

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	FINDINGS OF FACT
)	
McKenzie Check Advance of Nebraska, L.L.C.,)	CONCLUSIONS OF LAW
d/b/a Advance America,)	
d/b/a Advance America, Cash Advance Centers,)	AND
3327 "L" Street,)	
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; Cum. Supp. 2006) ("the Act"). Pursuant to Neb. Rev. Stat. § 45-920 (Reissue 2004), the DEPARTMENT has examined the books, accounts, and records of McKenzie Check Advance of Nebraska, L.L.C., d/b/a Advance America, d/b/a Advance America, Cash Advance Centers, 3327 "L" Street, Omaha, Douglas County, Nebraska ("ADVANCE AMERICA"). As a result of such examination, and being duly advised and informed in the matter, the Director and ADVANCE AMERICA enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

FINDINGS OF FACT

1. ADVANCE AMERICA holds a delayed deposit services business license under the Act. License #1866 was originally granted February 17, 1999, and has been renewed annually on May 1st since that time pursuant to Neb. Rev. Stat. § 45-910 (Cum. Supp. 2006).

2. On December 6, 2005, the DEPARTMENT commenced an examination of ADVANCE AMERICA pursuant to Neb. Rev. Stat. § 45-920 (Reissue 2004). This examination included an on-site visitation of ADVANCE AMERICA's nine Omaha, Douglas County, Nebraska locations.

3. The December 6, 2005 Report of Examination ("Report") was forwarded to ADVANCE AMERICA on February 10, 2006. The Report noted a number of violations of the Act. ADVANCE AMERICA submitted responses received by the DEPARTMENT on March 15, 2006 and May 1, 2006.

4. References in this Consent Agreement to customers of ADVANCE AMERICA will be by way of initials, in order to protect the privacy of such customers. ADVANCE AMERICA knows or should know the identity of these customers. If ADVANCE AMERICA 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 two instances where ADVANCE AMERICA was holding checks in an aggregate face amount of more than five hundred dollars for customers CL and KF.

6. In its May 1, 2006 response to the Report, ADVANCE AMERICA addressed the holding of the checks referenced in Finding of Fact #5. ADVANCE AMERICA stated in part that:

Upon payment in full by cash, staff failed to return check # 175 to [CL] prior to entering into another transaction with this customer. The aggregate face amount of both checks exceeds \$500.

The accounts of [KF] at center # 5720 and [KF] at center # 5730 have been reviewed. It appears that on May 24, 2005 [KF] applied for an advance as a new customer at center #5730. At that time, the Team Member entered the last digit of [KF's] Social Security Number incorrectly into the computer system. When [KF] applied for an advance on September 2, 2005 at center

5720 and the correct Social Security Number was entered into the computer system, the computer did not recognize that [KF] had an outstanding transaction at center # 5730 and subsequently, allowed another transaction to be completed. . . . Staff has been reminded that the customer's information on the application and supporting documents must always match the information keyed into the computer system. [customers' full names redacted]

7. ADVANCE AMERICA's holding of checks in an aggregate face amount of more than five hundred dollars per customer from customers CL and KF represents two separate violations of Neb. Rev. Stat. § 45-919(1)(b) (Cum. Supp. 2006).

8. The Report revealed twenty-one instances where a check was held for more than thirty-one days for customers JB, MD, KH, AH, CR, DS, DW, JZ, AB, JC, JS, MK, FM, AM, DW, BH, DM, MS, TS, LR, and ML.

9. ADVANCE AMERICA's May 1, 2006 response stated that:

. . . our Nebraska centers were instructed on September 2, 2005 that the customer's check must be deposited on a date and at such a time that the bank will validate the deposit ticket within 31 days of the transaction date on the customer's agreement.

With the exceptions of [MD] check # 1711 held at center # 5708, [KH's] check # 1098 held at center # 5708 and [DW's] check # 1326 held at # 5718, the customer checks listed in the Report of Examination took place prior to implementation of the revised held check policy. Therefore, these checks were deposited on or before 31 days of the transaction date on the customer's agreement and the deposit tickets were validated by the bank on a date later than 31 days. [customers' full names redacted]

10. ADVANCE AMERICA's holding of checks from customers JB, MD, KH, AH, CR, DS, DW, JZ, AB, JC, JS, MK, FM, AM, DW, BH, DM, MS, TS, LR, and ML in excess of thirty-one days represents twenty-one separate violations of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2006).

11. The DEPARTMENT could conclude that the actions of ADVANCE AMERICA 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 (Cum. Supp. 2006).

12. The DEPARTMENT incurred a minimum of two hundred fifty dollars 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. § 45-919 (Cum. Supp. 2006) sets forth acts which are prohibited to a licensee. These acts include 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, for transactions prior to July 14, 2006, agreeing to hold a check for more than thirty-one days pursuant to Section 45-919(1)(c).

3. Neb. Rev. Stat. § 45-925 (Cum. Supp. 2006) 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.

4. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that ADVANCE AMERICA 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 (Cum. Supp. 2006).

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

6. It is in the best interest of ADVANCE AMERICA, and it is in the best interest of the public, for ADVANCE AMERICA and the DEPARTMENT to resolve the issues included herein.

CONSENT AGREEMENT

The DEPARTMENT and ADVANCE AMERICA agree as follows:

Stipulations: In connection with this Consent Agreement, ADVANCE AMERICA 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 December 6, 2005 examination of ADVANCE AMERICA. 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.

ADVANCE AMERICA further represents as follows:

1. ADVANCE AMERICA 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. ADVANCE AMERICA 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, ADVANCE AMERICA shall pay a fine of two hundred fifty dollars (\$250.00) for each of the two 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.

2. Within ten (10) days after the effective date of this Consent Agreement, ADVANCE AMERICA shall pay a fine of two hundred fifty dollars (\$250.00) for each of the twenty-one violations of Neb. Rev. Stat. § 45-919(1)(c), where a check was held for a time period in excess of the statutory limit.

3. Within ten (10) days after the effective date of this Consent Agreement, ADVANCE AMERICA shall pay the DEPARTMENT's investigation costs in the amount of two hundred fifty dollars (\$250.00).

4. The total amount of the fine, five thousand seven hundred fifty dollars (\$5,750.00), plus the total amount of investigation costs, two hundred fifty dollars (\$250.00), shall be payable in one check or money order in the amount of six thousand dollars (\$6,000.00) to the DEPARTMENT.


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

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

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

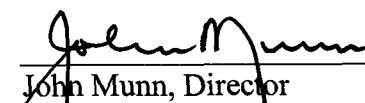
DATED this 4th day of August, 2006.

**McKenzie Check Advance of Nebraska, L.L.C.,
d/b/a Advance America,
d/b/a Advance America, Cash Advance Centers**

By: 
~~William M. Webster IV, President~~
Robert W. Shaw, Secretary
3327 "L" Street
Omaha, Nebraska 68107
(402) 731-9876

DATED this 7th day of August, 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