

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2017-AH-00022

ENTERED
JUL 19 2017
DAVID AEE
COMMISSIONERS OFFICE

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

FAST PAYDAY LOANS OF KENTUCKY, LLC

RESPONDENT

AGREED ORDER

* * * * *

1. The Department of Financial Institutions ("DFI") is responsible for regulating and licensing entities engaged in the business of cashing checks and accepting deferred deposit transactions in accordance with the provisions set forth in KRS Chapter 286.9.

2. Fast Payday Loans of Kentucky, LLC ("Respondent") is authorized to do business in Kentucky as a deferred deposit and check cashing licensee pursuant to KRS Chapter 286.9. The principal corporate office is located in Atlanta, Georgia.

3. Respondent has eleven licensed branches located in the Commonwealth of Kentucky. The license number and address of each branch is as follows:

- #CC14380 2501 Madison Road, Covington, KY 41014
- #CC14381 2290 Alexandria Pike, Southgate, KY 41071
- #CC14383 1230 Highway 127, Suite #1, Frankfort, KY 40601
- #CC14384 503 North Main Street, Nicholasville, KY 40356
- #CC15750 1309 South Green Street, Henderson, KY 42420
- #CC15751 2605 US Highway 60 East, Owensboro, KY 42303
- #CC16106 727 South Main Street, Madisonville, KY 42431
- #CC16107 407 W. Dixie Avenue, Elizabethtown, KY 42701

- #CC16516 8312 Preston Highway, Louisville, KY 40219
- #CC16517 10303 Dixie Highway, Louisville, KY 40272
- #CC16816 553 US 31 West Bypass, Bowling Green, KY 42101

4. On November 15, 2016, DFI conducted a routine examination of the office located at 503 North Main Street, Nicholasville, KY 43056 (License # CC14384). During the examination, DFI discovered the existence of redemption practices being used by Respondent for deferred deposit transactions that DFI alleges did not conform to statutory requirements. Respondent has subsequently acknowledged the existence of the following redemption and debit card payment processes at all of its eleven (11) branches in Kentucky:

- a. Respondent accepted debit cards without procuring personal identification numbers as redemption payments for deferred deposit loans by either telephone call from the customer to a licensed location or in-person at each of the eleven (11) licensed branches in Kentucky.
- b. Respondent completed and closed deferred deposit transactions by telephone call from the customer to a licensed branch or in person at each of the eleven (11) licensed branches in Kentucky upon accepting redemption payment by debit card without procuring personal identification numbers.

5. KRS 286.9-010(6) provides: "Closed" or "close" means that one (1) of the following has occurred in connection with a deferred deposit service transaction concerning the customer's payment instrument:

- a. The payment instrument is redeemed by the customer by payment to the licensee of the face amount of the payment instrument in cash;
 - b. The payment instrument is exchanged by the licensee for a cashier's check or cash from the customer's financial institution;
 - c. The payment instrument is deposited by the licensee, and the licensee has evidence that the person has satisfied the obligation;
 - d. The payment instrument is collected by the licensee or its agent through any civil remedy available under the laws of this state; or
 - e. Any other reason that the commissioner may deem to be proper under this subtitle;
6. 808 KAR 9:010, Section 1 provides: The following shall be additional definitions of "closed" or "close" under KRS 286.9-010(6)(e):
- a. The customer's payment instrument was unpaid and the licensee has sold the underlying debt to a non-affiliated third party without recourse;
 - b. The underlying debt represented by the customer's payment instrument has been discharged in bankruptcy;
 - c. The database provider has designated the deferred deposit transaction concerning the customer's payment instrument as closed pursuant to KRS 286.9-140(7); or
 - d. The licensee has reported to the database provider that the deferred deposit transaction concerning the customer's payment

instrument is closed following being held open pursuant to KRS 286.9-140(7).

7. KRS 286.9-100(7) provides, "No licensee shall engage in unfair or deceptive acts, practices, or advertising in the conduct of the licensed business."

8. KRS 286.9-140(1) provides, in part:

...A deferred deposit service business licensee shall accurately and promptly submit such data before entering into each deferred deposit transaction in such format as the commissioner may require by rule or order, including the customer's name, Social Security number or employment authorization alien number, address driver's license number amount of the transaction, date of the transaction, date that the completed transaction is closed, and any additional information required by the commissioner.

9. On July 7, 2015, DFI issued a memorandum to all licensed deferred deposit entities ("July 7th Debit Pin Memorandum"), including Respondent. The title of the memorandum was "Debit Card Transaction as a Redemption Method for a Payment Instrument." In the memorandum, DFI stated that "pinned debit card transactions constitute "cash" for purposes of KRS 286.9-010(6)."

10. The July 7th Debit Pin Memorandum adds that a "deferred deposit entity must provide proof on request of the [DFI] that any redemptions by debit card were debit rather than credit."

11. DFI has alleged Respondent violated certain provisions of KRS Chapter 286.9 and 808 KAR 9, including KRS 286.9-010, 808 KAR 9:010, Section 1, KRS 286.9-

100(7) and KRS 288.9-140(1) and failed to follow the requirements of the July 7th Debit Pin Memorandum.

12. Respondent acknowledged receipt of and knowledge of the July 7th Debit Pin Memorandum. Respondent acknowledged and understands the requirements of KRS Chapter 286.9 and 808 KAR 9, including the specific requirement for closing a deferred deposit transaction, the definitions and procedures for "closed" and "close," as enumerated in KRS 286.9-010 and 808 KAR 9:010, Section 1. Respondent acknowledged the specific prohibition against the use of unfair or deceptive acts, practices, or advertising in the conduct of its licensed businesses, as enumerated in KRS 286.9-100(7).

13. In response to DFI's allegations, Respondent provided what they contend were statutory and common law justifications for their actions. Respondent provided two memoranda from its transaction processor supporting Respondent's contention that it never accepted credit cards and that the payments it processed were debit card transactions.

14. In the interest of economically and efficiently resolving the violations described herein, and without Respondent admitting or denying the statements of fact and legal conclusions, herein, DFI and Respondent agree as follows:

- a. Respondent will discontinue its current practice of accepting and processing debit card payments as a method of redeeming and closing outstanding deferred deposit loans at all of its Kentucky branches;

- b. Respondent shall notify DFI prior to re-instituting a debit card operation and using a new card payment channel at any of its Kentucky branches, as discussed further in this Agreed Order;
- c. Respondent will allow deferred deposit customers to redeem and close outstanding loans with currency for a payment instrument at all of its Kentucky branches. Until such a time as Respondent reinstates a new debit card program, the permitted forms of redemption accepted by Respondent shall be by cash, check, draft, money order, personal money order, travelers' check or other demand instruments, except for debit or credit cards. Respondent shall notify DFI prior to re-instituting the operation and use of a new card payment channel (for debit cards with the provision of personal identification numbers, only) at any of its Kentucky branches, as discussed further in this Agreed Order;
- d. Respondent will remove the current card payment channels from all of its Kentucky branches. Until a new debit card program is initiated, Deferred Deposit customers will not be able to redeem or close out outstanding loans by payment with a debit card, either in person or by telephone, at any of its Kentucky branches; and
- e. Respondent shall devote the time and resources necessary to ensure continual and full compliance with all statutory requirements set forth in KRS Chapter 286.9.

15. DFI possesses a range of administrative authority in addressing statutory and regulatory violations, including license revocation or denial, suspension or the imposition of civil penalties. See KRS 286.110 and KRS 286.9-991.

16. In this case, DFI acknowledges Respondent will:

- a. Terminate the use of its current card payment channels at all of its Kentucky branches, as of the date of the full execution of this Agreed Order; and
- b. Not accept any card payment, either in person or by telephone, as a means of redemption for outstanding deferred deposit loans by customers as of the date of the full execution of this Agreed Order.

17. Respondent agrees to notify DFI, in writing, at least seven (7) calendar days prior to the implementation, operation, and use of a new card payment channel at a specific Kentucky branch (or all branches, if applicable), and such card payment channels will:

- a. Only allow Respondent to accept debit card payments with a personal identification number;
- b. Prohibit the use of any credit card;
- c. Only create and issue receipts for debit card payments with a personal identification number wherein payment by debit card is clearly and conspicuously identified on the receipt; and
- d. If and when Respondent institutes a new card payment channel allowing the payment of deferred deposit loans by telephone, such card payment channel shall be automated, shall only allow debit card payments to be

redeemed if a personal identification number is provided with the automated transaction. Upon completion and closure of the deferred deposit transaction, Respondent agrees to mail or otherwise provide the original check provided by the customer at the initiation of the loan, clearly marked as "Paid," back to the customer. Mailed checks will be sent to the address on file in the customer's account records.

18. Respondent waives its right to demand a hearing at which it would be entitled to legal representation, to confront and cross-examine witnesses, and to present evidence on its own behalf, or to otherwise appeal or set aside this Order.

19. Respondent consents to and acknowledges the jurisdiction of DFI over this matter and that this Agreed Order is a matter of public record and may be disseminated as such.

20. In consideration of the execution of this Agreed Order, Respondent for itself, and for its successors and assigns, hereby releases and forever discharges the Commonwealth of Kentucky, DFI, Office of Legal Services, and each of their members, agents, and employees in their individual capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have or claim to have against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, this disciplinary action, this settlement or its administration.

21. By signing below, the parties acknowledge they have read the foregoing Agreed Order, know and fully understand its contents, and that they are authorized to

enter into and execute this Agreed Order and legally bind their respective parties. Pursuant to its authority under KRS Chapter 286.9, DFI reserves the right and ability to assess a civil penalty and other administrative remedies against Respondent should it determine Respondent has failed to follow any portion of this agreed order. Respondent would then be entitled to demand a hearing at which it would have the right to legal representation, to confront and cross-examine witnesses, and to present evidence on its own behalf, or to otherwise appeal or set aside any future civil penalty or other administrative remedy.

11. This Agreed Order shall constitute the Final Order in this matter.

IT IS SO ORDERED on this the 18th day of July, 2017.



CHARLES A. VICE
COMMISSIONER

Consented to:

This 14th day of July, 2017.

This 29th day of June, 2017.

Sammy R. Scruggs
Authorized Representative
Division of Non-Depository Institutions
Department of Financial Institutions

[Signature]
Authorized Representative
Fast Payday Loans of Kentucky, LLC

ACKNOWLEDGEMENT

STATE OF Georgia)
)
COUNTY OF Fulton)

On this the 29th day of June, 2017, before me Jennifer R. Pope, the undersigned, Robert Reich, did personally appear and acknowledge himself/herself to be the authorized representative of Fast Payday Loans of Kentucky, LLC. and that he/she, being authorized to do so, entered into and executed the foregoing instrument for the purposes therein contained.

In witness whereof I hereunto set my hand.

My Commission Expires: May 28, 2021

[Signature]
Notary Public



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Agreed Order** was sent on this the 19
day of July, 2017, by certified mail, return receipt requested, to:

Mr. David Gordon
Fast Payday Loans of Kentucky, LLC
8601 Dunwoody Place, Suite 406
Atlanta, GA 30350

And by Hand-Delivery to:

Hon. Kathryn Adams Cornett
1025 Capital Center Drive, Suite 200
Frankfort, KY 40601
Counsel for Department of Financial Institutions



Name: Allison Evans

Title: Executive Staff Advisor