BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of: THE COMMISSIONER OF BUSINESS OVERSIGHT OF THE STATE OF CALIFORNIA, Complainant, v. MTC MANAGEMENT GROUP, INC., YVONNE ARVIZU, MARICRUZ CUEVA, WWW.IMPROVINGMYSCORE.COM, AND WWW.MEJORANDOTUCREDITO.COM, Respondents.	Case No. C-7464 OAH No. 2015020315

DECISION

The attached Proposed Decision After Remand of the Administrative Law Judge of the Office of Administrative Hearings, dated December 21, 2015, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter with technical and minor changes on the attached Errata Sheet pursuant to Government Code section 11517(c)(2)(C).

This Decision shall become effective on March 10, 2016.

IT IS SO ORDERED this 9th day of February, 2016.

/s/
JAN LYNN OWEN
Commissioner of Business Oversight

ERRATA SHEET

(Changes to Proposed Decision After Remand – MTC Management Group, Inc.)

1) On page 8 of the Proposed Decision After Remand, paragraph number 4 of the Order, line 3, delete "(their?)".

2) On page 8 of the Proposed Decision After Remand, paragraph number 5 of the Order, line 3, delete "and" after "shall" and before "pay".

BEFORE THE
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In the Matter of: THE COMMISSIONER OF BUSINESS OVERSIGHT OF THE STATE OF CALIFORNIA, Complainant, vs. MTC MANAGEMENT GROUP, INC.,[1] YVONNE ARVIZU, MARICRUZ CUEVA, WWW.IMPROVINGMYSCORE.COM, and WWW.MEJORANDOTUCREDITO.COM, Respondents.	Case No. C-7464 OAH No. 2015020315

PROPOSED DECISION AFTER REMAND

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 28, 2015, in Los Angeles, California.

Uche L. Enenwali, Senior Corporations Counsel, represented complainant, Jan Lynn Owen, Commissioner of Business Oversight, Department of Business Oversight, State of California.

There was no appearance by respondents, or by their attorney of record, Ralph R. Martinez, The Amnesty Law Firm.

Complainant established compliance with Government Code sections 11505 and 11509, and the hearing proceeded as a default pursuant to Government Code section 11520.

The matter was submitted on April 28, 2015.

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[1] The caption on the pleadings filed by complainant referred to respondent as MTC Management Group.

On August 21, 2015, the department remanded the matter to the Office of Administrative Hearings to prepare a revised proposed decision under Government Code section 11517, subdivision (c)(2)(D). A telephonic trial setting was conducted and on December 4, 2015, the record was reopened, additional evidence was received, the requested corrections were made, and the matter was submitted.

FACTUAL FINDINGS

Jurisdiction

1. On December 30, 2014, complainant, in her official capacity, filed a Statement in Support of Order Levying Administrative Penalties and Claim for Ancillary Relief, Order Levying Administrative Penalties and Ancillary Relief, Citations Assessing Administrative Penalties and Desist and Refrain order. Complainant alleged that respondents had engaged in unlicensed prorater activities and violated various provisions of the Financial Code that regulate proraters.[2] Complainant sought an order against respondents, individually, jointly and severally, that imposed administrative penalties, provided ancillary relief, ordered restitution, required disgorgement, and provided for cost recovery. Complainant also sought the issuance of citations and a desist and refrain order to prevent respondents from acting as proraters without first obtaining a license and from committing further violations.

Respondents' Business and License History

2. Records from the California Secretary of State documented that MTC Management Group, Inc., was formed on March 3, 2011. The California Franchise Tax Board suspended the corporation on January 2, 2014. Articles of incorporation filed on March 3, 2011, identified the corporation's name as Sensible Solutions Group, Inc. A certificate of amendment of articles of incorporation filed on June 17, 2011, changed the corporation's name to MTC Management Group, Inc. Yvonne Arvizu was identified as the corporation's president, secretary, chief executive officer, and chief financial officer. A statement of information filed on June 4, 2013, identified the corporation's type of business as financial consulting. A January 15, 2015, statement of information identified the corporation's type of business as document management services.[3]

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[2] 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."

[3] Respondent Maricruz Cueva was not identified in the Secretary of State documents, but she filed a notice of defense in response to complainant's service of the pleadings in this case on respondent MTC Management Group. Complainant asserted at hearing that respondent Maricruz Cueva was MTC's Financial Advisor.

3. MTC maintained two Internet websites: www.improvingmyscore.com and www.mejorandotucredito.com.[4]

4. The department's Certificate of Search demonstrated that respondents are not licensed as check sellers, bill payers, or proraters. Respondents were not exempt from the licensing requirements of the Financial Code.

The Department's Investigation

5. A declaration from a Kern County deputy district attorney with attached documentation referenced a consumer complaint filed by Mr. and Mrs. Flores.[5] The couple heard a radio advertisement for respondents' services on a Spanish language station. They executed agreements with respondents in January 2013 in which they initially agreed to pay $8,896 to respondents to negotiate the Flores's $32,000 debt with their creditors. Thereafter, respondents required an additional $3,000 payment to negotiate the debt. Eventually, the Flores paid $15,700 to respondents. The Flores's credit was never repaired. The documents attached to the deputy district attorney's declaration contained the sums Mr. and Mrs. Flores paid respondents and established that respondents were acting as proraters.

6. Redacted documents from Kern Schools Federal Credit Union documented that Mr. and Mrs. Flores made payments to respondents. The department created a summary of the Flores's payments that indicated Mr. Flores paid $14,861 to respondents and Mrs. Flores paid $2,124 to respondents, for total payments to respondents of $16,985.[6]

7. The department also investigated a consumer complaint made by Luis Bautista and requested respondents produce records related to Mr. Bautista's complaint. On March 26, 2015, respondent's counsel e-mailed complainant a debt settlement report with attachments. Luis Bautista was identified as the "client." The e-mail advised that respondent's counsel was attaching "a final accounting for Mr. Bautista's account and the evidence supporting it." The debt settlement report stated that the original debt enrolled was $17,064, the amount paid to date was $8,896, and the available funds were $3,578.38. In the accounts section of the debt settlement report, the balance, offer, office fee, total, and status of 12 creditors was listed. The cumulative paid settlement amount was $4,520.62, with a $345 administration fee, a $450 company representation fee, a $1,217.68 process negotiation fee, and a $450 document preparation/response to lawsuit fee. The total program cost was $6,985.30, the amount paid by Mr. Bautista was $8,896, and the funds remaining on account were $1,910.70. Although respondents' attorney asserted in his e-mail that "the accuser has

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[4] MTC, Ms. Arvizu, Ms. Cueva, and the two Internet websites will be collectively referred to in this decision as respondents.

[5] The deputy district attorney's declaration and attached memos erroneously spelled the name Florez.

[6] This amount was different from the $15,700 alleged.

lied" and "attempted to use the government" in a "malicious manner in order to extort money from my clients," the documents established that respondents acted as proraters for Mr. Bautista.

8. A department examiner created a schedule of payments for the Flores's and Mr. Bautista's accounts. The examiner identified six payees for the Flores totaling $6,765.38, but could not verify payment to those payees. The examiner identified two payees for Mr. Bautista totaling $1,345.36, and verified those payments.

9. Copies of pages complainant downloaded from MTC's website, improvingmyscore.com, indicated that respondents offered to "repair your bad credit." Respondent offered help with late payments, foreclosures, charge-offs, short sales, judgments, collections, repossessions, bankruptcy, low scores, identity theft, child support, and tax liens. Respondents offered to "increase your credit score in days," "build your business credit," and "restore your credit today." The website advised that "[f]or more than 15 years, our professionals consist of the nation's top leaders in credit consulting most likely known as credit repair. We offer a solid solution to consumers with challenging credit scores." Respondent advised that their "focus is helping you achieve your financial goal by helping you raise your credit score." The website acknowledged that the "credit repair industry has a bad reputation," but advised that respondents were different and had "over 183 creditors ready to settle and provide deletion letters to improve your credit." The website promised that if "you are tired of having bad credit, or you are trying to obtain a home, a car, or simply get an emergency credit card, we are ready to help you increase your credit score." Respondents promised to "negotiate collections up to 50% (or less) of the value of the current debt." Respondents identified themselves as having "helped thousands of customers" and being "experts in disputing negative accounts." The website provided tips for consumers to use to increase their credit scores.

Cost Recovery

10. The declaration of Associate Corporations Investigator Jennifer Marks in support of complainant's request for costs identified the investigative work performed, the tasks incurred, the hours spent, the hourly rate, and the expenses and costs incurred. Complainant's investigator spent 10.5 hours at a cost of $1,846.84 investigating this matter. The investigative costs incurred were reasonable.

11. The declaration of Rebecca Gutierrez, the senior legal analyst and custodian of records, in support of complainant's request for costs identified the enforcement work performed, the tasks incurred, the hours spent, the hourly rate, and the expenses and costs incurred. Ms. Guitierrez spent 10 hours at a cost of $1,553.56 performing her tasks in this matter. The enforcement costs incurred were reasonable.

12. The declaration of the examiner Lisa Medina in support of complainant's request for investigative costs identified the work performed, the tasks incurred, the hours

spent, the hourly rate, and the expenses and costs incurred. Ms. Medina spent eight hours at a cost of $776 performing her tasks in this matter. The costs incurred were reasonable.

13. The declaration of Senior Corporations Counsel Enenwali in support of complainant's request for legal costs incurred identified the work performed, the hours spent, and the hourly rate. Ms. Enenwali was well prepared, this was a complex matter, and her hourly rate and time spent on the identified tasks were both reasonable. However, one cost item, the time spent to attend the hearing, was an estimate only. Given the time actually spent at the two hearings, Ms. Enenwali's time estimate will be reduced by six hours and the costs reduced by $900. As such, reasonable legal costs incurred were $7,650.

LEGAL CONCLUSIONS

Applicable Code Sections

1. Financial Code section 12105, subdivision (b), authorizes the Commissioner to file a claim for ancillary relief including, but not limited to, a claim for restitution, disgorgement, or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative court has jurisdiction to award additional relief.

2. Financial Code section 12105, subdivision (c), authorizes the Commissioner to levy administrative penalties against persons who violate the Financial Code in an amount not to exceed $2,500 per violation.

3. Financial Code section 12105, subdivision (e), entitles the Commissioner to obtain costs, including reasonable attorney's fees and any related expenses, for services rendered investigating or prosecuting an administrative action.

4. Financial Code section 12107, subdivision (a), authorizes the department to issue a citation to anyone engaging in business as a prorater without a license or violating any provisions of the Financial Code. Each citation may contain an order to desist and refrain and may assess an administrative penalty in an amount not to exceed $2,500.

5. The Check Sellers, Bill Payers and Proraters Law set forth in Financial Code section 12200, prohibits anyone from engaging "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 first obtaining a license from the Commissioner.

6. 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."

7. Financial Code section 12315 prohibits a prorater from receiving "any fee unless he has the consent of at least 51 percent of the total amount of the indebtedness and of the number of creditors listed in the prorater's contract with the debtor, or such like number of creditors have accepted a distribution of payment."

8. Financial Code section 12315.1 requires a prorater to "notify, in writing, all creditors listed in the prorate contract of the debtor's desire to engage the services of the prorater within five days of the effective date of the contract" and the notification "shall include notice as to the proposed monthly payment to be made to the creditor." Additionally, the contract between the prorater and the debtor "shall list every debt to be prorated with the creditor's name, and disclose the total of all such debts."

9. Financial Code section 12321 requires a prorater to deliver a receipt to a debtor for each payment within five days after receipt of a payment, unless paid by check or money order.

10. Financial Code section 12322 requires the prorater, at least once every six months, to render an accounting to the debtor itemizing the total amount received from the debtor, the total amount paid to each creditor, the total amount which any creditor has agreed to accept payment in full on any debt owed, the amount of charges deducted, and any amount held in reserve. A prorater must render such an accounting to a debtor within seven days after receiving a written demand.

Evaluation

11. Respondents acted as proraters for Mr. and Mrs. Flores and Mr. Bautista. Respondents collected $15,700 from Mr. and Mrs. Flores and $8,896 from Mr. Bautista. Respondents were not licensed by the department to act as proraters and were not exempt from licensing requirements. Respondents violated Financial Code section 12220.

Respondents received an upfront fee of $3,000 from Mr. and Mrs. Flores before satisfying the requirements outlined in Financial Code section 12315; respondents did not provide the notification required by Financial Code section 12315.1; respondents did not deliver a receipt of payment of Mr. and Mrs. Flores's debt as required by Financial Code section 12321; and respondents failed to render an accounting to Mr. and Mrs. Flores in violation of Financial Code section 12322.

Cause Exists to Impose Discipline

12. Cause exists pursuant to Financial Code section 12105, subdivision (b), to grant complainant's request for ancillary relief as follows: ordering respondents to pay restitution of $15,700 to Mr. and Mrs. Flores and $8,896 to Mr. Bautista; to disgorge all benefits received, including but not limited to, salaries, commissions, fees, profits and any other remuneration derived directly or indirectly from respondents' actions or practices; rescind each and all of respondents' unlawful transactions; and pay the legal rate of interest

on the principal amounts paid by Mr. Flores and Mr. Bautista from the date of their payment to the date of the order herein.

13. Cause exists pursuant to Financial Code section 12105, subdivision (c), to levy administrative penalties against respondents of $2,500 per violation. Respondents are levied administrative penalties in the amount of $2,500, for each violation, for violating Financial Code sections 12200, 12315, 12315.1, 12321, and 12322, for a total amount of $12,500. Respondents, individually, jointly, and severally, shall pay the $12,500 administrative penalty within 60 days from the date of this order by check or money order payable to the Department of Business Oversight.

14. Cause exists pursuant to Financial Code section 12107, subdivision (a), to issue citations in the amount of $2,500 per violation, against respondents, and to issue a desist and refrain order. Respondents, individually, jointly, and severally are levied an administrative penalty of $2,500 for each of the five citations listed below for a total of $12,500. Respondents shall pay the $12,500 administrative penalty within 60 days of the date of this order by check or money order made payable to the Department of Business Oversight. Respondents are further ordered to cease and desist from engaging in the business of prorating unless licensed by the department.

Citation 1 - beginning in January 2013, respondents acted as proraters without first obtaining a license from the Commissioner, in violation of Financial Code section 12200.

Citation 2 - beginning in January 2013, respondents acted as proraters without first obtaining a license from the Commissioner and received an upfront fee of $3,000 without satisfying the requirements prescribed under state law in violation of Financial Code section 12315.

Citation 3 - beginning in January 2013, respondents acted as proraters without first obtaining a license from the Commissioner and failed to provide the notification prescribed under state law in violation of Financial Code section 12315.1.

Citation 4 - beginning in January 2013, respondents acted as proraters without first obtaining a license from the Commissioner and failed to deliver a receipt of payment of at least one California resident's debt in violation of Financial Code section 12321.

Citation 5 - beginning in January 2013, respondents acted as proraters without first obtaining a license from the Commissioner and failed to render an accounting to at least one California resident in violation of Financial Code section 12322.

15. Cause exists pursuant to Financial Code section 12107, subdivision (a), to order respondents to desist and refrain from engaging 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 proraters without first obtaining a license from the Commissioner. This order is necessary and is in the public interest in order to protect

consumers, and the order is consistent with the purposes, policies, and provisions of the California finance laws

16. Cause exists pursuant to Financial Code section 12105, subdivision (e), to award the department its costs of investigation and enforcement, including reasonable attorney's fees and any related expenses for services rendered. The declarations filed in support of the cost recovery established that reasonable costs in the amount of $11,826.40 were incurred.

ORDER

1. Respondents MTC Management Group, Inc., Yvonne Arvizu, Maricruz Cueva, www.improvingmyscore.com and www.mejorandotucredito.com, individually, jointly and severally, are hereby ordered to desist and refrain from engaging 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 proraters without first obtaining a license from the Commissioner.

2. Respondents MTC Management Group, Inc., Yvonne Arvizu, Maricruz Cueva, www.improvingmyscore.com and www.mejorandotucredito.com, individually, jointly and severally, shall pay full restitution in the amount of $24,596, which shall be paid within 60 days from the date of this order by check or money order payable to the Department of Business Oversight.

3. Respondents MTC Management Group, Inc., Yvonne Arvizu, Maricruz Cueva, www.improvingmyscore.com and www.mejorandotucredito.com, individually, jointly and severally, shall disgorge all benefits received, including but not limited to, salaries, commissions, fees, profits and any other remuneration derived directly or indirectly from respondents' actions or practices.

4. Respondents MTC Management Group, Inc., Yvonne Arvizu, Maricruz Cueva, www.improvingmyscore.com and www.mejorandotucredito.com, individually, jointly and severally, shall rescind each and all of respondents' (their?) unlawful transactions.

5. Respondents MTC Management Group, Inc., Yvonne Arvizu, Maricruz Cueva, www.improvingmyscore.com and www.mejorandotucredito.com, individually, jointly and severally, shall and pay the legal rate of interest on the principal amounts paid by Mr. Flores and Mr. Bautista from the date of their payments to the date of the order herein.

6. Respondents MTC Management Group, Inc., Yvonne Arvizu, Maricruz Cueva, www.improvingmyscore.com and www.mejorandotucredito.com, individually, jointly and severally, shall pay administrative penalties of $12,500, which shall be paid within 60 days from the date of this order by check or money order payable to the Department of Business Oversight.

7. Respondents MTC Management Group, Inc., Yvonne Arvizu, Maricruz Cueva, www.improvingmyscore.com and www.mejorandotucredito.com, individually, jointly and severally, shall pay citations in the amount of $12,500, which shall be paid within 60 days from the date of this order by check or money order payable to the Department of Business Oversight.

8. Respondents MTC Management Group, Inc., Yvonne Arvizu, Maricruz Cueva, www.improvingmyscore.com and www.mejorandotucredito.com, individually, jointly and severally, shall pay the department its costs in the amount of $11,826.40, which shall be paid within 60 days from the date of this order by check or money order payable to the Department of Business Oversight.

DATED: December 21, 2015

/s/
MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings