DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock, Rm 256 Denver, Colorado, 80202	DATE FILED: March 7, 2017 5:41 PM CASE NUMBER: 2015CV31639
Plaintiff: Julie Ann Meade, Administrator, Colorado Fair Debt Collection Practices Act, v. **Defendant:** Peak Resolution, L.L.C. d/b/a P.R. Associates, L.L.C. and/or Peak Resolution Services and/or the Law Office P.R. Associates; Daniel Cane; Christopher Hagerman; and Sun Resolution LLC	**▲COURT USE ONLY▲** Case Number: **2015CV31639** **Courtroom: 409**

ORDER REGARDING REMEDIES PURSUANT TO THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT AND C.R.S. §12-14-134

This matter came before the Court for a hearing on appropriate remedies to be imposed pursuant to C.R.S. §12-14-134 after the Court previously entered an Order of Default. The Court, having reviewed the testimony, evidence, written closing arguments and responses, pertinent parts of the Court's file, and otherwise being sufficiently advised, finds, concludes and orders as follows:

I. Summary of Factual Background

The Administrator ("Plaintiff" or "Administrator") filed the complaint in this matter on May 8, 2015. The Court incorporates by reference its summary of the facts recited in its Order dated October 3, 2016. In

addition, the Court considers the testimony and evidence received at the hearing on January 25, 2017.

Daniel Cane ("Cane") was owner of Sun Resolutions ("Sun") which he started in Florida. He was working in conjunction with another debt collection company called Delray. Cane felt that business was not going well and, at suggestion of others, moved to Colorado with hopes for greater success, and started Peak Resolution ("Peak"). While operating both Sun and Peak, Cane lived, and continues to live, in Buffalo, New York. While setting up offices in Colorado, he posted an advertisement for a debt collection manager. Hagerman answered and was soon hired as the manager. Cane had operated several businesses before Peak. Hagerman had been in collections for 18 years and knew the law regarding collections.

The Court previously entered a default judgment as to liability, but, beyond that, based on evidence and testimony, there is no question that Defendants were violating C.R.S. §12-14-101 et seq. In addition to never acquiring a license, which as experienced debt collectors they should have known was required, they would call consumers regarding "Payday Loan" debts and used collection methods that the statute was designed to prevent: they would inform debtors that they had a case pending when they did not; they would say this could be a civil or criminal matter; they would declare that they were going to turn the debt over to the District Attorney; they would tell debtors that a warrant

would be issued for their arrest; they would state that, people were on the way to serve debtors with papers and; they would misrepresent that the caller was from the District Attorney's Office;

As mentioned above, the business was not licensed. Neither Cane nor Hagerman tried to obtain a license in Colorado. Defendant Cane said he believed that Delray, with whom he was working, was licensed here and that it was permissible to use that license. Cane testified that he didn't find out until later that Peak could not use that license. However, in fact, that license did not exist in Colorado either.

Analysis

Pursuant to C.R.S. §12-14-135, among the remedies the Court may impose are the appropriate or proven amounts for Restitution, Disgorgement, civil penalties, attorney fees and costs, as well as injunctive relief. The Court addresses each in turn.

Restitution:

Jenn D'Amico ("D'Amico") worked for Defendants for five months in the summer of 2014 in collections. She testified that in her position she called consumers daily regarding payday loans. Her "boss" was Hagerman who, according to her, was there every day and "walked the floor" every couple of hours. He trained and listened to collectors and would "close deals" by finishing the call with a "talk off." Cane, she testified, was Hagerman's boss and he would be present every couple of months. She would make between 100 to 150 calls and speak to two or

three people each day. D'Amico kept a spreadsheet to track the money she collected from debtors. She testified that she updated it daily. She testified that she was not a top collector, but rather, was "in the middle of the pack." The testimony of D'Amico and Exhibit 32, prove by a preponderance of the evidence that restitution owed by Defendant's is at least, $37,701.22.

Disgorgement:

The Court notes that C.R.S. §12-14-135 provides for additional remedies such as disgorgement. The Court agrees that it is an appropriate remedy designed to prevent offenders from profiting from their improper and unlicensed collection efforts. While the Court agrees with the Plaintiff's analysis and calculation of the amounts in her Rebuttal Closing, the Court notes that the approximately $205,000 is revenue, not profit. While Defendants should not benefit from records that are obscure because of their own lack of production of discovery, it is unclear to the Court what Defendants' actual profits were. Further, the goals of the remedies from the statute are met in the other remedies, penalties, fees, and costs to be imposed by the Court.

Attorney Fees and Costs:

C.R.S. §12-14-135 provides that, should the Administrator prevail in an action brought under this article, the Court may award reasonable costs and attorney fees. This case was filed nearly two years ago. There has been much litigation involved in this matter. Defendants do not

contest the reasonableness of the amount of cost and fees, but rather whether good cause exists to order them. The Court finds that while "good cause" need not be proven, there is good cause for the Court to impose them and therefore orders $137,776.75 in attorney fees.

Civil Penalties:

The Court first notes that C.R.S. §12-14-135 provides for a variety of remedies the Court may consider. The statute does not require the imposition of each remedy, nor does it require the maximum amounts for each. Plaintiff requests that the Court impose the maximum fine for every time collection effort made. With 904 calls, the judgment would be $1,356,000.00.

To determine the appropriate penalty, the Court should consider the following four factors: [1] defendant's good faith or bad faith; [2] injury to the public; [3] defendant's ability to pay, and; [4] the desire to eliminate the benefits derived by violations of the remedial statute. *See People v. Wunder*, 371 P.3d 785, 793 (Colo. App. 2016).

Preliminarily, the Court first addresses Defendants' arguments comparing the fine amounts requested by Plaintiff to the maximum fine for a felony. Defendants argue that a maximum penalty for a class five or six felony is $100,000.00. They then consider class four felony crimes such as second degree assault , or sexual assault, to argue that the maximum fine in for those charges are $100,000 (actually, it is up to $500,000) and therefore, since Defendants' behavior is much less

egregious, the fines imposed in this matter should be much less. However, what Defendants fail to consider in this argument is that in addition to any potential fine, a defendant convicted of second degree assault, is also going to serve a minimum mandatory five-year prison sentence, which, in the court's discretion, may be as many as sixteen years, plus a mandatory three-year period of parole. A sexual assault conviction, along with a possible fine, exposes a defendant to an indeterminate sentence of lifetime supervision or, a very real likelihood of life in prison and, if ever released, lifetime parole. Hence, since no such possible punishment is available here, such comparisons are misplaced and not persuasive.

The Court finds the Defendants' acted in bad faith. They both had a great deal of experience in debt collections. The Court is convinced that they knew they had to be licensed in Colorado and the argument that they believed they were operating under the Delray license is simply not credible. Further, the collection methods they used were egregious and appear almost as if Defendants looked to the statute to see what was prohibited and then used it as a guide to do those very things. Both men attempt to distance themselves from the training and collections. But Plaintiff's witnesses, as outlined above, credibly say otherwise. In any event, in the Court's view, they were aware of the collection methods being used, and if they didn't know, they should have known

The injury to the public is clear. Threatening people with incarceration, misleading them about warrants for their arrest, are prohibited tactics because of the unjustifiable distress that it causes consumers. While some people accumulate debt with no intention of ever paying, many people are hard workers who get overextended and fall on hard times. The response of the community should not be to demonize them or harass them with threatening and deceptive collection efforts. Defendants argue, surprisingly, that D'Amico's testimony, that Hagerman's philosophy was to "use the gray areas of collections, where you're not quite breaking the law, it's just right on the verge," depicts an individual who, "far from being any 'flagrant' violation of the law, this shows someone who was in fact obeying the law." Def.s' Resp. to Pl.'s Closing Arg. 7. Such a conclusion strains credibility. Defendants knew they were operating without a license, Defendants trained their collectors, Defendants knew what their collectors were saying, and Defendants knew the threats being made were in violation of statutes regarding prohibited methods. Hagerman, at least, participated in "talk offs." They were clearly acting in contravention of the law.

The Court next considers Defendants' ability to pay. Defendants' testimony indicates that they do not currently have many assets. Hagerman testified that he is now working in commercial collections and made about $92,000.00 in 2015. He testified that he did not pay taxes in 2014 because Peak did not give him a 1099 (this is not credible). He

testified that he has a wife and two children, both at home. Hagerman says he only made $2,500.00 per month for nine months ($22,500.00) but argues that the Court should assess $23,750.00 in civil penalties and restitution in the amount of $1,450.00 for a total of $25,200.00.

Daniel Cane is currently working as a processor for documents for student loans and testified that he made about $80,000.00 in 2015. He also has a wife and two children. He stated that he has a home valued at $197,000.00 which was purchased in 2006, and is owned "with two banks." He leases a Ford SUV for his wife and drives a 2010 Ford Edge. He testified that he made only about $40,000.00 with Peak and asks that his civil penalties not exceed that amount and that his restitution should also be limited to $1,450.00 for a total of $41,450.00.

Plaintiff, understandably, argues that Defendants did not provide the discovery necessary to prove what their real incomes were and then simply ask the Court to, "take their word for it." The Court has already indicated its reservations regarding the credibility of Cane and Hagerman, however, even assuming each Defendant[1] has a greater income and ability to pay, as Plaintiff argues, imposing a maximum fine for every violation, would be unduly harsh as it would likely bury Defendants financially for the rest of their lives.

Finally, the Court considers the final factor, the desire to eliminate the benefits derived by violations of the remedial statute. Because of

[1] Here, the Court is referring to Cane and Hagerman personally because the business entities are no longer in operation and, therefore, the entities will not pay this judgment.

the state of discovery, it is difficult to know precisely what benefits were gained by Defendants. Clearly, as is implicated by this Order, the Court wishes to deprive Defendants of any benefit earned through endeavors with Peak as well as to deter others. In the Court's view, the other remedies imposed also contribute to this goal.

The Court finds that a civil penalty is appropriate, however not every violation deserves the same penalty. For example, there is a distinction between leaving a message for collection and a call that is simply unlicensed, or calls that threaten a debtor with incarceration. Considering the other remedies imposed, the Court assesses greater civil penalties for the most egregious phone calls, reduced penalties for the remaining calls, and balances that amount with Defendants' ability to pay as well as impact to the public and deterrence.

Therefore, for the each of the 161 calls listed in Plaintiff's Exhibit B to her Rebuttal Closing Argument, the Court imposes a fine of $1,500.00 for a total of $241,500.00. For the Remaining 743 phone calls, the Court imposes a fine of $100.00.00 each for a total of $74,300.00

Thus, the breakdown is as follows:

Defendant	**Restitution**	**161 phone calls**	**Remaining 743 phone calls**	**Fees/costs**	**Total**
Hagerman; Cane; Peak; Sun	$37,701.22	$241,500	$74,300	$137,776.75	$491,277.97

The total of $491,277.97 shall be paid jointly and severally. The Court considered Defendants' argument to impose these fines and costs individually, however, in the Court's view, while their roles were different, they are equally culpable. Hagerman was more directly involved in managing collectors, and in participating in phone calls, but Cane was the owner and supervisor who was ultimately responsible for how the operation was conducted.

While the above remedy is approximately $1.2 million less than the penalties Plaintiff was seeking, the Court does not, by doing so, diminish the gravity of the offenses. First, the Court notes that the Order is approximately twelve times (for Cane) greater than what Defendants were arguing the remedy should be. The penalties, restitution, attorney fees and costs imposed, in the Court's view, represent a substantial burden on Defendants, which also meets the goals of depriving them of the benefit of their operation, punishing their behavior, deterring such activity by them or others in the future and recognizes the negative impact the collection tactics had on the debtors contacted.

Regarding the previous injunction Ordered, the Court will not vacate it, but agrees that it should be modified to make it clear that Defendants may engage in lawful activities. The Court requests Plaintiff's counsel to submit a proposed modified Order within 10 days.

So Ordered: March 7, 2017

BY THE COURT:

MICHAEL J. VALLEJOS
District Court Judge

cc: Parties via electronic filing