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

12 In the Matter of THE COMMISSIONER OF)	DESIST AND REFRAIN ORDER PURSUANT
13 CORPORATIONS OF THE STATE OF)	TO CALIFORNIA FINANCIAL CODE
14 CALIFORNIA,)	SECTION 23050;
)	ORDER VOIDING TRANSACTIONS
15 Complainant,)	PURSUANT TO CALIFORNIA FINANCIAL
)	CODE SECTION 23060; and
16 v.)	CITATIONS PURSUANT TO CALIFORNIA
)	FINANCIAL CODE SECTION 23058
17 Northway Financial Corporation Ltd. and)	
18 Northway Broker Ltd. d.b.a.)	
19 Pixy Cash a.k.a. PixyCash.com,)	
)	
20 Respondents.)	
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23 Complainant, the Commissioner of Corporations of the State of California (“Commissioner”
24 or “Department”), is informed and believes, and based on such information and belief, finds as
25 follows:

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I.

FACTUAL BACKGROUND

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3 1. Northway Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com (“Pixy Cash”) is a
4 company licensed by the Malta Financial Services Authority with its principal place of business at
5 Level 5, Plaza Commercial Centre, Bisazza Street, Sliema SLM 1640, Malta, European Union. Pixy
6 Cash operates a website, www.pixycash.com, which includes a phone number, 1-888-543-2350, and
7 email address, customercare@PixyCash.com.

8 2. Northway Financial Corporation Ltd. (“Northway Financial”) is a company licensed
9 by the Malta Financial Services Authority with its principal place of business at Level 5, Plaza
10 Commercial Centre, Bisazza Street, Sliema SLM 1640, Malta, European Union.

11 3. Pixy Cash and Northway Financial are engaged in the business of originating or
12 offering to originate deferred deposit transactions (commonly referred to as “payday loans” or
13 “payday advances”) over the internet to the general public, including California residents.

14 4. The Commissioner has jurisdiction over deferred deposit transactions as set forth in
15 the California Deferred Deposit Transaction Law (“CDDTL”) (California Financial Code section
16 23000 et. seq.).

17 5. “Deferred deposit transaction” means a transaction whereby a person defers
18 depositing a customer’s personal check until a specific date, pursuant to a written agreement for a fee
19 or other charge. “Personal check,” which is referenced in California Financial Code section 23001,
20 subdivision (a), includes the electronic equivalent of a personal check, such as an Automated
21 Clearing House (“ACH”) or debit card transaction.

22 6. On August 27, 2008, pursuant to California Financial Code section 23050, the
23 Commissioner issued a Desist and Refrain Order to Northway Broker Ltd. and Northway Financial
24 Corporation Ltd. (“August 2008 Order”) ordering them to desist and refrain from engaging in the
25 business of deferred deposit transactions in the State of California without first obtaining a license
26 from the Commissioner or being exempt. The August 2008 Order remains in full force and effect.

27 7. On March 6, 2012, the Commissioner issued a Desist and Refrain Order pursuant to
28 California Financial Code section 23050, Order Voiding Transactions pursuant to Financial Code

1 section 23060, and Citations pursuant to Financial Code section 23058, to Northway Financial
2 Corporation Ltd., Northway Broker Ltd., 247Greenstreet.com, and 247 Green Street (“March 2012
3 Orders”) for violating Financial Code sections 23005 (unlicensed business), 23035 (face amounts of
4 loan greater than \$300), and 23036 (excessive fees). The March 2012 Orders remain in full force and
5 effect.

6 8. Northway Financial and Pixy Cash have not been issued a license by the
7 Commissioner authorizing them to engage in the business of originating deferred deposit transactions
8 under the CDDTL. They are not exempt from the licensing requirements of California Financial
9 Code section 23005. As such, Pixy Cash and Northway Financial are not authorized to engage in
10 payday lending, or to offer, originate, or make deferred deposit transactions, arrange deferred deposit
11 transactions for a deferred deposit originator, act as an agent for a deferred deposit originator, or
12 assist a deferred deposit originator in the origination of deferred deposit transactions in California or
13 to California residents.

14 9. Yet, beginning in or around August, 2012, Pixy Cash and Northway Financial
15 originated a deferred deposit transaction with at least one California resident through the website,
16 www.pixycash.com, and electronically debited the California resident’s account by means of an ACH
17 transaction for the loan amount, fees, and charges, on the due date, as follows:

18 10. In or around August, 2012, Pixy Cash and/or Northway Financial arranged via the
19 website, www.pixycash.com, for an electronic deposit of \$275 into a California resident’s bank
20 account. On the due date, Pixy Cash and/or Northway Financial debited the California resident’s
21 bank account for the loan amount of \$275 and a finance charge of \$63.19, totaling \$338.19.

22 11. In or around September, 2012, Pixy Cash and/or Northway Financial arranged via the
23 website, www.pixycash.com, for an electronic deposit of \$475 into a California resident’s bank
24 account. On the due date, Pixy Cash and/or Northway Financial debited the California resident’s
25 bank account for the loan amount of \$475 and a finance charge of \$109.15, totaling \$584.15.

26 12. In or around January, 2013, Pixy Cash and/or Northway Financial arranged via the
27 website, www.pixycash.com, for an electronic deposit of \$175 into a California resident’s bank
28 account. On or around the due date, the California resident paid Pixy Cash and/or Northway

1 Financial the loan amount of \$175 and a finance charge of \$43.72, totaling \$218.72. In addition,
2 Pixy Cash and/or Northway Financial had twice charged a returned check fee of \$29.00, totaling
3 \$58.00.

4 **II.**

5 **DESIST AND REFRAIN ORDER**

6 The Department is responsible for enforcing provisions of the CDDTL found in California
7 Financial Code commencing at section 23000. The Commissioner is authorized to pursue
8 administrative actions and remedies against persons who engage in violations of the CDDTL.

9 California Financial Code section 23050 provides, in pertinent part:

10 Whenever, in the opinion of the commissioner, any person is engaged in
11 the business of deferred deposit transactions . . . without a license from
12 the commissioner, or any licensee is violating any provision of this
13 division, the commissioner may order that person or licensee to desist
14 and to refrain from engaging in the business or further violating this
15 division. If within 30 days, after the order is served, a written request for
16 a hearing is filed and no hearing is held within 30 days thereafter, the
17 order is rescinded.

18 California Financial Code section 23005 subdivision (a) prohibits any person from offering,
19 originating, or making a deferred deposit transaction without first obtaining a license from the
20 Commissioner, except as specified. Section 23035 subdivision (a) limits the face amount of the
21 check in a deferred deposit transaction to three hundred dollars (\$300). Section 23036 subdivision (a)
22 limits fees to 15% of the face amount of the deferred deposit transaction. Section 23036 subdivision
23 (e) limits the exclusive fee charged for the return of a dishonored check to fifteen dollars (\$15).

24 The foregoing facts establish violations of the CDDTL by Northway Financial Corporation
25 Ltd. and Northway Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com, including: 1) engaging in the
26 business of originating or offering to originate deferred deposit transactions without having first
27 obtained a license to do so from the Commissioner, in violation of section 23005(a); 2) offering or
28 originating deferred deposit transactions with face amounts greater than \$300, in violation of section
23035(a); and 3) charging excessive transaction and returned check fees, in violation of section
23036(a) and (e), respectively.

Pursuant to Financial Code section 23050, Northway Financial Corporation Ltd. and Northway Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com are hereby ordered to desist and refrain from violating Financial Code sections 23005, 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.

III.

ORDER VOIDING CALIFORNIA DEFERRED DEPOSIT TRANSACTIONS

California Financial Code section 23060 provides:

(a) 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.

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

Pursuant to California Financial Code section 23060 subdivisions (a) and (b), any and all deferred deposit transactions contracted with California customers or in the State of California by Northway Financial Corporation Ltd. and Northway Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com are therefore void. Northway Financial Corporation Ltd. and Northway Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com are hereby ordered to immediately cease collecting all principal amounts, and return all principal amounts, provided in any and all deferred deposit transactions contracted with California customers or in the State of California, and to disgorge any and all charges or fees received in conjunction with those deferred deposit transactions.

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IV.

CITATIONS

For the CDDTL violations of Northway Financial Corporation Ltd. and Northway Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com, the Commissioner herein issues 13 separate Citations (A through M), as part of this single document:

CITATION A – In or around August, 2012, Northway Financial Corporation Ltd. and Northway Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com originated a deferred deposit transaction with at least one California resident through the website, www.pixycash.com, without a license, in violation of Financial Code section 23005;

CITATION B – In or around August, 2012, Northway Financial Corporation Ltd. and Northway Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com originated a deferred deposit transaction with at least one California resident through the website, www.pixycash.com, without a license, in violation of the August 2008 Order;

CITATION C – In or around August, 2012, Northway Financial Corporation Ltd. and Northway Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com originated a deferred deposit transaction with at least one California resident through the website, www.pixycash.com, without a license and charging an excessive transaction fee, in violation of the March 2012 Orders;

CITATION D – In or around August, 2012, Northway Financial Corporation Ltd. and Northway Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com originated a deferred deposit transaction with at least one California resident through the website, www.pixycash.com, charging an excessive transaction fee, in violation of section 23036(a);

CITATION E – In or around September, 2012, Northway Financial Corporation Ltd. and Northway Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com originated a deferred deposit transaction with at least one California resident through the website, www.pixycash.com, without a license, in violation of Financial Code section 23005;

CITATION F – In or around September, 2012, Northway Financial Corporation Ltd., and Northway Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com originated a deferred deposit transaction with at

1 least one California resident through the website, www.pixycash.com, without a license, in violation
2 of the August 2008 Order;

3 **CITATION G** – In or around September, 2012, Northway Financial Corporation Ltd. and Northway
4 Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com originated a deferred deposit transaction with at
5 least one California resident through the website, www.pixycash.com, without a license, with a face
6 amount of the check greater than \$300 and an excessive transaction fee, in violation of the March
7 2012 Orders;

8 **CITATION H** – In or around September, 2012, Northway Financial Corporation Ltd. and Northway
9 Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com originated a deferred deposit transaction with at
10 least one California resident through the website, www.pixycash.com, with a face amount of the
11 check greater than \$300, in violation of section 23035(a);

12 **CITATION I** – In or around September, 2012, Northway Financial Corporation Ltd. and Northway
13 Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com originated a deferred deposit transaction with at
14 least one California resident through the website, www.pixycash.com, charging an excessive
15 transaction fee, in violation of section 23036(a);

16 **CITATION J** – In or around January, 2013, Northway Financial Corporation Ltd., and Northway
17 Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com originated a deferred deposit transaction with at
18 least one California resident through the website, www.pixycash.com, without a license, in violation
19 of Financial Code section 23005;

20 **CITATION K** – In or around January, 2013, Northway Financial Corporation Ltd. and Northway
21 Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com originated a deferred deposit transaction with at
22 least one California resident through the website, www.pixycash.com, without a license, in violation
23 of the August 2008 Order;

24 **CITATION L** – In or around January, 2013, Northway Financial Corporation Ltd. and Northway
25 Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com originated a deferred deposit transaction with at
26 least one California resident through the website, www.pixycash.com, without a license and charging
27 an excessive transaction fee and returned check fee, in violation of the March 2012 Orders; and
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1 **CITATION M** – In or around January, 2013, Northway Financial Corporation Ltd. and Northway
2 Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com originated a deferred deposit transaction with at
3 least one California resident through the website, www.pixycash.com, charging an excessive
4 transaction fee and returned check fee, in violation of sections 23036(a) and (e), respectively.

5 California Financial Code section 23058 gives the Commissioner the authority to issue
6 citations for the foregoing CDDTL violations. Section 23058 states:

7 (a) If, upon inspection, examination or investigation, based upon a complaint or
8 otherwise, the department has cause to believe that a person is engaged in the business of
9 deferred deposit transactions without a license, or a licensee or person is violating any
10 provision of this division or any rule or order thereunder, the department may issue a
11 citation to that person in writing, describing with particularity the basis of the citation.
12 Each citation may contain an order to desist and refrain and an assessment of an
13 administrative penalty not to exceed two thousand five hundred dollars (\$2,500). All
14 penalties collected under this section shall be deposited in the State Corporations Fund.

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

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

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

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

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Pursuant to Financial Code section 23058, Northway Financial Corporation Ltd. and Northway Broker Ltd. d.b.a. Pixy Cash a.k.a. PixyCash.com are hereby ordered to pay the Commissioner an administrative penalty of two thousand five hundred dollars (\$2,500) for each of the 13 citations (Citations A through M) for the total amount of thirty-two thousand five hundred dollars (\$32,500) within 30 days from the date of this citation.

Dated: March, 18, 2013
Los Angeles, California

JAN LYNN OWEN
Commissioner of Corporations

By: _____
MARY ANN SMITH
Deputy Commissioner