

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Unlicensed Activity of:

Case No.: 13F-BD018 -SBD

3 **EVEREST RECEIVABLE SERVICES INC.**
4 **AND NEIL WALSH, PRESIDENT**

CONSENT ORDER

5 5165 Broadway #112
6 Depew, New York 14043

Respondents.

7 On September 6, 2012, the Arizona Department of Financial Institutions (“Department”) issued
8 a Cease and Desist Order, Notice of Opportunity for Hearing, Consent to Entry of Order, alleging that
9 Respondents had violated Arizona law. Wishing to resolve this matter in lieu of an administrative
10 hearing, Respondents consent to the Following Findings of Fact and Conclusions of Law, and consent
11 to the entry of the following Order.

12 **FINDINGS OF FACT**

13 1. Everest Receivable Services Inc. (“Respondent Company”) is a foreign limited liability
14 company, which was incorporated in Delaware on October 23, 2008.

15 2. At all times relevant to this action, Respondent Company was not registered with the
16 Arizona Corporation Commission for purposes of transacting business in Arizona. On July 2, 2012,
17 Respondent Company applied for authority to transact business in Arizona with the Arizona Corporation
18 Commission. Respondent Company’s application for authority to transact business in Arizona was
19 approved on July 24, 2012.

20 3. Respondent Company is not and was not, at any time material herein, authorized to
21 transact business in Arizona as a collection agency in accordance with A.R.S. § 32-1001 *et seq.*

22 4. Respondent Neil Walsh is the President of Respondent Company. Mr. Walsh is not and
23 was not, at any time material herein, authorized to transact business in Arizona as a collection agency in
24 accordance with A.R.S. § 32-1001 *et seq.*

25 5. Respondents are not exempt from licensure as a collection agency pursuant to A.R.S. §§
26 32-1004.

1 6. According to Respondent Company's website, <http://www.everest-inc.com/index.html>,
2 Respondent Company is "a licensed, full-service consumer receivable asset management company that
3 focuses on recovery of delinquent consumer debt."

4 7. On or about June 18, 2012, the Department received a complaint from Edward M., an
5 Arizona resident, indicating that Respondent Company was attempting to collect debt in the state of
6 Arizona. Specifically, Edward M. received a call from the Respondent Company on June 6, 2012
7 attempting to collect on an old debt. After Edward M. told Respondent Company's agent that
8 Respondent Company was not licensed to collect debt in Arizona, he was transferred to a supervisor
9 who asked Edward M. for his "attorney information," insisted that Respondent Company was licensed,
10 and informed Edward M. that he would be receiving a letter within 10 days requesting a full amount of
11 debt. Afterward, Respondent Company mailed a dunning letter to Edward M. at his Arizona address.

12 8. In response to the Department's letter, inquiring whether Respondent Company engaged in
13 unlicensed activity as a collection agency, Respondents stated that Respondent Company was
14 established in Delaware on October 23, 2008 as a third party consumer collection agency, that
15 Respondent Company did not become active until spring of 2009, and that it started to collect on a
16 broader basis across more states in 2010. Respondents further stated that no Arizona accounts were
17 placed with Respondent Company for collection in 2008, 2009 or 2010. Respondent acknowledged,
18 however, that in 2011 and 2012, Respondent Company engaged in collection activity within Arizona.
19 Respondents made assurances that they no longer conduct any collection agency activity in Arizona and
20 have taken immediate actions to end activity on its Arizona accounts and to prevent any and all outgoing
21 calls or letters to Arizona.

22 9. Upon notice from the Department of possible unlicensed activity, Respondents informed the
23 Department that they ceased all collection efforts in Arizona and would begin the process of applying
24 for a license to engage in the collection agency business in Arizona. Respondents submitted a license
25 application to the Department on or about September 27, 2012.

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CONCLUSIONS OF LAW

1. Pursuant to A.R.S. Title 6 and Title 32, Chapter 9, the Superintendent has the authority and the duty to regulate all persons engaged in the collection agency business and with the enforcement of statutes, rules, and regulations relating to collection agencies.

2. The conduct of Respondents, as alleged above, constitutes a violation of the statutes governing collection agents as follows:

- a. A.R.S. § 32-1021(A) by failing to make an original application to the Department upon forms prescribed by the Superintendent before conducting collection agency activity; and
- b. A.R.S. § 32-1055(A) by conducting collection agency activity in Arizona without having first applied for and obtained a collection agency license under A.R.S. § 32-1001, *et seq.*

3. Pursuant to A.R.S. § 6-132, Respondents' violations of the aforementioned statutes are grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for each day.

4. The violations set forth above constitute grounds for: (1) the issuance of an order pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent to correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; and (3) an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating collection agencies pursuant to A.R.S. §§ 6-123 and 6-131.

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ORDER

1. Respondents shall immediately stop the violations set forth in the Findings of Fact and Conclusions of Law.

2. Respondents shall immediately cease all collection agency business in Arizona until such time as they have obtained a collection agency license from the Superintendent as prescribed by A.R.S. §§ 32-1001 *et seq.*

1 3. Respondents shall immediately pay to the Department a civil money penalty in the
2 amount of **six thousand dollars (\$6,000.00)**. Respondents are jointly and severally liable for payment
3 of the civil money penalty.

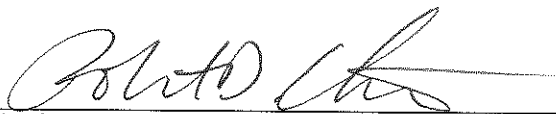
4 4. Respondents shall comply with all Arizona statutes and rules regulating Arizona
5 collection agencies.

6 5. The provisions of this Order shall be binding upon Respondents, their employees, agents
7 and other persons participating in the conduct of the affairs of Respondents.

8 6. This Order shall become effective upon service, and shall remain effective and
9 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated or
10 set aside.

11 SO ORDERED this 2 day of November , 2012.

12 Lauren W. Kingry
13 Superintendent of Financial Institutions

14 By 
15 Robert D. Charlton
16 Assistant Superintendent of Financial Institutions

17 **CONSENT TO ENTRY OF ORDER**

18 1. Respondents acknowledge that they have been served with a copy of the foregoing
19 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the same,
20 are aware of the right to an administrative hearing in this matter, and have waived the same.

21 2. Respondents admit the jurisdiction of the Superintendent and consent to the entry of the
22 foregoing Findings of Fact, Conclusions of Law, and Order.

23 3. Respondents state that no promise of any kind or nature has been made to induce them
24 to consent to the entry of this Order, and that they have done so voluntarily.

25 4. Respondents agree to immediately cease from engaging in the violative conduct set forth
26 above in the Findings of Fact and Conclusions of Law.


1 5. Respondents acknowledge that the acceptance of this Agreement by the Superintendent
2 is solely to settle this matter and does not preclude this Department, any other agency or officer of this
3 state or subdivision thereof from instituting any proceeding as may be appropriate now or in the future.

4 6. Failure to correct the violations set forth above in this Order or any future findings of
5 repeat violations may result in disciplinary action which may include a greater civil money penalty.

6 7. Respondent Neil Walsh, on behalf of Respondent Company, represents that he is the
7 President of Respondent Company (Everest Receivable Services Inc.) and that, as such, is authorized to
8 consent to the entry of this Order individually and on behalf of Respondent Company.

9 8. Respondents waive all rights to seek judicial review or otherwise to challenge or contest
10 the validity of this Cease and Desist Order.

11 DATED this 25th day of October, 2012.

12
13 By: 
14 Neil Walsh, President
15 Everest Receivable Services Inc.

16 ORIGINAL of the foregoing filed this 2nd
17 day of November, 2012, in the office of:

18 Lauren W. Kingry, Superintendent of Financial Institutions
19 Arizona Department of Financial Institutions
20 ATTN: June Beckwith
21 2910 N. 44th Street, Suite 310
22 Phoenix, AZ 85018

23 COPY e-mailed/delivered same date to:

24 Natalia A. Garrett, Assistant Attorney General
25 Office of the Attorney General
26 1275 W. Washington St.
Phoenix, AZ 85007
Natalia.Garrett@azag.gov

Robert D. Charlton, Assistant Superintendent
Lori Mann, Examiner-In-Charge
ATTN: Sabrina Zimmerman
Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018
Sabrina.Zimmerman@azdfi.gov

1 **COPY** e-mailed/mailed same date, to:

2 David Peltan, Esq.
3 128 Church Street
4 East Aurora, NY 14052
5 davidpeltan@peltanlaw.com
6 Attorney for Respondents

7 Everest Receivables Inc.
8 ATTN: Neil Walsh, President
9 5165 Broadway, Suite 112
10 Depew NY 14043
11 Respondent

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