

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	
)	FINDINGS OF FACT
McKenzie Check Advance of Nebraska, LLC)	CONCLUSIONS OF LAW
d/b/a Advance America)	AND
d/b/a Advance America, Cash Advance)	CONSENT AGREEMENT
d/b/a Advance America, Cash Advance Centers)	
3327 L Street)	
Omaha, Douglas 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. 2014) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2014), 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, d/b/a Advance America, Cash Advance Centers, 3327 L Street, Omaha, Douglas County, Nebraska (“Advance America”). As a result of such examination, and being duly advised and informed in the matter, the Director and Advance America enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

FINDINGS OF FACT

1. Advance America holds a delayed deposit services business license under the Act. License No. 1866 was originally granted February 17, 1999, and has been renewed annually on May 1st since that time pursuant to Neb. Rev. Stat. § 45-910 (Cum. Supp. 2014).

2. On November 9, 2015, the Department commenced an examination of Advance America pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2014). This examination included an on-site visitation of Advance America's Omaha, Douglas County, Nebraska locations.

3. The November 9, 2015 Report of Examination ("Report") was forwarded to Advance America on January 20, 2016. The Report noted a number of violations of the Act. Advance America submitted a response received by the Department on February 1, 2016.

4. The Department has reviewed the response submitted by Advance America and has taken it into consideration in determining the appropriate actions to be taken in this matter.

5. The previous regular examinations of Advance America were conducted May 28, 2013 ("2013 Exam"), and June 9, 2014 ("2014 Exam"), and revealed a number of violations of the Act. The 2013 Exam resulted in a Consent Agreement between the Department and Advance America with an effective date of April 22, 2014. The 2014 Exam resulted in a Consent Agreement between the Department and Advance America with an effective date of November 4, 2014. Repeat violations of the Act will be noted below.

6. References in this Consent Agreement to customers of Advance America will be by way of initials, in order to protect the privacy of such customers. Advance America knows or should know the identity of these customers. If Advance America 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. Advance America failed to properly maintain accurate payment records in one instance for customer PL. This was a repeat violation as noted in the 2014 Exam and corresponding Agreement.

8. Advance America failed to make a record available to the Department's examiner in one instance for customer WE.

9. Advance America failed to obtain signatures on the disclosure agreement in five instances for customers DN, NR, LD, and KT (2). This was a second repeat violation as noted in the 2013 Exam, 2014 Exam, and corresponding Agreements.

10. Advance America held a check for more than thirty-four days in two instances for customers MS and MB.

11. Advance America failed to obtain a Same Day Transaction Verification Form ("SDTVF") in one instance for customer ER. This was a repeat violation as noted in the 2014 Exam and corresponding Agreements.

12. Advance America failed to obtain correctly completed SDTVFs in nineteen instances for customers MB, EF, AC (3), LM, KP, SA, EG, JO, AK, NS (2), JV, KT (2), PL (2), and OY. This was a second repeat violation as noted in the 2013 Exam, 2014 Exam, and corresponding Agreements.

13. The Department could conclude that the actions of Advance America 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 (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. § 45-915.01(1) (Reissue 2010) provides that a licensee shall keep or make available the books and records relating to transactions made under the Delayed Deposit Services Licensing Act as are necessary to enable the Department to determine whether the licensee is complying with the Act. The books and records shall be maintained in a manner consistent with accepted accounting practices.

4. The facts set forth in Finding of Fact No. 7 constitute one repeat violation of Neb. Rev. Stat. § 45-915.01 (Reissue 2010) as noted in the 2014 Exam and corresponding Consent Agreement.

5. The facts set forth in Finding of Fact No. 8 constitute one violation of Neb. Rev. Stat. § 45-915.01 (Reissue 2010).

6. Neb. Rev. Stat. § 45-917 (Reissue 2010) 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.

7. The facts set forth in Finding of Fact No. 9 constitute five separate second repeat violations of Neb. Rev. Stat. § 45-917 (Reissue 2010) as noted in the 2013 Exam, 2014 Exam, and corresponding Consent Agreements.

8. 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.

9. The facts set forth in Finding of Fact No. 10 constitute two separate violations of Neb. Rev. Stat. § 45-919(1)(c).

10. Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010) provides that no licensee shall 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.

11. The facts set forth in Finding of Fact No. 11 constitute one violation of Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010) and Neb. Rev. Stat. § 45-915.01 (Reissue 2010).

12. The facts set forth in Finding of Fact No. 12 constitute nineteen separate second repeat violations of Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010) and Neb. Rev. Stat. § 45-915.01 (Reissue 2010) as noted in the 2013 Exam, 2014 Exam and corresponding Consent Agreements.

13. 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.

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

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

16. It is in the best interest of Advance America, and it is in the best interest of the public, for Advance America and the Department to resolve the issues included herein.

CONSENT AGREEMENT

The Department and Advance America agree as follows:

Stipulations: In connection with this Consent Agreement, Advance America 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 November 9, 2015 examination of Advance America's Omaha, Douglas 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.

Advance America further represents as follows:

1. Advance America 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. Advance America 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 days after the effective date of this Consent Agreement, Advance America shall pay a fine of Two Hundred Dollars (\$200.00) for the one instance where Advance America failed to properly maintain customer records in repeat violation of Neb. Rev. Stat. § 45-915.01 (Reissue 2010).

2. Within ten days after the effective date of this Consent Agreement, Advance America shall pay a fine of Two Hundred Dollars (\$200.00) for the one instance where Advance America failed to make a record available to the Department during the examination in violation of Neb. Rev. Stat. § 45-915.01 (Reissue 2010).

3. Within ten days after the effective date of this Consent Agreement, Advance America shall pay a fine of Four Hundred Dollars (\$400.00) for each of the five instances it failed to obtain signatures on customer disclosure agreements in its second repeat violation of Neb. Rev. Stat. § 45-917 (Reissue 2010).

4. Within ten days after the effective date of this Consent Agreement, Advance America shall pay a fine of Two Hundred Fifty Dollars (\$250.00) for each of the two instances it held a check for more than 34 days in violation of Neb. Rev. Stat. 45-919(1)(c) (Reissue 2010).

5. Within ten days after the effective date of this Consent Agreement, Advance America shall pay a fine of Two Hundred Dollars (\$200.00) for the one instance where Advance America failed to obtain a SDTVF in repeat violation of Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010) and Neb. Rev. Stat. § 45-915.01 (Reissue 2010).

6. Within ten days after the effective date of this Consent Agreement, Advance America shall pay a fine of Two Hundred Dollars (\$200.00) for each of the nineteen instances where

Advance America failed to obtain correctly completed SDTVFs in its second repeat violation of Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010) and Neb. Rev. Stat. § 45-915.01 (Reissue 2010).

7. Within ten days after the effective date of this Consent Agreement, Advance America shall pay the Department's investigation costs in the amount of Five Hundred Dollars (\$500.00).

8. The total amount of the fine, Six Thousand Nine Hundred Dollars (\$6,900.00), 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 Seven Thousand Four Hundred Dollars (\$7,400.00) to the Department.

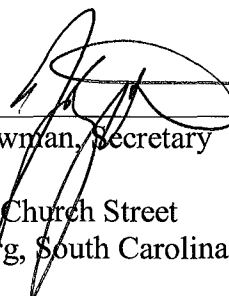
9. In the event Advance America fails to comply with any of the provisions of this Consent Agreement, the Department may commence such action regarding Advance America as it deems necessary and appropriate in the public interest.

10. If, at any time, the Department determines Advance America 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.

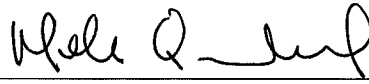
DATED this 3rd day of March, 2016.

**MCKENZIE CHECK ADVANCE OF NEBRASKA, LLC
D/B/A ADVANCE AMERICA
D/B/A ADVANCE AMERICA, CASH ADVANCE
D/B/A ADVANCE AMERICA, CASH ADVANCE CENTERS**

By: 
Jeffrey Newman, Secretary
135 North Church Street
Spartanburg, South Carolina 29306

DATED this 9 day of March, 2016.

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

By: 
Mark Quandahl, Director

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