

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	
)	
Western Funding Incorporated,)	FINDINGS OF FACT
3915 East Patrick Lane,)	CONCLUSIONS OF LAW
Las Vegas, Nevada)	AND
)	CONSENT ORDER

THIS MATTER comes before the Nebraska Department of Banking and Finance (“DEPARTMENT”), by and through its Director, pursuant to its authority under the Nebraska Installment Sales Act, Neb. Rev. Stat. §§ 45-334 to 45-353 (Reissue 2010; Supp. 2011) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-346 (Reissue 2010) and Neb. Rev. Stat. § 45-348 (Reissue 2010), the DEPARTMENT has investigated the facts surrounding the application of Western Funding Incorporated, 3915 East Patrick Lane, Las Vegas, Nevada (“WESTERN”), for a sales finance license.

As a result of such investigation, and being duly advised and informed in the matter, the Director and WESTERN enter into the following Findings of Fact, Conclusions of Law, and Consent Order.

FINDINGS OF FACT

1. WESTERN held Sales Finance License #497 under the Act. That license was issued to WESTERN on May 5, 1999, and the license was renewed on October 1st of each succeeding year through September 30, 2008. On September 30, 2008, the DEPARTMENT issued WESTERN an Order Cancelling Sales Finance Company License #497.

2. WESTERN’s former President, E. Dwight Cope (“COPE”), acknowledged that WESTERN’s Nebraska Sales Finance License would not be renewed. That acknowledgment

occurred in a September 26, 2008 letter to the DEPARTMENT. COPE stated that the non-renewal was necessary due to the challenges faced by WESTERN to obtain a surety bond. Maintaining a surety bond was, and is, a requirement for the renewal of the sales finance license.

3. On August 31, 2010, the DEPARTMENT received a Sales Finance License Application from WESTERN. COPE signed the application on August 30, 2010.

4. At the time that this application was received by the DEPARTMENT, Harbor Structured Finance, LLC, Columbus, Ohio ("HARBOR"), was negotiating a purchase of WESTERN. HARBOR acquired 100% ownership in WESTERN on October 15, 2010.

5. On September 2, 2010, the DEPARTMENT emailed WESTERN's CFO, Lester A. Keller, and WESTERN's legal counsel, stating that

It is the Department's understanding that the Applicant continued to transact Nebraska business despite the fact that the previous license expired as of September 30, 2008. As such, please provide a complete listing of Nebraska consumers that the Applicant has done business with since the expiration of the previous license. This listing should include the consumer name, address, loan (or other identifying number), interest rate charged, amount of fees collected by the company for the transaction, and current status of the transaction.

6. The DEPARTMENT's September 2, 2010 email to Keller requested additional information to complete the application. That information included audited financial statements, an original written consent of the registered agent, a copy of the surety bond, authorization from the Nebraska Secretary of State to conduct business, and a request to verify the legal name of the company.

7. Representatives of HARBOR and WESTERN knew of the unlicensed activities referenced in Finding of Fact #5 prior to October 15, 2010.

8. The DEPARTMENT received a response from WESTERN to its September 2, 2010 email on May 13, 2011. That response consisted of a new application for a Sales Finance License and responses to the questions listed in Finding of Fact #5. This application was signed by Katherine H. Cooper, WESTERN's EVP/COO.

9. The May 13, 2011 response stated that WESTERN had 1,623 active Nebraska sales finance accounts as of October 15, 2008, and that 1,450 Nebraska WESTERN accounts that were acquired after August 30, 2008, were now closed. WESTERN had 173 Nebraska accounts that remained active as of May 13, 2011.

10. WESTERN acquired one auto loan since October 15, 2010, and that loan was reportedly acquired by mistake and resold to the maker of the loan within three days of its acquisition.

11. WESTERN applied for a Nebraska Sales Finance License on May 13, 2011. The application became complete on November 21, 2011. That license is pending.

12. The DEPARTMENT could conclude that the actions of WESTERN warrant the commencement of administrative proceedings to determine whether it should impose an administrative fine in an amount up to one thousand dollars per violation, plus investigation costs, pursuant to Neb. Rev. Stat. § 45-351 (Reissue 2010).

13. The DEPARTMENT incurred a minimum of one thousand dollars (\$1,000.00) in investigation costs in this matter.

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 45-346 (Reissue 2010) provides that an application for a sales finance license under the Act shall be on a form prescribed and furnished by the Director of the DEPARTMENT. The Director shall investigate the facts, and if he or she finds that the

experience, character, and general fitness of the applicant, of the members thereof if the applicant is a corporation or association, and of the officers and directors thereof if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of the Act, the Director shall issue and deliver a license to the applicant to do business as a sales finance company.

2. Neb. Rev. Stat. § 45-345 (Reissue 2010) provides that no person shall act as a sales finance company in this state without obtaining a license from the DEPARTMENT as provided in the Nebraska Installment Sales Act whether or not such person maintains an office, place of doing business, or agent in this state.

3. As set forth in Findings of Fact ##s 5 through 9, WESTERN did not have a license when it participated in 1,623 Nebraska sales finance transactions. It was essential that a license be acquired if WESTERN was to conduct such business. Of the 1,623 accounts, 173 are currently active.

4. Neb. Rev. Stat. § 45-351 (Reissue 2010) states that if the Director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has willfully and intentionally violated any provision of the Nebraska Installment Sales Act, any rule or regulation adopted and promulgated under the Act, or any order issued by the Director under the Act, the Director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation.

5. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that WESTERN has violated the Act by engaging in unlicensed activities, and that an administrative fine in an amount of not more than one thousand dollars

for each separate violation plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-351 (Reissue 2010).

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

7. It is in the best interest of WESTERN and the best interest of the public for WESTERN and the DEPARTMENT to resolve the issues included herein.

CONSENT ORDER

The DEPARTMENT and WESTERN agree as follows:

Stipulations: In connection with this Consent Order, WESTERN and the Director stipulate to the following:

1. The DEPARTMENT has jurisdiction as to all matters herein.
2. This Consent Order shall resolve all matters between the DEPARTMENT and WESTERN in connection with the Findings of Fact set forth above. Should future circumstances warrant, the facts from this matter may be considered in future administrative action by the DEPARTMENT.
3. This Consent Order shall be in lieu of all other proceedings available to the DEPARTMENT, except as specifically referenced in this Consent Order.

WESTERN further represents as follows:

1. WESTERN 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. WESTERN is acting free from any duress or coercion of any kind or nature.

3. This Consent Order is executed to avoid further proceedings and constitutes an admission of violations solely for the purpose of this Consent Order and for no other purpose whatsoever.

IT IS THEREFORE AGREED as follows:

1. Within ten (10) days after the effective date of this Consent Order, WESTERN shall pay a fine of ten thousand dollars (\$10,000.00) for the one hundred seventy-three (173) violations of Neb. Rev. Stat. § 45-345 (Reissue 2010), representing open sales finance accounts.

2. Within ten (10) days after the effective date of this Consent Order, WESTERN shall pay a fine of five thousand dollars (\$5,000.00) for the one thousand four hundred and fifty (1,450) violations of Neb. Rev. Stat. § 45-345 (Reissue 2010), representing closed sales finance accounts.

3. Within ten (10) days after the effective date of this Consent Order, WESTERN shall pay the DEPARTMENT's investigation costs in this matter in the amount of one thousand dollars (\$1,000.00).

4. The total amount of the fine, fifteen thousand dollars (\$15,000.00), plus the total amount of investigation costs, one thousand dollars (\$1,000.00), shall be payable in one check or money order in the amount of sixteen thousand dollars (\$16,000.00) to the DEPARTMENT.

5. Within five (5) business days after WESTERN's compliance with this Consent Order, the DEPARTMENT shall issue a License to WESTERN.

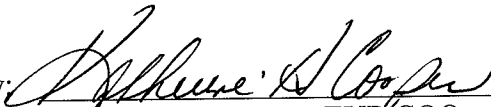
6. In the event WESTERN fails to comply with any of the provisions of this Consent Order, the DEPARTMENT may commence such action as it deems necessary and appropriate in the public interest.

7. If, at any time, the DEPARTMENT determines WESTERN has committed any other violation of the Act or other state law applicable to WESTERN's business, the DEPARTMENT may take any action available to it under the Act.

8. The effective date of this Consent Order will be the date of the Director's signature.

DATED this 16th day of December, 2011.

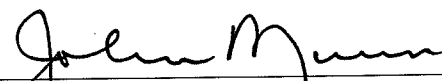
WESTERN FUNDING INCORPORATED

By: 
Katherine H. Cooper, EVP/COO

3915 East Patrick Lane
Las Vegas, Nevada 89120

DATED this 19th day of December, 2011.

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

By: 
John Munn, Director

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