

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 WAYNE STRUMPFER
Deputy Commissioner
3 ALAN S. WEINGER (CA BAR NO. 86717)
Lead Corporations Counsel
4 MARISA I. URTEAGA-WATKINS (CA BAR NO. 236398)
Corporations Counsel
5 Department of Corporations
6 1515 K Street, Suite 200
7 Sacramento, California 95814
8 Telephone: (916) 322-8730
9 Facsimile: (916) 445-6985
Attorneys for Complainant

10 BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

11
12 In the Matter of the Request for a Hearing on the)
Citations and Desist and Refrain Order issued by) OAH No. 100-3229
13 the California Corporations Commissioner,)
14 Complainant,) STATEMENT IN SUPPORT OF CITATIONS
AND DESIST AND REFRAIN ORDER
15 v.)
16 JOSEPH BARNETT HUBBARD dba CASH)
17 TIL PAYDAY,)
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 I.

23 INTRODUCTION

24 The Commissioner of the California Department of Corporations (“Department”) is
25 responsible for enforcing all provisions of the California Deferred Deposit Transaction Law
26 (“CDDTL”) set forth in California Financial Code sections 23000 *et seq.* (All future section
27 references are to the Financial Code unless indicated otherwise.)
28

1 A deferred deposit transaction is a written transaction whereby one person gives funds to
2 another person upon receipt of a personal check with an agreement that the personal check shall
3 not be deposited until a later date. These transactions are also referred to as “payday advances”
4 or “payday loans.”

5 On December 28, 2007, the Commissioner issued Citations and Desist and Refrain Order
6 pursuant to section 23050 and 23058 to JOSEPH BARNETT HUBBARD, a California sole
7 proprietor doing business as CASH TIL PAYDAY (hereinafter referred to as “Respondent”), for
8 multiple CDDTL violations. Respondent has requested a hearing concerning the Department’s
9 action on or about January 28, 2008 and has also waived the thirty-day hearing requirement time
10 regarding this hearing.

11 **II.**

12 **FACTS AND PROCEDUAL BACKGROUND**

13 On December 28, 2007, the Commissioner issued Citations and ordered Respondent to
14 desist and refrain from engaging in the business of offering, originating, and making deferred
15 deposit transactions pursuant to section 23050 for the following violations: (1) Failure to include
16 the Department's toll free number in the notice distributed to the customer prior to entering into the
17 agreement in violation of section 23035(c)(4); (2) Failure to include statutorily required
18 disclosures in/on posted notices in violation of section 23035(d)(1); and (3) Respondent charged
19 customers an NSF fee of \$15 for checks that were neither deposited to the bank or returned by the
20 bank in violation of section 23036(f).

21 On or about July 20, 2006, Respondent was issued a deferred deposit transaction license.
22 License Number 100-3229 was issued to Respondent’s principal place of business located at
23 32245 Mission Trail, Suite D3, Lake Elsinore, CA 92530.

24 The application that Respondent filed with the Department for a license to make deferred
25 deposit transactions included a signed Declaration, designated as “Exhibit K” to the application,
26 wherein Respondent attested under penalty of perjury:

27 I (we) have obtained and read copies of the California Deferred Deposit Transaction
28 Law (Division 10 of the California Financial Code) and the Rules (Chapter 3, Title,
10, California Code of Regulations) and am familiar with their content;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Respondent’s declaration in support of their application for license also states, in pertinent part, that “by signing this declaration”, “the applicant hereby agrees (or attests) or declares understanding of the following items listed below:”

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. . . .

Respondent also signed under penalty of perjury another required Declaration, designated as “Exhibit L” to the application, which states:

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).)

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

provisions of the law and rules and regulations. . . .

Despite the Respondent’s ample notice, and acknowledgment, of the CDDTL licensing requirements, Respondent willfully violated several sections of that law.

On June 27, 2007, the Department conducted a noticed regulatory examination of Respondent in Lake Elsinore, California. During the examination, the examiner acting on behalf of the Commissioner discovered Respondent failed to include the Department's toll free number in the notice distributed to the customer prior to entering into the agreement in violation of section 23035(c)(4).

Additionally, the Commissioner’s examiner discovered that Respondent violated subdivision (d)(1) of section 23035 by failing to include statutorily required disclosures in/on posted notices. Specifically, the required posted notices did not include the disclosure that Respondent may not use the criminal process against customers to collect any deferred deposit transaction.

Finally, the Commissioner’s examiner discovered that Respondent, in violation of section 23036 (f), charged customers a Non Sufficient Funds fee of \$15 for checks that were neither deposited to the bank nor returned by the bank.

The multiple violations of the CDDTL that were discovered during the review of Respondent’s business warranted the Commissioner’s issuance of Citations and a Desist and Refrain Order on December 28, 2007. The Commissioner seeks to have his actions upheld and provides the following legal authority in support thereof.

**III.
DEFERRED DEPOSIT TRANSACTION LAW**

Respondent possesses a deferred deposit transaction license issued by the Department in 2006, and is within the definition of a “licensee” under section 23001, subdivision (d). All CDDTL licensees are required to comply with basic legal requirements imposed on all persons so defined concerning notices and advertisements.

Section 23035, subdivision (c), states in part:

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

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

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

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

14 Section 23035, subdivision (e), states in pertinent part:

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

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

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

23 IV.

24 DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS

25 On or about June 27, 2007, the Commissioner, by way of his examiner, conducted an
26 examination of the Respondent's principal place of business in Lancaster, California. The
27 Commissioner's examiner discovered multiple violations of the CDDTL during the onsite inspection
28 of the Respondent's premises and business records.

On December 28, 2007, the Commissioner issued to Respondent "Citations and Desist and
Refrain Order", citing violations of three (3) provisions of the CDDTL for Respondent's business
location. The three (3) Citations issued are set forth below:

Citation A. Respondent failed to disclose in a notice distributed to the customer prior to
entering into the agreement the Department of Corporations' toll-free number, which is (866)

1 Ask-Corp (275-2677), in violation of section 23035, subdivision (c)(4);

2 **Citation B.** Respondent failed to disclose in a notice distributed to the customer prior to
3 entering into the agreement that customers cannot be prosecuted in a criminal action in
4 conjunction with a deferred deposit transaction and cannot be threatened with criminal
5 prosecution, in violation of section 23035, subdivision (d)(1);

6 **Citation C.** Respondent charged customers a Non Sufficient Funds fee of \$15 for
7 checks that were neither deposited to the bank nor returned by the bank, in violation of section
8 23036 (f).

9 **V.**

10 **CITATIONS**

11 Pursuant to Financial Code section 23058, Respondent Joseph Hubbard doing business as
12 Respondent Til Payday is hereby ordered to pay to the Commissioner within 30 days from the
13 date of these Citations of administrative penalties totaling five thousand five hundred dollars
14 (\$5,500) for each of three violations discovered at Respondent’s business location, comprised of
15 one thousand five hundred dollars (\$1,500) for Citation A, one thousand five hundred dollars
16 (\$1,500) for Citation B and two thousand five hundred dollars (\$2,500) for Citation C as listed
17 below:

18 CITATION A. - \$1,500

19 CITATION B. - \$1,500

20 CITATION C. - \$2,500

21 **TOTAL: \$5,500.00**

22 **VI.**

23 **COMMISSIONER’S AUTHORITY TO ISSUE CITATIONS**

24 Section 23058 gives the Commissioner authority to issue citations and states:

25 (a) If, upon inspection, examination or investigation, based upon a
26 complaint or otherwise, the department has cause to believe that a person
27 is engaged in the business of deferred deposit transactions without a
28 license, or a licensee or person is violating any provision of this division
or any rule or order thereunder, the department may issue a citation to that
person in writing, describing with particularity the basis of the citation.
Each citation may contain an order to desist and refrain and an assessment

1 of an administrative penalty not to exceed two thousand five hundred
2 dollars (\$2,500). All penalties collected under this section shall be
deposited in the State Corporations Fund.

3 (b) The sanctions authorized under this section shall be separate from, and
4 in addition to, all other administrative, civil, or criminal remedies.

5 (c) If within 30 days from the receipt of the citation of the person cited
6 fails to notify the department that the person intends to request a hearing
7 as described in subdivision (d), the citation shall be deemed final.

8 (d) Any hearing under this section shall be conducted in accordance with
Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
9 Title 2 of the Government Code, and in all states the commissioner has
10 all the powers granted therein.

11 (e) After the exhaustion of the review procedures provided for in this
12 section, the department may apply to the appropriate superior court for a
13 judgment in the amount of the administrative penalty and order
14 compelling the cited person to comply with the order of the department.
The application, which shall include a certified copy of the final order of
15 the department, shall constitute a sufficient showing to warrant the
issuance of the judgment and order.

16 VII.

17 COMMISSISONER’S AUTHORITY TO ISSUE A DESIST AND REFRAIN ORDER

18 Respondent engaged in the business of deferred deposit transactions in violation of the
19 above-cited provisions of the CDDTL. Section 23050 provides in pertinent part:

20 Whenever, in the opinion of the commissioner, any person is engaged in
21 the business of deferred deposit transactions, as defined in this division,
22 without a license from the commissioner, or any licensee is violating any
23 provision of this division, the commissioner may order that person or
licensee to desist and to refrain from engaging in the business or further
violating this division.

24 Pursuant to sections 23050 and 23058, the Commissioner ordered Respondent to desist
25 and refrain from engaging in the business of deferred deposit transactions in the State of
26 California in violation of the CDDTL. The Commissioner’s Desist and Refrain Order was
27 properly issued and necessary for the protection of consumers and consistent with the purposes,
28 policies, and provisions of the CDDTL.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VIII.
CONCLUSION

Complainant finds that Respondent, Joseph Hubbard doing business as Cash Til Payday, violated the CDDTL. The Commissioner is justified in: (1) issuing Citations for each CDDTL violation to Respondent pursuant to section 23058; and, (2) issuing a Desist and Refrain Order to Respondent pursuant to sections 23050 and 23058.

WHEREFORE, Complainant, the California Corporations Commissioner prays that

1. Respondent be ordered pursuant to Financial Code section 23058 to immediately pay to the Commissioner an administrative penalty in the total amount of five thousand five hundred dollars (\$5,500) for Citations A through C; and
2. The Desist and Refrain Order issued pursuant to Financial Code section 23050 and 23058 be affirmed to prohibit Respondent from violating Financial Code section 23035 and 23036(f).

Dated: February 21, 2008
Sacramento, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
ALAN S. WEINGER
Lead Corporations Counsel