State of California - Department of Corporations

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the DESIST and REFRAIN ORDER of: NATIONWIDE ASSET SERVICES, INC., a.k.a. NATIONWIDE ASSET SERVICES, and UNIVERSAL NATIONWIDE, L.L.C. d.b.a. UNIVERSAL DEBT REDUCTION, and GLOBAL CLIENT SOLUTIONS, L.L.C., CONSOLIDATED PROCEEDINGS. Respondents.	Case No.: 38300 OAH No.: N2005120755

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Commissioner of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective on August 4, 2006.

IT IS SO ORDERED this 3rd day of AUGUST 2006.

CALIFORNIA CORPORATIONS COMMISSIONER

Preston DuFauchard

Desist and Refrain Order of:

Nationwide Asset Services, Inc., a.k.a. Nationwide Asset Services, and Universal Nations, L.L.C. d.b.a. Universal Debt Reduction and Global Client Solutions, L.L.C., Consolidated Proceedings

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BEFORE THE
DEPARTMENT OF CORPORATIONS
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In the Matter of the Desist and Refrain Orders of: NATIONWIDE ASSET SERVICES, INC., a.k.a. NATIONWIDE ASSET SERVICES, and UNIVERSAL NATIONWIDE, L.L.C., d.b.a. UNIVERSAL DEBT REDUCTION, and GLOBAL CLIENT SOLUTIONS, L.L.C., CONSOLIDATED PROCEEDINGS. Respondents.	Case No. 38300 OAH No. N2005120755

PROPOSED DECISION

The matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, in Sacramento, California, on February 21, 22, 23 and 24, 2006.

Joan A. Kerst, Senior Corporations Counsel, represented Acting California Corporations Commissioner Wayne Strumpfer.

Michael Mallow, Esq., of Kirkpatrick, & Lockhart Nicholson Graham, L.L.P., represented Nationwide Asset Services, Inc., Universal Nationwide, LLC, and Universal Debt Reduction, L.L.P.

Samantha Williams, Esq., of Venable, L.L.C., associated with Michael D. Welch, Esq., of Gordon & Rees, L.L.P.,[1] represented Global Client Solutions, L.L.C.

[1] Mr. Welch appeared only on February 21, 2006.

The evidentiary proceeding concluded on February 24, 2006. To accommodate the filing of closing arguments and post-hearing motions, a submission calendar was established, and the matter deemed submitted as of March 31, 2006.

FINDINGS OF FACT

1. On December 5, 2005, Acting Deputy Commissioner Alan S. Weinger, Enforcement Division, issued on behalf of the California Corporations Commissioner (the Commissioner), a Desist and Refrain Order (Order) pursuant to the California Check Sellers, Bill Payers and Proraters Law[2] prohibiting respondents Nationwide Asset Services, Inc.; Universal Nationwide, LLC; Universal Debt Reduction, LLP; FGL Clearwater, Inc., dba American Debt Arbitration (ADA);[3] and Global Client Solutions, LLC, from engaging in the business of a prorater unless and until they obtained the appropriate license or a valid exemption from the licensure requirement.

2. No respondent possesses a license issued by the Commissioner to act as a prorater.

3. Respondents Nationwide Asset Services, Inc.; Universal Nationwide, LLC; Universal Debt Reduction, LLP, dispute the factual findings in the Order and also argue, inter alia, the Order is unnecessary for the protection of the public because these respondents voluntarily modified and continue to modify their business practices, and have done so, since late 2003.

4. Respondent Global Client Solutions, LLC, disputes the factual findings in the Order and the jurisdiction of the California Check Sellers, Bill Payers and Proraters Law[4] over its activities.

5. On December 21, 2005, the Commissioner filed a Statement in Support of the Desist and Refrain Order, requesting ancillary relief and costs.[5]

6. Respondent Nationwide Asset Services, Inc. (NAS) is a corporation organized and existing under the laws of the State of Nevada.

A. In solicitation material to consumers, NAS represents it "was founded in August 2001. Our founders have spent several years in the financial services arena and have applied their considerable business and management knowledge to the training of our highly skilled group of Consultants. The Company is located in Sacramento, CA."

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[2] Financial Code sections 12000 and 12103.

[3] ADA did not request a hearing pursuant to Financial Code section 12103. The Desist and Refrain Order dated December 5, 2005, remains in full force and effect against ADA.

[4] Financial Code sections 12000, et seq.

[5] Financial Code sections 12105 and 12106.

B. NAS, in web-based solicitation material, claims, "we are the leader in the Negotiation field, offering you the best program available."

7. Respondent Universal Debt Reduction, LLP (Universal) is a limited liability company organized and existing under the laws of the State of Arizona.

A. In solicitation material to consumers, Universal states, "We started as a counseling organization in June 2000, introducing our Clients to a debt reduction program with benefits far beyond anything we had seen before. This was done on a contract basis with another company. In 2001, Universal Debt Reduction and Nationwide Asset Services were founded, and we now have hundreds of trained and experienced Debt Consultants under one umbrella, with a better program than ever. Each of our founders has spent dozens of years in the financial services arena, and has applied their considerable business and management abilities to the training of our highly skilled group of Consultants. The company is headquartered in Sacramento, CA."

B. Universal readily acknowledges in its consumer solicitation material that "Nationwide" will undertake the Universal consumer's negotiation process.

8. Respondent Universal Nationwide, LLC, (Universal Nationwide) is a limited liability company organized and existing under the laws of the State of Nevada.

9. Respondent Global Client Solutions, LLC, (Global) is a limited liability company organized and existing under the laws of the State of Oklahoma.

10. NAS, Universal, and Universal Nationwide are business entities owned equally by and between William Anderson and Gary Kenneth Brown. NAS and Universal are engaged in negotiating consumers' debts with their respective creditors. NAS and Universal, never having had more than 45 employees, conduct these activities for compensation. Universal Nationwide was initially established to serve as a holding company for NAS and Universal.[6]

11. ADA, a separate business entity, performs, in part, "a debt services marketing" function for NAS and Universal. In its web-based consumer solicitation material, ADA represents it offers "a program co-managed by Nationwide Asset Services." ADA further states:

> "NAS started as a counseling organization in June 2000, introducing our Clients to a debt reduction program with benefits far beyond

[6] It was not disputed that both consumers and employees of Universal, NAS, and Universal Nationwide fail to comprehend the distinctions among these Brown – Anderson business entities. The appellation, Universal Nationwide, was largely welcomed and incorporated by Universal and NAS employees.

anything we had seen before. This was done on a contract basis with another company. In 2001, Nationwide Asset Services was founded. Each of our founders has spent dozens of years in the financial services arena, and has applied their considerable business and management abilities to the training of our highly skilled group of Consultants."

12. The business relationships between and among the various business entities, NAS, Universal, Universal Nationwide, and ADA with respect to their consumer debt settlement business and respective customers, are governed by a series of written agreements. The net effect of these agreements is to fundamentally limit what each entity does within the overall debt negotiation service schema.

13. Consumers are solicited largely via the Internet on sites developed and maintained by NAS, Universal, or ADA. When a consumer expresses interest in utilizing the services of NAS, Universal, or ADA, a packet is mailed to the consumer for review, execution, and return. The packet contains several documents, including an authorization that vests control of deposited customer funds in NAS, Universal, ADA, or its designee.

14. Consumers seeking to reduce or eliminate their debt are required to pay an enrollment fee and to direct, via electronic funds transfer (EFT) on a form developed by and for Global, a monthly remittance. The source of each monthly EFT remittance is from the NAS or Universal customer's personal bank account. Upon enrollment, a NAS or Universal account is established, in an FDIC-insured custodial account located at Rocky Mountain Bank & Trust (Rocky Mountain), a bank chartered by the State of Colorado, operated by Global for the new NAS or Universal customer.[7]

A. NAS, in its web-based solicitation material, advises its customers, "You will receive instruction in your enrollment packet to open a dedicated account in your name at a specified financial institution. After enrollment fees are paid, that account will be opened and monthly payments will accrue in your new account, which is owned by you."

B. Universal, in its web-based solicitation material, advises its customers, "You will receive forms in your enrollment packet to open a dedicated account in your name at a specified financial institution. After enrollment fees are paid, that account will be opened and monthly payments will accrue in your new account."

C. ADA, working in concert with NAS, advises their customers in ADA's web-based solicitation material, "You will receive forms in your enrollment packet to open a dedicated account in your name at a specified financial institution. After enrollment fees are paid, that

[7] NAS, in its web-based solicitation material, advises its customers, "You will receive instruction in your enrollment packet to open a dedicated account in your name at a specified financial institution. After enrollment fees are paid, that account will be opened and monthly payments will accrue in your new account, which is owned by you."

account will be opened and monthly payments will accrue in your new account."

15. Each NAS or Universal customer enters into a formal contract that provides the terms and payment schedule due respondents for services rendered. Consistent with these contracts, respondents NAS, Universal, and Universal Nationwide receive no money from customers for the payment of debts owed by respondents' customers to their creditors.

16. Global provides account management activities for debt settlement organizations. Its architectural platform permits debt settlement organizations' customers the capability of owning their accounts while funds accumulate incident to their debt settlement program.[8] The platform provides a business format that separates client funds from the debt settlement organization's funds. Global does not conduct any negotiations for its customer's creditors. It is a business entity separate and apart from ADA, NAS, Universal, or Universal Nationwide. Global is compensated from its customers' Rocky Mountain accounts.

17. NAS or Universal customers are both encouraged and instructed to cease further payments to creditors. The custodial account at Rocky Mountain is an account that aggregates the various remittances from NAS or Universal customers. Global has contracted with Rocky Mountain to maintain and update each customer's records. Customer deposits and charges, whether as fees or withdrawals, are recorded by Global personnel.

18. Upon full payment of enrollment fees, NAS or Universal personnel undertake the negotiation of customers' debt with their respective creditors. Rocky Mountain receives customer EFT deposits. Global facilitated the establishment of the EFT process between the parties. Rocky Mountain contracted with Global for the latter to undertake and maintain the accounting and recordkeeping of each customer's account. Global imposes fees and charges, and directs EFT payments from Rocky Mountain bank customers to Global for its account management function. Global also facilitates EFT transfer to creditors of NAS or Universal customers from the customers' Rocky Mountain bank accounts.

19. NAS and Universal's debt negotiation services are compensated from Rocky Mountain accounts monitored by Global pursuant to the parties' contracts. Compensation is also effected by EFT transfer from the customers' Rocky Mountain bank accounts to NAS or Universal.

A. In its web-based solicitation material, NAS advises its customers, "All fees are included in the monthly payments you will be making, which are usually less than the combined minimum payments on your credit cards. Included in those fees are setup fees, your enrollment fees (paid with your first three monthly payments), monthly admin fees, and settlement fees (29% of the amount we save you, giving us the incentive to achieve the best settlements possible)."

[8] Access to accounts by respondents' customers is limited.

B. In its web-based solicitation material, Universal advises its customers, "All fees are included in the monthly payments you will be making, which are usually less than the combined minimum payments on your credit cards. Included in those fees are your enrollment fees, paid with your first three monthly payments, Settlement fees which equal 29% of the amount we save you, giving us incentive to achieve the best settlements possible, and a small monthly administrative fee in the amount of $49."

C. ADA, working in concert with NAS, advises their customers in ADA's web-based solicitation material, "All fees are included in the monthly payments you will be making, which are usually less than the combined minimum payments on your credit cards. Included in those fees are your enrollment fees, paid with your first three monthly payments, Settlement fees which equal 29% of the amount we save you, giving us incentive to achieve the best settlements possible, and a small monthly administrative fee in the amount of $49."

20. An administrative proceeding need not "be conducted according to technical rules relating to evidence and witnesses."[9] Hearsay is admissible. However, upon a properly interposed objection, hearsay evidence may be limited in scope.[10] In balancing the respective evidence provided by each party, the undersigned applied, in part, the criteria set forth at Evidence Code sections 412,[11] 413,[12] 500,[13] 780,[14] 786,[15] 790[16] and 791[17] in ascertaining the

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[9] Government Code section 11512, subdivision (c).

[10] Government Code section 11513, subdivision (d).

[11] Evidence Code section 412 provides, "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."

[12] Evidence Code section 413 provides, "In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating thereto, if such be the case."

[13] Evidence Code section 500 provides, "A party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

[14] Evidence Code section 780 provides, in pertinent part: "Except as otherwise provided by statute, the court may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following: (a) His demeanor while testifying and the manner in which he testifies. (b) The character of his testimony. (c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies. (d) The extent of his opportunity to perceive any matter about which he testifies. (e) His character for honesty or veracity or their opposites. (f) The existence or nonexistence of a bias, interest, or other motive. (g) A statement previously made by him that is consistent with his testimony at the hearing. (h) A statement made by him that is inconsistent with any part of his testimony at the hearing. (i) The existence or nonexistence of any fact testified to by him. (j) His attitude toward the action in which he testifies or toward the giving of testimony. (k) His admission of untruthfulness."

[15] Evidence Code section 786: "Evidence of traits of his character other than honesty or veracity, or their opposites, is inadmissible to attack or support the credibility of a witness."

[16] Evidence Code section 790: "Evidence of the good character of a witness is inadmissible to support his credibility unless evidence of his bad character has been admitted for the purpose of attacking his credibility."

[17] Evidence Code section 791: "Evidence of a statement previously made by a witness that is consistent with his testimony at the hearing is inadmissible to support his credibility unless it is offered after: (a) Evidence of a

relative convincing force of the evidence presented.[18] As previously set forth, the business relationships between and among the various business entities, NAS, Universal, Universal Nationwide, and ADA with respect to their consumer debt settlement business and respective customers, have been governed by a series of written agreements with the evident intent and effect to fundamentally limit what each entity does within the overall debt negotiation service schema. It has been substantially demonstrated that each corporate entity conducts its activities through human agency. These human agents comprise owners, employees, and partners common to each corporate body. The purpose of the written agreements is to create ostensibly effective walls vis-a-vis the various corporate entities. While the respondents (NAS, Universal, Universal Nationwide) have made ostensible business model modifications, there has been no substantial change in the corporate entity's fundamental focus nor control of client funds in the rendering of debt settlement services.[19] The various contractual relationships among these respondents seek to elevate form over substance—a condition disfavored by our legal system.[20] Each respondent requires consumers to execute documents, including authorizations, which vest control of consumers' deposits to a respondent (NAS, Universal, Universal Nationwide), or its designee. This assures that each respondent will, first and foremost, be paid. Only then, upon notification of the receipt of sufficient funds in a client's account, does NAS or Universal, either separately or in conjunction (and occasionally operating as Universal Nationwide), render services to its client by negotiating and directing the distribution of deposited client funds to or among creditors in payment or partial payment of that client's obligations.

LEGAL CONCLUSIONS

1. Financial Code section 12200 prohibits any person from receiving money as agent of an obligor for the purpose of paying bills, invoices, or accounts of such obligor, or acting as a prorater. Financial Code section 12002.1 defines a "prorater" as "a person who, for compensation, engages in whole or in part in the business of receiving money or evidences thereof for the purpose of distributing the money or evidences thereof among creditors in payment or partial payment of the obligations of the debtor."[21]

Financial Code section 12200 provides, in pertinent part, that "[n]o person shall engage in the business, for compensation, of receiving money as agent of an obligor for the purpose of paying bills, invoices, or accounts of such obligor, or acting as a prorater without

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statement made by him that is inconsistent with any part of his testimony at the hearing has been admitted for the purpose of attacking his credibility, and the statement was made before the alleged inconsistent statement; or (b) An express or implied charge has been made that his testimony at the hearing is recently fabricated or is influenced by bias or other improper motive, and the statement was made before the bias, motive for fabrication, or other improper motive is alleged to have arisen."

[18] Under Evidence Code section 500, the Commissioner has the burden of proving the facts that warranted issuance. Respondents have the burden of establishing that exemption or exception to the licensure requirement. Financial Code section 12101.5.

[19] *Cal-Am Corp. v. Department of Real Estate* (1980) 104 Cal.App.3d 453.

[20] Civil Code section 3528.

[21] See also *Crawford v. Farmers Group, Inc.* (1984) 160 Cal.App.3d 1164, 1170 – 1171.

first obtaining a license from the commissioner." Financial Code section 12103 authorizes the Commissioner to issue desist and refrain orders.

Respondents NAS, Universal and Universal Nationwide have each argued that they are not proper subjects of the California Check Sellers, Bill Payers and Proraters Law.[22] Simply put, these respondents argue, in part, that their non-receipt of "money or evidences thereof" precludes culpability. They are incorrect. Money is not merely currency or coin. Money is, as one witness testified, a unit of measurement. It is an invention to simplify trade. It serves as a medium of exchange, a standard of value, and a store of value. "Money" as both a term and concept is sufficiently broad as to encompass a broad range of financial or economic instruments. The phrase "evidences thereof" only functions to expand, not diminish, the scope and extent of what constitutes "money." Respondents, following notification of the receipt of client funds by the entity they direct client funds through, then engage in their negotiation services to reduce client debt obligations.

The Financial Code admittedly does not define "receiving money or evidences thereof" or what constitutes "money or evidences thereof". It is nevertheless fundamental that a "receiving" can be either actual or constructive. Operating within respondents' business models, the evidence reveals that once some evidence of the deposit of client funds in Rocky Mountain is received, respondents commence the rendering of services. Admittedly, respondents themselves do not receive client funds; however, they do receive evidence of such funds' deposits. While the Legislature has not defined "money or evidences thereof," such shortfall, if any, does not function to restrict the scope of complainant's focus. Mindful of the authorizations required to be executed by their customers, it becomes equally evident that while the actual owners of the funds (i.e., customers) possess title, respondents receive sufficient control over customers' funds that permit disbursements both on behalf of clients and for respondents' compensation.

The crux of the NAS, Universal, and Universal Nationwide respondents' joint enterprise is the negotiation of others' debt for compensation. While they (NAS, Universal, or Universal Nationwide) do not directly receive money (a function reserved to Global), no respondent (NAS, Universal, or Universal Nationwide) commences any activity for the benefit of their customers until client funds are both deposited in an account and available for distribution; whether for these respondent's compensation or that of a client's creditor settlement. Respondents' activities, therefore, fall within the definition of prorater and require licensure by the Commissioner. It has been competently established[23] that respondents NAS, Universal, and Universal Nationwide have violated pertinent provisions of the Financial Code. Cause, accordingly, exists pursuant to Financial Code sections 12002.1, 12103, and 12200 to sustain the Commissioner's issuance of the Desist and Refrain Order, in that respondents NAS, Universal, or Universal Nationwide were engaged in the business of prorating without a license, pursuant to Factual Findings 1 through 20.[24]

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[22] Financial Code section 12000, et seq.

[23] The standing objections and motions to strike of respondents are respectively overruled and denied.

[24] Accordingly, respondents' motions to dismiss (or vacate the Desist and Refrain Order) are overruled.

2. Global engages in no negotiations. Its compensation is based strictly on maintenance of each customer's financial account for Rocky Mountain. Global conducts limited banking activities. It is not a bank. While complainant seeks to include Global within the ambit of its Order, it was not competently demonstrated that Global has a nexus sufficient with the remaining respondents to impute culpability or engaged in activity that constitutes prorating. Cause does not exist pursuant to Financial Code sections 12002.1, 12100, 12103, and 12200 to sustain the Desist and Refrain Order with respect to Global only, pursuant to Factual Findings 1 through 20.[25]

3. Complainant has filed both a Notice of Intention to Levy Administrative Penalties[26] and a Request for Ancillary Relief.[27] Pursuant to the parties' stipulation, these issues, including respondents' special defenses, have been deferred for a subsequent proceeding.

ORDER

1. The Commissioner's Desist and Refrain Order was properly issued, and shall remain in effect as to respondents Nationwide Asset Services, Inc.; Universal Nationwide, LLC; and Universal Debt Reduction, LLP, pursuant to Legal Conclusion 1.

2. The Commissioner's Desist and Refrain Order was not properly issued and shall not remain in effect as to respondent Global Client Solutions, LLC, pursuant to Legal Conclusion 2.

3. Pursuant to Legal Conclusion 2, hearing on the Request for Ancillary Relief, and Intention to Levy Administrative Penalties against respondents Nationwide Asset Services, Inc.; Universal Nationwide, LLC; and Universal Debt Reduction, LLP, shall commence at 9:00 a.m., July 31, 2006, through August 4, 2006, at the Office of Administrative Hearings, 560 J Street, Suite 300, Sacramento, California.

DATED: April 28, 2006

JAIME R. ROMAN
Administrative Law Judge
Office of Administrative Hearings

[25] Global's Special Defenses, in view of this determination, are dismissed as moot.
[26] Financial Code section 12105, subdivision (c).
[27] Financial Code sections 12105, subdivision (b), and 12105, subdivision (e).