

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	
)	FINDINGS OF FACT
American Check Casher, Inc.,)	CONCLUSIONS OF LAW
8029 West Dodge Road, Suite #1,)	AND
Omaha, Douglas County, 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 2004; Supp. 2005) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-920 (Reissue 2004), the DEPARTMENT has examined the books, accounts, and records of American Check Casher, Inc., 8029 West Dodge Road, Suite #1, Omaha, Douglas County, Nebraska (“AMERICAN”). As a result of such examination, and being duly advised and informed in the matter, the Director and AMERICAN enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

FINDINGS OF FACT

1. AMERICAN holds a delayed deposit services business license under the Act. License #1813 was originally granted March 17, 1995, and has been renewed annually on May 1st since that time pursuant to Neb. Rev. Stat. § 45-910 (Supp. 2005). AMERICAN is currently authorized by the DEPARTMENT to operate three branches in Omaha, Douglas County, Nebraska, in addition to the main office location.

2. On September 9, 2004, the DEPARTMENT commenced an examination of AMERICAN pursuant to Neb. Rev. Stat. § 45-920 (Reissue 2004). This examination included an on-site visitation of AMERICAN'S four Omaha, Douglas County, Nebraska locations.

3. The September 9, 2004, Report of Examination ("Report") was forwarded to AMERICAN on October 1, 2004. The Report noted a number of violations of the Act. AMERICAN submitted responses received by the DEPARTMENT on November 5, 2004; November 8, 2004; and December 3, 2004. AMERICAN's collection inventory report was received by the DEPARTMENT post-examination and the examiner's findings with respect to that report were forwarded to AMERICAN for response on December 23, 2004. AMERICAN submitted additional responses received by the DEPARTMENT on January 18, 2005; February 1, 2005; March 4, 2005; and March 17, 2005.

4. The previous regular examination of AMERICAN, conducted September 3, 2003 ("2003 Exam"), also revealed a number of violations of the Act. The findings of the 2003 Exam resulted in a Consent Agreement between AMERICAN and the DEPARTMENT, effective April 29, 2004.

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

6. The Report noted five instances where payroll checks were held in the delayed deposit services collection inventory. These checks were cashed by AMERICAN as payroll checks, deposited, and then returned as counterfeit checks. All of the checks were allegedly written on the same business.

7. AMERICAN's November 5, 2004 response indicated with respect to these checks that, ". . . A HANDWRITTEN REPORT WAS MADE, BUT THE CHECKS WERE NOT TURNED OVER TO THE OMAHA POLICE CHECKS AND FRAUD DIVISION, SO THE CHECKS ARE STILL IN THE STORE." (Emphasis in Original) AMERICAN's November 8, 2004 response further indicated that, "We will now keep all delayed deposit returned checks separate form (sic) any and or all other types of returned checks at each location."

8. AMERICAN's failure to maintain the records of other business conducted at the same business location separate from the records of the delayed deposit services business represents five separate violations of Neb. Rev. Stat. § 45-916(1) (Reissue 2004).

9. The Report noted a number of instances where AMERICAN attempted to charge two penalty fees for the same customer transaction. Of these, AMERICAN's follow-up documentation explained all but seven instances regarding customers BE, KL, AY, DM, JS, SI, and MP, whose checks were all being held by AMERICAN's collection agency.

10. AMERICAN's November 8, 2004 response indicated that, "We have pulled back in house almost every account Merchants Collection Agency had been working on.

...Where two checks were received on a single transaction we will collect only one single fee.”

11. AMERICAN’s attempt to charge two penalties for the same customer transaction for seven customers represents seven separate violations of Neb. Rev. Stat. § 45-917(1)(c) (Reissue 2004).

12. The Report and subsequent correspondence revealed ten instances where more than *two* checks from the same maker were held for customers **TC, FI, EJ, SN, LO, RS, LS, JS, JS,** and **CW**.

13. AMERICAN’s holding of more than two checks from the same maker at the same time for ten customers represents ten separate violations of Neb. Rev. Stat. § 45-919(1)(a) (Reissue 2004).

14. The Report and subsequent correspondence revealed twenty-three instances where checks in an aggregate face amount of more than five hundred dollars were held for each of the following customers: **SB, AC, TC, TF, FI, EJ, RJ, TJ, TK, LL, IM, SN, HO-B, LO, JP, LS, JS, JS, TT, JW, RW, CW,** and **SW**. The 2003 Exam also noted five violations in which AMERICAN was holding checks in an aggregate face amount of more than **five** hundred dollars for one customer.

15. AMERICAN’s holding of checks in an aggregate face amount of more than five hundred dollars from one maker for each of twenty-three different customers represents twenty-three separate violations of Neb. Rev. Stat. § 45-919(1)(b) (Reissue 2004).

16. With respect to the violations noted in Findings of Fact #s 12-15 above, which were determined by the examiner with respect to the collection inventory report which

was not available during prior examinations and which was submitted to the examiner several months after the onsite examination had been completed, AMERICAN's February 1, 2005 response indicated that,

We have realized that some of the **requested** material are for transactions that dated prior to our company policy being changed in regards to when we would allow a customer to write their next check. We had in past years viewed a check being deposited as the close of a transaction. And that at the point of deposit, the check was no longer a **part of** our active check holding. In which case if the customer had come in after their check was deposited, we would allow them to write a new check. . . . It was at the departments (sic) request that we changed this policy and so it was then established. However, it is in this time prior to this change that we are seeing where some questions are arising and discrepancies are being found. In previous examinations we have addressed similar occurrences **of** certain violations where we were holding more than *two* checks or a total of over \$500.00 dollars. These occurrences happened of course because we allowed a customer to write a check once the previous one was deposited and then later returned. But again this practice had been changed in years past and is no longer our policy.

17. The Report showed that AMERICAN had a number of problems associated with its recordkeeping of current and collection inventories. The three previous regular examinations of AMERICAN, held June 12, 2001; March 27, 2002; and the 2003 Exam also cited a number of errors in the current and collection inventories.

18. One of the conditions that the Director must investigate when determining whether to issue a delayed deposit services license is whether the experience, character, and general fitness of the applicant is such as to warrant the belief that the business will be conducted honestly, fairly, and efficiently. To operate efficiently, a licensee must ensure that transactions with customers are conducted accurately and that the records concerning those transactions are accurately kept.

19. AMERICAN's November 8, 2004 response addressed this issue, in part, by stating that, "We have since informed each employee to pay close attention to all checks

as they are received. To ask for a new check from the customer when possible and to only have a maker initial a correction on a check as a last resort.” The response also indicated that AMERICAN was in the process of upgrading its entire computer system so as to **be able to generate the reports and records** that the DEPARTMENT had requested.

20. Four successive examinations have shown multiple errors in AMERICAN’s current and collection inventories. Those findings suggest that AMERICAN could not meet the conditions of Neb. Rev. Stat. § 45-908 (Reissue **2004**).

21. The DEPARTMENT could conclude that the actions of AMERICAN warrant the commencement **of** administrative proceedings to determine 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 **2004**).

22. The DEPARTMENT incurred a minimum of two thousand one hundred dollars (**\$2,100.00**) in investigation costs in this matter. These costs include the twenty-four and a half hours that the examiner spent reviewing the collections inventory report that was submitted several months after the on-site examination had been completed.

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 45-908 (Reissue **2004**) 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, efficiently, and in accordance with the Act. To operate efficiently, a licensee must ensure that transactions with customers are conducted accurately and that the records concerning those transactions are accurately kept.

2. Neb. Rev. Stat. § 45-916(1) (Reissue 2004) 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)(c) (Reissue 2004) provides that a licensee may charge a penalty not to exceed fifteen dollars if a check is not negotiable on the date agreed upon.

4. Neb. Rev. Stat. § 45-919 (Reissue 2004) sets forth acts which are prohibited to a licensee. These acts include (a) holding more than two checks from one maker, and (b) holding checks in an aggregate amount of more than five hundred dollars.

5. Neb. Rev. Stat. § 45-925 (Reissue 2004) 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 for each separate violation and the costs of an investigation.

6. The facts listed in the above Findings of Fact constitute a sufficient basis for **the** Director to have determined that AMERICAN has violated the Act, that a majority **of** such violations were repeat violations of 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 2004).

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

8. It is in the best interest of AMERICAN, and it is in the best interest of the public, for AMERICAN and the DEPARTMENT to resolve the issues included herein.

CONSENT AGREEMENT

The DEPARTMENT and AMERICAN agree as follows:

Stipulations: In connection with this Consent Agreement, AMERICAN and the Director 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 September **9,2004** examination of AMERICAN. 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.

AMERICAN further represents **as** follows:

1. AMERICAN 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. AMERICAN 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 violations 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, AMERICAN shall pay a fine of fifty dollars (\$50.00) for each of the five violations of Neb. Rev. Stat. § 45-916(1), where AMERICAN failed to maintain the records of another business conducted at the same business location separate from the records of the delayed deposit services.

2. Within ten (10) days after the effective date of this Consent Agreement, AMERICAN shall pay a fine of fifty dollars (\$50.00) for each of the seven violations of Neb. Rev. Stat. § 45-917(1)(c), where AMERICAN attempted to charge two penalties for the same transaction.

3. Within ten (10) days after the effective date of this Consent Agreement, AMERICAN shall pay a fine of one hundred dollars (\$100.00) for each of the ten violations of Neb. Rev. Stat. § 45-919(1)(a), where AMERICAN held more than two checks from one maker at one time.

4. Within ten (10) days after the effective date of this Consent Agreement, AMERICAN shall pay a fine of two hundred fifty dollars (\$250.00) for each of the twenty-three repeat violations of Neb. Rev. Stat. § 45-919(1)(b) (Reissue 2004), where checks in an aggregate amount of more than five hundred dollars were held from one *maker*.

5. Within ten (10) days after the effective date of this Consent Agreement, AMERICAN shall pay a fine of two thousand dollars (\$2,000.00) for the repeat violation of not ensuring that transactions with customers were conducted accurately or that records of those transactions were not accurately kept as noted in Finding of Fact #20.

6. Within ten (10) days after the effective date of this Consent Agreement, AMERICAN shall pay the DEPARTMENT's investigation costs in the amount of two thousand one hundred dollars (\$2,100.00).

7. The total amount of ~~the~~ fine and investigation costs, eleven thousand four hundred fifty dollars (\$11,450.00) shall be payable in one check or money order to the DEPARTMENT.

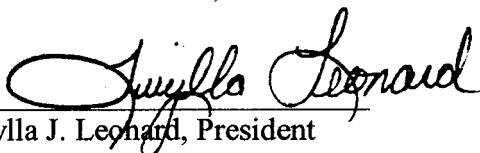
8. In the event AMERICAN fails to comply with any ~~of~~ the provisions of this Consent Agreement, the DEPARTMENT may commence such action regarding AMERICAN as it deems necessary and appropriate in the public interest.

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

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

DATED this 7th day of Dec, 2005.

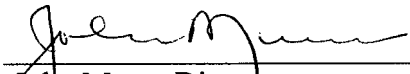
American Check Casher, Inc.

By: 
Twylla J. Leonard, President

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DATED this 9th day of December, 2005.

State of Nebraska
Department of Banking and Finance

By: 

John Munn, Director
Munn, Director

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