

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

In the Matter of Receivables Management
Solutions, Inc. a/ka/ Wentworth Assets,
Inc. LLC, and Robert Claude Dunham,
Individually

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION
UPON DEFAULT**

This matter came on for a third prehearing conference before Administrative Law Judge LauraSue Schlatter on July 17, 2014.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). There was no appearance by, or on behalf of, Respondents Receivables Management Solutions, Inc. a/k/a Wentworth Assets, Inc. LLC, and Robert Claude Dunham, Individually (Respondents). Mr. Dunham had previously appeared at the prehearing conferences on behalf of the Respondents, jointly.

STATEMENT OF THE ISSUES

1. Whether Respondents conducted business as an unlicensed debt collection agency in Minnesota and without the requisite bond, in violation of Minn. Stat. §§ 332.23, subd. 1 and 332.34.
2. Whether Respondents failed to register all individuals performing the duties of a debt collector in Minnesota, in violation of Minn. Stat. § 332.33, subd. 5a.
3. Whether Respondents commingled operating and customer funds in common accounts and used customer funds to pay operating expenses, in violation of Minn. Stat. §§ 332.345 and 332.37(10).
4. Whether Respondents refused or intentionally failed to account to their clients for all money collected within 30 days from the last day of the month in which the money was collected, in violation of Minn. Stat. § 332.37(8).
5. Whether Respondents engaged in multiple acts and practices, each of which constitutes a distinct violation of law, that demonstrate they are untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the Commissioner of Commerce.

SUMMARY OF RECOMMENDATION

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

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On September 26, 2013, a Notice of and Order for Hearing, Order to Show Cause, Order for Prehearing Conference, and Statement of Charges (Notice and Order for Hearing) in this matter was mailed to Respondent Dunham at his last known address.¹

2. The Notice and Order for Hearing indicated that a Prehearing Conference would be held in this matter on October 31, 2013, at 1:00 p.m., at the Office of Administrative Hearings, 600 Robert Street North, St. Paul, Minnesota.²

3. The Respondents were represented at the First Prehearing Conference by Respondent Claude Robert Dunham (Dunham). At the First Prehearing Conference, this matter was scheduled for hearing beginning on August 11, 2014 and continuing as needed through August 14, 2014.

4. A Second Prehearing Conference was held on May 2, 2014. Mr. Dunham again appeared, representing the Respondents jointly.

5. On June 2, 2014, an Amended Notice of and Order for Hearing, Order to Show Cause and Statement of Charges (Amended Notice and Order for Hearing) in this matter was mailed to Respondent Dunham at his last known address.³

6. In conformity with Minn. R. 1400.5700, the Notice and Order for Hearing and the Amended Notice and Order for Hearing require that any party intending to “appear at the prehearing conference and hearing must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service” of the Notice and Order for Hearing.⁴

7. The Notice and Order for Hearing and the Amended Notice and Order for Hearing in this matter also include the following statement:

Respondent’s failure to appear at the prehearing conference, settlement conference, or the hearing . . . may result in a finding that the Respondents are in default, that the Department’s allegations contained in

¹ See Attachment A at Affidavit of Service.

² Attachment A at 1.

³ See Attachment B at cover letter from C. Kaisershot.

⁴ Ex. A at 9, Ex. B at 9.

the Statement of Charges may be accepted as true, and that Respondents may be subject to discipline by the Commissioner

8. Respondent did not file a Notice of Appearance with the undersigned.

9. In a letter dated July 3, 2014, Assistant Attorney General Kaisershot notified the undersigned Administrative Law Judge that he had been contacted by an attorney, Stephen Meisinger, who represents Mr. Dunham in various matters but is not an attorney of record in this proceeding. Mr. Meisinger informed Mr. Kaisershot that Respondent Robert Claude Dunham intended to exercise his constitutional right against self-incrimination and refrain from further appearances in this proceeding.⁵

10. On July 9, 2014, the Office of Administrative Hearings mailed a Third Prehearing Order to Respondent Dunham at his last known address. The Third Prehearing Order included Notice of a Prehearing Conference to be held by telephone on July 17, 2014 at 9:30 a.m.⁶

11. The Third Prehearing Order stated its purpose was “to determine whether Respondents intend to pursue this appeal and to provide the parties with an opportunity to address any issues outstanding prior to the hearing date.” It also included a warning that “the failure of a party to appear at a prehearing conference or hearing without the prior consent of the Administrative Law Judge shall be considered a default by that party. Upon default, the allegations contained in the Notice and Order for Prehearing Conference may be accepted as true, and the proposed action may be upheld.”⁷

12. No one appeared at the July 17, 2014 Prehearing Conference on behalf of Respondent. No request was made for a continuance, nor was any communication received by the undersigned from Respondent prior to the July 17, 2014 Prehearing Conference.

13. Respondent’s failure to appear at the Prehearing Conference was without consent of the Administrative Law Judge.

14. Because Respondent failed to appear at the Prehearing Conference, Respondent is in default.

15. Pursuant to Minn. R. 1400.6000, the allegations contained in the Amended Notice and Order for Hearing, a copy of which is attached as Attachment B, are taken as true, deemed proven without further evidence, and incorporated by reference into these Findings of Fact.⁸

⁵ Attachment C.

⁶ See Attachment D at Certificate of Service.

⁷ Att. D at 1-2.

⁸ In his Motion for Default, the Assistant Attorney General moved that the Expert Report of Receiver Charles Rolf also be accepted as true and deemed proven. The basis for this motion is Minn. R.1400.6000 which allows the Administrative Law Judge to deem the allegations of “any other pleading” as true, in addition to those contained in the Notice and Order for Hearing. The Expert’s Report was filed

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Department of Commerce and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 332.395.

2. The Respondent received timely and proper notice of the Third Prehearing Conference in this matter when the Administrative Law Judge sent the Third Prehearing Order to his last known address.

3. The Department has complied with all relevant procedural requirements of statute and rule.

4. Under Minn. R. 1400.6000, the Respondent is in default as a result of his failure to appear at the scheduled prehearing conference.

5. Under Minn. R. 1400.6000, when a party defaults by failing to appear at a prehearing conference without the prior consent of the judge, the allegations and the issues set out in the Notice and Order for Hearing may be taken as true and deemed proven. The Administrative Law Judge therefore deems the allegations to be true.

6. Minnesota Statutes section 45.027 provides that the Department may discipline a licensee who engages in conduct that violates the rules or law applicable to a licensee.

7. The Department has grounds to take disciplinary action against the Respondent's license based upon the allegations set forth in the Amended Notice and Order for Hearing.

8. An order by the Department taking disciplinary action against the Respondent's license is in the public interest.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

with the Office of Administrative Hearings on July 1, 2014. The Administrative Law Judge declines to include the allegations contained within that report among the allegations deemed true as part of this default recommendation. The Amended Notice and Order for Hearing specifically states, under paragraph 1 of the Additional Notice section, that "Respondent's failure to appear at the prehearing conference . . . may result in a finding that Respondents are in defaults, that the Department's allegations contained in the Statement of Charges may be accepted as true" The Respondents were on notice that the allegations in the Amended Notice and Order for Hearing could be deemed true in the event of a default. The Notice did not extend to other documents. Therefore, the Administrative Law Judge does not include later-filed documents in this Recommendation for Default Order.

RECOMMENDATION AND ORDER

IT IS HEREBY RECOMMENDED that the Commissioner take disciplinary action against Receivables Management Solutions Inc.'s collection agency license, and the debt collection registration license of Robert C. Dunham.

IT IS HEREBY ORDERED that the hearing scheduled for August 11-14, 2014 is **CANCELLED** and all prehearing deadlines contained in the First and Second Prehearing Orders are **VACATED**.

Dated: July 22, 2014

s/LauraSue Schlatter

LAURASUE SCHLATTER
Administrative Law Judge

Reported: Default

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. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Michael Rothman, Commissioner, Department of Commerce, Attn: Heidi Retterath, Suite 500, 85 Seventh Place East, St. Paul, MN 55101, (651) 539-1445, to learn the procedure for filing exceptions or presenting argument.

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 Administrative Law Judge of the date the record closes. 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. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, 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.