

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Revocation of the Collection  
3 Agency License of:

No. 15F-BD006-BNK

4 **ASSOCIATED CREDITORS EXCHANGE,  
5 INC.; JOSEPH BERARDI, PRESIDENT; and  
6 MATTHEW J. BERARDI, VICE PRESIDENT**

**CONSENT ORDER**

7 3443 N. Central Avenue  
8 Phoenix, Arizona 85012

9 Respondents.

10 On November 17, 2014, the Arizona Department of Financial Institutions (“Department”)  
11 issued a Notice of Hearing to Revoke and Complaint, alleging that Respondents had violated  
12 Arizona law. Wishing to resolve this matter in lieu of an administrative hearing, and without  
13 admitting or denying liability, Respondents consent to the following Findings of Fact and  
14 Conclusions of Law, and consents to the entry of the following Order.

15 **FINDINGS OF FACT**

16 1. At all times pertinent hereto, Respondent Associated Creditors Exchange, Inc. (“ACE”)  
17 was an Arizona corporation which was authorized to transact business in Arizona as a collection  
18 agency, license number CA-0909086, within the meaning of A.R.S. § 32-1001, *et seq.* The nature of  
19 ACE’s business was that of soliciting claims for collection and collection of claims owed, due, or  
20 asserted to be owed, or due, within, the meaning of A.R.S. § 32-1001(2)(a).<sup>1</sup> On or about August  
21 2013, ACE claims to have stopped operating as a collection agency.

22 2. Respondent Joseph A. Berardi is the President of ACE and was authorized to transact  
23 business in Arizona as a collection agency within the meaning of A.R.S. §§ 32-1001, *et seq.*

24 3. Respondent Matthew J. Berardi is the Vice-President of ACE and was authorized to  
25 transact business in Arizona as a collection agency within the meaning of A.R.S. §§ 32-1001, *et seq.*

26 4. ACE, Joseph A. Berardi and Matthew J. Berardi (collectively “Respondents”) were not

---

<sup>1</sup> According to the Arizona Corporation Commission’s records, ACE was dissolved for failure to file an annual report on December 30, 2014.

1 exempt from licensure as a collection agency within the meaning of A.R.S. § 32-1004.

2 5. An examination of ACE, conducted by the Department, commencing on December 1,  
3 2013, revealed that Respondents:

4 a. Made a material misstatement or omission on the application for a license or on any  
5 document required to be filed with the Superintendent. Specifically:

6 (1) Respondents failed to follow instructions by failing to submit with their renewal  
7 license applications, in the collection agency addendum, a financial statement  
8 that began at the previous statement's ending date. This created a gap in  
9 financial reporting or an omission of information required on the Department's  
10 renewal form.

11 (2) Since the last examination this omission of information occurred on  
12 Respondents' renewal submissions for 2009, 2010, 2011, 2012, and 2013.

13 b. Failed to deal openly, fairly and honestly in the conduct of the collection agency  
14 business by (i) engaging in unfair or misleading practices or resorted to an oppressive,  
15 vindictive or illegal means or methods of collection; (ii) using unauthorized or  
16 oppressive tactics designed to harass any person to pay a debt; (iii) using written or  
17 oral communications that either ridicule, disgrace, or humiliate any person or tend to  
18 ridicule, disgrace, or humiliate any person; and (iv) permitting its agents, employees,  
19 representatives, debt collectors, or officers to use obscene or abusive language in  
20 efforts to collect a debt, in their dealings with at least ten (10) debtors.

21 c. Failed to deal openly, fairly and honestly in the conduct of the collection agency  
22 business by (i) engaging in unfair or misleading practices or resorted to an oppressive,  
23 vindictive or illegal means or methods of collection; (ii) failing to stop contacting a  
24 debtor, directly or indirectly, after the debtor gave ACE written notice that the debtor:  
25 refuses to pay the debt, or wants the collection agency to stop all further  
26 communication with the debtor; (iii) failing to give copies of its evidence of the debt

1 to the debtor or the debtor's attorney on request; and/or (iv) failing to investigate any  
2 claim by the debtor or the debtor's attorney that the debtor has been misidentified, the  
3 debt has been paid, the debt has been discharged in bankruptcy, or based on any other  
4 reasonable claim, the debt is not owed, in their dealings with at least five (5) debtors.

5 d. Failed to meet the financial responsibility and bonding requirements of A.R.S. Title  
6 32, Chapter 9. Specifically, Respondents' internal financial statements for the period  
7 ended September 30, 2013 showed negative equity in the amount of -\$3,436,262.48.  
8 Respondents' current position does not meet the financial responsibility required to  
9 continue business.

10 e. Failed to notify the Superintendent in writing of any change in its place of business.  
11 Specifically, Based upon the above findings, the Department issued a Notice of  
12 Assessment on September 26, 2014 and attempted service via certified mail, return  
13 receipt requested, upon Respondents at their last known address of record at 3443 N.  
14 Central Avenue, Suite 1100, Phoenix, Arizona 85012. The mail was returned to the  
15 Department.

16 f. Failed to maintain a valid bond, which is a prerequisite of doing business as a  
17 collection agency. On October 14, 2014, the Department received a Notice of Non-  
18 Renewal of surety bond.

19 6. These Findings of Fact shall also serve as Conclusions of Law.

20 **CONCLUSIONS OF LAW**

21 1. Pursuant to A.R.S. Title 6 and Title 32, Chapter 9, the Superintendent has the authority  
22 and duty to regulate all persons engaged in the collection agency business and with the enforcement  
23 of statutes, rules, and regulations relating to collection agencies.

24 2. The conduct of ACE, Joseph A. Berardi and Matthew J. Berardi, as alleged above,  
25 constitutes a violation of the statutes and rules governing collection agents as follows:

26 a. A.R.S. § 32-1053(A)(6) by making a material misstatement or omission on the

1 application for a license or on any document required to be filed with the  
2 Superintendent;

- 3 b. A.R.S. §§ 32-1051(1), 32-1053(A)(1) and 47-1201(b)(23) by failing to meet their  
4 financial responsibility and maintain a positive net worth at all times;
- 5 c. A.R.S. § 32-1051(3) by breaching the duty to deal openly, fairly and honestly in the  
6 conduct of the collection agency business;
- 7 d. A.R.S. § 32-1051(4) by engaging in unfair or misleading practices or resorting to  
8 oppressive, vindictive or illegal means or methods of collection.
- 9 e. A.A.C. Rule 20-4-1511(A), by using unauthorized or oppressive tactics designed to  
10 harass any person to pay a debt;
- 11 f. A.A.C. Rule 20-4-1511(B), by using written or oral communications that either  
12 ridicule, disgrace, or humiliate a person or tend to ridicule, disgrace, or humiliate a  
13 person;
- 14 g. A.A.C. Rule 20-4-1511(D), by permitting its agents, employees, representatives, debt  
15 collectors, or officers to use obscene or abusive language in efforts to collect a debt;
- 16 h. A.A.C. Rule 20-4-1513(B), by failing to stop contacting a debtor, directly or  
17 indirectly, after the debtor gives a written notice that the debtor refuses to pay the  
18 debt or wants the collection agency to stop all further communication with the debtor.
- 19 i. A.A.C. Rule 20-4-1514(A), by failing to provide proper disclosure information to the  
20 debtor within five (5) days after the initial communication with the debtor;
- 21 j. A.A.C. Rule 20-4-1514(B), by failing to give the debtor access to any of the  
22 collection agency's records that contain the disclosure information listed under  
23 A.A.C. Rule 20-4-1514(A);
- 24 k. A.A.C. Rule 20-4-1514(C), by failing to provide a free copy of any document from its  
25 records that contain the disclosure information listed under A.A.C. Rule 20-4-  
26 1514(A), at the request of the debtor; and

1 l. A.A.C. Rule 20-4-1521 by failing to investigate a claim that the debtor has been  
2 misidentified.

3 m. A.A.C. Rule 20-4-1503(B) by failing to notify the Superintendent in writing of any  
4 change in its place of business within 10 days after the change.

5 n. A.R.S. § 32-1021(B)(2) by failing to maintain an active and valid surety bond  
6 deposited with the Superintendent.

7 3. Neither ACE, nor Joseph A. Berardi or Matthew J. Berardi meet any of the exemptions to  
8 the licensing requirements set forth in A.R.S. § 32-1004(A).

9 4. The violations, set forth above, constitute grounds for (1) the issuance of an order  
10 pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and  
11 to take the appropriate affirmative actions, within a reasonable period of time prescribed by the  
12 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and  
13 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132 of not more  
14 than five thousand dollars (\$5,000.00) for each violation for each day; (3) the suspension or  
15 revocation of Respondents' license pursuant to A.R.S. § 32-1053(A); and (4) an order or any other  
16 remedy necessary or proper for the enforcement of statutes and rules regulating collection agencies  
17 pursuant to A.R.S. §§ 6-123 and 6-131.

18 **ORDER**

19 1. Respondents Joseph A. Berardi, Matthew J. Berardi and Associated Creditors Exchange,  
20 Inc. shall cease conducting collection agency business in the State of Arizona in violation of any  
21 applicable Arizona statutes or rules.

22 2. Respondents shall pay to the Department a settlement payment in the amount of **ten**  
23 **thousand dollars (\$10,000.00)**, which shall be paid according to the following schedule:

- 24 a. **Five thousand dollars (\$5,000.00)** due upon execution of this Order;
- 25 b. **Five thousand dollars (\$5,000.00)** due on or before February 20, 2015.

26 Respondents Joseph A. Berardi, Matthew J. Berardi and Associated Creditors Exchange, Inc. shall

1 be jointly and severally liable for the payment of the civil money penalty.


2 1. The provisions of this Order shall be binding upon Respondents Joseph A. Berardi,  
3 Matthew J. Berardi and Associated Creditors Exchange, Inc., and resolves the Notice of Hearing to  
4 Revoke and Complaint issued on November 17, 2014, subject to Respondents' compliance with the  
5 requirements of this Order. Upon receipt of the payment of the civil money penalty from  
6 Respondents and execution of this Consent Order by Respondents, the Department will accept the  
7 surrender of Associated Creditors Exchange, Inc.'s license, license number CA-0909086, in lieu of  
8 pursuing an administrative action for license revocation.

9 2. Should Respondents fail to comply with this Order, the Superintendent shall institute  
10 further disciplinary proceedings.

11 3. The provisions of this Order shall be binding upon Respondents, their employees, agents,  
12 and other persons participating in the conduct of the affairs of Respondents.

13 4. This Order shall become effective upon service, and shall remain effective and  
14 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated,  
15 or set aside.

16 SO ORDERED this 25 day of February, 2015.

17  
18 Lauren W. Kingry  
19 Superintendent of Financial Institutions  
20 By   
21 Robert D. Charlton  
22 Assistant Superintendent of Financial Institutions

23 **CONSENT TO ENTRY OF ORDER**

24 1. Respondent acknowledges that he has been served with a copy of the foregoing  
25 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, has read the same,  
is aware of his right to an administrative hearing in this matter, and has waived the same.

26 2. Respondent admits the jurisdiction of the Superintendent and consents to the entry of

1 the foregoing Findings of Fact, Conclusions of Law, and Order.

2 3. Respondent acknowledges that the acceptance of this Agreement by the  
3 Superintendent is solely to settle this matter and does not preclude this Department, any other agency  
4 or officer of this state or subdivision thereof from instituting other proceedings as may be  
5 appropriate now or in the future.

6 4. Failure to correct the violations set forth above or any future findings of repeat  
7 violations shall result in disciplinary action which may include a greater civil money penalty.

8 5. Joseph A. Berardi, on behalf of Associated Creditors Exchange, Inc. and himself,  
9 represents that he is the President of Associated Creditors Exchange, Inc. and that, as such, has been  
10 authorized by Associated Creditors Exchange, Inc. to consent to the entry of this Order on its behalf.

11 6. Matthew J. Berardi, on behalf of Associated Creditors Exchange, Inc. and himself,  
12 represents that he is the Vice-President of Associated Creditors Exchange, Inc. and that, as such, has  
13 been authorized by Associated Creditors Exchange, Inc. to consent to the entry of this Order on its  
14 behalf.

15 7. Respondent waives all rights to seek judicial review or otherwise to challenge or  
16 contest the validity of this Consent Order.

17 DATED this 21<sup>ST</sup> day of JANUARY, 2015.

18  
19 By Joseph A. Berardi  
Joseph A. Berardi, President  
Associated Creditors Exchange, Inc.

20  
21 By Matthew J. Berardi  
Matthew J. Berardi, Vice President  
Associated Creditors Exchange, Inc.

22  
23 ORIGINAL of the foregoing filed this 25<sup>th</sup> day  
24 of February, 2015, in the office of:

25 Lauren W. Kingry, Superintendent of Financial Institutions  
26 Arizona Department of Financial Institutions  
ATTN: Sabrina Zimmerman

1 2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018

2 **COPY** e-filed same date to:

3 Diane Mihalsky, Administrative Law Judge  
4 Office of the Administrative Hearings

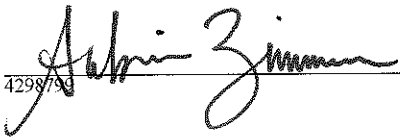
5 **COPY** of the foregoing mailed/delivered same date to:

6 Natalia A. Garrett, Assistant Attorney General  
Office of the Attorney General  
7 1275 W. Washington  
Phoenix, AZ 85007  
8 [Natalia.Garrett@azag.gov](mailto:Natalia.Garrett@azag.gov)

9 Robert D. Charlton, Assistant Superintendent  
Jeremy Baraff, Examiner-in-Charge  
10 Arizona Department of Financial Institutions  
2910 N. 44th Street, Suite 310  
11 Phoenix, AZ 85018  
[Sabrina.Zimmerman@azdfi.gov](mailto:Sabrina.Zimmerman@azdfi.gov)

12 **COPY** emailed and mailed same date to:

13 Mark H. Candioto, Esq.  
14 Parker Schwartz, PLLC  
7310 North 16th Street, Suite 330  
15 Phoenix, Arizona 85020  
Attorneys for Respondents  
16 [mcandioto@psazlaw.com](mailto:mcandioto@psazlaw.com)

17   
18 4298799

19  
20  
21  
22  
23  
24  
25  
26