BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of: THE COMMISSIONER OF BUSINESS OVERSIGHT, Complainant. v. QUICK CASHING, INC., DBA FAMILY FINANCIAL CENTER, Respondent.	Case No. 100-4387 OAH No. 2014100614

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated January 8, 2016, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter pursuant to Government Code section 11517(c)(2)(A).

This Decision shall become effective on March 4, 2016.

IT IS SO ORDERED this 3rd day of February, 2016.

/s/
JAN LYNN OWEN
Commissioner of Business Oversight

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PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings (OAH), heard this matter on November 30, 2015, in Los Angeles, California.

Affi Eghbaldari and Robert Lux, Co-Counsel with the Enforcement Division of the Department of Business Oversight (the Department), appeared and represented complainant Jan Lynn Owen, Commissioner of Business Oversight (Commissioner).

Edward Lear, attorney at law, appeared and represented respondent Quick Cashing, Inc., doing business as Family Financial Center.

This matter was originally heard on February 23, 2015 and a Proposed Decision was issued on March 2, 2015. On June 11, 2015, the Department rejected the Proposed Decision and remanded the case to the administrative law judge for the taking of additional evidence. In its written referral to OAH dated June 11, 2015, the Department identified eight issues to be considered on rehearing. The referral was marked for identification as Exhibit 16.

During the hearing, respondent orally moved the court to reduce the civil penalties, as imposed in the Proposed Decision at paragraph 3 of the Order, based on the evidence presented during the hearing. Complainant opposed the motion on the grounds that the hearing was limited to the eight issues raised by the Department in its referral of the case for rehearing. The motion and objections were taken under submission.

The record was held open to December 11, 2015, to allow the parties to file evidence of amounts actually collected by respondent in connection with the transactions that were voided in the rejected Proposed Decision, and to file contemporaneous briefs in support of or in opposition to respondent's motion.

On December 11, 2015, complainant filed a post-hearing brief in opposition to respondent's motion and the declaration of Arby C. Aghayans. The brief was marked for identification as Exhibit 17 and the declaration was marked as Exhibit 18.

Respondent filed no brief, evidence, or objections. Exhibit 18 was admitted into evidence.

Respondent's motion was denied based on Legal Conclusions 1-3. Complainant's objections to the motion were sustained.

The matter was submitted for decision on December 18, 2015. The administrative law judge makes the following factual findings based on the stipulations of the parties, all exhibits and transcripts from the prior hearing, and the additional evidence received at the hearing on remand.

ISSUES

Respondent did not object to six issues relating to certain editorial changes recommended by the Department. The administrative law judge accepted those recommendations, resolving six of the eight issues.[1] The unresolved issues are:

1. Whether respondent shall be ordered to return the principal amount of the transactions that were voided in the Proposed Decision at paragraph 2 of the Order.

2. Whether the order shall specify the total dollar amount of any principal, charges, or fees to be returned by respondent.

FACTUAL FINDINGS

1. Administrative Law Judge Matthew Goldsby heard this matter on February 23, 2015. Respondent failed to appear at the hearing after complainant served notice of the hearing as required by law. Based on evidence presented by complainant, the administrative law judge issued a Proposed Decision on March 2, 2015. On June 11, 2015, the Department rejected the Proposed Decision and remanded the matter for the taking of additional evidence pursuant to Government Code section 11517, subdivision (c)(2)(D). On June 22, 2015, OAH issued the Order Re Complainant's Request for an Order of Remand.

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[1] The six issues are resolved taking into account formatting changes and added paragraphs that were necessary to address the additional evidence and respondent's motion.

2. Respondent is a California corporation, organized on August 4, 2011. Respondent filed a Fictitious Business Name Statement to do business under the name Family Financial Center. The company was owned and managed by two persons who acted as the president and vice-president/treasurer/secretary, respectively.

3. On December 21, 2011, respondent filed its application for a license under the California Deferred Deposit Transaction Law (CDDTL). The Commissioner disclosed all pertinent provisions of the CDDTL in various exhibits attached to the application. The president of the respondent signed the application and each of its exhibits under penalty of perjury, agreeing to comply with all provisions of the CDDTL.

4. On February 8, 2012, the Commissioner issued to respondent a license under the CDDTL based on the representations made in the application. The Department mailed the license to respondent with a detailed description of all provisions of the law and regulations applicable to the business of deferred deposit transactions.

5. After the issuance of its license, respondent engaged in the business of deferred deposit transactions.[2] Its principal place of business was 1266 S. Lake Street, Los Angeles, California.

6. On February 13, 2013, the Commissioner notified respondent of its intent to conduct a regulatory examination and requested the production of the last four quarterly balance sheets and income statements. In response, respondent completed a questionnaire, but furnished no balance sheet or income statement before the commencement of the examination.

7. On June 7, 2013, an investigator for the Department conducted an examination of respondent's compliance with the CDDTL. The investigator met with the executive vice president in the morning and the president in the afternoon.

8. Respondent furnished to the investigator a printout of transactions from September 19, 2012, through June 6, 2013. The schedule included an itemization of checks that were returned for nonsufficient funds (NSF). The maximum fee allowed by law for NSF transactions is $15 per returned check. According to the schedule, respondent charged a $20 NSF fee for each of 37 transactions.

9. At the rehearing, respondent furnished a more detailed print-out of NSF transactions. The new evidence revealed an additional 12 NSF transactions with NSF fees charged at the rate of $20 per returned check. Based on the additional evidence, respondent charged excessive NSF fees in 49 deferred deposit transactions.

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[2] A deferred deposit transaction is a written agreement whereby one party advances funds upon receipt of a personal check and agrees not to deposit the check until a later date. These transactions are commonly referred to as "payday loans."

10. The investigator executed a declaration based on his findings. In his declaration, the Department's investigator admitted that the new spreadsheet "does not identify whether [respondent] collected on any of the outstanding checks with excess NSF fees" and that he could not "determine from the evidence the actual amounts [respondent] collected from each customer." (Ex. 16.) At the rehearing, the investigator testified that he did not review bank records to ascertain whether any of the returned checks was eventually deposited or cashed.

11. Respondent furnished to the investigator a printout reflecting amounts received to make payday advances. In eight separate deferred deposit transactions, consumers tendered a check in the face amount of $345. The maximum amount allowed by law is $300 per deferred deposit transaction.[3] Respondent collected and received the total sum of $2,760 from these eight deferred deposit transactions.

12. Respondent furnished samples of collection letters mailed to its clients. In a letter dated May 3, 2013, respondent closed with the following paragraph: "In the event that [respondent] does not receive $329.52 on or before May 13, 2013 we will be turning over your bad check to the Los Angeles County District Attorney's Office for criminal prosecution. Furthermore, our office will be filing a Small Claims action against you for insufficient fund check wherein you could be liable for 3 times the amount of the check." (Ex. 9.)

13. Respondent furnished a Disclosure Statement and Loan Agreement for two customers, bearing only the customer's name, but not the customer's address as required by law.

14. An investigator for the Commissioner inspected the business location and all signage posted on the walls. The signage did not include a schedule of fees and charges. The signage did not include an advisory that any customer who enters into a deferred deposit transaction and offers a personal check to a licensee shall not be subject to any criminal penalty for failure to comply with the terms of the agreement.

15. On January 13, 2014, the Great American Insurance Company issued its notice to cancel the surety bond posted by respondent. Respondent did not apply to reinstate the bond or obtain a replacement bond.

16. As a result of the examination, the investigator for the Department discovered the following 12 violations of the CDDTL:

(A) Respondent failed to prepare or provide quarterly balance sheets and income statements in violation of California Code of Regulations, title 10, section 2025, subdivision (b).

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[3] Financial Code section 23035, subdivision (a), limits deferred deposit transactions as follows: "The face amount of the check shall not exceed three hundred Dollars ($300)."

(B) Respondent failed to maintain records to show compliance with the net worth requirements for licensees in violation of Financial Code sections 23007 and 23024.

(C) Respondent failed to maintain separate books and records for deferred deposit transactions involving nonsufficient funds in violation of Financial Code section 23024 and California Code of Regulations, title 10, section 2027.

(D) Respondent engaged in deferred deposit transactions that exceeded the maximum amount allowed by law in violation of Financial Code section 23035, subdivision (a).

(E) Respondent charged excessive NSF fees in violation of Financial Code section 23036, subdivision (e).

(F) Respondent made threats of criminal prosecution in collection letters sent to customers in violation of Financial Code section 23035, subdivision (b).

(G) Respondent made threats of filing small claims actions and liability of treble damages in collection letters sent to customers in violation of Financial Code section 23036, subdivision (d).

(H) In violation of Financial Code section 23035, subdivision (c)(6), respondent failed to provide written notice to customers that checks were being negotiated under the CDDTL.

(I) Respondent failed to post a notice in a clear and conspicuous place at its business location disclosing the prohibition against the use of the criminal process against customers to collect any deferred deposit transaction in violation of Financial Code section 23035, subdivision (d)(1).

(J) Respondent failed to post a notice in a clear and conspicuous place at its business location disclosing the schedule of all charges and fees to be charged on deferred deposit transactions in violation of Financial Code section 23035, subdivision(d)(2).

(K) Respondent failed to identify the address of customers in its written transaction agreements in violation of Financial Code section 23035, subdivision (e)(4).

(L) Respondent failed to reinstate its surety bond in the amount $25,000 in violation of Financial Code section 23013.

17. The Commissioner referred the matter to the Department's enforcement division for disciplinary action. On April 7, 2014, respondent reported to the Commissioner that it had ceased business operations and offered to surrender its license. Because disciplinary proceedings were pending, the Commissioner rejected respondent's offer to surrender its license and the Department continued its investigation and the enforcement of its disciplinary action.

18. On August 22, 2014, the Commissioner took the following enforcement action:

(A) The Commissioner issued a Desist and Refrain Order pursuant to Financial Code section 23050.

(B) The Commissioner issued an Order Voiding Deferred Deposit Transactions pursuant to Financial Code section 23060, declaring certain identified NSF transactions to be void and ordering the return of all money received and collected in connection with those transactions.

(C) The Commissioner issued 12 Citations, each relating to one of the above described violations, and assessed an administrative penalty in the amount of $2,500 for each violation, totaling $30,000 in penalties, pursuant to Financial Code section 23058.

19. On August 25, 2014, the Commissioner filed her Accusation to Revoke License pursuant to Financial Code section 23052.

LEGAL CONCLUSIONS

Denial of Motion to Reconsider Civil Penalties

1. Upon receipt of a proposed decision, the Department is authorized to take any of the following actions under Government Code section 11517:

(A) Adopt the proposed decision in its entirety.

(B) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.

(C) Make technical or other minor changes in the proposed decision "limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision." (Gov. Code § 11517, subd. (c)(2)(C).)

(D) "Reject the proposed decision and refer the case to the same administrative law judge if reasonably available . . . to take addition evidence. If the case is referred to an administrative law judge pursuant to this subparagraph, he or she shall prepare a revised proposed decision . . . based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing." (Gov. Code § 11517, subd. (c)(2)(D).)

(E) Reject the proposed decision and decide the case upon the record, subject to specific procedural requirements, including the following restriction: "The agency itself shall not decide any case . . . without affording the parties the opportunity to present

either oral or written argument before the agency itself." (Gov. Code § 11517, subd. (c)(2)(E)(ii).)

2. An agency referral of a case for rehearing under Government Code section 11517 shall contain a written statement of the evidence or issues to be considered on rehearing. (Cal. Code Regs., tit. 1, § 1050, subd. (a)(4).)

3. The Department elected to reject the proposed decision and remand the case to the administrative law judge to consider additional evidence. The written referral to OAH identified eight issues to be considered on rehearing, none of which included the reasonableness of the assessed civil penalties. While the governing provisions of the code and regulations do not expressly limit the hearing to the issues raised by an agency, respondent has failed to act with sufficient diligence to preserve its rights to a full hearing on the merits. Respondent failed to appear and present evidence on the issues raised in the pleadings after complainant served notice of the initial hearing as required by law. Respondent failed to file and serve any documentation prior to the rehearing that would put the court or complainant on notice that the scope of issues should be broader than contemplated by the Department's referral. Respondent filed no points and authorities in support of its motion during the period made available for such purpose. Based on these facts and circumstances, respondent's motion is denied and the proposed decision is limited to the issues raised by the Department's referral to OAH.

Proposed Decision on the Merits

4. The burden of producing evidence as to the unresolved issues is on complainant as the party against whom a finding on those facts is required in the absence of further evidence. (Evid. Code § 550, subd. (a).) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

5. The Department may revoke any license if the licensee has violated any provision of the CDDTL or any related rule or regulation. (Fin. Code, § 23052, subd. (b).)

6. Financial Code section 23050 provides:

> Whenever, in the opinion of the commissioner, any person is engaged in the business of deferred deposit transactions . . . without a license from the commissioner, or any licensee is violating any provision of [the CDDTL], the commissioner may order that person or licensee to desist and to refrain from engaging in the business or further violating this division.

7. Financial Code section 23060 provides:

> (a) If any amount other than, or in excess of, the charges or fees permitted by this division is willfully charged, contracted for, or received, a deferred deposit transaction contract shall be void, and no person shall have any right to collect or receive the principal amount

provided in the deferred deposit transaction, any charges, or fees in connection with the transaction.

(b) If any provision of [the CDDTL] is willfully violated in the making or collection of a deferred deposit transaction, the deferred deposit transaction contract shall be void, and no person shall have any right to collect or receive any amount provided in the deferred deposit transaction, any charges, or fees in connection with the transaction.

8. Financial Code section 23058, subdivision (a), provides:

If, upon inspection, examination or investigation, based upon a complaint or otherwise, the department has cause to believe that a person is engaged in the business of deferred deposit transactions without a license, or a licensee or person is violating any provision of [the CDDTL] or any rule or order thereunder, the department may issue a citation to that person in writing, describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed $2,500.

9. In this case, respondent engaged in the business of deferred deposit transactions and repeatedly violated the CDDTL. The recurrence and quantity of the violations exhibit a disregard of the law and the interests of the public. Accordingly, all orders, citations, and other relief prayed for by the Commissioner are reasonable and necessary to prevent further injury to consumers.

10. The additional evidence presented at the rehearing fails to show that respondent collected or received any amounts provided in the 49 deferred deposit transactions in which it charged excessive NSF fees. On the contrary, the new evidence clarifies that respondent imposed the excessive NSF fees precisely because respondent was unable to cash or deposit the 49 checks for lack of funds. In the absence of any evidence that respondent subsequently collected any amounts on the returned checks, no factual basis exists to order respondent to return any sum of money, whether principal, charges, or fees.

11. The evidence established that respondent collected and received $2,760 by cashing eight checks in the face amount of $345 each, exceeding the maximum allowed by law. However, complainant alleged that these violations were the basis only for the issuance of a citation and assessment of a civil penalty. Complainant did not allege in any pleading or in its referral back to OAH that these transactions were void or that respondent should be ordered to return any amounts collected and received in relation to these eight transactions. Accordingly, this administrative law judge lacks jurisdiction to order respondent to return any portion of those amounts received.

12. The Department assessed an administrative penalty of $2,500 per violation, the maximum allowed under the law. The total liability of $30,000 is substantial, whereas the

violations were curable and caused negligible actual injury to the public. However, the potential for abuse posed a substantial risk of harm to the public. Moreover, respondent's noncompliance was the result of willful disobedience. The Department disclosed its rules and regulations as part of the application for licensure and respondent agreed to comply with those provisions of the CDDTL. Moreover, the Department furnished respondent with a detailed description of all provisions of the law and regulations applicable to the business of deferred deposit transactions when its license was issued. Nonetheless, the violations began shortly after the initiation of respondent's business and continued until respondent ceased operations. For these reasons, the maximum penalty is reasonable and necessary to deter further violations.

13. Cause exists to order respondent to desist and to refrain from engaging in the business of deferred deposit transactions under Financial Code section 23050 because respondent violated the provisions of the CDDTL. (Factual Findings 1-16.)

14. Cause exists to void the 49 deferred deposit transactions described above under Financial Code section 23060 because respondent willfully charged amounts in excess of the charges or fees permitted by the CDDTL. The preponderance of the evidence fails to show that respondent collected or received any amounts in connection with the 49 voided transactions. Accordingly, cause does not exist to order respondent to return any principal amount provided in the 49 voided deferred deposit transactions or to order respondent to return any specific sum of money. (Factual Findings 2-10.)

15. Cause exists to issue citations and assess administrative penalties under Financial Code section 23058 because respondent was engaged in the business of deferred deposit transactions in violation of the CDDTL. (Factual Findings 1-16.)

16. Cause exists to revoke respondent's license under Financial Code section 23052 because respondent violated the provisions of the CDDTL. (Factual Findings 1-16.)

ORDER

1. Respondent Quick Cashing, Inc., doing business as Family Financial Center, is ordered to desist and refrain from engaging in the business of deferred deposit transactions.

2. The 49 deferred deposit transactions described above are declared void and respondent has no right to collect or receive any amount provided in those transactions or any charges or fees in connection with those transactions.

3. Citations 1 through 12 are affirmed and respondent is ordered to pay an administrative penalty of $2,500 for each of the 12 separate citations for the total amount of $30,000, payable within 30 days from the effective date of this decision.

4. The Deferred Deposit Transaction Originator License number 100-4387 issued to respondent Quick Cashing, Inc., doing business as Family Financial Center, is revoked.

DATED: January 8, 2016

/s/

MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings