

The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

STEVEN L. ANTONAKES
COMMISSIONER OF BANKS

Mr. Paul L. Soucy
Litigation Manager
Nelson, Watson & Associates LLC
83 Merrimack Street, Lower Level
Haverhill, MA 01831

JANICE S. TATARKA
DIRECTOR
OFFICE OF CONSUMER AFFAIRS AND
BUSINESS REGULATION

July 27, 2006

Dear Mr. Soucy,

This is a response to your letter of April 18, 2006 to the Division of Banks (the "Division") relating to the application and statutory language of the Division's debt collection regulations, 209 CMR 18.00 *et seq* to the practice of calling debtor's within the allowable limits of 209 CMR 18.14(1)(d). According to the Division's records, Nelson, Watson & Associates, LLC is a licensed debt collector in the Commonwealth.

According to your letter, you are aware that debt collectors cannot "engage any consumer in communication via telephone...in excess of two calls in each seven-day period at a consumer's residence and two calls in each 30-day period other than at a consumer's residence, for each debt." 209 CMR 18.14(1)(d). However, you then state "you cannot engage a consumer in communication via telephone if there are no words spoken." Your letter seeks an opinion, seemingly, on the ability to call consumers during the limited periods if no "communication" occurs, i.e. never reaching the consumer or anyone else and never leaving a message. The issue then would be does that constitute "engaging in communication" for the purposes of the Division's regulation.

Communication is defined at 209 CMR 18.02 as "conveying information regarding a debt directly or indirectly to any person through any medium."

The Division's regulations provide, in pertinent part, a debt collector, in connection with the collection of any debt, may not "engage any consumer in communication via telephone...in excess of two calls in each seven-day period at a consumer's residence and two calls in each 30-day period other than at a consumer's residence..." 209 CMR 18.14(1)(d).

Upon review of the relevant statutory language contained in the Division's regulations along with the material provided, it is the position of the Division that if a debt collector upon telephoning a debtor does not reach that individual, or anyone else, and also does not leave a message on an answering machine or voice mail, then it would not constitute a "communication" under 209 CMR 18.14(1)(d). However, if the debt collectors do indeed speak to someone or leave any information on the debtor's answering machine, then that would constitute a "communication" and be subject to the limitations set forth in 209 CMR 18.14(1)(d). It is the



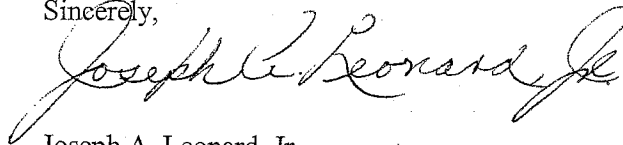
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longstanding position that unless *no information* is conveyed it is a communication for the purposes of the relevant statutes.

Please be advised that excessive repeated telephone calls to a debtor's residence even in situations where no information is conveyed to the debtor may constitute harassment in violation of 209 CMR 18.15.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,

A handwritten signature in cursive script that reads "Joseph A. Leonard, Jr." The signature is written in dark ink and is positioned above the typed name.

Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
and General Counsel

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