

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	
JACS, L.L.C.,)	FINDINGS OF FACT
d/b/a Express Money,)	CONCLUSIONS OF LAW
2055 'O' Street,)	AND
Lincoln, Nebraska)	CONSENT AGREEMENT
)	

THIS MATTER comes before the Nebraska Department of Banking and Finance ("DEPARTMENT"), by and through its Director, pursuant to its authority under the Delayed Deposit Services Licensing Act, Neb. Rev. Stat. §§ 45-901 to 45-929 (Reissue 1998; Cum. Supp. 2002; Supp. 2003; LB 999,2004) ("the Act"). Pursuant to Neb. Rev. Stat. § 45-920 (Reissue 1998), the DEPARTMENT has examined the books, accounts, and records of JACS, L.L.C., d/b/a Express Money, 2055 'O' Street, Lincoln, Lancaster County, Nebraska ("EXPRESS MONEY"). As a result of such examination, and being duly advised and informed in the matter, the Director and EXPRESS MONEY enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

FINDINGS OF FACT

1. EXPRESS MONEY holds a delayed deposit services business license under the Act. The license was originally granted July 18, 1995, and has been renewed annually on May 1st since that time, pursuant to Neb. Rev. Stat. § 45-910 (Cum. Supp. 2002).
2. On December 11,2003, the DEPARTMENT commenced an examination of EXPRESS MONEY pursuant to Neb. Rev. Stat. § 45-920

(Reissue 1998). This examination included an on-site visitation of EXPRESS MONEY's main office and a branch location at 501 West 'A' Street, Lincoln, Nebraska.

3. The December 11, 2003 Report of Examination ("Report") was forwarded to EXPRESS MONEY on December 31, 2003. The Report noted a number of findings with respect to violations of law. EXPRESS MONEY submitted a response to the Report on February 17, 2004. The DEPARTMENT sent written requests for more information to EXPRESS MONEY on February 23, 2004, and April 5, 2004. EXPRESS MONEY provided additional information on March 15, 2004, and April 14, 2004.

4. References in this Consent Agreement to customers of EXPRESS MONEY will be by way of initials, in order to protect the privacy of such customers. EXPRESS MONEY knows or should know the identity of these customers. If EXPRESS MONEY is unable to ascertain the identity of these customers, the DEPARTMENT will provide a list of these customers upon receipt of a written request.

5. The Report revealed that one collection file, for customer TD, could not be found during the time of the examination. The TD file was subsequently found and a copy of the documents for the transaction noted in the Report were provided by EXPRESS MONEY with the March 15, 2004 response. These documents showed that the disclosure agreement for TD did not disclose the annual percentage rate ("APR"), as required by Regulation Z, 12 C.F.R. § 226 (2001).

6. In response to the Department's April 5, 2004 follow-up request, EXPRESS MONEY addressed the nondisclosure of the APR referenced in Finding of Fact #5. EXPRESS MONEY stated in its April 14, 2004 response that the nondisclosure of the APR ". . . must have been a computer malfunction."

7. EXPRESS MONEY's nondisclosure of the APR charged for TD's transaction is a violation of Neb. Rev. Stat. § 45-917(1)(a) (Reissue 1998).

8. The Report revealed that EXPRESS MONEY may have attempted to collect a fifteen dollar non-sufficient funds ("NSF") penalty for each of two checks written at the same time by customer JO.

9. In its February 17, 2004 response to the Report, EXPRESS MONEY noted that customer JO had written two checks and that the ". . . computer automatically adds \$15 for each returned check." Subsequent documentation revealed that the two checks were written at the same time and should be considered to be one transaction.

10. EXPRESS MONEY's attempt to collect two penalty fees for one transaction is a violation of Neb. Rev. Stat. § 45-917(1)(c) (Reissue 1998).

11. The Report noted that EXPRESS MONEY was using a collection agency by the name of CybrCollect which electronically withdraws funds from customer accounts that have been turned over for collection. If funds are not available at the time of the electronic withdrawal, the collection agency added an additional \$30 fee to the amount of the insufficient funds check. No notice to the consumer of this practice was found in EXPRESS MONEY's customer disclosure agreements. In its December 31, 2003 transmittal letter, the DEPARTMENT requested a listing of all accounts charged the additional fee by the collection

agency. EXPRESS MONEY's February 17, 2004 response listed eighty accounts which had been assessed excess penalty fees in addition to the statutorily permitted \$15 non-sufficient funds penalty.

12. EXPRESS MONEY's February 17, 2004 response indicated that "if there has been any extra fees CyberCollect (sic) will refund the amount due. It is also my understanding that CyberCollect (sic) will no longer electronically take money out of customers accounts, they will just send letters and make phone calls to try and collect they (sic) money due." EXPRESS MONEY provided copies of correspondence from CybrCollect's Marketing Director with its February 17, 2004 and April 14, 2004 responses. The February 17, 2004 copy indicated, with respect to the excess penalty fees that, "This should act as our confirmation for her that we have done that." The April 14, 2004 copy indicated with respect to electronic collection that, "I have changed the collection methodology on your account to prevent any electronic collections from occurring on your account."

13. CybrCollect provided information to the DEPARTMENT in correspondence dated June 2, 2004, and June 7, 2004. CybrCollect confirmed that it had stopped collection for any delayed deposit business in Nebraska, and agreed to refund any fees collected that were in excess of the statutorily permitted amount. The information submitted revealed that twenty-five NSF checks were electronically collected by CybrCollect on behalf of EXPRESS MONEY from November 1, 2002 through June 2004. CybrCollect charged a \$15.00 fee for five of these checks, a \$30.00 fee for nineteen of these checks, and no fee for one of the checks. The information further revealed that an additional seventy-five checks appeared on the "Detail Unpaid List" dated from

January 2, 2002 to February 10, 2004. CybrCollect stated with respect to these seventy-five checks that, "A letter was sent to the address on the returned check requesting payment of the face amount of the returned check plus a \$30 service fee." CybrCollect has represented to the Department that the collection attempts for those seventy-five checks were not successful.

14. EXPRESS MONEY's charging, or allowing to be charged, a penalty fee to the nineteen customers in excess of fifteen dollars through its contracted collection agency represents nineteen separate violations of Neb. Rev. Stat. § 45-917(1)(c) (Reissue 1998).

15. EXPRESS MONEY's allowing its contracted collection agency to collect twenty-five NSF checks electronically, in contradiction of the DEPARTMENT's Interpretative Opinion No. 3, represents twenty-five separate violations of Neb. Rev. Stat. § 45-917(1)(c) (Reissue 1998).

16. EXPRESS MONEY's allowing its contracted collection agency to attempt to collect a penalty fee in excess of fifteen dollars for seventy five customers represents seventy five separate violations of Neb. Rev. Stat. § 45-917(1)(c) (Reissue 1998).

17. The Report noted that five transactions appearing on the collections inventory list, for customers AJ, GJ, AM, AS, and JZ, appeared to be checks that were cashed and not delayed deposit transactions.

18. EXPRESS MONEY indicated during the December examination that it had been having problems with its computer software and had been working with the software provider in order to correct the problem areas. One of the problems

was that transactions were being listed on the collections inventory report that were not delayed deposit transactions.

19. EXPRESS MONEY's failure to maintain records of another business separate and apart from the records of the delayed deposit services business is a violation of Neb. Rev. Stat. § 45-916(1) (Reissue 1998).

20. The DEPARTMENT could conclude that the actions of EXPRESS MONEY warrant the commencement of administrative proceedings to determine whether it should suspend or revoke EXPRESS MONEY's delayed deposit services business license pursuant to Neb. Rev. Stat. § 45-922 (Cum. Supp. 2002), or whether it should impose an administrative fine in an amount up to \$5,000.00 per violation, plus investigative costs, pursuant to Neb. Rev. Stat. § 45-925 (Reissue 1998).

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 45-908 (Reissue 1998) provides that in order to issue a delayed deposit services business license, the Director must determine that the character and general fitness of the applicant and its officers, directors, and shareholders are such as to warrant a belief that the business will be operated honestly, fairly, and efficiently, and in accordance with the Act.

2. Neb. Rev. Stat. § 45-916(1) (Reissue 1998) provides that a licensee may operate a delayed deposit services business at a location where any other business is operated or in association or conjunction with any other business if the books, accounts, and records of the delayed deposit services business are

kept and maintained separate and apart from the books, accounts, and records of the other business.

3. Neb. Rev. Stat. § 45-917(1)(a) (Reissue 1998) requires a licensee to provide the maker of the check with written notice of the fees to be charged for the transaction.

4. Neb. Rev. Stat. § 45-917(1)(c) (Reissue 1998) provides that a licensee may charge a penalty not to exceed fifteen dollars if a check is not negotiable on the date agreed upon.

5. Neb. Rev. Stat. § 45-922 (Cum. Supp. 2002) provides that if the Director finds, after notice and opportunity for hearing, that a delayed deposit services business licensee or any of its officers or directors has knowingly violated the Act, or a fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Director in refusing to grant the license, the Director may suspend or revoke the license.

6. Neb. Rev. Stat. § 45-925 (Reissue 1998) provides that if the Director finds, after notice and opportunity for hearing, that any person has violated the Act, the Director may order such person to pay an administrative fine of not more than five thousand dollars (\$5,000.00) for each separate violation and the costs of an investigation.

7. Interpretative Opinion No. 3, effective August 1, 2003, states with respect to Neb. Rev. Stat. § 45-917(1)(c) (Reissue 1998) that, "A licensee may not collect a check as an electronic Automated Clearing House transaction instead of depositing or physically presenting a check to the institution on which it is written."

8. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that EXPRESS MONEY has violated the Act, and that an administrative fine in an amount of not more than five thousand dollars (\$5,000.00) for each separate violation plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-925 (Reissue 1998).

9. Under the Act's statutory framework, the Director has the legal and equitable authority to fashion significant remedies.

10. It is in the best interest of EXPRESS MONEY, and it is in the best interest of the public, for EXPRESS MONEY and the DEPARTMENT to resolve the issues included herein.

CONSENT AGREEMENT

The DEPARTMENT and EXPRESS MONEY agree as follows:

Stipulations: In connection with this Consent Agreement, EXPRESS MONEY and the DEPARTMENT stipulate to the following:

1. The DEPARTMENT has jurisdiction as to all matters herein.
2. This Consent Agreement shall resolve all matters raised by the DEPARTMENT's December 11, 2003 examination of EXPRESS MONEY. Should future circumstances warrant, the facts from this matter may be considered in a future administrative action by the DEPARTMENT.
3. This Consent Agreement shall be in lieu of all other proceedings available to the DEPARTMENT, except as specifically referenced in this Consent Agreement.

EXPRESS MONEY further represents as follows:

1. EXPRESS MONEY is aware of its right to a hearing on these matters at which it may be represented by counsel, present evidence, and cross examine witnesses. The right to such a hearing, and any related appeal is irrevocably waived.

2. EXPRESS MONEY is acting free from any duress or coercion of any kind or nature.

3. This Consent Agreement is executed to avoid further proceedings and constitutes an admission of violation of the Act solely for the purpose of this Consent Agreement and for no other purpose.

IT IS THEREFORE AGREED as follows:

1. Within ten (10) days after the effective date of this Consent Agreement, EXPRESS MONEY shall pay a fine of fifty dollars (\$50.00) for the violation of Neb. Rev. Stat. § 45-917(1)(a) (Reissue 1998) where the customer's APR was not disclosed.

2. Within ten (10) days after the effective date of this Consent Agreement, EXPRESS MONEY shall provide the DEPARTMENT with proof that it has refunded the finance charge for customer TD's transaction.

3. Within ten (10) days after the effective date of this Consent Agreement, EXPRESS MONEY shall pay a fine of fifty dollars (\$50.00) for the violation of Neb. Rev. Stat. § 45-917(1)(c) (Reissue 1998) where an attempt was made to charge more than one penalty fee for the same transaction.

4. Within ten (10) days after the effective date of this Consent Agreement, EXPRESS MONEY shall pay a fine of fifty dollars (\$50.00) for each of the

nineteen violations of Neb. Rev. Stat. § 45-917(1)(c) (Reissue 1998) where its contracted collection agency charged a penalty fee in excess of fifteen dollars.

5. Within ten (10) days after the effective date of this Consent Agreement, EXPRESS MONEY shall provide the DEPARTMENT with proof that any penalty fee in excess of fifteen dollars associated with any account collected by CybrCollect for EXPRESS MONEY has been refunded.

6. Within ten (10) days after the effective date of this Consent Agreement, EXPRESS MONEY shall pay a fine of one hundred dollars (\$100.00) for each of the twenty five violations of Neb. Rev. Stat. § 45-917(1)(c) (Reissue 1998) where its contracted collection agency collected checks electronically.

7. Within ten (10) days after the effective date of this Consent Agreement, EXPRESS MONEY shall pay a fine of forty dollars (\$40.00) for each of the seventy five violations of Neb. Rev. Stat. § 45-917(1)(c) (Reissue 1998) where its contracted collection agency was allowed to attempt to collect a penalty fee in excess of fifteen dollars.

8. Within ten (10) days after the effective date of this Consent Agreement, EXPRESS MONEY shall pay a fine of fifty dollars (\$50.00) for the violation of Neb. Rev. Stat. § 45-916(1) (Reissue 1998) where records of another business were not maintained separately from records of the delayed deposit services business.

9. The total amount of the fine, six thousand six hundred dollars (\$6, 600.00) shall be payable in one check or money order to the DEPARTMENT.

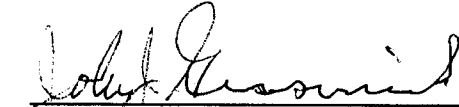
10. Within ten (10) days after the effective date of this Consent Agreement, EXPRESS MONEY shall review the Act, Neb. Rev. Stat. §§ 45-901 to 45-929 (Reissue 1998; Cum. Supp. 2002; Supp. 2003; LB 999, 2004) and all Interpretative Opinions issued under the Act with all current employees and upon hiring of any future employees. EXPRESS MONEY shall retain signed, dated statements from these employees attesting that they have reviewed the Act and all Interpretative Opinions.

11. In the event EXPRESS MONEY fails to comply with any of the provisions of this Consent Agreement, the DEPARTMENT may commence such action as it deems necessary and appropriate in the public interest.

12. If, at any time, the DEPARTMENT determines EXPRESS MONEY has committed any other violations of the Act, the DEPARTMENT may take any action available to it under the Act.

13. The effective date of this Consent Agreement will be the date of the Director's signature.


**JACS, L.L.C.,
d/b/a EXPRESS MONEY**
2055 'O' Street
Lincoln, Nebraska 68510
(402) 476-6727



John J. Grasmick
President

Dated: 8/28/04

**Nebraska Department of Banking
and Finance**
311 The Atrium, 1200 'N' Street
Lincoln, Nebraska 68508
(402) 471-2171



Samuel P. Baird
Director

Dated: 8.31.04