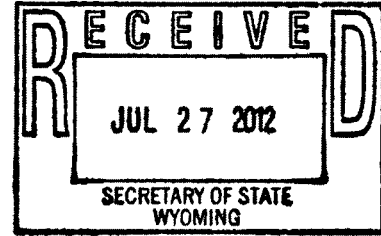


BEFORE THE SECRETARY OF STATE
STATE CAPITOL
CHEYENNE, WYOMING 82002-0020



IN THE MATTER OF)
THE NOTICE OF VIOLATION)
ISSUED TO:)

) Docket No. 2011-07

) Corp 95)
) 210 Nichols Avenue)
) Casper, WY 82601)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

THIS MATTER came before the Wyoming Secretary of State (SOS) on May 7, 2012, for a contested case hearing. Presiding at the hearing for the SOS was independent hearing officer, John S. Burbridge. Petitioner, the Secretary of State's Office, Compliance Division (Division), appeared by and through counsel, Michael M. Robinson, Senior Assistant Attorney General. Respondent, Corp 95 and its representative, David DeLoach, (Corp 95), appeared by and through counsel, Daniel B. Frank. The Division's Exhibits State 1, State 2, State 3, State 4, State 5, State 6 and State 7 were admitted into evidence. Corp 95 did not present or request admission of any exhibits and therefore, no exhibits were admitted into evidence. Based upon the evidence reviewed, testimony and argument presented, the SOS hereby makes the following FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER:

I. ISSUES

The issue in this matter is whether the Division has proved that Corp 95 failed to maintain records required by the Registered Offices and Agents Act (Act), specifically, Wyo. Stat. § 17-28-107(a)(v)(A) and (B), in violation of Wyo. Stat. § 17-28-109(a)(ii), thereby justifying civil penalties and other adverse action as allowed by Wyo. Stat. § 17-28-109(a).

II. FINDINGS OF FACT

1. As of October 17, 2011, Corp 95 was the registered agent for 955 active business entities. Corp 95 is a Commercial Registered Agent (CRA) under Wyoming law because it acts as the registered agent for more than ten business entities. Wyo. Stat. § 17-28-105(b); Rules, General Provisions, Chapter 1, Section 4(e). State Exhibit 1, Tab A; Tr. at 20, 40.

2. The officers and directors of Corp 95 are Ms. D'arcy DeLoach and Mr. David DeLoach. State Exhibit 1, Tab C; Tr. at 57.

3. On October 20, 2011, three representatives from the Division, including Mr. Ryan Anderson, a compliance auditor with the Division, conducted a compliance audit of Corp 95 at the registered office located at 210 Nichols Avenue in Casper. State Exhibit 1, Tab P; Tr. at 18, 39.

4. The audit was triggered by the various conduct of Corp 95, including multiple relocations of its registered office and the use of "virtual offices" and answering service locations from 2006 to 2011. This behavior raised "red flags" with the Division which were indicative of unusual and suspicious behavior by a registered agent. Tr. at 14, 39, 44.

5. Ms. Michele Hoover was present at Corp 95's registered office when the Division arrived to conduct the audit. Ms. Hoover was a representative of Casper Answering Service and produced a Registered Agent Agreement she held with Corp 95 authorizing her to accept service of process on behalf of Corp 95. State Exhibit 1, Tabs Q, R, and S; Tr. at 18-19.

6. Upon request by the Division, Ms. Hoover produced compact discs (CD) relating to the entities represented by Corp 95. The CDs were dated August 2010, November 2010, and July 8, 2011. The data on the CDs was copied and taken to the Division office for inspection. State Exhibit 1, p. 4 and Tab P; Tr. at 18-19.

7. Mr. Anderson compared the data from the CDs provided by Ms. Hoover to the SOS database of business entities and made the following findings:

a. Pursuant to the SOS database, Corp 95 was the registered agent for 955 active business entities as of October 17, 2011. State Exhibit 1, Tabs A and P; Tr. at 40.

b. The most current CD relating to Corp 95 that Ms. Hoover provided to the Division was dated July 8, 2011. That CD contained information on only 498 entities. State Exhibit 1, Tabs P, U, V, and W; Tr. at 19-20, 40. The information regarding the 498 entities contained a list with a name of a person and an address for each entity. The persons named were not identified whether they were an officer, director, manager, or communications contact person as required by Wyo. Stat. § 17-28-107(a)(v)(A) and (B). State Exhibit 1, Tabs P and X; Tr. at 20-21, 40-41. The descriptive heading of the list on the CD stated "Wyoming Officer List, 17-16-507" with a note in parentheses stating, "The person shown below is all of the officers and directors unless otherwise indicated." However, the list did not "otherwise indicate" individuals other than officers and directors. State Exhibit 1, Tab X; Tr. at 40, 46.

c. Of the 498 entities listed on the July 8, 2011 CD, 402 were limited liability companies and ninety-six were corporations. Limited liability companies do not have "officers" and "directors" as indicated on the CD but rather, managers, members or member-managers. Wyo. Stat. Ann. §§ 17-29-102(a)(x)-(xii) and 17-29-407. Tr. at 40. Therefore, it was impossible for the Division to determine whether the individuals listed on the July 8, 2011 CD relating to limited liability companies were managers or communications contact persons, information required by Wyo. Stat. Ann. § 17-28-107(a)(v)(A) and (B). State Exhibit 1, Tab X; Tr. at 40.

d. Mr. Anderson and Ms. Wheeler both testified that since the remaining ninety-six (of the 498) entities listed on the July 8, 2011 CD were corporations the Division

presumed that the individuals listed were an officer and/or director. Tr. at 21-22, 40.

e. Based on the SOS database, there were 457 business entities for which Corp 95 acted as registered agent but no information existed on the July 8, 2011 CD. Formation dates for these 457 entities go back as far as 2002 with eighty-eight of them being formed within sixty days prior to the October 20, 2011 audit. State Exhibit 1, Tabs Y, Z, AA, and BB; Tr. at 20-21, 40-41.

f. The July 8, 2011, CD contained information on 234 entities that were not registered with the SOS. State Exhibit 1, Tab CC; Tr. at 20.

8. The Division's audit determined that Corp 95 failed to maintain and produce on demand any of the records required by Wyo. Stat. Ann. § 17-28-107(a)(v)(A) and (B) for 457 of the entities it represented itself as registered agent. The Division further determined that of the 498 other entities, Corp 95 provided partial information including an individual's name and address for those entities but it failed to properly designate whether the individual was an officer, director, or manager as required by Wyo. Stat. Ann. § 17-28-107(a)(v)(A), and Corp 95 also failed to list a designated communications contact person for any of the 498 entities as required by Wyo. Stat. Ann. §17-28-107(a)(v)(B). State Exhibit 1, pp. 5-7.

9. On or about November 22, 2011, the Division issued Findings of Fact and Order advising Corp 95 of its audit results, including alleged violations of the Act, and proposed civil penalties in a total amount of \$353,000.00 and revocation of Corp 95's Commercial Registered Agent Registration. State Exhibit 1, pp. 7-8.

10. Following the issuance of the Division's Order on November 22, 2011, Corp 95 made several attempts to update and correct the records on the entities it represented. The Division received CDs from Corp 95 dated December 12, 2011, January 30, 2012, February 1,

2012, February 24, 2012, and April 16, 2012. While some of the violations previously identified were resolved, some entities continued to lack required information. State Exhibits 2-4 and 7; Tr. at 23-27, 40.

11. Ms. Wheeler testified that the Act became law effective January 1, 2009; the Act was intended to remove the cloak of anonymity of ownership in corporations and limited liability companies permitted under earlier Wyoming laws; that Wyoming was criticized for its conducivity to hiding and protecting the identity of these business entities; that prior to the Act there were over 7,000 companies that listed their registered office and registered agent at drop-box locations (i.e. places like Mailboxes, Etc., UPS stores, and other places that rented out post office boxes); that there was prospective federal legislation that would impose a nationwide regulatory framework on the states; and in response to the issues surrounding corporate and limited liability company anonymity, the SOS sought legislation with the intent of providing a local solution better suited to Wyoming than a "one-size fits all" federal law. Tr. at 31-33.

12. Ms. Wheeler testified that an important purpose of the Act was to provide law enforcement with the necessary tools for enforcement and investigations while still providing protection to smaller, mainly family, ranching-type, entities from over-regulation. The Act accomplished this by requiring specific records be maintained at an actual physical location within Wyoming. Tr. at 32-35.

13. Ms. Wheeler testified that another essential part of the Act was to make the registered agent for a business entity the "face" of that entity by requiring a real person be present at the registered office that is able to accept service of process. Tr. at 33.

14. As part of their registration under the Act, CRAs agree under penalty of perjury that they will "comply with the provisions of the [sic] W.S. 17-28-101 — 17-28-111." Since

January 1, 2009, when the Act went into effect, Corp 95 made such representations when filing its Commercial Registered Agent Registration on January 2, 2009, October 19, 2009 and October 20, 2010. Corp 95 also submitted Statement of Change of Registered Agent's Name and/or Registered Office By Registered Agent forms on September 22, 2009, February 22, 2010, and August 10, 2010 in which they, again, certified they were in compliance with the Act for every entity that it represented. State Exhibit 1, Tabs I, J, K, M, and N; Tr. at 38-39, 42, 50.

15. Ms. Wheeler testified that she believed the civil penalty proposed in the Division's November 2011 Order was reasonable and based on the fact that Corp 95 was formed in 2003, Corp 95 held itself out, through its website, as offering premier incorporating services, Corp 95 formed businesses in other states, Corp 95 was not new to the industry, on three separate occasions since the Act went into effect on January 1, 2009, Corp 95 signed and filed with the SOS consent to appointment forms wherein it certified it was in compliance with the Act, as well as CRA registrations wherein it affirmed under penalty of perjury that it would comply with the Act, and that the Division had performed several other audits of registered agents and found some in violation of the same record retention provisions of the Act that Corp 95 had violated, stressing that Corp 95 was not treated any differently than any of those other registered agents, who also had the maximum civil monetary penalty assessed against them. Tr. at 41-42.

16. Mr. DeLoach, on behalf of Corp 95, testified that he is the compliance officer and general overall manager of Corp 95. Tr. at 57.

17. Mr. DeLoach testified that he first became aware there was a problem with the records at Corp 95's registered office when he received the Division's November 2011 Order detailing Corp 95's noncompliance with the Act. Tr. at 60-61, 64-65.

18. Mr. DeLoach admitted that the required information was missing and that Corp

95 was in violation of the Act. Tr. at 67-68, 70, 78-79.

19. Mr. DeLoach testified that in order to comply with the record retention requirements of the Act, prior to the Act becoming effective, he had a "couple of people" in his office compile the required information onto separate CDs, which he subsequently merged onto a single CD. Tr. at 60-61.

20. Mr. DeLoach testified that the information on one of the CDs never made it onto the other CD, resulting in missing information for some of the entities Corp 95 represented, but not others. Tr. at 60-61.

21. Mr. DeLoach testified that he had no reason to believe that he was not in compliance with the record retention requirements of the Act. However, Mr. DeLoach admits that between January 1, 2009, when the Act went into effect and October 2011, when the audit occurred, he only examined the content of the CDs "in a cursory manner." Mr. DeLoach stated he believed he only had an obligation to see if the CDs he sent to Corp 95's registered office were not blank. Mr. DeLoach further testified that he believed that he did not have to, and did not, check to see if the information on the CDs was complete and accurate. Tr. at 64, 71, 79-80.

22. Mr. DeLoach stated that all the records for the entities represented by Corp 95 were at his home office in California in paper form. Mr. DeLoach further testified that it was his belief that if needed, gathering information at his home office in California, burning it onto a CD and sending to its registered office in Wyoming was sufficient to meet the requirement under the Act that all records be reasonably produced on demand. Tr. at 61, 73-75.

23. Mr. DeLoach testified that the \$353,000.00 civil penalty imposed on Corp 95 for its failure to comply with the Act was not an appropriate amount, stating that the mere fact that the legally required information was missing was not "egregious." Mr. DeLoach testified that if

he had his choice, he would be willing to accept a civil penalty between \$3,000.00 and \$7,000.00. However, Mr. DeLoach provided no testimony regarding a specific basis for his suggested civil penalty, generally stating there was a lack of willfulness in violating the Act. Tr. at 78-79.

III. CONCLUSIONS OF LAW

24. The SOS has jurisdiction over matters involving the registration and conduct of CRAs and enforcement of the Act's provisions. Wyo. Stat. §§ 17-28-101, *et seq.*

25. Wyoming Statute § 17-28-107 states:

(a) The registered agent shall:

....

(v) Maintain at the registered office, the following information for each domestic entity represented which shall be current within sixty (60) days of any change until the entity's first annual report is accepted for filing with the secretary of state and thereafter when the annual report is due for filing and shall be maintained in a format that can be reasonably produced on demand:

(A) Names and addresses of each entity's directors, officers, limited liability company managers, managing partners, trustees or persons serving in a similar capacity;

(B) The name, address and business telephone number of a natural person who is an officer, director, employee or designated agent of each entity represented who is authorized to receive communications from the registered agent;

....

26. Chapter 7, Section 4 of the SOS Registered Offices and Agents Rules sets forth the requirements for production of records stating:

(a) A record shall:

(i) Contain all information required by law and these Rules;

(ii) Be written or, if electronic, be able to be immediately printed;

....

(b) All records that are required to be kept by the Registered Agent must be:

(i) Maintained in paper format at the physical office; or

(ii) Maintained in electronic format if they can be either printed or downloaded onto a recordable device, such as a CD or DVD, upon request.

(iii) Available via remote access if the Registered Agent can produce the records in a time frame and format consistent with the time frames associated with (i) and (ii) above.

27. Pursuant to Wyo. Stat. § 17-28-108(a) “[a]ll records maintained pursuant to W.S. 17-28-107 are subject to periodic, special or other examination by the secretary of state or his representatives as deemed necessary or appropriate in investigations.” The SOS may compel production of required records as specified in Wyo. Stat. § 17-28-107 pursuant to Wyo. Stat. § 17-28-108(b). “Failure to produce . . . records maintained pursuant to W.S. 17-28-107 to the secretary of state on demand . . . shall be punishable as provided in W.S. 17-28-109.” Wyo. Stat. § 17-28-108(d).

28. Wyoming Statute § 17-28-109 states:

(a) The secretary of state may impose a civil penalty not to exceed five hundred dollars (\$500.00) for each violation, with respect to each entity represented, of this chapter for which no other specific penalty is provided, and may deny or revoke any registration, require enhanced recordkeeping and refuse to accept filings for business entities served by a registered agent if the registered agent, or in the case of [sic] registered agent that is a corporation or other business entity, its officers, directors, members, partners or persons serving in a similar capacity:

....

(ii) Has failed to maintain records as required by W.S. 17-28-107;

....

(b) A registered agent has complied with W.S. 17-28-107 if he has timely requested from the entity, either by certified letter or through an engagement letter or other similar document, that the required information be provided and be kept current within sixty (60) days of any change until the entity's first annual report is accepted for filing with the secretary of state. It shall be a defense to an action under paragraph (a)(ii) of this section if the registered agent notifies the secretary of state of the entity's failure to provide the required information or of the registered agent's belief that the information is inaccurate, and the registered agent resigns within sixty (60) days after the date the certified letter requesting information has been sent. No fee shall be assessed a registered agent resigning pursuant to this subsection.

....

(e) It shall be a defense to any violation under this section if the agent, in the exercise of reasonable diligence could not have known that:

- (i) The information maintained by the agent is inaccurate;
- (ii) The information provided by the entity represented is inaccurate; or
- (iii) An entity used the registered agent's identity or address without the registered agent's knowledge or consent.

29. Wyoming law requires any registered agent representing more than ten business entities to register as a CRA on an annual basis. Wyo. Stat. §§ 17-28-101 and 105.

30. Corp 95 acted as CRA for 955 entities as of October 17, 2011.

31. Since January 1, 2009, when the Act went into effect, Corp 95 filed three CRA registrations and (at least) 955 "Statement of Change" forms in which Corp 95 affirmed that it would comply, and otherwise was in compliance with, the Act.

32. Corp 95 is a corporation that provides incorporation and other services, including registered agent service, to the public. Corp 95 has been in the registered agent business in Wyoming since at least 2003 and held itself out, through its public website, as offering premier incorporating services. The entities that used Corp 95 as their CRA paid and relied on Corp 95 to act as CRA appropriately and properly, in compliance with the Act.

33. Upon demand by the Division, Corp 95 failed to provide the information at its

In the Matter of the Notice of Violation Issued to: Corp 95, Docket No. 2011-07

Findings of Fact, Conclusions of Law, and Order

registered office required by Wyoming law. Specifically, Corp 95 provided no information on 457 active Wyoming business entities that are filed with the SOS and list Corp 95 as registered agent, as required by Wyo. Stat. § 17-28-107(v)(A) and (B). Additionally, Corp 95 did not identify a communication contact person for any of the 498 entities on its "Wyoming Officer List" as provided to the Division, as required by Wyo. Stat. § 17-28-107(v)(B).

34. Corp 95 did provide names and addresses associated with 498 entities on the "Wyoming Officer List," but the information contained insufficient detail, making it impossible to determine whether the person listed was an officer, director, limited liability company manager, or person serving in a similar capacity, an incorporator or a communications contact person.

35. Corp 95 had an obligation under the Act to ensure that the information required by Wyo. Stat. § 17-28-107(a)(v) was present at its registered office and available for inspection reasonably on demand and that such information was accurate.

36. While Corp 95 made several attempts to update and correct the records on the entities it represented following receipt of the Division's November 2011 Order, such attempts were made between three weeks and approximately five months following the Order. Wyo. Stat. § 17-28-107(a)(v) requires that such information ". . . be maintained in a format that can be reasonably produced on demand." Producing required information several weeks and months after it is demanded is contrary to the intent of Wyo. Stat. § 17-28-107(a)(v).

37. By not exercising the requisite due diligence imposed by the Act and Corp 95's own representations in its CRA registrations and consent to appointments, Corp 95 failed to comply with the duties of a registered agent under the Act.

38. The evidence shows that the Division did not receive complaints from the public,

or law enforcement officials regarding Corp 95's operations as a commercial registered agent in Wyoming prior to its audit.

39. Corp 95 did not provide any evidence constituting a statutory defense under Wyo. Stat. § 17-28-109.

40. Corp 95 did not dispute that information required by Wyo. Stat. § 17-28-107(a)(v)(A) and (B) was missing and therefore, Corp 95 was in violation of the Act at the time of the Division's audit.

41. Nothing in the Act or rules requires the Division to give a registered agent an opportunity to remedy a violation of the Act before imposing action pursuant to Wyo. Stat. § 17-28-109. In fact, the language of Wyo. Stat §§ 17-28-107 and 108 require production of information "reasonably . . . on demand" and "on demand", respectively, without providing authority for production following a request. While Corp 95 did provide evidence showing that after it received the Division's Order, approximately one month following the audit, it engaged in a review of its files in an attempt to comply with the statutory requirements, but at the time of the hearing, Corp 95 was still unable to provide complete information on the entities for which it served as CRA despite multiple attempts to correct the information.

42. As a result of Corp 95's violations of the Act, it is appropriate to assess Corp 95 civil penalties pursuant to Wyo. Stat. § 17-28-109(a)(ii) as follows:

a. At the time of the Division's audit, Corp 95 failed to maintain information as required by Wyo. Stat. § 17-28-107(a)(v) for 457 business entities of which it represented. Consequently, Corp 95 shall be assessed a \$100.00 civil penalty for each failure to maintain information required by Wyo. Stat. § 17-28-107(a)(v)(A) as related to 457 business entities, resulting in civil penalties of \$45,700.00. Corp 95 shall also be assessed a \$100.00 civil penalty

for each failure to maintain information required by Wyo. Stat. § 17-28-107(a)(v)(B) as related to 457 business entities, resulting in civil penalties of \$45,700.00. The total civil penalty as related to the 457 business entities at issue as a result of Corp 95's failure to maintain any information required by Wyo. Stat. § 17-28-107(a)(v)(A) and (B) shall be \$91,400.00.

b. At the time of the Division's audit, Corp 95 maintained partial information as required by Wyo. Stat. § 17-28-107(a)(v) for 498 business entities of which it represented. Consequently, Corp 95 shall be assessed a \$100.00 civil penalty for each failure to maintain information required by Wyo. Stat. § 17-28-107(a)(v)(B) as related to 498 business entities, resulting in civil penalties of \$49,800.00.


c. The total civil penalty assessed to Corp 95 as related to the Division's audit of October 20, 2011, shall be \$141,200.00.

IV. ORDER

IT IS THEREFORE ORDERED that Corp 95 shall pay a total civil penalty in the amount of \$141,200.00 as allowed by Wyo. Stat. § 17-28-109(a), due within thirty (30) days of the effective date of this Order.

IT IS FURTHER ORDERED that in the event Corp 95 is unable to pay the total civil penalty ordered herein that Corp 95's Commercial Registered Agent Registration is immediately revoked.

DONE this 27th day of July, 2012.



Max Maxfield
SECRETARY OF STATE
State of Wyoming
State Capitol Building
Cheyenne, Wyoming 82002-0020
(307) 777-7378

CERTIFICATE OF SERVICE

I hereby certify that the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER were served on the 27th day of July, 2012, by placing a true and correct copy in the United States Mail, certified return receipt requested, postage prepaid, addressed to the following:

Daniel B. Frank
Frank Law Office
519 East 18th Street
Cheyenne, WY 82001

Michael M. Robinson
Senior Assistant Attorney General
Office of the Attorney General
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Cheyenne, WY 82002



Secretary of State's Office