

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

_____)	
LUSTIG, GLASER & WILSON, P.C.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 15-03703-BLS
)	
DAVID J. COTNEY, in his capacity as)	
the Commissioner of Banks, and)	
MASSACHUSETTS DIVISION OF BANKS,)	
)	
Defendants.)	
_____)	

FIRST AMENDED VERIFIED COMPLAINT

I. INTRODUCTION

1. This action arises from the Massachusetts Division of Banks’s (and its Commissioner’s) purported reinterpretation, over a century after its predecessor statute was first enacted and over a decade after its most recent substantive amendment, of a Massachusetts statute, now G.L. c. 93, § 24, governing debt collectors. Although the statute clearly and unequivocally states that law firms and lawyers are excluded from the definition of “debt collectors,” the defendants have opined that they will adopt a new “interpretation” of the term “debt collector,” claiming that the statutory exclusion does not apply to attorneys practicing law in the Commonwealth of Massachusetts who regularly collect debts on behalf of a client, and that therefore those attorneys must register as debt collectors with the Division of Banks. This new interpretation, however, directly contradicts the plain language of G.L. c. 93, § 24, the Defendants’ own regulations, the Defendants’ prior interpretations of the statute, and, finally,

the separation of powers principles set forth in Article XXX of the Massachusetts Constitution's Declaration of Rights. Accordingly, Lustig, Glaser & Wilson, P.C. is entitled to a declaratory judgment, vindication of its civil rights, an award of attorneys' fees, and injunctive relief against the Defendants.

II. PARTIES

2. The Plaintiff, Lustig, Glaser & Wilson, P.C. ("LGW"), is a law firm organized as a professional corporation under the laws of the Commonwealth of Massachusetts and located at 245 Winter Street, Suite 300, Waltham, Middlesex County, Massachusetts.

3. The Defendant, David J. Cotney, is the Massachusetts Commissioner of Banks (the "Commissioner"). Mr. Cotney oversees the Massachusetts Division of Banks and is responsible for the licensing and supervision of "debt collectors" pursuant to G.L. c. 93, §§ 24-28 and the implementation of the Division of Banks's regulations. The Commissioner has a usual place of business at 1000 Washington Street, 10th Floor, Boston, Suffolk County, Massachusetts.

4. The Defendant, Division of Banks (the "Division"), is the Massachusetts agency charged with the licensing and supervision of "debt collectors" pursuant G.L. c. 93, §§ 24-28, including the implementation and oversight of 209 CMR §§ 18.00 *et seq.* The Division is located at 1000 Washington Street, 10th Floor, Boston, Suffolk County, Massachusetts.

III. FACTS

5. For over a century, "debt collectors" in the Commonwealth have been regulated by statute, currently G.L. c. 93, § 24. Beginning with the original 1910 statute, however, attorneys admitted to practice law in the Commonwealth, have been exempt from this statute – an implicit recognition by the Legislature that conferring regulatory jurisdiction over attorneys

in the practice of law to an administrative agency is inconsistent with Article XXX of the Massachusetts Constitution's Declaration of Rights, which precludes the legislative and executive branches from exercising the powers reserved to the judicial branch of our government. The current version of the statute, G.L. c. 93, § 24, continues this exemption, stating in § 24(g) that "debt collector," the key term defining the scope of the Division's regulatory jurisdiction, "*shall not include ... attorneys-at-law collecting a debt on behalf of a client*" (emphasis added).

6. Consistent with the plain language of the statute, the Division's own regulations exempt from the definition of "debt collector" any "attorneys-at-law licensed to practice law in the Commonwealth who are collecting a debt on behalf of a client." 209 CMR § 18.02(g). Those same regulations also state that "[n]o debt collector shall: (a) Furnish legal advice or otherwise engage in the practice of law or represent that it is competent to do so, or institute judicial proceedings on behalf of others," 209 CMR § 18.17(12).

7. The Division has consistently made it clear that the statute and regulations mean what they say – lawyers engaged in the practice of law in the Commonwealth are not debt collectors. In a 2006 opinion identified by the Division as "Selected Opinion 06-059," published on the Division's section of the Mass.gov website, the Division recognized that the "attorney-at-law" exclusion contained in G.L. c. 93, § 24 "applies . . . to attorneys licensed to practice law in the Commonwealth since, unlike attorneys licensed in other jurisdictions, they are in fact authorized to practice law and utilize the court system in the Commonwealth." As the Division correctly recognized in 2006, "[a]ttorneys licensed to practice law in the Commonwealth are subject to the Supreme Judicial Court's Rules of Professional Conduct and the disciplinary

oversight of the Board of Bar Overseers.” The Division further recognized that “[a]ttorneys, licensed to practice law in the Commonwealth, are also subject to the requirements and restrictions of the [Federal Fair Debt Collection Practices Act] and the debt collection regulations of the Massachusetts Attorney General, 209 CMR 7.00 *et seq.*” A true and correct copy of Selected Opinion 06-059 is attached hereto as Exhibit A and incorporated herein by reference. Likewise, later in 2006, when a prior banking commissioner claimed that LGW was required to register as a debt collector, he quickly ceased his efforts after LGW explained to him that LGW was exempt from the statute. True and correct copies of letters dated October 2, 2006 and October 3, 2006 are attached hereto as Exhibits B and C and incorporated herein by reference.

8. LGW is a law firm located in the Commonwealth of Massachusetts whose Massachusetts attorneys concentrate their practice in the area of consumer debt collection on behalf of the firm’s clients.

9. On September 19, 2013, LGW’s managing attorney, Kenneth C. Wilson, wrote to the Division of Banks requesting an opinion “as to whether or not [LGW] is required to obtain a so-called ‘Debt Collection License’ from the [Division] in order to engage in consumer debt collection activity in the Commonwealth” (the “September 2013 Letter”). A true and correct copy of the September 2013 Letter is attached hereto as Exhibit D and incorporated herein by reference.

10. At the request of the Division, LGW supplemented the September 2013 Letter with additional information by email on October 21, 2013 (the “October 2013 Email”). A true and correct copy of the October 2013 Email is attached hereto as Exhibit E and incorporated herein by reference.

11. Over two years later, on November 2, 2015, the Division informed LGW by letter of its opinion that LGW is a “debt collector” and is “required to be licensed as a debt collector in the Commonwealth under the provisions of Massachusetts General Laws chapter 93, section 24, through section 28, inclusive, as well as the Division’s regulation 209 CMR 18.00 *et seq.*” Notwithstanding the plain language of the statute, the regulations interpreting the statute, and its own prior interpretations of the statute, the Division has now concluded that since the exemption in the statute states that it applies to “attorneys collecting a debt on behalf of a client’ rather than ‘attorneys who *regularly* collect debts on behalf of a client,’” the exemption only applies to attorneys whose principal practice is not the collection of debts. The Division has announced that it will make the “determination on a case-by-case basis” as to which attorneys and firms are exempt from the statute. A true and correct copy of the Division’s November 2, 2015 letter, identified its letter as “Selected Opinion 13-018,” published on the Division’s section of the Mass.gov website, is attached hereto as Exhibit F and incorporated herein by reference.

12. Recognizing that its opinion “is a new requirement,” the Division’s letter gives LGW and other “affected law firms” six months to register, to post a bond, and to obtain a license from the Division, after which time the Division threatens to enforce the licensure requirements and to consider “affected law firms” to be in violation of the licensing requirement. Failure to comply with the registration, bonding, and licensure requirements of Chapter 93 of the General Laws and the implementing regulations of the Division can lead to fines and imprisonment for a company and its principals and also can constitute an unfair or deceptive act or practice under the provisions of G.L. c. 93A, § 2.

IV. CAUSES OF ACTION

(Count I – Declaratory Judgment, G.L. c. 231A, § 1 – Statutory Interpretation)

13. The foregoing paragraphs are incorporated herein by reference.

14. An actual controversy exists between the Plaintiff and Defendants concerning whether the Plaintiff is a “debt collector” as defined in G.L. c. 93, § 24, and therefore subject to regulation as a “debt collector” by Defendants.

15. The Defendants have exceeded their authority by asserting supervisory power over the Plaintiff.

16. As a direct and proximate result of the Defendants’ determination that the Plaintiff is a “debt collector” subject to the Defendants’ oversight, the Plaintiff will suffer injury in the nature either of (1) forced submission to unlawful oversight or (2) statutory penalties, potential imprisonment of its officers, and *de facto* violations of G.L. c. 93A, § 2.

17. The failure to resolve this controversy now will therefore inevitably lead to litigation after the expiration of the Defendants’ six-month grace period for the Plaintiff’s registration.

(Count II – Declaratory Judgment, G.L. c. 231A, §1 – Separation of Powers)

18. The foregoing paragraphs are incorporated herein by reference.

19. An actual controversy exists between the Plaintiff and Defendants concerning whether the Plaintiff is a “debt collector” as defined in G.L. c. 93, § 24, and therefore subject to regulation as a “debt collector” by Defendants.

20. If the Defendants’ interpretation of “debt collector,” as defined in G.L. c. 93, § 24, is correct, which LGW expressly denies, then the statutes at G.L. c. 93, §§ 24-28 violate Article XXX of the Massachusetts Constitution’s Declaration of Rights.

21. Article XXX of the Massachusetts Constitution's Declaration of Rights provides that, "[i]n the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men."

22. Attorneys collecting debts on behalf of their clients are engaged in the practice of law.

23. The regulation of the practice of law, specifically including the representation of clients with respect to third parties and the initiation of legal process on their behalf, is an inherently judicial power.

24. If the statutes at G.L. c. 93, §§ 24-28 are an attempt by the Legislature to regulate the practice of law, as the Defendants contend, then they are unconstitutional.

25. As a direct and proximate result of the Legislature's impermissible efforts to regulate the practice of law, the Plaintiff will suffer injury in the nature either of (1) forced submission to unlawful oversight or (2) statutory penalties, potential imprisonment of its officers, and *de facto* violations of G.L. c. 93A, § 2.

26. The failure to resolve this controversy now will therefore inevitably lead to litigation after the expiration of the Defendants' six-month grace period for the Plaintiff's registration.

(Count III – Violation of Civil Rights, 42 U.S.C. § 1983 and G.L. c. 12, § 11I)

27. The foregoing paragraphs are incorporated herein by reference.

28. The Defendants have threatened Plaintiff with enforcement of the statutes and regulations applicable to “debt collectors” in an attempt to coerce the Plaintiff into submitting to the Defendants’ unlawful oversight.

29. By imposing new and burdensome regulatory requirements not authorized by law and contrary to the Division’s own precedents and regulations, and unjustified by any cause other than caprice, the Defendants have acted arbitrarily and without reasoned consistency, thus violating the Plaintiff’s due process rights under the Constitutions and laws of the United States and the Commonwealth of Massachusetts.

30. The Defendants acted under color of state law.

31. The Plaintiff has been harmed as a direct and proximate result of the Defendants’ actions.

(Count IV – Injunctive Relief)

32. The foregoing paragraphs are incorporated herein by reference.

33. The Plaintiff is likely to succeed on the merits of its claims for declaratory judgment and civil rights violations against the Defendants.

34. The Plaintiff will suffer irreparable harm if the Defendants are not enjoined from enforcing the statutes and regulations concerning “debt collectors” against them.

35. The balance of harms favors injunctive relief.

36. Public policy favors injunctive relief.

V. DEMAND FOR RELIEF

WHEREFORE, the Plaintiff, Lustig, Glaser & Wilson, P.C., respectfully requests that the Court:

1. Enter a declaratory judgment (a) that Plaintiff is not a “debt collector” subject to regulation by the Defendants under G.L. c. 93, § 24, and need not apply for a license from the Defendants or, (b) in the event that the statutes at G.L. c. 93, §§ 24-28, are held to apply to the Plaintiff, that the statutes are unconstitutional as applied to the Plaintiff because they violate Article XXX of the Massachusetts Constitution’s Declaration of Rights;
2. Enter judgment in Plaintiff’s favor, and against the Defendants, on plaintiff’s claim pursuant to 42 U.S.C. § 1983 and G.L. c. 12, § 11I;
3. Temporarily, preliminarily, and permanently enjoin the Defendants from enforcing G.L. c. 93, §§ 24-28 and 209 CMR 18.00 *et seq.* against the Plaintiff;
4. Award Plaintiff damages in an amount to be determined at trial;
5. Award Plaintiff its costs and attorneys’ fees pursuant to 42 U.S.C. §§ 1983, 1988 and G.L. c. 12, § 11I; and
6. Award such other relief as the Court deems just and proper.

The Plaintiff,

LUSTIG, GLASER & WILSON, P.C.,
By its attorneys,

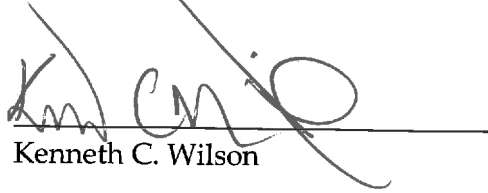
Mark D. Smith, BBO# 542676
Marc C. Laredo, BBO# 543973
Matthew A. Kane, BBO# 666981
101 Federal Street, Suite 650
Boston, MA 02110
617-443-1100
smith@laredosmith.com
laredo@laredosmith.com
kane@laredosmith.com

Date:

VERIFICATION

I, Kenneth C. Wilson, state that I have read the foregoing allegations and that the facts recited therein are true and correct based upon my personal knowledge and review of the exhibits attached hereto.

Signed under the penalties of perjury this ^{21st}21 day of January, 2016.


Kenneth C. Wilson



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

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

October 13, 2006

The Division is issuing the following opinion pertaining to attorneys at law ("attorneys") engaged in the collection of consumer debt in the Commonwealth and the applicability of the Commonwealth's debt collection laws, General Laws chapter 93, sections 24-28, inclusive and the Division's regulations, 209 CMR 18.00 *et seq* (collectively the "Debt Collection Law").

The Debt Collection Law defines a "debt collector" in section 24 of chapter 93 as "any person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of a debt, or who regularly collects or attempts to collect, directly or indirectly, a debt owed or due or asserted to be owed or due another." Within the same definitional provision is a list of exclusions from the "debt collector" definition including in clause (g) "attorneys-at-law collecting a debt on behalf of a client". The Division has been requested to opine on the scope of this attorney-at-law exclusion and applicability of the Debt Collection Law to attorneys.

Historically, the Debt Collection Law, prior to its most recent amendment, did not apply to attorneys licensed to practice law in the Commonwealth. However, the Debt Collection Law, including its licensing provisions, was applicable to attorneys licensed to practice in other jurisdictions. The Debt Collection Law was amended in many provisions to model the federal statute, the Fair Debt Collection Practices Act ("FDCPA") which does not contain a licensing component. The most recent amendments to General Laws chapter 93, sections 24-28, inclusive, were based on a legislative recommendation submitted by the Division. That recommendation was passed into law without any substantive change.

The Division is mindful of the 1995 U. S. Supreme Court decision which held that attorneys who regularly engage in consumer debt collection activity, even when that activity consists of litigation are "debt collectors" under the FDCPA and subject to compliance with its requirements and restrictions. *See Heintz v. Jenkins*, 514 U.S. 291 (1995).

It is the position of the Division that the "attorney-at-law" exclusion applies solely to attorneys licensed to practice law in the Commonwealth since, unlike attorneys licensed in other jurisdictions, they are in fact authorized to practice law and utilize the court system in the Commonwealth. Attorneys licensed to practice law in the Commonwealth are subject to the Supreme Judicial Court's Rules of Professional Conduct and the disciplinary oversight of the Board of Bar Overseers. This position is consistent with the Division's longstanding practice relative to the licensing of attorneys as debt collectors. Attorneys, licensed to practice law in the Commonwealth, are also subject to the requirements and restrictions of the FDCPA and the debt collection regulations of the Massachusetts Attorney General, 209 CMR 7.00 *et seq*. The Debt Collection Law contains substantially similar requirements and restrictions as the FDCPA.

In a separate opinion (Opinion O06060), also issued today, the Division established that a "passive" debt buyer need not obtain a debt collector license if the collections were done by a licensed debt collector or an attorney licensed to practice law in Massachusetts. However, it is the Division's position that Opinion O06060 can not be coupled with the attorney-at-law on behalf of a client exclusion, so called, to result in situations where an entity is not required to be licensed. Two such situations are addressed as follows.

In the first situation, if an attorney licensed to practice law in Massachusetts is, in fact, the "debt buyer" as contemplated by the Division's Industry Letter of June 16, 2006 (the "Industry Letter"), the attorney or a law firm would be required to obtain a license as a debt collector in accordance with the requirement of the Industry Letter. Accordingly, the attorney-at-law exclusion would not be available to an attorney who or a law firm which is a debt buyer. It is the Division's position that under those facts the debt buyer/attorney would neither be passive nor acting on behalf of a client.

Similarly, in the event that an attorney licensed to practice law in Massachusetts is a debt buyer as contemplated by the Division's Industry Letter and Opinion O06060 and that attorney seeks to collect the debt solely through a law firm that attorney is affiliated with, that attorney would no longer be viewed as a "passive debt buyer" and that attorney would be required to obtain a debt collector license.

Attorneys not licensed to practice law in the Commonwealth who regularly engage in or whose principal purpose is debt collection, must obtain a license as a debt collector and will be subject to all provisions of the Debt Collection Law in the Commonwealth. In that situation such an attorney, not authorized to practice in the Commonwealth, collecting debt would be conducting such business as a debt collector and not as an attorney. That fact was clearly recognized in the prior statute. The Division's view under the amended statute remains the same.

This opinion is effective as of October 2, 2006.

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.

The Division will review other fact patterns on a case by case basis. An entity seeking an opinion from the Division on the Debt Collection Law should review the process for obtaining an opinion as set out in Regulatory Bulletin 1.1-103. Opinion requests must contain all applicable facts and cite specific cases, if any, which support the argument presented. Additionally, rulings of the Federal Trade Commission, if applicable, should be cited as well.

Sincerely,



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

O06059

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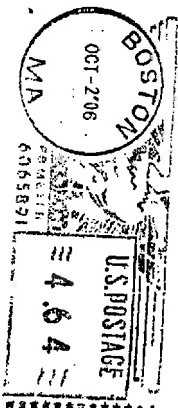
Commonwealth of Massachusetts
Office of the Commissioner of Banks
One South Station
Boston, Massachusetts 02110

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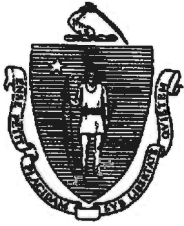
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Lustig, Glaser & Wilson PC
PO Box 9127
Needham, MA 02492



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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

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

October 2, 2006

Lustig, Glaser & Wilson PC
PO Box 9127
Needham, MA 02492

To The Chief Executive Officer:

On June 16, 2006 the Division of Banks ("Division") issued an Industry Letter (the "Letter") stating that debt buyers as referred to in the Letter are required to be licensed by the Division. The Division subsequently posted notice that all covered debt buyers had until September 30, 2006 to submit an application for a debt collector license to the Division. The Letter is available on the Division's website at www.mass.gov/dob.

The records of the Division show that as of the date of this letter you are not licensed to do business as a debt collector in Massachusetts nor have you filed an application by the September 30th deadline. Any collection of debt without a license is a violation of Massachusetts General Law chapter 93, sections 24 through 28 inclusive (the "Statutes") and Massachusetts Regulation 209 CMR 18.00 *et seq.* (the "Regulations") under which you may be subject to the penalties set out in statute. Further, violations of G.L.c. 93, §§ 24 through 27 are considered unfair or deceptive acts or practices under the provisions of G.L.c. 93A. For violations of G.L.c. 93A you may be subject to action by the Attorney General of the Commonwealth and by consumers, who are provided by the statute with certain rights to seek damages against you.

You are hereby directed to immediately cease engaging in any unlicensed or unauthorized debt collection activity in Massachusetts until such time as you have either: (1) obtained a license through the Division's normal application process; or (2) demonstrated in writing why you are not subject to the Statutes and Regulations to the satisfaction of the Division.

Enclosed is an affidavit which must be completed by an authorized officer and returned to Deborah Doyle, Chief Director, Consumer Compliance Unit of the Division unless a letter demonstrating why you are not subject to the Statutes and Regulations has been submitted. The affidavit or a letter must be submitted within two weeks of the receipt of this letter.

Sincerely,

Steven L. Antonakes
Commissioner of Banks

Enclosures

CERTIFIED MAIL #7006 0100 0005 0893 3703

COMMONWEALTH OF MASSACHUSETTS

AFFIDAVIT

I, _____, a duly authorized officer of _____ hereby certify that I, and/or any entity that I do business as, have ceased operating as a debt collector as defined by Massachusetts General Laws chapter 93, section 24. I, and/or any such business entity discontinued operations as of _____, 200___. I hereby further certify that neither I, nor any business entity owned, operated, or controlled by me, will begin operation as a debt collector, as defined by Massachusetts General Laws chapter 93 section 24, without first obtaining a license from the Commissioner of Banks of the Commonwealth of Massachusetts, as required by Massachusetts General Laws chapter 93 section 24A.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS ____ DAY OF _____, 200__.

By: _____
(Signature)

NOTARIZATION

State of _____ County of _____

Personally appeared the above-named _____ on _____
(date)

and made oath that the statements herein made are true.

Before me

(Notary Public)

SEAL



Facsimile Cover Sheet

DATE: October 3, 2006

FROM: Kenneth C. Wilson, Esq.

To: Deborah Doyle

Company: Division of Banks

FAX NO.: 617-956-1599

RE: Response to Letter Dated 10/2/06 from Steven L. Antonakes, Commissioner of
Banks addressed to Lustig, Glaser & Wilson, P.C.

Confidentiality Notice: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the above-named recipient. Any use, dissemination, distribution of copy hereof by anyone else is strictly prohibited.

We are sending a total of 17 pages, including this cover sheet.

Lustig, Glaser & Wilson, P.C., PO Box 9127, Needham, MA 02492-9127
Telephone: (781) 449-3000 Facsimile: (781) 449-6600

LUSTIG, GLASER & WILSON, P.C. *Attorneys at Law*

P.O. Box 929127, Needham, Massachusetts 02492 • Tel (781) 449-3000 • Fax (781) 449-6600

October 3, 2006

Deborah Doyle, Chief Director
Consumer Compliance Unit
Commissioner of Banks
One South Station
Boston, MA 02110

RE: Letter Dated October 2, 2006 – Lustig, Glaser & Wilson, P.C.

Dear Ms. Doyle:

I am writing in response to the certified letter numbered 7006 0100 0005 0893 3703, dated October 2, 2006 from Steven L. Antonakes, Commissioner of Banks, directing that Lustig, Glaser & Wilson, P.C.:

“immediately cease engaging in unlicensed or unauthorized debt collection activity in Massachusetts until such time as you have either (1) obtained a license through the Division’s normal application process; or (2) demonstrated in writing why you are not subject to the Statutes and Regulations to the satisfaction of the Division.”

Please be advised that Lustig, Glaser & Wilson, P.C. is **not** a debt purchaser. Never, since its incorporation in 1992, has Lustig, Glaser & Wilson, P.C. ever engaged in the business of debt purchasing as defined by the applicable Statutes and Regulations.

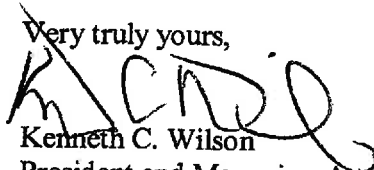
Additionally, Lustig, Glaser & Wilson, P.C. is a law firm and as such is subject to the regulation of the Supreme Judicial Court, NOT the Division of Banks. For your review I have enclosed copies of our Articles of Organization, a current print screen of the information relating to Lustig, Glaser & Wilson, P.C. from the Secretary of the Commonwealth’s website, a copy of the Board of Bar Overseer’s information from the Board’s website showing that the two shareholders of Lustig, Glaser & Wilson, P.C. (Ronald E. Lustig – 50% and Kenneth C. Wilson – 50%) are both attorneys in good standing, admitted to the practice of law in the Commonwealth.

Finally, I direct your attention to the Division’s own Regulations, specifically 209 CMR 18.02, which provides an exemption for “attorneys-at-law collecting a debt on behalf of a client” from the definition of “Debt Collector” as used in said Regulation.

Following your review of the enclosed materials would you be so kind as to provide me with your decision, in writing, regarding our claim of exemption from (or the non-applicability of) the Statutes and Regulations referred to in Commissioner

Antonakes' letter dated October 2, 2006. In the event additional information is required for you to complete your review, kindly contact me immediately at (781) 449-3000 ext. 102 or by e-mail at kcwilson@lgw.com.

Very truly yours,



Kenneth C. Wilson
President and Managing Attorney

The Commonwealth of Massachusetts

OFFICE OF THE MASSACHUSETTS SECRETARY OF STATE
MICHAEL JOSEPH CONNOLLY, Secretary

ONE ASHBURTON PLACE, BOSTON, MASSACHUSETTS 02108

ARTICLES OF ORGANIZATION-PROFESSIONAL CORPORATION (Under G.L. Ch. 156A)

ARTICLE I

The name of the corporation is: (see Section 8)

Lustig, Glaser & Wilson, P.C.

ARTICLE II

The purpose for which the corporation is formed and the specific type(s) of professional service to be rendered by the corporation are as follows: (see Sections 2(b) and 3)

To engage in the general practice of law and to render any and all services incidental or ancillary to any aspect of such services including, without limitation, the following: consulting and rendering legal advice or opinions on or with respect to any cause or matter whatsoever, including laws, statutes, rules, regulations, contracts, legal principles and other documents, actions or relationships having legal effect or significance; drafting documents and opinions for the purpose of implementing such advice, representation and arrangements; preparing and managing the prosecution or defense of causes in courts or before regulatory agencies or other tribunals and representation of clients in and before such courts of law and equity, regulatory agencies or other tribunals; and to examine and report generally with respect to the public record as maintained by the Courts of the Commonwealth or other jurisdictions, Registries of Deeds and act on behalf of the public who may engage the Corporation for such purposes.

The Corporation shall have and enjoy all the powers and privileges permitted of or extended to business corporations organized under G.L. Chapter 156B, except as may be inconsistent with the provisions of G.L. Chapter 156A, and may own, lease, manage, let, sell, hold, mortgage, convey or otherwise dispose of real and personal property necessary or appropriate for the rendering of professional legal services to the public, and may invest its funds in real estate, mortgages, stocks, bonds or any other type of investment with power to pledge, mortgage and convey the same as may be necessary or convenient.

The Corporation shall have the power and authority to do, take or cause to be taken any and all acts and things necessary or incidental to the foregoing purposes subject to and consistent with the provisions of G.L. Chapter 156A, and shall have authority to open and maintain bank accounts, including IOLTA accounts, so-called, for the management and disbursement of clients' funds.

92-155040

NOTE: If the space provided under any article or item on this form is insufficient, additions shall be set forth on a separate 8 1/2 x 11 sheets of paper leaving a left hand margin of at least 1 inch for binding. Additions to more than one article may be continued on a single sheet so long as each article requiring such addition is clearly indicated.

All references to Sections are to Sections of Mass. G.L. Chapter 156A

Examiner

Name
Approved

C
P
M
R.A.

P.C.

...classes of stock and the total number of shares and par value, if any, of each type and class of stock which the follows:

WITHOUT PAR VALUE STOCKS

TYPE	NUMBER OF SHARES
COMMON:	15,000
PREFERRED:	None

WITH PAR VALUE:

TYPE	NUMBER
COMMON:	None
PREFERRED:	None

ARTICLE IV

If more than one class of stock is authorized, state a distinguishing designation for each class. Prior to the issuance of any shares are outstanding, the corporation must provide a description of the preferences, voting powers, qualifications, and special or class and of each other class of which shares are outstanding and of each series then established with any class.

ARTICLE V

The restrictions, if any, imposed by the Articles of Organization upon the transfer of shares of stock of any class are as follows:

All shares issued by the Corporation shall be subject to the restrictions which are set forth in G.L. Chapter 156A governing Professions and to the Rules of the Supreme Judicial Court which may govern issuance and eligibility for ownership of shares in the Corporation. In no event shall any share of stock of the Corporation be issued or transferred to any person other than the Corporation or to any person who is duly licensed by the Supreme Judicial Court to practice law in the Commonwealth of Massachusetts and who remains in good standing before the Court.

All shareholders of the Corporation shall, by becoming shareholders, be subject to the provisions of S.J.C. Rule 3:06 (or as the same may from time to time be amended or succeeded by the Supreme Judicial Court).

Any sale of shares of stock in the Corporation to any person who is not already a stockholder in the Corporation must be approved in advance by the written consent of the holders of not less than 55 percent of the outstanding shares of stock issued by the Corporation. [G.L. Chapter 156A, Sec. 10C]

Certificates issued representing shares of the Corporation shall be subject to restrictions on transfer imposed by G.L. Chapter 156A as well as to the applicable Rules of the Supreme Judicial Court and otherwise as set forth in the Articles of Organization, as the same may from time to time be amended.

See "Attachment 5A" annexed and incorporated herewith.

ARTICLE VI

Other lawful provisions, if any, for the conduct and regulation of business and affairs of the corporation, for its voluntary dissolution or for regulating the powers of the corporation, or of its directors or stockholders, or of any class of stockholders: (If there are no provisions, see "Attachment 6A" annexed and incorporated herewith.)

See "Attachment 6A" annexed and incorporated herewith.

Note: The preceding six (6) articles are considered to be permanent and may ONLY be changed by filing appropriate Articles of Amendment.

COMMONWEALTH OF MASSACHUSETTS

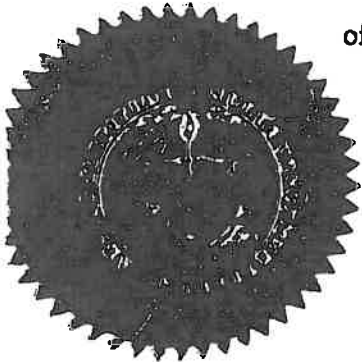
SUFFOLK, SS.

BE IT REMEMBERED, that at the Supreme Judicial Court holden at Boston within and for said County of Suffolk, on the eighteenth day of December A. D. 19 75 , said Court being the highest Court of Record in said Commonwealth:

RONALD E. LUSTIG

being found duly qualified in that behalf, and having taken and subscribed the oaths required by law, was admitted to practice as an Attorney, and, by virtue thereof, as a Counsellor at Law, in any of the Courts of the said Commonwealth: that said Attorney is at present a member of the Bar, and is in good standing according to the records of this Court. *

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this third day of February in the year of our Lord nineteen hundred and ninety-two.



Richard J. Rouse

RICHARD J. ROUSE, Clerk

*Records of private discipline, if any, such as a private reprimand imposed by the Board of Bar Overseers or by any court, are not covered by this certification.

COMMONWEALTH OF MASSACHUSETTS

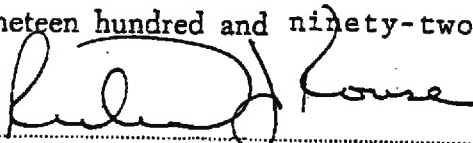
SUFFOLK, SS.

BE IT REMEMBERED, that at the Supreme Judicial Court holden at Boston within and for said County of Suffolk, on the twenty-eighth day of November A. D. 19 69 , said Court being the highest Court of Record in said Commonwealth:

DAVID M. GLASER

being found duly qualified in that behalf, and having taken and subscribed the oaths required by law, was admitted to practice as an Attorney, and, by virtue thereof, as a Counsellor at Law, in any of the Courts of the said Commonwealth: that said Attorney is at present a member of the Bar, and is in good standing according to the records of this Court. *

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this third day of February in the year of our Lord nineteen hundred and ninety-two.



RICHARD J. ROUSE, Clerk



*Records of private discipline, if any, such as a private reprimand imposed by the Board of Bar Overseers or by any court, are not covered by this certification.

COMMONWEALTH OF MASSACHUSETTS

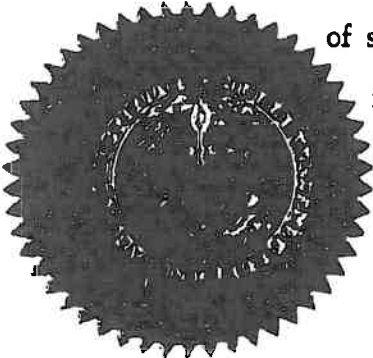
SUFFOLK, ss.

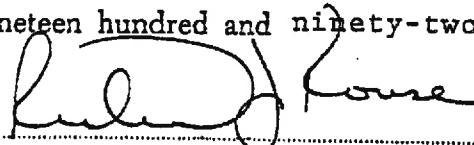
BE IT REMEMBERED, that at the Supreme Judicial Court holden at Boston within and for said County of Suffolk, on the twenty-first day of December A. D. 19 81 , said Court being the highest Court of Record in said Commonwealth:

KENNETH C. WILSON

being found duly qualified in that behalf, and having taken and subscribed the oaths required by law, was admitted to practice as an Attorney, and, by virtue thereof, as a Counsellor at Law, in any of the Courts of the said Commonwealth: that said Attorney is at present a member of the Bar, and is in good standing according to the records of this Court. *

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this third day of February in the year of our Lord nineteen hundred and ninety-two.





RICHARD J. ROUSE, Clerk

*Records of private discipline, if any, such as a private reprimand imposed by the Board of Bar Overseers or by any court, are not covered by this certification.

ATTACHMENT 5A

In case a stockholder desires to sell his shares of stock first offer them for sale to the remaining stockholders, in the intention to give them a preference in the purchase of shares, and any attempted sale in violation of this provision shall be null and void.

ATTACHMENT 6A

6. Other lawful provisions, if any, for the conduct or regulation of the business and affairs of the Corporation for voluntary dissolution, or for limiting, defining, regulating powers of the corporation, or of its director stockholders, or any class of stockholders:

(a) The directors may make, amend, or repeal these Articles or the by-laws in whole or in part, except with respect to any provision of such by-laws which by law or these Articles or the by-laws requires action by the stockholders.

(b) Meetings of the stockholders of the corporation shall be held anywhere in the United States.

(c) The corporation shall have the power to be a partner in any business enterprise which this corporation would have the power to conduct by itself.

(d) The corporation, by vote of at least 51 percent of the shares outstanding and entitled to vote thereon (or if there are two or more classes of stock entitled to vote as separate classes, then by vote of not less than 51 percent of each such class of stock outstanding), may, subject to (and to the extent not inconsistent with) the provisions of G.L. Chapter 156A, (1) authorize any amendment to its Articles of Organization pursuant to Section 71 of Chapter 156B of the Massachusetts General Laws, as amended from time to time, (ii) authorize the sale, lease or exchange of all or substantially all of its property and assets, including its goodwill, pursuant to Section 75 of Chapter 156B of the Massachusetts General Laws, as amended from time to time and (iii) approve an agreement of merger or consolidation pursuant to Section 78 of Chapter 156B of the Massachusetts General Laws, as amended from time to time.

ARTICLE VII

The information contained in ARTICLE VII is NOT a PERMANENT part of the Articles of Organization and may be changed ONLY by filing the appropriate form provided therefor.

- a. The post office address of the corporation IN MASSACHUSETTS is: 175 Highland Avenue, Needham, MA 02194
- b. The name and residential address of each of the initial directors, shareholders and officers of the corporation are as follows: (see Section 7(b))

	NAME	RESIDENCE
President:	Kenneth C. Wilson	34 Bradford Road, Natick, MA 01760
Treasurer:	Ronald E. Lustig	6 Brigham Court, Natick, MA 01760
Clerk:	Ronald E. Lustig	6 Brigham Court, Natick, MA 01760
Directors:	Ronald E. Lustig	6 Brigham Court, Natick, MA 01760
	Kenneth C. Wilson	34 Bradford Road, Natick, MA 01760
Shareholders:	Ronald E. Lustig	6 Brigham Court, Natick, MA 01760
	David M. Glaser	618 Newton Street, Chestnut Hill, MA 02167
	Kenneth C. Wilson	34 Bradford Road, Natick, MA 01760

- c. The fiscal year of the corporation shall end on the last day of the month of: December
- d. The name and BUSINESS address of the RESIDENT AGENT of the corporation, if any, is: None appointed

PLEASE INSERT HERE the required certificate(s) from the appropriate regulatory board(s) Section 7(b)

ARTICLE VIII

The effective date of organization of the corporation shall be the date approved and filed by the Secretary of the Commonwealth. If a later effective date is desired, specify such date which shall not be more than thirty days after the date of filing.

LATER EFFECTIVE DATE:

ARTICLE IX

By-laws of the corporation have been duly adopted and the president, treasurer, clerk and directors whose names are set forth above, have been duly elected.

IN WITNESS WHEREOF and under the pains and penalties of perjury, I/WE, whose signature(s) appear below as incorporator(s) and whose names and business or residential address(es) ARE CLEARLY TYPED OR PRINTED beneath each signature do hereby associate with the intention of forming this corporation under the provisions of General Laws Chapter 156B and do hereby sign these Articles of Organization as incorporator(s) this 29th day of February 1992

Ronald E. Lustig

Ronald E. Lustig
6 Brigham Court, Natick, MA

NOTE: If an already-existing corporation is acting as incorporator, type in the exact name of the corporation, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said corporation and the title he/she holds or other authority by which such action is taken.

1992 JUN -3 AM 9:53

THE COMMONWEALTH OF MASSACHUSETTS

REGISTRATION DIVISION

PROFESSIONAL ORGANIZATION

ARTICLES OF ORGANIZATION

GENERAL LAWS, CHAPTER 156A, SECTION 7

I hereby certify that, upon an examination of these articles of organization, duly submitted to me, it appears that the provisions of the General Laws relative to the organization of corporations have been complied with, and I hereby approve said articles; and the filing fee in the amount of \$ 200 - having been paid, said articles are deemed to have been filed with me this

day of JUNE 3RD 19 92
Michael Joseph Connolly

Effective date

MICHAEL JOSEPH CONNOLLY
Secretary of State

FILING FEE: 1/10 of 1% of the total amount of the authorized capital stock, but not less than \$200.00. For the purpose of filing, shares of stock with a par value less than one dollar or no par stock shall be deemed to have a par value of one dollar per share.

PHOTOCOPY OF ARTICLES OF ORGANIZATION TO BE SENT

RONALD E. LUSTIG

LUSTIG, GLASER & WILSON
175 HIGHLAND AVENUE
NEEDHAM HEIGHTS, MA 02194

Telephone:

(617) 455-6666



**The Commonwealth of Massachusetts
William Francis Galvin**

Secretary of the Commonwealth
One Ashburton Place, Boston, Massachusetts 02108-1512
Telephone: (617) 727-9640

LUSTIG, GLASER & WILSON, P.C. Summary Screen



Help with this form

Request a Certificate

The exact name of the Professional Corporation: LUSTIG, GLASER & WILSON, P.C.

Entity Type: Professional Corporation

Identification Number: 043155826

Old Federal Employer Identification Number (Old FEIN): 000396659

Date of Organization in Massachusetts: 06/03/1992

Current Fiscal Month / Day: 12 / 31

Previous Fiscal Month / Day: 01 / 01

The location of its principal office in Massachusetts:

No. and Street: 140 KENDRICK STREET

BUILDING C

City or Town: NEEDHAM

State: MA Zip: 02494 Country: USA

If the business entity is organized wholly to do business outside Massachusetts, the location of that office:

No. and Street:

City or Town:

State:

Zip:

Country:

The name and address of the Registered Agent:

Name: RONALD E. LUSTIG

No. and Street: C/O LUSTIG, GLASER & WILSON, P.C.

140 KENDRICK STREET, BUILDING C

City or Town: NEEDHAM

State: MA Zip: 02494 Country: USA

The officers and all of the directors of the corporation:

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code	Expiration of Term
PRESIDENT	KENNETH C. WILSON	274 PARKER STREET NEWTON, MA 02459 USA	06/30/2004
TREASURER	RONALD E. LUSTIG	6 BRIGHAM COURT	06/30/2004

		NATICK, MA 01760 USA	
SECRETARY	RONALD E. LUSTIG	6 BRIGHAM COURT NATICK, MA 01760 USA	06/30/2004
DIRECTOR	RONALD E. LUSTIG	6 BRIGHAM COURT NATICK, MA 01760 USA	02/02/2004
DIRECTOR	KENNETH C. WILSON	274 PARKER STREET NEWTON, MA 02459 USA	02/02/2004

business entity stock is publicly traded:

The total number of shares and par value, if any, of each class of stock which the business entity is authorized to issue:

Class of Stock	Par Value Per Share Enter 0 if no Par	Total Authorized by Articles of Organization or Amendments		Total Issued and Outstanding Num of Shares
		Num of Shares	Total Par Value	
CNP	\$0.00000	15,000	\$0.00	1,000

Consent
 Manufacturer
 Confidential Data
 Does Not Require Annual Report
 Partnership
 Resident Agent
 For Profit
 Merger Allowed

Select a type of filing from below to view this business entity filings:

- ALL FILINGS
- Annual Report - Professional
- Application For Revival
- Articles of Amendment
- Articles of Consolidation - Foreign and Domestic

Comments



The Commonwealth of Massachusetts
William Francis Galvin

Minimum Fee: \$100.00

Secretary of the Commonwealth
One Ashburton Place, Boston, Massachusetts 02108-1512
Telephone: (617) 727-9640

Annual Report - Professional
(General Laws, Chapter 156D)

Federal Employer Identification Number: 043155826 (must be 9 digits)

1. The exact name of the business entity is: LUSTIG, GLASER & WILSON, P.C.

2. The Corporation is organized under the laws of: State: MA Country:

3.4. The street address of the corporation registered office in the commonwealth and the name of the registered agent at that office:

Name: RONALD E. LUSTIG
No. and Street: C/O LUSTIG, GLASER & WILSON, P.C.
140 KENDRICK STREET, BUILDING C
City or Town: NEEDHAM State: MA Zip: 02494 Country: USA

5. The street address of the corporation's principal office is:

No. and Street: 140 KENDRICK STREET
BUILDING C
City or Town: NEEDHAM State: MA Zip: 02494 Country: USA

6. Provide the name and business street address of the officers and of all the directors of the corporation:

(A president, treasurer, secretary and at least one director are required.)

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
PRESIDENT	KENNETH C. WILSON	274 PARKER STREET NEWTON, MA 02459 USA
TREASURER	RONALD E. LUSTIG	6 BRIGHAM COURT NATICK, MA 01760 USA
SECRETARY	RONALD E. LUSTIG	6 BRIGHAM COURT NATICK, MA 01760 USA
DIRECTOR	KENNETH C. WILSON	274 PARKER STREET NEWTON, MA 02459 USA
DIRECTOR	RONALD E. LUSTIG	6 BRIGHAM COURT NATICK, MA 01760 USA

7. Briefly describe the professional services rendered by the corporation:

PRACTICE OF LAW - ATTORNEYS

8. The capital stock of each class and series is:

Class of Stock	Par Value Per Share Enter 0 if no Par	Total Authorized by Articles of Organization or Amendments		Total Issued and Outstanding
		Num of Shares	Total Par Value	Num of Shares
CNP	\$0.00000	15,000	\$0.00	1,000

9. Check here if the stock of corporation is publicly traded:


10. Date of the end of the fiscal year is: 12/31/2005

11. The names and residential addresses of all *shareholders*, whether individuals, partners, or Business Entities are:

Name	Address (no PO Box) Address, City or Town, State, Zip Code
RONALD E. LUSTIG	6 BRIGHAM COURT NATICK, MA 01760 USA
KENNETH C. WILSON	274 PARKER STREET NEWTON, MA 02459 USA


I, RONALD E. LUSTIG, its OTHER OFFICER

the undersigned, hereby certify, pursuant to Massachusetts General Laws, Chapter 156A, Section 18, that the above-listed shareholders, and all the partners of a general partnership which is a shareholder of the business entity, are duly licensed to render one or more professional services for which the business entity was organized, or are professional business entities authorized to render such professional services, and that a copy of this report is being sent to the appropriate regulatory board. I hereto sign my name on this 23 Day of January, 2006.

<p>Massachusetts Board of Bar Overseers of the Supreme Judicial Court 99 High Street Boston, Ma. 02110 Attorney Status Report</p>	
<p>Kenneth C Wilson Lustig, Glaser & Wilson, P.C. 781-449-3000 P.O. Box 9127 Needham MA 02492-9127 Admitted to the bar on 1981-12-21 Current status is Active Next Registration : June</p>	<p>Full office addresses for active status attorneys only.</p>
<p>This attorney has no record of public discipline.</p>	<p>Data as of 2006-10-03</p>

Click HERE to SEARCH AGAIN!

or **HERE to return to the main page.**

<p>Massachusetts Board of Bar Overseers of the Supreme Judicial Court 99 High Street Boston, Ma. 02110 Attorney Status Report</p>	
<p>Ronald E Lustig Lustig, Glaser & Wilson, P.C. 781-449-3000 PO Box 9127 Needham MA 02492-9127 Admitted to the bar on 1975-12-18 Current status is Active Next Registration : December</p>	<p>Full office addresses for active status attorneys only.</p>
<p>This attorney has no record of public discipline.</p>	<p>Data as of 2006-10-03</p>

Click HERE to SEARCH AGAIN!

or HERE to return to the main page.

From: Origin ID: (781)449-3000
Ronald Lusig
LUSTIG, GLASER & WILSON, P.C
140 Kendrick St
Building C - 3rd Floor
Needham, MA 02494

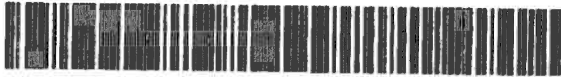


CL889148/12/23

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Act/Wgt: 1 LB
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Account#: S *****

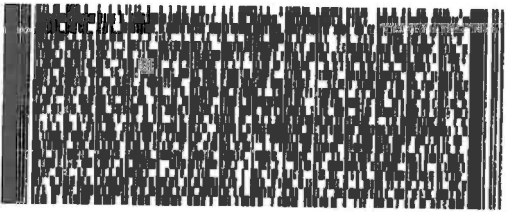
COPY

REF:



Delivery Address Bar Code

SHIP TO: (617)956-1500 **BILL SENDER**
Deborah Doyle
Division of Banks
Consumer Compliance Unit
One South Station
Boston, MA 02110



STANDARD OVERNIGHT

WED

TRK# 7900 8475 5267

FORM 0201

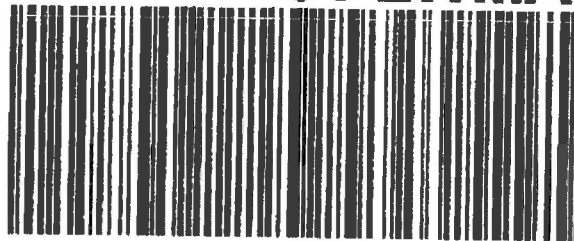
Deliver By: 04OCT06

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02110 -MA-US

01 LWMA



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1. Use the 'Print' feature from your browser to send this page to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

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Detailed Results

Print

Tracking number	790084755267	Destination	Boston, MA
Signed for by	R.POLLEYS	Delivered to	Receptionist/Front Desk
Ship date	Oct 3, 2006	Service type	Standard Envelope
Delivery date	Oct 4, 2006 9:27 AM	Weight	0.5 lbs.
Status	Delivered		

Date/Time	Activity	Location	Details
Oct 4, 2006	9:27 AM Delivered	Boston, MA	
	8:14 AM On FedEx vehicle for delivery	SOUTH BOSTON, MA	
	8:12 AM At dest sort facility	EAST BOSTON, MA	
Oct 3, 2006	11:43 PM At local FedEx facility	EAST BOSTON, MA	
	9:04 PM At dest sort facility	EAST BOSTON, MA	
	8:33 PM Left origin	NEEDHAM, MA	
	7:21 PM Picked up	NEEDHAM, MA	
	1:46 PM Package data transmitted to FedEx		

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Your Name:

Your Email Address:

Email address	Language	Exception updates	Delivery updates
	English		<input type="checkbox"/>
	English		<input type="checkbox"/>
	English		<input type="checkbox"/>
	English		<input type="checkbox"/>

Select format: HTML Text Wireless

Add personal message:

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LUSTIG, GLASER & WILSON, P.C. *Attorneys at Law*

P.O. Box 549287, Waltham, MA 02454-9826 • Tel (781) 449-3000 • Fax (781) 449-6600

September, 19, 2013

Division of Banks
1000 Washington Street, 10th Floor
Boston, MA 02118-6400

RE: Opinion Letter Request – Lustig, Glaser & Wilson, P.C.

Dear Sir or Madam:

I am writing on behalf of my law firm, Lustig, Glaser & Wilson, P.C. (hereinafter sometimes referred to as "LGW") seeking an opinion from the Division of Banks as to whether or not Lustig, Glaser & Wilson, P.C. is required to obtain a so-called "Debt Collection License" from the Division of Banks in order to engage in consumer debt collection activity in the Commonwealth. While I believe we fall squarely within the exemption for Massachusetts licensed attorneys set forth at 209 CMR 18:02(g) as clarified in the Division's Opinion Letter 06-059 issued on October 13, 2006 we find ourselves constantly challenged on the issue of the need for a license under the so-called "Debt Collection Law" (collectively MGL chapter 93 sections 24-28 and 209 CMR 18.00 et seq). We therefore seek clarification regarding the licensing requirements of the Debt Collection Law as they apply to our law firm so we can be certain as to what is expected of us and correctly respond to future challenges.

By way of background, Lustig, Glaser & Wilson, P.C. is a law firm, incorporated on June 3, 1992 as a professional corporation, pursuant to the laws of the Commonwealth of Massachusetts (see screenshot included herewith showing LGW's corporate information as it appears on the public website of the Corporations Division of the Secretary of the Commonwealth). LGW maintains a single office located at 245 Winter Street, Waltham, Massachusetts where it employs approximately 100 employees, including 22 attorneys. All attorneys employed by LGW are licensed to practice law in Massachusetts and are in good standing with the bar.

Lustig, Glaser & Wilson, P.C.'s law practice is overwhelmingly concentrated in the area of consumer debt collection. All such work is undertaken on behalf of firm clients. As a result, LGW falls within the definition of a "debt collector" as such term is defined by both the Fair Debt Collection Practices Act (15 USC s. 1692(a)(6)) and the Debt Collection Regulations of the Office of the Massachusetts Attorney General (940 CMR 7.03).

Lustig, Glaser & Wilson, P.C. represents original creditors, collection agencies and both active and passive debt purchasers. Neither LGW nor any of the attorneys or other employees employed by LGW has an ownership interest in any of the consumer debt the firm seeks to collect.


When engaging in debt collection activity Lustig, Glaser & Wilson, P.C. communicates with consumers and/or their attorneys as the attorney for the owner of the defaulted debt. The firm's

collection activities consist of telephone calls to consumers, written communication directed to consumers and, when authorized by the owner of the debt, litigation in the Massachusetts trial court system. When litigation is filed it is always filed in the name of the true owner of the debt. In such actions LGW always identifies itself as the attorney for the owner of the debt and not as the plaintiff and/or the owner of the debt.

Based on the information contained herein, which fully and accurately discloses Lustig, Glaser & Wilson, P.C.'s debt collection activities, would you kindly provide us with the Division's opinion as to whether or not Lustig, Glaser & Wilson, P.C. is required by the Debt Collection Law to obtain a license from and post a bond with the Division of Banks in order to continue collecting consumer debt on behalf of firm clients in the Commonwealth.

Kindly let me know if any additional information or documentation is required for your consideration. We look forward to your response.

Very truly yours,



Kenneth C. Wilson - Managing Attorney / President

Lustig, Glaser & Wilson, P.C.

781-514-1526 (Direct)

kcwilson@lgw.com

From: Ken Wilson <kcwilson@lgw.com>
Sent: Monday, October 21, 2013 9:49 AM
To: neil.tobin@state.ma.us
Subject: Opinion Letter Request - Lustig, Glaser & Wilson, P.C.

Dear Attorney Tobin,

As requested during our discussion of earlier today, I am writing to provide you with some additional information regarding Lustig, Glaser & Wilson, P.C., its consumer debt collection activities and, more specifically, the functions of its non-attorney staff.

As a preliminary matter it is important to understand that all activity of the firm's non-attorney employees is undertaken under the direction and supervision of the firm's attorneys. Lustig, Glaser & Wilson, P.C. operates out of a single location and functions as a true law firm, not as a collection agency. We do not have a collection unit that is independent from the law firm or that acts as a "feeder" for the law firm. Accounts are placed by the firm's various clients with the firm (not with individual attorneys within the firm) and, at the time of placement, are approved for litigation by the firm's clients.

In performing collection litigation services for our clients, both attorney and non-attorney employees of the firm make and receive telephone calls to and from consumers. Calls made or received by non-attorney staff are done so at the direction and under the supervision of the firm's attorneys. Further, calls initiated or received by non-attorney staff members are frequently escalated to the firm's attorneys as necessary.

The firm also sends letters to consumers when providing its collection litigation services to its clients. Letters to consumers are sent pre-suit, post-suit and post-judgment. All letters used were created by firm attorneys and the logic / workflow used by the firm's software and procedures to send written communication to consumers was designed by the firm's managing attorney. Non-attorney employees cannot create or initiate the sending of written communication to consumers.

Written communication is frequently received by the firm from consumers. While non-attorney employees frequently review written communication received by the firm, (i.e. do the initial intake and recording of the communication received in the consumer's account history) such written communication is forwarded to one of the firm's attorneys for review and response. Non-attorney staff does not initiate written communication with consumers. Written communication to consumers is handled by one of the firm's attorney staff.

A significant number of the firm's non-attorney staff is devoted to directly supporting the firm's litigation efforts. Such non-attorney employee roles include litigation document review and preparation, interaction with personnel at the various state courts, the county deputy sheriffs and town constables, and other similar functions supporting the firm's consumer debt collection litigation efforts. As is the case with all firm employees, our non-attorney litigation support staff functions at the direction and under the supervision of the firm's attorneys.

While the attorney exemption articulated in the Division's 2006 Opinion Letter clearly applies to attorneys licensed in Massachusetts, we believe the exemption also applies to a law firm such as Lustig, Glaser & Wilson, P.C. since, as a practical matter, the law firm is the legal entity through which the exempt attorneys operate. Lustig, Glaser & Wilson, P.C. is a true debt collection law firm and not a collection agency or a debt purchaser. Finally, as you know, Massachusetts attorneys and the firm's in which they operate are subject to the supervision of the Commonwealth's Supreme Judicial Court and those of us who engage in consumer debt collection must also abide by the debt collection regulations promulgated by the Massachusetts Attorney General.

Please let me know if any additional information is needed.

Kenneth C. Wilson – Managing Attorney



Kenneth C. Wilson
Managing Attorney | Lustig, Glaser & Wilson, P.C.
P 781.514.1526 | M 617.216.8937 | F 781.449.6600
245 Winter Street | Suite 300 | Waltham, MA 02451



THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF BANKS
1000 Washington Street, 10th Floor, Boston, Massachusetts 02118

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

JOHN C. CHAPMAN
UNDERSECRETARY

DAVID J. COTNEY
COMMISSIONER OF BANKS

November 2, 2015

Kenneth C. Wilson
Managing Attorney/President
Lustig, Glaser & Wilson, P.C.
P.O. Box 549287
Waltham, MA 02454-9826

Dear Mr. Wilson:

This letter is in response to your correspondence dated September 19, 2013 and October 21, 2013 to the Division of Banks (Division) in which you request an opinion relative to whether the law firm of Lustig, Glaser and Wilson, P.C. (LGW) is required to obtain a debt collector license from the Division in order to engage in consumer debt collection activity in the Commonwealth. This matter has also been discussed with you in a telephone conference with staff of the Division. I regret the delay in this response.

In your letters, you state that LGW's law practice is overwhelmingly concentrated in the area of consumer debt collection on behalf of its clients. It employs approximately 100 employees, including 22 attorneys licensed to practice law in Massachusetts. All of LGW's attorneys are in good standing with the Massachusetts bar. In performing debt collection services, both attorney and non-attorney employees make and receive telephone calls to and from consumers for the purpose of attempting to collect debts owed to LGW's clients. Telephone calls made by non-attorney staff are described as being conducted at the direction of, and under the supervision of, the firm's attorneys. Calls initiated or received by non-attorney staff may be escalated to LGW's attorneys, as necessary.

All written communication to debtors is created by the firm's attorneys. Non-attorneys cannot create or initiate the sending of written communication to consumers. Written communication received from consumers is forwarded to an LGW attorney for review and response. A significant portion of LGW's non-attorney staff is also dedicated to supporting LGW's litigation efforts. Non-attorney litigation support staff functions at the direction and under the supervision of LGW's attorneys. Based on the facts as presented in your correspondence dated September 19, 2013 and October 21, 2013 relative to the operations of LGW, you ask that the Division confirm that the firm is exempt from being licensed as a debt collector in the Commonwealth.

Massachusetts General Laws chapter 93, section 24A prohibits any person from, directly or indirectly, engaging in the business of a debt collector without first obtaining a license from the Division. Massachusetts General Laws chapter 93, section 24 defines a "debt collector" as, "any person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of a debt, or who regularly collects or attempts to collect, directly or indirectly, a debt owed or due or asserted to be owed or due another." However, the statutory definition excludes attorneys-at-law collecting a debt on behalf of a client from the definition of "debt collector."

Under 209 CMR 18.02, the attorney-at-law exemption is applicable to "attorneys-at-law *licensed to practice law in the Commonwealth* who are collecting a debt on behalf of a client." (emphasis added). On October 13, 2006, the Division issued Opinion 06-059 pertaining to the attorney-at-law exclusion and applicability of the debt collection law to attorneys. The 2006 advisory opinion was referenced in your letter dated September 19, 2013. In issuing Opinion 06-059, the Division stated that, "[a]ttorneys not licensed to practice law in the Commonwealth who regularly engage in or whose principal purpose is debt collection, must obtain a license as a debt collector and will be subject to the provisions of the Debt Collection Law in the Commonwealth. In that situation such an attorney, not authorized to practice in the Commonwealth, collecting debt would be conducting such business as a debt collector and not as an attorney." Attorneys licensed to practice law in the Commonwealth are subject to the Supreme Judicial Court's Rules of Professional Conduct and the disciplinary oversight of the Board of Bar Overseers.

While the Division has considered the application of the attorney-at-law exception to attorneys licensed in other jurisdictions, the Division has not yet considered whether the "attorney-at-law" exception can exempt a law firm which is primarily engaged in consumer debt collection activities and comprised of attorneys licensed to practice in Massachusetts from the debt collector licensing requirements outlined in Massachusetts General Laws chapter 93, section 24A.¹

After a careful review of the facts you have presented in your correspondence, as well as the provisions of Massachusetts General Laws chapter 93, sections 24-28, inclusive, and the Division's implementing regulation, 209 CMR 18.00 *et seq*, the Division has determined that the attorney-at-law exemption from debt collector licensing requirements provides a narrow exception for Massachusetts licensed attorneys engaged in debt collection activities. The language in the attorney-at-law exemption and the position presented in Opinion 06-059 are illustrative of the limitations upon the attorney-at-law exemption. Specifically, the Division now clarifies that the applicability of the exemption to Massachusetts law firms turns on the extent of the debt collection activity conducted by the firm.

In concluding that the amount of a law firm's debt collection activity dictates whether it is subject to Massachusetts debt collector licensing requirements, the Division first considered that the definition of a debt collector in Massachusetts General Laws chapter 93, section 24 is quite expansive as it encompasses "any person . . . in any business the principal purpose of which is the collection of a debt, or who *regularly collects* or attempts to collect . . . a debt owed or . . . due [to] another." (emphasis added). The term "regular" means "steady, or uniform in course, practice or occurrence; not subject to unexplained or irrational variation." *Black's Law Dictionary* 1285 (6th ed. 1990). Thus, the plain language of the debt collector definition includes, and requires licensure of, those individuals or entities that frequently or consistently engage in debt collection activities, rather than those who collect debts on an occasional or sporadic basis.

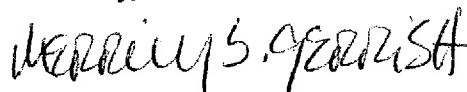
¹ The term "law firm" in this opinion includes one or more attorneys, regardless of corporate structure.

Conversely, the language in the "attorney-at-law" exclusion from the debt collector definition in Massachusetts General Laws chapter 93, section 24 is quite limited. Specifically, "attorney-at-law" exclusion applies to "attorneys collecting a debt on behalf of a client" rather than attorneys who *regularly* collect debts on behalf of a client. M.G.L. c. 93 § 24(g) (emphasis added). The plain language of the statutory exclusion, therefore, does not exempt attorneys whose principal purpose is the collection of debts or who regularly collect debts on behalf of clients. Accordingly, it is the Division's position that the absence of the broad language such as "regularly collects" in the attorney-at-law exemption indicates that the attorney-at-law exemption does not permit law firms comprised of Massachusetts-licensed attorneys to engage in regular debt collection activities without obtaining a debt collector license. Going forward, the Division will require licensure of law firms where the firm's principal purpose is the collection of debts, or where the firm regularly collects or attempts to collect debts owed or asserted to be owed to another.² The Division will reach its determination on a case-by-case basis, taking into consideration various factors, including, but not limited to: (1) the relative portion of the firm practice that involves the collection of debts; (2) whether, and to what extent, the firm utilizes non-attorneys to engage in debt collection activity, and whether such non-attorney work is directly supervised by attorneys; and (3) the extent of the firm's debt collection work that involves collecting debts through traditional legal activities (e.g. filing complaints) compared to its debt collection work through traditionally non-legal activities (e.g. sending letters or calling debtors).

In your correspondence with the Division, you described LGW as a firm overwhelmingly engaged in the area of consumer debt collection on behalf of its clients. Per your representations about the extent of LGW's debt collection activities, the Division concludes that LGW's principal purpose is the collection of debts and therefore its activities are beyond the scope of the attorney-at-law exemption. Therefore, LGW is required to be licensed as a debt collector in the Commonwealth under the provisions of Massachusetts General Laws chapter 93, Section 24, through 28, inclusive, as well as the Division's regulation 209 CMR 18.00 *et seq.*

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,



Merrily S. Gerrish
Deputy Commissioner of Banks
and General Counsel

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² The Division makes clear that the debt collector licensing requirement for law firms comprised of Massachusetts-licensed attorneys, as set forth in this Opinion, is a new requirement that will not be imposed retroactively on affected law firms. Furthermore, the Division recognizes that immediate compliance by affected law firms is not feasible. For this reason, the Division will not enforce the foregoing licensure requirements and will not consider affected law firms to be in violation of the licensing requirements if those firms obtain debt collector licenses within six months of the date of this Opinion.