

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Request for Hearing on
the Citations and Desist and Refrain Order
Issued By the California Corporations
Commissioner,

Complainant,

vs.

A.L.I. Inc., doing business as Premierel
Stations,

Respondent.

File No. 100-08661

OAH No.: L2007090041

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated October 22, 2007, is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter with the following technical and minor change pursuant to Government Code Section 11517(c)(2)(C).

- 1) On page 2, paragraph 3, under FACTUAL FINDINGS, line 7, after "April", strike "2004" and insert "2005".
- 2) On page 6, paragraph 1 under ORDER, line 5, strike "in".

This Decision shall become effective on January 25th, 2008.

IT IS SO ORDERED this 24th day of January 2008.

CALIFORNIA CORPORATIONS COMMISSIONER

Preston DuFauchard

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PROPOSED DECISION

The hearing in the above-captioned matter was held on September 21, 2007, at Los Angeles, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings, presided. Complainant was represented by Joan E. Kerst, Lead Corporations Counsel. Respondent appeared through its Vice-President, Abdul Ismail.

Evidence was received, the matter argued, and the case was submitted for decision on the hearing date. The Administrative Law Judge hereby makes his factual findings, legal conclusions, and orders, as follows:

INTRODUCTION AND STATEMENT OF THE CASE

The main facts of the case are not disputed. Essentially, Respondent is licensed to conduct deferred deposit transactions, popularly known as "payday loans." In August 2007, after an examination of Respondent's business and its books and records, the Commissioner issued Citations and Desist and Refrain Order, which listed seven violations of the statutes governing Respondent's business. Respondent was ordered to cease such violations, and to pay administrative penalties totaling \$13,500. Respondent provided evidence in mitigation, and of rehabilitation, and asserted that the penalties, under all the circumstances, were excessive.

FACTUAL FINDINGS

1. On April 14, 2005, the Commissioner of the California Department of Corporations (Department) issued a deferred deposit transactions originator license to Respondent, A.L.I., Inc. That license, file no. 100-0866, was issued pursuant to the California Deferred Deposit Transaction Law (CDDTL), Financial Code sections 23000, et. seq.

2. Respondent is a California Corporation, doing business as Premiere Stations, in Anaheim, California. The licensed business allows Respondent to engage in deferred deposit transactions, commonly known as "payday loans" or "payday advances." Such is a written transaction where one person gives funds to another person upon receipt of a personal check, and it is agreed that the personal check shall not be deposited until a later date. Respondent operates the licensed business at a facility where it also has other business concerns, including a gas station, restaurants, and a Western Union-Cash check cashing service.

3. When Respondent applied for its license to engage in deferred deposit transactions its Vice-President, Mr. Ismail, stated in writing that he had read the applicable laws, and he stated that Respondent agreed to comply with the CDDTL, including any rules or orders of the Commission of Corporations. Respondent also agreed to being subject to periodic examinations, and to keep and maintain records for two years following the last entry on a deferred deposit transaction. Respondent also agreed to be subject to other rules if it were to be licensed. When a license was issued to Respondent in April 2004, a letter accompanied the license, stating there were various obligations and responsibilities that the licensee was obligated to comply with, and it provided information about those obligations.

4. On July 18, 2007, an examiner acting on behalf of the Commissioner visited Respondent's place of business, in order to conduct a mandated examination of Respondent's books and records. The examiner, Ms. Azucena Manalo discovered numerous violations of the CDDTL, described below. Those violations were described in the Citations and Desist and Refrain Order alphabetically, and that convention is followed hereafter.

5 (A) Respondent failed to conspicuously post its license in its place of business, as required by Financial Code section 23018.¹ The penalty for this violation, as set forth in the citation, was \$500.

(B) Respondent failed to distribute the statutorily-mandated notice to consumers prior to entering into an agreement, as is required by section 23035, subdivision (c). The penalty for this violation, as set forth in the citation, was \$2,500.

¹ All further citations to statutes shall be to the Financial Code, unless otherwise noted.

(C) Respondent failed to include disclosure that the licensee can not make a deferred deposit transaction contingent on the purchase of another product or service, such disclosure being mandated by section 23035, subdivision (e)(11). The penalty for this violation, as set forth in the citation, was \$1,500.

(D) The Respondent failed to include disclosure that the customer can not be prosecuted or threatened with prosecution to collect a deferred deposit transaction in its agreement with a customer; that disclosure is required by section 23035, subdivision (e)(9). The penalty for this violation, as set forth in the citation, was \$1,500.

(E) Respondent failed to post the statutorily-mandated notice in the unobstructed view of the public, at its licensed location, as require by sections 23035, subdivision (d), and 23019. The penalty for this violation, as set forth in the citation, was \$2,500.

(F) Respondent failed to keep evidence of the check for closed deferred deposit transactions, as required by California Code of Regulations (CCR), title 10, section 2025, subdivision (c)(1).² The penalty for this violation, as set forth in the citation, was \$2,500.

(G) Respondent failed to maintain records demonstrating minimum net worth of \$25,000, as required by section 23007. Such documentation includes quarterly unaudited balance sheets, required by CCR section 2025, subdivision (b). The penalty for this violation, as set forth in the citation, was \$2,500.

6. After receipt of the Citations and Desist and Refrain Order, Respondent filed a timely request for hearing.

7. In mitigation, Respondent pointed to the fact that it had no prior discipline, either from the Department, or the Attorney General, who formerly issued permits to persons performing deferred deposit transactions. Respondent was cooperative during the examination itself, providing access to the records it had on hand. When Respondent did not have quarterly balance sheets showing the minimum net worth of \$25,000, he did offer tax returns to provide some evidence of financial strength.³ The examiner did not find any evidence that Respondent had engaged in improper collection practices. Respondent's business is a franchise, and it had relied on the franchisor's software to produce forms with all of the appropriate language and disclosures.

8. Respondent has taken steps to post proper notices. It has obtained updated

² All citations to the regulations shall be to title 10 thereof.

³ Respondent's net worth in 2006 exceeded the statutory minimum many times over.

software and it has revamped its forms and agreements in order to come into compliance. It has made sure to have copies of all the checks used in the transactions. However, some deficiencies remained as of the time of the hearing.

9. Respondent provided evidence that its gross income from the deferred deposit transactions has averaged approximately \$18,000 per year. It must pay the franchisor 12 percent of that amount. Bad debts were estimated at between \$3,000 and \$4,000 per year. Respondent is legally obligated to pay the cost of the mandated-examination, typically in an amount of approximately \$800 and it must also pay fees to the commissioner in a similar amount.⁴ Respondent has other expenses, such as labor, an allocation of rent, materials and supplies which would further reduce its profit from the operation of the deferred deposit transaction business.

10. In aggravation, Respondent was on actual notice of the governing laws and regulations, and agreed to abide by them. The Department has sent out bulletins and newsletters to every licensee, reminding them of their obligations. For example, in February 2007, a bulletin was sent to every licensee, describing the most common violations found from the examination process. Respondent had several weeks notice that the examination was coming, and when it did not have the quarterly balance sheet, the examiner gave Respondent five days to produce one. No such balance sheet was brought to the hearing. Respondent does not have the proper fictitious business name registered with the Department, in that Cash Plus is not an authorized name. It is fairly inferred that Respondent's violations have been ongoing for a period of years.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter pursuant to sections 23050, 23055, and 23058, was established, based on Factual Findings 1 through 6.

2. Respondent has violated provisions of the CDDTL, as follows:

(A) Respondent violated section 23018 by failing to conspicuously post its license in its place of business, based on Factual Finding 5(A);

(B) Respondent violated section 23035, by failing to distribute the mandated notice to consumers prior to entering into an agreement, based on Factual Finding 5(B);

(C) Respondent violated section 23035, subdivision (e)(11), by failing to include disclosure that the licensee can not make a deferred deposit transaction contingent on the purchase of another product or service, based on Factual Finding 5(C);

⁴ See sections 23016 and 23046.

(D) The Respondent violated section 23035, subdivision (e)(9), by failing to include disclosure that the customer can not be prosecuted or threatened with prosecution to collect a deferred deposit transaction in its agreement with a customer, based on Factual Finding 5(D);

(E) Respondent violated sections 23035, subdivision (d), and 23019, by failing to post required notices in the unobstructed view of the public, at its licensed location, based on Factual Finding 5(E);

(F) Respondent violated CCR section 2025, subdivision (c)(1), by failing to keep evidence of the check for closed deferred deposit transactions, based on Factual Findings 5(F);

(G) Respondent violated section 23007 and CCR section 2025, subdivision (b), by failing to maintain records demonstrating minimum net worth of \$25,000, based on Factual Finding 5(G).

3. The Commissioner of Corporations is authorized to assess an administrative fine of up to \$2,500 per citation, pursuant to section 23058, subdivision (a).

4. Notwithstanding the mitigating factors, based on all the citations should be sustained, along with the Desist and Refrain Order.

Discussion and Rationale:⁵

As noted in the Findings, Respondent did not dispute the facts of the violations. The record makes clear that Respondent had failed to comply with various legal obligations, and that it did so for a period of years.

As compared to the income directly derived from the activity, the penalties are substantial, close to one-third of the profit derived by the business since 2005. This is a significant amount, but not such a severe penalty as to shock the conscience. And, it should be noted that the deferred deposit transactions may generate profits in Respondent's other business on the premises; someone obtaining an advance may purchase gasoline, or food, or use the other services there.

As pointed out by Complainant, the maximum penalty was not assessed for every citation, and there were multiple violations of many of the statutes. Even if the failures to

⁵ The section that follows is within the ambit of Government Code section 11425.50, subdivision (d), and meant to provide a discussion of legal issues raised as well as key evidence, and a rationale for the findings, conclusions, and proposed order. So far as stated, it is intended to augment credibility findings. However, the evidence and authorities referenced are not necessarily the only ones relied on in reaching the decision.

comply with the law did not actually harm a consumer, that risk is inherent in the failure to comply. And, the failure to comply with the law may give this licensee a competitive advantage over other licensees. For example, the fact that Respondent did not prepare a quarterly balance sheet may not have caused actual harm to a consumer, but if the Respondent can forego the cost of preparing a quarterly financial statement, then that savings inures to its benefit and gives Respondent an edge over its competitors.

Respondent was placed on notice for a period of months that increased attention to the technical requirements of its business was expected by the Department. It knew for weeks that an examiner was coming. Attention to its obligations might have reduced its exposure; it could have posted the proper notices, had its accountants prepare the balance sheet, and otherwise taken steps to come into compliance after more than two years of prodding by the Department. Such efforts would have reduced Respondent's exposure in this proceeding.

The purpose of proceedings of this type are not to punish a licensee, but to protect the public. (*E.g., Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) Here, where the Department could have brought an action to revoke or suspend Respondent's license for non-compliance (§ 23052), the resort to administrative penalties meets the policy goal of protection by deterring further violations by this licensee, and others.⁶

ORDER

1. Respondent A.L.I., Inc. is hereby ordered to desist and refrain from violating Financial Code sections 23018; 23035, subdivisions (c), (d), (e)(11), and (e)(9); 23019; 23007; and, sections 2025, subdivisions (b) and (c)(1) of title 10 of the California Code of Regulations when it engages in the business of deferred deposit transactions in the State of California in.

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⁶ As stated by the California Supreme Court, "It is equally well accepted that a state may impose reasonable penalties as a means of securing obedience to statutes validly enacted under the police power. . . . Imposition of civil penalties has, increasingly in modern times, become a means by which legislatures implement statutory policy. (*Hale v. Morgan* (1978) 22 Cal.3d 388, 398.)

2. Respondent A.L.I., Inc. is ordered to pay administrative penalties to the California Department of Corporations in the amount of \$13,500. Said penalties are to be paid within 30 days of the effective date of this decision. Failure to comply with this order may expose Respondent to court proceedings pursuant to Financial Code section 23058, subdivision (e), and any other remedies that the Department may have.

October 22, 2007

~~Joseph D. Montoya~~
Administrative Law Judge
Office of Administrative Hearings