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9
10 BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

11
12 In the Matter of the Accusation of) File No.: 100-3246
THE CALIFORNIA CORPORATIONS)
13 COMMISSIONER,) 1) DESIST AND REFRAIN ORDER
) 2) CITATIONS
14 Complainant,) 3) ORDER VOIDING LOANS
)
15 vs.)
16 Order Express, Inc.,)
17)
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 INTRODUCTION

23 The Commissioner of the Department of Corporations (“Department”) issued to Respondent,
24 Order Express, Inc., a deferred deposit transaction originator license (No. 100-3246), pursuant to the
25 California Deferred Deposit Transaction Law (“CDDTL”) set forth in California Financial Code
26 section 23000 et seq. (All future references to sections are to the California Financial Code unless
27 indicated otherwise.)

28 The Commissioner has issued against Respondent a Desist and Refrain Order, Citations

1 totaling fifteen thousand five hundred dollars (\$15,500), and an Order Voiding Loans, pursuant to
2 CDDTL sections 23050, 23058, and 23060, for multiple violations of the CDDTL.

3 I

4 FACTUAL BACKGROUND

5 1. The Department is responsible for enforcing provisions of the CDDTL and authorized
6 to pursue administrative actions and remedies against licensees who engage in violations of the
7 CDDTL.

8 2. Since at least September of 2006, Respondent has engaged in the business of deferred
9 deposit transactions by offering, originating and making deferred deposit transactions.

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

14 4. On December 16, 2008, the Commissioner’s examiner visited Respondent’s store
15 located at 2670 E. Florence Ave., Huntington Park, California 90255.

16 5. The Commissioner’s examiner verified with Respondent’s representative that
17 Respondent was engaged in deferred deposit transactions at this location. After verification, the
18 examiner requested information regarding CDDTL transactions made by Respondents.

19 6. The Department examiner’s review of Respondent’s information revealed the
20 CDDTL violations described below, which warrant the issuing of an order to desist and refrain from
21 such violations, penalties, and restitution to consumers.

22 II

23 DEFERRED DEPOSIT TRANSACTION LAW

24 7. Section 23005 of the CDDTL requires that any person who offers, originates or makes a
25 deferred deposit transaction be licensed.

26 8. Deferred deposit originators are defined as “licensees” under the CDDTL, even if they
27 do not obtain the required license from the Department for the location where they are doing
28 business. Section 23001 defines “licensee” as any person who offers, originates, or makes a

1 deferred deposit transaction.

2 9. Certain disclosures are required in each agreement between the licensee and its customer.
3 These are detailed in section 23035(e) and include: that a customer cannot be prosecuted or
4 threatened with prosecution, and that a licensee cannot accept collateral in connection with the
5 transaction.

6 10. Prior to entering into an agreement with a customer, section 23035(c) requires that the
7 licensee give the customer a notice with disclosures that include information about the charges on
8 the transaction.

9 11. The licensee must also post in its store, pursuant to sections 23035(d), 23019, and
10 23018(a), respectively, a notice that the licensee cannot use the criminal process against customers,
11 the schedule of fees charged by the licensee on transactions, and the license issued by the
12 Department.

13 12. Section 23001(a) states that in a CDDTL transaction, the licensee takes a customer's
14 personal check and defers the deposit of such check to a certain date. Section 23035(a) describes the
15 amount of time a customer's personal check can be held by the licensee and limits the face value of
16 the personal check in any transaction made under the CDDTL to three hundred dollars (\$300.00).

17 13. The fees charged by the licensee are strictly limited under the CDDTL. For example,
18 section 23036(b) states that no fees may be charged for the extension of repayment time. In
19 addition, under section 23036(e), late payment fees are prohibited.

20 14. Under section 23050, the Commissioner may order that any licensee who violates any
21 provision of the CDDTL desist and refrain from further violating the CDDTL.

22 15. Section 23058 permits the Department to issue citations to any licensee who violates any
23 provision of the CDDTL. Each citation may contain an assessment of an administrative penalty of
24 up to two thousand five hundred dollars (\$2,500). This penalty is in addition to and separate from all
25 other remedies available to the Department.

26 16. Pursuant to section 23060(a), if any amount other than, or in excess of, the charges or
27 fees permitted by this division is willfully charged, contracted for, or received, a deferred deposit
28 transaction contract shall be void, and no person shall have any right to collect or receive the

1 principal amount provided in the deferred deposit transaction, any charges, or fees in connection
2 with the transaction.

3 III

4 RESPONDENTS' DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS

5 17. Respondent initially obtained a license from the Department on December 27, 2006.

6 18. During the Department's examinations of and discussions with Respondent in
7 December 2008, the Commissioner's examiner obtained a spreadsheet maintained by
8 Respondent with a history of loans it made. In addition, the Department's examiner obtained
9 copies of agreements and payment receipts from Respondent.

10 19. These documents revealed that prior to obtaining a license, Respondent originated at
11 least five deferred deposit transactions in violation of section 23005, with loans and fees totaling
12 one thousand four hundred dollars (\$1,400.00).

13 20. The agreements entered into between Respondent and its customers did not include
14 the disclosures required by section 23035(e).

15 21. The Department's examiner found that Respondent also did not provide notices
16 required under section 23035(c).

17 22. In violation of sections 23018(a), 23035(d), and 23019, respectively, Respondent did
18 not have posted as required in its store: its CDDTL license, a notice that it cannot use the
19 criminal process against its customers, and its schedule of fees for all CDDTL transactions.

20 23. Respondent's representative informed the Department's examiner that it does not
21 generally obtain customers' personal checks, which violates sections 23001(a) and 23035(a).

22 24. The Department's examiner found, in the information and documents provided by
23 Respondent, that Respondent charged fees for the extension of repayment by some customers, in
24 violation of section 23036(b).

25 25. The total amount of extension fees paid were one thousand nine hundred and five
26 dollars (\$1,905.00) on twenty-seven (27) loans, with a total face value of seven thousand eight
27 hundred and seventy dollars (\$7,870.00).

28 26. In addition, the examiner found that Respondent charged late payment fees on certain

1 transactions, in violation of section 23036(e).

2 27. The total amount of late fees collected by Respondent was three hundred and seventeen
3 dollars and fifteen cents (\$317.15) on seventeen (17) loans with total face values of four thousand
4 eight hundred and seventy dollars (\$4,870.00).

5 28. Respondent’s specific violations include the following CDDTL sections: 23005,
6 23001(a), 23018, 23019, 23035, and 23036. For Respondents’ violations discovered during the
7 Department’s regulatory examination and review of records, the Commissioner is issuing an order to
8 desist and refrain from further violations of the CDDTL, pursuant to section 23050, an order voiding
9 the twenty-seven (27) loans, for which Respondent charged illegal extension and/or late fees,
10 pursuant to section 23060, and seven citations, pursuant to section 23058. The citations are two
11 thousand five hundred dollars (\$2,500) each, for: engaging in deferred deposit transactions without a
12 license, in violation of section 23005; charging extension fees in violation of section 23036(b);
13 failing to obtain customers’ personal checks for each transaction, in violation of sections 23001(a)
14 and 23035(a); failing to post notice with disclosures as required in sections 23019 and 23035(d);
15 failing to include disclosures in the written agreement with customers, as required under section
16 23035(e); and failing to provide written notice to customers, prior to entering into a written
17 agreement with them, as required under section 23035(c). In addition, Respondent is receiving a
18 citation of five hundred dollars (\$500) for failure to post its CDDTL license from the Department, as
19 required under section 23018(a). The total citation amount is fifteen thousand five hundred dollars
20 (\$15,500).

21 IV

22 COMMISSIONER’S AUTHORITY TO ISSUE CITATIONS

23 AND DESIST AND REFRAIN ORDER

24 29. Section 23058 gives the Commissioner’s authority to issues 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.

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Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars (\$ 2,500). All penalties collected under this section shall be deposited in the State Corporations Fund.

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

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

(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 Title 2 of the Government Code, and in all states the commissioner has all the powers granted therein.

(e) After the exhaustion of the review procedures provided for in this section, the department may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and order 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 the department, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

CITATIONS

30. Pursuant to section 23058, Respondent is hereby ordered to pay to the Commissioner within thirty (30) days from the date of these citations an administrative penalty of fifteen thousand five hundred dollars (\$15,500) for the citations described above.

DESIST AND REFRAIN ORDER

31. By reason of the foregoing, the licensee engaged in originating deferred deposit transactions without a license in violation of section 23005. In addition, Respondent charged extension and late fees in violation of sections 23036(b) and (e), failed to disclose to consumers disclosures as required under sections 23019 and 23035, failed to collect personal checks of consumers in violation of sections 23001(a) and 23035(a), and failed to post its license, in violation of 23018(a).

32. California Financial Code section 23050 provides in pertinent part:

Whenever, in the opinion of the commissioner, any person is engaged

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in the business of deferred deposit transactions, as defined in this division, without a license from the commissioner, or any licensee is violating any 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. If, within 30 days, after the order is served, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded.

33. Pursuant to Financial Code section 23050, Order Express, Inc. is hereby ordered to desist and refrain from violating Financial Code sections 23005, 23001(a), 23018(a), 23019, 23035, and 23036. This Order is necessary for the protection of consumers and consistent with the purposes, policies and provisions of the CDDTL. This Order shall remain in full force and effect until further order of the Commissioner.

V

COMMISSIONER’S AUTHORITY TO VOID TRANSACTIONS

34. Respondent violated sections 23005 and 23036(b), (e) and (f) of the CDDTL by engaging in deferred deposit transactions prior to obtaining a license, and by charging extension and late fees on at least twenty-seven (27) deferred deposit transactions. These transactions totaled at least ten thousand, ninety-two dollars and fifteen cents (\$10,092.15). Therefore, the Commissioner seeks to void at least twenty-seven (27) deferred deposit transactions and order Respondent to return any consumers’ funds received and not to collect on any not yet collected, in an amount that aggregates at least ten thousand, ninety-two dollars and fifteen cents (\$10,092.15).

35. California Financial Code section 23060(a) states:

If any amount other than, or in excess of, the charges or fees permitted by this division is willfully charged, contracted for, or received, a deferred deposit transaction contract shall be void, and no person shall have any right to collect or receive the principal amount provided in the deferred deposit transaction, any charges, or fees in connection with the transaction.

ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS

36. Pursuant to section 23060 the above described twenty-seven (27) deferred deposit transactions, totaling at least ten thousand, ninety-two dollars and fifteen cents (\$10,092.15) are

1 declared void, and Respondent is hereby ordered to return any funds received to the consumers,
2 and not collect any funds not yet received, on any loans made where extension or late fees were
3 charged.

4 **CONCLUSION**

5 Complainant finds, due to the foregoing, that Respondent violated sections 23005, 23001(a),
6 23018(a), 23019, 23035, and 23036. Therefore, the Commissioner is justified in ordering
7 Respondent to desist and refrain from further violations of the CDDTL, in issuing seven citations in
8 the total amount of fifteen thousand five hundred dollars (\$15,500) to Respondent, and in voiding at
9 least twenty-seven (27) transactions pursuant to sections 23050, 23058 and 23060, respectively.

10 This Order is necessary for the protection of consumers and consistent with the purposes,
11 policies and provisions of the CDDTL. This Order shall remain in full force and effect until
12 further order of the Commissioner.

13 Dated: July 21, 2009

14 Los Angeles, California

15 **PRESTON DuFAUCHARD**
16 California Corporations Commissioner

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18 By _____
19 **ALAN S. WEINGER**
20 Deputy Commissioner

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