

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)
)
 McKenzie Check Advance of Nebraska, LLC,)
 d/b/a Advance America,)
 d/b/a Advance America, Cash Advance Centers,)
 1015 South Cottonwood,)
 North Platte, Lincoln County, Nebraska;)
)
 McKenzie Check Advance of Nebraska, LLC,)
 d/b/a Advance America,)
 d/b/a Advance America, Cash Advance Centers,)
 3345 West Capital Avenue,)
 Grand Island, Hall County, Nebraska;)
)
 McKenzie Check Advance of Nebraska, LLC,)
 d/b/a Advance America,)
 d/b/a Advance America, Cash Advance Centers,)
 1103 Galvin Road South, Suite E,)
 Bellevue, Sarpy County, Nebraska;)
)
 and)
)
 McKenzie Check Advance of Nebraska, LLC,)
 d/b/a Advance America,)
 d/b/a Advance America, Cash Advance Centers,)
 3327 L Street,)
 Omaha, Douglas County, Nebraska)

FINDINGS OF FACT
 CONCLUSIONS OF LAW
 AND
 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; Supp. 2009) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008), the DEPARTMENT has examined the books, accounts, and records of McKenzie Check Advance of Nebraska, LLC, d/b/a Advance America, d/b/a Advance

America, Cash Advance Centers, 1015 South Cottonwood, North Platte, Lincoln County, Nebraska; McKenzie Check Advance of Nebraska, LLC, d/b/a Advance America, d/b/a Advance America, Cash Advance Centers, 3345 West Capital Avenue, Grand Island, Hall County, Nebraska; McKenzie Check Advance of Nebraska, LLC, d/b/a Advance America, d/b/a Advance America, Cash Advance Centers, 1103 Galvin Road South, Suite E, Bellevue, Sarpy County, Nebraska; and McKenzie Check Advance of Nebraska, LLC, d/b/a Advance America, d/b/a Advance America, Cash Advance Centers, 3327 L Street, Omaha, Douglas County, Nebraska (“AACAC”). As a result of such examinations, and being duly advised and informed in the matter, the Director and AACAC enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

FINDINGS OF FACT

1. AACAC holds delayed deposit services business licenses under the Act. License #1863 was originally issued on January 21, 1999, to the North Platte, Lincoln County, Nebraska location. License #1857 was originally issued on December 16, 1998, to the Grand Island, Hall County, Nebraska location. License #1905 was originally issued on April 12, 2001, to the Bellevue, Sarpy County, Nebraska location. License #1866 was originally issued on February 17, 1999, to the Omaha, Douglas County, Nebraska location. The licenses have been renewed annually on May 1st since that time, pursuant to Neb. Rev. Stat. § 45-910 (Cum. Supp. 2008).

2. On January 27, 2009, the DEPARTMENT commenced an examination of AACAC’s North Platte, Lincoln County, Nebraska location pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008).

3. The January 27, 2009 North Platte, Lincoln County, Nebraska Report of Examination (“Lincoln County Report”) was forwarded to AACAC on April 3, 2009, and May 11, 2009. The Lincoln County Report noted a number of violations of the Act. AACAC submitted a response received by the DEPARTMENT on June 1, 2009.

4. On February 9, 2009, the DEPARTMENT commenced an examination of AACAC’s Grand Island, Hall County, Nebraska location pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008).

5. The February 9, 2009 Grand Island, Hall County, Nebraska Report of Examination (“Hall County Report”) was forwarded to AACAC on April 21, 2009, and May 11, 2009. The Hall County Report noted a number of violations of the Act. AACAC submitted responses received by the DEPARTMENT on June 1, 2009, and June 11, 2009.

6. On October 30, 2007, the DEPARTMENT commenced an examination of AACAC’s Bellevue, Sarpy County, Nebraska location pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008).

7. The October 30, 2007 Bellevue, Sarpy County, Nebraska Report of Examination (“Sarpy County Report”) was forwarded to AACAC on March 24, 2008, and August 28, 2008. The Sarpy County Report noted a number of violations of the Act. AACAC submitted a response received by the DEPARTMENT on November 7, 2008.

8. On November 5, 2007, the DEPARTMENT commenced an examination of AACAC’s Omaha, Douglas County, Nebraska location pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008).

9. The November 5, 2007 Omaha, Douglas County, Nebraska Report of Examination (“Douglas County Report”) was forwarded to AACAC on March 25, 2008, August 28, 2008, and February 3, 2009. The Douglas County Report noted a number of violations of the Act. AACAC submitted responses received by the DEPARTMENT on November 7, 2008, and May 8, 2009.

10. The DEPARTMENT has reviewed the responses submitted by AACAC and has taken them into consideration in determining the appropriate actions to be taken in these matters.

11. References in this Consent Agreement to customers of AACAC will be by way of initials, in order to protect the privacy of such customers. AACAC knows or should know the identity of these customers. If AACAC is unable to ascertain the identity of these customers, the DEPARTMENT will provide a list of these customers upon receipt of a written request.

12. The Douglas County Report noted ten (10) instances where customers’ records were not properly maintained. The Lincoln County Report noted seven (7) instances where records for customers KK, KO, JB, SC, AE, RH, and JL were not properly maintained. The Hall County Report noted ten (10) instances where records for customers’ records were not properly maintained. The Sarpy County Report noted fifty-three (53) instances where customers’ records were not properly maintained.

13. AACAC’s failure to properly maintain customers’ records in eighty (80) instances represents eighty (80) separate violations of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

14. The Douglas County Report noted five (5) instances where the Annual Percentage Rate (“APR”) was improperly disclosed or not disclosed to customers AW (understated), OR (overstated), AA (not disclosed), AD (overstated), and JA (understated). The Hall County Report noted one (1) instance where the APR was understated to customer KU.

15. AACAC’s failure to properly disclose the APR to customers in six (6) instances represents six (6) separate violations of Neb. Rev. Stat. § 45-917(1)(a) (Cum. Supp. 2008).

16. The Douglas County Report noted one (1) instance where AACAC accepted partial payment from customer KD.

17. AACAC’s acceptance of partial payment in one (1) instance represents a violation of Neb. Rev. Stat. § 45-919(1)(f) (Cum. Supp. 2008).

18. The Douglas County Report noted four (4) instances where AACAC held checks with a face value greater than five hundred dollars for customer TF. The Lincoln County Report noted one (1) instance where AACAC held checks with an aggregate face value greater than five hundred dollars for customer RS. The Hall County Report noted five (5) instances where AACAC held checks with a face value greater than five hundred dollars for customers HA, CA, BB, JH, and MM.

19. AACAC’s holding of checks with an aggregate face value greater than five hundred dollars in ten (10) instances represents ten (10) separate violations of Neb. Rev. Stat. § 45-919(1)(b) (Cum. Supp. 2008).

20. The Lincoln County Report noted four (4) instances where AACAC held checks from customers MD, AE, RE, and WR longer than statutorily allowed.

21. AACAC's holding of checks longer than statutorily allowed in four (4) instances represents four (4) separate violations of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008).

22. The Douglas County Report noted sixty-one (61) instances where AACAC failed to obtain completed Same Day Transaction Verification Forms (SDTVFs). The Sarpy County Report noted twenty (20) instances where AACAC failed to obtain completed SDTVFs. The Lincoln County Report noted seven (7) instances where AACAC failed to obtain completed SDTVFs for customers RD, LL, MU, B, TH, JR, and KR. The Hall County Report noted seven (7) instances where AACAC failed to obtain completed SDTVFs for customers MN, CO, JZ, GC, AD, JM, and WW.

23. AACAC's failure to obtain completed SDTVFs in ninety-five (95) instances represents ninety-five (95) separate violations of Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

24. The DEPARTMENT could conclude that the actions of AACAC 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 one thousand 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.

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. § 45-917(1)(a) (Cum. Supp. 2008) 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.

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.

6. Neb. Rev. Stat. § 45-919(1)(f) (Cum. Supp. 2008) provides that no licensee shall renew, roll over, defer, or in any way extend a delayed deposit transaction by allowing the maker to pay less than the total amount of the check and any authorized fees or charges.

7. Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) provides that a licensee shall not enter 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. The DEPARTMENT has prescribed the SDTVF for this purpose.

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

CONSENT AGREEMENT

The DEPARTMENT and AACAC agree as follows:

Stipulations: In connection with this Consent Agreement, AACAC 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 27, 2009 examination of AACAC's North Platte, Lincoln County, Nebraska location; the DEPARTMENT's February 9, 2009 examination of

AACAC's Grand Island, Hall County, Nebraska location; the DEPARTMENT's October 30, 2007 examination of AACAC's Bellevue, Sarpy County, Nebraska location; and the DEPARTMENT's November 5, 2007 examination of AACAC's Omaha, Douglas County, Nebraska location. Should future circumstances warrant, the facts from these matters may be considered in future administrative actions 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.

AACAC further represents as follows:

1. AACAC 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. AACAC 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, AACAC shall pay a fine of five thousand dollars (\$5,000.00) for the eighty (80) instances AACAC failed to properly maintain customer records in violation of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

2. Within ten (10) days after the effective date of this Consent Agreement, AACAC shall pay a fine of one hundred dollars (\$100.00) for each of the six (6)

instances AACAC failed to properly disclose the APR in violation of Neb. Rev. Stat. § 45-917(1)(a) (Cum. Supp. 2008).

3. Within twenty (20) days after the effective date of this Consent Agreement AACAC shall provide proof that it has refunded APR fees charged to its customers AW, OR, AA, AD, JA, and KU.

4. Within ten (10) days after the effective date of this Consent Agreement, AACAC shall pay a fine of one hundred dollars (\$100.00) for accepting partial payment in violation of Neb. Rev. Stat. § 45-919(1)(f) (Cum. Supp. 2008).

5. Within ten (10) days after the effective date of this Consent Agreement, AACAC shall pay a fine of one hundred dollars (\$100.00) for each of the ten (10) instances AACAC held more checks from a single maker with an aggregate face value greater than five hundred dollars in violation of Neb. Rev. Stat. 919(1)(b) (Cum. Supp. 2008).

6. Within ten (10) days after the effective date of this Consent Agreement, AACAC shall pay a fine of one hundred dollars (\$100.00) for each of the four (4) instances AACAC held customers' checks longer than statutorily allowed in violation of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008).

7. Within ten (10) days after the effective date of this Consent Agreement, AACAC shall pay a fine of five thousand dollars (\$5,000.00) for the ninety-five (95) instances AACAC failed to obtain a completed SDTVF in violation of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008).

8. Within ten (10) days after the effective date of this Consent Agreement, AACAC shall pay the DEPARTMENT's investigation costs in the amount of one thousand two hundred fifty dollars (\$1,250.00).

9. The total amount of the fine, twelve thousand one hundred dollars (\$12,100.00), plus the total amount of investigation costs, one thousand two hundred fifty dollars (\$1,250.00), shall be payable in one check or money order in the amount of thirteen thousand three hundred fifty dollars (\$13,350.00) to the DEPARTMENT.

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

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

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

DATED this 26 day of March, 2010.

**McKenzie Check Advance of Nebraska, LLC
d/b/a Advance America
d/b/a Advance America, Cash Advance Centers**

By: _____

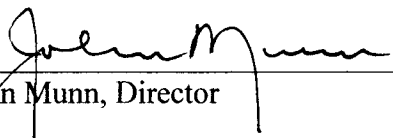
W. Thomas Newell, Secretary

135 North Church Street
Spartanburg, South Carolina 29306
(888) 314-4238

DATED this 30th day of March, 2010.

**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