

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation of and
Statement of Issues of THE CALIFORNIA
CORPORATIONS COMMISSIONER,

Complainant,

v.

CNG FINANCIAL MANAGEMENT, INC.,

Respondent.

Case Nos.: 100-2904 & 100-3551

OAH No.: 2008080015

DECISION

The attached Proposed Decision After Reconsideration, dated October 13, 2009, is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective on November 12, 2009.

IT IS SO ORDERED this 10th day of November 2009.

CALIFORNIA CORPORATIONS COMMISSIONER

Preston DuFauchard

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COMMISSIONER,

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CNG FINANCIAL MANAGEMENT, INC.,

Respondent.

Case Nos. 100-2904; 100-3551

OAH No. 2008080015

**PROPOSED DECISION
AFTER RECONSIDERATION**

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on November 12, 2008, in Los Angeles California.

Marisa I. Urteaga-Watkins, Counsel for the Department of Corporations, represented complainant. Salah M. Mousa, President of CNG Financial, Inc. (CNG), appeared on behalf of CNG and was represented by A. Nathan Dawood, Secretary of respondent CNG.

Evidence was received and the record was left open two weeks to allow complainant's counsel to submit a legible copy of exhibit 10, page H-1. The document was received on November 19, 2008, and marked and admitted as exhibit 19. Respondent was allowed 10 days to file a reply. Respondent did not file a reply. The record was closed and the matter was deemed submitted on November 29, 2008. The proposed Decision was issued on December 31, 2008.

On April 27, 2009, the undersigned received an Order of Rejection of Proposed Decision and a Referral to Administrative Law Judge for Reconsideration (marked exhibit A) pursuant to Government Code section 11517, subdivision (c)(D)(2). The Referral directed the ALJ to address and consider: (1) Whether to affirm the Commissioner's Desist and Refrain Order issued against respondent pursuant to Financial Code section 23050, ordering respondent CNG to desist and refrain from violating Financial Code sections 23036 and 23037; and (2) Whether there is cause to affirm the Commissioner's citation and administrative penalty of \$2,500 imposed on respondent CNG for violating Financial Code section 23035, subdivision (e). A hearing on Reconsideration was held on September 15, 2009, and the matter was resubmitted.

FACTUAL FINDINGS

1. Alan S. Weinger made and filed the Accusation and Statement of Issues, Citations and Desist and Refrain Order, and Order Voiding Loans, in his official capacity as Lead Corporations Counsel, Department of Corporations (Department), and on behalf of Preston DuFauchard, Commissioner of Corporations (Commissioner).

2. The Department is responsible for enforcing provisions of the California Deferred Deposit Transaction Law (CDDTL) and authorized to pursue administrative actions and remedies against licensees who engage in violations of the CDDTL.

3. CNG, a California corporation, currently holds a deferred deposit transaction originator license number 100-2904 for 395 N. E Street, Suite #104, San Bernardino, California. The Commissioner issued the license to CNG pursuant to the CDDTL at the above location on December 15, 2005. Since obtaining the license, Respondent CNG has engaged in the business of deferred deposit transactions by offering, originating and making deferred deposit transactions. A “deferred deposit transaction” (DDT) is a written transaction whereby one person gives funds to another person upon receipt of a personal check along with an agreement that the personal check shall not be deposited until a later date. These transactions are also referred to as “payday advances” or “payday loans.”

4. In January 2007, a regulatory examination of CNG at 395 N. E Street, Suite #104, San Bernardino, California, (examination) was conducted by Rodolfo Delgadillo, a field examiner employed by the Department. Mr. Delgadillo determined that CNG engaged in conduct that violated the CDDTL as set forth below.

5. On April 23, 2007, CNG filed a short form application for a second deferred deposit transaction license (application file number 100-3551), with the Commissioner pursuant to the CDDTL. The application designated the second location as 24990 Alessandro Blvd., Suite H, Moreno Valley, California 92553. The application identified Salah M. Mousa as the president of CNG, and Mr. Mousa verified the application in that capacity.

6. Financial Code section 23035 requires licensees: (1) to provide each customer with a written agreement that contains certain required provisions and authorizes the licensee to defer deposit of a customer’s personal check; (2) to distribute a notice to each customer that contains, inter alia, information on charges relating to DDTs; and (3) to post notices setting forth, inter alia, a schedule of charges and fees for DDTs. CNG did not distribute to customers the required written notice delineating, inter alia, the charges for deferred deposit transactions before engaging in said DDTs, in violation of California Financial Code section 23035, subdivision (c). Further, CNG did not post a written notice to consumers, setting forth a schedule of charges and fees, in violation of Financial Code section 23035, subdivision (d). Finally, CNG did not provide customers with written agreements as required by Financial Code section 23035, subdivision (e).

7. Financial Code section 23036, subdivisions (a), (b), and (f), prohibit excess fees, extension fees, and fees greater than 15% of the face amount of the check from being charged for a DDT. CNG ledger entries during the examination revealed a total of two hundred one (201) loan transactions, of which ninety-four (94) loans were extension loans. CNG noted the letters “Ext” along with the date in the notes section of the ledger. Fees were charged to customers by CNG to extend these loans, as noted in the ledger, in violation of Financial Code section 23036, subdivision (b). In this same ledger, four (4) loan transactions showed that respondent CNG charged fees in excess of 15% of the face amount of the check (totaling \$15.00 in excess fees), in violation of Financial Code section 23036, subdivisions (b) and (f).¹

8. Financial Code section 23035, subdivision (a), prohibits any DDT term to be greater than 31 days. Specifically, a licensee may defer the deposit of a customer’s personal check for only a maximum of 31 days. CNG’s ledger reveals that CNG executed 24 DDT’s with terms ranging from one to three days in excess of the requisite 31 days in violation of Financial Code section 23035, subdivision (a).

9. Financial Code section 23036, subdivision (c), prohibits multiple DDT’s with the same customer during the period of time that an earlier DDT agreement with said customer is still in effect. CNG’s records show that it made two transactions with the same customer while a previous DDT agreement with said customer was still in effect, in violation of Financial Code section 23036, subdivision (c).

10. Financial Code section 23023 prohibits a licensee from making transactions under names that are not authorized by the Commissioner. According to Department records and CNG’s applications, the only authorized name that CNG may use to execute DDTs is “CNG Financial Management, Inc.” CNG used an unauthorized name, in that it allowed and/or caused certain customers to delineate “Cash” and “Salah M. Mousa” as the payee on customer checks, in violation of Financial Code section 23023.

11. It was discovered during the audit that CNG failed to maintain adequate books and records thereby violating California Code of Regulations, title 10, section 2025, subdivision (c)(1).

12. Pursuant to California Financial Code section 23005, subdivision (a), one must be licensed prior to engaging in a DDT. CNG was licensed on or about December 15, 2005. Analysis of CNG ledgers revealed that from July 2005 to December 2005, there was documentation indicating that the business entered into ten DDT’s with three different clients. As such, CNG engaged in unlicensed DDT activity and is again, in violation of the CDDTL. Mr. Mousa testified that he did not take control of the DDT business until respondent CNG obtained its license. He indicated that the previous owner continued to run

¹ Complainant alleged that six loans were in excess of the allowable fees; however, two of the transactions occurred prior to the formation of respondent CNG.

the business until mid-December. Complainant submitted the field examiner Delgadillo's report, which stated in pertinent part, "Licensee was informed that he had to stop all lending activity. On 10/28/05, the Department sent an examiner to visit the company to determine compliance: at that time the examiner identified no lending activity. While expanding the audit, I found ten (10) loans that were originated between 07/01/05 and 12/17/05, prior to been (sic) licensed and after the licensee had been told to stop all licensed activity." Since the field examiner who conducted the examination on October 28, 2005, did not testify, any statements attributed to he or she are administrative hearsay, and are given less weight than the direct testimony of Mr. Mousa. Therefore, it was not established that said field examiner spoke with Mr. Mousa, or that Mr. Mousa and respondent CNG were running and/or operating the DDT business prior to December 15, 2005.

13. Mr. Salah M. Mousa, the president of respondent CNG, immigrated to this country from Iraq in 2004. He has a post graduate degree in science and has taught university level courses in Iraq. He became president of respondent CNG in July 2005, but didn't actually take control of the business operations until December 15, 2005. Mr. Mousa was inexperienced in running a business in this country when he formed CNG and applied for licensure with the Department. Once he took control of the business, Mr. Mousa continued to use the same paperwork that was used by the previous owner. Because of his inexperience, Mr. Mousa called the Department and spoke with Department personnel on at least 20 occasions in 2006, attempting to obtain guidance from the Department on how to operate a DDT business. In March 2006, the Department sent a bulletin to help licensees understand the law regarding deferred deposit transactions; however, Mr. Mousa either didn't read the bulletin or did not understand it.

14. Since the January 2007 examination, Mr. Mousa and respondent CNG have obtained the services of Mr. Nathan Dawood to insure compliance with the Financial Code and Department regulations.

LEGAL CONCLUSIONS

THE ACCUSATION

1. Cause exists to revoke respondent's deferred deposit transaction originator license under Financial Code section 23052, for violating the following Financial Code sections and regulations:

- (1) Financial Code section 23035, subdivision (c), in that respondent CNG failed to distribute the required written notice to consumers, as set forth in Factual Finding 6;
- (2) Financial Code section 23036, subdivisions (a) and (f), in that respondent CNG charged excessive fees for deferred deposit transactions, as set forth in Factual Finding 7;

- (3) Financial Code section 23036, subdivision (b), in that respondent CNG charged unlawful extension fees for deferred deposit transactions, as set forth in Factual Finding 7;
- (4) Financial Code section 23035, subdivision (a), in that respondent CNG executed 24 deferred deposit transactions with terms greater the 31 days, as set forth in Factual Finding 8;
- (5) Financial Code section 23036, subdivision (c), in that respondent CNG executed three deferred deposit transactions with the same customer during the same time period, as set forth in Factual Finding 9;
- (6) Financial Code section 23023, subdivision (c), in that respondent CNG used unauthorized names by having customer checks made payable to “cash” or “Salah M. Mousa,” rather than CNG, as set forth in Factual Finding 10;
- (7) Financial Code section 23035, subdivision (d), in that respondent CNG failed to post the required written notice to consumers concerning the allowable fees, as set forth in Factual Finding 6;
- (8) Financial Code section 23035, subdivision (e), in that respondent CNG failed to provide customers with written agreements to enter into deferred deposit transactions, as set forth in Factual Finding 6; and
- (9) California Code of Regulations, title 10, section 2025, subdivision (c)(1), in that respondent CNG failed to keep and maintain required records for each deferred deposit transaction, as set forth in Factual Finding 11.

2. Cause does not exist to revoke respondent’s license under Financial Code sections 23052 and 23005, subdivision (a), in that complainant did not prove that respondent CNG engaged in unlicensed activities, as set forth in Factual Finding 12.

3. The above violations, although numerous, are not egregious. Further, the evidence in this case proved that on numerous occasions after obtaining a license, Salah M. Mousa, the president of CNG, sought guidance from the Department on how to properly operate a deferred deposit transaction business. Mr. Mousa was inexperienced and ill prepared to operate the business in accordance with statutes and regulations. He has since sought and obtained the services of Mr. Dawood to help him come into compliance. Financial Code section 23052 provides the Commissioner with authority to suspend or revoke a license. The Commissioner has promulgated no regulations or guidelines that outline the parameters for discipline in such matters. Based on the facts and circumstances of this case, revocation would be unduly harsh and punitive. The public would be adequately protected by imposing a suspension of respondent’s license.

THE STATEMENT OF ISSUES

4. Cause exists to deny respondent's short form application for a second deferred deposit transaction license under Financial Code section 23011, for violating following Financial Code sections:

- (1) Financial Code section 23035, subdivision (c), in that respondent CNG failed to distribute the required written notice to consumers, as set forth in Factual Finding 6;
- (2) Financial Code section 23036, subdivisions (a) and (f), in that respondent CNG charged excessive fees for deferred deposit transactions, as set forth in Factual Finding 7;
- (3) Financial Code section 23036, subdivision (b), in that respondent CNG charged unlawful extension fees for deferred deposit transactions, as set forth in Factual Finding 7;
- (4) Financial Code section 23035, subdivision (a), in that respondent CNG executed 24 deferred deposit transactions with terms greater the 31 days, as set forth in Factual Finding 8;
- (5) Financial Code section 23036, subdivision (c), in that respondent CNG executed three deferred deposit transactions for the same customer during the same time period, as set forth in Factual Finding 9;
- (6) Financial Code section 23023, subdivision (c), in that respondent CNG used unauthorized names by having customer checks made payable to "cash" or "Salah M. Mousa," rather than CNG, as set forth in Factual Finding 10;
- (7) Financial Code section 23035, subdivision (d), in that respondent CNG failed to post the required written notice to consumers concerning the allowable fees, as set forth in Factual Finding 6;
- (8) Financial Code section 23035, subdivision (e), in that respondent CNG failed to provide written agreements to consumers to enter into deferred deposit transactions, as set forth in Factual Finding 6; and
- (9) California Code of Regulations, title 10, section 2025, subdivision (c)(1), in that respondent CNG failed to keep and maintain required records for each deferred deposit transaction, as set forth in Factual Finding 11.

5. Cause does not exist to deny respondent's short form application for a second deferred deposit transaction license under Financial Code sections 23011 and 23005, subdivision (a), in that complainant did not prove that respondent CNG engaged in unlicensed activities, as set forth in Factual Finding 12.

6. Although respondent CNG presented evidence of mitigation and rehabilitation, the proven violations show that it would be against the public interest to grant respondent's application for a second deferred deposit transaction license, especially since Mr. Mousa has had difficulty operating one location, and must make every effort to operate CNG's original location in a manner that complies with the Financial Code.

ADMINISTRATIVE PENALTIES

7. Cause exists to impose administrative penalty assessments not to exceed \$2,500 for each violation set forth in Legal Conclusion 1. California Code of Regulations, title 10, section 250.70, sets forth factors in determining appropriate penalties as follows:

- (1) The nature and seriousness of the violations including actual or potential harm to the public or consumer;
- (2) The number and persistence of violations and the length of time over which they occurred;
- (3) The person's history of violations or complaints with the Department, other agencies or regulators;
- (4) Whether the person's conduct was negligent, willful, or knowing, and the extent to which it was negligent, willful, or knowing;
- (5) The person's financial condition including net worth and revenue;
- (6) The nature and extent to which the person cooperated with the Department's investigation;
- (7) Whether the person aggravated or mitigated any injury or damage caused by the violations; and
- (8) The nature and extent to which the person has taken corrective action to ensure that violations will not reoccur.

8. The proven violations in this case, although numerous, are not egregious. Further, the evidence in this case proved that on numerous occasions after obtaining a license, Salah M. Mousa, the president of CNG, sought guidance from the Department on how to properly operate a deferred deposit transaction business. In addition, Mr. Mousa cooperated with the field examiner throughout the examination process. Mr. Mousa was inexperienced and ill prepared to operate the business in accordance with statutes and regulations. He has since sought and obtained the services of Mr. Dawood to help him come into compliance. Based on the facts and circumstances of this case, the appropriate penalty assessment should be \$500 for each citation proven by the Commissioner. The Commissioner established seven of the citations alleged in the Accusation/Statement of Issues and the Citations and Desist and Refrain Order. Therefore, the appropriate total penalty for the proven violations is \$3,500.

THE ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS

9. Cause exists under Financial Code section 23060, to affirm the Order issued by the Department voiding certain illegal loan transactions that are particularly described in Factual Finding 7. Complainant is requesting that respondent be ordered to pay the consumers named in exhibit 12, a total of \$11,510. This amount would result in an unjust enrichment to these consumers because the stated amount includes the amounts already advanced to the consumers by the respondent CNG. Therefore, the appropriate amount that should be repaid to the named consumers is \$3,142.50, which is the sum of the illegal extension fees received by respondent CNG.

ORDER TO DESIST AND REFRAIN

10. Respondent CNG violated Financial Code sections 23035 and 23036 as set forth in Factual Findings 6 through 9, and Legal Conclusions 1 and 4. These violations amounted to unlawful conduct in connection with the business of deferred deposit transactions pursuant to Financial Code section 23037, subdivision (f). Therefore, cause exists under Financial Code section 23050 to affirm the Commissioner's Order to Desist and Refrain issued against respondent CNG, ordering CNG to desist and refrain from violating Financial Code sections 23036 and 23037.

ORDER

1. The deferred deposit transaction license, previously issued to CNG Financial Management, Inc., is suspended for a period of seven days beginning on the effective date of this order.

2. The application of respondent CNG Financial Management, Inc., for a second deferred deposit transaction license is denied.

3. Respondent CNG Financial Management, Inc. shall pay an administrative penalty of \$3,500 to the Commissioner.

4. The deferred deposit transactions referred to in Factual Finding 7 and listed in exhibit 12 are hereby voided. Respondent CNG Financial Management, Inc. shall return to the consumers (identified in exhibit 12) the amounts illegally charged as extension fees totaling \$3,142.50, as set forth in exhibit 12.

5. The Desist and Refrain Order issued by the Commissioner of Corporations is affirmed. Respondent CNG is hereby ordered to desist and Refrain from violating Financial Code sections 23036 and 23037.

DATED: October 13, 2009

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings