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8
9 BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

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11 In the Matter of the Accusation of)
THE CALIFORNIA CORPORATIONS) File No.: 943-0122
12 COMMISSIONER,) STATEMENT OF ISSUES
13)
14 Complainant,)
15 vs.)
16 Express Consolidation, Inc.)
17 Respondent.)
18)

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

21 I

22 INTRODUCTION

23 The California Corporations Commissioner proposes to issue an order that denies the
24 application of Respondent (File No. 943-0122) for a prorater license under the California Check
25 Sellers, Bill Payers and Proraters Law (“CSBPPL”) set forth in California Financial Code sections
26 12000 *et seq.* (All references to sections are to the Financial Code unless indicated otherwise.)

27 The proposed order from the Department of Corporations (“Department”) seeks to deny the
28 issuance of a license to Respondent, Express Consolidation, Inc., pursuant to section 12211 in that

STATEMENT OF ISSUES

1 Respondent during relevant times failed to comply with all the applicable provisions of the
2 CSBPPL and Respondent’s plan of business demonstrates its intent to circumvent the provisions of
3 the CSBPPL including, but not limited to, section 12220, 12104 and 12314.

4 II

5 PROCEDURAL AND FACTUAL BACKGROUND

6 The Department of Corporations (“Department”) has jurisdiction over and regulates
7 bill payers and proraters under the Check Sellers, Bill Payers and Proraters Law set forth in the
8 California Financial Code section 12000 et seq.

9 California Financial Code section 12200 requires a license from the Department or
10 bona fide exemption to engage in the business as a check seller, bill payer or prorater in California.

11 On October 12, 2000, Express Consolidation, Inc. (“ECI”) was incorporated in Florida
12 as a non-profit corporation and since that time has done business throughout the United States
13 with its principal business address located at 413 NE 3d Street, Delray Beach, FL 33483. ECI
14 also does business at 777 E. Atlantic Avenue Suite C2, #370 Delray Beach, FL 33483.

15 Randall L. Leshin (“Leshin”) is the president, treasurer and executive director and Charles
16 Ferdon (“Ferdon”) is the vice president and secretary of ECI.

17 Leshin is also a licensed attorney in the State of California doing business as Randall
18 Leshin, P.A. with his business located at 924 SE 6th Street, Fort Lauderdale, FL 33301.

19 Express Consolidated, Inc., ECI, Randall L. Leshin, P.A. and Leshin have engaged in
20 activities in violation of the Check Sellers, Bill Payers and Proraters Law pursuant to the California
21 Financial Code section 12000 et seq by providing services of receiving money as an agent of an
22 obligor for the purpose of paying bills and/or prorating services to California consumers in
23 exchange for a fee. To promote their services they advertised by means of telemarketing, their Web
24 sites that include www.expressconsolidation.org and www.dmcounseling.com and their toll-free
25 telephone numbers. Their prorating services consist of debt management services/programs that
26 involve negotiations of repayment plans with creditors of consumers, whereby, in exchange for
27 various fees, Express Consolidated, Inc. and Leshin receive money from the consumer to distribute
28 among a consumer’s creditors in payment of that consumer's obligations.

1 Express Consolidated, Inc., ECI, Randall L. Leshin, P.A. and Leshin began the debt
2 settlement process for a consumer only after they have obtained extensive and detailed personal
3 and financial information about a consumer's identity, credit cards and bank accounts through
4 their application process. A consumer was also required to make all payments (money orders,
5 cashiers checks or electronic debits) payable to ECI's offices located at 777 E. Atlantic Avenue
6 Suite C2, #370, Delray Beach, Fl 33483. Express Consolidated, Inc., ECI, Randall L. Leshin,
7 P.A. and Leshin also provided the forms to consumers so that they can electronically debit a
8 consumer's bank accounts to withdraw funds from the consumer's bank account for the
9 payment of fees and for payments to a respective consumer's creditors.

10 Express Consolidated, Inc., ECI, Randall L. Leshin, P.A. and Leshin required consumers
11 to give them authorization and limited power of attorney that grants "ECI and any agents,
12 subcontractors, and employees of ECI authorization, authority and limited power of attorney to
13 communicate, discuss and negotiate payments terms and conditions, extension and deferment
14 of the [consumer's] accounts with creditors."

15 California consumers paid a \$50 set up fee and a monthly administrative fee of 10% of
16 the consumer's monthly payment. In exchange for these fees Express Consolidated, Inc., ECI,
17 Randall L. Leshin, P.A. and Leshin provided services of arranging a payment schedule on
18 behalf of the consumer to distribute payments monthly to the creditors of the consumer with
19 purported benefits that include arranging for creditors to accept reduced payments, lower
20 interest rates, and reducing or eliminating late fees and over-limit charges for credit cards.

21 ECI never filed with the Department of Corporations the form, Nonprofit Community
22 Service Organization Notice and Written Consent Notice, (Form CSCL 118) to claim an exemption
23 from the licensing requirements of the Check Sellers, Bill Payers and Proraters Law. Thus, during
24 all relevant times ECI did not meet the exemption requirement found in California Financial Code
25 section 12104.

26 Not until February 29, 2008, did ECI filed with the Department an application to do
27 business as a General Prorater (Form CSCL 104) and obtain a license pursuant to the requirement of
28 the Check Sellers, Bill Payers and Proraters Law pursuant to Financial Code section 12201 et seq.

1 The authorized individual signing on behalf of Express Consolidation, Inc. was Leshin. In the
2 application, Leshin indicated that he was the officer considered as the applicant’s principal
3 managing officer. A review of the documents filed by ECI and subsequently provided by Ferdon
4 reveals that ECI, Leshin and others had engaged in unlicensed, non-exempt prorating activities in
5 the State of California.

6 Documents show at least 2,427 residents of California were induced to enter into
7 agreements with ECI and Leshin. Although in many cases the agreements were between Randall L.
8 Leshin, P.A. and consumers, all the agreements clearly stated that Randall L. Leshin, P.A. was “not
9 providing any legal services.” Thus, Randall L. Leshin, P.A. and Leshin cannot meet the legal
10 requirements for an exemption from the licensing requirement found in the Check Sellers, Bill
11 Payers and Proraters Law.

12 Additionally, California consumers were overcharged amounts that exceed the statutory
13 limits found in California Financial Code sections 12104 and 12314 for nonprofit community
14 service organizations and for profit entities operating as proraters, respectively.

15 III

16 CHECK SELLERS, BILL PAYERS AND PRORATERS LAW

17 California Financial Code section 12200, states:

18 No person shall engage in the business, for compensation, of selling
19 checks, drafts, money orders, or other commercial paper serving the
20 same purpose, or of receiving money as agent of an obligor for the
21 purpose of paying bills, invoices, or accounts of such obligor, or
22 acting as a prorater, nor shall any person, without direct compensation
and not as an authorized agent for a utility company, accept money for
the purpose of forwarding it to others in payment of utility bills,
without first obtaining a license from the commissioner.

23 The definition of a prorater in Financial Code section 12002.1 states:

24 A prorater is a person who, for compensation, engages in whole or in
25 part in the business of receiving money or evidences thereof for the
26 purpose of distributing the money or evidences thereof among
27 creditors in payment or partial payment of the obligations of the
28 debtor.

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In order to be exempt from licensure, Financial Code section 12104 in part states:

A nonprofit community service organization that meets all of the following criteria shall be exempt from any requirements imposed on proraters pursuant to this division:

(a) The nonprofit community service organization incorporates in this state or any other state as a nonprofit corporation and operates pursuant to either the Nonprofit Public Benefit Corporation Law, . . . or the Nonprofit Mutual Benefit Corporation Law, . . .

(d) The nonprofit community service organization receives from a debtor no more than the following maximum amounts to offset the organization's actual and necessary expenses for the services described in subdivision (c): a one-time sum not to exceed fifty dollars (\$50) for education and counseling combined in connection with debt management or debt settlement services; and for debt management plans, a sum not to exceed 8 percent of the money disbursed monthly, or thirty-five dollars (\$35) per month, whichever is less, and for debt settlement plans a sum not to exceed 15 percent of the amount of the debt forgiven for negotiated debt settlement plans. Nonprofit community service organizations shall not require any upfront payments or deposits on debt settlement plans and may only require payment of fees once the debt has been successfully settled. For purposes of this subdivision, a household shall be considered one debtor. The fees allowed pursuant to this subdivision shall be the only fees that may be charged by a nonprofit community service organization for any services related to a debt management plan or a debt settlement plan.

(i) The nonprofit community service organization submits to the commissioner, at the organization's expense, an audit report containing audited financial statements covering the calendar year or . . . fiscal year, then for that fiscal year, within 120 days after the close of the calendar or fiscal year.

(j) The nonprofit community service organization submits with the annual financial statements required under subdivision (i) a declaration that conforms to Section 2015.5 of the Code of Civil Procedure . . .

The Department did not receive from ECI any documents that are required to be filed to meet the requirements for an exemption under California Financial Code section 12104. All non-exempt bill payers and proraters in this state are required to be licensed by the Commissioner. Express Consolidated, Inc., ECI, Randall L. Leshin, P.A. and Leshin are not able to satisfy the

1 criteria to meet any statutory exemption from the Check Sellers Bill Payers Proraters Law’s
2 licensing requirement. Thus, during all relevant times they have been unlicensed and unauthorized
3 to act as either bill payers or proraters in the State of California.

4 Moreover, Express Consolidated, Inc., ECI, Randall L. Leshin, P.A. and Leshin charged
5 consumers amounts that exceed the statutory amounts authorized by the Legislature in that their
6 fees violate California Financial Code sections 12104 and 12314.

7 Section 12314 limits the charges and fees that Respondents can charge consumers and
8 states:

9 The total charges received by a prorater, or any other person for the
10 prorater's services, may not exceed in the aggregate twelve percent
11 (12%) for the first three thousand dollars (\$3,000), eleven percent
12 (11%) for the next two thousand dollars (\$2,000), and ten percent
13 (10%) for any of the remaining payments distributed by a prorater to
14 the creditors of a debtor, except for payments made on recurrent
15 obligations. Recurring obligations shall be defined for the purpose of
16 this section as follows: current rent payments, current utility payments,
17 current telephone bills, current alimony payments, current monthly
18 insurance premium payments, and payments made on obligations
19 which are secured by a first mortgage or first deed of trust on real
20 property.

21 (a) Notwithstanding the provisions of Section 12315, upon compliance
22 with the provisions of Sections 12315.1, and 12320, an origination fee
23 of a sum not to exceed fifty dollars (\$50) may be charged;

24 (b) A fee not to exceed four dollars (\$4) per disbursement on recurring
25 obligations, consisting of current rent payments or obligations which
26 are secured by a first mortgage or first trust deed on real property, may
27 be charged.

28 (c) A fee not to exceed one dollar (\$1) on other recurring obligations.
When a debtor has not canceled or defaulted on the performance of his
contract with the prorater within 12 months after execution of the
prorate contract, the prorater shall refund any origination fee charged to
the debtor. At least once each month the prorater shall pay not less than
70 percent of all funds received from the debtor to the creditors of the
debtor.

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IV

COMMISSISONER’S AUTHORITY TO DENY RESPONDENT’S CDDTL LICENSE

By reason of Respondent’s business plan and financial arrangements, which violate the CSBPPL, the Commissioner seeks an order to deny the prorater license of Respondent.

Section 12221 sets forth the grounds for a denial of license and states:

Upon notice and reasonable opportunity to be heard, the commissioner may deny any license for any of the following reasons:

- (a) A false statement of a material fact has been made in the application for license.
- (b) Any officer, director, or member of the applicant has, within the last 10 years, been (1) convicted of or pleaded nolo contendere to a crime, or (2) committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with the provisions of this division.
- (c) The applicant, any officer, director, general partner, or member of the applicant, or any person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of the State of California or a foreign jurisdiction.
- (d) The applicant has not complied with all the applicable provisions of this division.
- (e) The proposed officers and directors do not have sufficient check selling, bill paying, prorating, or other experience to afford reasonable promise of successful operation.
- (f) The plan of business does not demonstrate that the proposed business will have a reasonable chance for a successful operation.
- (g) The proposed business is being formed for a purpose other than the legitimate objectives contemplated by this division.
- (h) The proposed capital structure is inadequate.

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VI

CONCLUSION

Complainant finds, by reason of the foregoing that Respondent at relevant times failed to comply with all the applicable provisions of the CSBPPL, the proposed business is being formed for a purpose other than the legitimate objectives contemplated by this division.

THEREFORE, Complainant find that he is justified under section 12221 in denying the application of Respondent, Express Consolidation, Inc., for a CSBPPL license.

WHEREFORE IT IS PRAYED that an order issue that denies the application for CCBPPL license filed on February 29, 2008, by Respondent, Express Consolidation, Inc.

Dated: July 15, 2008
San Francisco, California

Respectfully submitted,

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Joan E. Kerst
Senior Corporations Counsel
Attorney for Complainant