

IN THE MATTER OF
the *Collection and Debt Settlement Services Act*
2011, c.126

- and -

IN THE MATTER OF
Capital Credit Recovery Corp

REASONS FOR DECISION & ORDER OF THE DIRECTOR OF CONSUMER AFFAIRS

Date of Suitability Notice: 23 January 2024
Date of Opportunity to be Heard: In-person hearing waived as Licensee did not respond
Date of Reasons for Decision: 11 April 2024

Heard Before

Alaina M. Nicholson
Director of Consumer Affairs Division

INTRODUCTION

- [1] The *Collection and Debt Settlement Services Act, 2011, c.126* (the *Act*) provides that the Director may determine continued suitability to hold a collection agency licence:

9(1) The Director may suspend or cancel a licence in accordance with the regulations or when the Director considers it in the public interest to do so.

- [2] This matter involves a request by Financial and Consumer Services Commission (FCNB) staff (Staff) to the Director of Consumer Affairs (Director) to review the suitability of Capital Credit Recovery Corp (the Licensee) to continue to hold a collection agency licence under the *Act*.
- [3] Under subsection 9(4.2) of the *Act*, the Director shall not suspend or cancel a licence without giving the Licensee an opportunity to be heard.

REGULATORY HISTORY WITH THE FCNB

- [4] On 14 March 2023, the Licensee submitted an application for a collection agency licence to FCNB. As part of the collection agency licence application, applicants must provide a copy of the balance sheet, as outlined under section 7 of the General Regulation under the *Act*.
- [5] Upon review of the financial statements, Staff noted that the financial position of the company was weak and highlighted concerns that this heightened the risk of mismanagement of trust funds.
- [6] To address the concerns raised by Staff regarding the financial position of the company, a collection agency licence was issued to the Licensee in April 2023 with the following terms and conditions:

The Licensee must submit its 2023 financial statements to FCNB by 1 June 2023.

- [7] The Licensee had not submitted the financial statements to the FCNB by 1 June 2023, as required by the terms and conditions. The following is a summary of the correspondence between the Licensee and Staff with respect to the past due 2023 financial statements:
- 1 June 2023 – Staff contacted the Licensee via email to advise the financial statements were due.
 - 1 June 2023 – The Licensee responded by forwarding an email from their accountant, wherein the accountant stated that he had been sick and unable to complete the financial statements. The accountant advised he would begin work on the financial statement shortly.
 - 15 June 2023 – Staff contacted the Licensee to inquire on the status of the financial statements.
 - 15 June 2023- In response to Staff's 15 June 2023 email, Staff received an email directly from the accountant, wherein he stated that the statements were not ready and that they should be ready by the end of the month (June).

- 4 July 2023 - Staff contacted the Licensee via email seeking an update on the status of the financial statements. The Licensee responded via email and advised that the accountant would have them ready once he returned from his vacation.
- [8] After not receiving the required financial statements, on 17 July 2023, Staff sent a letter to the Licensee to advise of concerns regarding the Licensee's noncompliance with the terms and conditions. The letter stated that Staff was recommending the suspension of the collection agency licence to the Director.
- [9] The letter went on to advise that the recommendation was for their licence to be reinstated upon submission and review of the financial statements. The Licensee was also advised of their right to an opportunity to be heard, which included the following information:
- that it was an opportunity for them to provide any additional information or rationale to aid the Director in reviewing suitability for licensure;
 - that they had a right to bring legal counsel to the opportunity to be heard;
 - that they had a right to disclosure of all information considered by FCNB Staff in determining they were unsuitable for licensure and all information put before the Director of Consumer Affairs for consideration at the opportunity to be heard; and
 - that if the Licensee did not reply within 10 days of the letter that the Director would render a decision based on the information on file.
- [10] On the same day, 17 July 2023, the Licensee's accountant, contacted Staff over the phone to confirm receipt of a copy of the letter, and to advise that the Licensee would be suspending collection activity until otherwise directed by FCNB.
- [11] On 24 August 2023, the suspended Licensee submitted their 2023 financial statements.
- [12] On 11 September 2023, after a Staff review of the financial statements, Staff sent a letter to the Licensee advising of continued concerns over the Licensee's financial position. The letter advised that Staff was recommending to the Director that the following terms and conditions be placed on the Licensee's collection agency licence:
- Agency to provide repayment terms for the \$117,236 amount receivable from the shareholder and the \$30,000 Canada Emergency Business Account (CEBA) loan payable by 25 September 2023.
 - Agency to provide quarterly financial reporting, in addition to the existing annual reports. These reports should be submitted within 30 days after the end of each quarter.
 - Agency to notify the Director, without delay, of any shortages within the trust account, along with supporting documentation indicating the reason for the shortage and the corrective actions taken to immediately correct the deficiency.
- [13] The Licensee was also advised of their right to an opportunity to be heard, which included the following information:
- that it was an opportunity for them to provide any additional information or rationale to aid the Director in reviewing suitability for licensure;
 - that they had a right to bring legal counsel to the opportunity to be heard;

- that they had a right to disclosure of all information considered by FCNB Staff in determining they were unsuitable for licensure and all information put before the Director of Consumer Affairs for consideration at the opportunity to be heard; and
- that if the Licensee did not reply within 10 days of the letter that the Director would render a decision based on the information on file.

[14] On 15 September 2023, the Licensee agreed to the recommended terms and conditions and submitted a signed undertaking.

[15] On 22 September 2023, the Licensee emailed Staff and provided the repayment terms for the \$117,236 amount receivable from the shareholder and the \$30,000 CEBA loan payable. The email also advised the Licensee would notify the Director of any shortage, but that a shortage had never occurred, as the trust account was reconciled monthly and that the liability agreed to the bank.

[16] On 25 September 2023, Staff emailed the Licensee to advise their collection agency licence was active and that collection activity could resume in New Brunswick.

THE FACTS

[17] On 2 November 2023, Staff contacted the Licensee via email to inquire on the end of quarter financial reporting.

[18] On 10 November 2023, the Licensee submitted their quarterly profit and loss statement via email to Staff.

[19] On 20 November 2023, Staff contacted the Licensee via email to advise their submission of 10 November 2023 was a profit and loss statement and requested submission of a balance sheet.

[20] On 21 November 2023, the Licensee responded to Staff's 20 November 2023 email and advised they would speak with their bookkeeper about the requested balance sheet.

[21] On 29 November 2023, the Licensee and Staff spoke over the phone about Staff's request of a balance sheet. Shortly after terminating the call, Staff followed-up the phone call with an email to the Licensee, wherein the definition of a "balance sheet" was provided.

[22] On 8 December 2023, the Licensee submitted a balance sheet via email to Staff.

[23] Upon review of the balance sheet, Staff noted the Licensee's poor working capital resulting from its current liabilities exceeding current assets. Staff found that the total amount of the working capital deficiency was unclear based on the way the figures were presented on the balance sheet. For example, there were items which were receivables that were being reported as payables and vice versa. More concerning, there were not enough funds available to pay the trust liability amount reported of \$142,404.

[24] Staff also noted the Licensee was reporting a shortage in the amount of \$91,968 in its trust account.

[25] Staff also noted the shareholder loans receivable balances were lower than they were at year end, but that they had increased over the last 3 months and no repayments had been made on

the CEBA loan. The Licensee had indicated in their 22 September email to Staff that a portion of the shareholder loans would be received by the company during the fiscal year and that CEBA loan repayments would begin in October.

- [26] The Licensee had indicated in their 22 September 2023 email to Staff that the trust account is reconciled monthly and that the liability agreed to the bank; however, this conflicted with what was reported on the balance sheet.
- [27] Staff concluded that the risk of trust funds being misappropriated was high and noted the significant shortage in the trust account had not been reported, as per the terms and conditions.
- [28] On 13 December 2023, Staff contacted the Licensee via email to inform the Licensee of a shortage in the trust account and to request additional information, including:
- Supporting documentation indicating the reason for the trust shortage reflected at 30 September 2023.
 - An explanation on the corrective action being taken to remedy the \$91,698 shortage.
 - Staff specified that if the account was not in fact short, then to provide evidence to support this, including a bank reconciliation report, a copy of the bank statement and list of clients and amounts owing to each for 30 September 2023.
- [29] On 18 December 2023, in response to staff's 13 December email, the Licensee submitted the following documents via an email to Staff:
- A bank statement of what appeared to be a TD EVERY DAY C BUSINESS PLAN for [Business Owner];
 - A document outlining a list of what appeared to be outstanding cheques, a reconciliation between the physical bank balance and trust liability amount as listed on the document, and a list titled "Payables Report"
- [30] The 18 December 2023 email from the Licensee to Staff also indicated the following with respect to the trust shortage:
- "The majority of shortage funds are owed back to me as a loan to the company that will be paid over the next 2 years"
- [31] Upon review of the Licensee's 18 December 2023 email, Staff noted the following:
- The TD bank statement provided for account [Account A] was identified as a "TD EVERY DAY C BUSINESS PLAN"; there was no indication on the statement of it being a trust account as required by section 12 of the General Regulation. Even more concerning, the account appeared to be held in the business owner's name instead of Capital Credit Recovery Corp.
 - Regarding the trust shortage, in their response, the Licensee appeared to acknowledge a shortage and advised that shortage funds were owed back to him. Based on the Licensee's response, it appeared to Staff that the shortage was being covered through a shareholder loan and that the Licensee expected it be repaid over 2 years. However, the amount of the shortage remained unclear as well as when or how it originated and when the Licensee deposited funds to cover it.

- Staff was able to verify that the list of deposits provided agreed to the TD bank statement, but not the withdrawals from the account; no listing of withdrawals were provided. Staff noted most withdrawals were being made by cheque but that frequent transfers out of the account to account [Account B] were also happening. It is unknown who the owner of account [Account B] is or to whom each cheque was written. Staff was unable to verify the accuracy of the trust liability without this information.
- The reconciliation provided by the Licensee contained discrepancies. Specifically, the amount available to cover the "Trust Liability" identified in their reconciliation (\$17,075) did not match the total identified as owing to clients under the "Payables Report" (\$17,370.47). This appeared to indicate a shortage in the trust account of approximately \$300, a balance significantly different than the shortage reported on the balance sheet.
- Staff was unable to determine how the documents related to the \$50,706.79 "Trust Account" asset and \$142,404.58 "Trust Liability" found on the balance sheet provided on 8 December 2023 for the quarter ending 30 September 2023.

[32] On 2 January 2024, Staff emailed the Licensee to outline the concerns identified through review of the response and documents provided in the Licensee's 18 December 2023 email to Staff. In the email, Staff requested the following information:

- Confirmation from the bank that account [Account A] is a trust account belonging to the corporation.
- With respect to deposits associated with collection activity, an outline indicating the dates and amounts of the deposits.
- The date the trust account shortage occurred.
- A listing of all payees and payments that cleared the account in September 2023, including the transfers out to account [Account B].
- Additional information on the balance sheet figures, namely the \$50,706.79 "Trust Account" asset and \$142,404.58 "Trust Liability" as well as general ledger printout showing the bookkeeping entries made into those accounts. Additional details about how these figures tie into the manual reconciliation provided with the supporting documentation.

[33] On 8 January 2024, in response to Staff's 2 January 2024 email, the Licensee submitted several documents via an email to Staff:

- A confirmation letter from TD Bank regarding account [Account A].
- 13 separate copies of cancelled cheques from account [Account A].

[34] In the body of the Licensee's 8 January 2024 email to Staff, the Licensee advised that:

- There was no shortage in the trust account and that the dates and amounts were on the bank statement.
- There were 2 outstanding cheques remaining and that the Licensee would be following up with clients to remind them to cash their cheques.
- The \$142,404 is the total company liability.

[35] On 8 January 2024, the Licensee sent a second email to Staff that included the following documents:

- General Ledger for Trust Account
- General Ledger for General Account

[36] Upon Staff review of the two emails sent by the Licensee to Staff on 8 January 2024, the following was noted:

- Based on the information submitted by the Licensee since 10 November 2023, Staff was not able to rely on the balance sheet or on the profit and loss statement prepared by the company for quarterly reporting.
- Based on the information provided since 10 November 2023, Staff was still calculating a shortage in the trust account, in the amount of \$265.47.
- The Licensee had not notified the Director of the shortage, as required.
- In comparing the general ledgers provided by the Licensee on 8 January 2024 with the trust bank statement for 30 September 2023, Staff noted transfers from the account to the general account on 5 separate occasions. The total of the transfers was in the amount of \$17,623.29.
- The Licensee did not provide an explanation as to why these transfers occurred.
- The Licensee did not provide the "Trust Liability" account listed on the balance sheet, as requested in Staff's 2 January 2024 email to the Licensee.
- The Licensee did not provide information on how the figures on the balance sheet statement reconciled to the physical statement balance and list of liabilities, as requested in Staff's 2 January 2024 email to the Licensee.

[37] On 23 January 2024, Staff sent a letter to the Licensee advising the Licensee's financial statements were not up-to-date and that Staff was unable to reconcile the financial statements with the Licensee's bank statements and itemized list of payables. The letter also stated that Staff had discovered a shortage in the trust account at 30 September 2023 and that the shortage had not been reported to the Director, as per the terms and conditions. As a result of these issues, Staff was recommending the cancellation of their licence to the Director.

[38] The letter went on to advise the Licensee of their right to an opportunity to be heard, which included the following information:

- that it was an opportunity for them to provide any additional information or rationale to aid the Director in reviewing suitability for licensure;
- that they had a right to bring legal counsel to the opportunity to be heard;
- that they had a right to disclosure of all information considered by FCNB Staff in determining they were unsuitable for licensure and all information put before the Director of Consumer Affairs for consideration at the opportunity to be heard; and
- that if the Licensee did not reply within 10 business days of the letter that the Director would render a decision based on the information on file.

[39] The Licensee did not respond to the letter and thus waived their right to an opportunity to be heard.

THE COMMISSION'S MANDATE

- [40] The *Financial and Consumer Services Act*, in subsection 2(a), provides that the purpose of the Act is to “enable the Commission to provide regulatory services that protect public interest and enhance public confidence in the regulated sectors...”.
- [41] The *Financial and Consumer Services Act*, in paragraph 12(2)(b), provides that “the Commission shall ... administer financial and consumer services legislation”, which as per subsection 1(c) includes the *Collection and Debt Settlement Services Act*.
- [42] Consumer protection is a fundamental consideration and a key purpose of the Commission’s mandate. It is a key responsibility of the Director, as the gatekeeper to the industry, to determine suitability of an applicant or a licensee to operate in the sector.

THE PROCESS OF DETERMINING SUITABILITY

- [43] Protecting the public and enhancing public confidence in the financial marketplaces which it regulates, includes ensuring that those carrying on business in the industry are competent and trustworthy. It also includes ensuring that when a licence is granted and/or held, any potential risks to consumers are minimized.
- [44] Trustworthiness is an essential character trait in collection activity. It provides consumers with confidence in the industry. Consumers need to feel and be assured that a licensed collector/collection agency will be honest and act with integrity when collecting on a debt.
- [45] When assessing whether an applicant is suitable for licensing, competence, integrity and financial stability are considered.
- [46] Demonstrating expertise in the field is essential for consumer confidence. Ensuring sound financial stability further enhances trust in those licensed in the industry. Another important character trait in licensing is that of integrity, which can be defined as conducting business with honesty and a strong moral foundation. The licensee’s financial position, delayed submissions, and overall mismanagement reflect a deviation from these standards. Integrity involves more than compliance; it requires transparency, ethical behaviour and accountability.
- [47] The question being asked is, if a Licensee is continued to be licensed does it leave consumers exposed to potential harm or exploitation?

ANALYSIS

- [48] After review of the 30 September 2023 balance sheet and several requests by Staff to the Licensee for additional supporting documentation, Staff determined that the balance sheet and information provided by the Licensee could not be relied upon for accuracy.
- [49] Staff identified a shortage in the trust account that had not been reported to the Director as per the Terms and Conditions on the Licensee’s Collection Agency Licence.

[50] Staff has substantial concerns over the mismanagement of the trust account and identified an increased risk of misappropriation of trust funds, posing a significant risk to consumers.

DECISION

[51] A licence approved by FCNB provides reassurance to New Brunswick consumers that the licensee is reputable and may be trusted in their given profession.

[52] After careful consideration of the particular facts of this matter, given the Licensee's improper financial record-keeping, poor financial position, and non-compliance with terms & conditions, I have determined that the Licensee is not suitable to carry on business under the *Act*. In that regard, in the public interest, I am revoking licensure in this industry in accordance with subsection 9(1).

[53] Where the licence of the collection agency is cancelled, the licences of all collectors of the collection agency are also cancelled.

[54] As per subsection 9(2), no person whose licence has been cancelled is entitled to a new licence for one year after the cancellation.

DATED at Fredericton, New Brunswick this day of April 11, 2024.



Alaina M. Nicholson
Director, Consumer Affairs Division
Financial and Consumer Services Commission