

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

Debtwave Credit Counseling, Inc.
Mr. Anthony Murigu, President

Enforcement Case No. 11-11421

Respondents

Issued and entered
this 27th day of December 2011
by Annette E. Flood,
Chief Deputy Commissioner

ORDER TO CEASE AND DESIST

The Office of Financial and Insurance Regulation (OFIR) of the Michigan Department of Licensing and Regulatory Affairs, pursuant to the Michigan Debt Management Act, 1975 PA 148, as amended; MCL 451.411 *et seq.* (Act), the Michigan Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 *et seq.*, and the rules promulgated under the Act, says that:

I.
BACKGROUND

1. Debtwave Credit Counseling, Inc. (hereinafter "DCC") is a California not-for-profit corporation with its principal place of business located at 8665 Gibbs Drive, Suite 100, San Diego, California 92123.
2. At all times pertinent to the matter herein, Mr. Anthony Murigu (hereinafter "Murigu") was the President of DCC.
3. OFIR is responsible for the licensing, exemption and regulation of a person engaged in the business of debt management and the enforcement of the provisions of the Act.
4. At all times pertinent to the matter herein, Respondent DCC was not licensed by OFIR to provide debt management services to residents in the State of Michigan.
5. At all times pertinent to the matter herein, Respondent Murigu was not licensed by OFIR to provide debt management services to residents in the State of Michigan.
6. On or about September 7, 2011, OFIR received a complaint from a licensed debt management company (Complainant) alleging that Respondent is in the business of

processing debt management plans for Michigan residents. The Complainant also provided OFIR with the names of three Michigan residents enrolled in Respondent's debt management plan program.

7. On or about October 3, 2011, OFIR sent a letter to Respondent Murigu. The letter requested that Respondent Murigu provide OFIR with the debt management contracts for the three Michigan consumers listed in the Complainant's complaint. OFIR staff also requested that Respondent Murigu provide a list of Michigan residents from whom DCC is currently accepting payments for disbursement to creditors.
8. In response to OFIR's request, counsel for Respondent DCC provided OFIR with the requested debt management contracts and a list of seventy-five Michigan residents enrolled in Respondents' debt management plan.
9. In Respondent DCC's letter to OFIR dated October 20, 2011, Respondent DCC indicates that it offers eligible consumers a debt management plan. The letter also states that this debt management plan "is a repayment plan through which consumer debts are consolidated and creditors offer concessions such as lower interest rates, reduced or waived late and over-limit fees and 're-aging' account balances."
10. According to Respondent DCC's website, DCC provides a program to its clients that facilitate the repayment of their debts in a timely fashion. The website also asserts that Respondent DCC specializes in working with credit cards; however, the company is able to assist its clients with any debt that is considered unsecured. The website further provides that Respondent DCC assists its clients with reducing their interest rates, lowering monthly payments, consolidating debts into one monthly payment, eliminating late and over-limit fees and preventing harassing calls from creditors.
11. The agreements between Respondent DCC and the three Michigan residents states, "Debtwave Credit Counseling, Inc. ... is regulated by the State of Michigan Office of Financial and Insurance Regulation.... Complaints related to this agreement may be directed to the Michigan Office of Financial and Insurance Regulation at 611 W. Ottawa Street, 3rd Floor, Lansing, Michigan 48933. 1-877-999-6442." However, as previously stated, DCC is not a licensed debt management company in the State of Michigan. See *Client Agreement OP 2.1 - Effective Date: 7/5/2011 – Revision: 8 – Page 1 of 2*.
12. The contracts between DCC and its clients state:
 1. **SERVICES.** DCC agrees to provide budget, educational and counseling services to Client, and to evaluate Client's debt status, including Client's available and projected income and the existence of other liquid assets as well as the Client's indebtedness to determine if it is in the best economic interest of the Client to enter into a monthly Debt Management Plan ('DMP') with Client's creditors which may result in reduced interest and/or payments to creditors that participate in the DMP. If DCC determines that it is in Client's best economic interest to enter into the DMP, DCC shall use its best efforts to

- facilitate a DMP for Client. Client understands that DCC's counselors are qualified through a third party certification. Client authorizes DCC to contact Client's specified creditors for purposes of obtaining new payment terms, collect information from such creditors, arrange for payment in installments to such creditors and monitor Client's enrolled accounts.
2. **FEES.** Client shall pay an initial budget consultation fee of \$0. If a DMP is established for the Client, Client shall pay, in addition to the initial consultation fee, a monthly service charge of 15% of the amount of debt to be liquidated during the express terms of the contract, not to exceed \$49.
 3. **CREDITOR AND FEE PAYMENT AND PAYMENT METHODS** Payments shall continue until all creditors in the DMP are paid in full or either party cancels the DMP pursuant to paragraph 8. The total monthly payment (including creditor payment and fees), the name of each creditor, amount of debt to be prorated and estimated number of payments are annexed hereto as Exhibit A and are listed on the DMP Forecast Report. Payment to be debited (if applicable) and scheduling for Automatic Payment Services (APS) are listed on the Debit Form. Client authorizes DCC to debit Client's account pursuant to the Annexed APS Debit Form.... *Id.*
13. According to the Debit Forms for abovementioned Michigan residents, Respondent DCC was authorized to debit the clients' accounts monthly in order to pay their debts.

II. CONCLUSIONS OF LAW

WHEREAS, Section 2(a) of the Act, MCL 451.412(a), states that the business of debt management means providing or offering to provide debt management to 1 or more residents of this state; and

WHEREAS, Section 2(d) of the Act, MCL 451.412(d), states that debt management means the planning and management of the financial affairs of a debtor and the receipt of money from the debtor for distribution to a creditor in payment or partial payment of the debtor's obligations; and

WHEREAS, OFIR has information that Respondents DCC and Murigu are engaged in debt management and/or the business of debt management within the State of Michigan; and

WHEREAS, Section 4(1) of the Act, MCL 451.414(1), requires all persons located within or outside the boundaries of the State of Michigan to be licensed in order to conduct debt management business in the State of Michigan; and

WHEREAS, Respondents DCC and Murigu are not licensed with the State of Michigan under the Act; and

WHEREAS, Section 4(1) of the Act, MCL 451.414(1), provides that a contract of debt management as defined by this Act made by a person without a license is null and void; and

WHEREAS, Section 23(3)(b) of the Act, MCL 451.433(3)(b), permits the Commissioner to require a statement in writing regarding the facts and circumstances surrounding the matter to be investigated and that the statement be filed with OFIR within 15 days; and

WHEREAS, on or about October 3, 2011, OFIR requested information from Respondent Murigu regarding DCC's debt management practice in the State of Michigan; and

WHEREAS, in a letter dated October 20, 2011, counsel for DCC provided OFIR with information that demonstrates that Respondents DCC and Murigu are engaged in the business of debt management in the State of Michigan; and

WHEREAS, based on the foregoing, OFIR Staff recommends that the Commissioner find that Respondents DCC and Murigu are engaged in acts or practices that violate Section 4 of the Act and Rules promulgated under the Act; and

WHEREAS, this action is necessary, appropriate and in the public interest for the protection of the public, and consistent with the purposes fairly intended by the policy and provisions of the Act.

III. ORDER

IT IS THEREFORE ORDERED that, pursuant to Section 23 of the Act, MCL 451.433, and Section 24 of the Act, MCL 451.434, that:

1. Respondents DCC and Murigu shall immediately **CEASE AND DESIST** from transacting the business of debt management in the State of Michigan without being licensed under the Act.
2. Within 30 days of the issuance and entry of this Order, Respondents DCC and/or Murigu shall come into compliance by doing either A or B as described below:
 - A. Both:
 - i. Submit an application for licensure under the Act;
or
Submit a written request for an exemption from licensure pursuant to MCL 451.414 and provide proof that DCC is a tax exempt entity pursuant to Section 501(c) of the Internal Revenue Code of 1986;
AND
 - ii. Submit copies of all debt management contracts entered into with Michigan residents.

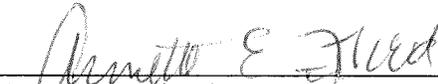
OR

- B. All of the following:

- i. Immediately cancel any and all debt management contracts DCC and/or Murigu have with residents of the State of Michigan.
 - ii. Refund all the fees Respondents DCC and/or Murigu collected from Michigan residents who entered into debt management contracts with Respondents DCC or Murigu.
 - iii. Provide all Michigan clients with a list of debt management companies licensed by OFIR.
 - iv. Transfer all Michigan accounts to a Michigan licensed debt management company.
 - v. Provide OFIR with written documentation proving that all Michigan clients have been provided with a list of Michigan licensed debt management companies, and have been transferred to a debt management company licensed by OFIR.
 - vi. Provide OFIR with the name(s) of the licensed debt management companies to which they have transferred the Michigan client accounts. This document shall also include the names and addresses of the Michigan residents whose accounts have been transferred to a licensed debt management company.
3. Failure to comply with this ORDER will subject Respondents DCC and Murigu to one or more of the following:
- (a) A person who knowingly authorizes, directs, or aids in violation of a final cease and desist order, or who knowingly fails to comply with the terms of a final cease and desist order, is guilty of a misdemeanor, and may be fined not more than \$5,000.00, or imprisoned for not more than 6 months, or both. Each violation constitutes a separate offense.
 - (b) A person who violates an injunction or a cease and desist order issued pursuant to this act is guilty of criminal contempt.

Any communication regarding this Order should be addressed to the Office of Financial and Insurance Regulation, Office of General Counsel, Attention: Marlon F. Roberts, Staff Attorney, P.O. Box 30220, Lansing, Michigan 48909.

OFFICE OF FINANCIAL AND
INSURANCE REGULATION



Annette E. Flood
Chief Deputy Commissioner