

STATE OF WASHINGTON
DEPARTMENT OF LICENSING
BUSINESS AND PROFESSIONS DIVISION

In the Matter of the COLLECTION AGENCY license of COLUMBIA RECOVERY GROUP, L L C	Case No 2010-04-0928-00COL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL ORDER OF BRIEF ADJUDICATIVE PROCEEDING
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Under authority delegated by the Director, Presiding Officer John Dziedzic conducted a Brief Adjudicative Proceeding in this matter pursuant to RCW 34 05 482 through 494 and WAC 308-08 The Presiding Officer reviewed the record in this matter and all documents submitted by Columbia Recovery Group

Section 1: FINDINGS OF FACT

- 1.1 On April 26, 2010, the Department received a written complaint dated "4/21/2010" and signed by "SM." The complaint identifies Columbia Recovery Group (CRG) as the licensed business at issue, and the summary reads, in material part, as follows

I am enclosing a copy of a Declaration of Service which was filed in King County Superior Court which shows that on Sunday, March 15, 2009, at 5 41 am a summons and complaint was served on my residence

- 1.2 Attached to the complaint was a photocopy of a one page document captioned "Declaration of Service" and "signed this 25 day of March, 2009 by a "server" associated with "Xpress Legal Support, LLC " The document is stamped as "E-FILED" on October 19, 2009 with the King County Superior Clerk in a case (number 09-2-3[?]170-4 SEA) identifying Columbia Recovery Group, LLC as the plaintiff The document contains the following declaration.

I served the following documents in King County, State of Washington as follows

SERVICE ON	[SM] by personal service
SUB-SERVICE ON	Jane Doe [M] by leaving said documents at the house of usual abode with [SM]
DATE & TIME	Sunday, March 15, 2009 @ 5.41 a m
PLACE SERVICE	Clyde Hill, Washington 98004
DOCUMENTS SERVED	Summons, Complaint for Money Due (3 sets)

- 1.3 The Department first issued a collection agency license to CRG in October 2005 The address of record for CRG's office is in Bellevue, Washington
- 1.4 On July 9, 2010, the Department mailed a "Statement of Charges" to CRG, informing the company that it intended to fine them \$500 (five hundred dollars) for the following reason

[O]n March 15, 2009 at 5 41 a.m legal documents from Columbia Recovery Group, LLC were served on [SM] The collection agency law does not allow contact with a debtor prior to 7 30 a m

- 1.5 The "Statement" includes information describing how CRG could challenge the Department's intended action. by requesting a Brief Adjudicative Proceeding (BAP), as provided by RCW Chapter 34.05 and WAC Chapter 308-08. The letter states that the Department must receive the request "no later than July 29, 2010."
- 1.6 On July 27, 2010, the Department received a BAP request form dated "7/20/10" and signed by Gordon K. Tangen, as Legal Department Manager – Columbia Recovery Group. With the request form, Mr. Tangen submitted a one-page letter, dated "July 20, 2010," which reads as follows:
- Columbia Recovery Group LLC currently uses Xpress Legal Support LLC to handle the serving of legal documents. In this particular case a server, working on behalf of Xpress Legal Support LLC served [SM] on 03/15/09 at 5:45 AM. Columbia Recovery Group LLC in no way asked for defendant [SM] to be served prior to 7:30 am and we are greatly disappointed to find out that this was the case.
- Columbia Recovery Group LLC disputes the decision of the Department Of Licensing to fine our office \$500.00. We feel that the violation was committed by [the server] working for Xpress Legal Support LLC. I have enclosed a copy of the declaration of service as evidence that Xpress Legal Support LLC was responsible for this service violation.
- 1.7 In a letter dated August 3, 2010, the Department informed Mr. Tangen that a review of the record in this matter was scheduled to begin August 10, 2010, and that if the company needed additional time to collect information for consideration at that proceeding, a representative should contact the Department to request an extension.
- 1.8 Between August 3, 2010 and the date of this order, the Department did not receive either a request for an extension or additional information from, or on behalf of, CRG regarding this matter.

Section 2: CONCLUSIONS OF LAW

The following Conclusions of Law are made based on the above Findings of Fact:

- 2.1 The Director has jurisdiction over the respondent and over the subject matter of this proceeding.
- 2.2 This matter is appropriate for resolution by Brief Adjudicative Proceeding pursuant to RCW 34.05.482 and WAC 308-08-525(1).
- 2.3 The request for a Brief Adjudicative Proceeding was received timely.
- 2.4 RCW 18.235.110(1)(i) empowers the Department to deny a license to an applicant who has engaged in "unprofessional conduct."
- 2.5 "Unprofessional conduct" includes violating any of the provisions the laws or rules regulating the conduct or business of collection agencies (see RCW 18.235.130(8)).
- 2.6 In relevant part, RCW 19.16.250 provides as follows:
- No licensee or employee of a licensee shall (12) Communicate with a debtor or anyone else in such a manner as to harass, intimidate, threaten, or embarrass a debtor, including but not limited to communication at an unreasonable hour. A communication shall be presumed to have been made for the purposes of harassment if [i]t is made with the debtor or spouse at his or her place of residence between the hours of 9:00 p.m. and 7:30 a.m.

- 2.7 Based on the record of this case, there is no dispute that, at all times relevant to this matter,

- a. CSG was a collection agency governed by the laws and rules of the state of Washington,
 - b. SM was a debtor for the purposes of Washington State collection agency law,
 - c. CSG had retained the services of Xpress Legal Support to provide services relating to serving legal documents for CSG,
 - d. Service of legal documents is a form of communication with a debtor, and
 - e. An employee or other representative of Xpress Legal Support served a document upon SM at his residence, between the hours of 9 00 p.m. and 7 30 a.m.
- 2 8 The sole issue in this case is whether a licensed collection agency is responsible for the actions of an employee or other representative of an entity with which the collection agency has an agreement to provide services relating to communicating with debtors, and the action are clearly within the scope of the agreement. CSG contends that it does not have such liability (see ¶ 1 6, above)
- 2 9 Under the facts of this case, the relationship between CSG and Xpress Legal Support falls within the scope of well-established¹ agency law:
- the consensual, fiduciary relation between two persons, created by law, by which one, the principal, has the right to control the conduct of the agent, and the agent has the power to affect the legal relations of the principal.²
- 2.10 This Initial Order concludes that CSG possesses the right (and under collection agency law, the duty) to control the debtor communication actions of its agent, Xpress Legal Support. In this instance, it is apparent that neither CSG nor Xpress Legal Support successfully exercised that right with respect to the actions of the server. Nonetheless, as principal and as a licensee subject to Ch 19 16 RCW, CSG is ultimately responsible.

Section 3: ORDER

The Presiding Officer hereby issues the following INITIAL ORDER based on the Finding of Facts and Conclusion of Law

- 3 1 The Department's decision to fine Columbia Recovery Group is upheld
- 3 2 Payment of the fine, in the amount of \$500.00 (five hundred dollars), is due thirty (30) days from the date this Initial Order becomes final (see Section 4 for information concerning when this Initial Order becomes a Final Order)

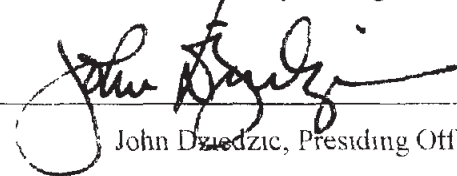
¹ "The agent has the distinguishing features of his representative capacity and his derivative authority, and his acts are designed to be those of his constituent." *McCarty v. King County Medical Service Corp.*, 26 Wn 2d 660, 175 P 2d 653 (Wash. 1946) (quoting 2 Am Jur. 15, § 6, on the subject of 'Agency')

² See Restatement of Agency, Section 1. See also *State v. Garcia*, 146 Wn App 821, 827-82, 193 P 3d 181 (Wash App Div. 3 2008). "an agency relationship results from the manifestation of consent by [the principal] that [the agent] shall act on his behalf and subject to his control with a correlative manifestation of consent by the [agent] to act on his behalf and subject to his control." *Moss v. Madman*, 77 Wash 2d 396, 402-03, 463 P 2d 159 (1969). "The right to control the manner of performance is essential to prove agency." *Bloedel Timberlands Dev., Inc. v. Timber Indus., Inc.*, 28 Wash App 669, 674, 626 P 2d 30 (1981). "[T]he existence of the right of control, not its exercise is decisive." *Paganian v. Phillips Petrol. Co.*, 16 Wash App 34, 37, 552 P 2d 1065 (1976).

Section 4: RIGHTS TO REVIEW

- 4 1 CRG has the right to request an administrative review of this INITIAL ORDER by the Director, pursuant to RCW 34 05 488 and RCW 34 05 491, which require that the request must
- a include a statement of the reason(s) for asking for an administrative review and
 - b be **timely received** by the Department of Licensing, Collection Agency Program, within twenty-one (21) days from the date this INITIAL ORDER is mailed (see Certificate of Mailing and Service, below)
- 4 2 If the Department of Licensing, Collection Agency Program, **does not receive a timely request** for review, this INITIAL ORDER becomes the FINAL ORDER on the twenty-second (22nd) day after this INITIAL ORDER is mailed (see Certificate of Mailing and Service, below)
- 4 3 A request for review is considered denied, and this INITIAL ORDER will become the FINAL ORDER, if, within twenty (20) days of the Department's receipt of a timely request, the Director
- a has not acted on the request for review; or
 - b. has not served the Respondent with a written notice specifying the date by which the Director will act on the request for review
- 4 4 Chapter 34.05 RCW, Part V, governs the judicial review (appeal) of FINAL ORDERS

DATED this 20th day of August, 2010



John Dziedzic, Presiding Officer

THE FOLLOWING PAGE CONTAINS A CERTIFICATE OF MAILING AND SERVICE