

**STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS**

TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS, COMPLIANCE DIVISION)	
Petitioner,)	
v.)	TDFI No. 17-117
)	
MAX C. EVERETT, JR.)	
doing business as)	
FAST CASH PLUS)	
Respondent.)	

EMERGENCY CEASE AND DESIST ORDER

The Commissioner of the Tennessee Department of Financial Institutions (the “Commissioner”), by and through the Compliance Division of the Tennessee Department of Financial Institutions (the “Division” or the “Petitioner”), having determined that Max C. Everett, Jr., doing business as Fast Cash Plus located in Knoxville, Tennessee, and also with a location in Jefferson City, Tennessee (the “Respondent”) has violated and continues to violate the Deferred Presentment Services Act, TENN. CODE ANN. §§ 45-17-101, *et seq.*, and that extraordinary circumstances require immediate action in this matter, hereby issues the following EMERGENCY CEASE AND DESIST ORDER pursuant to TENN. CODE ANN. §§ 45-1-107(a)(4) and (c) and TENN. CODE ANN. § 45-17-116(c).

JURISDICTIONAL AUTHORITY

1. Pursuant to TENN. CODE ANN. § 45-1-104, the Tennessee Department of Financial Institutions (the “Department”) is charged with the execution of all laws relative to persons doing or engaged in a banking or other business as provided in Title 45 (Banks and Financial Institutions) of the Tennessee Code.

2. Pursuant to TENN. CODE ANN. § 45-1-105(b), the Commissioner may appoint an assistant commissioner over the Division to assist with the execution of all laws relative to financial institutions under Title 45.

3. TENN. CODE ANN. § 45-1-107(a)(4) provides that, in addition to other powers conferred by Title 45 of the Tennessee Code, the Commissioner has the power to order any person to cease violating a provision of Title 45 of the Tennessee Code or lawful regulation issued thereunder.

4. Pursuant to TENN. CODE ANN. § 45-1-107(c), notice and opportunity for a hearing shall be provided in advance of the Commissioner issuing such an order, except that in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action but shall promptly afford a subsequent hearing upon the application to rescind the action taken.

5. The Deferred Presentment Services Act provides that “In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any enforcement action authorized by this chapter without providing the opportunity for a prior hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken that is filed with the commissioner within twenty (20) days after receipt of the notice of the commissioner's emergency action.” TENN. CODE ANN. § 45-17-116(c).

6. Respondent is a sole proprietor doing business as a deferred presentment services provider with offices located at 5100 Clinton Highway, Knoxville, Tennessee 37912 (the “Knoxville Office”) and 1409 Russell Avenue, Suite 2, Jefferson City, Tennessee 37760 (the “Jefferson City Office”).

7. These locations are licensed with the Department pursuant to the Deferred Presentment Services Act under license numbers 113844 and 113844-101, respectively.

STATUTORY AUTHORITY

DEFERRED PRESENTMENT SERVICES ACT

8. TENN. CODE ANN. § 45-17-103(a) states that “No person shall engage in the business of deferred presentment services in this state through the use of the Internet, facsimile, telephone, or other means without having first obtained a license.”

9. In order to qualify for a license to provide deferred presentment services, the “business experience, character, and general fitness of the applicant shall reasonably warrant the belief that the applicant’s business will be conducted lawfully and fairly.” TENN. CODE ANN. § 45-17-104(a)(2).

10. The Deferred Presentment Services Act provides that “The requirements set forth in subdivisions (a)(1) and (2) are continuing in nature.” TENN. CODE ANN. § 45-17-104(b).

11. The Deferred Presentment Services Act states that “If, after notice and opportunity for a hearing, the commissioner finds that a person has violated this chapter, or any administrative regulation issued pursuant thereto, the commissioner may: (1) Order the person to cease and desist violating the chapter or any administrative rules issued pursuant thereto; (2) Require the refund of any fees collected by the person in violation of this chapter; and/or (3) Order the person to pay the commissioner a civil monetary penalty of not more than one thousand dollars (\$1,000) for each transaction in violation of this chapter or each day that a violation has occurred and continues.” TENN. CODE ANN. § 45-17-115.

12. As stated above, TENN. CODE ANN. § 45-17-116(c) provides that “In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any enforcement action authorized by this chapter without providing the opportunity for a prior hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken that is filed with the commissioner within twenty (20) days after receipt of the notice of the commissioner's emergency action.”

FACTUAL ALLEGATIONS

13. The factual allegations contained herein are based upon information that the Department has learned from actions taken by and statements of the Respondent and other sources.

14. On June 1, 2017, a Knoxville news reporter contacted and informed the Department that she was “working on a story where Pay Day Express had hundreds of papers thrown across a public roadway. Neighbors say some kids got into a dumpster and threw the papers on the highway.”

15. The Department immediately sent an Examiner to the location, Clinton Highway, to investigate the allegations. Respondent’s Knoxville Office is located on Clinton Highway, across the road from the Payday Loan Express store. It was later determined that none of the papers were from the Payday Loan Express store. Instead, the Examiner found that the documents were from Respondent’s Jefferson City Office.

16. The Examiner talked to the General Manager for Respondent’s Knoxville and Jefferson City Offices. The General Manager told the Examiner that on May 31, 2017, the security camera taped two (2) individuals breaking into the dumpster located behind the store, finding documents, and scattering the documents around the parking lot of the Payday Loan Express store and in the street in front of the business.

17. The General Manager told the Examiner that when she arrived at Respondent's Knoxville Office on June 1, 2017, the documents were collected from the front of the street and around the business and that she put the documents back in the dumpster.

18. On June 2, 2017, the Regulatory Compliance Director spoke to the General Manager. She told him that the men filmed by the security camera threw the papers in the road around midnight on May 31, 2017, and that an acquaintance contacted her the next morning to tell her about the papers on the road. The General Manager said that Respondent's Knoxville Office Manager and his friends picked up the papers by 8:00 a.m. on June 1, 2017. The General Manager told the Regulatory Compliance Director that this was the first time that Respondent had put documents in the dumpster, stating that Respondent usually disposed of paperwork by burning.

19. Later on June 2, 2017, the General Manager provided a statement to the Department. In her statement, the General Manager said that on May 25, 2017, Respondent's Knoxville Office received approximately three (3) to four (4) boxes of paperwork dated between 2009 and 2011 from Respondent's Jefferson City Office. She also said these boxes were sealed and put in a dumpster located in the parking lot behind the Payday Loan Express store across the road from Respondent's Knoxville Office.

20. In her statement, the General Manager said that the security camera video showed "two people breaking into our dumpster and specifically got 2 boxes of paperwork, they proceeded to cut open and dump all around the front of our store."

21. The General Manager said "We immediately recovered this paperwork and disposed of except for a few documents the news people picked up in front of our store."

22. In the morning of June 2, 2017, the Examiner and the Regulatory Compliance Director examined the dumpster located in the parking lot behind the Payday Loan Express store across the road from Respondent's Knoxville Office and found that it still contained documents pertaining to Respondent's customers.

23. The Examiner and the Regulatory Compliance Director stated that the documents they retrieved from the dumpster and reviewed consisted of the following types of documents: copies of checks, customer agreements, receipts for payments on customers' accounts, and a company daily cash report, all dated 2009 from Respondent's Jefferson City Office. The Regulatory Compliance Director stated that the documents were in bad condition, with the majority being very wet, mixed with general trash, and wadded together.

24. The documents recovered by the Department included: nine (9) loans due reports; one hundred fifteen (115) check copies; one hundred thirty (130) payment receipts; and one hundred twenty-eight (128) deferred presentment services agreements. These documents included customers' names, addresses, personal and work telephone numbers, checking account numbers, checking account routing numbers, the last four (4) digits of social security numbers, and Fast Cash Plus account balances and payment information.

25. On June 2, 2017, the Regulatory Compliance Director talked with Respondent's Knoxville Office Manager. The Knoxville Office Manager said that he had worked at Respondent's Jefferson City Office on Friday, May 26, 2017, and that he was told to take four (4) boxes, that he described as the size of a small bankers box or approximately twelve (12) inches by eighteen (18) inches, and put them in the Payday Loan Express store's dumpster. He stated that the boxes were securely taped. He told

the Regulatory Compliance Director that he placed the boxes in the Payday Loan Express store's dumpster on May 26, 2017.

26. On June 2, 2017, the Manager of Respondent's Jefferson City Office said that the Knoxville police called her at 5:48 a.m. on June 1, 2017 to tell her the customer contracts were in the road.

27. On June 2, 2017, the Regulatory Compliance Director spoke to an employee from Respondent's Jefferson City Office who said that he watched the security camera video, telling the Director that the two (2) people were seen on the video between 11:51 p.m. and 11:58 p.m., according to the time stamp. The Jefferson City Office employee told the Director that the video was not clear and all he could see were papers going everywhere.

CAUSE OF ACTION

28. Upon information and belief, by disposing of the sensitive and personal information of Respondent's customers in a dumpster in the parking lot, Respondent failed to take steps to safeguard its customers' information and failed to protect it against the unauthorized access to or use of any such information in connection with its disposal.

29. Upon information and belief, Respondent, from the date the documents were placed in the dumpster on May 26, 2017, exposed the sensitive and personal information of Respondent's customers.

30. Upon information and belief, on June 1, 2017, the sensitive and personal information of Respondent's customers remained on the public highway in front of Respondent's Knoxville Office until the documents were collected and placed back in the dumpster located in the parking lot, where the information continued to be exposed.

31. Upon information and belief, that after the documents were recovered from the public highway on June 1, 2017, they were placed back in the dumpster located in the parking lot, in the documents' original format, without altering the documents to protect the sensitive and personal information of Respondent's customers.

32. Upon information and belief, Respondent's actions as set forth in paragraphs eight (8) through twenty-seven (27) of this ORDER show a failure to have policies and procedures in place for the secure maintenance and destruction of confidential customer information or the failure to follow the policies and procedures that Respondent may have in place, and such failure may be ongoing.

33. Respondent's actions as set forth in paragraphs eight (8) through twenty-seven (27) of this ORDER fail to demonstrate the business experience, character, and general fitness to reasonably warrant the belief that Respondent's business will be conducted lawfully and fairly pursuant to the Deferred Presentment Services Act.

34. Respondent's action as set forth in paragraphs eight (8) through twenty-seven (27) of this ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that Respondent has violated and continues to violate TENN. CODE ANN. § 45-1-107(a)(4), TENN. CODE ANN. § 45-1-107(c), and TENN. CODE ANN. § 45-17-104.

EMERGENCY ORDER

Having considered the statutory authority, the factual allegations, and the cause of action, the Commissioner has determined that Respondent violated and potentially continues to violate the Deferred Presentment Services Act, and that these continuing violations are extraordinary circumstances warranting immediate action:

35. **IT IS THEREFORE ORDERED** that Respondent, and any and all of its officers, directors, managers, employees, independent contractors, agents, successors and/or assigns, shall immediately cease and desist from the disposal or destruction of customer information until such time as Respondent is able to satisfactorily demonstrate to the Commissioner that it is able to dispose of customer information in a secure way and, therefore, has the business experience, character, and general fitness to reasonably warrant the belief that Respondent shall conduct business lawfully and fairly within the purposes of the Deferred Presentment Services Act.

36. **IT IS FURTHER ORDERED** that Respondent shall, not later than the close of business on July 10, 2017 provide to the Department a full accounting of the documents that were disposed of in the dumpster located in the parking lot, its policies and procedures regarding record retention and destruction of customer files, and the steps it has taken to ensure its compliance with these policies and procedures.

37. **IT IS FURTHER ORDERED** that Respondent shall immediately contact the affected customers, notifying them of the breach of confidentiality and, not later than the close of business on July 10, 2027 provide to the Department documentation confirming notification of the affected customers.

38. **NOTHING** in this ORDER shall prevent the Department from taking any administrative action based on the allegations set forth above, including further administrative action, under the authority of the Deferred Presentment Services Act.

39. The provisions of this ORDER shall remain in full force and effect unless and until such time as any provision shall have been modified, terminated, suspended, or set aside by the Commissioner, an administrative judge, or any court having jurisdiction over the matters addressed herein as applicable to Respondent.

RIGHTS OF RESPONDENT

40. Respondent has the right to a hearing for the purpose of contesting and obtaining rescission of this ORDER. If a hearing is timely requested by Respondent, any such hearing shall be pursuant to the Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101, *et seq.*, and TENN. COMP. R. & REGS. 0180-6.

41. In order to request a hearing, Respondent must file a written request within twenty (20) days from receipt of this ORDER. If no such written request is timely filed, then this EMERGENCY CEASE AND DESIST ORDER will be deemed final for all purposes. Any written request for a hearing must be filed with the Commissioner, Tennessee Department of Financial Institutions, Tennessee Tower, 26th Floor, 312 Rosa L. Parks Avenue, Nashville, Tennessee 37243.

ISSUED this 9th day of June, 2017.



Greg Gonzales, Commissioner
Tennessee Department of Financial Institutions

Approved for Entry:

SUBU

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CERTIFICATE OF SERVICE

I hereby certify that on this the 9th day of June, 2017, a true and correct copy of the foregoing "Emergency Cease and Desist Order" has been deposited with the United States Postal Service ("USPS") to be sent *via* USPS certified mail, return receipt requested, to Respondent at 5100 Clinton Highway, Knoxville, Tennessee 37912.



Sarah Branch, BPR No. 041017
Assistant General Counsel
Tennessee Department of Financial Institutions