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9
10 BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

12 In the Matter of the Accusation of)	File Nos.: 100-0389, 100-0636, 100-0637,
13 THE CALIFORNIA CORPORATIONS)	100-0639, 100-0640, 100-0642,
14 COMMISSIONER,)	100-0644
)	
15 Complainant,)	1) DESIST AND REFRAIN ORDER
)	2) CITATIONS
16 vs.)	3) ORDER VOIDING LOANS
)	
17 Area Check Cashing Centers, Inc.,)	
)	
18 Respondent)	
)	

19
20 Complainant, the California Corporations Commissioner, (“Commissioner”) is informed and
21 believes, and based upon such information and belief, alleges and charges Respondent as follows:

22 INTRODUCTION

23 The Commissioner of the Department of Corporations (“Department”) issued to Respondent,
24 Area Check Cashing Centers, Inc. (“Area”) seven deferred deposit transaction originator licenses
25 (Nos. 100-0389, 100-0636, 100-0637, 100-0639, 100-0640, 100-0642, and 100-0644) (“Area
26 Licenses”), pursuant to the California Deferred Deposit Transaction Law (“CDDTL”) set forth in
27 California Financial Code section 23000 et seq. (All future references to sections are to the
28 California Financial Code unless indicated otherwise.) In addition to the licensed locations operated

1 by Respondent, Area also operated a deferred deposit transaction business at a location for which it
2 did not hold a license.

3 The Commissioner has issued against Respondent a Desist and Refrain Order, Citations
4 totaling forty-five thousand, one hundred and ten dollars (\$45,110), and an Order Voiding Loans,
5 pursuant to CDDTL sections 23050, 23058, and 23060, for the unlicensed activity and multiple
6 additional violations of the CDDTL.

7 I

8 FACTUAL BACKGROUND

9 1. The Department is responsible for enforcing provisions of the CDDTL and authorized
10 to pursue administrative actions and remedies against licensees who engage in violations of the
11 CDDTL.

12 2. Since at least February of 2004, Respondent has engaged in the business of deferred
13 deposit transactions by offering, originating and making deferred deposit transactions.

14 3. A deferred deposit transaction is a written transaction whereby one person gives funds
15 to another person upon receipt of a personal check along with an agreement that the personal
16 check shall not be deposited until a later date. These transactions are also referred to as “payday
17 advances” or “payday loans.”

18 4. On March 10, 2008, the Commissioner’s examiner visited Respondent’s corporate
19 office, located at 5601 E. La Palma Avenue, Anaheim, California 92807. The examiner discussed
20 the examination and additional information with Respondent’s officer, Charles Gill, on or about
21 April 10, 2008.

22 5. The Commissioner’s examiner followed up with an examination on April 23, 2008 at the
23 store located at 4340 Lincoln Ave., Cypress, California 90630. The findings from this examination
24 were discussed with Mr. Gill at the corporate office on May 1, 2008.

25 6. The Department examiner’s review of Respondent’s businesses revealed the
26 CDDTL violations described below, which warranted the issuing of an order to desist and refrain
27 from such violations, penalties, and restitution to consumers.

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II

DEFERRED DEPOSIT TRANSACTION LAW

7. Section 23005 of the CDDTL requires that any person who offers, originates or makes a deferred deposit transaction be licensed. Each license is specific to the location and the licensee listed in the license application and on the license issued by the Department.

8. Licenses issued by the Department under the CDDTL are not transferable or assignable, pursuant to section 23018.

9. Section 23045(a) states that licenses remain in effect until they are surrendered, suspended or revoked. Suspension and revocation are actions the Commissioner may take. Surrender of a license requires an application to surrender by the licensee.

10. Deferred deposit originators are defined as “licensees” under the CDDTL, even if they do not obtain the required license from the Department for the location where they are doing business. Section 23001 defines “licensee” as any person who offers, originates, or makes a deferred deposit transaction.

11. Certain disclosures are required in each agreement between the licensee and its customer. These are detailed in section 23035(e) and include: a disclosure of the APR being charged, the name, address, and telephone number of the licensee, and other disclosures.

12. Section 23023 requires that licensees only operate businesses under the name listed on their license or order from the Department.

13. Section 23037 limits a licensee’s transactions and activities and states that a licensee shall not make any statement that is likely to mislead in connection with the business of deferred deposit transactions.

14. Under section 23050, the Commissioner may order that any person who is engaged in the business of deferred deposit transactions without a license desist and refrain from engaging in the business, and that any licensee who violates any provision of the CDDTL desist and refrain from further violating the CDDTL.

15. Section 23058 permits the Department to issue citations to any person it determines is engaged in deferred deposit transactions without a license, as well as to a licensee who violates any

1 provision of the CDDTL. Each citation may contain an assessment of an administrative penalty of
2 up to two thousand five hundred dollars (\$2,500). This penalty is in addition to and separate from all
3 other remedies available to the Department.

4 16. Pursuant to section 23060, if a licensee willfully violates any provision of the CDDTL in
5 the making or collection of a deferred deposit transaction, the transaction contract is void, and the
6 originator does not have the right to collect or receive any amount provided in the deferred deposit
7 transaction. This includes any charges or fees collected by the licensee in connection with the
8 transaction.

9 III

10 RESPONDENTS' DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS

11 17. Respondent operated a deferred deposit transaction business at 4340 Lincoln Ave.,
12 Cypress, California 90630. Respondent did not hold a license for this business, in violation of
13 section 23005.

14 18. The business name under which Respondent operated at this location was Checks
15 Cashed And More ("CCM"), in violation of section 23037. (CCM was licensed by the
16 Department in its own name at this location.)

17 19. On or about April 6, 2007, Respondent purchased CCM and began operations at this
18 location, using CCM's license number and business name in agreements with customers, in
19 violation of sections 23023 and 23037.

20 20. Respondent did not apply for a license at this location until January 2008. The
21 Department informed Respondent that a license could not be issued in Respondent's name at this
22 business location until the prior licensee surrendered its license.

23 21. During the Department's examinations of and discussions with Respondent in March
24 and April 2008, the Commissioner's examiner obtained Respondent's Deferred Deposit Ledgers
25 of customers at the Lincoln Ave. location in Cypress, California from April 6, 2007 through
26 April 4, 2008.

27 22. These ledgers revealed that while Respondent was unlicensed at this location, it
28 engaged in five hundred seventy (570) deferred deposit transactions, with loans totaling one

1 hundred fifty-six thousand, two hundred eighty-eight dollars and ninety-five cents (\$156,288.95).
2 See Exhibit A.

3 23. According to the record keeping of the Respondent, at least five hundred fifty-eight
4 (558) of these transactions were collected upon.

5 24. Respondent’s records indicate that the maximum fee charged on each transaction was
6 forty-five dollars (\$45).

7 25. The Department’s examiner also obtained information from Respondent with respect
8 to Respondent’s seven licensed deferred deposit business locations (the Area Licenses).

9 26. Respondent’s records revealed that every one of the Area Licenses businesses had
10 disclosed incorrect annual percentage rates (“APRs”) to customers, in violation of sections 23035
11 and 23037.

12 27. Respondent’s specific violations include the following CDDTL sections: 23005, 23023,
13 23035, and 23037. For Respondents’ violations discovered during the Department’s regulatory
14 examination and review of records, the Commissioner is issuing an order to desist and refrain from
15 further violations of the CDDTL, pursuant to section 23050, an order voiding five hundred and
16 seventy (570) loans, pursuant to section 23060, and Citations one through five hundred and sixty-six
17 (1-566), pursuant to section 23058. The first Citation is for two thousand five hundred dollars
18 (\$2,500), for the violation of section 23005, engaging in deferred deposit transactions without a
19 license. Citations two through five hundred and fifty-nine (2-559), inclusive, are being issued for the
20 five hundred and fifty-eight (558) transactions on which Respondent charged fees from April 6,
21 2007 through April 4, 2008, at the Lincoln Ave., Cypress, California location, while Respondent was
22 not licensed to engage in deferred deposit transactions at this location. The maximum fee charged
23 by Respondent on these transactions was forty-five dollars (\$45) each, therefore each Citation is in
24 the amount of forty-five dollars (\$45), for a total amount of twenty-five thousand one hundred and
25 ten dollars (\$25,110). Citations five hundred and sixty through five hundred and sixty-six (560-
26 566), inclusive, are being issued in the total amount of seventeen thousand five hundred dollars
27 (\$17,500), or two thousand five hundred dollars (\$2,500) for each Citation, for the seven locations
28 where Respondent disclosed incorrect APRs to customers, in violation of sections 23035 and 23037.

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IV
COMMISSIONER’S AUTHORITY TO ISSUE CITATIONS
AND DESIST AND REFRAIN ORDER

28. Section 23058 gives the Commissioner’s authority to issues citations, and states:

(a) 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 this division 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 two thousand five hundred dollars (\$ 2,500). All penalties collected under this section shall be deposited in the State Corporations Fund.

(b) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If within 30 days from the receipt of the citation of the person cited fails to notify the department that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and in all states the commissioner has all the powers granted therein.

(e) After the exhaustion of the review procedures provided for in this section, the department may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and order compelling the cited person to comply with the order of the department. The application, which shall include a certified copy of the final order of the department, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

CITATIONS

29. Pursuant to Financial Code section 23058, Respondent is hereby ordered to pay to the Commissioner within thirty (30) days from the date of these Citations an administrative penalty of forty-five thousand one hundred and ten dollars (\$45,110) for the five hundred and sixty-six (566) Citations described above.

DESIST AND REFRAIN ORDER

30. By reason of the foregoing, the licensee engaged in originating deferred deposit transactions without a license at 4340 Lincoln Ave., Cypress, California 90630, in violation of the California Financial Code section 23005. In addition, Respondent made misleading statements in connection with its deferred deposit transactions at this location, used an incorrect business name in transactions with customers at this business, and failed to disclose to consumers accurate annual percentage rates at seven business locations, in violation of sections 23037, 23023, and 23035, respectively.

31. California Financial Code section 23050 provides in pertinent part:

Whenever, in the opinion of the commissioner, any person is engaged in the business of deferred deposit transactions, as defined in this division, without a license from the commissioner, or any licensee is violating any provision of this division, the commissioner may order that person or licensee to desist and to refrain from engaging in the business or further violating this division. If, within 30 days, after the order is served, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded.

32. Pursuant to Financial Code section 23050, Area Check Cashing Centers, Inc. is hereby ordered to desist and refrain from violating Financial Code sections 23005, 23023, 23035, and 23037. This Order is necessary for the protection of consumers and consistent with the purposes, policies and provisions of the CDDTL. This Order shall remain in full force and effect until further order of the Commissioner.

V

COMMISSIONER’S AUTHORITY TO VOID TRANSACTIONS

33. Respondent willfully violated sections 23005 and 23037 of the CDDTL by engaging in deferred deposit transactions with at least forty-five (45) consumers at a location for which Respondent did not hold a license, and misleading consumers by using a business name and license number unaffiliated with Respondent. Transactions with these consumers totaled at least one hundred fifty-six thousand, two hundred eighty-eight dollars and ninety-five cents (\$156,288.95) between April 6, 2007 and April 4, 2008. Therefore, the Commissioner seeks to

1 void at least five hundred seventy (570) transactions with at least forty-five (45) consumers and
2 order Respondent to return the consumers’ funds in an amount that aggregates at least one
3 hundred fifty-six thousand, two hundred eighty-eight dollars and ninety-five cents (\$156,288.95).

4 See Exhibit A.

5 34. California Financial Code section 23060(b) states:

6 If any provision of this division is willfully violated in the making or
7 collection of a deferred deposit transaction, the deferred deposit
8 transaction contract shall be void, and no person shall have any right
9 to collect or receive any amount provided in the deferred deposit
10 transaction, any charges, or fees in connection with the transaction.

11 **ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS**

12 35. Pursuant to California Financial Code section 23060 the above described five
13 hundred seventy (570) deferred deposit transactions, totaling at least one hundred fifty-six
14 thousand, two hundred eighty-eight dollars and ninety-five cents (\$156,288.95) are declared
15 void, and Respondent is hereby ordered to return the funds to the consumers listed in Exhibit A
16 attached hereto.

17 **CONCLUSION**

18 Complainant finds, due to the foregoing, that Respondent violated sections 23005, 23023,
19 23035, and 23037. Therefore, the Commissioner is justified in ordering Respondent to desist and
20 refrain from further violations of the CDDTL, in issuing five hundred sixty-six (566) Citations in the
21 total amount of forty-five thousand one hundred ten dollars (\$45,110) to Respondent, and in voiding
22 at least five hundred seventy (570) transactions pursuant to sections 23050, 23058 and 23060,
23 respectively.

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This Order is necessary for the protection of consumers and consistent with the purposes, policies and provisions of the CDDTL. This Order shall remain in full force and effect until further order of the Commissioner.

Dated: October 27, 2008

Sacramento, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
ALAN S. WEINGER
Acting Deputy Commissioner