

**ARKANSAS STATE BOARD OF COLLECTION AGENCIES
DEPARTMENT OF LABOR AND LICENSING**

Meeting Minutes – August 18, 2021

I. Call to Order

Chair Guinn called the meeting to order at 10:00 AM.

II. Roll Call

Secretary Smith called the roll.

Present	Absent
Rusty Guinn, Chair	<i>none</i>
Warner Smith *	
Tyler Steele *	
Ed Vance	

Board staff in attendance: Boyd Maher, Executive Director
Rhonda Hetland, Licensing Manager
Lacie Kirchner, Assistant Attorney General

Others in attendance: Jason Johnson, Hearing Officer
Suba Desikan, Bureau of Legislative Research
Daniel Ingram *

** Participated virtually via Teams videoconference.*

III. Approval of Minutes

Mr. Smith presented the minutes of the May 19, 2021 meeting. **Director Maher** asked to clarify that the motion, reflected in the May minutes, to add the new director as a signer to the Board's account at First Security Bank also contemplated removing the former director. **Mr. Smith** agreed this clarification should be noted in the minutes. **Mr. Steele** moved to adopt the minutes as amended. **Mr. Vance** seconded. The motion passed unanimously (4-0).

IV. Hearings

A. Hearing Officer Johnson announced case #2021-001, noting that the Respondent, Hillcrest Davidson and Associates, was not present or represented, in person or virtually. He recognized Ms. Kirchner as counsel for the Board. **Mr. Johnson** read the rules of the hearing and noted it was being recorded. He explained that Board members had no prior knowledge of the case. **Mr. Maher** and **Ms. Hetland** were sworn in as witnesses. **Ms. Kirchner** offered the evidence packet, containing four exhibits, into the record. Hearing no objections, **Mr. Johnson** accepted the evidence packet into the record. The Board members reviewed the materials individually for several minutes.

Ms. Kirchner called Mr. Maher as witness. She asked him to identify his position and the complaint received against the Respondent. **Ms. Kirchner** asked if Hillcrest Davidson and Associates is a current or former licensee. **Mr. Maher** responded that the Board has no record of them having ever been licensed in Arkansas. **Ms. Kirchner** asked about Mr. Maher's telephone conversation with Sean Atwood, Vice President at Hillcrest Davidson and Associates. **Mr. Maher** described Mr. Atwood's belief that his firm did not require licensure because the debt in question arose from a commercial transaction. **Ms. Kirchner** asked if Arkansas law exempted commercial debt collection from licensure. **Mr. Maher** replied that statute requires that all collection agencies operating in Arkansas be licensed and makes no distinction between consumer and commercial debts. **Ms. Kirchner** asked if Hillcrest Davidson and Associates was otherwise exempt from licensure. **Mr. Maher** replied that they do not appear to fall into any of the other exemptions provided by statute. **Ms. Kirchner** asked if Mr. Atwood had been advised of the availability of a retroactive license. **Mr. Maher** replied he had offered Mr. Atwood the retroactive license allowed by statute, but Mr. Atwood had declined this option.

Ms. Kircher asked if the exhibit packet included the complaint received by staff. **Mr. Maher** confirmed that it contained the complaint from Daniel Ingram. **Ms. Kircher** asked about the communication included in the complaint. **Mr. Maher** explained that most of it was between Ken Williams, an employee of Hillcrest Davidson and Associates, and Mr. Ingram, but also included text messages from Mr. Williams to Mr. Ingram's spouse. **Ms. Kircher** asked whether the communication included in the complaint discussed the licensure of Hillcrest Davidson and Associates. **Mr. Maher** replied that Mr. Ingram had asked Mr. Williams about licensure, but Mr. Williams had declined to answer. **Ms. Kircher** asked how long Hillcrest Davidson and Associates had been attempting to collect the debt. **Mr. Maher** noted that the complaint included a letter dated July 20, 2020, but even that referenced previous collection efforts.

Ms. Kircher asked what other allegations, besides practicing without a license, were included in the complaint. **Mr. Maher** replied that the complaint also included communication that could be characterized as harassment. Mr. Williams contacted both Mr. and Mrs. Ingram on their personal, unlisted mobile phones, even after he had already reached Mr. Ingram at his law office. Additionally, Mr. Williams, in an attempt to collect the debt, indicated he would file a complaint against Mr. Ingram's law license.

Ms. Kircher asked whether the complaint alleged violations of the Fair Debt Collection Practices Act. **Mr. Maher** explained that while both the federal and state FDCPA's provide additional protection to consumers, these laws do not apply to commercial debt collection. Nevertheless, he continued, collection agencies are still required to be licensed to practice in Arkansas. **Ms. Kircher** announced she had no further questions.

Mr. Johnson invited the Board to ask questions. **Mr. Vance** asked whether the question before the Board was only one of licensure. **Mr. Maher** replied it was primarily a question so licensure, but also of unethical practices, noting the calls to the Ingrams' personal phones and the threat against the law license. **Mr. Vance** asked whether the Board has jurisdiction over commercial debt collection. **Mr. Maher** restated that commercial debt collection was not exempted from the Board's oversight and that – while the FDCPA carries extra protections for consumers – even commercial debt collection calls for a baseline standard of ethical conduct.

Hearing no other questions from the Board, **Mr. Johnson** invited Ms. Kirchner to make a closing statement. **Ms. Kirchner** restated that Hillcrest Davidson and Associates had practiced without an Arkansas license from July 2020 until June 2021. She also noted the section in the Board's rules that prohibit harassment, abuse, and unfair practices by all collection agencies operating in the state, even those collecting commercial debts. **Ms. Kirchner** reiterated that the Respondent had declined Mr. Maher's offer to settle the complaint with a retroactive license.

Mr. Johnson declared the record closed and recessed the hearing to allow for deliberation by the Board. **Mr. Guinn** noted that cases like this are rare, and that the Board's maximum fine is \$500 per day. **Mr. Smith** said that a daily fine was appropriate in this case, noting that the Respondent did not reply or appear. **Mr. Steele** agreed that the evidence was clear, and a fine was warranted. **Mr. Vance**, noting his position as the collection industry representative, said he was disgusted at the Respondent's behavior, describing it as reprehensible and harassment. He suggested the Board pursue the maximum available penalty of \$500 per day, noting the Respondent declined to settle the complaint with a retroactive license. **Mr. Guinn** agreed, describing the Respondent's actions as despicable. **Mr. Vance** asked how the Board would collect such a fine. **Mr. Guinn** replied that this was not the question before the Board at this time, noting that a large fine could serve to deter bad actors. **Mr. Vance** concurred. **Mr. Guinn** moved to fine the Respondent \$500 per day for the duration of the unlicensed collection efforts. **Mr. Vance** seconded. **Mr. Smith** asked what would preclude the Respondent from obtaining a license if they refused to pay such a fine. The motion passed unanimously (4-0).

Mr. Johnson reconvened the hearing and invited the Board to ratify its decision in the record. **Mr. Smith** moved to fine the Respondent \$500 per day for the duration of their unlicensed collection efforts. **Mr. Vance** seconded. The motion was passed unanimously (4-0). **Mr. Johnson** invited the Board to specify a total amount in the record. **Mr. Maher** explained that July 20, 2020 through June 30, 2021 represented 345 days, and that \$500 per day yielded a total of \$172,500. He continued that the Board could also instruct staff not to accept any new applications for licensure from the Respondent until the full amount was paid. **Mr. Vance** so moved. **Mr. Smith** seconded. The motion was passed unanimously (4-0).

Mr. Johnson read the appeal process for the record. **Ms. Kirchner** invited the Board to find the allegations and facts of the case were proven and true. **Mr. Vance** so moved. **Mr. Smith** seconded. The motion was passed unanimously (4-0). **Mr. Johnson** declared the hearing concluded and the record closed.

Ms. Kirchner, Mr. Johnson, and Mr. Ingram left the meeting.

V. Financial Reports

A. Mr. Maher reviewed the memo regarding the Board's FY21 cashflow and invited questions. He noted the Board had already paid out the full statutory distributions to higher ed institutions for FY22 based on the previous year's revenue. **Mr. Guinn** asked if these figures included the certificate of deposit balance. **Mr. Maher** replied that they did not, and the CD balance continues to grow.

B. Mr. Maher reviewed the Memorandum of Understanding with the Department of Labor and Licensing and invited questions. **Mr. Smith** said it looked acceptable.

C. Mr. Maher described the investment programs available from the State Treasury – a CD auction and a money market fund. He explained that the Board's CD at First Security Bank was maturing now, so the Board should act quickly to if it wished to move its investments to the Treasury. **Mr. Steele** asked at what rate would the current CD renew if not moved. **Mr. Maher** replied it would likely renew at the current rate of 0.5%. **Mr. Steele** said this was a good rate, and given the Board's cash balance, he did not believe there was a need to move any funds at this time. **Mr. Steele** asked how often the Treasury conducted CD auctions. **Mr. Maher** said he did not know. **Mr. Steele** suggested confirming the frequency of the auctions, and also inquiring what rates state agencies were currently realizing from the program. The other members expressed general agreement to allow the current CD to renew for another 11-month term.

VI. Old Business / New Business

A. Mr. Maher reported he had granted two administrative variances, both regarding the waiver of late fees. In the first case, a Louisiana collection agency had explained an extenuating circumstance leading to their late renewal. In the other case, a Georgia collection agency had evidence showing they had submitted their online application before the deadline, but it had failed to transmit.

B. Mr. Maher reported on the ongoing transition to the Enterprise Licensing and Permitting (ELP) system, the Board's new licensing and database platform. Board staff is meeting frequently with the staff from Information Network of Arkansas, and the new system should be operational in the coming weeks. **Mr. Maher** noted that ELP will allow new licensees to apply online.

C. Mr. Maher reviewed the steps in the rulemaking process and opened the public hearing on the proposed rules. Hearing no comments, he closed the public hearing. **Ms. Desikan** asked if the Board had received any written comments. **Mr. Maher** replied that it has not, but that written comments would continue to be accepted until September 7.

VII. Adjourn

Mr. Guinn adjourned the meeting at 10:52 AM.



Boyd Maher, Director



Rusty Guinn, Chair