

1 PRESTON DuFAUCHARD
California Corporations Commissioner
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9 BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

10 The California Corporations Commissioner,)
11) Case No. 100-3229
Complainant,)
12) **ACCUSATION**
v.)
13)
14 JOSEPH BARNETT HUBBARD dba CASH)
15 TIL PAYDAY,)
16 Respondent.)

17 _____
The Complainant is informed and believes, and based upon such information and belief,
18 alleges and charges Respondent as follows:

19 **I.**

20 Respondent Joseph Barnett Hubbard doing business as Cash Til Payday (“Cash Til
21 Payday” or “Respondent”) is a deferred deposit transaction originator licensed by the California
22 Corporations Commissioner (“Commissioner”) pursuant to the California Deferred Deposit
23 Transaction Law (California Financial Code § 23000 et seq.) (“CDDTL”). On or about July 20,
24 2006, License Number 100-3229 was issued to Respondent’s principal place of business located
25 at 32245 Mission Trail, Suite D3, Lake Elsinore, CA 92530.

26 **II.**

27 On December 28, 2007, the Commissioner issued Citations and ordered Respondent to
28 desist and refrain from engaging in the business of offering, originating, and making deferred

1 deposit transactions pursuant to section 23050 for the following violations: (1) Failure to include
2 the Department's toll free number in the notice distributed to the customer prior to entering into the
3 agreement in violation of section 23035(c)(4); (2) Failure to include statutorily required
4 disclosures in/on posted notices in violation of section 23035(d)(1); and (3) Respondent charged
5 customers an NSF fee of \$15 for checks that were neither deposited to the bank or returned by the
6 bank in violation of section 23036(f).

7 Despite the Respondent's ample notice and acknowledgement¹, of the CDDTL licensing
8 requirements, Respondent willfully violated several sections of that law. On June 27, 2007, the
9 Department conducted a noticed regulatory examination of Respondent in Lake Elsinore,
10 California. During the examination, the examiner acting on behalf of the Commissioner discovered
11 Respondent failed to include the Department's toll free number in the notice distributed to the
12 customer prior to entering into the agreement in violation of section 23035(c)(4).

13
14 Additionally, the Commissioner's examiner discovered that Respondent violated
15 subdivision (d)(1) of section 23035 by failing to include statutorily required disclosures in/on
16 posted notices. Specifically, the required posted notices did not include the disclosure that
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18
19 ¹ The application that Respondent filed with the Department included a signed Declaration, designated as "Exhibit K" to the
20 application, wherein Respondent attested under penalty of perjury: *I (we) have obtained and read copies of the California
21 Deferred Deposit Transaction Law (Division 10 of the California Financial Code) and the Rules (Chapter 3, Title, 10, California
22 Code of Regulations) and am familiar with their content; and; I (we) agree to comply with all the provision[s] of the California
23 Deferred Deposit Transaction Law, including any rules or orders of the Commissioner of Corporations. Respondent's
24 declaration in support of their application for license also states, in pertinent part, that "by signing this declaration", "the applicant
25 hereby agrees (or attests) or declares understanding of the following items listed below:" (1) That the applicant will submit to
26 periodic examinations by the Commissioner of Corporations as required by the California Deferred Deposit Transaction Law;
27 (2) That the applicant will keep and maintain all records for 2 years following the last entry on a deferred deposit transaction
28 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. Respondent also signed under penalty of perjury another required Declaration,
designated as "Exhibit L" to the application, which states: *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.))* Moreover, the Department correspondence mailed with the license sent to Respondent informed of the following facts:
*[T]here are certain obligations and responsibilities that a licensee must comply with. The following information about a
licensee's obligations and responsibilities regarding certain requirements of the California Deferred Deposit Transaction Law is
provided for your reference . . . a licensee should review and become familiar with all provisions of the law and rules and
regulations. . . .**

1 Respondent may not use the criminal process against customers to collect any deferred deposit
2 transaction. Finally, the Commissioner’s examiner discovered that Respondent, in violation of
3 section 23036 (f), charged customers a Non Sufficient Funds fee of \$15 for checks that were neither
4 deposited to the bank nor returned by the bank.

5 On December 28, 2007, the Commissioner issued Citations and a Desist and Refrain Order
6 (“Desist and Refrain Order”) to Hubbard for violations of California Financial Code sections 23000
7 *et seq.* The multiple violations of the CDDTL that were discovered during the review of
8 Respondent’s business warranted the Commissioner’s issuance of Citations and a Desist and
9 Refrain Order on December 28, 2007.

10 On February 21, 2008, the Commissioner issued a Statement in Support of the Citations and
11 Desist and Refrain Order (“Statement in Support”). Copies of the Desist and Refrain Order and
12 Statement in Support are attached and incorporated herein as “Exhibit A”. An administrative
13 hearing concerning the Citations and Desist and Refrain Order took place at the Los Angeles Office
14 of Administrative Hearings on June 27, 2008 (designated as OAH Case Number L2008030198). On
15 July 17, 2008, the Office of Administrative Hearings issued its proposed decision. On October 28,
16 2008, the proposed decision was adopted by the Commissioner and became final (“Commissioner’s
17 Decision”). Hubbard was served with the Commissioner’s Decision on February 1, 2009. A copy of
18 the Commissioner’s Decision is attached and incorporated herein as “Exhibit B”.

19 The Decision affirmed the Desist and Refrain Order in favor of the Department of
20 Corporations, by affirming Citations B- \$1,500.00 and C -\$2,500.00, reducing Citation A to
21 \$1,000.00, and ordering Respondent to pay a total administrative penalty of \$5,000.00 within 30
22 days of the Decision. In addition to the administrative penalty, Respondent must also pay the
23 following fees: Department of Corporations Examination Expense of \$1,233.43 and Department of
24 Corporations Administrative Assessment of \$941.00.

25 Respondent requested consideration in the payment of all fees due, including the
26 administrative penalty of \$5,000.00 ordered in the Decision, alleging financial hardship and inability
27 to pay any fees or administrative penalties. The Department executed a settlement agreement, which
28 set forth a schedule of payment of all fees due and administrative penalties in an effort to assist the

1 Respondent in meeting its obligations. Respondent failed to execute the settlement agreement. To
2 date, Respondent has not made any payments towards the fees and administrative penalties due.
3 Accordingly, the Commissioner seeks to revoke the CDDTL license of Respondent.

4 **III.**

5 California Financial Code section 23052 provides in pertinent part:

6 The commissioner may suspend or revoke any license, upon notice
7 and reasonable opportunity to be heard, if the commissioner finds any
8 of the following:

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

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

15 (c) A fact or condition exists that, if it had existed at the time of the original
16 application for the license, reasonably would have warranted the commissioner
17 in refusing to issue the license originally.

18 **IV.**

19 The Commissioner finds that, by reason of the foregoing, Cash Til Payday has violated the
20 Commissioner’s Decision, which are grounds to revoke the deferred deposit transaction license of
21 Cash Til Payday.

22 WHEREFORE, IT IS PRAYED that the deferred deposit transaction license of Cash Til
23 Payday be revoked.

24 Dated: April 15, 2009
25 Sacramento, California

26 PRESTON DuFAUCHARD
27 California Corporations Commissioner

28 By _____

Marisa I. Urteaga-Watkins
Corporations Counsel