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9
10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) CDDTL LICENSE NO. 10DBO-89178
13 THE COMMISSIONER OF FINANCIAL)
14 PROTECTION AND INNOVATION,) ACCUSATION
15 Complainant,)
16 v.)
17 KMD PARTNERS, LLC D/B/A)
18 CREDITNINJA, a Limited Liability Company,)
19 Respondent.)
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21 Complainant, the Commissioner of Financial Protection and Innovation (Commissioner) is
22 informed and believes, and based upon such information and belief, alleges and charges Respondent
23 as follows:

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I.

Introduction

1. The Commissioner has jurisdiction over the licensing and regulation of persons and entities engaged in originating deferred deposit transactions under the California Deferred Deposit Transaction Law (CDDTL) (Fin. Code § 23000 et. seq).¹

2. KMD Partners LLC d/b/a CreditNinja (KMD) is a limited liability company licensed as a California deferred deposit transaction originator pursuant to the CDDTL with the license number 10DBO-89178. KMD’s principal place of business is located at 222 South Riverside Plaza, Suite 2200 Chicago, IL 60606.

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

4. On June 26, 2023, KMD submitted an application to the Commissioner by email requesting to surrender its CDDTL license.

II.

2020 Regulatory Examination

5. On July 14, 2020, the Commissioner commenced a regulatory examination of the books and records of KMD which showed KMD engaged in originating DDTs in violation of the CDDTL in the manner more fully described below.

Charging multiple return check fees.

6. Section 23036(e) states: “A fee for a deferred deposit transaction shall not exceed 15 percent of the face amount of the check. 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 single fee charged pursuant to this subdivision is the exclusive charge for a dishonored check. No fee may be added for late payment.” The 2020 Examination showed that KMD charged customers

¹ All further references are to the Corporations Code unless otherwise indicated.

1 multiple returned check fees in violation of section 23036(e). KMD charged more than one NSF fee
2 in 1,327 DDTs between November 1, 2018, and May 22, 2020.

3 Extending deferred deposit transactions with a check value in excess of \$300.

4 7. Section 23035(a) provides that the face amount of a check shall not exceed \$300.
5 Between November 1, 2018, and May 22, 2020, KMD originated 65 DDTs in which they obtained
6 checks with face value in excess \$300 from customers, in violation of section 23035(a).

7 Accepting the same check for a subsequent transaction.

8 8. Pursuant to section 23037(a), a licensee is prohibited from accepting or using the
9 same check for a subsequent transaction or permitting a customer to pay off all or a portion of one
10 deferred deposit transaction with the proceeds of another. KMD paid off all or a portion of a
11 customer’s deferred deposit transactions with the proceeds of other deferred deposit transaction, in
12 violation of section 23037(a).

13 Failure to meet minimum net worth.

14 9. According to section 23007, a license is required to maintain a net worth of at least
15 twenty-five thousand dollars at all times. The 2020 examination revealed that KMD failed to meet
16 the minimum \$25,000 net worth requirement for the quarterly periods ending June 30, 2020, March
17 31, 2020, December 31, 2019, and June 30, 2019, in violation of section 23007.

18 Using non-conforming agreements.

19 10. Under section 23035(g), licensees are required to use written agreements that
20 conform to the provisions set forth in section 23035(e), which among other things, “shall not be
21 vague, unclear, or misleading and shall be in at least 10-point type.” The 2020 examination showed
22 that KMD used written agreements that contained vague, unclear, or misleading language in
23 approximately 5,948 DDT agreements.

24 11. On September 22, 2021, by email correspondence dated September 22, 2021,
25 (September 22, email), the Commissioner directed KMD to conduct an internal audit covering the
26 period November 1, 2018, through May 22, 2020, and provide an audit report containing the
27 information listed below no later than November 19, 2021.

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1 12. In about November 2022, KMD provided the following response to the requests
2 contained in the Commissioner’s September 22, email:

3 (a) Commissioner’s request no. 1: the total number of deferred deposit
4 transactions (DDTs) KMD originated that exceeded the \$300 maximum DDT during the period of
5 November 1, 2018, through May 22, 2020.

6 KMD’s response to the Commissioner’s request no. 1: KMD identified 63 DDTs
7 in which they collected amounts exceeding \$300, instead of 65 DDTs disclosed in the 2020
8 examination. Evidence of refunds was not provided for eight DDTs, and KMD did not provide
9 evidence showing they adjusted the DDT balances for 21 transactions. KMD indicated that they
10 made ledger balance adjustments and/or refunds but did not provide evidence of ledger adjustments
11 or refunds. KMD stated that they could provide the information upon request.

12 (b) Commissioner’s request no. 2: the total number of DDTs in which KMD
13 charged more than one NSF fee during November 1, 20218 through May 22, 2020.

14 KMD’s response to the Commissioner’s request no. 2: KMD stated they made
15 ledger balance adjustments and/or refunds, however they did not provide evidence of ledger
16 adjustments or refunds.

17 (c) Commissioner’s request no. 3: the total number of DDTs in which KMD
18 permitted customers to pay off all or a portion of an existing DDT with the proceeds of another
19 transaction during the period November 1, 2018, through May 22, 2020.

20 KMD’s response to the Commissioner’s request no. 3: KMD stated this was a
21 manual error that affected one DDT customer whom they had already refunded. KMD did not
22 provide evidence of the refund.

23 (d) Commissioner’s request no. 4: the total number of DDTs in which KMD
24 failed to keep complete evidence of the check.

25 KMD’s response to the Commissioner’s request no. 4: KMD stated it originated
26 1,087 DDTs without maintaining complete evidence of checks and that since the 2020 examination,
27 they require applicants to verify bank account owner’s name by completing a “instant bank
28 verification (“IBV”).”

1 (e) Commissioner’s request no 5: the total number of transactions in which KMD
2 used written agreements that contained vague, unclear, or misleading language.

3 (f) KMD’s response to the Commissioner’s request no 5: KMD reported 5,948
4 DDT agreements that contained vague, unclear, or misleading language.

5 **III.**

6 **Revocation Statute**

7 13. Financial Code section 23052 provides in pertinent part:

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

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

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

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

20 14. By reason of the foregoing, KMD has violated the CDDTL by: (i) charging more than
21 a single fee for dishonored payments on deferred deposit transactions, in violation of section
22 23036(c); (ii) making deferred deposit transactions in an amount that exceed \$300, in violation of
23 section 23035(a); (iii) allowing a customer to pay off a prior deferred deposit transaction with the
24 proceeds of a new deterred deposit transaction, in violation of section 23037(a); (iv) failing to
25 maintain the required minimum a net worth of at least \$25,000 at all times, in violation of section
26 23007, and (v) using agreements that contained vague, unclear or misleading language, in violation
27 of section 23035(g).

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IV.

Conclusion

15. KMD engaged in business as deferred deposit transaction originators in violation of provisions of the CDDTL, including collecting more than a single fee for a dishonored payment; making deferred deposit transactions for an amount in excess of \$300.00; permitting a customer to pay off all or a portion of a prior deferred deposit transaction with the proceeds of a new deferred deposit transaction, not maintaining a minimum net worth of at least \$25,000.00 at all times, and using non-conforming agreements.

V.

Prayer

WHEREFORE, Complainant, the Commissioner of Financial Protection and Innovation prays that the deferred deposit transaction license number 10DBO-103480 issued to KMD Partners, LLC D/B/A CreditNinja, be revoked pursuant to Financial Code section 23052.

Dated: July 18, 2023
Los Angeles, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By _____
UCHE L. ENENWALI
Senior Counsel
Enforcement Division