

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	
)	FINDINGS OF FACT
A & P Check Cashing, LLC,)	CONCLUSIONS OF LAW
3622 North 90 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. 2008) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008), the DEPARTMENT has examined the books, accounts, and records of A & P Check Cashing, LLC, 3622 North 90th Street, Omaha, Douglas County, Nebraska (“A & P”). As a result of such examination, and being duly advised and informed in the matter, the Director and A & P enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

FINDINGS OF FACT

1. A & P holds a delayed deposit services business license under the Act. License #1906 was originally issued on April 16, 2001. The license has been renewed annually on May 1st since that time, pursuant to Neb. Rev. Stat. § 45-910 (Cum. Supp. 2008).
2. On June 25, 2007, the DEPARTMENT commenced an examination of A & P pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008). This examination included an

on-site visitation of A & P's main office and branch locations in Omaha, Douglas County, Nebraska.

3. The June 25, 2007 Report of Examination ("Report") was forwarded to A & P on August 13, 2007. The Report noted a number of violations of the Act. A & P submitted a response received by the DEPARTMENT on September 4, 2007.

4. The two previous regular examinations of A & P conducted August 24, 2004 ("2004 Exam"), and June 20, 2006 ("2006 Exam"), also revealed a number of violations of the Act. The findings of the 2004 Exam and the 2006 Exam resulted in Consent Agreements with the effective dates of January 3, 2005 and February 8, 2008, respectively. Repeat violations of the Act will be noted below.

5. References in this Consent Agreement to customers of A & P will be by way of initials, in order to protect the privacy of such customers. A & P knows or should know the identity of these customers. If A & P 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 that A & P did not start copying the checks of all customers until January 2007, although required to do so since July 14, 2006.

7. A & P's September 4, 2007 response states:

We didn't know that we had to copy all the Held checks until we found out from another check Cashing store that had been audited by (examiner's name redacted) and they were told to copy all Held checks. Effective January 1, 2007 we began coping (sic) all Held checks.

The Ideal software shows the payment history on all buy backs. As the trend is to a paperless Transaction process, we didn't feel we needed to keep copies of all buy back receipts. We are Now (sic) marking all contracts paid-in-full after they are bought back with cash.

8. A & P's failure to maintain copies of all customer checks for approximately six (6) months represents numerous violations of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

9. The Report noted sixteen (16) instances where A & P failed to obtain completed Same Day Transaction Verification Forms ("SDTVFs") for customers VE(2), EH(2), DH(2), PM(2), VC, SL, JR, SV, CA, JB, ML, and DW.

10. A & P's September 4, 2007 response states:

VC's (name redacted) (SDTVF) form has been completed and a copy is enclosed.

VE- The three transactions for VE (name redacted) have been corrected and a copy is enclosed.

EH- The two transactions for EH (name redacted) have been corrected and a copy is enclosed.

SL- The SDTVF for SL (name redacted) has been corrected by the customer and a copy is enclosed.

JR- The transactions for JR (name redacted) have been corrected by the customer and a copy is enclosed.

SV- The contract and (SDTVF) form for SV (name redacted) have been completed and a copy is enclosed.

CA (name redacted), check #3826 with an incomplete SDTVF that was not dated by CSR has been corrected and a copy has been enclosed. The transaction for check #3884 where the customers (sic) name was not in the declaration paragraph has been corrected and a copy has also been enclosed. A & P Check Cashing has a new next day audit system in place to help minimize these clerical mistakes.

JB (name redacted), check #1235 with an incomplete SDTVF where the customers (sic) name was not in the declaration paragraph has been corrected and a copy is enclosed.

DH (name redacted) Check #1137 & #1155 having incomplete SDTVF's have also been corrected and copies are enclosed.

ML (name redacted), check #8531 that has a SDTVF not dated by the customer has been corrected and a copy is enclosed.

PM (name redacted), check #2390 that has a SDTVF that is missing the name of the customer in the declaration paragraph has been corrected and a copy is enclosed. Check #2334 which has an incomplete SDTVF where the form was not dated has been corrected and a copy has been enclosed.

DW (name redacted), check #2100 where the SDTVF was not dated has been corrected and a copy is enclosed.

11. A & P's failure to obtain completed SDTVFs for its customers in sixteen (16) instances represents sixteen (16) separate violations of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008).

12. The Report noted nineteen (19) instances where customer records of another business were kept and maintained in the customer files of the delayed deposit services business.

13. A & P's September 4, 2007 response generally states:

Separate customer files have been created for all non-DDS transactions (Money Order/Western Union/Paycheck cashing). At the time of the examination, separate account histories for just DDS Transactions were provided to the Examiners for the accounts under review. All employees are Aware (sic) of the requirement to keep the transactions separate.

14. A & P's failure to keep and maintain the books, accounts and records of the delayed deposit services business separate and apart from the books, accounts, and records of another business in nineteen (19) instances represents nineteen (19) separate violations of Neb. Rev. Stat. § 45-916(1) (Cum. Supp. 2008).

15. The Report noted one instance where A & P was holding checks for customer MC with an aggregate face value greater than five hundred dollars.

16. A & P's September 4, 2007 response states:

MC (name redacted), checks #1209 & #1210 where the licensee was holding the 2 checks and a pre-payment. The CSR thought that since it was one transaction we could not return one of the checks since it was on one contract. After the examination CSR has been made aware of the correct procedure and will follow from now on. The customer picked up the transaction on 6/28/2007 and a copy of the contract has been enclosed as proof of being paid.

17. A & P's holding of checks with an aggregate face value of more than five hundred dollars for customer MC represents a violation of Neb. Rev. Stat. § 45-919(1)(b) (Cum. Supp. 2008).

18. The Report noted one instance where a check was held longer than the statutorily allowed time for customer TC.

19. A & P's September 4, 2007 response states:

TC (name redacted), check #2062 that was held for 32 days. The Manager that was here at the time must have thought that since it was after July 14 the check could have been held for 34 days. He was going by the check deposit date and not the date that the check was written. (Manager name redacted) is no longer employed by A & P Check Cashing.

20. A & P's holding of a check for customer TC longer than the statutorily allowed time represents a repeat violation of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008). The repeat violation was noted in the 2004 Exam and the 2006 Exam and corresponding Consent Agreements.

21. The Report noted one instance where A & P accepted a check as repayment from customer PR.

22. A & P's September 4, 2007 response states:

PR (name redacted), check #1094 that had a payment made with a personal check. CSR took payment that was mailed to us and notified customer that we could not take personal checks as a form of payment. Customer has made other payments by mail using a money order to

pay. CSR has been notified of the right forms of payment that are accepted for payment on a held check.

23. A & P's acceptance of a check as payment for customer PR represents a repeat violation of Neb. Rev. Stat. § 45-919(1)(e) (Cum. Supp. 2008). This repeat violation was noted in the 2006 Exam and corresponding Consent Agreement.

24. The DEPARTMENT could conclude that the actions of A & P 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. 2008).

25. The DEPARTMENT incurred a minimum of five hundred dollars (\$500.00) 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.

2. Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008) provides that a licensee shall, at a minimum, include in its books and records copies of all application materials relating to makers, disclosure agreements, checks, payment receipts, and proofs of compliance required by Section 45-919.

3. Neb. Rev. Stat. § 45-916(1) (Cum. Supp. 2008) provides that the 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.

4. Neb. Rev. Stat. § 45-919(1)(b) (Cum. Supp. 2008) provides that no licensee shall at any one time hold from any one maker a check or checks in an aggregate face amount of more than five hundred dollars.

5. Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008) provides that no licensee shall hold or agree to hold a check for more than thirty-four days. If the transaction was entered into before July 14, 2006, the time allowed is thirty-one days.

6. Neb. Rev. Stat. § 45-919(1)(e) (Cum. Supp. 2008) provides that no licensee shall accept a check as repayment, refinancing, or any other consolidation of a check or checks held by the same licensee.

7. Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) sets forth acts which are prohibited to a licensee. These acts include entering into another delayed deposit transaction with the same maker on the same business day as the completion of a delayed deposit transaction unless prior to entering into the transaction the maker and the licensee verify on a form prescribed by the DEPARTMENT that completion of the prior delayed deposit transaction has occurred.

8. Neb. Rev. Stat. § 45-925 (Cum. Supp. 2008) 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.

9. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that A & P 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. 2008).

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

11. It is in the best interest of A & P, and it is in the best interest of the public, for A & P and the DEPARTMENT to resolve the issues included herein.

CONSENT AGREEMENT

The DEPARTMENT and A & P agree as follows:

Stipulations: In connection with this Consent Agreement, A & P 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 June 25, 2007 examination of A & P. 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.

A & P further represents as follows:

1. A & P 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. A & P 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, A & P shall pay a fine of five thousand dollars (\$5,000.00) for failing to maintain copies of customer checks for approximately six months in violation of Neb. Rev. Stat.

§ 45-915.01(2).

2. Within ten (10) days after the effective date of this Consent Agreement, A & P shall pay a fine of fifty dollars (\$50.00) for each of the sixteen (16) instances it failed to obtain completed SDTVFs in violation of Neb. Rev. Stat. § 45-915.01(2) and Neb. Rev. Stat. § 45-919(1)(g).

3. Within ten (10) days after the effective date of this Consent Agreement, A & P shall pay a fine of fifty dollars (\$50.00) for each of the nineteen (19) instance it failed to maintain its delayed deposit services books, accounts and records separate and apart from the books, accounts and records of another business in violation of Neb. Rev. Stat.

§ 45-916(1).

4. Within ten (10) days after the effective date of this Consent Agreement, A & P shall pay a fine of one hundred dollars (\$100.00) for holding checks for a customer with

an aggregate face value greater than \$500.00 in violation of Neb. Rev. Stat.

§ 45-919(1)(b).

5. Within ten (10) days after the effective date of this Consent Agreement, A & P shall pay a fine of five hundred dollars (\$500.00) for holding a customer's check longer than the statutorily allowed time in repeat violation of Neb. Rev. Stat. § 45-919(1)(c).

6. Within ten (10) days after the effective date of this Consent Agreement, A & P shall pay a fine of one thousand dollars (\$1,000.00) for accepting a check in repayment from a customer in repeat violation of Neb. Rev. Stat. § 45-919(1)(e).

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

8. The total amount of the fines, eight thousand three hundred-fifty dollars (\$8,350.00), 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 eight thousand eight hundred fifty dollars (\$8,850.00) to the DEPARTMENT.

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

10. If, at any time, the DEPARTMENT determines A & P has committed any other violations of the Act, the DEPARTMENT may take any action available to it under the Act.

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

DATED this 3 day of Sept, 2009.

A &P Check Cashing, LLC

By: Paul Bencker
Paul Bencker, President

3622 North 90th Street
Omaha, NE 68134

DATED this 6th day of August, 2009.

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

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