

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

In the Matter of One Source Management	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
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This matter came on for a prehearing conference before Administrative Law Judge Manuel J. Cervantes (ALJ) on May 26, 2010, in a courtroom at the Office of Administrative Hearings (OAH) in St. Paul, pursuant to a Notice and Order Hearing, Order for Prehearing Conference, Statement of Charges, and Notice of Appearance (Notice and Order for Hearing), filed April 5, 2010.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department Commerce (Department). There was no appearance by, or on behalf of, Respondent One Source Management after written due notice by U.S. mail at Respondent's last known address on April 2, 2010. Respondent did not request a continuance or contact the ALJ for other relief. The record closed on May 26, 2010, following an oral motion for default judgment.

ISSUES

1. Whether the Respondent has engaged in unregistered debt settlement services in Minnesota in violation of Minn. Stat. § 332B.03 (2008);
2. Whether the Respondent charged excessive fees in violation of Minn. Stat. § 332B.09, subd. 4 (2008); and
3. Whether the Respondent violated Minn. Stat. § 45.027, subd. 1a (2008) by failing to respond to the Department's investigation.

The ALJ concludes that the Respondent is in default and recommends that the allegations in the Notice and Order for Hearing be deemed proven and be accepted as true.

The ALJ further concludes there is a basis to subject Respondent to disciplinary action under Minn. Stat. § 332B and recommends that the Department impose discipline upon Respondent.

Based upon the evidence in the hearing record, the ALJ makes the following:

FINDINGS OF FACT

1. Respondent One Source Management is not licensed in any capacity by the Department.

2. The Department received a complaint from Minnesota resident K.H. The complaint indicated that Respondent had offered to contact all of K.H.'s credit card companies and reduce the interest rate on all of the credit cards to a fixed rate of 6.99%.

3. Respondent told K.H. that they would provide a faster way to pay off the credit cards and guarantee a minimum savings of \$2,000. The very same day that Respondent contacted K.H. it charged one of her credit cards a fee of \$998.95.

4. Notwithstanding the charge by Respondent, no debt settlement services were provided to K.H.

5. In February 2010, the Department attempted to contact Respondent on four separate instances to address the complaint. No response was received from Respondent.

6. In addition, the Department received a complaint from Minnesota residents K.T. and P.T. The Department's investigation revealed that the Respondent offered to save these complainants money on their existing credit cards. Respondent charged \$998.95 to their Sears credit card on the day they made contact.

7. In February 2010, the Department attempted to contact the Respondent, on two separate instances to address these complaints. No response was received from Respondent.

8. On April 2, 2010, a Notice and Order Hearing in this matter was mailed to the Respondent's last known address. The Notice indicated that a conference would be held in this matter on May 26, 2010 before the undersigned.

9. The Notice and Order in this matter includes the following statement: Respondent's failure to appear at the prehearing conference or hearing may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and its proposed disciplinary action may be upheld.¹

10. Respondent failed to appear at the prehearing conference on May 26, 2010. After a short wait, the Department made an oral motion for default judgment. No prehearing request was made for a continuance nor was any communication received from Respondent by the ALJ.

¹ Notice and Order for Hearing at 3.

CONCLUSIONS OF LAW

1. The ALJ and the Commissioner are authorized to consider the allegations against Respondent under Minn. Stat. § 14.50.

2. Respondent was given written notice on April 2, 2010 of the scheduled prehearing conference of May 26, 2010 mailed to its last known address. This matter is, therefore, properly before the Commissioner and the ALJ.²

3. Respondent is in default as a result of its failure to appear at the scheduled prehearing conference.

4. Pursuant to Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. Upon default, the allegations and claims set forth in the original Notice and Order for Hearing may be taken as true or deemed proved without further evidence.

5. Minn. Stat. § 332B.03 (2008), states,

On or after August 1, 2009, it is unlawful for any person, whether or not located in this state, to operate as a debt settlement services provider or provide debt settlement services including, but not limited to, offering, advertising, or executing or causing to be executed any debt settlement services or debt settlement services agreement, except as authorized by law, without first becoming registered as provided in this chapter. Debt settlement services providers may continue to provide debt settlement services without complying with this chapter to those debtors who entered into a contract to participate in a debt settlement services plan prior to August 1, 2009, but may not enter into a debt settlement services agreement with a debtor on or after August 1, 2009, without complying with this chapter.

6. Respondent has engaged in unregistered debt settlement services in Minnesota and therefore, Respondent has violated Minn. Stat. § 332B.03 (2008).

7. Minn. Stat. § 332B.09, subd. 4 (2008), states,

No fees, charges, assessments, or any other compensation may be claimed, demanded, charged, collected, or received other than the fees allowed under this section.³ Any fees collected in excess of those allowed under this section must be immediately returned to the debtor.

8. Respondent has charged fees in excess of those allowed by law and therefore, Respondent has violated Minn. Stat. § 332B.09, subd. 4 (2008).

² Minn. R. 1400.5550, subp. 2.

³ See Minn. Stat. § 332B.09, subd. 3 (2008).

9. Minn. Stat. § 45.027, subd. 1a (2008), states,

An applicant, registrant, certificate holder, licensee, or other person subject to the jurisdiction of the commissioner shall comply with requests for information, documents, or other requests from the department within the time specified in the request, or, if no time is specified, within 30 days of the mailing of the request by the department. Applicants, registrants, certificate holders, licensees, or other persons subject to the jurisdiction of the commissioner shall appear before the commissioner or the commissioner's representative when requested to do so and shall bring all documents or materials that the commissioner or the commissioner's representative has requested.

10. Respondent failed respond to inquires by the Department and therefore, Respondent has violated Minn. Stat. § 45.027, subd. 1a (2008).

11. The allegations contained in the Notice and Order for Hearing are deemed proven and are taken as true.

12. The facts set forth in the Notice and Order for Hearing provide a basis to subject Respondent to disciplinary action.

13. The imposition of discipline against Respondent is in the public interest.

Based upon these Conclusions, the ALJ makes the following:

RECOMMENDATION

It is hereby respectfully recommended that the Commissioner impose discipline against One Source Management.

Dated: June 23, 2010

s/Manuel J. Cervantes
MANUEL J. CERVANTES
Administrative Law Judge

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the

Commissioner, Parties should contact Glenn Wilson, Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, or call the Department at (651) 296-4026, to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency 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.