

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 WAYNE STRUMPFER
Deputy Commissioner
3 ALAN S. WEINGER (CA BAR NO. 86717)
Lead Corporations Counsel
4 JOAN E. KERST (CA BAR NO. 123351)
Senior Corporations Counsel
5 Department of Corporations
6 71 Stevenson Street, Ste. 2100
7 San Francisco, California 94102
8 Telephone: (415) 972-8547
9 Facsimile: (415) 972-8550
Attorneys for Complainant

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

12)
13 THE CALIFORNIA CORPORATIONS) File No.: 100-3292
COMMISSIONER,)
14) ACCUSATION
15 Complainant,)
16 vs.)
17 Darlene L. Or, doing business as Post Box Plus,)
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 On September 6, 2006, the Commissioner of the California Department of Corporations
24 (“Department”) issued Respondent, Darlene L. Or, doing business as Post Box Plus, a deferred
25 deposit transaction originator license (File No. 100-3292) pursuant to the California Deferred
26 Deposit Transaction Law (“CDDTL”) set forth in California Financial Code sections 23000 et seq.
27 (Unless indicated otherwise all references to sections are to the California Financial Code and
28 references to sections of the California Code of Regulation, title 10, are referred to as regulations.)

ACCUSATION

1 By reason of Respondent’s numerous and continuing violations of the CDDTL, the
2 Commissioner seeks to revoke the deferred deposit transaction originator license of Respondent
3 pursuant to section 23052.

4 I

5 FACTUAL BACKGROUND

6 1. During all relevant times herein, Darlene L. Or, doing business as Post Box Plus was a
7 fictitious business name used by its owner, Darlene Lynn Or, (hereinafter Respondent) at the
8 business located at 7900 Limonite Avenue # G, Riverside, California.

9 2. The Department is responsible for enforcing all provisions of the CDDTL.
10 Respondent has engaged in numerous violations of the CDDTL as discussed below.

11 3. Since at least September 2006 Respondent has engaged in the business of deferred
12 deposit transactions by offering, originating and making deferred deposit transactions as described
13 below.

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

18 5. In August 2006 Respondent filed with the Department an application for a license to
19 make deferred deposit transactions and included a Declaration, designated as “Exhibit K” to the
20 application, and signed under penalty of perjury by Respondent’s owner, Darlene L. Or stating:

21 **I (we) have obtained and read copies of the California Deferred Deposit**
22 **Transaction Law (Division 10 of the California Financial Code) and the Rules**
23 **(Chapter 3, Title, 10, California Code of Regulations) and am familiar with**
24 **their content: and,**

25 **I (we) agree to comply with all the provision[s] of the California Deferred Deposit**
26 **Transaction Law, including any rules or orders of the Commissioner of**
27 **Corporations.**

28 Respondent’s Declaration to the application also states that “by signing this declaration . . .the
applicant hereby agrees (or attests) or declares understanding of the following items listed below:”

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1. That the applicant will submit to periodic examinations by the Commissioner of Corporations as required by the California Deferred Deposit Transaction Law.
2. That the applicant will keep and maintain all records for 2 years following the last entry on a deferred deposit transaction and will enable an examiner to review the record keeping and reconcile each consumer deferred deposit transaction with documentation maintained in the consumer’s file records.
3. That the applicant understands the examination process involving the reconciliation of records will be facilitated if the applicant maintains, at minimum, a ledger or listing of the following current and undated information for each deferred deposit transaction (as specified in Financial Code section 23035): customer’s name and address, account number, check number, amount provided, fee, amount of check, corresponding annual percentage rate (e.g. 14-day or 30-day) and the deferred due date.
4. That the applicant will maintain a file of all advertising for a period of 90 days from the date of its use, which will be available to the Commissioner of Corporations upon request.
5. That the applicant will file with the Commissioner of Corporations an amendment to this application prior to any material change in the information contained in the application for licensure, including, without limitation, the plan of operation.
6. That the applicant will file with the Commissioner of Corporations any report required by the Commissioner.
7. That the applicant hereby attests that the applicant (including officers, directors and principals) has not engaged in conduct that would be cause of denial of a license.

6. The Respondent’s owner Darlene L. Or was required to and did sign a Declaration designated as “Exhibit L” to the application, which was signed under penalty of perjury stating:

1. The applicant will comply with all federal and state laws and regulations (including Division 10, commencing with Section 23000, of the Financial Code), if it offers, arranges, acts as an agent for, or assists a deferred deposit originator in the making of a deferred deposit transaction (Financial Code Section 23037(i).)

1 All records shall be kept for two years following the last entry on a deferred
2 deposit transaction and shall enable an examiner to review the recordkeeping
3 and reconcile each consumer deferred deposit transaction with documentation
maintained in the consumer's deferred deposit transaction file records.

4 12. California Code of Regulations, title 10, section 2025, subdivision (c)(1) specifies that
5 books and records must be maintained for two (2) years, as set forth below.

6 (c)(1) Except as provided in subsection (e), records to be maintained at each
7 licensed business location for each deferred deposit transaction shall include at least
8 the following: the deferred deposit transaction agreement, evidence of the check,
9 written disclosure(s) used to provide notice in compliance with subdivision (c) of
10 Section 23035 of the Financial Code, record of any and all extensions of time or
11 payment plans for repayment of an existing deferred deposit transaction, record of
time periods for each transaction, record of transaction fees and charges, and record
of transaction payments.

12 13. All CDDTL licensees are required to file a verified annual report with the Commissioner
13 pursuant to section 23026 and California Code of Regulations, title 10, section 2030. Section 23026
14 and regulation 2030 in relevant part, state:

15 On or before March 15 of each year, beginning March 2006, each licensee
16 shall file an annual report with the commissioner pursuant to procedures that
17 the commissioner shall establish. . . For the previous calendar year, these
reports shall include the following:

- 18 (a) The total number and dollar amount of deferred deposit
19 transactions made by the licensee.
- 20 (b) The total number of individual customers who entered into
21 deferred deposit transactions.
- 22 (c) The minimum, maximum, and average amount of deferred deposit
23 transactions.
- 24 (d) The average annual percentage rate of deferred deposits.
- 25 (e) The average number of days of deferred deposit transactions.
- 26 (f) The total number and dollar amount of returned checks.
- 27 (g) The total number and dollar amount of checks recovered.
- 28 (h) The total number and dollar amount of checks charged off.

1 14. Section 23035 set forth the requirements of the written agreements for deferred deposit
2 transactions and in relevant states:

3 (c) Before entering into a deferred deposit transaction, licensees shall distribute
4 to customers a notice that shall include, but not be limited to, the following:

5 (1) Information about charges for deferred deposit transactions.

6 (2) That if the customer's check is returned unpaid, the customer may be
7 charged an additional fee of up to fifteen dollars (\$15).

8 (3) That the customer cannot be prosecuted in a criminal action in
9 conjunction with a deferred deposit transaction for a returned check or be
10 threatened with prosecution.

11 (4) The department's toll-free telephone number for receiving calls
12 regarding customer complaints and concerns.

13 (5) That the licensee may not accept any collateral in conjunction with a
14 deferred deposit transaction.

15 (6) That the check is being negotiated as part of a deferred deposit
16 transaction made pursuant to Section 23035 of the Financial Code and is
17 not subject to the provisions of Section 1719 of the Civil Code. No
18 customer may be required to pay treble damages if this check does not
19 clear.

20 (d) The following notices shall be clearly and conspicuously posted in the
21 unobstructed view of the public by all licensees in each location of a business
22 providing deferred deposit transactions in letters not less than one-half inch in
23 height: . . .

24 (e) An agreement to enter into a deferred deposit transaction shall be in writing
25 and shall be provided by the licensee to the customer. The written agreement
26 shall authorize the licensee to defer deposit of the personal check, shall be
27 signed by the customer, and shall include all of the following:

28 (1) A full disclosure of the total amount of any fees charged for the
deferred deposit transaction, expressed both in United States
currency and as an APR as required under the Federal Truth In
Lending Act and its regulations.

 (2) A clear description of the customer's payment obligations as
required under the Federal Truth In Lending Act and its regulations.

 (3) The name, address, and telephone number of the licensee.

 (4) The customer's name and address.

 (5) The date to which deposit of check has been deferred (due date).

 (6) The payment plan, or extension, if applicable as allowed under
subdivision (c) of Section 23036.

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(7) An itemization of the amount financed as required under the Federal Truth In Lending Act and its regulations.

(8) Disclosure of any returned check charges.

(9) That the customer cannot be prosecuted or threatened with prosecution to collect.

(10) That the licensee cannot accept collateral in connection with the transaction.

(11) That the licensee cannot make a deferred deposit transaction contingent on the purchase of another product or service.

(12) Signature space for the customer and signature of the licensee or authorized representative of the licensee and date of the transaction.

(13) Any other information that the commissioner shall deem necessary by regulation.

15. Section 23037 limits a licensee’s transactions and activities and in relevant part states:

In no case shall a licensee do any of the following:

(e) Alter the date or any other information on a check.

(f) Engage in any unfair, unlawful, or deceptive conduct, or make any statement that is likely to mislead in connection with the business of deferred deposit transactions. . . .

(h) Take any check, instrument, or form in which blanks are left to be filled in after execution.

III

DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS

16. On April 19, 2007, the Commissioner’s examiner visited Respondent after giving the licensee advance notice of the Department’s regulatory examination.

17. The Commissioner’s examiner found the licensee failed to maintain quarterly statements demonstrating compliance with the statutory minimum net worth requirements in violation of sections 23007 and 23024. Additionally, Respondent failed to maintain deferred deposit transactions books and records as required. Specifically, the licensee did not maintain evidence of checks for each transaction in violation of section 23024 and California Code of Regulations, title 10, section 2025, subdivision (c)(1). Instead, Respondent admitted that no accounting or completed transaction records were maintained.

1 18. The Department examiner found the licensee was in violation of section 23035,
2 subdivision (c), by failing to provide the written notice to consumers prior to entering into written
3 agreements with them.

4 19. Respondent failed to post the notices and schedule of all fees and charges required by
5 section 23035, subdivisions (d).

6 19. Respondent also failed to include the information in written agreements mandated by
7 section 23035, subdivision (e) (1) (2), (7), (9), (10) and (11). Specifically, Respondent’s written
8 agreements lack numerous disclosures required by section 23035 that included the following:

- 9 (1) a correctly calculated annual percentage rate (“APR”);
- 10 (2) a clear description of the customer’s payment obligations as required under the
- 11 Federal Truth in Lending Act;
- 12 (3) an itemization of the amount financed as required under the Federal Truth in
- 13 Lending Act and regulations thereunder;
- 14 (4) information that the customer cannot be prosecuted or threatened with prosecution;
- 15 (5) notice that the licensee cannot accept collateral in connection with a deferred
- 16 deposit transaction; and,
- 17 (6) notice that the licensee cannot make a transaction contingent on the purchased of
- 18 another produce or service.

19 21. Additionally, Respondent accepted customer’s checks that were altered but lacked the
20 customer’s initials acknowledging the alterations in violation of section 23037, subdivision (e).
21 Respondent altered the customer’s name on written agreements in violation of section 23037,
22 subdivision (f). The Department examiner found that the licensee accepted agreements and checks
23 with blanks left to be completed after the agreement was executed in violation of section 23037,
24 subdivision (h).

25 22. Respondent’s Annual Report for 2006 filed with the Department was false in violation
26 of section 23026 and regulation 2030.

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III

COMMISSISONER’S AUTHORITY TO REVOKE RESPONDENT’S CDDTL LICENSE

Section 23052 sets forth the grounds for a suspension or revocation of a CDDTL license that in relevant part states:

The commissioner may . . .revoke any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:

(a) The licensee has failed to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of this division.

(b) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.

CONCLUSION

Complainant finds, by reason of the foregoing, that Respondent, Darlene L. Or, doing business as Post Box Plus, has violated multiple sections of the CDDTL that include Financial Code sections 23007, 23024, 23026, 23035, 23037 as well as regulations 2025 and 2030 of title 10 of the California Code of Regulations.

The violations and findings set forth above constitute grounds under Financial Code section 23052 to revoke the CDDTL license of Respondent.

WHEREFORE, Complainant, the California Corporations Commissioner prays that the deferred deposit transaction license of Respondent, Darlene L. Or, doing business as Post Box Plus, be revoked pursuant to Financial Code section 23052.

Dated: August 29, 2007
San Francisco, California

Respectfully submitted,
PRESTON DuFAUCHARD
California Corporations Commissioner

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