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PROGRAM SUMMARY 3-26-22

By: Gary R. Wallace-Program Summary Committee Chair

cdcbaa Holds Third Meeting and MCLE Program of 2022: "Advanced Collection Techniques" and "How Does Credit Work During and Post Bankruptcy?"

On March 26, 2022, the CDCBAA held its third members meeting and MCLE program of the year. To help mitigate the spread of COVID-19, the meeting and program were conducted as a live webinar via Zoom video. The program topics were: (1) **"Advanced Collection Techniques"** and (2) **"How Does Credit Work During and Post Bankruptcy?"** The distinguished panels consisted of James Selth, Esq. of Weintraub & Selth APC and Kelly Sweeney, Esq. of Sweeney & Kelble, APC for the first topic. Board member and vice-president Daniela Romero, Esq. and Philip Tirone, a credit specialist with 720 System Strategies, lectured on the second topic. CDCBAA former President and current board member Hale Antico moderated.

Mr. Selth began by explaining the prejudgment writ of attachment law and procedure in California state courts. Mr. Selth noted that, even if the underlying debt is discharged in bankruptcy, a state court attachment lien will be unaffected if the bankruptcy is filed more than 90 days after the attachment order issues.

Ms. Sweeney and Mr. Selth then presented on the law and procedure for other collection methods, including claim and delivery, receivers, *lis pendens (*also known as notices of actions pending -- note: the failure to remove a pre-petition *lis pendens* does not alone constitute a violation of the automatic stay), judgment debtor examinations, bank levies, wage garnishments, abstracts of judgment, executions on vehicles, vessels and aircraft, assignment motions, keepers and sales of dwellings.

California's new Debt Collectors Licensing Act (CA Finance Code Sec. 100000, et seq.), which took effect on January 1st of this year, was also discussed. This Act provides that "[n]o person shall engage in the business of debt collection in this state without first obtaining a license [from the California Department of Financial Protection and Innovation ("DFPI")]. "Debt collection" is defined as "any act or practice in connection with collection of consumer debt," while "debt collector" is "any person who, in the ordinary course of business, regularly, on the person's own behalf or on behalf of others, engages in debt collection."

The licensing requirements being imposed under this new Act are very burdensome and intrusive (e.g., application fee, surety bond, fingerprints, annual reports, periodic examinations, reviews of personal history). The failure to be licensed carries the potential for substantial penalties, including disgorgement, refunds, restitution, damages, and injunctions. These provisions have, therefore, created considerable concern and confusion among attorneys of all stripes (as even many non-collection attorneys occasionally engage in some form of consumer debt collection at some point in their careers). While attorneys are neither specifically excluded from nor specifically included in, the Act, the panel stated that the DFPI has taken the position that attorneys who engage in even a single act of consumer debt collection *are* included within the Act's reach. From a consumer debtor's perspective, the failure of an opposing party or counsel to be duly licensed under this Act may well constitute an affirmative defense to a collection action. Because this Act is new law, there is not yet any reported case law interpreting its language.

In the second half of the program, Ms. Romero and Mr. Tirone spoke on the subject of rebuilding credit during and after bankruptcy. Credit scores are an important financial tool for consumers who want to keep their expenses down while maintaining lines of credit. Negative information reported to the three major credit reporting agencies (Experian, Equifax and TransUnion) will hurt a credit score and can remain on that report for between seven to ten years. Mr. Tirone discussed the best methods for removing false negative information. For example, a good credit rating can be restored through the use of secured credit cards, by obtaining a co-signer on new debt and then timely paying off that new debt, and also by becoming an authorized user on someone else's credit card (provided that the card issuer agrees to report the authorized user's use of, and payment for, such credit). Thereafter, it is advisable to maintain a low credit balance relative to credit limits (no greater than a 30% ratio is the recommended rule of thumb). It was also noted that pure debit cards, prepaid cards, repayment of pay- day loans and -- of course -- straight cash payment transactions (which are, strictly speaking, not debt repayments when they occur at the time of purchase), are generally ineffective methods for rebuilding credit as these transactions are generally not reported to the credit agencies.

A great many questions were posed to Mr. Tirone during his presentation, which he promptly and helpfully answered. The chat and Q&A functions of the zoom technology proved valuable for this purpose.

Once again, helpful outlines for each program topic were provided to all registered participants.

The next CDCBAA members meeting and Zoom MCLE program will be held on April 23, 2022. The topic will be "Taxes and Bankruptcy." We hope you will join us.

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