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

12	In the Matter of the Accusation of THE)	File No.: 100-2890; 100-2891; 100-2892; 100-
13	CALIFORNIA CORPORATIONS)	2893
14	COMMISSIONER,)	
15	Complainant,)	1) ACCUSATION TO REVOKE
16	vs.)	LICENSE;
17	Yogesh Hiralal doing business as Pro Check)	2) CITATIONS AND DESIST AND
18	Cashing Inc.,)	REFRAIN ORDER;
19	Respondent.)	3) ORDER VOIDING LOANS

20
21 Complainant, the California Corporations Commissioner, (“Commissioner”) is informed and
22 believes, and based upon such information and belief, alleges and charges Respondent as follows:

23 INTRODUCTION

24 On September 19, 2005, the Commissioner of the Department of Corporations
25 (“Department”) issued to Respondent, Yogesh Hiralal doing business as Pro Check Cashing Inc.
26 (“Respondent”), a deferred deposit transaction originator license pursuant to the California Deferred
27 Deposit Transaction Law (“CDDTL”) set forth in California Financial Code section 23000 et seq.
28 (All future references to sections are to the California Financial Code unless indicated otherwise.)

1 Respondent was incorporated in California with its principal place of business at 2413 S.
2 Fairview Street, #I, Santa Ana, CA 92704. Respondent has three additional licensed locations at 707
3 N. Bristol, #F, Santa Ana, CA 92703, 616 N. Anaheim Boulevard, #C, Anaheim, CA 92805 and
4 1440 S. Anaheim Boulevard, #A17, Anaheim, CA 92805.

5 Respondent violated numerous provisions of the CDDTL. If the Commissioner had known
6 Respondent would engage in a scheme that violated multiple provisions of the California Financial
7 Code, the Commissioner would have denied a license to Respondent. In view of the extent, nature
8 and duration of violations, the Commissioner believes it is in the best interests of the public to
9 revoke Respondent’s CDDTL license pursuant to section 23052. The Commissioner has issued a
10 Desist and Refrain order, four (4) citations in the amount of \$2,500 per citation, and an order voiding
11 12 loans totaling \$3,165.00 made by Respondent, pursuant to sections 23050, 23058 and 23060,
12 respectively.

13 I.

14 FACTUAL BACKGROUND

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

18 2. From at least January 1, 2005 to September 18, 2005, Respondent was engaged in the
19 unlicensed business of deferred deposit transactions by offering, originating and making deferred
20 deposit transactions.

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

25 4. On June 2, 2005, the Commissioner issued a Desist and Refrain Order against Respondent
26 for engaging in the unlicensed business of deferred deposit transactions.

27 5. On September 19, 2005, the Commissioner issued Respondent a California Deferred
28 Deposit Transaction License, as Respondent had complied with the Desist and Refrain Order.

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6. When Respondent filed an application with the Department for a license to make deferred deposit transactions he included a Declaration, designated as “Exhibit K” to the application, and Respondent Yogesh Hiralal signed under penalty of perjury for Respondent, stating:

I (we) have obtained and read copies of the California Deferred Deposit Transaction 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: 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.

7. On January 22, 2007 and again on August 27, 2007, the Commissioner’s examiner visited three of Respondent’s business locations after giving Respondent advance notice of the Department’s examination.

8. The Department examiner’s review of Respondent’s business revealed several CDDTL violations described below warranting a revocation, Desist and Refrain Order, penalties and restitution to consumers.

II

DEFERRED DEPOSIT TRANSACTION LAW

9. Subdivisions (a), (b), (e) and (f) of section 23036, limit the type and amount of fees and charges that customers can be required to pay. These subdivisions, in relevant part, state:

(a) A fee for a deferred deposit transaction shall not exceed 15 percent of the face amount of the check.

(b) A licensee may allow an extension of time, or a payment plan, for repayment of an existing deferred deposit transaction but may not charge any additional fee or charge of any kind in conjunction with the extension or payment plan. A Licensee that complies with the provisions of this subdivision shall not be deemed to be in violation of subdivision (g) of section 23037.

(e) A fee not to exceed fifteen dollars (\$15) may be charged for the return of a dishonored check by a depository institution in a deferred deposit transaction. A singled fee charged pursuant to this subdivision is the exclusive charge for a dishonored check. No fee may be added for late payment.

1 (f) No amount in excess of the amounts authorized by this section shall be
2 directly or indirectly charged by a licensee pursuant to a deferred deposit
3 transaction.

4 10. Section 23060 limits a licensee’s transactions and activities and states in relevant part:

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

10 (b) If any provision of this division is willfully violated in the making or collection of
11 a deferred deposit transaction, the deferred deposit transaction contract shall be void,
12 and no person shall have any right to collect or receive any amount provided in the
13 deferred deposit transaction, any charges, or fees in connection with the transaction.

14 11. Financial Code section 23016 provides in pertinent part:

15 (a) Each licensee shall pay to the commissioner its pro rata share of all costs and
16 expenses reasonably incurred in the administration of this division, as estimated by
17 the commissioner, for the ensuing year and any deficit actually incurred or anticipated
18 in the administration of the program in the year in which the assessment is made. The
19 assessment will be based on the number of locations.

20 (b) On or before the 20th day of May in each year, the commissioner shall notify
21 each licensee by mail of the amount assessed and levied against it and that amount
22 shall be paid within 30 days thereafter. If payment is not made within 30 days, the
23 commissioner may assess and collect a penalty, in addition to the assessment, of 1
24 percent of the assessment for each month or part of a month that the payment is
25 delayed or withheld.

26 (c) If a licensee fails to pay the assessment on or before the 30th day of June
27 following the day upon which payment is due, the commissioner may by order
28 summarily suspend or revoke the certificate issued to the licensee. If, after an order is
made, a request for hearing is filed in writing within 30 days, and a hearing is not
held within 60 days thereafter, the order is deemed rescinded as of its effective date.
During any period when its certificate is revoked or suspended, a licensee shall not
conduct business pursuant to this division except as may be permitted by order of the
commissioner. However, the revocation, suspension, or surrender of a certificate shall
not affect the powers of the commissioner as provided in this division.

III

RESPONDENTS’ DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS

12. During the examination and subsequent expanded examination, the Commissioner’s
examiner (“examiner”) notified Respondent that an additional fee was charged on extensions of

1 time for repayment. In violation of Financial Code section 23036(b), Respondent charged nine
2 excess extension fees totaling \$344.00. During the initial examination, on January 22, 2007, the
3 examiner notified Respondent of two excessive extension fee charges. During the expanded
4 examination, on August 27, 2007, the examiner notified Respondent of seven additional
5 excessive extension fee charges that were not noted during the initial examination. Of these
6 seven transactions, one transaction occurred subsequent to the examiner's initial warning and
7 notification. Further, the examiner reminded Respondent of the two previously noted excessive
8 extension fee charges. The Department requested Respondent to refund to all noted customers
9 the extension fee charges and provide the Department proof of the refunded checks. Respondent
10 has not complied with this requirement.

11 13. The initial examination also disclosed that a fee in excess of the fifteen percent of the
12 face amount of the check was charged for a deferred deposit transaction. In violation of
13 Financial Code section 23036(a), one customer was charged a fee in excess of the 15% of the
14 face amount of the check. The excess charge totaled \$22.50. Respondent was notified during
15 the examination and asked to refund the noted customer the excess fee charged and provide the
16 department with proof of the refund. Respondent has not complied with this requirement.

17 14. The expanded examination revealed that more than \$15 was charged on one
18 customer's returned Not Sufficient Fund ("NSF") check, in violation of Financial Code section
19 23036(e). Respondent was notified and asked to refund the excess amount of \$10.00 to the noted
20 customer and provide the Department with proof of the refund. Respondent has not complied
21 with this requirement.

22 15. The initial examination also revealed a violation of Financial Code section 23036(f)
23 for Respondent's failure to refund a customer half of the deferred deposit transaction fee, as the
24 customer paid the loan early. The examination revealed that the customer was not refunded the
25 fee. Respondent was asked to refund this customer the excess fee in the amount of \$22.50.
26 Respondent has not complied with this requirement.

27 16. Respondent's specific violations include the following CDDTL sections: 23036 (a),
28 (b), (e) and (f). For Respondent's violations of section 23036 that were discovered during the

1 Department’s regulatory examination, the expanded examination and review of the records at
2 three of Respondent’s locations, the Commissioner is issuing Citations 1 through 3, inclusive.
3 The Citations are being issued in connection with the 12 transactions in three of Respondent’s
4 locations shown in Exhibit A.

5 17. Respondent also failed to pay the assessment fee for Invoice #DD0346 in the amount
6 of \$3,764.00 in violation of Financial Code section 23016. Respondent was notified on or about
7 May 20, 2007 and again on November 13, 2007 that the assessment fee was due within thirty
8 days of the date of invoice. To this date, Respondent has not paid the assessment fee.

9 18. For Respondent’s violation of Financial Code section 23016, the Commissioner is
10 issuing Citation 4. This Citation is being issued in connection with the non-payment of the
11 assessment fee.

12 IV.

13 COMMISSIONER’S AUTHORITY TO ISSUE CITATIONS AND DESIST AND REFRAIN
14 ORDER

15 19. Section 23058 gives the Commissioner’s authority to issues citations, and states:

16 (a) If, upon inspection, examination or investigation, based upon a
17 complaint or otherwise, the department has cause to believe that a person
18 is engaged in the business of deferred deposit transactions without a
19 license, or a licensee or person is violating any provision of this division
20 or any rule or order thereunder, the department may issue a citation to that
21 person in writing, describing with particularity the basis of the citation.
22 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.

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

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

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

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

8 **CITATIONS**

9 20. Pursuant to Financial Code section 23058, Respondent is hereby ordered to pay to
10 the Commissioner within 30 days from the date of these Citations an administrative penalty of
11 two thousand five hundred dollars (\$2,500) per Citation for the four Citations for the total
12 amount of ten thousand dollars (\$10,000).

13 **DESIST AND REFRAIN ORDER**

14 21. By reason of the foregoing, the licensee has failed to pay the assessment fee in violation
15 of the California Financial Code section 23016 and has engaged in charging excess fees in violation
16 of the California Financial Code section 23036. California Financial Code section 23050 provides in
17 pertinent part:

18 Whenever, in the opinion of the commissioner, any person is engaged
19 in the business of deferred deposit transactions, as defined in this
20 division, without a license from the commissioner, or any licensee is
21 violating any provision of this division, the commissioner may order
22 that person or licensee to desist and to refrain from engaging in the
23 business or further violating this division. If, within 30 days, after the
24 order is served, a written request for a hearing is filed and no hearing is
25 held within 30 days thereafter, the order is rescinded.

26 22. Pursuant to Financial Code sections 23050 and 23058, Yogesh Hiralal, doing business as
27 Pro Check Cashing, Inc. is hereby ordered to desist and refrain from violating California Financial
28 Code sections 23036 and 23016.

29 23. Respondent is ordered to immediately pay the assessment fee in the amount of
30 \$3,674.00. Respondent is further ordered to void the twelve transactions in the amount of \$3,165.00
31 for charging excess fees.

1 24. These Orders are necessary for the protection of consumers and consistent with the
 2 purposes, policies and provisions of the CDDTL. This Order shall remain in full force and effect
 3 until further order of the Commissioner.

4 V.

5 **COMMISSIONER'S AUTHORITY TO VOID TRANSACTIONS**

6 25. Respondent willfully violated sections 23036 of the CDDTL by charging excessive
 7 or unauthorized fees for twelve deferred deposit transactions. Respondent received a total of
 8 \$3,165.00 for the twelve deferred deposit transactions from 2006 through 2007, which included
 9 total extensions in the amount of \$399.00. Therefore, the Commissioner seeks to void
 10 Respondent's transactions with at least 12 consumers and order the return of the consumers'
 11 funds.

12 26. California Financial Code section 23060 states:

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

19 (b) If any provision of this division is willfully violated in the
 20 making or collection of a deferred deposit transaction, the deferred
 21 deposit transaction contract shall be void, and no person shall have
 22 any right to collect or receive any amount provided in the deferred
 23 deposit transaction, any charges, or fees in connection with the
 24 transaction.

21 **ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS**

22 27. Pursuant to California Financial Code section 23060 the above described deferred
 23 deposit transactions for at least 12 consumers totaling at least \$3,165.00, which includes
 24 principal balance and all fees charged, are declared void.

25 28. Further, Respondent had no right to collect or receive any amount provided in the
 26 deferred deposit transactions or any charges or fees in connection with these consumer
 27 transactions and are hereby ordered to immediately return any amount and all charges and fees,
 28 that Respondent directly or indirectly received for these transactions.

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VI.

COMMISSISONER’S AUTHORITY TO REVOKE RESPONDENTS’ CDDTL LICENSE

29. Section 23052 states the grounds for revocation of a CDDTL license:

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

- (a) The licensee has failed to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of this division.
- (b) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.
- (c) A fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.

CONCLUSION

The Commissioner finds, due to the foregoing, that Respondent violated sections 23036 and 23016. Therefore, the Commissioner is justified in revoking Respondent’s California deferred deposit transaction license pursuant to section 23052. The Commissioner was also justified, based upon the foregoing, in issuing four (4) citations to Respondent, issuing a Desist and Refrain order, and voiding at least 12 transactions pursuant to sections 23058, 23050 and 23060, respectively.

WHEREFORE, Complainant, the California Corporations Commissioner prays that the deferred deposit transaction license of Yogesh Hiralal, doing business as Pro Check Cashing Inc., be revoked pursuant to Financial Code section 23052.

Dated: May 1, 2008
Los Angeles, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____

ALAN S. WEINGER
Lead Corporations Counsel