



## AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration between

Case Number: 01-20-0000-2900

Adam Veltri

-vs-

Americor Funding, Inc.

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### INTERIM AWARD OF ARBITRATOR

I, Julie M. Williamson, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, each represented by counsel, at an evidentiary hearing held on September 15, 2020, do hereby issue this INTERIM AWARD as follows:

#### **Background**

1. Beginning with the 2008 recession, Adam Veltri (Claimant or Mr. Veltri) suffered a number of business reversals that resulted in an accumulation of sizeable credit card debt. By 2017, he was feeling overwhelmed and sought to consolidate his debt through a debt relief provider. He selected Americor Funding, Inc. (Respondent or Americor) to provide those services.
2. Mr. Veltri spoke with Americor and agreed upon a plan whereby Americor, in exchange for a fee, would negotiate on his behalf to settle his credit card debts. Under this arrangement, Mr. Veltri would not receive any further creditor calls and would not have to negotiate separate settlements himself. He would make biweekly deposits into a trust account to cover payments to settling creditors, with a goal of becoming free of the listed credit debts in approximately four years. On or about July 14, 2017, Mr. Veltri signed an Americor Debt Resolution Agreement and related documents. The Debt Resolution Agreement contains the arbitration agreement that is operative here.
3. The relationship between Mr. Veltri and Americor began well. In the first few months, Americor was able to settle several outstanding credit card balances and Mr. Veltri consistently made his biweekly payments to the trust account.
4. On or about January 25, 2018, Mr. Veltri was served with a summons in a lawsuit that American Express had filed against him in Denver County Court seeking recovery on one of the accounts that Mr. Veltri had listed with Americor. Mr. Veltri notified Americor of the lawsuit by email on February 6, 2018. Mr. Veltri testified that he was very anxious about the lawsuit and expected Americor to pursue settlement vigorously with American Express in light of the pending lawsuit.

5. Americor assigned Jessica Watkins as negotiator (or “mediator,” the term Americor uses for the Americor representative assigned to negotiate with a creditor’s attorney) on the American Express account. Ms. Watkins telephoned American Express’s counsel, the Vinci Law Office, LLC (Vinci), on Wednesday, February 7, 2018, to begin settlement negotiations. The Vinci attorney stated that there were actually two American Express accounts with unpaid balances (only one of which had been listed with Americor) and that she was only authorized to settle both at the same time. The Vinci attorney stated that the lowest she could go to settle both accounts was approximately \$11,800 payable over 18 months. In return, Ms. Watkins offered approximately \$6,200, payable over 18 months, to settle both accounts. The Vinci attorney said that she would take that offer to the client, but that she was not optimistic that it would be accepted. The Vinci attorney told Ms. Watkins to follow up with her that Friday.
6. Ms. Watkins telephoned Mr. Veltri that same day, February 7, 2018. She first confirmed that Mr. Veltri would be responding to the summons. Mr. Veltri said that he would, but that he had no defense because he did owe the money to American Express. Ms. Watkins then reported that she had talked to American Express’s counsel and had offered approximately 60% of the account balance payable over 18 months to settle the debt. Ms. Watkins did not tell Mr. Veltri: (1) that there was another unpaid American Express account and that American Express would only settle both accounts at once; (2) that American Express would settle both accounts for approximately \$11,800 payable over 18 months; or (3) that Mr. Veltri would need to have a higher balance in his trust account if he wanted to do that deal with American Express. Instead, Ms. Watkins said that she would follow up with American Express’s response to her settlement offer and would call him back. Mr. Veltri proceeded to file an answer in Denver County Court in which he essentially admitted liability.
7. There is no evidence that Ms. Watkins ever followed up with the Vinci attorney. After two changes of the Americor representative assigned to negotiate with the Vinci firm, Americor reported to Mr. Veltri on or about February 25, 2018, that “the mediator is currently working on the account.” However, Americor’s records do not indicate that any mediator had had any further contact with the Vinci firm during that time. The records then show two more changes to the internally-assigned Americor mediator.
8. Mr. Veltri called Americor again on or about March 26, 2018, to check on the status of negotiations with American Express. Having received no update, and worried about the pending lawsuit, Mr. Veltri was very frustrated and asked to speak directly to the mediator. Mr. Veltri emphasized that the mediator needed to call him back as soon as possible. Americor did not put Mr. Veltri in touch with the mediator, promising only that the “appropriate person” would contact him. On March 28, 2018, Americor internally assigned yet a different mediator to negotiate with the Vinci law firm.
9. On April 11, 2018, still having received no word from Americor, Mr. Veltri called Americor, asked to speak to the mediator, and reported that he had received correspondence indicating that the case had moved to judgment. Americor still did not connect him with the mediator.
10. A week later, on April 18, 2018, Mr. Veltri called Americor once again, upset and frustrated. He reported that judgment against him had been entered in the American Express lawsuit and that he still had not been able to speak with his Americor mediator.
11. Mr. Veltri was so frustrated with Americor that he notified Americor by email on or about April 24, 2018 that he was terminating his contract, describing Americor’s service as “abysmal.”



12. In response to the cancellation, Americor assigned Giovanni Valenzuela to speak with Mr. Veltri, apparently only to determine how Mr. Veltri wanted to handle further payments. Mr. Valenzuela called Mr. Veltri on May 1, 2018. Mr. Veltri told him of the American Express judgment and Americor's "horrific" service in not returning his calls and not allowing him to speak with the mediator. Mr. Veltri asked again to speak with the mediator. Mr. Valenzuela then placed Mr. Veltri on hold multiple times for many minutes at a time while he attempted to "retrieve more information." Mr. Veltri asked point-blank what the latest communication with the Vinci law firm had been since the only offer he knew about was made on February 7, 2018. Mr. Valenzuela responded that he would call Mr. Veltri back after he got more information from the mediator.
13. Mr. Valenzuela called Mr. Veltri back that same day and told him that he had spoken with the mediator and that the mediator would reach out to the Vinci firm "again." Mr. Valenzuela also told Mr. Veltri that Americor had been calling the Vinci firm daily but had received no response. Mr. Veltri decided to give Americor another chance and withdrew his cancellation. In actuality, no Americor representative had contacted the Vinci firm since Ms. Watkins' single call on February 7, 2018.
14. The next day, May 2, 2018, Mr. Veltri attempted to use his Chase Bank debit card and was told that the available balance in his account was \$0.00. He called Chase and learned that American Express, by then a judgment creditor, had served a writ of garnishment on the bank. The writ of garnishment caused Chase to freeze four accounts: two that Mr. Veltri held jointly with his wife, one that he held jointly with his daughter, and one that he held jointly with his son. None of the family had access to their funds.
15. Mr. Veltri immediately called Mr. Valenzuela, extremely upset. Mr. Valenzuela then proceeded to misinform Mr. Veltri about his alternatives, including telling him that he had 30 days in which he could get his money out of the Chase accounts despite the writ of garnishment. When Mr. Veltri asked about negotiations with the Vinci firm, Mr. Valenzuela told him that the Vinci firm was "just not ready to resolve the account." In fact, Americor had had no contact at all with the Vinci firm since early February.
16. At some point in this process, Mr. Veltri attempted to negotiate directly with the Vinci firm. They refused to speak with him. They told him that because their records showed that Americor was Mr. Veltri's authorized representative, they could only speak with Americor.
17. After Chase froze Mr. Veltri's account, an Americor mediator finally contacted the Vinci firm about possible settlement. By that time, with its judgment and writ of garnishment in hand, American Express obviously held the upper hand. After a week of unsuccessful discussions, and repeated instances of urgent calls to Americor and continued misinformation, Mr. Veltri finally terminated his contract with Americor, told the Vinci law firm that Americor no longer represented him, and negotiated a settlement of the American Express judgment on his own.
18. Mr. Veltri and his wife testified that the entire American Express situation was a source of anxiety to both of them and caused strain in their marriage. The freezing of the bank accounts meant that they had no way to pay for day-to-day expenses for two weeks, and their daughter could not pay her rent. Mr. Veltri lost sleep many nights worrying about how they were going to live. It was embarrassing for him to explain the situation to his son and daughter, and the entire family was upset and scared by the garnishment. The garnishment also lowered their credit scores. Mr. Veltri described the



situation as one of the most tumultuous times in his life.

19. Had Americor negotiated timely with the Vinci law firm or even given Mr. Veltri the opportunity to settle at American Express's price, it would not be responsible for the freezing of Mr. Veltri's accounts because settlement or failure to settle would have been Mr. Veltri's decision. Their failure to do so, combined with their misrepresentations to Mr. Veltri regarding their dealings with the Vinci law firm, makes them directly responsible for the writ of garnishment being served on Chase Bank.
20. Mr. Veltri filed this proceeding in January 2020 claiming that Americor violated the Colorado Uniform Debt Management Services Act (CUDMSA or the Act), C.R.S. § 5-19-201, *et seq.*, in many respects. Americor filed a response in which it denied liability and asserted a number of affirmative defenses. Americor asserted no counterclaims.
21. A one-day evidentiary hearing in this matter was held via Zoom on September 15, 2020. Three witnesses testified at the hearing and more than 30 exhibits were admitted into evidence. Having heard the testimony and the arguments of counsel, and having reviewed the exhibits and listened to the included recordings of telephone calls, I find in favor of Claimant for the reasons set forth below.

## **Analysis**

22. CUDMSA regulates the provision of debt-management services such as those provided by Americor, who serves as an intermediary between an individual and the individual's creditors for the purpose of obtaining concessions from the creditors and settling the individual's debts. Americor is a "provider" within the meaning of C.R.S. § 5-19-202(15). Americor violated the CUDMSA in two respects.
23. First, C.R.S. § 5-19-219(a)(6) requires that the agreement between the individual and the provider must disclose the fees to be paid to the provider in a "clear and conspicuous manner." The Americor agreement did not meet this standard. While the cover letter furnished with the agreement referenced a settlement fee of 25% of the balance of each debt enrolled in the program, the Debt Resolution Agreement specified that the fee would be 4-6% of the debt. Debt Resolution Agreement, ¶ 5. An Americor witness at the hearing attempted to reconcile those two statements but could not do so credibly.
24. Second, Americor violated the CUDMSA in its dealings with Mr. Veltri. C.R.S. § 5-19-215 states. "A provider shall act in good faith in all matters under this part 2." "Good faith" is defined to mean "honesty in fact and the observance of reasonable standards of fair dealing." C.R.S. § 5-19-202(10). Americor's purposeful neglect of the American Express matter, even after receiving express notice that a lawsuit had been filed and judgment entered, coupled with its direct misrepresentations to Mr. Veltri about its negotiations with the Vinci firm (or lack thereof) violate this standard.
25. Americor's conduct also violates C.R.S. § 5-19-228(a), which states that a provider may not directly or indirectly: (15) "Employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information." Americor violated this provision by failing to inform Mr. Veltri of American Express's settlement position in February, failing to tell him that he could settle with American Express if he put more money in his trust account, omitting to tell him that Americor had had no contact with the Vinci firm after the call on February 7, 2018, purposely

leading him to believe that a mediator had been working on the problem, misrepresenting the frequency of Americor's contacts with the Vinci firm, and acting evasively in refusing to let Mr. Veltri speak directly with the mediator despite repeated direct requests.

26. C.R.S. § 5-19-235(f) sets forth an affirmation defense as follows: "A provider is not liable under this section for a violation of this part 2 if the provider proves that the violation was not intentional and resulted from a good faith error notwithstanding the maintenance of procedures reasonably adapted to avoid the error." Americor did not prove that any of the violations found in this Award meet that standard and thus may not avail itself of this defense.
27. C.R.S. § 5-19-223(b) states, "A provider may not impose charges or receive payment for debt-management services until the provider and the individual have signed an agreement that complies with sections 5-19-219 and 5-19-228." C.R.S. § 5-19-225(a) states, in turn: "If a provider imposes a fee or other charge or receives money or other payments not authorized by section 5-19-223 . . . , the individual may void the agreement and recover as provided in section 5-19-235." Mr. Veltri thus is entitled to void his agreement with Americor.
28. Although not a model of clarity, and devoid of any useful interpretive case law, section 235 of the CUDMSA outlines the remedies to which Mr. Veltri is entitled.
  - a. C.R.S. § 5-19-235(b) states: "If an individual voids an agreement pursuant to section 5-19-225(a), the individual may recover in a civil action three times the total amount of the fees, charges, money, and payments made by the individual to the provider, in addition to the recovery under subsection (c)(4) of this section [allowing for recovery of reasonable attorney fees and costs]." I interpret "fees, charges, money, and payments made by the individual to the provider" to mean amounts paid to Americor, not funds put into the trust account for payment to creditors. The evidence at the hearing was that Mr. Veltri paid settlement fees to Americor in the amount of \$7,292.92; three times this amount equals **\$21,878.76**.
  - b. C.R.S. § 5-19-235(c) states: "[A]n individual with respect to whom a provider violates this part 2 may recover from the provider . . . :
    - (1) Compensatory damages for injury, including noneconomic injury, caused by the violation;
    - (2) . . . with respect to a violation of section . . . 5-19-219 to 5-19-224, . . . or 5-19-228(a), . . . the greater of the amount recoverable under subsection (c)(1) of this section or five thousand dollars;
    - (3) Punitive damages; and
    - (4) Reasonable attorney fees and costs.
  - c. Applying Section 235(c), I also award Mr. Veltri compensatory damages for pain and suffering in the amount of **\$25,000.00** under Section 235(c)(1), **\$25,000.00** under Section 235(c)(2), and reasonable attorney fees and costs.
  - d. I am not awarding punitive damages, as I do not find that Mr. Veltri's injury to be attended



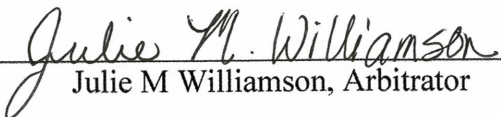
by circumstances of fraud, malice, or willful and wanton conduct as described in C.R.S. § 13-21-102(1). Also, C.R.S. § 13-21-102(5) may prohibit the award of punitive damages in this arbitration proceeding.

**Award**

1. For the reasons set forth above, I find in favor of Claimant, Adam Veltri, and against Respondent, Americor Funding, Inc., and award damages in the amount of **\$71,878.76**, plus reasonable attorney fees and expenses.
2. All claims and defenses not specifically addressed above are denied.
3. This Interim Award is in full settlement of the merits of all claims submitted to this Arbitration, except for the determination of reasonable attorney fees and costs in favor of Claimant as set forth above. The Arbitrator retains jurisdiction to address Claimant's claims for reasonable attorney fees and costs. Claimant shall submit his accounting of such reasonable attorney fees and costs and any supporting documents related thereto to the Arbitrator within 14 days of the date of this Interim Award. Respondent shall submit any responsive statement and supporting documents within 28 days of this Interim Award. Upon and after such submissions, the matter shall be deemed submitted to the Arbitrator for determination in a Final Award.

This Interim Award shall remain in full force and effect until the Arbitrator renders a Final Award.

Date: October 15, 2020

  
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Julie M Williamson, Arbitrator