

State of New Hampshire

State of New Hampshire
Banking Department

Docket # 10-229

v.

Progressive Debt Relief (a/k/a Omega
Financial Solutions and North America
Marketing, Inc.),

Order to Cease and Desist
and Show Cause

Respondent

Notice of Order to Cease and Desist and Show Cause (“Order”)

1. This Order commences an adjudicative proceeding under the provisions of RSA Chapter 399-D (including RSA 399-D:13, I, RSA 399-D:23, I and II, RSA 399-D:24, IV and V and RSA 399-D:25, IV) and RSA Chapter 541-A.
2. The Commissioner may impose administrative fines up to a maximum of \$2,500.00 for each violation. RSA 399-D:24, IV and V.

Respondents

3. Progressive Debt Relief (a/k/a Omega Financial Solutions and North America Marketing, Inc.) (“Respondent Progressive”) is a business with a former principal office location at 869 Main Street, Suite 600, Westbrook, ME 04092 and an address of PO Box 1955, Palm Harbor, FL 34682-1955. Respondent Progressive is a “Person.” RSA 399-D:1, VII.
4. The New Hampshire Banking Department’s (“Department”) records indicate that Respondent Progressive has never held a New Hampshire Debt Adjuster license.

Right to a Hearing

5. Respondent has the right to request a hearing of this Order. A hearing shall be held not later than ten (10) days after the Commissioner receives the Respondent’s written request for a hearing. Respondent may request a hearing and waive the ten (10) day

hearing requirement. The hearing shall comply with RSA Chapter 541-A, RSA 399-D:13, I and RSA 399-D:23, I and II.

6. If any person fails to request a hearing within thirty (30) days of receiving this Order, then such person shall likewise be deemed in default, all allegations may be deemed true, and the Order shall, on the thirty-first (31st) day, become permanent and shall remain in full force and effect until modified or vacated by the Commissioner for good cause shown. RSA 399-D: 13, I and RSA 399-D:23, II.
7. A default may result in administrative fines as described in Paragraph 2 above.

Statement of Allegations

8. On October 19, 2009, the Department received a complaint against Respondent from a New Hampshire consumer (“Consumer A”) alleging that Respondent was engaged in unlicensed debt adjuster activity in violation of RSA 399-D:3, I.
9. On May 23, 2007, Respondent had contracted with Consumer A to negotiate and settle approximately \$11,600.00 in consumer debt on behalf of Consumer A. The contract provided that Consumer A would pay Respondent an initial fee of \$399.00, plus \$200 per month for the first three (3) months of the plan, plus \$49.00 per month for a period of up to forty-three (43) months, in violation of RSA 399-D:14, I as an advanced fee and unequally amortized fee.
10. The contract also provided that Respondent would “eventually” negotiate Consumer A’s debts upon completion of the 43-month savings plan, in violation of RSA 399-D:14, II and RSA 399-D:15, I(b).
11. The debt settlement payment schedule that Respondent provided to Consumer A described thirty-five (35) to forty-three (43) months of payments at \$200.00 per month, for a total of between \$6,956.00 and \$8,695.00 available for debt settlement. This schedule neither mentions Respondent’s withdrawals of \$49.00 per month in

fees from Consumer A's account nor considers these funds in calculating the total settlement funds, in violation of RSA 399-D:13-a, I.

12. Respondent's 43-month schedule results in a total fee in excess of 15% of the amount of indebtedness, in violation of RSA 399-D:14, III.
13. On July 31, 2009, Consumer A changed bank accounts and contacted Respondent to continue scheduled payments with a different bank account. Respondent failed to respond.
14. By July 31, 2009, Respondent had collected \$2,700.00 in fees from Consumer A, without either the written consent of Consumer A's creditors or any payments made to Consumer A's creditors, in violation of RSA 399-D:14, I and II.
15. Respondent failed to conduct any debt negotiation on behalf of Consumer A, and has used none of the funds to pay Consumer A's creditors, in violation of RSA 399-D:14, I and RSA 399-D:15, I(b).
16. On October 13, 2010, the Department sent a letter via U.S. Certified Mail return receipt requested to Respondent at their primary business location requesting resolution of Consumer A's complaint, a list of Respondent's New Hampshire customers and an application for licensure. On October 18, 2010, the letter was returned to the Department marked "Vacant – Unable to Forward."
17. In December of 2010, Consumer A received \$1,200.00 from Respondent.
18. To date, Respondent has failed to respond or to provide any of the information requested therein, in violation of RSA 399-D:22, VIII.
19. To date, Respondent has failed to return \$1,500.00 of Consumer A's funds.

Alleged Violations

Respondent Progressive:	1 Count for unlicensed activity as a debt adjuster;
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RSA 399-D:3, I

1 Count for collecting an unequally amortized fee;

RSA 399-D:14, I

1 Count for collecting a fee prior to payment to creditors;

RSA 399-D:14, I

1 Count for collecting a fee without consent of the creditors;

RSA 399-D:14, II

1 Count for failure to disburse funds to creditors within 10 days of receipt;

RSA 399-D:15, I(b)

1 Count for charging a fee in excess of 15% of the amount of indebtedness;

RSA 399-D:14, III

1 Count for engaging in fraudulent or misleading acts related to a debt adjustment contract;

RSA 399-D:13-a, I

1 Count for failure to produce requested documents.

RSA 399-D:22, VIII

Respectfully Submitted:

/s/
Raef J. Granger
Hearings Examiner
N.H. Banking Department

04/11/11
Date:

Order

20. I hereby find as follows:

- a. Pursuant to RSA 399-D:13, I, the facts as alleged above, if true, show Respondent is operating or has operated in violation of RSA Chapter 399-D and form the legal basis for this Order;
- b. Pursuant to RSA 399-D:25, VI, this Order is necessary and appropriate to the public interest and for the protection of consumers and consistent with the purpose of New Hampshire banking laws;
- c. Pursuant to RSA 399-D:23, II, reasonable cause exists to issue an order to cease and desist; and
- d. Pursuant to RSA 399-D:13, I and RSA 399-D:23, II, if Respondent fails to respond to this Order and/or default then all facts as alleged herein are deemed as true.

21. Accordingly, it is hereby ORDERED that:

- a. Respondent shall immediately cease and desist from violating RSA Chapter 399-D and rules or orders thereunder;
- b. Respondent shall within fourteen (14) days of the date of this Order provide to the Department a list of all New Hampshire consumers for whom Respondent has conducted or contracted to conduct debt adjustment activities. This list must include the names and contact information of the New Hampshire consumers, along with all monies charged, collected and waived (if applicable). The list shall also be accompanied by all contracts, checks to and from the consumer and any other documents in the New Hampshire consumers' files;

- c. Respondent shall show cause why the Commissioner should not enter an order of rescission, restitution, or disgorgement of profits in the amount of \$1,500.00;
- d. Respondent shall show cause why the Commissioner should not recover costs for investigation of this matter in the minimum amount of \$2,250.00;
- e. Respondent shall show cause why administrative fines totaling \$20,000.00 should not be imposed; and
- f. Nothing in this Order shall prevent either 1) the Department from taking any further administrative and legal action as necessary under New Hampshire law or 2) the New Hampshire Office of the Attorney General from bringing an action against the above-named Respondent in any New Hampshire superior court, with or without prior administrative action by the Commissioner.

SO ORDERED,

Entered this 11th day of April, 2011.

/s/

Robert A. Fleury
Deputy Bank Commissioner
New Hampshire Banking Department