

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

EXPRESS CASH AND LOAN, INC.,

Respondent.

Case No. 100-0652

OAH No.: N2007070465

**FINAL DECISION (AFTER
REJECTION OF PROPOSED
DECISION) AND ORDER**

PROCEDURAL HISTORY

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on August 17, 2007.

Joan E. Kerst, Senior Corporations Counsel, represented complainant.

Ashby C. Sorensen, Attorney at Law, represented respondent.

Submission of the matter was deferred to September 7, 2007, for receipt of final arguments, which were received. On September 7, 2007, complainant filed an amended accusation alleging an additional cause for disciplinary action. On September 14, 2007, complainant withdrew the amended accusation, its entire reply brief dated September 7, 2007, the first three and a half pages of complainant's letter brief dated August 24, 2007, and any other references to a false application. All of the post hearing documents are marked as Exhibit "M", and the agreed upon briefs were considered.

The matter was submitted on September 14, 2007.

On October 2, 2007, the Administrative Law Judge issued a Proposed Decision that was served on all parties by the Department of Corporations on November 1, 2007, in accordance with Government Code Section 11517(c)(1). The Proposed Decision was not adopted as the Decision in this matter.

Pursuant to Section 11517(c)(2)(E) of the Government Code, all parties were served on January 10, 2008, with notice of the determination not to adopt the Proposed Decision of the Administrative Law Judge and notified that the case would be decided by the California Corporations Commissioner upon the record, and upon any written argument offered by the parties.

The parties were permitted to submit written arguments and were advised that the California Corporations Commissioner based his rejection on the reduction in the administrative penalties, and on consideration whether there are adequate grounds to revoke respondent's California deferred deposit transaction license pursuant to Financial Code Section 23052. The parties submitted written arguments by February 6, 2008.

The record in this case, including the transcript of the proceedings of August 17, 2007, has been given careful consideration. The following shall constitute the Decision of the California Corporations Commissioner in the above-entitled matter.

FACTUAL FINDINGS

1. Preston DuFauchard, California Corporations Commissioner, by Joan E. Kerst, Senior Corporations Counsel, made the accusation in his official capacity.

2. On December 31, 2004, the Commissioner of the Department of Corporations (Department) issued Express Cash and Loan, Inc. (respondent), a deferred deposit transaction originator license pursuant to the Financial Code.

3. Express Cash and Loan, Inc. is, and was at all relevant times to this matter, a California corporation doing business at 300 N. E Street, Madera, California 93638. The branch manager of respondent is Susan Green.

4. Since January 1, 2005, respondent has engaged in the business of deferred deposit transactions (also called payday advances or payday loans) by offering, originating and making deferred deposit transactions. A deferred deposit transaction is a written transaction whereby one person gives funds to another person upon receipt of a personal check and it is agreed that the personal check shall not be deposited until a later date.

5. In May 2003, respondent filed with the Department an application for a license to make deferred deposit transaction and included a Declaration, signed under penalty of perjury by the president/CEO, Rebecca A. Martin, stating that she has obtained and read copies of the law and that she agrees to comply with the law. It should be noted that deferred deposit transactions were previously regulated under the Department of Justice. A new law transferring the jurisdiction for deferred deposit transaction to the Department as of December 31, 2004. The new law instituted additional legal requirements and regulations that a licensee was required to follow. Ms. Martin also signed another declaration agreeing to comply with all the federal and state laws and regulations regarding deferred deposit transactions.

6. On December 31, 2004, a letter accompanied the Commissioner's issuance of a license to respondent, which alerted respondent to certain obligations and responsibilities under the new laws and regulations. Some of the provisions include that the maximum loan allowed is \$300, a maximum fee of 15 percent can be charged, and a non-sufficient check return charge is limited to \$15.

7. Respondent should have known its obligations and responsibilities under the new laws. On January 10, 2007, the Commissioner's examiner visited respondent after giving the licensee about two months advance notice of the examination.

8. The Commissioner's examiner found the licensee was not maintaining deferred deposit transactions books and records for the two-year period required by law. The examiner found the licensee was charging excessive and unauthorized fees. The examiner found the licensee was charging a deferred deposit transaction fee that exceeded the maximum allowed. The licensee failed to post the license and fee schedule as required by law. The licensee's advertisements did not contain the required disclosure. The licensee's written agreement did not contain all the required disclosures and the agreement contained excess charges and blank spaces in violation of the law. The licensee used customer checks for subsequent transactions and did not maintain evidence of checks for each transaction in violation of the law.

9. The respondent filled out a pre-examination questionnaire. In that questionnaire respondent stated that all paper records were shredded when a customer paid their deferred deposit transaction but that Express Cash and Loan, Inc. retained some information in their computer database for five years.

10. Respondent was cited for eleven violations as follows:

- A. Respondent failed to maintain deferred deposit transaction records for a period of two years from the date of the transactions and routinely destroyed deferred deposit transaction records, including evidence of checks.
- B. Respondent routinely destroyed deferred deposit transaction records, including evidence of checks.¹
- C. Respondent failed to post the required license.
- D. Respondent failed to disclose the license in advertising as required by law.
- E. Respondent failed to post the required schedule of fees.
- F. Respondent's written agreements with customers for deferred deposit transactions did not contain the required disclosures.
- G. Respondent charged consumers a deferred deposit transaction fee that exceeded the maximum allowed.
- H. Respondent charged customers excessive fees for non-sufficient funds.
- I. Respondent charged excessive fees to customers.
- J. Respondent used the same check for subsequent transactions.
- K. Respondent's agreement for deferred deposit transactions with customers contained blank spaces.

¹ Items A and B are the same act, but are alleged to violate both a statute and rules and regulations.

11. The Commissioner ordered respondent to pay a penalty of \$2,500 for each violation set forth in Finding 10, above, for a total amount of \$27,500. This is the maximum penalty allowed by law.

12. A. and B. Respondent admits that they were in the practice of destroying certain paper-based transaction records before the required two years. They did this to protect the consumer's privacy and prevent identity theft, not to evade any legal obligations. However, they do have computer records that can be reconstructed.

C. Respondent admits that the license was not properly posted. This was because they had to change banks and needed to show the license to the new bank. The license was never posted back on the wall. The failure to post the license was not done to evade the law.

D. Respondent admits that the advertisement did not have the proper license number. This was an oversight. The new advertisement for the local yellow pages will have the proper license number in the next publication.

E. Respondent did not post the 30-day loan schedule. This was because they only make 14-day loans. They now have a full and proper schedule posted.

F. Respondent admits that the prior agreements did not contain adequate disclosures. Before the examination, respondent changed the agreements to comply with the law.

G., H., and I. - Respondent admits that they charged excessive fees. Respondent charged a \$10 set up fee, a standard 12 percent on checks \$75 and lower, and an insufficient funds (NSF) fee for returned checks of \$25. Respondent stopped this practice in March of 2006.

J. Respondent admits that the same check was used for subsequent transactions. Respondent always had the customer initial the new dates. Respondent did this as a service to the customers. They have stopped this practice.

K. Respondent admits that the forms contained blank spaces because it did not know that the information was required to be filled in. After January 2007, respondent did not accept forms with blank spaces. Any blank spaces on computer forms were not left to be filled in later.

13. A. and B. - The violation for not keeping the proper records should not be assessed as a double penalty. The penalty for Findings 10 A and B are combined and reduced to \$1,000.

C., D., E., and F. - The violations set forth in Findings 10 C, D, E, and F involve the failure to notify clients of the requirements of the new law. Each one is assessed at \$500 for a total of \$2,000.

G, H, and I - The violations set forth in Findings 10 G, H, and I involve over charging consumers. These violations are assessed at \$500 each for a total of \$1,500.

J. The violation set forth in 10 J involves using the same check for subsequent transactions. This violation is assessed at \$100.

K. The last violation set forth in Finding 10 K involves actual agreements or forms signed by the clients that contained blank spaces. This violation is assessed at \$100.

The total reasonable assessment for the violations set forth in Finding 10 is \$4,700.

14. Respondent runs a pawnbroker business at the same location as the payday loan business. She has been a pawnbroker for more than 20 years. Respondent has made an effort to conform to the findings of the audit. They have posted the proper signs and schedules. They have modified the charges to conform to the requirements of the law. They had modified some of these charges prior to the audit. They have modified the record keeping to conform to the requirements of the law. It would not be against the public interest to allow respondent to continue as a deferred payment deposit transaction originator on terms and conditions that include a strict requirement to obey all the laws, rules and regulations that are required by the new legislation.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 7, 8, 9, 10, 12 and 13, cause for disciplinary action exists pursuant to Financial Code section 23052 subdivision (a) (failure to comply with requirements of the law) and (b) (violation of provisions of law or rules and regulations) as this code section relates to Financial Code section 23018 subdivision (a) (posting of the license); 23027 subdivision (b) (license number in advertisement); 23035 subdivisions (d) (posting requirements) and (e) (written disclosures); 23036 subdivisions (a), (e) and (f) (fees); 23037 subdivision (a) (cannot use same check for subsequent transaction); 23037 subdivision (h) (blank spaces in agreements); and title 10, California Code of Regulations, section 2025, subdivision (c) (1) (record keeping).

2. By reason of the matters set forth in Findings 10, 11, 12 and 13, the citation is affirmed as to Items A through K. Items A and B are combined. The reasonable amount of penalty assessment for Items A and B, combined is \$1,000. The reasonable amount of penalty assessment for Items C, D, E, F, G, H, and I is \$3,500. The reasonable amount of penalty assessment for Item J is \$100 and \$100 for Item K. The total reasonable assessment is \$4,700.

3. The matters set forth in Finding 14 have been considered in making the following order.

ORDER

1. The license and licensing rights of Express Cash and Loan, Inc. are hereby revoked. However, the revocation is stayed for a period of three years upon the following terms and conditions:

- a. Obey All Laws - Respondent shall obey all federal, state and local laws, rules and regulations governing licensed activities.
- b. Completion of Probation - Upon successful completion of probation, the deferred deposit transaction license shall be fully restored.
- c. Violation of Probation - If respondent violates probation in any respect, the Department, after giving notice and opportunity to be heard, may revoke probation and impose the disciplinary order that was stayed. Respondent must pay \$4,700 in penalty assessments within the first six (6) months of probation. Failure to pay the penalty assessments in a timely manner is a violation of probation.

2. Respondent is ordered to pay \$4,700 as set forth in Legal Conclusion 2. This amount shall be paid within six (6) months of the effective date of this Decision.

This Decision shall become effective on April 17, 2008.

IT IS SO ORDERED.

DATED: April 16, 2008

PRESTON DuFAUCHARD
CALIFORNIA CORPORATIONS COMMISSIONER