

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

IN THE MATTER OF:	)	
	)	FINDINGS OF FACT
Rod Kush's Cash Advance, Inc.,	)	CONCLUSIONS OF LAW
d/b/a Rod Kush's Cash Advance,	)	AND
3830 North 27 <sup>th</sup> Street,	)	CONSENT AGREEMENT
Lincoln, Lancaster County, Nebraska	)	

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 investigated customer complaints surrounding the Delayed Deposit Services Business License of Rod Kush's Cash Advance, Inc., d/b/a Rod Kush's Cash Advance, 3830 North 27<sup>th</sup> Street, Lincoln, Lancaster County, Nebraska ("ROD KUSH"). As a result of such investigation, and being duly advised and informed in the matter, the Director and ROD KUSH enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

**FINDINGS OF FACT**

1. ROD KUSH holds a delayed deposit services business license under the Act. License #1985 was originally granted March 6, 2006, and was renewed on May 1, 2007 pursuant to Neb. Rev. Stat. § 45-910 (Cum. Supp. 2006).
2. References in this Consent Agreement to customers of ROD KUSH will be by way of initials, in order to protect the privacy of such customers. ROD KUSH knows or should know the identity of these customers. If ROD KUSH is unable to ascertain the

identity of these customers, the DEPARTMENT will provide a list of these customers upon receipt of a written request.

3. On January 22, 2007, the DEPARTMENT received a complaint from customer TN regarding ROD KUSH. TN alleged that while all signage, rate charts, and the business license posted at the business location indicated that ROD KUSH was the entity TN attempted to do business with, that the agreement presented for the delayed deposit services transaction was with Allied Capital, Inc., and that the rates reflected in that agreement were higher than those that were posted.

4. TN's complaint was forwarded to ROD KUSH for response on January 23, 2007.

5. On January 25, 2007, the DEPARTMENT received a complaint from customer JB regarding ROD KUSH. JB alleged that while all signage, rate charts, and the business license posted at the business location indicated that ROD KUSH was the entity JB attempted to do business with, that the agreement presented for the delayed deposit services transaction was with Heartland Cash Advance, LLC ("HEARTLAND"). JB was asked to make the check out to HEARTLAND and the rate was higher than that which was posted.

6. JB's complaint was forwarded to ROD KUSH for response on January 26, 2007.

7. On January 26, 2007, the DEPARTMENT received a request to approve the purchase of ROD KUSH by HEARTLAND. HEARTLAND was previously known as Allied Capital, Inc. The request included a copy of a purchase agreement entered into between ROD KUSH and HEARTLAND on January 9, 2007. The purchase agreement stated, in part, that, "As of January 9, 2007 seller has stopped writing new customer transactions at the Lincoln location . . . . Buyer agrees to take over all funding of new customer transactions, payroll, telephone, marketing and any other office supplies that may be needed on January 9, 2007."

8. Neb. Rev. Stat. § 45-913 (Reissue 2004) provides that a license issued pursuant to the Act is not transferable. Pursuant to Neb. Rev. Stat. § 45-914 (Reissue 2004), the prior written approval of the Director shall be required whenever a change in control of a licensee is proposed. No request for change of control of ROD KUSH had been received by the DEPARTMENT prior to submission of the January 26, 2007 request. As of the date of this agreement, the Department has yet to give written approval to the request for change of control.

9. In correspondence dated February 12, 2007, ROD KUSH responded to the complaints by both TN and JB by stating:

Following the signing of the purchase agreement with Heartland Cash Advance, each party used their own software in tandem. This was done to ensure that each party knew what the check value would be once the State of Nebraska Department of Banking and Finance gave approval to Heartland Cash Advance. Also this was to help the csr's train on the new software system. Inadvertently the wrong customer agreement was being signed until we received this letter. The rate schedule had also been changed to reflect the rate chart on the Department's website. These efforts were made to expedite the transfer of ownership following approval by the Director of the Nebraska Department of Banking and Finance.

Following the complaint by [customer's full name redacted], the correct customer agreements have been used and the rate chart reflects our new rates.

10. In correspondence dated March 23, 2007, the DEPARTMENT asked for additional information regarding the situation.

11. In correspondence dated April 11, 2007, ROD KUSH stated that:

Per your request, the first date that the Lincoln Rod Kush's Cash Advance location in Lancaster County began using Heartland Cash Advance contracts was January 19, 2007. The date the Rod Kush's Cash Advance location in Lancaster County ceased using Heartland Cash Advance contracts was January 29, 2007. Please find enclosed a customer transaction listing showing the date, number, and amount of the transactions during those dates. There

were a total of 47 transactions which were completed using the Heartland Cash Advance contracts.

A review of the customer transaction listing provided with the April 11, 2007 correspondence revealed a total of forty-six (46) customers affected.

12. ROD KUSH's relinquishing control of its business to HEARTLAND without prior written approval of the Director represents a violation of Neb. Rev. Stat. § 45-914 (Reissue 2004).

13. Pursuant to Neb. Rev. Stat. § 45-917(2) (Cum. Supp. 2006) every licensee shall conspicuously display a schedule of all fees, charges, and penalties for all services provided by the licensee. Such notice shall be posted at every office of the licensee.

14. Enclosed with ROD KUSH's April 11, 2007 correspondence was the fee schedule for ROD KUSH and the fee schedule for HEARTLAND which was actually used for the forty-six (46) customer transactions in question. A review of these fee schedules show that HEARTLAND was charging the maximum fee amount allowable under statute and the ROD KUSH schedule that was actually posted reflected a discounted fee.

15. ROD KUSH's charging a higher fee than that which was posted for 46 customer transactions reflects 46 separate violations of Neb. Rev. Stat. § 45-917(2) (Cum. Supp. 2006).

16. The DEPARTMENT could conclude that the actions of ROD KUSH warrant the commencement of administrative proceedings to determine whether it should impose an administrative fine in an amount up to five thousand dollars for each violation, plus investigation costs, pursuant to Neb. Rev. Stat. § 45-925 (Cum. Supp. 2006).

17. The DEPARTMENT incurred a minimum of five hundred 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.

2. Neb. Rev. Stat. § 45-913 (Reissue 2004) provides that a license issued pursuant to the Act is not transferable.

3. Neb. Rev. Stat. § 45-914 (Reissue 2004) provides that the prior written approval of the Director shall be required whenever a change in control of a licensee is proposed.

4. Neb. Rev. Stat. § 45-917(2) (Cum. Supp. 2006) provides that every licensee shall conspicuously display a schedule of all fees, charges, and penalties for all services provided by the licensee. Such notice shall be posted at every office of the licensee.

5. 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.

6. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that ROD KUSH has violated the Act, and that an administrative fine in an amount of not more than five thousand dollars for each violation

plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-925 (Cum. Supp. 2006).

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 ROD KUSH, and it is in the best interest of the public, for ROD KUSH and the DEPARTMENT to resolve the issues included herein.

### **CONSENT AGREEMENT**

The DEPARTMENT and ROD KUSH agree as follows:

Stipulations: In connection with this Consent Agreement, ROD KUSH and the Director stipulate to the following:

1. The DEPARTMENT has jurisdiction as to all matters herein.
2. This Consent Agreement shall be in lieu of all other proceedings available to the DEPARTMENT, except as specifically referenced in this Consent Agreement.

ROD KUSH further represents as follows:

1. ROD KUSH 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. ROD KUSH 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, ROD KUSH shall pay a fine of five thousand dollars (\$5,000.00) for the violations of Neb. Rev. Stat. § 45-913 and 45-914, where ROD KUSH relinquished control of its business to HEARTLAND without prior written approval of the Director.

2. Within ten (10) days after the effective date of this Consent Agreement, ROD KUSH shall pay a fine of one hundred dollars (\$100.00) for each of the 46 violations of Neb. Rev. Stat. § 45-917(2) (Cum. Supp. 2006) where customers were charged fees in excess of the schedule of fees that was posted at the business location.

3. Within twenty (20) days after the effective date of this Consent Agreement, ROD KUSH shall submit proof to the DEPARTMENT that it has refunded the total amount of all fees collected from each of the 46 customers that were charged fees in excess of the schedule of fees that was posted at the business location.

4. Within ten (10) days after the effective date of this Consent Agreement, ROD KUSH shall pay the DEPARTMENT's investigation costs in the amount of five hundred dollars (\$500.00).

5. The total amount of the fine, nine thousand six hundred dollars (\$9,600.00), plus the total amount of investigation costs, five hundred dollars (\$500.00), shall be payable in one check or money order in the amount of ten thousand one hundred dollars (\$10,100.00) to the DEPARTMENT.

6. Within ten (10) business days of successful completion of both the receipt of payment as set forth in Item 5 and proof of compliance with Item 3, the DEPARTMENT will issue a letter of approval on the pending January 26, 2007 Change of Control request.

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

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

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

DATED this 11 day of Sept, 2007.

**ROD KUSH CASH ADVANCE, INC.  
D/B/A ROD KUSH CASH ADVANCE**

By: Rod Kush pres.  
Rod Kush, President

3830 North 27<sup>th</sup> Street  
Lincoln, NE 68521  
(402) 477-1500

DATED this 18<sup>th</sup> day of Sept, 2007.

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

By: John Munn  
John Munn, Director

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