

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

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

No. 16F-BD072-SBD

4 **NCO FINANCIAL SYSTEMS, INC. n/k/a**
5 **EGS FINANCIAL CARE, INC. AND JAY**
6 **KING, PRESIDENT**

CONSENT ORDER

7 20401 North 29th Avenue
8 Phoenix, Arizona 85027

Respondents.

9 On March 23, 2016, Arizona Department of Financial Institutions (“Department”) issued an
10 Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order, alleging
11 that NCO Financial Systems, Inc. a/k/a/ EGS Financial Care, Inc. (“NCO”)¹ and Jay King
12 (Mr. King), President of NCO (collectively “Respondents”) violated Arizona law. Wishing to
13 resolve this matter in lieu of an administrative hearing, Respondents, without admitting or denying
14 the following Findings of Facts and Conclusions of Law, consent to the entry of the following Order.

15 **FINDINGS OF FACT**

- 16 1. Respondent NCO is a Pennsylvania corporation authorized to conduct business in
17 Arizona. At all times pertinent for this Order, Mr. King is the President of NCO.
- 18 2. NCO’s business is that of soliciting claims for collections and the collection of claims
19 owed, due, or asserted to be owed or due, within the meaning of A.R.S. § 32-1001(2)(a).
- 20 3. NCO is licensed to transact business in Arizona as a collection agency, license number
21 0019052, within the meaning of A.R.S. § 32-1001, *et seq.*

22 _____

23 ¹ On May 20, 2015, EGS Financial Care, Inc. (“EGS”), the parent holding company and owner of NCO, subsumed the
24 entity NCO. NCO’s capital, assets, inventory, receivables, equipment, personnel, licenses, and liabilities were taken
25 over by EGS. On August 10, 2015, The Department received written notification that NCO changed its name to EGS
26 which resulted in EGS taking assignment of NCO’s Arizona collection agency license #0019052. Therefore, for
purposes of this Consent Order and its accompanying parts, EGS has stepped into the shoes of NCO. But for simplicity,
this Order and its accompanying parts will refer to NCO because the examination occurred during NCO’s tenure.

1 4. NCO and Mr. King are not exempt from licensure as a collection agency within the
2 meaning of A.R.S. § 32-1004.

3 5. The Department conducted an examination of NCO, beginning on August 15, 2012
4 through July 22, 2013 which concluded on or about April 17, 2014 and disclosed the following
5 infractions:

- 6 a. NCO failed to notify the Department in writing of changes in its officers and directors
7 within ten (10) days contrary to A.A.C. R20-4-1503(A). During examination of
8 NCO's board minutes issued in 2010 through 2012, the Department's examiner
9 discovered officers and directors appointed by NCO's Board without timely
10 notification to the Department.
- 11 b. NCO failed to deal openly, fairly and honestly, as well as refraining from engaging in
12 unfair or misleading practices in its collection practices contrary to A.R.S. § 32-
13 1051(3), and engaged in unfair or misleading methods of collection contrary to
14 A.R.S. § 32-1051(4). The examiner found fifteen (15) instances where Respondents
15 failed to deal openly, fairly and honestly. NCO and Mr. King deny any such
16 violations.
- 17 c. The Department's examiner found fifteen (15) instances where NCO used
18 unauthorized or oppressive tactics designed to harass a person to pay a debt contrary
19 to A.A.C. R20-4-1511(A). NCO and Mr. King deny any such violations.
- 20 d. The Department's examiner found two (2) instances where NCO contacted a third
21 party and informed the third party of the debt contrary to A.A.C. R20-4-1512(B).
- 22 e. The Department's examiner found two (2) instances where NCO contacted an
23 individual after receiving written notice from the debtor to cease communicating with
24 the debtor contrary to A.A.C. R20-4-1513(B). NCO and Mr. King deny any such
25 violations.
- 26

- 1 f. The Department’s examiner found three (3) instances where NCO failed to provide
2 the cited information to the debtor within the required five (5) days after the initial
3 communication with the debtor contrary to A.A.C. R20-4-1514(A). NCO and
4 Mr. King deny any such violations.
- 5 g. The Department’s examiner found three (3) instances where NCO failed to provide
6 access to any of the collection agency’s records that contain the information listed in
7 A.A.C. R20-4-1514(A) contrary to A.A.C. R20-4-1514(B). NCO and Mr. King deny
8 any such violations.
- 9 h. The Department’s examiner found three (3) instances where NCO failed to provide,
10 free of charge, a copy of any document from its records that contains the information
11 listed in A.A.C. R20-4-1514(A) contrary to A.A.C. R20-4-1514(C). NCO and
12 Mr. King deny any such violations.
- 13 i. The Department’s examiner found seven (7) instances where NCO failed to provide
14 copies of its evidence of the debt, and failed to investigate claims that the debtor was
15 misidentified, the debt was paid, the debt was discharged in bankruptcy, or any other
16 reasonable claim that the debt was not owed contrary to A.A.C. R20-4-1521. NCO
17 and Mr. King deny any such violations.

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

19 **CONCLUSIONS OF LAW**

20 7. The Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p (“FDCPA”) provides that it does not preempt state law unless the federal law and state law are inconsistent. See
21 15 U.S.C. § 1692n. “A state law is not inconsistent with [the FDCPA] if the protection such law
22 affords any consumer is greater than the protection provided by [the FDCPA].” *Id.*

24 8. Under Arizona law, a collection agency has the duty to “[d]eal openly, fairly and
25 honestly in the conduct of the collection agency business,” and “[not to] engage in any unfair or
26 misleading practices or resort to any oppressive, vindictive or illegal means or methods of

1 collection.” A.R.S. §§ 32-1051(3) - (4). Within five (5) days after the initial communication with
2 the debtor, collection agencies are required to obtain and inform the debtor of the following
3 information: (1) the name of the creditor; (2) the time and place of the creation of the debt; (3) the
4 merchandise, services, or other value provided in exchange for the debt; and (4) the date when the
5 account was turned over to the collection agency by the creditor. *See* A.A.C. Rule 20-4-1514(A).
6 Under Arizona law, collection agencies are also required to give the debtor access to such
7 information. A.A.C. Rule 20-4-1514(B). Specifically, at the debtor’s request, the collection agency
8 “shall give the debtor, free of charge, a copy of any document from its records that contains the
9 information listed in subsection (A).” A.A.C. Rule 20-4-1514(C).

10 9. NCO’s and Mr. King’s conduct constitute a violation of the following:

- 11 a. A.R.S. §§ 32-1051(3) and -1051(4), by breaching the duty to deal
12 openly, fairly and honestly in the conduct of the collection agency
13 business, and by engaging in unfair or misleading methods of
14 collection;
- 15 b. A.A.C. Rule 20-4-1511(A), by using unauthorized or oppressive
16 tactics designed to harass any person to pay a debt;
- 17 c. A.A.C. Rule 20-4-1512(B), by contacting, including a debtor’s
18 friend, relative, neighbor, or employer and inform the third party of
19 the debt;
- 20 d. A.A.C. Rule 20-4-1513(B), by ceasing to communicate to a debtor,
21 directly or indirectly, after the debtor gave notice to stop all further
22 communications with that debtor;
- 23 e. A.A.C. Rule 20-4-1514(A), by failing to provide proper disclosure
24 information to the debtor within five (5) days after the initial
25 communication with the debtor;

- 1 f. A.A.C. Rule 20-4-1514(B), by failing to give the debtor access to
- 2 any of the collection agency's records that contain the disclosure
- 3 information listed under A.A.C. Rule 20-4-1514(A);
- 4 g. A.A.C. Rule 20-4-1514(C), by failing to provide a free copy of any
- 5 document from its records that contain the disclosure information
- 6 listed under A.A.C. Rule 20-4-1514(A), at the request of the
- 7 debtor; and
- 8 h. A.A.C. Rule 20-4-1521 by failing to investigate a claim that the
- 9 debtor has been misidentified.

10 10. NCO's failure to notify the Department in writing of changes in its officers and
11 directors within ten (10) days constitutes a violation of A.A.C. R20-4-1503(A).

12 11. NCO and Mr. King deny the alleged violations in paragraphs 9-10 above.

13 12. The violations set forth above constitute grounds for: (1) the issuance of an order
14 under A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and to
15 take the appropriate affirmative actions, within a reasonable period of time prescribed by the
16 Superintendent to correct the conditions resulting from the unlawful acts, practices, and transactions;
17 (2) the imposition of a civil monetary penalty under A.R.S. § 6-132; (3) suspension or revocation of
18 Respondent's license under A.R.S. § 32-1053; and (4) an order or any other remedy necessary or
19 proper for the enforcement of statutes and rules regulating collection agencies under A.R.S. §§ 6-123
20 and 6-131.

21 **ORDER**

22 13. Respondents NCO and Mr. King shall immediately stop the violations set forth in the
23 Findings of Fact and Conclusions of Law. Specifically, Respondents shall use their best faith efforts
24 to do the following:

- 25 a. Deal openly, fairly and honestly in the conduct of the collection
- 26 agency business;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- b. Cease unfair or misleading practices or resorting to oppressive, vindictive or illegal means or methods of collection;
- c. Not use unauthorized or oppressive tactics designed to harass any person to pay a debt;
- d. Not communicate in a way that either ridicules, disgraces, or humiliates any person or tends to ridicule, disgrace, or humiliate any person;
- e. Not permit its agents, employees, representatives, debt collectors, or officers to use obscene or abusive language in efforts to collect a debt;
- f. Stop contacting debtors, directly or indirectly, after receipt of a written notice that the debtor refuses to pay the debt or wants the collection agency to stop all further communication with the debtor;
- g. Provide proper disclosure information to the debtor within five (5) days after the initial communication with the debtor;
- h. Give the debtor access to any of the collection agency's records that contain the disclosure information listed under A.A.C. Rule 20-4-1514(A);
- i. Provide a free copy of any document from its records that contain the disclosure information listed under A.A.C. Rule 20-4-1514(A), at the request of the debtor; and
- j. Cease all communications with person who was potentially wrongfully identified as debtor.

1 D. Respondents agree to immediately cease from engaging in the violative conduct set
2 forth above in the Findings of Fact and Conclusions of Law.

3 E. Respondents acknowledge that the acceptance of this Consent to the Entry of Order
4 by the Superintendent is solely to settle this matter and does not preclude this Department, any other
5 agency or officer of this state or subdivision thereof from instituting other proceedings as may be
6 appropriate now or in the future.

7 F. Failure to comply with this Order and any future findings of violations shall result in
8 disciplinary actions which may include a higher civil money penalty and/or license revocation.

9 G. Jay King, on behalf NCO, represents that he is the President and has been authorized
10 by NCO Financial Systems, Inc. to consent to the entry of this Order on its behalf.

11 H. Respondents waive all rights to seek any administrative or judicial review or
12 otherwise to challenge or contest the validity of this Order before any court of competent
13 jurisdiction.

14 DATED this 15TH day of August, 2016.

15 By: 
16 Jay King, President
17 NCO Financial Systems, Inc.

18 **ORIGINAL** of the foregoing filed this
15TH day of September, 2016 in the office of:

19 Robert D. Charlton, Superintendent
20 ATTN: June Beckwith
21 Arizona Department of Financial Institutions
22 2910 N. 44th Street, Suite 310
23 Phoenix, AZ 85018

COPY mailed/delivered same date to:

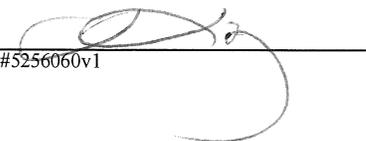
24 Roberto Pulver, Assistant Attorney General
25 Office of the Attorney General
26 1275 W. Washington St.
Phoenix, AZ 85007
Roberto.Pulver@azag.gov

1 Tammy Seto, Division Manager
Jeremy Baraff, Examiner-in-charge
2 ATTN: Linda Lutz
Arizona Department of Financial Institutions
3 2910 N. 44th Street, Suite 310
Phoenix, Arizona 85018
4 LLutz@azdfi.gov

5 **COPY** mailed same date by
Certified Mail, Return Receipt Requested, to:

6 Jay King, Former President
7 NCO Financial Systems, Inc.
c/o David Israel, Esq.
8 Mayas Erickson, Esq.
SESSIONS, FISHMAN, NATHAN & ISRAEL
9 3850 N. Causeway Blvd., Suite 200,
Metairie, LA 70002-7227
10 Attorneys for Respondents
disrael@sessions-law.biz
11 merickson@sessions-law.biz

12 CT Corporation System
2394 E. Camelback Rd.
13 Phoenix, AZ 85016
Statutory Agent for Respondent Company
14

15 
#5256060v1

16
17
18
19
20
21
22
23
24
25
26