a H&E Management Services, LLC, ("H&E"), and Freeman P. Hair, Roberta E. Hair, and Elrick P. Hair (collectively, the "Respondents") have engaged in

acts or practices constituting violations of the MCALA; and the Board finds that action under the MCALA, BR § 7-205, is appropriate.

WHEREAS, pursuant to BR § 7-205 the Board is authorized to issue an order requiring persons to cease and desist from engaging in collection-related violations of the law and may require persons to take affirmative action to correct the violations, including providing restitution to aggrieved consumers.

WHEREAS, pursuant to BR § 7-205(b), the Board may, as the result of a hearing, or of providing the opportunity for a hearing, seek to impose civil penalties for failure to cease and desist or failure of the persons to take affirmative action to correct the violations as ordered by the Board.

NOW, THEREFORE, the Board has determined, for the reasons set forth below, that it is in the public interest to issue this Cease and Desist Order requiring the Respondents immediately **CEASE AND DESIST** from engaging, directly or indirectly, in collection agency activities in this State, including engaging in the business of collecting from Maryland residents, the fees and dues allegedly owed to their homeowner and community associations.

1. 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].” BR § 7-203 provides that, “[t]he Commissioner is chairman of the Board.”

2. Pursuant to BR § 7-205(a) of the MCALA, the Board may receive complaints of unlicensed collection activities or misconduct by a licensee and is authorized to take administrative action to enforce the provisions of the MCALA and the MCDCA. In accordance with the Department’s regulations contained in the Code of Maryland Regulations (“COMAR”) at 09.01.02.03C(2), the Board may refer complaints for investigation. As the result of an

investigation, pursuant to the MCALA, BR § 7-205(a)(3), the Board is authorized to issue orders “(i) to cease and desist from the violation and any further similar violations; or (ii) requiring the violator to take affirmative action to correct the violation.”

3. BR § 7-205(b) authorizes the Board to impose civil penalties for a violation of the orders issued under 7-205(a), after a hearing or offering the Respondents the opportunity for a hearing. Section 7-205(b) provides that the Board may “impose a penalty of up to \$500 for each violation cited in the order, not to exceed \$5,000, from which the violator failed to cease and desist or for which the violator failed to take affirmative action to correct, as ordered by the Board.”

4. BR § 7-301 provides that, “[e]xcept as otherwise provided in this title, a person must have a license whenever the person does business as a collection agency in the State.” BR § 7-401(a) further provides that, “[e]xcept 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.”

5. A collection agency is defined in BR § 7-101 as:

(d) “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;

6. Pursuant to § 7-101(f), a consumer claim is defined as 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.

7. Pursuant to the MCALA, the Board has jurisdiction over the individuals who operate or manage businesses that engage in collecting consumer claims. BR § 7-101(g) provides:

(g) *Control person.* – (1) “Control person” means a person who has the power, directly or indirectly, to direct the management or policies of a collection agency, whether through ownership of securities, by contract, or otherwise.

(2) “Control person” includes a person who:

(i) is a general partner, an officer, a director, or a member of a collection agency, or occupies a similar position or performs a similar function;

(ii) directly or indirectly has the right to vote 10% or more of a class of voting securities, or has the power to sell or direct the sale of 10% or more of a class of voting securities of a collection agency; or

(iii) in the case of a partnership, a limited partnership, a limited liability partnership, a limited liability company, or any other business entity:

1. has the right to receive on liquidation or dissolution of a collection agency 10% or more of the capital of the collection agency; or

2. has contributed 10% or more of the capital of a collection agency.

8. The Commissioner additionally has authority under BR § 7-205(a)(1) to enforce the provisions of the MCDCA. The MCDCA sets standards for the conduct of debt collectors in consumer transactions and as CL § 14-202(8) provides, “[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 provisions of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.* The FDCPA defines debt collectors in § 1692(a)(6), in pertinent part, as any person “who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or

indirectly, debts owed or due or asserted to be owed or due another.” The FDCPA provides, in pertinent 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:

* * *

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

* * *

9. H&E Management Associates, LTD is a business entity that was initially formed in the District of Columbia and registered in May of 1984 with the Maryland State Department of Assessment and Taxation (“SDAT”) to do business in Maryland as H&E Management Associates, LTD. H&E’s business address listed with SDAT is 10903 Indian Head Highway, #403, Fort Washington, Maryland 20744. According to SDAT records, H&E Management Associates, LTD is incorporated, but the business is not in good standing for failure to file a business personal property return for 2017.

10. Neither H&E Management Associates, LTD., nor any of the Respondents, have ever been authorized to engage in collection agency activities by the Commissioner or licensed as a collection agency in Maryland.

11. Freeman P. Hair (“F. Hair”), Roberta E. Hair (“R. Hair”), and Elrick P. Hair (“E. Hair”), manage, direct, operate, supervise, and/or oversee the business activities of H&E.

12. Respondents F. Hair, R. Hair, and E. Hair are control persons within the definition provided in BR § 7-101 (g) and are subject to the jurisdiction of the Board.

13. On or about July 21, 2016, the Board received a complaint from [REDACTED] [REDACTED] (“Consumer A”), a resident of Maryland. In his complaint, Consumer A stated that he lives in a residential community in Fort Washington, Maryland, and that H&E was the property manager for his community’s homeowners’ association, Prophecy Homeowners Association (“Prophecy”). Consumer A alleged that H&E was not licensed by the Board and that H&E’s efforts to collect fees or dues from him on behalf of Prophecy were unlawful in that, among other things, they constituted collection activities for which a collection agency license was required.

14. On or about July 28, 2016, Michael Jackson, the former Director of the OCFR’s Consumer Services Unit, sent a letter to Respondent F. Hair notifying him that the Board had received information alleging that H&E was engaged in collection activities. Respondent F. Hair is listed in SDAT records as the Resident Agent for H&E Management Associates, LTD. In the July 28, 2016 letter, Mr. Jackson advised Respondent F. Hair that in order to engage in collection activities, H&E was required to be licensed by the Board. Reference was made in the letter to the MCALEA, and information was provided by Mr. Jackson about how to apply for a collection agency license for the company. Mr. Jackson requested that the Respondents contact him within 15 days to indicate what action they would take regarding the matter.

15. On or about August 22, 2016, Mr. Jackson contacted H&E and spoke with Respondent R. Hair regarding the letter he sent to Respondent F. Hair on July 28th, and the fact that no response had been received. Respondent R. Hair advised that she would look into the matter. After receiving no response again from the Respondents and verifying that an application for the Respondents had not been received by the OCFR, on August 26, 2016, Mr. Jackson sent a certified letter to H&E advising that the matter would be referred for enforcement action by the Board if the Respondents did not apply for the required license within 10 days of the date of the

letter. The Respondents did not respond to Mr. Jackson's August 26th letter or submit an application to the OCFR for a collection agency license for H&E.

16. On September 19, 2016, Mr. Jackson referred Consumer A's complaint to the OCFR's Enforcement Unit to conduct an investigation on behalf of the Board. On or about March 30, 2017, Zenaida Velez-Dorsey, a financial fraud examiner with the OCFR's Enforcement Unit, contacted H&E regarding the complaint filed by Consumer A. Examiner Velez-Dorsey spoke with Respondent E. Hair who advised her that the Respondents were not aware a license was required in order for H&E to collect community or homeowner association dues and fees. Respondent E. Hair acknowledged that H&E provided management services for Prophecy as well as several other community associations in the Fort Washington area, and that as part of the property management duties, H&E routinely collected the monthly dues and fees owed by residents to the homeowner and community associations H&E managed.

17. Based on Respondent E. Hair's description of H&E's collection activities, Examiner Velez-Dorsey advised him that H&E was required by the MCALA to be licensed as a collection agency in Maryland. On April 4, 2017, Examiner Velez-Dorsey again contacted the Respondents and they agreed to apply for a collection agency license for H&E. That same day, Examiner Velez-Dorsey sent an email to Respondent E. Hair confirming the Respondents' agreement to apply for the license. Respondents were to make application on or before April 18, 2017.

18. On or about April 21, 2017, the OCFR received an application form from H&E.

19. Upon receipt of the application form, and as is the standard practice of the OCFR's Non-Depository Licensing Unit, notice was sent by mail to H&E acknowledging receipt

of the application form and identifying the documents required to be submitted to the OCFR in order to complete the application process.

20. The Respondents were notified by email on April 25, 2017, and on May 30, 2017, that the application fee for the license had not been paid and needed to be submitted before the application could be processed, and that the documents previously requested by the Non-Depository Licensing Unit were still needed to complete the application.

21. On June 1, 2017, and again on July 11, 2017, letters were sent by regular and certified mail to Respondent E. Hair (who had submitted the application on behalf of H&E) advising that neither the requested documents nor application fee had been received by the Non-Depository Licensing Unit, and that as a result, H&E's application for collection agency license was not complete. In the letters, Respondent E. Hair was advised that unless the application fee and required documents were provided by July 18, 2017, H&E's application would be considered abandoned by the Respondents. The Respondents did not reply to the written communications from the OCFR regarding H&E's application for license.

22. The Respondents never completed the application for a collection agency license.

23. Or on about June 29, 2017, the OCFR received a second complaint about the collection activities of H&E. The complaint was filed by a Maryland resident, [REDACTED] ("Consumer B"). In her complaint, Consumer B alleged that H&E had been collecting homeowner association dues on behalf of her homeowners' association, Wood Creek Community Association, Inc. ("Wood Creek") for the last ten years. Consumer B stated in her complaint that she had contacted H&E in response to recent efforts by the Respondents to collect alleged overdue fees from her on behalf of Wood Creek to advise them that she did not owe outstanding dues or fees. She advised the OCFR that she had provided H&E copies of her

payment records to show the Respondents that she owed no debts to Wood Creek, and that despite the documentation she presented, H&E had persisted in contacting her regarding alleged Fees and dues owed, and ultimately engaged an attorney who sent her a collection letter threatening to obtain a lien on her property if she did not make a payment.

24. Respondents are not and have never been licensed to act as a collection agency for Wood Creek or any other homeowner or community association in the State. Any representation by the Respondents that they can legally take action against a consumer to recover an alleged consumer claim not owned by the Respondents is a misrepresentation to Maryland consumers. In the communications with Consumer B, H&E threatened legal action against her to recover association dues and fees allegedly owed to Wood Creek.

25. Under *Finch v. LVNV Funding, LLC*, 212 Md. App. 748 (2013), a party that lacks a required license cannot file an action in court to enforce a right related to the unlicensed activities. By attempting to collect claims of the community and homeowner associations from residents and threatening to take legal action against them to bring about payment, Respondents have not only violated the MCALA, but have violated other State and federal laws that regulate the collection of debt. CL § 14-202 (8) of the MCDCA, prohibits a person from claiming, attempting, or threatening to enforce a right with knowledge that the right does not exist. The FDCPA, 15 U.S.C. § 1692e, prohibits a person from making false or misleading representations that involve threatening to take any action that cannot legally be taken or that is not intended to be taken.

26. On or about January 19, 2018, Consumer A again contacted the OCFR and advised that H&E was continuing to collect dues and fees from him on behalf of his homeowners' association, Prophecy. In support of his complaint, Consumer A provided the

OCFR with copies of coupons (or invoices) contained in a payment coupon book he received from H&E. The coupons were for the association dues owed to Prophecy for the months of January 2018 and April 2018. The payment coupon book directed Consumer A to mail his payments to Prophecy, but in care of H&E and to H&E's mailing address.

27. In January of 2016, the OCFR advised the Respondents of the requirements of the MCALA to be licensed in order to engage in collection activities in the State. Respondents knew or should have known that they were prohibited from engaging in such activities on behalf of others, and specifically, from collecting alleged debts on behalf of community and homeowner associations without having obtained a collection agency license from the Board.

28. Respondents knowingly and willfully have continued to collect consumer debts from Maryland residents and engage in the very activities they were advised by the Commissioner violated Maryland law. Respondents have engaged in these activities without a collection agency license in violation of the MCALA and in breach of their representations to the Commissioner in April of 2017 that they would apply for the license.

29. The violation of BR § 7-401 of the MCALA is a criminal misdemeanor offense that carries the potential of up to six months of incarceration in addition to a monetary penalty of up to \$1,000. Further, Respondents' unlicensed activities violate CL § 14-202(8) of the MCDCA, as well as 15 U.S.C. §§ 1692(e)(5) of the FDCPA.

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 the Commissioner of Financial Regulation, on behalf of the Board, **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 debts such as community and homeowner association dues and fees 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 or Respondents will be subject to statutory monetary penalties for all such violations; and it is further

ORDERED that all provisions of this Order, including all Orders and Notices set forth herein, also apply to all control persons and unnamed owners, partners, members, officers, directors, employees, and agents of all Respondents' business entities named above; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to BR § 7-309 Respondents are entitled to a hearing before the Board to determine whether this Order to Cease and Desist should be vacated, modified, or entered as a Final Order of the Board; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to BR § 7-309, this Order to Cease and Desist will be entered as a Final Order of the Board if Respondents do not request a hearing within fifteen (15) days of the receipt of this Order; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to 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 permitted to request a hearing, and to appear at such hearing, only on behalf of himself or herself, or through an attorney authorized to practice law in Maryland at the Respondents' own expense; and further,

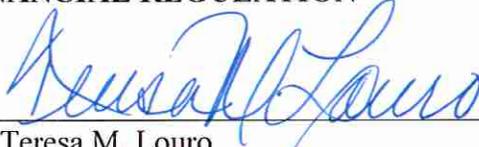
RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to SG § 10-206.1, and in accordance with SG § 10-207(b)(4), business entities are permitted to request a hearing, and to appear at such hearing, only through an attorney authorized to practice law in Maryland at the Respondents' own expense; and further,

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

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to BR § 7-205, the Board may issue an order requiring all Respondents to cease and desist from engaging in these violations and any further similar violations, or to take affirmative action to correct the violations, including the provision of restitution to aggrieved consumers, and after a hearing or providing the opportunity for a hearing, may issue a monetary penalty for violations of the order.

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

April 20, 2018
Date

By: 
Teresa M. Louro
Deputy Commissioner

For Antonio P. Salazar
Commissioner of Financial Regulation
Chairman, State Collection Agency Licensing Board