

**STATE OF NEBRASKA**  
**Department of Banking & Finance**

IN THE MATTER OF:	)	
	)	FINDINGS OF FACT
Kearney Cash, Inc.,	)	CONCLUSIONS OF LAW
1600 East 25 <sup>th</sup> Street,	)	AND
Kearney, Buffalo 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 Kearney Cash, Inc., 1600 East 25<sup>th</sup> Street, Kearney, Buffalo County, Nebraska (“KEARNEY CASH”). As a result of such examination, and being duly advised and informed in the matter, the Director and KEARNEY CASH enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

**FINDINGS OF FACT**

1. KEARNEY CASH holds a delayed deposit services business license under the Act. License #1849 was originally granted June 24, 1998, and has been renewed annually on May 1<sup>st</sup> since that time pursuant to Neb. Rev. Stat. § 45-910 (Reissue 2004; Supp. 2005).

2. On January 31, 2005, the DEPARTMENT commenced an examination of KEARNEY CASH pursuant to Neb. Rev. Stat. § 45-920 (Reissue 2004). This

examination included an on-site visitation of KEARNEY CASH's Kearney, Buffalo County, Nebraska location.

3. The January 31, 2005 Report of Examination ("Report") was forwarded to KEARNEY CASH on February 28, 2005. The Report noted a number of violations of the Act. KEARNEY CASH submitted responses received by the DEPARTMENT on March 23, 2005, August 17, 2005, and August 29, 2005.

4. References in this Consent Agreement to customers of KEARNEY CASH will be by way of initials, in order to protect the privacy of such customers. KEARNEY CASH knows or should know the identity of these customers. If KEARNEY CASH 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 noted that KEARNEY CASH's customer disclosure statement did not disclose the penalty fee which would be charged if the check was not negotiable on the date agreed upon. KEARNEY CASH continued to charge or attempt to charge a penalty fee for these customer transactions despite the fact that the fee had not been properly disclosed. The Report required KEARNEY CASH to determine how many transactions were processed using the incorrect disclosure statement.

6. KEARNEY CASH's March 23, 2005 response stated:

As of, 8-20-2003, the wording in our contract was changed to omit the \$15.00 return fee warning. This was done unbeknownst to any Kearney Cash employees. The change was made by our computer programmer to comply with Houlton Enterprises decision to stop charging \$15.00 return fees. This was never the intent of Steve Andrews or any other Kearney Cash employee. Although we do not intend to lay all responsibility for this mistake on any other parties, we also do not believe we are entirely to blame for the error either. . . . Obviously we would have fixed this costly error much sooner if we had been aware of it.

KEARNEY CASH disclosed that it had found the fee on 537 customer accounts. Of these accounts, 319 were outstanding and 218 had already been paid in full.

7. KEARNEY CASH's charging and attempting to charge a penalty fee for customer transactions despite the fact that the fee had not been properly disclosed to any customer since August 20, 2003, represents a minimum of 537 separate violations of Neb. Rev. Stat. § 45-917(1)(c) (Reissue 2004).

8. The Report revealed that KEARNEY CASH had held three checks each from customers KD and TF, which were written in an aggregate face amount of more than five hundred dollars.

9. The Report revealed three instances where KEARNEY CASH was holding checks in an aggregate face amount of more than five hundred dollars for customers LC, KD, and TF.

10. In its March 23, 2005 response to the Report, KEARNEY CASH addressed the holding of the checks referenced in Findings of Fact #8 and #9. KEARNEY CASH stated in part that:

The basic situations in all three cases were very similar. The customers, ([LC, KD, and TF]), in all three cases came back to rewrite postdated checks before their previous postdated checks had cleared their respective accounts. Although the checks had been deposited at least one day earlier in all three cases, none had cleared the customers bank accounts. In all three cases respective banks were contacted and fund availability was checked. All three customers were allowed to rewrite postdated checks. Since fund availability was checked with the banks, we falsely assumed that the customers previous checks would not be returned. The decisions were obviously very costly to Kearney Cash. We no longer allow customers to rewrite postdated checks if we are not assured by their bank that not only are funds available, but that the checks are definitely not being returned to us for any reason. [brackets added; customer's full name redacted]

11. KEARNEY CASH's holding of more than two checks from customers KD and TF represents two separate violations of Neb. Rev. Stat. § 45-919(1)(a) (Reissue 2004).

12. KEARNEY CASH's holding of checks in an aggregate face amount of more than five hundred dollars per customer from customers LC, KD, and TF represents three separate violations of Neb. Rev. Stat. § 45-919(1)(b) (Reissue 2004).

13. The Report revealed four instances where a check was held for more than thirty-one days, once for customer ML and three times for customer LC.

14. KEARNEY CASH's August 17, 2005 response stated that,

[ML] had called and requested her due date be moved from 8-16-04 to 8-27-04 on check #1446. The request was granted and then on 8-27-04 [ML] called again. She said she could not get here before close, but would be here before closing on the 28<sup>th</sup> (30<sup>th</sup> day holding check). [ML] is a long time customer in good standing with us, so we agreed to hold the check until closing on the 28<sup>th</sup>. The 28<sup>th</sup> of August 2004 fell on a Saturday and [ML] did not show up, so the check was deposited Saturday, August 28<sup>th</sup> 2005, at closing time. This made the deposit date for the bank 8-30-04. It was an error in judgment and we have become much more strict on due dates since the State was in to audit us.

[LC] had called on the 1<sup>st</sup> of July 2004 and stated that she could not make it to Kearney by the time we closed. I agreed to hold [LC's] check until closing on the 2<sup>nd</sup> (31<sup>st</sup> day holding check) and she promised she would be in by closing. [LC] never showed up and the check was sent to the bank with our deposits that night. That would make the bank date 7-03-04, 32 days from when the check was written. This was obviously a huge mistake on my part and as I stated before, we have become much more aware and strict about due dates. [customer names redacted]

15. KEARNEY CASH's holding of a check from customers ML and three checks from customer LC in excess of thirty-one days represents four separate violations of Neb. Rev. Stat. § 45-919(1)(c) (Reissue 2004).

16. The DEPARTMENT could conclude that the actions of KEARNEY CASH warrant the commencement of administrative proceedings to determine whether it should impose an administrative fine in an amount up to five thousand dollars per violation, plus investigation costs, pursuant to Neb. Rev. Stat. § 45-925 (Reissue 2004).

17. The DEPARTMENT incurred a minimum of two hundred fifty dollars (\$250.00) in investigation costs in this matter.

### **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. § 45-917(1)(c) (Reissue 2004) provides that every licensee shall, at the time any delayed deposit services transaction is made, give to the maker of the check, a notice written in plain English disclosing any penalty not to exceed fifteen dollars if a check is not negotiable on the date agreed upon.

3. Neb. Rev. Stat. § 45-919 (Reissue 2004) sets forth acts which are prohibited to a licensee. These acts include holding, at one time, more than two checks from any one maker pursuant to Section 45-919(1)(a), holding from any one maker a check or checks in an aggregate face amount of more than five hundred dollars pursuant to Section

45-919(1)(b), or agreeing to hold a check for more than thirty-one days pursuant to Section 45-919(1)(c).

4. 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.

5. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that KEARNEY CASH has violated the Act and that an administrative fine in an amount of not more than five thousand dollars for each separate violation plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-925 (Reissue 2004).

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

7. It is in the best interest of KEARNEY CASH, and it is in the best interest of the public, for KEARNEY CASH and the DEPARTMENT to resolve the issues included herein.

### **CONSENT AGREEMENT**

The DEPARTMENT and KEARNEY CASH agree as follows:

Stipulations: In connection with this Consent Agreement, KEARNEY CASH 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 January 31, 2005, examination of KEARNEY CASH. 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.

KEARNEY CASH further represents as follows:

1. KEARNEY CASH 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. KEARNEY CASH 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, KEARNEY CASH shall pay a fine of five thousand dollars (\$5,000.00) for the 537 violations of Neb. Rev. Stat. § 45-917(1)(c), where KEARNEY CASH charged or attempted to charge a penalty fee for a customer transaction despite the fact that the fee had not been properly disclosed to the customer.

2. Within thirty (30) days after the effective date of this Consent Agreement, KEARNEY CASH shall provide proof to the DEPARTMENT that it has removed the penalty fees from the accounts of the 319 customers whose accounts were still outstanding and that it has refunded the penalty fees paid by the 218 customers who had

paid their accounts in full as noted in Finding of Fact #6. If any additional customers have paid their accounts in full since the January 31, 2005 examination, any penalty fee paid by those customers shall be refunded as well.

3. Within ten days after the effective date of this Consent Agreement, KEARNEY CASH shall pay a fine of one hundred dollars (\$100.00) for each of the two violations of Neb. Rev. Stat. § 45-919(1)(a) (Reissue 2004), where more than two checks were held from one maker.

4. Within ten days after the effective date of this Consent Agreement, KEARNEY CASH shall pay a fine of one hundred dollars (\$100.00) for each of the three violations of Neb. Rev. Stat. § 45-919(1)(b), where checks were held in an aggregate face amount of more than five hundred dollars from one maker.

5. Within ten days after the effective date of this Consent Agreement, KEARNEY CASH shall pay a fine of one hundred dollars (\$100.00) for each of the four violations of Neb. Rev. Stat. § 45-919(1)(c), where a check was held for a time period in excess of the statutory limit.

6. Within ten days after the effective date of this Consent Agreement, KEARNEY CASH shall pay the DEPARTMENT's investigation costs in the amount of two hundred fifty dollars (\$250.00).

7. The total amount of the fine and investigation costs, six thousand one hundred fifty dollars (\$6,150.00) shall be payable in one check or money order to the DEPARTMENT.



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

9. If, at any time, the DEPARTMENT determines KEARNEY CASH 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 10 day of March, 2006.

**Kearney Cash, Inc.**

By: 

Steve Andrews, President

1600 East 25<sup>th</sup> Street  
Kearney, Nebraska 68847  
(308) 234-4440

DATED this 12<sup>th</sup> day of April, 2006.

**STATE OF NEBRASKA  
DEPARTMENT OF BANKING AND FINANCE**

By: 

John Munn, Director

Commerce Court, Suite 400  
1230 "O" Street  
Lincoln, Nebraska 68508  
(402) 471-2171