

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Amended Accusation
of:

THE CALIFORNIA CORPORATIONS
COMMISSIONER,

Complainant,

vs.

ROYAL PAYDAY ADVANCE, INC.,

Respondent.

Case No. 100-3125

OAH No.: L-2007090045

FINAL DECISION (AFTER
REJECTION OF PROPOSED
DECISION) AND ORDER

PROCEDURAL HISTORY

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles on January 16 and 17, 2008. Complainant California Corporations Commissioner was represented by Joan E. Kerst, Senior Corporations Counsel. Respondent Royal Payday Advance, Inc., was represented by Stella A. Havkin, Attorney at Law. Alex Rosenberg, President of Royal Payday Advance, Inc., was present and had an interpreter in the Russian language.

At the conclusion of the hearing, the record was held open for the parties to file written argument. On January 25, 2008, complainant filed a letter commenting on the admissibility of respondent's Exhibits I and M and a Memorandum of Points and Authorities in Support for Seeking Redress Pursuant to Financial Code sections 23052, 23058, and 23060. The letter and Memorandum were marked collectively as Exhibit 19A and 19B, respectively. On February 1, 2008, respondent filed a Memorandum of Points and Authorities in Opposition, which was marked as Exhibit P. On February 13, 2008, respondent submitted its Closing Brief, which was marked as Exhibit Q. On February 15, 2008, complainant filed its Closing Brief, which was marked as Exhibit 20.

On February 15, 2008, the Administrative Law Judge admitted respondent's Exhibits I and M into evidence and submitted this matter for decision.

On March 17, 2008, the Administrative Law Judge issued a Proposed Decision that was served on all parties by the Department of Corporations on April 16, 2008, 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 June 16, 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 argument by July 10, 2008. Complainant submitted a timely written argument. No written argument was received from respondent.

The record in this case, including the transcript of the proceedings of January 16 and 17, 2008, has been given careful consideration. The following shall constitute the Decision of the California Corporations Commissioner in the above-entitled matter.

FACTUAL FINDINGS

1. This matter arises under the California Deferred Deposit Transaction Law, Financial Code section 23000 et seq.¹ The Department of Corporations (hereinafter Department) is the agency of the State of California that has regulatory and licensing authority over applicants and licensees under the California Deferred Deposit Transaction Law (hereinafter also the CDDTL).

2. On February 28, 2006, the Department issued deferred deposit originator's license no.100-3125 to Royal Payday Advance, Inc. (hereinafter also respondent or Royal Payday), a California corporation. The principal business address of Royal Payday is 5585 Reseda Boulevard, Suite No. 102, Tarzana, California 91356. The president of Royal Payday is Alex Rosenberg (Rosenberg) and the secretary of the corporation is his spouse, Ella Rosenberg. The license remains in effect until suspended, surrendered, or revoked and is not transferable or assignable. This original license entitles respondent to maintain only its one place of business in Tarzana. The Department issued the license based on information contained in respondent's application filed on January 30, 2006.

3. (A) When it issued the license to respondent, the Department informed Rosenberg, President of Royal Payday, by a letter accompanying the license that a licensee had obligations and responsibilities under the CDDTL and advised him to review and become familiar with all of the laws and regulations.

(B) More specifically, in its letter, the Department advised Rosenberg, in part, that a licensee is subject to statutory books and records requirements, must maintain a net worth of at least \$25,000 at all times, and will be subject to an examination of its business, books, and records at any time but not less than once every two years. The Department further advised Rosenberg that its letter was not meant to enumerate all of a licensee's obligations and responsibilities.

¹All further statutory references are to the Financial Code, unless indicated otherwise.

(C) On April 5, 2007, a Department examiner visited Royal Payday and conducted an examination of its books and records after providing advance notice of the examination.

4. (A) On August 8, 2007, Accusation, File No. 100-3125, was made and filed for and on behalf of Preston DuFauchard in his official capacity as the California Corporations Commissioner.

(B) On December 31, 2007, Amended Accusation, File No. 100-3125, was made and filed for and on behalf of Preston DuFauchard in his official capacity as the California Corporations Commissioner.

5. (A) On or about August 14, 2007, Alex Rosenberg filed a Notice of Defense on behalf of Royal Payday, acknowledging receipt of the Accusation and requesting a hearing. After receipt of the Accusation and Amended Accusation, Rosenberg filed letters of explanation with the Department.

(B) On or about September 6, 2007, the Department filed and served a Notice of Hearing on Royal Payday and Rosenberg, notifying respondent of the hearing date on the Accusation.

(C) On September 19, 2007, the parties filed a joint request for continuance of the hearing. The continuance request was granted and the hearing ordered to commence on January 16, 2008. On December 31, 2007, the Department filed and served an Amended Notice of Hearing for the continued hearing date. This matter then ensued.

Department Examination

6. (A) On February 7, 2007, the Department informed Rosenberg by letter that it would be performing an examination of Royal Payday's deferred deposit transaction business and that an examiner would be calling him to schedule the examination. In its letter, the Department asked Rosenberg, in part, to complete an examination questionnaire and to provide the most recent quarterly balance sheet.

(B) On or about February 15, 2007, Rosenberg completed and returned the examination questionnaire to the Department, certifying that his answers were true and correct to the best of his knowledge and belief. In the questionnaire, Rosenberg stated that he maintained all of the books, records, and files of Royal Payday at his licensed location and kept the records for approximately four years. He indicated that he used a computer application or software for his business called "Loan Office 200G". Rosenberg further stated that he collected payments by using or accepting cash payments and by depositing the customers' checks, charged customers a \$15 fee for a check returned for non-sufficient funds (NSF), and allowed customers to have extensions of time to repay their deferred deposit transactions at no extra fee. Rosenberg also provided the Department with a portion of a balance sheet dated December 31, 2006, which showed that the total liabilities of Royal Payday were \$45,122.44.

7. On April 5, 2007, a senior examiner for the Department conducted a regulatory examination of the books and records of respondent Royal Payday at its licensed location in Tarzana. Rosenberg was present at the offices of Royal Payday during the examination. The senior examiner reviewed and copied books and records. On July 3, 2007, the senior examiner returned to the offices of Royal Payday to obtain further information about its loan transactions. The senior examiner obtained a loan report of Royal Payday's loan transactions from the date of licensure, or February 28/March 1, 2006, through July 2, 2007. On July 12, 2007, the senior examiner prepared a report of the findings from the regulatory examination.

Net Worth-Citation A

8. (A) At all times, respondent failed to maintain a net worth of at least \$25,000 in violation of section 23007. On January 31, 2006, which was one month prior to licensure, Royal Payday had a net worth of at least \$25,000; its liabilities were valued at \$31,919.45 and its assets were valued at \$63,764.44, which included \$38,768.02 of cash in its general business account. However, at the end of the calendar year, on December 31, 2006, and after ten months of licensure as a deferred deposit originator, Royal Payday had a net worth of less than \$25,000. Its balance sheet showed total assets valued at \$66,054.48, which included \$56,428.48 in cash in bank accounts. Its total liabilities were valued at \$45,122.44.

(B) Respondent contended that Royal Payday's net worth exceeded \$25,000 soon after the Department's regulatory examination. According to the complete balance sheet dated August 31, 2007 [Exh. 11], the value of respondent's total assets was \$62,920.47, including \$49,594.47 in cash. However, the value of its total liabilities, not including equity, was \$68,628.90. Thus, the balance sheet did not necessarily show that Royal Payday had a net worth of at least \$25,000 as of August 31, 2007. The balance sheet dated October 31, 2007, showed that Royal Payday did have a net worth exceeding \$25,000. The company had total assets valued at \$84,324.64, including \$70,998.64 in cash in bank accounts or inventory. The company's long-term liabilities totaled \$52,642.23.

Maintenance of Checks-Citation B

9. On April 5, 2007, respondent Royal Payday failed to maintain or keep books, accounts, and records of deferred deposit transactions to enable the Department to determine if respondent was complying with the CDDTL and the rules and regulations thereunder in violation of section 23024. Specifically, respondent did not keep evidence of customers' checks for deferred deposit transactions for two years as required by California Code of Regulations, title 10, section 2025, subdivision (c)(1) (hereinafter Regulation).

10. As the president and managing officer of Royal Payday, Rosenberg admits that he did not keep copies of the actual checks provided by customers for deferred deposit transactions for the required two years period. As a routine business practice, Royal Payday kept copies of customers' checks for three or four months and then discarded them. Instead, upon entering a deferred deposit transaction with a customer, Rosenberg and his agents and employees inputted certain information about the customer's check onto the loan information section of the business computer software of Royal Payday, including

the name of the customer's bank, bank account number, date, amount, and number of the check, and the due date of the deferred deposit transaction. However, this information about the customer's check was changed or deleted whenever the customer entered into a new deferred deposit transaction. Thus, the information of the customer's check was not maintained for two years when the customer entered a new deferred deposit transaction. In the absence of the physical evidence of the checks, the information about the checks kept by Royal Payday on its computer software did not comply with the requirements of section 23024 and Regulation 2025, subdivision (c)(1), that the licensee keep "evidence of checks" from deferred deposit transactions for two years.

11. On April 5, 2007, respondent also failed to maintain for two years any deferred deposit transaction agreements or written disclosures to provide notice to consumers in violation of Regulation section 2025, subdivision (c)(1). As described below, until April 4, 2007, respondent did not use or provide written agreements with customers that met the requirements of the CDDTL.

Written Agreement and Disclosures--Citations C and F

12. (A) Prior to April 4, 2007, in connection with its deferred deposit transactions, Royal Payday did not use or provide a written agreement signed by the customer and a representative of the company as required by section 23035, subdivisions (a) and (e). Nor did Royal Payday use or distribute a written notice of disclosure to customers before entering into deferred deposit transactions as required by section 23035, subdivision (c).

(B) As president and the managing officer of Royal Payday, Rosenberg was not aware of the legal requirements that he use a written agreement and distribute a disclosure notice for the deferred deposit transactions of his company. He began using a combined written agreement and disclosure statement (Exh. 10A) only one day before the Department's regulatory examination. In fact, before the regulatory examination, he had just used the written agreement and disclosure statement in connection with but one transaction, which was dated April 4, 2007.²

(C) From date of licensure in February 28, 2006 until April 4, 2007, Royal Payday had used a "Deferred Deposit Application" [Exhs. B-C] for its deferred deposit transactions. This Deferred Deposit Application failed to meet the requirements of a written agreement for a deferred deposit transaction under section 23035, subdivisions (a) and (e), in that the application did not contain the address and telephone number of Royal Payday, the date to which the deposit or check had been deferred, and the payment plan or extension. The Deferred Deposit Application also failed to provide disclosures to customers of the fees charged for a deferred deposit transaction, the customers' payment obligations and an itemization of the amount financed as required by the Federal Truth in

² Royal Payday's original deferred deposit agreement and disclosure statement provided, in part, that a customer could pay his loan by "refinance[ing] this short term loan." Having a customer pay off a deferred deposit transaction with the proceeds of another is prohibited by section 23037, subdivision (a). Royal Payday deleted any reference to refinancing from its written agreements soon after conclusion of the regulatory examination.

Lending Act, any returned check charges, and that Royal Payday cannot make deferred deposit transactions contingent on the purchase of another product or service in violation of section 23035, subdivision (e)(1), (2), (7), (8), and (11). [Citation F] Respondent's Deferred Deposit Application failed to contain a signature space for the authorized representative of Royal Payday as required by section 23035, subdivision (e)(12). In fact, respondent's Deferred Deposit Application was not an agreement as much as an application for credit, for the application solicited information from customers and warned them that the information could be used in order to "service" or collect the debt created by the deferred deposit transaction.

Disclosure Notice—Citation E

13. (A) From February 28, 2006, through April 4, 2007, respondent Royal Payday failed to distribute to customers a notice containing the information required by section 23035, subdivision (c), before entering into deferred deposit transactions. Respondent's Deferred Deposit Application did not contain information about the charges for deferred deposit transactions, charges of an additional fee up to \$15 for any returned check, the Department's toll-free telephone number for making customer complaints, that Royal Payday could not accept collateral in conjunction with a deferred deposit transaction, or that the customer's check was being negotiated as part of a deferred deposit transaction.(§ 23035, subds. (c)(1)-(6).) On the other hand, the Deferred Deposit Application did disclose that the customer "cannot be prosecuted in criminal court to collect this loan" as required by section 23035, subd. (c)(3).

14. (A) Rosenberg and his employees claimed that, from the date of licensure on February 28, 2006, through April 3, 2007, Royal Payday used the "Terms and Stipulations" form [Exhs. B and C] for its deferred deposit transactions and distributed this form to its customers. The Terms and Stipulations form contains the disclosures required by section 23035, subdivision (c), as well as information about the 15 percent limit of the fee for a deferred deposit transaction under section 23036, subdivision (a). For example, respondent asserted that the Terms and Stipulations form was distributed to a particular customer on May 10, 2006 [Exh. C].

(B) Royal Payday's Terms and Stipulations also stated that a consumer could address complaints to the California Corporations Commissioner Preston DuFauchard. DuFauchard was not appointed as the California Corporations Commissioner until June 2, 2006. Thus, respondent could not have prepared or distributed its Terms and Stipulations to customers at any time before June 2, 2006. Respondent provided the Department with copies of Deferred Deposit Applications with the Terms and Stipulations page attached, indicating that the Terms and Stipulations page was given to customers on numerous occasions prior to June 2, 2006. Respondent's reference to the California Commissioner by name, when coupled with the lack of evidence of any customer signing or acknowledging receipt of the Terms and Stipulations, has a strong tendency in reason to bestow doubt on respondent's assertion that that the form was ever used in deferred deposit transactions and distributed to any customers.

(C) Based on Findings 13 and 14(A) - (B) above, respondent failed to demonstrate with credible evidence that Royal Payday distributed the notice under section 23035, subdivision (c), since licensure by the Department.

Deferral Periods--Citation D

15. (A) It was not established that prior to April 5, 2007, Royal Payday entered into two (2) deferred deposit transactions in which the company deferred the deposit of customers' checks for more than 31 days in violation of section 23035, subdivision (a).

(B) According to respondent's Loan Office Client Report (Exh. 10, Att. A-B), on January 5, 2007, Royal Payday entered into a deferred deposit transaction with consumer JR.³ The company did not deposit the customer's check or receive payment upon the loan until February 9, 2007, which is more than 31 days after the origination date of the deferred deposit transaction.

(C) According to respondent's Loan Office Client Report (Exh. 10, Att. A-B), on January 6, 2007, Royal Payday entered into a deferred deposit transaction with consumer GW. The company did not deposit the customer's check or receive payment upon the loan until February 8, 2007, which is more than 31 days after the origination date of the deferred deposit transaction.

16. Respondent presented credible testimony and records, including Loan Office Client Reports and cancelled checks, to show that there were a number of deferred deposit transactions in 2006 and 2007 in which the "due dates" were more than 31 days after the transactions but Royal Payday did not defer deposits of customers' checks for more than 31 days in violation of section 23035, subdivision (a). The due dates for all of these transactions as listed on its Loan Office Client Reports did not reflect that respondent deferred deposits of customers' checks for up to 31 days at the time of the original transactions. Rather, the due dates on the Loan Office Client Reports were the dates when the customers actually settled or paid their obligations under their deferred deposit agreements with Royal Payday. In all of these cases, the customers provided checks at the time of the original transactions that were dated no more than 31 days thereafter. However, Royal Payday subsequently gave the customers extensions past the 31 days to repay the advances by agreeing to deposit their checks for a later date and/or to accept cash payments at a later date. Royal Payday provided these extensions to customers without charging them for any additional fee. As such, the due dates were settlement dates and not demonstrative of excessively long deferral dates in violation of the CDDTL.

Loans Exceeding \$300

17. (A) It was not established that, from February 28, 2006, through April 4, 2007, respondent entered into five (5) deferred deposit transactions in which respondent accepted customers' personal checks for deferral that exceeded \$300 in violation of section 23035, subdivision (a).

³ Customers of Royal Payday are referred to by their initials to protect their privacy.

(B) It was not established that, from February 28, 2006, through April 4, 2007, respondent charged a deferred deposit transaction fee in the same five transactions that exceeded 15 percent of the face amount of the checks in violation of section 23036, subdivision (a).

(C) Because respondent did not retain evidence of checks for two years, complainant was not able to present the actual checks in these five transactions to prove that the face amounts exceeded \$300 but relied instead on respondent's loan office client reports and data. Nevertheless, respondent presented credible evidence that in these five transactions, the customers presented checks in the face amount of \$300 for deferred deposit but respondent charged return check fees that resulted in the total amount of these transactions to exceed \$300. Respondent's evidence was credible based on the amounts charged and calculations. Respondent's loan office client reports showed that the "loan amount" was \$260 for each of the five transactions and the "fee charged" was either \$45.88 or 55.00. The fees charged by respondent included the 15 percent deferred deposit transaction fee ($\$300 \times .15 = \45) allowed under section 23036, subdivision (a), and a \$15 fee for a returned or dishonored check allowed by sections 23035, subdivision (c)(2), and 23036, subdivision (e). When added to the deferred deposit transaction fee, the return check fee resulted in each of the transaction to exceed \$300. The customers paid the total transaction costs by paying cash rather than having their checks deposited. However, the checks presented by the customers at the time of the original transactions did not exceed \$300 on their face amounts

Concurrent Multiple Transactions

18. (A) From February 28, 2006, through April 4, 2007, respondent Royal Payday entered into agreements for deferred deposit transactions with three customers during the periods of time that earlier written agreements for deferred deposit transactions for the same customers were in effect in violation of section 23036, subdivision (c).

(B) Respondent entered into deferred deposit transaction agreements with customers VM, KTS and JC while there were in effect earlier agreements with VM, KTS and JC.

19. Rosenberg admitted that Royal Payday entered into these multiple and/or concurrent deferred deposit transactions with the three customers. He explained that these customers had personal family or financial problems and he gave them open loans because he felt badly for them. Rosenberg did not know that the CDDTL barred multiple transactions with the same customers. He indicated that he stopped the practice after having been told of the violations through this proceeding.

Other Evidence

20. Rosenberg has owned the stock in and operated the deferred deposit transaction business of Royal Payday since its licensure in February 2006. In the same office space, he operates a money order business under authorization from Western Union as well as a check cashing business. Rosenberg states that he did not know of the legal

requirements governing Royal Payday's deferred deposit transaction license and business and contends that he did not willfully violate the Law. He complains that he was not given any training or forms by the Department when his business was first licensed.

21. (A) On or about January 30, 2006, when he filed the application for a license under the California Deferred Deposit Transaction Law, Rosenberg signed, and attached to the application, Exhibit K or the Declaration Regarding Law and Rules. Under penalty of perjury, Rosenberg attested as the president of Royal Payday that he had obtained and read copies of the Law and rules under the California Code of Regulations, was familiar with their contents, and agreed to comply with all of the provisions of the CDDTL, including rules of the Commissioner of Corporations. In addition, Rosenberg declared that he would keep and maintain all records for two years following the last entry on a deferred deposit transaction.

(B) In March 2006, the Department published Deferred Deposit Originator Bulletin, Issue No. 1, which contained a review of the Deferred Deposit Transaction Law and Guidelines for Complying with the Law. In July 2006, the Department published Issue No. 2, which announced the appointment of Preston DuFauchard as California Corporations Commissioner and reviewed enforcement actions. In February 2007, the Department published Issue No. 3, which reviewed common violations, contained guidelines for complying with the Law, and summarized enforcement actions. The Department mailed the bulletins to licensees. Rosenberg testified that he did not receive the bulletins.

22. Rosenberg has two employees working for Royal Payday. In December 2006, he hired a consultant, who had experience working with a bank, to help him to comply with the requirements of the Law. The consultant's duties included reviewing deferred deposit agreements, researching the legal requirements, and drafting the agreement and disclosures. In January 2007, Rosenberg hired an office assistant who helps customers to complete agreements, inputs customer information onto the Royal Payday computer system, and collects payments on deferred transactions. The office assistant also works on the Western Union and check cashing businesses.

23. Beginning on April 4, 2007, Rosenberg began using a Deferred Deposit Agreement and Disclosure Statement in its deferred deposit transactions with customers. His consultant helped draft the written agreement. The initial version of this agreement and disclosure statement did not comply with the Law in that the document mentions that the customer may "refinance this short term loan."⁴ In or about July 2007, Rosenberg had changes made to the agreement and disclosure, deleting the referencing to "refinance" and adding a section for memorializing information from a customer's check.

24. From February 28, 2006, through July 2, 2007, respondent entered into 2,872 deferred deposit transactions for the total amount of \$808,705.39 in short-term loans to customers. During this time period, respondent earned fees from these deferred deposit

⁴ Section 23037, subdivision (a), prohibits a deferred deposit transaction licensee from permitting a customer to pay off all or a part of one deferred deposit transaction with the proceeds of another.

transactions in the sum of \$112,512.81. No evidence was presented of any customer or consumer complaints against Royal Payday.

25. On November 2, 2007, the Department billed respondent for the cost of its examination, which was \$1,624.87. Respondent paid the examination cost bill.

LEGAL CONCLUSIONS

1. Respondent violated provisions of the CDDTL and regulations thereunder as follows:

a. Financial Code section 23007, in that respondent failed to maintain a net worth of \$25,000, as set forth in Finding 8 above;

b. Financial Code section 23024 and California Code of Regulations, title 10, section 2025, subdivision (c)(1), in that respondent failed to maintain evidence of checks received in deferred deposit transactions for two years, as set forth in Findings 9 - 10 above;

c. Financial Code section 23035, subdivisions (a), (c), and (e), in that respondent did not use or maintain written agreements for deferred deposit transactions and failed to provide required disclosures to customers, as set forth in Findings 12 - 14 above; and

d. Financial Code section 23036, subdivision (c), in that respondent entered into deferred deposit transactions with customers while prior agreements were still pending, as set forth in Findings 18 - 19 above.

2. Grounds exist to issue citations pursuant to Financial Code section 23058 for violating provisions of the CDDTL based on Conclusion of Law 1.

The Department's senior examiner conducted an examination of respondent's books and records on April 5, 2007. The examiner returned to Royal Payday on July 3, 2007, to obtain additional records. The Department issued the Accusation which contained Citation A, which alleged the violation of section 23007 and assessed an administrative penalty of \$2,500; Citation B, which alleged the violation of section 23024 and Regulation 2025, subdivision (c)(1), and assessed an administrative penalty of \$2,500; Citation C, which alleged the violation of section 23035 and assessed an administrative penalty of \$2,500; Citation D, which alleged the violation of section 23035, subdivision (a), and assessed an administrative penalty of \$2,500; Citation E, which alleged the violation of section 23035, subdivision (c), and assessed an administrative penalty of \$2,500; and Citation F, which alleged the violation of section 23035, subdivision (e), and assessed an administrative penalty of \$2,500. The total amount of the assessed administrative penalties for these six citations was \$15,000.

The evidence established that respondent committed violations of section 23007 for failing to meet the net worth requirement (Citation A); section 23024 and Regulation 2025, subdivision (c)(1), in failing to keep customers' checks for two years (Citation B); section

23035, subdivisions (a) and (e), for failing to use a written agreement and providing disclosures (Citations C and F); and section 23035, subdivision (c), for failing to provide notice of disclosure (Citation E), as set forth in Conclusions of Law 1 and Findings 8 - 10 and 12 - 13 above. The evidence showed that respondent did not enter into transactions exceeding 31 days in violation of section 23035, subdivision (a), as alleged in Citation D, as set forth in Finding 15 above.

Based on the foregoing, Citations A, B, C, E, and F will be sustained, and the administrative penalties will be reduced to the total reasonable sum of \$2,000 for the violations uncovered by the Department's examination and established at the hearing in this matter as follows: Citation A (net worth) - \$500, Citation B (maintain books and records) - \$500, Citation C (written agreements) - \$500 and Citations E (written disclosures) - \$500. No additional administrative penalty should be assessed for Citation F because this appears to be duplicative of the violation charged in Citation C.

3. Grounds exist for the Department to void deferred deposit transactions and order the return or refund of any amounts, charges, or fees from those transactions to the consumers under Financial Code section 23060.

Financial Code section 23060, subdivision (a), provides that, if a person willfully charges, contracts for, or receives any amount in excess of the charges or fees permitted by the CDDTL, the deferred deposit transaction shall be void. That person shall not have "any right to collect or receive" the principal amount under the transaction or any charges or fees in connection with the transaction. (Fin. Code, § 23060, subd. (a).)

Financial Code section 23060, subdivision (b), further provides that, if a person willfully violates any provision of the CDDTL in making or collecting a deferred deposit transaction, the transaction shall be void. That person shall not have "any right to collect or receive" any amount provided in the deferred deposit transaction or any charges or fees in connection with the transaction. (Fin. Code, § 23060, subd. (b).)

(A) First, the Department seeks to void transactions that respondent entered into with five customers where it was alleged that the face amounts of the checks and fees charged purportedly exceeded the maximums provided by the CDDTL. The total amount of these five transactions was alleged to have been \$1,565.88. However, it was not established that respondent violated sections 23035, subdivision (a), or 23036, subdivision (a), by accepting checks in excess of \$300 or by charging excessive fees, as set forth in Finding 17 above. The evidence did not show that the face amounts of these checks exceeded \$300 or that the transaction fees exceeded 15 percent of the face amount of the checks.

(B) Second, the Department seeks to void transactions with three consumers with whom respondent entered into agreements for deferred deposit transactions while earlier agreements for deferred deposit transactions were still in effect or pending with those customers in violation of section 23036, subdivision (c). The evidence demonstrated that respondent violated the CDDTL in the making or collection of these transactions as set forth in Findings 18 and 19 above. However, there were significant discrepancies in the evidence supporting both the number and amount of these transactions.

4. Grounds exist to revoke respondent's license under Financial Code section 23052, based on Conclusion of Law 1.

Respondent's claimed use of the Terms and Stipulations page for its deferred deposit transactions prior to April 2007, when it drafted and began using its written agreement, weighs in favor of revocation. The Terms and Stipulations page contains a specific reference to the current Corporations Commissioner and could not possibly have been used by Royal Payday before this commissioner's appointment in June 2006. Respondent's claim that the Terms and Stipulations page was provided to customers and attached to customers' applications and files was not credible and raises the inference that respondent's agents and employees have not been candid.

However, respondent had been in business for only just over a year when examined by the Department in April 2007. After the Department's examination, respondent began using a written agreement and disclosure statement, keeping customers' checks, and upgrading its net worth. It would not be against public interest to allow respondent to continue as a deferred deposit originator on terms and conditions that provide for the immediate revocation of respondent's license upon failure to obey any of the laws, rules and regulations required under the CDDTL.

ORDER

1. The deferred deposit transaction originator's license issued to Royal Payday Advance, Inc. is revoked based on Conclusion of Law 1 above. However, the revocation is stayed for a period of three years upon the following terms and conditions of probation during those three years:
 - 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. Probation begins upon the effective date of this order.
 - 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 \$2,000 in penalty assessments within the first thirty (30) days of probation. Failure to pay the penalty assessments in a timely manner is a violation of probation.
2. Citations A, B, C, E, and F, inclusive, issued by the California Corporations Commissioner to respondent Royal Payday Advance, Inc., are sustained; provided, however, the administrative penalties shall be reduced to the total sum of \$2,000,

based on Conclusion of Law 2 above. This amount shall be paid within the first thirty (30) days of probation.

3. The Department's Order voiding deferred deposit transactions and ordering the return of all amounts, charges and fees received for these transactions is overturned and vacated, based on Conclusion of Law 3 above.

This Decision shall become effective on _____ July 25, 2008 ____.

IT IS SO ORDERED.

DATED: July 24, 2008

PRESTON DuFAUCHARD
CALIFORNIA CORPORATIONS COMMISSIONER