

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUFFALO REGIONAL OFFICE

In the Matter of the Investigation by Eric T. Schneiderman,
Attorney General of the State of New York of Kenneth
Thomas, Shapiro and Price Corporation,
Weinberg, Grace and Associates, LLC and
Zimmerman Young and Associates, Inc.

AOD # 14-107

**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW
SECTION 63(15)**

Pursuant to the provisions of Executive Law § 63(12) and General Business Law ("GBL") Article 22-A, Eric T. Schneiderman, Attorney General of the State of New York ("OAG"), caused an inquiry to be made into the debt collection practices of Kenneth Thomas and his debt collection companies. Specifically, the OAG investigated whether Kenneth Thomas and his debt collection companies had repeatedly and persistently violated, *inter alia*, the Fair Debt Collection Practices Act, 15 U.S.C.A. §§ 1692-1692(o) ("FDCPA") and GBL Article 29-H. Based upon that inquiry the OAG makes the following findings:

Background

1. Kenneth Thomas is a resident of Erie County and has owned and operated various consumer debt collection companies including Shapiro and Price Corporation, Weinberg, Grace and Associates, LLC, and Zimmerman Young and Associates, Inc.
2. Thomas created Shapiro and Price Corporation in 2010 with its principal office located at 4246 Ridge Lea Road, Amherst, New York 14226 and began operating it on January of February 2011. No one by the name of Shapiro or Price is or was affiliated with the corporation.
3. At its peak, Shapiro and Price Corporation had about 10 collectors who were expected to call on 80 accounts per day. Shapiro and Price Corporation did not send validation of debt notices to consumers within 5 days of the initial communication as required by

15 U.S.C. § 1692g, and did not have the means to monitor the telephone calls of its debt collectors. Shapiro and Price Corporation debt collectors used aliases but Shapiro and Price Corporation did not keep track of them.

4. After approximately one year, Thomas ceased operating Shapiro and Price Corporation and created and began operating Weinberg, Grace and Associates, LLC at 2211 Sheridan Drive, Tonawanda, New York 14223. According to Thomas, he ceased operating Shapiro and Price Corporation and began operating Weinberg, Grace and Associates, LLC "just for a fresh start." Thomas acknowledged that Shapiro and Price Corporation had had consumer complaints filed against it, and that was a reason he made the switch. No one by the name of Weinberg or Grace is or was affiliated with the company. The "associates" referred to in the name are debt collectors.

5. Weinberg, Grace and Associates, LLC collected on the same debt as Shapiro and Price Corporation and used the same network provider, collection software and payment processor as Shapiro and Price Corporation. It also used some of the same debt collectors.

6. Weinberg, Grace and Associates, LLC did not send validation of debt notices to consumers within 5 days of the initial communication as required by 15 U.S.C. § 1692g, and did not have the means to monitor the telephone calls of its debt collectors. Weinberg, Grace and Associates, LLC debt collectors used aliases but Weinberg, Grace and Associates, LLC did not keep track of them.

7. In 2012, Thomas stopped operating Weinberg, Grace and Associates, LLC and created and began operating Zimmerman Young and Associates, Inc at 2211 Sheridan Drive, Tonawanda, New York 14223, the same address as Weinberg, Grace and Associates, LLC.

8. Zimmerman Young and Associates, Inc collected on the same debt as Weinberg, Grace and Associates, LLC and used the same collection software and payment

processor. It also used some of the same debt collectors. No one by the name of Zimmerman or Young is or was affiliated with the corporation. The "associates" referred to in the name are debt collectors.

9. Zimmerman Young and Associates, Inc, which has approximately 10 collectors, does not send validation of debt notices to consumers within 5 days of the initial communication as required by 15 U.S.C. § 1692g, and does not have the means to monitor the telephone calls of its debt collectors. Zimmerman Young and Associates, Inc debt collectors used aliases but Zimmerman Young and Associates, Inc does not keep track of them.

10. Debt collectors at Zimmerman Young and Associates, Inc are expected to make calls on approximately 80 different accounts per day and could be working on as many as 300 different accounts at any given time.

11. Zimmerman Young and Associates, Inc transmitted Employment Verification forms to the employers of some debtors. The Employment Verification form sought information on the employment status of the debtor, wages, year-to-date earnings, commissions, wage garnishments and the like. The Employment Verification form was a template form within the debt collection software available to all of the collectors by simply filling in various fields.

12. The Employment Verification form deceptively gives the impression that it is an official document of some sort. The form states that it has to be executed by an attorney and falsely state the following: "NOTE: Section 1692 of Title 15 of the U.S. Code permits this department to correspond with this place of employment to inquire about information concerning your employee in relevance to our order of business. If this violated any policy of your organization you must notify this office in writing of such prohibition. Employment Verification (Official Copy 2009)."

13. Thomas represented to the OAG that his companies no longer attempt to collect on payday loans from New Yorkers.

VIOLATIONS OF LAW

Failure to Validate Debts After The Initial Communication With A Consumer

14. 15 U.S.C. § 1692g(a) requires that within five days after the debt collector initially contacts a consumer, it must send the consumer a written notice that, among other things, contains (i) the amount of the debt, (ii) the name of the creditor to whom it is owed, (iii) the right of the consumer to dispute the validity of the debt and require that the debt collector obtain verification of it, and (iv) the right of the consumer to obtain the name and address of the original creditor if different from the current creditor (referred to herein as "the Verification Rights Notice").

15. The Verification Rights Notice is a significant feature of the FDCPA, see S. Rep. No. 382, 95th Cong., 1st Sess. 4 at 4, and is intended to minimize the chance that the debt collector is pursuing the wrong consumer or has misstated the amount of the debt. According to the Senate Report, "This provision will eliminate the recurring problem of collectors dunning the wrong person or attempting to collect debts which the consumer paid." *Id.*; see also *Jacobson v. Healthcare Fin. Ser., Inc.*, 516 F.3d 85, 89 (2d Cir. 2008).

16. This is especially the case where collectors collect on older portfolios that have been frequently sold back-and-forth by debt collectors and been collected on many times before. Recently, the Federal Trade Commission concluded that "debt collectors often have inadequate information when they contact consumers, thereby increasing the likelihood that they will reach the wrong consumer, try to collect the wrong amount, or both." Fed. Trade Comm'n, *Collecting Consumer Debt: Challenges of Change 21* (2009). Indeed, in 2010 alone, the FTC received 33,122 complaints alleging that debt collectors attempted to collect a debt that the consumer did not owe, or was larger than what the consumer actually owed, the precise errors that 15 U.S.C. § 1692g(a) is meant to address.

17. Thus, the significance of the Verification Rights Notice could hardly be over-estimated.

18. Thomas and his debt collection companies did not provide the Verification Rights Notice to consumers.

Use Of Verification Of Employment Forms

19. Zimmerman Young and Associates, Inc sent Verification of Employment ("VOE") forms to the employers of consumers. The VOE form illegally sought, among other things, the consumer's hourly wage, date of hire, and information on whether the consumer's wages are being garnished.

20. The FDCPA puts very strict limitations on when a debt collector may contact the employer of a consumer; indeed, the strict limitations put on third party contacts are among the most important of the FDCPA protections. According to the FDCPA Senate Report:

[T]his legislation adopts an extremely important protection . . . [I]t prohibits disclosing the consumer's personal affairs to third persons. Other than to obtain location information, a debt collector may not contact third persons such as a consumer's friends, neighbors, relative or employer. Such contacts are not legitimate collection practices and result in serious invasions of privacy, as well as loss of jobs.

S. Rep. No. 382, 95th Cong., 1st Sess. 4 at 4. (emphasis added)

21. Section 1692c(b) provides that a debt collector like respondents may not communicate with the employer of a consumer except to acquire location information. Section 1692a(7) defines "location information" as a "consumer's place of abode and his telephone number at such place, or his place of employment." Further, Section 1692b(1) requires that any debt collector contacting an employer to acquire location information about a consumer must "identify himself, state that he is confirming or correcting location information concerning the consumer, and, if expressly requested, identify his employer."

22. The Zimmerman Young and Associates, Inc VOE form, *on its face*, violates Sections 1692a(7) and 1692b(1) in two fundamental ways. First, the VOE form does not

state that Zimmerman Young and Associates, Inc is confirming or correcting location information of the consumer. Second, the VOE form illegally seeks much more than "location information" about the consumer, including the consumer's hourly wage, date of hire, and information on whether the consumer's wages are being garnished.

23. The Zimmerman Young and Associates, Inc VOE form violates Sections 1692e(5) (prohibiting debt collectors from "represent[ing] or impl[y]ing] that nonpayment of any debt will result in . . . the seizure, garnishment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action") and 1692e(10) because it seeks information about garnished wages and it instructs the employer to show the form to the consumer for a signature. As a result, the "least sophisticated consumer" may think his wages are at risk of garnishment. See *Cabron v. Medical Data Systems, Inc.*, 379 B.R. 371 (Bkrcty. M.D. Ala. 2007). Zimmerman Young and Associates, Inc, however, have never obtained a judgment against a consumer and thus, had no intention of garnishing, or right to garnish, wages.

24. As a result of its investigation, the OAG concludes that the Thomas and his debt collection companies have repeatedly and persistently violated the FDCPA and GBL Articles 22-A and 29-H.

25. By reason of the foregoing, the OAG finds that Thomas and his debt collection companies (i) have engaged in repeated deceptive and fraudulent practices in violation of GBL § 349 and Executive Law, § 63(12), and (ii) have engaged in repeated illegality in violation of Executive Law, § 63(12).

IT NOW APPEARING that Thomas, individually, and on behalf of his debt collection companies ("Thomas") desires to settle and resolve the investigation without admitting or denying the OAG's findings, the OAG and Thomas hereby enter into this Assurance of Discontinuance.

AGREEMENT

26. **IT IS HEREBY AGREED** that Thomas and his agents, trustees, servants, employees, successors, heirs and assigns, or any other person acting under his direction and control, whether acting individually or in concert with others, or through any corporate or other entity or device through which he may now or hereafter act or conduct business, operating or doing business in New York State, including businesses in which he has any legal or beneficial interest, are bound by the terms of this Assurance of Discontinuance.

27. **IT IS FURTHER AGREED AND UNDERSTOOD** that Thomas will abide by all applicable federal and state laws, including but not limited to the FDCPA, and GBL Articles 22-A and 29-H. Specifically, Thomas will not:

- a. communicate with alleged debtors at their places of employment when the debt collectors know, or have reason to know, that the employers do not permit such communications;
- b. discuss alleged debtors' debts with third parties without the consent of the alleged debtor or his/her attorney or unless otherwise permitted by law;
- c. communicate with third parties for any purpose other than acquiring location information without the consent of the alleged debtor or his/her attorney or unless otherwise permitted by law;
- d. communicate with third parties more than once, except as permitted by the FDCPA or other applicable law;
- e. represent or imply that the collector is acting on behalf of an attorney when that is untrue;
- f. represent or imply that the collector is affiliated with a law enforcement agency, a court or state or local agency;
- g. represent or imply that they or a creditor has commenced, or is about to commence, legal action against a consumer when that is untrue;
- h. send verification of employment forms to the employers of consumers;
- i. represent or imply that the consumer has committed a crime or is subject to arrest; or

- j. threaten to seize a consumer's assets or garnish a consumer's wages

28. **IT IS FURTHER AGREED AND UNDERSTOOD** that Thomas will, within five (5) days of the initial contact with consumers, provide the validation notices required by 15 U.S.C. § 1692g and, upon request, provide the OAG with documentation that he has done so.

29. **IT IS FURTHER AGREED AND UNDERSTOOD** that Thomas will create and maintain a file for each consumer complaint he receives, which will include the consumer complaint, the response thereto, including all related written and oral communications and the disposition.

30. **IT IS FURTHER AGREED AND UNDERSTOOD** that Thomas will maintain a log of all aliases used by debt collectors.

31. **IT IS FURTHER AGREED AND UNDERSTOOD** that Thomas will maintain a personnel file for each employee (including supervisors) that must include the disciplinary history of the employee with respect to each complaint in which the employee is named or involved, including a record of all disciplinary actions taken against any employee in connection with any such complaint. Upon written request from the OAG, Thomas will make available to the OAG any and all information and documents described in this paragraph.

32. **IT IS FURTHER AGREED AND UNDERSTOOD** that, within fifteen (15) days of the execution of this Assurance, Thomas will identify to the OAG an employee responsible for directing compliance with the terms of this Assurance ("Compliance Employee"). Within thirty (30) days thereafter, the Compliance Employee(s) shall submit to the OAG a sworn, written statement describing in detail the practices and procedures that Thomas has put in place to ensure compliance with the term of this Assurance. Such sworn, written statement must be updated and submitted to the OAG thereafter, on a twice-yearly basis, for a period of three (3) years.

33. **IT IS FURTHER AGREED AND UNDERSTOOD** that Thomas will

maintain a system that will permit him to monitor electronically his employees' telephone calls without their knowledge, and will maintain a daily log of which employees were monitored, during what period and by whom and will make such log available to the OAG.

34. **IT IS FURTHER AGREED AND UNDERSTOOD** that Thomas will monitor each employee at least once per 2 weeks for thirty minutes.

35. **IT IS FURTHER AGREED AND UNDERSTOOD** that, for a period of three (3) years following the date of execution of this Assurance, in the event that Thomas changes a principal place of business, incorporate(s) a new corporation or business entity, do(es) business under a new name, (collectively, "Change in Business"), Thomas shall inform the OAG in writing within thirty (30) days after any such Change in Business.

36. **IT IS FURTHER AGREED AND UNDERSTOOD** that Thomas shall on execution of this Assurance pay as costs and penalties to the Attorney General's Office, the total sum of \$30,000 made payable to the State of New York, delivered to Eric T. Schneiderman, Attorney General of the State of New York, 350 Main Street, Suite 300A, Buffalo, NY, 14202 Attention: James M. Morrissey, Assistant Attorney General, as follows: \$5,000 on execution of the Assurance, and \$5,000 on the first business day of the following five months beginning on June 2, 2014. Thomas' failure to make any payment shall require that he immediately cease and desist operating his debt collection businesses without any further action of the OAG.

37. **IT IS FURTHER AGREED AND UNDERSTOOD** that the OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Thomas, and the OAG's own factual investigation as set forth in Findings (1) - (13) above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

38. **IT IS FURTHER AGREED AND UNDERSTOOD** that no representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has

been made to or relied upon by Thomas in agreeing to this Assurance.

39. **IT IS FURTHER AGREED AND UNDERSTOOD** that Thomas represents and warrants, through the signature below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

40. **IT IS FURTHER AGREED AND UNDERSTOOD** that Thomas shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects his (i) testimonial obligations, or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which OAG is not a party.

41. **IT IS FURTHER AGREED AND UNDERSTOOD** that this Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

42. **IT IS FURTHER AGREED AND UNDERSTOOD** that this Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of OAG.

43. **IT IS FURTHER AGREED AND UNDERSTOOD** that, in the event that any one or more of the provisions contained in this Assurance shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

44. **IT IS FURTHER AGREED AND UNDERSTOOD** that, to the extent not already provided under this Assurance, Thomas shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance.

45. **IT IS FURTHER AGREED AND UNDERSTOOD** that acceptance of this Assurance by OAG shall not be deemed approval by OAG of any of the practices or procedures

referenced herein, and Thomas shall make no representation to the contrary.

46. **IT IS FURTHER AGREED AND UNDERSTOOD** that all correspondence to the Attorney General shall be delivered or mailed to the following address:

Office of the Attorney General of the State of New York
Attn: James M. Morrissey, Assistant Attorney General
350 Main Street, Suite 300A
Buffalo, New York 14202

47. **IT IS FURTHER AGREED AND UNDERSTOOD** that nothing contained in this Assurance shall be construed to limit the rights of a person or an entity who is not a party to this Assurance with respect to any of the matters contained herein. Notwithstanding the foregoing, in no event shall this Assurance be construed to limit the rights of Thomas in connection with any action commenced by any party other than the Attorney General.

48. **IT IS FURTHER AGREED AND UNDERSTOOD** by Thomas that, pursuant to Executive Law § 63(15), in the event of any violation of this Assurance, the Attorney General may commence an action or proceeding, under General Business Law Article 22-A and Executive Law § 63(12), and that evidence of a violation of the Assurance shall constitute *prima facie* proof of violation of the applicable laws in any civil action or proceeding thereafter commenced by the Attorney General.

49. **IT IS FURTHER AGREED AND UNDERSTOOD** by Thomas, that, should the OAG prove in a court of competent jurisdiction that a breach of this Assurance by the Company has occurred, he shall pay to OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

50. **IT IS FURTHER AGREED AND UNDERSTOOD** that the OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The OAG is willing to accept this Assurance pursuant to New York Executive Law § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

SIGNATURES FOR AOD # 14-XXX ARE ON THE NEXT PAGE

SIGNATURE PAGE FOR AOD # 14-XXX

IN WITNESS WHEREOF, the undersigned subscribe their names.

Dated:

Buffalo, New York

April, 2014

May 15



Kenneth Thomas, individually and as owner of Shapiro and Price Corporation, Weinberg, Grace and Associates, LLC, and Zimmerman Young and Associates, Inc.

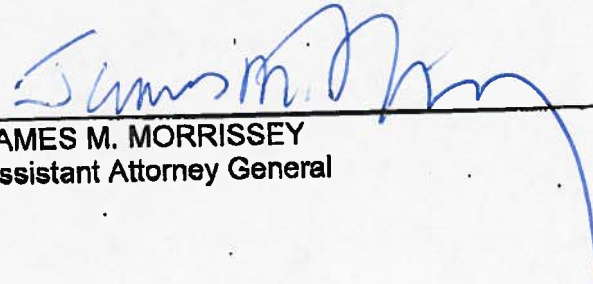


MARK GROSSMAN, Attorney for Kenneth Thomas, individually and as owner of Shapiro and Price Corporation, Weinberg, Grace and Associates, LLC, and Zimmerman Young and Associates, Inc.

Consented to:

**ERIC T. SCHNEIDERMAN
Attorney General of the State of New York**

By:



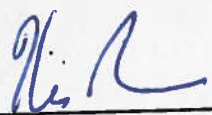
**JAMES M. MORRISSEY
Assistant Attorney General**

CORPORATE ACKNOWLEDGMENT

STATE OF NEW YORK)
 :SS
COUNTY OF ERIE)

Kenneth Thomas being duly sworn, deposes and says:

I am the owner of Shapiro and Price Corporation, Weinberg, Grace and Associates, LLC, and Zimmerman Young and Associates, Inc. and have authority to execute the foregoing Assurance of Discontinuance, and have authority to bind the above-referenced companies to this Assurance. I have executed the aforesaid instrument with the consent and authority of the above-referenced companies and those responsible for the acts of said entities and duly acknowledge the same. I subscribed my name understanding the provisions thereof and entered into it knowingly and willingly.



KENNETH THOMAS

Sworn to before me this
15th day of *April*, 2014.



Notary Public