



State of Tennessee

Department of State

Administrative Procedures Division
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April 17, 2020

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312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

Bill Loyd Whidden, III
Formerly doing business as Trey's
Fast Cash
17301 Frank Road
Alva, FL 33920

RE: In the Matter of: Bill Loyd Whidden, III dba Trey's Fast Cash
Docket No. 03.00-151165J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/rer
Enclosure

**STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS**

TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS, COMPLIANCE DIVISION)	
 Petitioner,)	
v.)	APD Docket No. 03.00-151165J
)	TDFI No.: 16-035
BILL LOYD WHIDDEN, III, doing business as TREY’S FAST CASH)	
 Respondent.)	

INITIAL ORDER

This matter came to be heard on February 26, 2020, before Administrative Law Judge Steve R. Darnell assigned to the Administrative Procedures Division of the Tennessee Department of State, and sitting for the Commissioner of the Tennessee Department of Financial Institutions (hereinafter “Commissioner”) pursuant to Tennessee Code Annotated Section (hereinafter “TENN. CODE ANN. §”) 4-5-301(d). The Compliance Division of the Tennessee Department of Financial Institutions (hereinafter “Petitioner” or “Division”) was represented by Sarah Branch, Assistant General Counsel, with the Tennessee Department of Financial Institutions (hereinafter “Department”). Bill Loyd Whidden, III (“Respondent”) appeared pro se.

INITIAL ORDER

This matter is a “contested case” governed by the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-301, *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 Petitioner for the purpose of seeking customer refunds and civil penalties based

on Respondent's unlicensed activity in violation of the Deferred Presentment Services Act, TENN. CODE ANN. §§ 45-17-101, *et seq.* After consideration of the pleadings, argument of counsel and Respondent, and the record as a whole, it is **DETERMINED** that an Initial Order should be entered **GRANTING** the Division's request for customer refunds in the amount of fourteen thousand nine hundred seventeen dollars and sixty cents (\$14,917.60) and civil penalties in the amount of twenty-two thousand one hundred seven dollars and seventy-five cents (\$22,107.75) and taxing the costs of this matter to Respondent pursuant to Rule 54 of the Tennessee Rules of Civil Procedure. This conclusion is based upon the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Division commenced this contested case pursuant to the Deferred Presentment Services Act.
2. The Commissioner is responsible for the administration, enforcement, and interpretation of the Deferred Presentment Services Act and any rules promulgated pursuant to the Deferred Presentment Services Act.
3. The Division is the lawfully designated representative through which the Commissioner regulates any and all persons subject to the Deferred Presentment Services Act.
4. Bill Loyd Whidden, III, is a natural person with a last known address of 17301 Frank Road, Alva, Florida 33920.
5. Bill Whidden, Jr. was originally licensed by the Department to operate under the Deferred Presentment Services Act on March 12, 2007, under license number 114328.
6. In January 2016, the Division received a consumer complaint stating that Mr. Whidden, Jr. had died and Respondent was continuing to operate the business.

7. The Division conducted an examination on January 7, 2016, and determined that Mr. Whidden, Jr. had passed away on May 21, 2015 and Respondent continued to operate the deferred presentment services business after Mr. Whidden, Jr.'s death without obtaining a license authorizing Respondent to provide deferred presentment services.

8. During the January 7, 2016 examination, the Division found that Respondent entered into two hundred fifty-five (255) deferred presentment services transactions without a license during the period between Mr. Whidden, Jr.'s death on May 21, 2015 and the Division's examination on January 7, 2016.

9. The Division requested a response from the Respondent addressing the corrective action taken with regard to the violations cited in the examination within thirty (30) days of the conclusion of the examination.

10. The Division did not receive a response from Respondent.

11. Because no examination response was received, the Division conducted a second examination of Respondent's business on April 22, 2016, and found that Respondent had continued to operate without a license after the January 7, 2016 examination, entering into thirty-five (35) additional deferred presentment services transactions during the period between the Division's January 7, 2016 examination and its April 22, 2016 examination.

12. The Division requested refunds be made to the affected customers arising from the two hundred ninety (290) deferred presentment services transactions entered into by Respondent without a license totaling fourteen thousand nine hundred seventeen dollars and sixty cents (\$14,917.60).

13. No refunds were made to the affected customers as requested by the Division.

CONCLUSIONS OF LAW

14. The Deferred Presentment Services Act states, in pertinent part, that “[n]o 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).

15. TENN. CODE ANN. § 45-17-108(a) provides that “a license issued pursuant to this chapter is not transferable or assignable.”

16. TENN. CODE ANN. § 45-17-115 states that “[i]f, 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.”

17. Respondent, without obtaining a license, continued to operate the deferred presentment services business after Mr. Whidden, Jr.’s death on May 21, 2015, and it is undisputed that Respondent entered into at least two hundred ninety (290) deferred presentment services transactions while unlicensed in violation of TENN. CODE ANN. § 45-17-103(a).

18. The Division has shown, by a preponderance of the evidence, that Respondent violated the Deferred Presentment Services Act.

19. Pursuant to TENN. CODE ANN. § 45-17-115(2), refunds should be made to affected customers for fees collected by the Respondent while unlicensed, and the Division has shown that refunds in the amount of fourteen thousand nine hundred seventeen dollars and sixty cents (\$14,917.60) are appropriate.

20. With regard to civil penalties that may be ordered pursuant to TENN. CODE ANN. § 45-17-115(3), no criteria are found in the Deferred Presentment Services Act informing the Division how to determine the proper civil penalty to be levied. The Tennessee Court of Appeals has cited the following language concerning administrative penalties with approval:

The applicable standard of judicial review in such cases required review of the [agency's] order according to the "fundamental principle ... that where [the legislature] has entrusted an administrative agency with the responsibility of selecting the means of achieving the statutory policy 'the relation of remedy to policy is peculiarly a matter for administrative competence.'" *American Power Co. v. SEC*, 329 U.S. 90, 112 (1946). Thus, the [agency's] choice of sanction was not to be overturned unless the [Court] might find it "unwarranted in law or ... without justification in fact..." *Id.*, at 112-113. *Mosley v. Tennessee Dept. of Commerce and Ins.*, 167 S.W.3d 308, 319-320 (Tenn. Ct. App. 2004).

22. Both Article I, § 16 of the Tennessee Constitution and the Eighth Amendment to the United States Constitution prohibit the government from imposing excessive fines. The Tennessee Supreme Court has determined that Tennessee's Constitutional provision is coextensive with its federal counterpart. *State v. Harris*, 844 S.W.2d 601, 603 (Tenn. 1992); *State v. Black*, 815 S.W.2d 166, 188-189 (Tenn. 1991). "[S]o long as the sanctions imposed by an agency are within the scope of its statutory authority, the reviewing court should not substitute its judgment for that of the agency, unless the penalty is so clearly disproportionate to the offense and completely inequitable in light of the surrounding circumstances as to be shocking to the conscience of the Court." *Overton v. Bd. of Examiner in Psychology*, 1996 WL 656104, at 2

(Tenn. Ct. App. 1996)(quoting 73A Corpus Juris Secundum, Public Administrative Law and Procedure § 223 (1983)).

23. The Division requests that Respondent be assessed civil penalties in the total amount of twenty-two thousand one hundred seven dollars and seventy-five cents (\$22,107.75), which they have calculated in two (2) stages. First, the Division requests civil penalties in an amount equal to the fees charged by Respondent to customers during the period of unlicensed activity from the time of Mr. Whidden, Jr.'s death on May 21, 2015 until the time of the January 7, 2016 examination. The Division determined that Respondent entered into two hundred fifty-five (255) transactions during this period of unlicensed activity, collecting fees in the amount of thirteen thousand, three hundred fifty-seven dollars and seventy-five cents (\$13,357.75). Second, the Division requests a heightened penalty of two hundred fifty dollars (\$250) per violation for the thirty-five (35) transactions documented in the April 22, 2016 examination, or eight thousand seven hundred fifty dollars (\$8,750), because Respondent continued the unlicensed conduct after being notified during the January 7, 2016 examination that he was operating without a license in direct violation of the Deferred Presentment Services Act. Therefore, the Division requests that Respondent be assessed a total civil penalty in the amount of twenty-two thousand one hundred seven dollars and seventy-five cents (\$22,107.75), which is, considering the circumstances, reasonable, appropriate, and within the Division's statutory authority.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

a. That Respondent shall refund to the affected customers the fees collected in violation of the Deferred Presentment Services Act in the amount of fourteen thousand nine hundred seventeen dollars and sixty cents (\$14,917.60);

b. That Respondent shall pay to the Commissioner a total civil penalty in the amount of twenty-two thousand one hundred seven dollars and seventy-five cents (\$22,107.75); and

c. Respondent shall pay the costs of this proceeding.

IT IS SO ORDERED.

This Initial Order entered and effective this 16th day of April 2020.



Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 16th day of April 2020.



STEPHANIE SHACKELFORD, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

EXTENSION OF NOTICE OF APPEAL DEADLINES

You have certain appeal rights if you disagree with the Administrative Judge's decision. The deadlines for those appeal rights are usually listed in the automatically generated Notice of Appeal Procedures, which is included in this Order packet. However, due to the COVID-19 pandemic, the Tennessee Supreme Court has ordered that any such deadlines that fall between March 13, 2020, through May 5, 2020, are extended to May 6, 2020. Therefore, the due dates falling between March 13, 2020, and May 5, 2020, for this case, identified in the Notice of Appeal Procedures, are extended to May 6, 2020. The Administrative Procedures Division has already announced this extension of appeal rights to the state agency involved in this case but is hereby making all parties to this case aware of this extension.

FILING

Until further notice, filings should be made by email, to APD.Filings@tn.gov, or by facsimile, to 615-741-4472. Paper filings should only be made by mail or in-person if a litigant has no access to either email or facsimile. Only one filing method should be used.

IN THE MATTER OF:

APD CASE No. 03.00-151165J

Tennessee Department of Financial
Institutions, Compliance Division v. Bill Lloyd
Whidden, III, DBA Trey's Fast Cash

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

Attached is the Administrative Judge's decision in your case before the Tennessee Department of Financial Institutions, Compliance Division, called an Initial Order, with an entry date of **April 17, 2020**. 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 states 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 **May 2, 2020**. A new 15 day period for the filing of an appeal to the Tennessee Department of Financial Institutions, Compliance Division (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 Tennessee Department of Financial Institutions, Compliance Division. 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 Tennessee Department of Financial Institutions, Compliance Division, along with the specific reasons 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 **May 2, 2020**. The filing of a Petition for Reconsideration is not required before appealing. See TENN. CODE ANN. § 4-5-317.
3. **The Tennessee Department of Financial Institutions, Compliance Division decides to Review the Initial Order:** In addition to a party filing an appeal of the Initial Order, the Tennessee Department of Financial Institutions, Compliance Division may, on its own motion, review 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 Tennessee Department of Financial Institutions, Compliance Division renders a Final Order.

If none of the actions in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order on **May 3, 2020**. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

IN THE MATTER OF:

APD CASE No. 03.00-151165J

Tennessee Department of Financial
Institutions, Compliance Division v. Bill Lloyd
Whidden, III, DBA Trev's Fast Cash

NOTICE OF APPEAL PROCEDURES

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 **April 24, 2020**. See TENN. CODE ANN. § 4-5-316.

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 states 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 Agency deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the Tennessee Department of Financial Institutions, Compliance Division rendered a Final Order, the Tennessee Department of Financial Institutions, Compliance Division 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 Tennessee Department of Financial Institutions, Compliance Division; 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 Agency deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the Tennessee Department of Financial Institutions, Compliance Division rendered a Final Order, the Tennessee Department of Financial Institutions, Compliance Division 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.

IN THE MATTER OF:

APD CASE No. 03.00-151165J

Tennessee Department of Financial
Institutions, Compliance Division v. Bill Lloyd
Whidden, III, DBA Trey's Fast Cash

NOTICE OF APPEAL PROCEDURES

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