

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	
)	
N.I.S., Inc.,)	FINDINGS OF FACT
d/b/a Paycheck Advance,)	CONCLUSIONS OF LAW
3116 South 24 th Street,)	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; Cum. Supp. 2006; Supp. 2007) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-920 (Supp. 2007), the DEPARTMENT has examined the books, accounts, and records of N.I.S. Inc., d/b/a Paycheck Advance, 3116 South 24th Street, Omaha, Douglas County, Nebraska (“PAYCHECK ADVANCE”). As a result of such examination, and being duly advised and informed in the matter, the Director and PAYCHECK ADVANCE enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

FINDINGS OF FACT

1. PAYCHECK ADVANCE holds a delayed deposit services business license under the Act. License #1803 was originally granted September 29, 1994, and has been renewed annually on May 1st since that time pursuant to Neb. Rev. Stat. § 45-910 (Cum. Supp. 2006).
2. On August 8, 2006, the DEPARTMENT commenced an examination of PAYCHECK ADVANCE pursuant to Neb. Rev. Stat. § 45-920 (Supp. 2007). This

examination included an on-site visitation of PAYCHECK ADVANCE's eleven, Omaha, Douglas County, Nebraska locations.

3. The August 8, 2006 Report of Examination ("Report") was forwarded to PAYCHECK ADVANCE on November 13, 2006. The Report noted a number of violations of the Act. PAYCHECK ADVANCE submitted responses received by the DEPARTMENT on December 12, 2006 and January 17, 2007.

4. The four previous regular examinations of PAYCHECK ADVANCE conducted December 19, 2002 ("2002 Exam"); October 29, 2003 ("2003 Exam"); October 18, 2004 ("2004 Exam"); and November 30, 2005 ("2005 Exam") also revealed a number of violations of the Act. The findings of the 2002 Exam resulted in a Consent Agreement between PAYCHECK ADVANCE and the DEPARTMENT, effective July 24, 2003. As part of the July 2003 Consent Agreement, PAYCHECK ADVANCE agreed to adopt written policies prohibiting the holding of more than two checks from one maker; the holding of a check or checks in an aggregate face amount of more than five hundred dollars from one maker; and the holding of checks for more than thirty-one days. PAYCHECK ADVANCE was to review these policies with all current employees and upon hiring of any new employees. PAYCHECK ADVANCE agreed that any violation of the policies, whether intentional or not, will be considered violations of the Act. The findings of the 2003 Exam resulted in a Consent Agreement between PAYCHECK ADVANCE and the DEPARTMENT, effective April 26, 2004. The findings of the 2004 Exam resulted in a Consent Agreement between PAYCHECK ADVANCE and the DEPARTMENT, effective May 27, 2005. The findings of the 2005 Exam resulted in a Consent Agreement between PAYCHECK ADVANCE and the

DEPARTMENT, effective August 8, 2006. Repeat violations of the Act will be noted below.

5. References in this Consent Agreement to customers of PAYCHECK ADVANCE will be by way of initials, in order to protect the privacy of such customers. PAYCHECK ADVANCE knows or should know the identity of these customers. If PAYCHECK ADVANCE 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 four instances where customers' DD, CD, AL, and VP contracts were not available for inspection during the examination and/ or contained errors.

7. PAYCHECK ADVANCE's December 12, 2006 response stated:

It looks like check #002 and #003 had a numeric amount of 199.75 each but the written amount is for \$199.50 for both checks. We did send DD [customer's name redacted] a teller error letter and ask [sic] her to come in and write 2 new checks. We also made new contracts for her. I do not have a note of what happened with check #002 original contract; we may have given this to DD when she was originally in the store.

For these two customers [CD and AL], we believe the CSR printed only 1 contract from the printer and had the customer sign the contract, then made a copy of the contract on the copier. The CSR then gave the customer the original and kept the copy.

We looked through VP's [customer's name redacted] file to locate the original contract for Ck #3958. We have the original contract for #3957 and a handwritten contract for ck #3958. I'm not sure if the printer jammed or what happened that we do not have an original contract for #3958. There were not notes made regarding what happened.

8. PAYCHECK ADVANCE's failure to properly maintain or produce records related to customers DD, CD, AL, and VP represents four separate repeat violations of Neb. Rev. Stat. § 45-908(1) (Reissue 2004). Violations of this nature were also noted in the 2005 Exam.

9. The Report noted five instances where customer SW's records of the delayed deposit services were not maintained separately from SW's records of transactions of another business of PAYCHECK ADVANCE.

10. PAYCHECK ADVANCE's December 12, 2006 response stated:

These checks were actually regular checks cashed at the store. The CSR must have keyed these checks into collections incorrectly.

11. PAYCHECK ADVANCE's failure to maintain the records of another business separately from the delayed deposit services records for customer SW represents five separate repeat violations of Neb. Rev. Stat. § 45-916(1) (Cum. Supp. 2006). Violations of this nature were also noted in the 2003 Exam.

12. The Report noted an instance where the annual percentage rate ("APR") for the transaction was not disclosed to customer DP.

13. PAYCHECK ADVANCE's December 12, 2006 response stated:

DP's (customer's name redacted) APR was not disclosed. DP was issued a refund on 11-21-06, with check #1281 in the amount of \$74.46. DP picked up her refund check on 11-29-06.

14. PAYCHECK ADVANCE's failure to disclose the APR to customer DP represents a violation of Neb. Rev. Stat. § 45-917(1)(a) (Cum. Supp. 2006).

15. The Report noted two instances where customer LN's checks were held longer than thirty-one days.

16. PAYCHECK ADVANCE's December 12, 2006 response stated:

I have included a copy of the front of ck #1329 and #1330. This is what we had in the file because the checks have already been Paid In full. One of the checks was run to the bank for payment; the other check was paid in full in payments by LN (customer's name redacted) and was destroyed. I have included the disclosure agreements and a copy of the bank deposit slip. The checks were written on 6-5-06 and were deposited and posted at the bank on 7-7-06. It does appear these checks were held 32 days.

17. PAYCHECK ADVANCE's failure to deposit customer LN's checks within the thirty-one day time frame represents two separate repeat violations of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2006) in effect at the time of the transaction. Violations of this nature were also noted in the 2003 Exam, 2004 Exam, and 2005 Exam.

18. The DEPARTMENT could conclude that the actions of PAYCHECK ADVANCE, when considered in conjunction with the 2003 Exam, 2004 Exam, 2005 Exam, 2003 Consent Agreement, 2004 Consent Agreement, 2005 Consent Agreement, and 2006 Consent Agreement warrant the commencement of administrative proceedings to determine whether the DEPARTMENT should suspend or revoke PAYCHECK ADVANCE's delayed deposit services business license pursuant to Neb. Rev. Stat. §45-922 (Cum. Supp. 2006), or 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).

19. 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. § 45-916 (Cum. Supp. 2006) 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. Federal Regulation Z, 12 CFR §226 (2001), requires the licensee to disclose the annual percentage rate associated with the fee charged for the delayed deposit services transaction to the customer.

4. Neb. Rev. Stat. § 45-917(1)(a) (Cum. Supp. 2006) provides that every licensee shall, at the time any delayed deposit services transaction is made, give to the maker of the check, or if there are two or more makers, to one of them, a notice written in plain English disclosing the fee to be charged for the transaction.

5. Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2006), in effect at the time of the transactions and referenced herein, provides that no licensee shall hold or agree to hold a check for more than thirty-one days. A check which is in the process of collection for the reason that it was not negotiable on the day agreed upon shall not be deemed as being held in excess of the thirty-one day period.

6. Neb. Rev. Stat. §45-922 (Cum. Supp. 2006) 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.

7. 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.

8. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that PAYCHECK ADVANCE 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).

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

CONSENT AGREEMENT

The DEPARTMENT and PAYCHECK ADVANCE agree as follows:

Stipulations: In connection with this Consent Agreement, PAYCHECK ADVANCE 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 August 8, 2006 examination of PAYCHECK ADVANCE. 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.

PAYCHECK ADVANCE further represents as follows:

1. PAYCHECK ADVANCE 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. PAYCHECK ADVANCE 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, PAYCHECK ADVANCE shall pay the DEPARTMENT a fine of two hundred fifty dollars (\$250.00) for each of the four repeat instances where the transactions were not accurate or the records were unable to be located upon demand for customers DD, CD, AL, and VP in violation of Neb. Rev. Stat. § 45-908 (Reissue 2004).

2. Within ten (10) days after the effective date of this Consent Agreement, PAYCHECK ADVANCE shall pay the DEPARTMENT a fine of one hundred dollars (\$100.00) for each of the five repeat instances where the delayed deposit services records of SW were not maintained separate and apart from other business transactions and the delayed deposit services records in violation of Neb. Rev. Stat. § 45-916(1) (Cum Supp. 2006).

3. Within ten (10) days after the effective date of this Consent Agreement, PAYCHECK ADVANCE shall pay the DEPARTMENT a fine of one hundred dollars

(\$100.00) for failing to disclose the APR to customer DP in violation of Neb. Rev. Stat. § 45-917(1)(a) (Cum. Supp. 2006).

4. Within twenty (20) days after the effective date of this Consent Agreement, PAYCHECK ADVANCE shall submit proof to the DEPARTMENT that it has refunded the total amount of all fees collected from customer DP that were charged in excess of the APRs that were not disclosed to the consumer.

5. Within ten (10) days after the effective date of this Consent Agreement, PAYCHECK ADVANCE shall pay the DEPARTMENT a fine of two thousand dollars (\$2,000.00) for each of the two repeat instances where customer LN's checks were held over thirty-one days in violation of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2006).

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

7. The total amount of the fine, five thousand six hundred dollars (\$5,600.00), 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 six thousand one hundred dollars (\$6,100.00) to the DEPARTMENT.

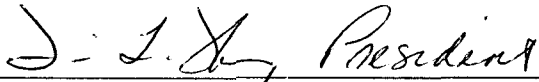
8. In the event PAYCHECK ADVANCE fails to comply with any of the provisions of this Consent Agreement, the DEPARTMENT may commence such action regarding PAYCHECK ADVANCE as it deems necessary and appropriate in the public interest.

9. If, at any time, the DEPARTMENT determines PAYCHECK ADVANCE 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 5th day of August, 2008.

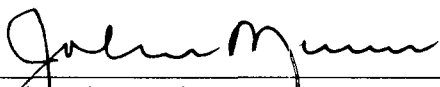
**N.I.S., Inc., d/b/a
PAYCHECK ADVANCE**

By: 
Trina Thomas, President

3116 South 24th Street
Omaha, Nebraska 68108
(402) 341-0100

DATED this 18th day of August, 2008.

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

By: 
John Munn, Director

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