

IN THE MATTER OF:

Financial Institutions vs. Sharon M. Guthrie d/b/a
Etowah Pawn Shop

APD CASE No. 03.00-150076J

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

Attached is the Administrative Judge's decision in your case before the **Commissioner of the Tennessee Department of Financial Institutions (the Commissioner)**, called an Initial Order, with an entry date of **November 28, 2018**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and sets forth the specific reasons why you think the decision is incorrect. The APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is no later than **December 13, 2018**. A new 15 day period for the filing of an appeal to the Commissioner (as set forth in paragraph (2), below) starts to run from the entry date of an order disposing of a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an appeal. Such an Appeal must be **received** by the APD no later than 15 days after the date of denial of the Petition. See TENN. CODE ANN. § 4-5-317 and § 4-5-322.

2. **A Party Files an Appeal of the Initial Order:** You may appeal the decision to the Commissioner. Mail to the APD a document that includes your name and the above APD case number, and states that you want to appeal the decision to the Commissioner, along with the basis for your appeal. The APD must **receive** your written Appeal no later than 15 days after the entry of the Initial Order, which is no later than **December 13, 2018**. The filing of a Petition for Reconsideration is not required before appealing. See TENN. CODE ANN. § 4-5-317.
3. **The Commissioner of the Tennessee Department of Financial Institutions decides to Review the Initial Order:** In addition, the Commissioner may give written notice of his or her intent to review the Initial Order, within 15 days after the entry of the Initial Order.

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the Commissioner renders a Final Order.

If none of these actions set forth in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order **December 13, 2018**. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

STAY

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for a stay must be **received** by the APD within 7 days of the date of entry of the Initial Order, which is no later than **December 5, 2018**. See TENN. CODE ANN. § 4-5-316.

IN THE MATTER OF:

APD CASE No. 03.00-150076J

Financial Institutions vs. Sharon M. Guthrie d/b/a

Etowah Pawn Shop

NOTICE OF APPEAL PROCEDURES

REVIEW OF A FINAL ORDER

1. **A Party may file a Petition for Reconsideration of the Final Order:** When an Initial Order becomes a Final Order, a party may file a Petition asking for reconsideration of the Final Order. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and sets forth the specific reasons why you think the Final Order is incorrect. If the Initial Order became a Final Order without an Appeal being filed, and without the Commissioner deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the Commissioner rendered a Final Order, the Commissioner will consider the Petition. The APD must receive your written Petition for Reconsideration no later than 15 days after: (a) the issuance of a Final Order by the Commissioner; or (b) the date the Initial Order becomes a Final Order. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing the Final Order will be adjusted. If no action is taken within 20 days of filing of the Petition, it is deemed denied. *See* TENN. CODE ANN. § 4-5-317.
2. **A Party Files an Appeal of the Final Order:** A person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review "in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person's discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County," within 60 days of the date of entry of the Final Order. *See* TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317. A reviewing court also may order a stay of the Final Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-322 and 4-5-317.
3. **A Party may request a stay of the Final Order:** A party may file a Petition asking for a stay that will delay the effectiveness of the Final Order. If the Initial Order became a Final Order without an Appeal being filed, and without the Commissioner deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the Commissioner rendered a Final Order, the Commissioner will consider the Petition. A Petition for a stay of a Final Order must be received by the APD within 7 days after the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-316.

FILING

To file documents with the Administrative Procedures Division, use this address:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, TN 37243-1102
Fax: (615) 741-4472

STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:

TENNESSEE DEPARTMENT OF
FINANCIAL INSTITUTIONS,
COMPLIANCE DIVISION
Petitioner,

DOCKET NO: 03.06-150076J
TDFI No.: 16-023

v.

SHARON M. GUTHRIE, doing business as
ETOWAH PAWN SHOP
Respondent.

NOTICE OF DEFAULT AND INITIAL ORDER

This matter came to be heard on October 18, 2018, in Conference Room I, Tennessee Tower, 3rd Floor, 312 Rosa L. Parks Avenue, Nashville, Tennessee 37243, before Administrative Law Judge Joyce Carter-Ball, assigned by the Administrative Procedures Division of the Tennessee Department of State, and sitting for the Commissioner of the Tennessee Department of Financial Institutions (“Commissioner”) pursuant to Tennessee Code Annotated (“TENN. CODE ANN. §” 4-5-301(d)). The Tennessee Department of Financial Institutions (“Department”) was represented by attorney Sarah Branch. Sharon Guthrie, doing business as Etowah Pawn Shop (“Respondent”), having received due notice of this hearing, failed to appear or to otherwise participate and was not represented by legal counsel.

This matter is a “contested case” governed by the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101, *et seq.* and Chapter 1360-04-01 of the Uniform Rules of Procedure for Hearing Contested Cases before Administrative State Agencies. This matter was initiated by the Department for the purpose of seeking an Initial Order: 1) requiring Respondent to pay refunds to the affected Tennessee consumers, pursuant to TENN. CODE ANN. § 45-17-115(2) of the Deferred Presentment Services Act, TENN. CODE ANN. §§ 45-17-101, *et seq.* (“Deferred Presentment Services Act”); 2) requiring Respondent to pay civil monetary penalties in the amount of seven thousand dollars (\$7,000) to the Commissioner, based upon seven (7) alleged violations multiplied by the statutory maximum civil monetary penalty of one thousand dollars (\$1,000) per violation, pursuant to TENN. CODE

ANN. § 45-17-115(3); 3) requiring Respondent to pay the past due examination fee in the amount of four hundred dollars (\$400), pursuant to TENN. CODE ANN. § 45-17-111(c) of the Deferred Presentment Services Act; 4) taxing the costs of this matter to Ms. Guthrie pursuant to Rule 54 of the Tennessee Rules of Civil Procedure; and 5) granting such other, further, general, or different relief to which the Department may be entitled.

NOTICE OF DEFAULT

1. The record demonstrates that Respondent is an individual doing business in the state of Tennessee at 1102 South Tennessee Avenue, Etowah, Tennessee 37331.
2. The record demonstrates that Respondent does not have a license in the state of Tennessee to provide deferred presentment services.
3. The record demonstrates that counsel for the Department mailed Respondent a true and correct copy of a Notice of Charges and Opportunity for Hearing, via United States Certified Mail Return Receipt Requested, on January 9, 2018. The United States Mail Return Receipt indicates that Respondent received said mailing.
4. The record demonstrates that Respondent contacted the Department via email on January 16, 2018, and that the Department and Respondent remained in contact via email until June 6, 2018.
5. The record demonstrates that a Pre-Hearing Order was entered on July 20, 2018, setting this matter for a hearing on October 18, 2018. The Order was mailed via United States First Class Mail to Respondent.
6. The record demonstrates that counsel for the Department mailed and emailed Respondent a true and correct copy of a Notice of Intent to Introduce Affidavits of Jim Simmons and Christy Beadle-Adams on October 4, 2018.
7. The record demonstrates that Respondent did not respond to the Notice of Intent.
8. The record demonstrates that, after due notice thereof, Respondent failed to appear and failed to otherwise participate at the hearing. The record demonstrates that Respondent was not represented by legal counsel.
9. The record demonstrates that counsel for the Department made an oral motion at the hearing to hold Respondent in default for failing to appear or to participate at the hearing after due notice thereof and to conduct the hearing without the participation of Respondent.
10. The record demonstrates that the Department's motion to hold Respondent in default for failing to appear or to participate at the hearing after due notice was granted, and the hearing was conducted without the

participation of Respondent pursuant to TENN. CODE ANN. § 4-5-309 and TENN. COMP. R. & REGS. Rule 1306-04-01-.15.

11. The record demonstrates that this matter was tried as uncontested as to Respondent pursuant to TENN. COMP. R. & REGS. Rule 1360-04-01-.15(2)(b).

NOTICE IS HEREBY GIVEN TO RESPONDENT THAT RESPONDENT HAS BEEN HELD IN DEFAULT FOR FAILING TO APPEAR OR TO PARTICIPATE AT THE HEARING AFTER RECEIVING DUE NOTICE THEREOF. TENN. CODE ANN. § 4-5-309. RESPONDENT HAS FIFTEEN (15) DAYS FROM THE EFFECTIVE DATE OF THIS ORDER TO REQUEST THAT THIS FINDING OF DEFAULT BE SET ASIDE. THIS REQUEST MUST BE RECEIVED IN THE OFFICE OF THE SECRETARY OF STATE, ADMINISTRATIVE PROCEDURES DIVISION, TENNESSEE TOWER, 8TH FLOOR, 312 ROSA L. PARKS AVENUE, NASHVILLE, TENNESSEE 37243. THE REQUEST TO HAVE THE FINDING OF DEFAULT SET ASIDE SHOULD INCLUDE THE REASONS TO JUSTIFY RESPONDENT'S FAILURE TO APPEAR OR TO PARTICIPATE AT THE HEARING. IF RESPONDENT DOES NOT REQUEST THE DEFAULT TO BE SET ASIDE OR OTHERWISE APPEAL THE ACCOMPANYING INITIAL ORDER, THEN THE INITIAL ORDER SHALL BECOME A FINAL ORDER SUBJECT TO COURT REVIEW.

FINAL ORDER
FINDINGS OF FACT

12. TENN. CODE ANN. § 45-1-104 provides that 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).

13. The Commissioner is responsible for the administration, enforcement, and interpretation of the Deferred Presentment Services Act, and any regulations promulgated pursuant to said Act.

14. The Department is the lawfully designated representative through which the Commissioner regulates any and all persons subject to the Deferred Presentment Services Act.

15. Respondent is an individual who was at all relevant times herein doing business in the state of Tennessee at 1102 South Tennessee Avenue, Etowah, Tennessee 37331.

16. Respondent was at all relevant times herein not licensed to provide deferred presentment services in the state of Tennessee.

17. On or about December 18, 2015, the Department examined Respondent, in response to a complaint received by the Department stating that Respondent was charging high fees for deferred presentment services. The complainant gave the Department copies of two (2) deferred presentment services agreements entered into by Respondent.

18. During the compliance examination, the Department found that Respondent had entered into five

(5) additional deferred presentment services transactions even though Respondent was not licensed by the Department to provide deferred presentment services at the time of the transactions.

19. True and correct copies of these seven (7) deferred presentment services agreements are attached as collective Exhibit I and incorporated by reference as though specifically set forth herein. 20. In each of the seven (7) transactions, Respondent accepted a check from a customer on the date that it was written and held it, as noted on the face of the loan agreement, for a period of time before Respondent contracted to present the check for payment.

21. On or about December 18, 2015, the Respondent acknowledged receipt of the Report of Examination.

22. Respondent was directed to pay refunds to the Tennessee consumers who entered into the seven (7) agreements in Exhibit I.

23. Respondent has not paid the refunds owed to the customers associated with the seven (7) agreements in Exhibit I in the amounts listed in Exhibit I.

24. Respondent was invoiced for the examination fee of four hundred dollars (\$400).

25. Respondent has not paid the examination fee of four hundred dollars (\$400).

26. Respondent was served with a Notice of Charges and Opportunity for Hearing in the above-captioned matter on January 9, 2018.

CONCLUSIONS OF LAW

27. The Deferred Presentment Services Act provides 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. A person shall be deemed to be engaged in the business of deferred presentment services in this state, if the person induces a consumer, while located in this state, to enter into a deferred presentment services transaction in this state." TENN. CODE ANN. § 45-17-103(a).

28. Deferred presentment services means "a transaction pursuant to a written agreement involving the following combination of activities in exchange for a fee: (A) Accepting a check dated on the date it was written; and (B) Holding a check for a period of time prior to presentment for payment or deposit." TENN. CODE ANN. § 45-17-102(3).

29. The factual allegations set forth in paragraphs twelve (12) through twenty-three (23) of this Initial Order, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that Respondent committed seven (7) violations of TENN. CODE ANN. § 45-17-103(a) by providing deferred presentment services in this state without first having obtained a license from the Department to provide such services in Tennessee.

30. Pursuant to TENN. CODE ANN. § 45-17-115, the Commissioner, after notice and opportunity for a hearing, may order a person to cease and desist violating the chapter, require the refund of any fees collected by the person in violation of this chapter, and/or order the person to pay to the commissioner a civil penalty of not more than one thousand dollars (\$1,000) for each transaction in violation of this chapter.

31. TENN. CODE ANN. § 45-17-111(c) provides that "An unlicensed person subject to the licensing requirements of this chapter, that is examined or investigated in accordance with this chapter, shall pay to the commissioner the reasonable and actual expenses of the investigation or examination."

32. The factual allegations as stated in paragraphs twenty-four (24) and twenty-five (25) of this Initial Order, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that Respondent committed one (1) violation of TENN. CODE ANN. § 45-17-111(b) by failing to pay a four hundred (\$400) past due examination fee to the Department.

33. TENN. CODE ANN. § 45-17-115 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 to the commissioner a civil 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."

RELIEF

34. After consideration of the pleadings, argument of counsel, and the record as a whole, it is determined by a preponderance of the evidence that Respondent committed seven (7) violations of TENN. CODE ANN. § 45-17-103(a).

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

- a. That Respondent shall refund fees collected in violation of the Deferred Presentment Services Act;

b. That Respondent shall pay to the Commissioner a total civil monetary penalty not exceeding seven thousand dollars (\$7,000);

c. That Respondent shall pay to the Department the compliance examination fee in the amount of four hundred dollars (\$400); and

d. That Respondent shall pay the costs of this proceeding.

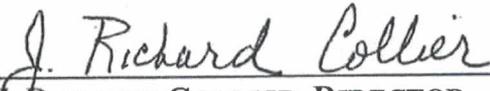
IT IS SO ORDERED.

This INITIAL ORDER entered and effective this the 28th day of NOV. 2018.



Joyce Carter-Ball
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 28th day of NOV. 2018.



J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE