

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	
)	FINDINGS OF FACT
FCFS CO, Inc.,)	CONCLUSIONS OF LAW
d/b/a First Cash Pawn, Mister Money,)	AND
326 West 27 th Street,)	CONSENT AGREEMENT
Scottsbluff, Scotts Bluff County, Nebraska)	

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 45-930 (Reissue 2010; Cum. Supp. 2012; Supp. 2013) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-920 (Supp. 2013), the DEPARTMENT has examined the books, accounts, and records of FCFS CO, Inc., d/b/a First Cash Pawn, Mister Money, 326 West 27th Street, Scottsbluff, Scotts Bluff County, Nebraska (“FCFS”). As a result of such examination, and being duly advised and informed in the matter, the Director and FCFS enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

FINDINGS OF FACT

1. FCFS holds a delayed deposit services business license under the Act. License #2059 was originally issued on November 21, 2012. The license has been renewed annually on May 1st since that time, pursuant to Neb. Rev. Stat. § 45-910 (Cum. Supp. 2012).
2. On August 8, 2013, the DEPARTMENT commenced an examination of FCFS pursuant to Neb. Rev. Stat. § 45-920 (Supp. 2013). This examination included an on-site visitation of FCFS’ Scottsbluff, Scotts Bluff County, Nebraska location.

3. The August 8, 2013 Report of Examination ("Report") was forwarded by encrypted electronic mail using the email address belonging to the exam delivery contact person for FCFS on October 11, 2013, and included a request for response within twenty-one (21) calendar days pursuant to Neb. Rev. Stat. § 45-921(5) (Reissue 2010). The Report noted a number of violations of the Act. DEPARTMENT records indicate that the electronic mail was undeliverable and never opened.

4. The Report was forwarded again on October 16, 2013. DEPARTMENT records indicate that the electronic mail was undeliverable and never opened.

5. On November 7, 2013, the DEPARTMENT contacted FCFS by telephone to obtain an updated email address for FCFS' exam delivery contact person. The DEPARTMENT then sent a follow-up email to FCFS on November 7, 2013, requesting an email confirmation of the contact person information.

6. The Report was forwarded on November 8, 2013, to the new exam delivery contact person for FCFS. DEPARTMENT records indicate that FCFS opened the electronic mail containing the Report on November 14, 2013. FCFS failed to respond to the DEPARTMENT's request for a response to the Report within twenty-one (21) calendar days.

7. On November 17, 2013, FCFS responded, via electronic mail, to the DEPARTMENT's November 7, 2013 request for updated contact information.

8. On December 31, 2013, the Report was forwarded again to FCFS by encrypted electronic mail. The DEPARTMENT requested a response within twenty-one (21) calendar days. DEPARTMENT records indicate that FCFS opened the electronic mail on December 31, 2013.

9. On January 22, 2014, FCFS contacted the DEPARTMENT by telephone, asking for an extension of time to respond to the Report. The DEPARTMENT informed FCFS that its response would be due February 1, 2014. The DEPARTMENT also sent an email to FCFS on January 22, 2014, to confirm the telephone conversation.

10. On January 29, 2014, FCFS contacted the DEPARTMENT via electronic mail, requesting guidance and/or training from the DEPARTMENT's examiner.

11. On January 29, 2014, the DEPARTMENT responded to FCFS' request via electronic mail, and stated that its examiner was unable to provide training. The DEPARTMENT also reminded FCFS that a response to the Report was due February 1, 2014.

12. On February 1, 2014, the DEPARTMENT did not receive a response to the Report. FCFS has completely failed to respond to the DEPARTMENT's repeated requests for a response to the Report.

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

14. The Report noted that FCFS used the term "loan" in its disclosure agreements without the term being preceded by the word "payday."

15. FCFS' use of the term "loan" in its disclosure agreements without the term being preceded by the word "payday" represents multiple violations of Neb. Rev. Stat. § 45-908 (Reissue 2010).

16. The Report noted one hundred twenty-eight (128) instances where FCFS failed to properly keep and maintain copies of customer records, namely, five (5) transaction records,

thirty-eight (38) customer checks, thirty-three (33) payment records, nineteen (19) copies of returned checks, nineteen (19) deposit records, seven (7) payment receipts, and seven (7) records of insufficient fund fees charged to makers.

17. FCFS' failure to properly keep and maintain copies of customer records in one hundred twenty-eight (128) instances represents one hundred twenty-eight (128) separate violations of Neb. Rev. Stat. § 45-915.01(2) (Reissue 2010).

18. The Report noted twenty-two (22) instances where FCFS failed to obtain correctly completed Same Day Transaction Verification Forms ("SDTVFs") for customers MA, LB, RD, LH (3), EM (3), ER, DS (3), GV (4), KP, SG, AO, PB, and PU.

19. FCFS' failure to obtain correctly completed SDTVFs in twenty-two (22) instances represents twenty-two (22) separate violations of Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010) and Neb. Rev. Stat. § 45-915.01(2) (Reissue 2010).

20. As set forth in Findings of Fact #s 3-12, inclusive, FCFS has never provided a response to the Report as requested by the DEPARTMENT. Each day that FCFS has failed to respond to the Report represents a separate violation of Neb. Rev. Stat. § 45-921(5) (Reissue 2010).

21. The DEPARTMENT examined 10.34% of all active accounts of FCFS. All accounts examined contained errors. Within those accounts, the individual transactions examined showed a 101.06% rate of error.

22. The DEPARTMENT could conclude that the actions of FCFS warrant the commencement of administrative proceedings to determine whether it should suspend or revoke FCFS' delayed deposit services license pursuant to Neb. Rev. Stat. § 45-922 (Reissue 2010), and/or 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).

23. The DEPARTMENT incurred a minimum of two thousand five hundred dollars (\$2,500.00) 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. § 45-902(2) (Reissue 2010) defines “delayed deposit services business,” as a person who for a fee (a) accepts a check dated subsequent to the date it was written or (b) accepts a check dated on the date it was written and holds the check for a period of days prior to deposit or presentment pursuant to an agreement with or any representation made to the maker of the check. This definition does not include offering loans. To operate in accordance with the Act, a licensee may use the phrase “payday loan” in its advertising, signage, contracts, or other customer contacts, but may not use the term “loan” by itself for any purpose.

3. The significant number of violations of the Act as set forth in Findings of Fact #s 3-12 and #s 14-20, inclusive, and the high rate of error set forth in Finding of Fact #21 could cause the Director to determine that the business of FCFS is not being operated honestly, fairly, efficiently, and in accordance with the Act. The DEPARTMENT accordingly has the authority to examine FCFS at any time before the next annual

examination under Neb. Rev. Stat. § 45-920 (Supp. 2013) and Neb. Rev. Stat. § 45-921 (Reissue 2010).

4. 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.

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. § 45-921(5) (Reissue 2010) provides that upon receipt by a licensee of a notice of investigation or inquiry request for information from the DEPARTMENT, the licensee shall respond within twenty-one calendar days. Each day a licensee fails to respond constitutes a separate violation of the Act.

7. Neb. Rev. Stat. § 45-921(6) (Reissue 2010) provides that if the Director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that the licensee has violated Section 45-921(5), 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.

8. Neb. Rev. Stat. § 45-922 (Reissue 2010) provides that the Director may, following a hearing in accordance with the Administrative Procedure Act, suspend or revoke any license issued pursuant to the Delayed Deposit Services Licensing Act if he or

she finds a licensee or any of its officers, directors, partners, or members has knowingly violated the Act or any rule, regulation, or order of the Director thereunder; or finds a fact or condition existing which, if it had existed at the time of the original application for such license, would have warranted the Director to refuse to issue such license.

9. 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.

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

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

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

CONSENT AGREEMENT

The DEPARTMENT and FCFS agree as follows:

Stipulations: In connection with this Consent Agreement, FCFS 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, 2013 examination of FCFS' Scottsbluff, Scotts Bluff County, Nebraska location. 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.

FCFS further represents as follows:

1. FCFS 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. FCFS 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, FCFS shall pay a fine of five hundred dollars (\$500.00) for using the term "loan" in its disclosure agreements without the term being preceded by the word "payday" in violation of Neb. Rev. Stat. § 45-908 (Reissue 2010).

2. Within ten (10) days after the effective date of this Consent Agreement, FCFS shall pay a fine of one hundred dollars (\$100.00) for each of the one hundred twenty-eight (128) instances it failed to properly keep and maintain copies of customer records in violation of Neb. Rev. Stat. § 45-915.01(2) (Reissue 2010).

3. Within ten (10) days after the effective date of this Consent Agreement, FCFS shall pay a fine of fifty dollars (\$50.00) for each of the twenty-two (22) instances it failed to obtain correctly completed SDTVFs in violation of Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010) and Neb. Rev. Stat. § 45-915.01(2) (Reissue 2010).

4. Within ten (10) days after the effective date of this Consent Agreement, FCFS shall pay a fine of five thousand dollars (\$5,000.00) for failing to respond to the DEPARTMENT's repeated requests for a response to the Report in violation of Neb. Rev. Stat. § 45-921(5) (Reissue 2010).

5. Within ten (10) days after the effective date of this Consent Agreement, FCFS shall pay the DEPARTMENT's investigation costs in the amount of two thousand five hundred dollars (\$2,500.00).

6. The total amount of the fine, nineteen thousand four hundred dollars (\$19,400.00), plus the total amount of investigation costs, two thousand five hundred dollars (\$2,500.00), shall be payable in one check or money order in the amount of twenty-one thousand nine hundred dollars (\$21,900.00) to the DEPARTMENT.

7. Within ninety (90) days after the effective date of this Consent Agreement, FCFS shall develop written policies and procedures to prevent further repeat violations of Neb. Rev. Stat. § 45-915.01(2) (Reissue 2010) and Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010) and shall submit a copy of such policies and procedures to the DEPARTMENT for its approval. The policies and procedures shall be available on-site for examiner review.

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

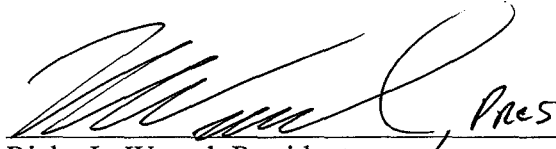
9. If, at any time, the DEPARTMENT determines FCFS has committed any other violations of the Act, the DEPARTMENT may take any action available to it under the Act.

10. The DEPARTMENT reserves the right to examine FCFS at any time before the next annual examination under Neb. Rev. Stat. § 45-920 (Supp. 2013) and Neb. Rev. Stat. § 45-921 (Reissue 2010).

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

DATED this 29th day of April, 2014.


FCFS CO, INC.
D/B/A FIRST CASH PAWN, MISTER MONEY

By:  Pres
Ricky L. Wessel, President

690 East Lamar Boulevard, Suite 400
Arlington, Texas 76011

DATED this 2nd day of May, 2014.

STATE OF NEBRASKA
DEPARTMENT OF BANKING AND FINANCE

By: 
John Munn, Director

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