

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Unlicensed Debt **RECOMMENDATION ON CROSS**
Collection Activity of PurCo Fleet **MOTIONS FOR SUMMARY DISPOSITION**
Services, Inc.

This matter is pending before Administrative Law Judge Suzanne Todnem upon the parties' cross motions for summary disposition.

Stephen D. Melchionne, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Stephen K. Christiansen, Christiansen Law, PLLC, appeared on behalf of PurCo Fleet Services, Inc. (PurCo or Respondent).

On June 28, 2024, the Department filed its Motion for Summary Disposition and Memorandum of Law in Support of the Department's Motion for Summary Disposition (Department's Motion)¹ and Respondent filed its Motion for Summary Disposition and Memorandum of Law in Support of Motion for Summary Disposition, and requested oral argument, (Respondent's Motion).² The parties simultaneously filed responses, the Department's Memorandum Opposing Summary Disposition (Department's Response)³ and PurCo Fleet Services, Inc.'s Memorandum of Law in Support of Response to the Department's Motion for Summary Disposition (Respondent's Response)⁴ on July 15, 2024, and the motion record closed that day.

STATEMENT OF THE ISSUE

Did Respondent engage in the business of a collection agency in Minnesota without a license, in violation of Minn. Stat. § 332.33, subd. 1 (2022)?

¹ The Department's Motion is supported by the Declarations (Decl.) of Stephen Melchionne, with Exhibits (Exs.) A-F; and Paul Haas, with Ex. Haas-A. Citations to this portion of the record are identified by "Ex." followed by the corresponding letter.

² Respondent's Motion is supported by the Declaration of Stephen K. Christiansen and Exs. 1-11. Citations to these documents will be "Ex." followed by the corresponding numeral.

³ The Department's Response is supported by the Declaration of Jacqueline Olson and a Second Declaration of S. Melchionne, with Exhibits A-B. Citations to this portion of the record are identified by "Ex." followed by "Response-" and the corresponding letter.

⁴ Resp't's Response includes Exs. 1-11. Citations to this portion of the record are identified by "Ex." followed by "Response-" and the corresponding number.

SUMMARY OF CONCLUSIONS

There is no genuine issue of material fact to dispute that Respondent has engaged in the business of a collection agency on behalf of Minnesota companies for which licensure is required. Respondent has contracted with multiple Minnesota companies to perform collection agency services on their behalf for which Respondent is required to be licensed by the Department.

Based upon the submissions of counsel and the record, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:


IT IS HEREBY RECOMMENDED:

1. The Department's Motion be **GRANTED**.
2. Respondent's Motion be **DENIED**.

IT IS HEREBY ORDERED:

1. Respondent's request for a motion hearing is **DENIED**.⁵
2. The hearing scheduled to begin on October 24, 2024, is **CANCELED** as are pretrial filing deadlines.

Dated: October 9, 2024


SUZANNE TODNEM
Administrative Law Judge

⁵ See Minn. R. 1400.6600 (2023). A hearing on a motion will be ordered by the judge only if it is determined that a hearing is necessary to the development of a full and complete record on which a proper decision can be made. In this case, the Administrative Law Judge did not determine a hearing was necessary.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce (Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 45.027, subd. 5a(b) (2024), the Commissioner shall issue a further order vacating or making permanent the cease and desist order within 15 days after receiving the Administrative Law Judge's report. The time periods provided in this provision may be waived by agreement of the person requesting the hearing and the Department of Commerce and the person against whom the cease and desist order is issued.

A cease and desist order issued under Minn. Stat. § 45.027, subd. 5a (2024), remains in effect until it is modified or vacated by the Commissioner. Under Minn. Stat. 14.62, subd. 1 (2024), the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. Final orders may be appealed in the manner provided in Minn. Stat. §§ 14.63 -.69 (2024).

MEMORANDUM

I. Factual Background

Respondent is a Utah corporation.⁶ Respondent has worked with car rental companies for over 30 years providing damage claim adjusting and collection, including collecting money for damage to a motor vehicle from any liable person by any lawful means available.⁷ Respondent is licensed as a collection agency in the states of Idaho and Arizona.⁸

Respondent has entered into "Agreement for Services" contracts with at least five Minnesota vehicle rental companies.⁹ The Agreement for Services between Respondent and the clients¹⁰ establishes that Respondent will collect¹¹ money to which the client is entitled for damage to a motor vehicle from any liable person.¹² That is, Respondent recovers money to which a client is entitled from the client's customers and Respondent retains a portion of the money collected as "compensation for its services."¹³ The money Respondent recovers is segregated in a trust account and then disbursed to the client, less the compensation Respondent retains for providing its services.¹⁴

⁶ Ex. 1.

⁷ Resp't's Motion at 1; Ex. 3 (Sample Agreement for Services).

⁸ Ex. Response-3 at 9.

⁹ Exs. A-F. The terms of the Agreement for Services are the same among the six contracts, with only the respective client information and authorized agent information varying among them.

¹⁰ The Agreement for Services is between PurCo and the "client." See Exs. A-F, Ex. 3.

¹¹ In 2024, Respondent revised its standard Agreement for Services to remove references to "collect" or "collection" and instead uses iterations of "recover" or "recovery." See Decl. of James Driessen, ¶¶ 4-5; Ex. Response-9.

¹² Exs. A-E; Ex. 3.

¹³ Exs. A-E; Ex. 3; Ex. Response-9.

¹⁴ Exs. A-E; Ex. 3; Ex. Response-9.

Respondent provides forms the client must use when a damage claim arises on which Respondent is to collect.¹⁵ Throughout the duration of the ongoing contract relationship and processing of individual files, the client:

1. retains access to any of the files in PurCo's possession;
2. may audit Respondent's trust account;
3. shall receive all uncollected files from PurCo upon termination of the service agreement;
4. may receive money on files assigned to PurCo and pay PurCo all the money received or PurCo's share;
5. shall prosecute in its own name any action in small claims court which Respondent deems necessary to collect on any of the client's files upon Respondent's directive;
6. shall promptly return to Respondent money it received if all or a portion of the money must be returned to the payor.¹⁶

The relationship between Respondent and each client continues until either party terminates the agreement in writing with 30 days' notice.¹⁷ Upon termination of the agreement, Respondent returns all uncollected files to the client within 90 days of the termination.¹⁸

The Department became aware of Respondent's activities when it received a letter on June 22, 2022.¹⁹ Marcia Rounsaville rented a vehicle from Sonju Enterprises, Avis System Licensee (Sonju) in Duluth, Minnesota, in August 2021.²⁰ In a letter dated September 7, 2021, Respondent informed Ms. Rounsaville that there was physical damage to the vehicle she rented from Sonju resulting in a total claim amount of \$2,730.85.²¹ Ms. Rounsaville was instructed to send a check made payable to Respondent, with the claim number on the check.²² The letter to Ms. Rounsaville included the statement, "We are attempting to collect a debt."²³

Ms. Rounsaville eventually hired Kadee J. Anderson, a Minnesota attorney, to represent her in the collection matter with Respondent. Ms. Anderson sent a letter dated June 22, 2022, to Respondent and demanded Respondent "cease and desist from its

¹⁵ Exs. A-E; Ex. 3; Ex. Response-9.

¹⁶ Exs. A-F; Ex. 3.

¹⁷ Exs. A-F; Ex. 3; Ex. Response-9.

¹⁸ Exs. A-F; Ex. 3; Ex. Response-9.

¹⁹ Ex 7.

²⁰ Ex. 4.

²¹ Ex. 4. The Total Claim Amount consisted of \$1,651.05 for physical damage, \$879.80 loss of use for 10 days, and \$200.00 administrative fee.

²² Ex. 4.

²³ Ex. 4.

unlawful collections activities” against her client.²⁴ It was this correspondence that was provided to the Department as referenced above.²⁵

Respondent is not and has not been licensed by the Department in any capacity.²⁶ On November 29, 2023, the Department issued a Cease and Desist Order to Respondent.²⁷

II. Summary Disposition Standard

Summary disposition is the administrative equivalent of summary judgment.²⁸ The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition.²⁹ A motion for summary disposition may be granted when no genuine issue of material fact exists.³⁰ A genuine issue is one that is not a sham or frivolous,³¹ and a fact is material if resolving it will affect the result or outcome of the case.³²

The moving party must initially show the absence of a genuine issue of material fact.³³ The moving party may do so by citing to particular parts of materials in the record.³⁴ When the non-moving party resists a motion for summary disposition on a basis of fact, the non-moving party must show that there are specific facts in dispute which would have a bearing on the outcome of the case.³⁵

When considering a motion for summary disposition, the evidence must be viewed in the light most favorable to the non-moving party, and doubts and factual inferences must be resolved against the moving party.³⁶ The court’s function is not to decide the facts at issue, but to determine whether a genuine dispute of fact exists.³⁷ Therefore, the court does not weigh the evidence or make credibility assessments when considering a motion for summary disposition.³⁸

²⁴ Ex. 7 (Anderson Letter).

²⁵ Ex. 7; Ex. Haas-A.

²⁶ Ex. Haas-A; Ex. 2.

²⁷ Ex. Haas-A; Ex. 8, Cease and Desist Order (November 29, 2023).

²⁸ *Pietsch v. Bd. of Chiropractic Exam’rs*, 683 N.W.2d 303, 306 (Minn. 2004); *see also* Minn. R. 1400.5500(K) (2023).

²⁹ *See generally* Minn. R. 1400.6600; Minn. R. Civ. P. 56.

³⁰ *In re Gillette Children’s Specialty Healthcare*, 883 N.W.2d 778, 785 (Minn. 2016).

³¹ *See Highland Chateau, Inc. v. Minn. Dep’t of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984).

³² *Rathbun v. W.T. Grant Co.*, 300 Minn. 223, 229, 219 N.W.2d 641, 646 (1974).

³³ Minn. R. Civ. P. 56.03; *Anderson v. Dep’t of Natural Res.*, 693 N.W.2d 181, 191 (Minn. 2005).

³⁴ Minn. R. Civ. P. 56.03(a)(1).

³⁵ Minn. R. Civ. P. 56.05; *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

³⁶ *Rochester City Lines, Co. v. City of Rochester*, 868 N.W.2d 655, 661 (Minn. 2015).

³⁷ *Id.* at 664.

³⁸ *Hoyt Props., Inc. v. Production Resource Grp, LLC*, 736 N.W.2d 313, 320 (Minn. 2007).

A fact at issue must be established by substantial evidence, and a party may not rest upon general averments or denials.³⁹ Evidence offered to support or defeat summary judgment must be such evidence as would be admissible at trial.⁴⁰

When parties file cross motions for summary disposition, they “tacitly agree that there exist no genuine issues of material fact.”⁴¹ In this case, the parties both assert that no material issues of fact exist but oppose each other’s characterizations of the undisputed facts. If issues of fact exist notwithstanding the filing of cross motions, a trial regarding the factual question remains necessary.⁴²

III. Analysis

A. Legal Standards

The Commissioner of Commerce (Commissioner) enforces laws related to collection agencies and debt buyers.⁴³ No person may conduct business as a collection agency in the State of Minnesota without a valid license issued by the Department, unless an exemption applies.⁴⁴ A collection agency means a person engaged in the business of collection for others any account, bill, or other indebtedness, unless subject to an exception.⁴⁵

The Commissioner has the power to issue a cease and desist order whenever it appears to the Commissioner that a person has engaged or is about to engage in an act or practice constituting a violation of a law or rule related to the duties and responsibilities of the Commissioner.⁴⁶

B. Respondent’s Conduct as a Collection Agency

The Department contends that summary disposition should be granted its favor based on the language of the contracts Respondent has signed with Minnesota vehicle-rental companies and the undisputed fact that Respondent is not licensed in Minnesota. The Department has supported its Motion with declarations attesting to facts and documentation.⁴⁷ The Department provided six Agreement for Services⁴⁸ contracts between Respondent and Minnesota companies; Respondent provided two sample versions of the Agreement for Services.⁴⁹

³⁹ *Russ*, 566 N.W.2d at 70-71.

⁴⁰ *Hopkins by LaFontaine v. Empire Fire & Marine Ins., Co.*, 474 N.W.2d 209, 212 (Minn. Ct. App. 1991).

⁴¹ *Remodeling Dimensions, Inc. v. Integrity Mut. Ins. Co.*, 819 N.W.2d 602, 610 (Minn. 2012) (quotation omitted).

⁴² *St. Paul Fire & Marine Ins. Co. v. Nat’l Computer Sys., Inc.*, 490 N.W.3d 626, 630 (Minn. Ct. App. 1992), *review denied* (Minn. Nov. 17, 1992).

⁴³ Minn. Stat. § 332.33, subd. 1.

⁴⁴ Minn. Stat. § 332.33, subd. 1.

⁴⁵ Minn. Stat. § 332.31, subd. 3 (2022).

⁴⁶ Minn. Stat. § 45.027, subd. 5a(a).

⁴⁷ See Minn. R. Civ. P. 56.03(a)(1).

⁴⁸ Exs. A-F.

⁴⁹ Ex. 3; Ex. Response-9.

Respondent contends summary disposition should be granted in its favor because there is no genuine dispute of any material fact and it is entitled to judgment as a matter of law. Respondent has supported its Motion with declarations attesting to facts and documentation.⁵⁰ Respondent argues it is not a collection agency because it takes assignment of rental car damage incidents before they occur, seeks recovery in its own name and for its own account from start to finish, and purchases, on an agreed basis, those matters on which it successfully recovers.⁵¹ Respondent further asserts the damage incidents are not debts, bills or accounts when they are pre-assigned to Respondent.⁵²

Respondent attempts to characterize its arrangement with its clients as Respondent paying a fee for the files and that Respondent is an assignee and owner of the claims. The language in its own Agreement for Services clearly states Respondent retains compensation for its services.⁵³

Respondent's argument that Utah law governs the client agreement and the relationship between Respondent and its clients is irrelevant to assessing whether Respondent is acting as a collection agency in Minnesota. Regardless how Respondent attempts to characterize itself or its asserted relationship with its Minnesota clients, Minnesota laws apply to its conduct in Minnesota and on behalf of Minnesota companies despite Respondent's self-description.

Respondent has no independent right to recover any indebtedness⁵⁴ from its client's customers. Respondent asserts client claims are "assigned" to Respondent. The claims remain the client's as evidenced by the terms of the Agreement for Services.⁵⁵ The Agreement for Services states the relationship between Respondent and the Client is that of assignor and assignee, but every other definition and term of the agreement establishes that the client retains the right to the monetary debt, Respondent assesses the amount and collects the debt on behalf of the client and retains a portion for collection services Respondent provides. Respondent is a collection agency engaged in the business of collection of indebtedness for others.⁵⁶

C. Respondent is Required to be Licensed in Minnesota

Respondent has contracted with Minnesota companies that rent vehicles in Minnesota to provide debt collection services on their behalf on claims originating in Minnesota.⁵⁷ Respondents have "recovered damages" from Minnesota residents.⁵⁸ That is, Respondents have collected debts on behalf of the Minnesota vehicle rental

⁵⁰ See Minn. R. Civ. P. 56.03(a)(1).

⁵¹ Respondent Motion at 2.

⁵² Respondent Motion at 2.

⁵³ Exs. A-F; Ex. 3; Ex. Response-9.

⁵⁴ See Minn. Stat. § 332.31, subd. 3.

⁵⁵ Exs. A-F; Ex. 3; Ex. Response-9.

⁵⁶ Minn. Stat. § 332.31, subd. 3.

⁵⁷ Exs. A-F; Ex. 3; Ex. Response-9.

⁵⁸ Ex. Response-A.

companies and retained a percentage of the money collected as its fee for (collection) services provided.⁵⁹ While Respondents attempt to cloak their debt collection activities in terms such as an “assignee” that “recovers damages” for “files” it receives from “clients,” the fact is that Respondent collects debts on behalf of Minnesota vehicle rental companies in exchange for a fee and did so from Minnesota residents.⁶⁰

IV. Conclusion

The parties have tacitly established that there are no material facts in dispute, and summary judgment is appropriate. Respondent is a collection agency as defined in Minn. Stat. § 332.31, subd. 3, and is required to be licensed by the Department. The Department properly issued the Cease and Desist Order against Respondent.

S. T.

⁵⁹ See Exs. A-F; Ex. 3; Ex. Response-9; Ex. Response-A.

⁶⁰ Ex. Response-A.