

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 WAYNE STRUMPFER
Deputy Commissioner
3 ALAN S. WEINGER (CA BAR NO. 86717)
Lead Corporations Counsel
4 JOAN E. KERST (CA BAR NO. 1233051)
Senior Corporations Counsel
5 Department of Corporations
6 71 Stevenson Street, Ste. 2100
7 San Francisco, California 94105
8 Telephone: (415) 972-5847
9 Facsimile: (415) 972-8550
Attorneys for Complainant

10
11 BEFORE THE DEPARTMENT OF CORPORATIONS
12 OF THE STATE OF CALIFORNIA

13)
14 In the Matter of the Accusation of) File No.: 943-0115
15 THE CALIFORNIA CORPORATIONS)
16 COMMISSIONER,) STATEMENT OF ISSUES
17)
18 Complainant,)
19)
20 vs.)
21 Debt Agreement Administrators (Americas), Inc.)
22)
23 Respondent.)
24)

25 Complainant, the California Corporations Commissioner, is informed and believes, and
26 based upon such information and belief, alleges and charges Respondent as follows:

27 INTRODUCTION

28 The California Corporations Commissioner proposes to issue an order that denies the
application of Respondent (File No. 943-0115) for a prorater license under the California Check
Sellers, Bill Payers and Proraters Law (“CSBPPL”) set forth in California Financial Code sections
12000 *et seq.* (All references to sections are to the Financial Code unless indicated otherwise.)

1 The proposed order from the Department of Corporations (“Department”) seeks to deny the
2 issuance of a license to Respondent, Debt Agreement Administrators (Americas) Inc., pursuant to
3 section 12211 in that Respondent during relevant times failed to comply with all the applicable
4 provisions of the CSBPPL and Respondent’s plan of business demonstrates its intent to circumvent
5 the provisions of the CSBPPL including, but not limited to, section 12314.

6 I

7 PROCEDURAL AND FACTUAL BACKGROUND

8 On October 17, 2005, Respondent filed with the Department its application for license as a
9 prorater under the Check Sellers, Bill Payers and Proraters Law (“CSBPPL”).

10 In January 2006 the Department’s Financial Services Division Special Administrator DiAun
11 Burns sent the Respondent a letter indicating at least 15 deficiencies in its application, including its
12 failure to file a business plan.

13 Subsequently, Respondent submitted a business plan to the Department for “SRMC Inc.
14 Group.” SRMC Inc., is described as “a joint venture American-Australian enterprise” (sic).
15 Respondent’s represents that:

16 “SRMC Inc. is a joint venture between SRMC Limited, an Australian Company with
17 long standing experience in insolvency matters and credit counseling services and
18 Mr. Leonard J. Stec,” a licensed California CPA. SRMC Ltd. owns 51% of SRMC
19 Inc.”

20 Therefore, Leonard J. Stec owns 49% of the joint venture. The joint venture named
21 SRMC Inc. is a holding company that owns **three wholly owned subsidiaries**¹ consisting
22 of:

- 23 1. Debt Agreement Administrators (Americas) Inc. (Respondent)
24 2. Credit Counselors Americas Inc. (hereinafter “CCA”), and
25 3. Solvency Resolution Management Consultant, Inc.

26 Respondent states all the above-described companies are for profit corporations.

27 _____
28 ¹ Respondent is a California corporation. CCA is a Delaware corporation. The Secretary of State has no
record of SRMC Group or Solvency Resolution Management Consultants Inc.

1 Respondent further states: “SRMC shall act as the holding company providing funds and
2 support to subsidiaries where required and be the ultimate beneficiary of profit from its subsidiaries
3 for distribution to share holders (sic).”

4 Respondent is a wholly owned subsidiary of SRMC Inc. Therefore, all Respondent’s stock
5 is owned by SRMC Inc. SRMC Inc., as the majority, indeed sole owner of shares of Respondent
6 has absolute and total control of Respondent.

7 CCA is a wholly owned subsidiary of SRMC Inc. Therefore, all its stock is owned by
8 SRMC Inc. SRMC Inc., as the majority/sole owner of shares of CCA has absolute and total control
9 of CCA.

10 Respondent and CCA are brother-sister corporations in relation to each other and SRMC
11 Inc. acts as their parent corporation and financier.

12 II

13 RESPONDENT’S APPLICATION

14 Respondent’s submission of information about its affiliate CCA states it would:

15 “act in the capacity of a counselor to debtors; assessing the best solution to a
16 debtors’ financial position, formulating and collating the information required
17 by the prorater with a view to submitting a debt agreement to creditors.”

18 CCA operates as a “finder” of clients for its sibling corporation, Respondent. CCA then
19 hands off these debtors-clients (hereinafter “consumers”) to Respondent. In exchange for CCA’s
20 “consulting services” CCA receives a fee from the funds debtor-clients provided to Respondent.
21 Respondent’s arrangement with CAA as a finder constitutes a violation of section 12324.

22 Respondent acts as the prorater for consumers receiving and disbursing consumers’ funds to
23 their respective creditors. Respondent would collect from consumers a fee of approximately 10%
24 for its services and also collect a fee for CCA’s “consulting services.” All fees, including those
25 paid to CCA, would be paid by Respondent from consumers’ funds forwarded to Respondent for
26 payment to creditors. Respondent’s arrangement concerning fees constitutes a violation of section
27 12314.

28

1 The amount owed to CCA by a consumer would be listed as a “debt” and would receive
2 priority and preferential payment before other creditors owed funds from a consumer receive
3 payment. Respondent’s arrangement with CAA constitutes a violation of section 12314 and is
4 contrary to the intent of the CSBPPL.

5 Notwithstanding the foregoing Respondent represents that there is no economic or financial
6 relationship between itself and CCA and that CCA is not compensated for referring consumers.

7 Respondent’s application also indicated it would assess a cancellation or termination fee,
8 which constitutes a violation of 12314.1.

9 Some of the deficiencies identified by the Department have been addressed. However,
10 Respondent contends that the referral of clients from CCA and Respondent’s collection of CCA
11 fees are not in violation of the CSBPPL.

12 III

13 CHECK SELLERS, BILL PAYERS AND PRORATERS LAW

14 Section 12314 limits the charges and fees that Respondents can charge consumers and
15 states:

16 The total charges received by a prorater, or any other person for the prorater's
17 services, may not exceed in the aggregate twelve percent (12%) for the first
18 three thousand dollars (\$3,000), eleven percent (11%) for the next two
19 thousand dollars (\$2,000), and ten percent (10%) for any of the remaining
20 payments distributed by a prorater to the creditors of a debtor, except for
21 payments made on recurrent obligations. Recurring obligations shall be
22 defined for the purpose of this section as follows: current rent payments,
current utility payments, current telephone bills, current alimony payments,
current monthly insurance premium payments, and payments made on
obligations which are secured by a first mortgage or first deed of trust on real
property.

23 (a) Notwithstanding the provisions of Section 12315, upon compliance
24 with the provisions of Sections 12315.1, and 12320, an origination fee of a
25 sum not to exceed fifty dollars (\$50) may be charged;

26 (b) A fee not to exceed four dollars (\$4) per disbursement on recurring
27 obligations, consisting of current rent payments or obligations which are
28 secured by a first mortgage or first trust deed on real property, may be
charged.

1 (c) A fee not to exceed one dollar (\$1) on other recurring obligations.

2 When a debtor has not canceled or defaulted on the performance of his
3 contract with the prorater within 12 months after execution of the prorate
4 contract, the prorater shall refund any origination fee charged to the debtor.
5 At least once each month the prorater shall pay not less than 70 percent of all
6 funds received from the debtor to the creditors of the debtor.

6 Section 12324 contains a prohibition that states a prorater shall not:

7 (a) Offer, pay, or give any cash, fee, gift, bonus, premium, reward, or other
8 compensation to any person for referring any prospective customer to the
9 prorater;

10 (b) Receive any cash, fee, gift, bonus, premium, reward, or other
11 compensation from any person other than the debtor in connection with his
12 activities as a prorater.

12 Section 12314.1 prohibits a cancellation or termination fee.

13 IV

14 COMMISSISONER’S AUTHORITY TO DENY RESPONDENT’S CDDTL LICENSE

15 By reason of Respondent’s business plan and financial arrangements, which violate the
16 CSBPPL, the Commissioner seeks an order to deny the prorater license of Respondent.

17 Section 12221 sets forth the grounds for a denial of license and states:

18 Upon notice and reasonable opportunity to be heard, the commissioner may deny
19 any license for any of the following reasons:

20 (a) A false statement of a material fact has been made in the application for license.

21 (b) Any officer, director, or member of the applicant has, within the last 10 years, been
22 (1) convicted of or pleaded nolo contendere to a crime, or (2) committed any act
23 involving dishonesty, fraud, or deceit, which crime or act is substantially related to the
24 qualifications, functions, or duties of a person engaged in business in accordance with
25 the provisions of this division.

26 (c) The applicant, any officer, director, general partner, or member of the applicant, or
27 any person owning or controlling, directly or indirectly, 10 percent or more of the
28 outstanding interests or equity securities of the applicant has violated any provision of
this division or the rules thereunder or any similar regulatory scheme of the State of
California or a foreign jurisdiction.

(d) The applicant has not complied with all the applicable provisions of this division.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(e) The proposed officers and directors do not have sufficient check selling, bill paying, prorating, or other experience to afford reasonable promise of successful operation.

(f) The plan of business does not demonstrate that the proposed business will have a reasonable chance for a successful operation.

(g) The proposed business is being formed for a purpose other than the legitimate objectives contemplated by this division.

(h) The proposed capital structure is inadequate.

CONCLUSION

Complainant finds, by reason of the foregoing that Respondent at relevant times failed to comply with all the applicable provisions of the CSBPPL, the proposed business is being formed for a purpose other than the legitimate objectives contemplated by this division.

THEREFORE, Complainant find that he is justified under section 12221 in denying the application of Respondent, Debt Agreement Administrators (Americas) Inc., for a CSBPPL license.

WHEREFORE IT IS PRAYED that an order issue that denies the application for CCBPPL license filed on October 17, 2005, by Respondent, Debt Agreement Administrators (Americas) Inc.

Dated: March 15, 2007
San Francisco, California

Respectfully submitted,

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____

Joan E. Kerst
Senior Corporations Counsel
Attorney for Complainant