

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

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BEFORE THE COMMISSIONER
OF INSURANCE

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE MATTER OF
THE LICENSURE OF
RAUCH-MILLIKEN INTERNATIONAL, INC.
CA#10427

VOLUNTARY SETTLEMENT
AGREEMENT

NOW COME Rauch-Milliken International, Inc., its officers, Stephen M. Rauch, Thomas R. Milliken, and Alex O'Connell, and the North Carolina Department of Insurance [hereinafter "Department"] and hereby enter into the following Voluntary Settlement Agreement [hereinafter "this Agreement"].

WHEREAS, the Department has the authority and responsibility for the enforcement of the provisions of Article 70 of Chapter 58 of the General Statutes of North Carolina applicable to collection agencies and the collection agency business; and

WHEREAS, Rauch-Milliken International, Inc. is a Louisiana corporation with its principal place of business located in Metairie, Louisiana. Rauch-Milliken International, Inc. is a commercial debt collector which holds a permit to operate as a collection agency in North Carolina; and

WHEREAS, this Agreement does not constitute an admission by Rauch-Milliken International, Inc. of any fact or non-compliance with any state or federal law, rule or regulation. Rauch-Milliken International, Inc. enters into this Agreement for settlement purposes only and denies the Department's allegations. This Agreement is made without any trial or adjudication of any issue of fact or law; and

WHEREAS, in December 2017, the Department received a complaint from Angela Bennett, an owner of Bennett Plumbing Service, Inc. [hereinafter, "Debtor"], regarding communications received from Rauch-Milliken International, Inc. in relation to a debt owed to Local 360 Media [hereinafter, "Creditor"] by Debtor. In particular, Debtor had received a November 26, 2017 letter, December 5 and 6, 2017 e-mails, and a December 8, 2017 letter from Rauch-Milliken International, Inc. regarding an alleged amount of \$21,696.60 due to Creditor. Ms. Bennett complained that the figure of \$21,696.60 was approximately three times the amount due and that she had no idea where Rauch-Milliken International, Inc. had obtained this figure. Ms. Bennett further complained that Debtor had received numerous phone calls to its business

number, Ms. Bennett's home and cell phone numbers, and Ms. Bennett's daughter's cell phone;
and

WHEREAS, Ms. Bennett provided the Department with copies of the letters and e-mails which Debtor received from Rauch-Milliken International, Inc. in November and December 2017, the contracts which Debtor signed with Local 360, and invoices that Debtor received from Creditor in December 2017; and

WHEREAS, N.C.G.S. § 58-70-50 requires that "All collection agencies licensed under this Part to do the business of collection agency in this State, shall in all correspondence with debtors use stationery or forms which contain the permit number and the true name and address of the collection agency. . . ." N.C.G.S. § 58-70-50 (Emphasis added); and

WHEREAS, the Department contends that Rauch-Milliken International, Inc.'s failure to disclose its permit number and its physical address in any of its letters and e-mails with Debtor was a violation of N.C.G.S. § 58-70-50; and

WHEREAS, Rauch-Milliken International, Inc. contends that its failure to disclose its permit number on letters with the Debtor was due to a recent switch in mail vendors; that the communications contained the mailing address of Rauch-Milliken International, Inc. and therefore complied with the address requirements of N.C.G.S. §58-70-90; and that, in any event, Rauch-Milliken International, Inc. substantially complied with N.C.G.S. § 58-70-50;

WHEREAS, N.C.G.S. § 58-70-110(2) provides, in pertinent part, that:

No collection agency shall collect or attempt to collect a debt or obtain information concerning a consumer by any fraudulent, deceptive or misleading representation. Such representations include, but are not limited to, the following: . . . (2) Failing to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector; . . ."

N.C.G.S. § 58-70-110(2) (Emphasis added); and

WHEREAS, the term "consumer" is defined under N.C.G.S. § 58-70-90(2) as "an individual, aggregation of individuals, corporation, company, association, or partnership that has incurred a debt or alleged debt"; and

WHEREAS, Rauch-Milliken International, Inc. failed to disclose that "it is attempting to collect a debt and that any information obtained will be used for that purpose" in its first written communication with Debtor on November 26, 2017 and failed to disclose in its subsequent communications with the Debtor that the communication is from a debt collector in violation of N.C.G.S. § 58-70-110(2); and

WHEREAS, the November 26, 2017 letter which Debtor received from Rauch-Milliken International, Inc. stated in part that Creditor had “placed this past due account with us for the purpose of placing it with a Commercial Collection Attorney in your area for litigation”, that the balance of \$21,696.60 “is due and payable within (5) five days from receipt of this letter”, and “[t]o avoid the possibility of asset attachment, including seizure of all bank accounts, inventory, accounts receivable, etc., please contact this office immediately so an amicable arrangement can be made to clear this debt and avoid action”; and

WHEREAS, the December 5 and 6, 2017 e-mails which Debtor received from Rauch-Milliken International, Inc. again referenced the alleged past due balance of \$21,696.60 owed to Creditor and stated in part that “Our client has asked their rights as a legitimate creditor be protected with a secured interest under the terms of the agreement with our client”, that Rauch-Milliken International, Inc. “feels that a forensic accounting investigation is warranted in order to determine assets and liabilities . . . subject to liquidation”, and that Creditor “may ask [Rauch-Milliken International, Inc.] to . . . [f]inalize the preliminary trial investigative work into the assets and liabilities of the business in order that this claim may be forwarded to counsel that manages commercial collection law cases in your county” with the instruction “to have a lawsuit filed immediately without negotiation nor terms.” The e-mails again requested that Debtor contact Rauch-Milliken International, Inc. immediately to “make arrangements with our office to resolve the past due balance as to avoid further action being taken”; and

WHEREAS, the December 8, 2017 letter which Debtor received from Rauch-Milliken International, Inc. was a copy of a letter which Rauch-Milliken International, Inc. purportedly addressed and sent to Creditor regarding the alleged \$21,696.60 balance. The letter stated in part that “[w]e feel litigation against debtor is necessary at this point. With a judgment, we can subpoena all of debtor’s records, including all checking accounts and tax records. . . . Once we research debtor’s assets, we can file to seize debtor’s bank accounts, inventory, accounts receivable, real properties, etc.” The letter requested that Creditor send \$275.00 for court costs and 10% of principal balance for “non-contingent attorney fees on this claim” and stated that “this amount will be added to your claim against debtor.” The letter also requested that Creditor forward in duplicate all invoices, notes, delivery receipts and an itemized statement to support this claim, “sign and return the attached affidavit with the above supporting documentation to this office so our attorney can begin legal proceedings at once,” and send “a check in the amount of \$350.00 to cover the cost of retaining a private investigator in debtor’s area” in order to “investigate debtor’s assets . . . which would be subject to seizure once judgment is rendered.” A payment invoice for Debtor to remit the alleged balance due of \$21,696.60 was attached to the December 8, 2017 letter; and

WHEREAS, N.C.G.S. § 58-70-110(4) provides, in pertinent part, that:

No collection agency shall collect or attempt to collect a debt or obtain information concerning a consumer by any fraudulent, deceptive or misleading representation. Such representations include, but are not limited to, the following:
(4) Falsely representing the character, extent, or amount of a debt against a consumer or of its status in any legal proceeding . . . ; or falsely representing the creditor’s rights or intentions.”

N.C.G.S. § 58-70-110(4)(Emphasis added); and

WHEREAS, N.C.G.S. § 58-70-115(2) provides, in pertinent part, that:

No collection agency shall collect or attempt to collect any debt by use of any unfair practices. Such practices include, but are not limited to, the following: . . .
(2) Collecting or attempting to collect from the consumer all or any part of the collection agency's fee or charge for services rendered, collecting or attempting to collect any interest or other charge, fee or expense incidental to the principal debt unless legally entitled to such fee or charge.”

N.C.G.S. § 58-70-110(2)(Emphasis added); and

WHEREAS, the Department contends that N.C.G.S. § 58-70-115(2) prohibits a collection agency from attempting to collect all or any portion of its fees for services rendered, regardless of whether the creditor’s contract with the debtor contains a provision authorizing the creditor to recover collection fees from the debtor; and

WHEREAS, Rauch-Milliken International, Inc. contends that the communications were consistent with the pro forma communications previously submitted to the Department (including the intent to collect collection fees) and to which no objection had been raised and that it was legally entitled to collect its collection agency fees based upon the underlying contract terms between the debtor and creditor; and

WHEREAS, the Department requested that Rauch-Milliken International, Inc. provide documentation to support the \$21,696.60 debt allegedly owed via a December 14, 2017 e-mail to Rauch-Milliken International, Inc. In a January 16, 2018 response to the Department’s request, Rauch-Milliken International, Inc.’s Compliance Officer asserted that Creditor outsourced two contracts for collection with balances of \$10,844.37 and \$6,512.91, respectively, for a total of \$17,357.28 and that “[Rauch-Milliken International, Inc.] then added the client’s collection expense (\$4,339.32) which brings us to the total [Rauch-Milliken International, Inc.] has been attempting to recover for the creditor, \$21,696.60”; and

WHEREAS, in its initial response to the Department, Rauch-Milliken International, Inc. attached copies of the front pages of the two contracts that Debtor entered into with Creditor and asserted that the contract terms included a provision requiring Debtor to “pay all cost involved in collection, including court costs, collection agency fees, attorneys’ fees and all other reasonable expenses incurred by [Creditor] of any and all fees, costs or expenses due by [Debtor] to [Creditor].” The above referenced terms did not appear on the contract pages attached to Rauch-Milliken International, Inc.’s response and the contract pages did not document the alleged current balance of \$10,844.37 and \$6,512.91 due on the respective contracts. Rauch-Milliken International, Inc. subsequently supplemented its submission at the Voluntary Settlement Conference to include the remainder of the contracts, including the terms and conditions which expressly provide in pertinent part that: (a) the customer agreed to pay “all costs involved in collection, including... *collection agency fees*”; and (b) that the Creditor had the “right to rescind all discounts, adjustments or trade values and the total unpaid amount of the contract will be due and payable” (Emphasis added); and

WHEREAS, the Department contends that Rauch-Milliken International, Inc.'s November 26 and December 5, 6, and 8, 2017 correspondence with Debtor misrepresented that the amount of debt the debtor owed was \$21,696.60 in violation of N.C.G.S. § 58-70-110(4); and

WHEREAS, Rauch-Milliken International, Inc. contends that the communications accurately represented the amount of the debt owed (when including the collection fees which it contends it was authorized to assess pursuant to the parties' contract); and

WHEREAS, the Department contends that Rauch-Milliken International, Inc.'s November 26 and December 5, 6, and 8, 2017 correspondence with Debtor falsely represented the creditor's rights and intentions in violation of N.C.G.S. § 58-70-110(4); and

WHEREAS, Rauch-Milliken International, Inc. contends that the communications accurately represented the creditor's rights and intention to pursue legal action and that the matter was, in fact, referred to local counsel; and

WHEREAS, the Department contends that Rauch-Milliken International, Inc. attempted to collect from the consumer all or any part of the collection agency's fee or charge by adding \$4,339.39 to the balance due from Debtor in violation of N.C.G.S. § 58-70-115(2);

WHEREAS, N.C.G.S. § 58-70-105(1) provides that:

No collection agency shall unreasonably publicize information regarding a consumer's debt. Such unreasonable publication includes, but is not limited to, the following: (1) Any communication with any person other than the debtor or his attorney, except:

- a. With the permission of the debtor or his attorney;
- b. To persons employed by the collection agency, to a credit reporting agency, to a person or business employed to collect the debt on behalf of the creditor, or to a person who makes a legitimate request for the information;
- c. To the spouse (or one who stands in place of the spouse) of the debtor, or to the parent or guardian of the debtor if the debtor is a minor;
- d. For the sole purpose of locating the debtor, if no indication of indebtedness is made;
- e. Through legal process.

N.C.G.S. § 58-70-105(1) (Emphasis added); and

WHEREAS, in its initial December 14, 2017 response to the Department's request for a response to the Debtor's complaint, Rauch-Milliken International, Inc. informed the Department that it recently learned that there were two Angela Bennetts both listed as working for Debtor which is a family business and that it had erred in calling and speaking with the other Angela Bennett. Rauch-Milliken International, Inc.'s counsel played a recording of the December 2017

phone conversation which its collection agent, Mike Milliken, had with the other Angela Bennett. During the call, Mr. Milliken spoke with an individual who answered to the name Angela Bennett regarding an account owed by Debtor and falsely represented that Rauch-Milliken International, Inc. had an affidavit which authorized it to sue Creditor to collect the balance due even though the individual informed Mr. Milliken that she had no idea what he was talking about; and

WHEREAS, the Department contends that Rauch-Milliken International, Inc. communicated with a person other than the debtor by telephone regarding the debt on December 8, 2017 in violation of N.C.G.S. § 58-70-105(1) and falsely represented that Creditor signed an Affidavit authorizing it to sue Creditor in violation of N.C.G.S. § 58-70-110(4); and

WHEREAS, Rauch-Milliken International, Inc. asserts that the number called was associated with the correct Angela Bennett; and

WHEREAS, N.C.G.S. § 58-70-130(c) provides that violations of Part 3 of Article 70 “constitute unfair or deceptive acts or practices proscribed herein or by N.C.G.S. § 75-1.1”; and

WHEREAS, the Department contends that Rauch-Milliken International, Inc. has committed unfair or deceptive acts or practices proscribed by N.C.G.S. §§ 58-70-130(c) and 75-1.1 by its violations of N.C.G.S. § 58-70-105(1), 58-70-110, and 58-70-115; and

WHEREAS, the Department sent a letter to the officers of Rauch-Milliken International, Inc. in February 2018 which informed it of the alleged violations of the provisions of Article 70 of Chapter 58 and requested that the officers of Rauch-Milliken International, Inc. attend an informal conference with the Department to discuss the alleged violations. Stephen Rauch and legal counsel for Rauch-Milliken International, Inc. attended the informal conference with the Department on June 14, 2018; and

WHEREAS, Rauch-Milliken International, Inc. informed the Department that it voluntarily ceased all collection efforts in North Carolina since receiving the Department’s February 2018 informal conference letter pending resolution of this matter with the Department at the Voluntary Settlement Conference; and

WHEREAS, Rauch-Milliken International, Inc. and its officers agree to permanently cease and desist collecting and attempting to collect any collection fees, regardless of whether the terms of the underlying contract between the debtor and creditor appear to authorize the collection of such fees, and to permanently cease and desist collecting and attempting to collect any other fees from North Carolina consumers which are prohibited by N.C.G.S. § 58-70-115(2) or any other applicable laws; and

WHEREAS, in order to address the Department’s concerns, Rauch-Milliken International, Inc. has reviewed and revised its North Carolina form collection letters used for collection of debts in order to ensure that such letters show its NC permit number and physical address as required by N.C.G.S. § 58-70-50, include the disclosures required by N.C.G.S. § 58-70-110(2), and comply with N.C.G.S. § 58-70-90 *et seq.* Said letters have been submitted to the

Department for its approval prior to the entry of this Agreement and the Department has reviewed said letters and is satisfied that the letters as submitted are compliant with the foregoing statutes; and

WHEREAS, Rauch-Milliken International, Inc. and its officers agree to insure that its e-mail correspondence with debtors also shows its NC permit number and physical address as required by N.C.G.S. § 58-70-50, include the disclosures required by N.C.G.S. § 58-70-110(2), and are compliant with N.C.G.S. § 58-70-90 *et seq.*; and

WHEREAS, the Department has requested that Rauch-Milliken International, Inc. and its officers enter into this agreement to permanently cease and desist collecting and attempting to collect any collection fees, even if the terms of the underlying contract between the debtor and creditor appear to authorize the collection of such fees, and to permanently cease and desist collecting and attempting to collect any other fees from North Carolina consumers which are prohibited by N.C.G.S. § 58-70-115(2) or any other applicable laws, remediate its communications with debtors to insure compliance with N.C.G.S. § 58-70-90 *et seq.*, and to pay a civil penalty in the amount of two thousand dollars (\$2,000.00) for its alleged violations of N.C.G.S. § 58-70-50, 58-70-105(1), 58-70-110, and 58-70-115 in lieu of administrative action against Rauch-Milliken International, Inc.'s collection agency permit;

WHEREAS, in consideration of Rauch-Milliken International, Inc.'s agreement to the terms stated in this Agreement, the Department agrees not to pursue other regulatory action against Rauch-Milliken International, Inc. for the violations alleged herein; and

WHEREAS, pursuant to N.C.G.S. § 58-2-70(g), the Commissioner of Insurance and the Department have the express authority to negotiate "a mutually acceptable agreement with any person as to the status of the person's license or certificate or as to any civil penalty or restitution"; and

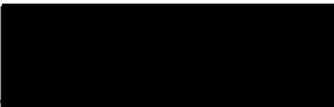
WHEREAS, the parties to this Agreement have reached a mutually agreeable resolution of this matter as set out in this Agreement.

NOW THEREFORE, in consideration of the promises and agreements set out herein, the Department, Rauch-Milliken International, Inc. and its officers hereby agree to the following:


1. Rauch-Milliken International, Inc. shall pay a civil penalty of two thousand dollars (\$2000.00) to the Department. The form of payment shall be via certified check, cashier's check or money order. The check or money order for the payment shall be payable to the "North Carolina Department of Insurance." Rauch-Milliken International, Inc. shall remit payment or confirmation of payment by certified mail, return receipt requested, to the Department along with a copy of this signed agreement on or before September 15, 2018 to the Department in care of its counsel, Assistant Attorney General Anne Kirby. The civil penalty shall be subject to disbursement in accordance with the provisions of Article IX, Section 7 of the North Carolina Constitution for the benefit of public schools.

2. Rauch-Milliken International, Inc. shall permanently cease and desist collecting and attempting to collect any collection fees, even if the terms of the underlying contract between the debtor and creditor appear to authorize the collection of such fees, and shall permanently cease and desist collecting and attempting to collect any other fees from North Carolina consumers which are prohibited by N.C.G.S. § 58-70-115(2) or any other applicable laws and otherwise comply with all provisions of Article 70 of Chapter 58 of the General Statutes of North Carolina and Title 11 of the North Carolina Administrative Code that are applicable to it.
3. This Agreement shall be binding upon Rauch-Milliken International, Inc. its officers, agents, subsidiaries and subdivisions, as well as its successors, assigns and/or purchasers of all or substantially all of Rauch-Milliken International, Inc.'s assets.
4. This Agreement does not in any way affect the Department's disciplinary power in any future or follow-up examination of Rauch-Milliken International, Inc. or in any future cases or complaints involving Rauch-Milliken International, Inc. In the event that Rauch-Milliken International, Inc. fails to comply with this Agreement or otherwise fails to comply with the laws and rules applicable to Rauch-Milliken International, Inc., the Department may take any administrative or legal action it is authorized to take.
5. The parties to this Agreement agree that this Agreement shall have the full force and effect of an Order of the Commissioner of Insurance. Rauch-Milliken International, Inc. understands that N.C.G.S. § 58-70-40(c)(6) provides that a collection agency's permit may be revoked if a partner or proprietor or officer of the collection agency has violated or refused to comply with an Order of the Commissioner.
6. Rauch-Milliken International, Inc. enters into this Agreement freely and voluntarily and with knowledge of its right to have an administrative hearing on this matter. Rauch-Milliken International, Inc. has consulted with an attorney prior to entering into this Agreement.
7. This Agreement, when finalized will be a public record and will not be treated as confidential. Any and all permits issued by the Department to Rauch-Milliken International, Inc. shall reflect that Regulatory Action has been taken against those permits following the execution of this Agreement. The Department may disclose the contents of this Agreement to third parties upon request or pursuant to any law or policy providing for such disclosure.
8. This Agreement shall become effective when signed by the parties.
9. By signing below, Rauch-Milliken International, Inc. and its officers agree to comply with all of the terms of this Agreement.

North Carolina Department of Insurance

By: 
Kathy Shortt
Senior Deputy Commissioner
Date: 9-7-18

Rauch-Milliken International, Inc.

By: 
Stephen M. Rauch
as President, Vice President, Secretary & Treasurer
of Rauch-Milliken International, Inc.


Rauch-Milliken International, Inc.

By: 
Thomas R. Milliken
as Chief Executive Officer of
Rauch-Milliken International, Inc.

Date: 8-16-18

Date: 8/16/18

Rauch-Milliken International, Inc.

By: 
Alex O'Connell
as Officer of
Rauch-Milliken International, Inc.

Date: 8/16/18