

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Unlicensed Activity of:

No. 09F-BD072-SBD

3 **CONSUMER RECOVERY ASSOCIATES,**
4 **LLC AND PETER MITCHELL, MANAGER**
2697 International Parkway #260
Virginia Beach, Virginia 23452

**ORDER TO CEASE AND DESIST;
NOTICE OF OPPORTUNITY FOR
HEARING; CONSENT TO ENTRY OF
ORDER**

5 Respondent.

6
7 The Superintendent of Financial Institutions for the State of Arizona (the "Superintendent"),
8 makes the following Findings of Fact and Conclusions of Law and enters the following Order
9 pursuant to Arizona Revised Statutes ("A.R.S.") § 6-137.

10 Pursuant to Titles 6 and 41 of the Arizona Revised Statutes and Title 20, Chapter 4 of the
11 Arizona Administrative Code ("A.A.C."), Respondents are hereby notified that they are entitled to a
12 hearing to contest the allegations set forth in this Order. The Request for Hearing shall be filed with
13 the Arizona Department of Financial Institutions (the "Department") pursuant to A.R.S. § 6-137(D)
14 within **thirty (30) days** of service of this Order and shall identify with specificity the action or order
15 for which review is sought in accordance with A.R.S. § 41-1092.03(B).

16 Pursuant to A.R.S. §§ 41-1092.01(D) and 41-1092.03(B), any person may appear on his or
17 her own behalf or by counsel. If Respondents are represented by counsel, the information required
18 by A.R.S. § 41-1092.03(B) shall be included in the Request for Hearing. Upon the filing of a
19 Request for Hearing, the Department shall issue a Notice of Hearing scheduling the matter for
20 hearing in accordance with A.R.S. § 41-1092.05. **Persons with disabilities may request**
21 **reasonable accommodations such as interpreters, alternative formats, or assistance with**
22 **physical accessibility.** Requests for special accommodations must be made as early as possible to
23 allow time to arrange the accommodations. If accommodations are required, call the Office of
24 Administrative Hearings at (602) 542-9826.

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1 Respondents have the right to request an Informal Settlement Conference, pursuant to A.R.S.
2 § 41-1092.06, by filing a written request no later than **twenty (20) days** before the scheduled
3 hearing. The conference will be held within **fifteen (15) days** after receipt of your request. If an
4 Informal Settlement Conference is requested, a person with the authority to act on behalf of the
5 Department will be present (the "Department Representative"). Please note that in requesting an
6 Informal Settlement Conference, Respondents waive any right to object to the participation of the
7 Department Representative in the final administrative decision of this matter, if it is not settled. In
8 addition, any written or oral statement made by Respondents at such informal settlement conference,
9 including written documentation created or expressed solely for purposes of settlement negotiations,
10 is inadmissible in any subsequent administrative hearing. (See A.R.S. § 41-1092.06 for rules
11 regarding informal settlement conferences.) Conversely, any written or oral statement made by
12 Respondents outside an Informal Settlement Conference is not barred from being admitted by the
13 Department in any subsequent hearing.

14 If Respondents do not request a hearing, this Order shall become final. If Respondents
15 request a hearing, the purpose of the hearing shall be to determine if grounds exist for: (1) the
16 issuance of an order pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the
17 violative conduct and to take the appropriate affirmative actions, within a reasonable period of time
18 prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts,
19 practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-
20 132; and (3) an order or any other remedy necessary or proper for the enforcement of statutes and
21 rules regulating collection agencies pursuant to A.R.S. §§ 6-123 and 6-131.

22 FINDINGS OF FACT

23 1. Respondent Consumer Recovery Associates, LLC ("CRA") is a Virginia limited
24 liability company that is not and was not, at any time material herein, authorized to transact business
25 in Arizona as a collection agency within the meaning of A.R.S. §§ 32-1001, *et seq.* The nature of
26 CRA's business is that of soliciting claims for collection and collection of claims owed, due or

1 asserted to be owed or due within the meaning of A.R.S. § 32-1001(2).

2 2. Respondent Peter Mitchell (“Mr. Mitchell”) is the Manager of CRA and is not and
3 was not at any time material herein authorized to transact business in Arizona as a collection agency
4 within the meaning of A.R.S. §§ 32-1001, *et seq.*

5 3. CRA and Mr. Mitchell are not exempt from licensure as a collection agency within
6 the meaning of A.R.S. §§ 32-1004.

7 4. On October 27, 2008, the Department received a complaint from an Arizona resident
8 who stated that CRA “placed a hard inquiry” on his credit report on September 21, 2008, without
9 having any permissible reason to do so. The Complainant explained that he received two (2)
10 messages on his answering machine from CRA on September 22, 2008, and that his mother had also
11 received a telephone call from a “Mr. Sheldon” on that date. The Complainant then sent a written
12 request to CRA that all future contact be in writing. CRA signed the return receipt for the
13 Complainant’s letter on September 26, 2008. The Complainant stated he was contacted
14 telephonically by CRA three (3) more times, once on October 9, 2008 and twice on October 10,
15 2008.

16 5. On November 4, 2008, the Department sent a letter to CRA stating that the
17 Department had reason to believe that CRA was operating in Arizona without the benefit of a
18 collection agency license, and gave CRA an opportunity to respond by November 18, 2008.

19 6. On November 18, 2008, the Department received a letter from Paul A. Gill, Esq.
20 (“Mr. Gill”), on behalf of CRA. Mr. Gill stated that, “...any dunning efforts made in Arizona were
21 unintentional while waiting for the licensing process to be complete. Since receipt of your letter,
22 several safeguards have been installed in our system to prevent any calls from going out to Arizona.”
23 Mr. Gill also inquired regarding expedition of the Department’s licensing process.

24 7. As of March 12, 2009, the Department had received no collection agency license
25 application from Respondents.

26 8. These Findings of Fact shall also serve as Conclusions of Law.

1 CONCLUSIONS OF LAW

2 1. Pursuant to A.R.S. §§ 32-1001, *et seq.*, the Superintendent has the authority and the
3 duty to regulate all persons engaged in the collection agency business and with the enforcement of
4 statutes, rules, and regulations relating to collection agencies.

5 2. Respondents' conduct, as alleged above, constitutes the conduct of a collection
6 agency in the State of Arizona without having first applied for and obtained a collection agency
7 license pursuant to Chapter 9 of Title 32, in violation of A.R.S. §§ 32-1021(A) and 32-1055(A).

8 3. CRA and Mr. Mitchell do not meet any of the exemptions to the licensing
9 requirements set forth in A.R.S. § 32-1004(A).

10 4. The violations, set forth above, constitute grounds for: (1) the issuance of an order
11 pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and
12 to take the appropriate affirmative actions, within a reasonable period of time prescribed by the
13 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
14 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; and (3) an
15 order or any other remedy necessary or proper for the enforcement of statutes and rules regulating
16 collection agencies pursuant to A.R.S. §§ 6-123 and 6-131.

17 ORDER

18 1. CRA and Mr. Mitchell shall immediately stop all collection agency activity in
19 Arizona until such time as Respondents have obtained a collection agency license from the
20 Superintendent as prescribed by A.R.S. § 32-1021.

21 2. Respondents shall immediately pay to the Department a civil money penalty in the
22 amount of **five thousand dollars (\$5,000.00)**.

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

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