

ADAMS COUNTY, DISTRICT COURT, COLORADO 1100 Judicial Center Drive Brighton, CO 80601	FILED Document – District Court CO Adams County District Court
Petitioner: ORION FINANCIAL GROUP, INC.	DATE FILED: December 27, 2011 2011cv1834 CASE NUMBER: 2011CV1834 Filing Date: Dec 27 2011 11:45PM MST Transaction ID: 41585150
v. Respondent: JOHN SUTHERS, COLORADO ATTORNEY GENERAL and LAURA E. UDIS, ADMINISTRATOR UNIFORM CONSUMER CREDIT CODE, FIRST ASSISTANT ATTORNEY GENERAL	▲ ▲ COURT USE ONLY
Attorney for Petitioner: Brad Daybell, #40303 The Law Office of Brad M. Daybell, P.C. 11001 W. 120 th Ave., Suite 400 Broomfield, CO 80021 Phone Number: 303/625-4015 E-mail:braddaybell@gmail.com Fax Number: 303/625-4017 Atty. Reg. #: 40303	Case Number: Division Courtroom:
COMPLAINT FOR DECLARATORY JUDGMENT	

Petitioner, Orion Financial Group, Inc. (OFG), through counsel, Brad Daybell, seeks a Declaratory Judgment pursuant to C.R.S. §24-4-105(11) and states as follows:

PARTIES

1. Petitioner, OFG, is a Colorado Corporation with its primary place of business at 5005 W. 81st Place, Suite 100, Westminster, CO 80031. OFG's primary business is debt-management.

2. Respondent, John Suthers is the Colorado Attorney General and Laura E Udis is the First Assistant Attorney General, located in Denver Colorado. As First Assistant Attorney General, Ms. Udis is the Administrator of the Colorado Uniform Consumer Credit Code (UCCC) and is responsible for enforcement of the UCCC.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this case pursuant to C.R.S. § 13-1-124 and C.R.S. § 24-4-105.

4. Venue is proper in the Adams County District Court pursuant to C.R.S. § 12-14.5-233 because at least a portion of the transactions involving the application submitted to the Administrator and at least a portion of the alleged violations occurred within Adams County.

FACTUAL ALLEGATIONS

5. OFG was created to provide ethical, reliable, customer support to companies registered to provide debt management relief services in Colorado under the Uniform Debt-Management Services Act (UDMSA), C.R.S. §12-14.5-201.

6. Between August 2009 and March of 2010, OFG acted as a stated agent of a registered debt management services company and entered into agreements that acknowledged OFG would be providing services on behalf of a registered provider.

7. The Administrator of the UDMSA, Laura E. Udis, has expressed the opinion that the services described by agreements in question qualified as Debt-Management Services as defined in the UDSMA. It is OFG's position that they were acting on behalf of a registered entity and did not itself need to be registered.

8. On March 8, 2010 the Administrator sent a letter to OFG expressing this belief at which time OFG immediately ceased to perform these services and transferred the contracts to a registered service provider.

9. On July 13, 2011 OFG filed an application with the Administrator to become a registered provider to perform debt-management services in Colorado pursuant to C.R.S. §12-14.5-201.

10. On September 2, 2011, OFG was informed by the Administrator that prior to approving OFG's registration, a Stipulation and Final Agency Order would need to be issued regarding alleged violations of the UDMSA involving the approximately 165 consumers referred to in paragraph 6.

11. The Administrator has stated that OFG's application is complete and satisfactory and would be approved if and when OFG would agree to pay approximately \$160,000 in restitution to these clients and approximately \$40,000 in fines to the state.

12. Not one of the individuals who entered into the agreements in question has made a complaint or voided their contract.

13. OFG has negotiated in good faith with the Administrator in an attempt to resolve this matter, but no resolution has yet been reached. To expedite the resolution of this matter, OFG seeks a Declaratory Judgment in regards to the following; regarding C.R.S. § 12-14.5-204(b), regarding the definition of an agent in this clause; C.R.S. §12-14.5-233(a)(2), regarding the definition of a "person aggrieved" by a violation and C.R.S. §12-14.5-225, regarding who has the right to void an agreement.

COUNT: I

The UDSMA does not specifically limit the authority that may be delegated to an agent nor does it give the Administrator the power to do so

14. In the UDSMA the term “agent” is not defined, but agents are specifically exempted from the registration requirement. It goes on to allow for the delegation of duties under the UDMSA, but fails to define the limitations of that delegation.

Under C.R.S. § 12-14.5-204(b), an agent is not defined, but is exempted from registration:

(b) If a provider is registered under this part 2, subsection (a) of this section does not apply to an employee or agent of the provider.

Under C.R.S. § 12-14.5-231 the possibility of a delegation of duties is specifically provided for:

If a provider delegates any of its duties or obligations under an agreement or this part 2 to another person, including an independent contractor, the provider is liable for conduct of the person that, if done by the provider, would violate the agreement or this part 2.

The legislature clearly anticipated that providers would delegate some portion of their duties as debt-management service providers and provided an exception from the registration requirements for those parties. The legislature reiterates in the second clause above, that providers can delegate debt-management services to outside agents (including to independent contractors). Agents performing some of the duties of a provider without themselves being a provider was clearly foreseen and accounted for according to the above statute.

COUNT: II

THE ADMINISTRATOR DOES NOT HAVE THE AUTHORITY TO VOID A PARTIES CONTRACT UNDER THE UDMSA

15. The Administrator does not have the authority, under the UDMSA, to void an individual’s agreement; the parties have the right to void their agreement, if they so choose. The UDMSA states that the individual has the right to void a contract, not the Administrator. Under C.R.S. § 12-14.5-225(b), it reads as follows:

If a provider is not registered as required by this part 2 when an individual assents to an agreement, the agreement is voidable by the individual.

The statute clearly states that the agreement is voidable by, and only by, the individual and does not state that the Administrator, or any other party, may void the agreement. A voidable agreement is not necessarily void, unless the individual that agreed to the agreement chooses to void the contract.

In addition to the above statute, the UDMSA refers to an individual’s ability to void contracts in three other sections. Under C.R.S. § 12-14.5-225(c), it states, “If an individual voids an agreement...” and in C.R.S. § 12-14.5-235(a),(b), these sections begin by stating, “If an

individual voids an agreement...” These sections parallel the construction of C.R.S. § 12-14.5-225(b), as well as the common law and reinforce the clear intention that the individual alone has the choice to void an agreement. No reasonable interpretation of these sections states or implies that the Administrator or any other party has the power to void an individual’s contract.

COUNT III:

THE ADMINISTRATOR IS NOT AUTHORIZED TO SEEK RESTITUTION FOR A PERSON UNLESS THE PERSON IS AGGRIEVED BY A VIOLATION

16. The Administrator is given authority to enforce the UDMSA, but the UDMSA also limits the authority of the Administrator regarding actions and remedies that may be used to enforce the UDMSA. Under C.R.S. § 12-14.5-232(a), it states:

The administrator may act on its own initiative or in response to complaints and may receive complaints, take action to obtain voluntary compliance with this part 2, and seek or provide remedies as provided in this part 2.

This section gives the Administrator the ability to take action to seek or provide remedies in regards to all powers given the Administrator, but C.R.S. §12-14.5-233(a)(2), limits the ability to order restitution to those cases in which there is an aggrieved person. Provision C.R.S. §12-14.5-233(a)(2), reads as follows:

Ordering a provider or a person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation;

According to Black’s Law Dictionary, an “aggrieved” person is defined as, “a person or entity having legal rights that are adversely affected; having been harmed by an infringement of legal rights.” *Black’s Law Dictionary* (9th ed. 2009).

A plain reading of the definition would indicate that for a person to be aggrieved, the person’s legal rights must have been adversely affected or harmed. The determination that a person has been aggrieved depends solely on whether the individual feels that they have been harmed. If a person has been harmed or is aggrieved, the person will move to void the contract and seek restitution based on the harm that has occurred due to entering into the agreement.

The regulations of the UDMSA, regarding an individual voiding a contract or rescinding a contract and seeking restitution, are based on the common law contract doctrine of rescission. Under the common law doctrine of rescission, the aggrieved individual would void or rescind the agreement and seek restitution. By rescinding the contract and seeking restitution, the rescinding party is seeking to be placed back into the same position that they were in prior to the agreement being entered into. By rescinding the contract, the other party is also placed back in the same position as if the contract had not been entered into and both parties are relieved from any further obligations regarding the contract. This is precisely the remedy available to an individual under the UDMSA, however, a party to the agreement must first rescind the contract and then seek

restitution, but the Administrator is not given the power to void or rescind contracts by this statute.

Petitioner argues that the provision in C.R.S. § 12-14.5-232(a), granting the power to the Administrator to “receive complaints”, is intended for the purpose of allowing individuals who may have been harmed, to notify the Administrator and seek the Administrator’s assistance in resolving the matter. It should be assumed that if a complaint isn’t filed with the Administrator, then the person does not consider themselves harmed or aggrieved. Without an individual having expressed their aggrieved condition, the UDMSA limits the Administrator from seeking restitution for that individual.

If the statute had been written so that no aggrieved person was first required before the Administrator could seek restitution, the Administrator would have the authority to void a person’s contract without their permission and seek restitution that may not be wanted by the individual. In essence, it would give the Administrator the authority to void agreements between parties that do not desire to have their contracts voided. The right to void a contract is an individual’s choice, not the Administrators.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for relief as follows:

1. A declaratory judgment that, pursuant to the terms of the UDMSA, the term “agent” has a common-usage meaning and that registered entities may delegate some or all of their authority and duties regulated by the UDMSA to any person or entity it chooses without restriction.
2. A declaratory judgment that, pursuant to the terms of the UDMSA, the Administrator does not have authority to void an individual’s agreement.
3. A declaratory judgment that, pursuant to the terms of the UDMSA, that the Administrator does not have the authority to deem an individual as “aggrieved” as commonly defined and referred to in the UDSMA without the individual taking an affirmative action to complain or otherwise notify the Administrator of harm.
4. A declaratory judgment that, pursuant to the terms of the UDMSA, the Administrator does not have authority to seek restitution on behalf of an individual unless that individual is “aggrieved” and that individual has voided or rescinded the contract.
5. For such other and further relief as the court may deem just and proper.

Dated: December 27, 2011

/s/ Brad Daybell
Attorney Signature