

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	
)	FINDINGS OF FACT
Kearney Cash, Inc.,)	CONCLUSIONS OF LAW
1600 East 25th Street,)	AND
Kearney, Buffalo 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 2010) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-920 (Reissue 2010), the DEPARTMENT has examined the books, accounts, and records of Kearney Cash, Inc., 1600 East 25th Street, Kearney, Buffalo County, Nebraska (“KEARNEY CASH”). As a result of such examination, and being duly advised and informed in the matter, the Director and KEARNEY CASH enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

FINDINGS OF FACT

1. KEARNEY CASH holds a delayed deposit services business license under the Act. License #1849 was originally issued on June 24, 1998. The license has been renewed annually on May 1st since that time, pursuant to Neb. Rev. Stat. § 45-910 (Reissue 2010).
2. On August 9, 2011, the DEPARTMENT commenced an examination of KEARNEY CASH pursuant to Neb. Rev. Stat. § 45-920 (Reissue 2010). This examination included an on-site visitation of KEARNEY CASH’s Kearney, Buffalo County, Nebraska locations.

3. The August 9, 2011 Report of Examination (“Report”) was forwarded to KEARNEY CASH on October 18, 2011. The Report noted a number of violations of the Act. KEARNEY CASH submitted a response received by the DEPARTMENT on October 28, 2011.

4. The DEPARTMENT has reviewed the response submitted by KEARNEY CASH and has taken it into consideration in determining the appropriate actions to be taken in this matter.

5. The two previous regular examinations of KEARNEY CASH conducted March 31, 2009 (“2009 Exam”), and May 18, 2010 (“2010 Exam”), also revealed a number of violations of the Act. The 2009 Exam resulted in a Consent Agreement between the DEPARTMENT and KEARNEY CASH with an effective date of October 21, 2009. The 2010 Exam resulted in a Consent Agreement between the DEPARTMENT and KEARNEY CASH with an effective date of November 10, 2010. Repeat violations of the Act will be noted below.

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

7. The Report noted nine (9) instances where KEARNEY CASH held checks with an aggregate face value greater than five hundred dollars from customers SB, TJ, CK(6), and LV.

8. KEARNEY CASH’s holding of checks from a single customer with an aggregate face value greater than five hundred dollars in nine (9) instances represents nine (9) separate repeat violations of Neb. Rev. Stat. § 45-919(1)(b) (Reissue 2010) as noted in the 2009 Exam and in the 2010 Exam and corresponding Consent Agreements.

9. The Report noted two (2) instances where KEARNEY CASH held checks for more than the statutorily allowed time for customers LD and JH.

10. KEARNEY CASH's holding of checks for longer than the statutorily allowed time in two (2) instances represents two (2) separate repeat violations of Neb. Rev. Stat. § 45-919(1)(c) (Reissue 2010) as noted in the 2009 Exam and in the 2010 Exam and corresponding Consent Agreements.

11. The Report noted ten (10) instances where KEARNEY CASH failed to obtain completed Same Day Transaction Verification Forms ("SDTVFs") for customers TC(2), LJ, FM(4), JO, TP, and WS.

12. KEARNEY CASH's failure to obtain completed SDTVFs in ten (10) instances represents ten (10) separate repeat violations of Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010) and Neb. Rev. Stat. § 45-915.01(2) (Reissue 2010) as noted in the 2009 Exam and in the 2010 Exam and corresponding Consent Agreements.

13. The DEPARTMENT could conclude that the actions of KEARNEY CASH 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 (Reissue 2010).

14. 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 2010) 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) (Reissue 2010) 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. § 45-919(1)(b) (Reissue 2010) 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.

4. Neb. Rev. Stat. § 45-919(1)(c) (Reissue 2010) provides that no licensee shall hold or agree to hold a check for more than thirty-four days.

5. Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010) 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.

6. Neb. Rev. Stat. § 45-925 (Reissue 2010) 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.

7. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that KEARNEY CASH 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 (Reissue 2010).

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

9. It is in the best interest of KEARNEY CASH, and it is in the best interest of the public, for KEARNEY CASH and the DEPARTMENT to resolve the issues included herein.

CONSENT AGREEMENT

The DEPARTMENT and KEARNEY CASH agree as follows:

Stipulations: In connection with this Consent Agreement, KEARNEY CASH 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 9, 2011 examination of KEARNEY CASH's Kearney, Buffalo County, Nebraska locations. 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.

KEARNEY CASH further represents as follows:

1. KEARNEY CASH 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. KEARNEY CASH 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, KEARNEY CASH shall pay a fine of one thousand dollars (\$1,000.00) for each of the nine (9) instances KEARNEY CASH held checks for a single customer with an aggregate face value greater than five hundred dollars (\$500.00) in its third repeat violation of Neb. Rev. Stat. § 45-919(1)(b) as noted in the 2009 Exam and in the 2010 Exam and corresponding Consent Agreements.

2. Within ten (10) days after the effective date of this Consent Agreement, KEARNEY CASH shall pay a fine of one thousand dollars (\$1,000.00) for each of the two (2) instances KEARNEY CASH held checks longer than the statutorily allowed time in its third repeat violation of Neb. Rev. Stat. § 45-919(1)(c) (Reissue 2010) as noted in the 2009 Exam and in the 2010 Exam and corresponding Consent Agreements.

3. Within ten (10) days after the effective date of this Consent Agreement, KEARNEY CASH shall pay a fine of two hundred dollars (\$200.00) for each of the ten (10) instances it failed to obtain completed SDTVFs in its third repeat violation of Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010) and Neb. Rev. Stat. § 45-915.01(2) (Reissue 2010) as noted in the 2009 Exam and in the 2010 Exam and corresponding Consent Agreements.

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

5. The total amount of the fine, thirteen thousand dollars (\$13,000.00), plus the total amount of investigation costs, five hundred dollars (\$500.00), is thirteen thousand five hundred

dollars (\$13,500.00). This amount shall be payable to the DEPARTMENT in six (6) equal monthly payments of two thousand two hundred fifty dollars (\$2,250.00).

6. Payments are to be made as follows:

<u>Payment Due Date</u>	<u>Payment Amount</u>
March 9, 2012	\$2,250.00
April 6, 2012	\$2,250.00
May 4, 2012	\$2,250.00
June 1, 2012	\$2,250.00
July 6, 2012	\$2,250.00
August 1, 2012	\$2,250.00

7. Payments shall be RECEIVED by the DEPARTMENT on or before the due date and shall be payable in one check or money order for the entire installment amount due. Partial payments of any installment will not be accepted.

8. Late payments will not be accepted without prior written approval from the DEPARTMENT. Any unapproved past due payment will void this Consent Agreement causing the total remaining balance of the fine and costs to become immediately due. Any late payment will also be cause for the DEPARTMENT revoking KEARNEY CASH's license. Any check that is dishonored by the financial institution it is drawn upon will be deemed as a late payment.

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

10. If, at any time, the DEPARTMENT determines KEARNEY CASH 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 28 day of FEBRUARY, 2012.

Kearney Cash, Inc.

By: 

Steve Andrews, President

1600 East 25th Street
Kearney, Nebraska 68847

DATED this 29th day of February, 2012.

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

By: 

John Munn, Director

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