In the Matter of the Collection Agency License of:

NCO FINANCIAL SYSTEMS, INC. MICHAEL J. BARRIST, PRESIDENT 20401 N. 29th Avenue, Suite 110 Phoenix, AZ 85027

Respondents.

No. 11F-B003-SBD

CONSENT ORDER

On July 1, 2010, the Arizona Department of Financial Institutions ("Department") issued an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order ("Cease and Desist Order"), alleging that Respondents had violated Arizona law. Denying liability, yet wishing to resolve this matter in lieu of an administrative hearing, Respondents consent to the following Findings of Fact and Conclusions of Law, and consent to the entry of the following Order.

FINDINGS OF FACT

- 1. Respondent NCO Financial Systems, Inc. ("NCO") is a Pennsylvania corporation authorized to transact business in Arizona as a collection agency, license number CA0019052, within the meaning of A.R.S. § 32-1001, et seq. The nature of NCO's business is that of soliciting claims for collection and collection of claims owed, due, or asserted to be owed, or due, within, the meaning of A.R.S. § 32-1001(2)(a).
- 2. Respondent Michael J. Barrist ("Mr. Barrist") is the President of NCO. NCO is authorized to transact business in Arizona as a collection agency within the meaning of A.R.S. §§ 32-1001, et seq.
- 3. NCO is not exempt from licensure as a collection agency within the meaning of A.R.S. § 32-1004.
- 4. While denied by NCO, an examination of NCO, conducted by the Department, revealed that NCO failed to implement procedures to correct harassment and other violations of Arizona statutes and rules since their previous examination in November 2004, in 49 complaints filed with

the Department since the November 2004 examination.

5. These Findings of Fact shall also serve as Conclusions of Law.

CONCLUSIONS OF LAW

- 1. Pursuant to A.R.S. Title 6 and Title 32, Chapter 9, the Superintendent has the authority and duty to regulate all persons engaged in the collection agency business and with the enforcement of statutes, rules, and regulations relating to collection agencies.
- 2. By the conduct set forth in the Findings of Fact, and while denied by NCO, NCO has violated the following:
 - a. A.A.C. R20-4-1504(D) by failing to maintain all records required and make them available for examination, investigation, or audit in Arizona within three working days after the Superintendent demands the records;
 - b. A.A.C. R20-4-1511(A) by using unauthorized or oppressive tactics designed to harass any person to pay a debt;
 - c. A.A.C. R20-4-1511 (C) by stating, implying or tending to imply, in written or oral communications that any person is guilty of fraud or any other crime;
 - d. A.A.C. R20-4-1512(A) by failing to contact a debtor by telephone only during reasonable hours, to make a reasonable attempt to contact a debtor at the debtor's residence, and/or by failing to contact a debtor at the debtor's place of employment if a reasonable attempt to contact the debtor at the debtor's residence has failed;
 - e. A.A.C. R20-4-1507(1) by failing to represent itself as a collection agency in all communications with debtors, either orally or in writing;
 - f. A.A.C. R20-4-1509(C) by threatening legal action when there was no intention to sue;
 - g. A.A.C. R20-4-1512(B)(1) by disclosing information about a debt to a third party.
 - h. A.A.C. R20-4-1513(B)(2) by failing to cease and desist communication with a debtor after receiving written notice from the debtor;

- i. A.A.C. R20-4-1520(A)(2) by allowing their debt collectors, agents, representatives, employees, or officers to claim to be, or imply that the person is, an attorney unless the person is licensed to practice law;
- j. A.R.S. § 32-1051(3) by failing to deal openly, fairly and honestly in the conduct of the collection agency business;
- k. A.R.S. § 32-1051(4) by engaging in unfair or misleading practices; and
- 1. A.A.C. R20-4-1510(C) by misrepresenting the remedies available to NCO.
- 3. NCO does not meet any of the exemptions to the licensing requirements set forth in A.R.S. § 32-1004(A).
- 4. By the conduct set forth above, NCO has failed to conduct its collection agency business in accordance with the law, by violating numerous provisions of the Arizona Revised Statutes and Arizona Administrative Code, which is grounds for the suspension or revocation of NCO's license, pursuant to A.R.S. § 32-1053(3).
- 5. The violations, set forth above, constitute grounds for: (1) the issuance of an order pursuant to A.R.S. § 6-137 directing NCO to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the suspension or revocation of NCO's license pursuant to A.R.S. § 32-1053; and (4) an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating collection agencies pursuant to A.R.S. §§ 6-123 and 6-131.

ORDER

- NCO shall immediately stop the violations set forth in the Findings of Fact and Conclusions of Law. NCO shall use its best faith efforts to:
 - a. maintain all records required and make them available for examination, investigation, or audit in Arizona within three working days after the Superintendent demands the

records;

- b. immediately cease from using unauthorized or oppressive tactics designed to harass any person to pay a debt;
- c. immediately cease from stating, implying or tending to imply, in written or oral communications that any person is guilty of fraud or any other crime;
- d. contact a debtor by telephone only during reasonable hours, to make a reasonable attempt to contact a debtor at the debtor's residence, and/or by failing to contact a debtor at the debtor's place of employment if a reasonable attempt to contact the debtor at the debtor's residence has failed;
- e. represent themselves as a collection agency in all communications with debtors, either orally or in writing;
- f. immediately cease from threatening legal action when there was no intention to sue;
- g. immediately cease from disclosing information about a debt to third parties.
- h. immediately cease and desist communication with a debtor after receiving written notice from the debtor;
- i. immediately cease from allowing their debt collectors, agents, representatives, employees, or officers to claim to be, or imply that the person is, an attorney unless the person is licensed to practice law;
- j. immediately deal openly, fairly and honestly in the conduct of the collection agency business;
- k. immediately cease from engaging in unfair or misleading practices; and
- 1. immediately cease from misrepresenting the remedies available to NCO.
- 2. NCO shall immediately pay to the Department an assessment in the amount of two hundred thousand dollars (\$200,000.00), including late penalty fees.
- 3. NCO shall comply with all Arizona statutes and rules regulating Arizona collection agencies (A.R.S. §§ 32-1001, et seq.).

- 4. The provisions of this Order shall be binding upon NCO and its employees, agents, and other persons participating in the conduct of the affairs of NCO.
- 5. This Order shall become effective upon service, and shall remain effective and enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated, or set aside.

SO ORDERED this _____ day of November____, 2010.

Lauren W. Kingry Superintendent of Financial Institutions

Robert D. Charlton

Assistant Superintendent of Financial Institutions

CONSENT TO ENTRY OF ORDER

- 1. Respondents acknowledge that they have been served with a copy of the foregoing Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the same, are aware of their right to an administrative hearing in this matter, and have waived the same.
- 2. Respondents admit the jurisdiction of the Superintendent and consent to the entry of the foregoing Findings of Fact, Conclusions of Law, and Order.
- 3. Respondents state that no promise of any kind or nature has been made to induce them to consent to the entry of this Order, and that they have done so voluntarily.
- 4. NCO agrees to continue to use its best faith efforts to cease from engaging in the violative conduct as alleged above in the Findings of Fact and Conclusions of Law.
- 5. Respondents acknowledge that the acceptance of this Agreement by the Superintendent is solely to settle this matter and does not preclude this Department, any other agency or officer of this state or subdivision thereof from instituting other proceedings as may be appropriate now or in the future.

| 1 | 6. Michael J. Barrist, on behalf of NCO Financial Systems, Inc. represents that he is the |
|----|--|
| 2 | President and that, as such, has been authorized by NCO Financial Systems, Inc. to consent to the |
| 3 | entry of this Order on its behalf. |
| 4 | 7. Respondents waive all rights to seek judicial review or otherwise to challenge or contest |
| 5 | the validity of this Order. |
| 6 | · · · |
| 7 | DATED this 28 day of October , 2010. |
| 8 | By: The same of th |
| 9 | Michael J. Barrist, as President NCO Financial Systems, Inc. |
| 10 | ORIGINAL of the foregoing filed this |
| 11 | day of 000, 2010, in the office of: |
| 12 | Lauren W. Kingry Superintendent of Financial Institutions |
| 13 | Arizona Department of Financial Institutions ATTN: Susan L. Longo |
| 14 | 2910 N. 44th Street, Suite 310 Phoenix, AZ 85018 |
| 15 | COPY mailed/delivered same date to: |
| 16 | Craig A. Raby, Assistant Attorney General |
| 17 | Office of the Attorney General 1275 West Washington |
| 18 | Phoenix, AZ 85007 |
| 19 | Robert D. Charlton, Assistant Superintendent Mack Wynegar, Senior Examiner |
| 20 | Arizona Department of Financial Institutions 2910 N. 44th Street, Suite 310 |
| 21 | Phoenix, AZ 85018 |
| 22 | AND COPY MAILED SAME DATE by Certified Mail, Return Receipt Requested, to: |
| 23 | Michael J. Barrist, President |
| 24 | NCO Financial Systems, Inc. 507 Prudential Road |
| 25 | Horsham, PA 19044 Respondents |

| 1 | |
|----|---|
| 1 | Heidi McNeil Staudenmaier, Esq. |
| 2 | SNELL & WILMER, LLP One Arizona Center |
| 3 | 400 East Van Buren Phoenix, AZ 85004-2202 |
| | Attorneys for Respondents |
| 4 | David Israel, Esq. |
| 5 | Mayas Erickson, Esq. SESSIONS, FISHMAN, NATHAN & ISRAEL, LLC |
| 6 | 3850 N. Causeway Blvd., Suite 200 Metairie, LA 70002-7227 |
| 7 | Attorneys for Respondents |
| 8 | Wood Imakleker of |
| 9 | # 938307-2 |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| | |
| 14 | |
| 15 | |
| 16 | |
| 17 | |
| 18 | |
| 19 | |
| 20 | |
|] | |
| 21 | |
| 22 | |
| 23 | |
| 24 | |