

COMMONWEALTH OF KENTUCKY
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
OFFICE OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2007-AH-489

OFFICE OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

AGREED ORDER TO CEASE AND DESIST

JIM COOPER

RESPONDENT

** ** * ** * ** *

FINDINGS OF FACT

1. On April 19, 2007, the Office of Financial Institutions (“OFI”) received a consumer complaint from Melissa Clark (“Clark”), a former employee of Sky Waffles, Inc., d/b/a Waffle House. Sky Waffles, Inc. is owned and managed by Jim Cooper (“Cooper”) and controls four business locations in the Central Kentucky area.
2. Clark complained that Cooper was making loans to his employees and charging a \$10.00 per week late fee plus a \$5.00 per day late fee when the loan was not repaid on time. Clark stated that the employee was required to sign a loan contract or agreement. The loan contract specified the terms of the loan and the repayment period. The loan contract further specified an annual percentage rate of over 400%. If the employee failed to pay over a period of time, Cooper would file a complaint with the court.
3. The records of the Shelby District Court, Small Claims Division, located in Shelbyville, Kentucky, reveal that Cooper filed suit on three loan contracts against his employees and received a judgment in each case (Case No. 05-S-0002), (Case No. 04-S-00173) and (Case No. 04-S-00172) [Collectively Exhibit 1]. The complaints included the loan contracts. The loan contracts that were filed with the court state specifically that:

“[t]his is a promissory note between Jim Cooper and (employee). This contract was entered into on the date of _____. This is a courtesy between Jim Cooper and Sky Waffles L.L.C. employees only. When your employment stops for any reason the loan must be paid in full.”

The loan contract further states:

“[t]he total loan including weekly fee will be paid over a period of up to 4 weeks. Each week the loan remains outstanding an additional fee of \$10 will accrue until said loan is paid in full.”

Continuing, the loan contract states:

“These payments are due each Sunday by 4PM to Jim Cooper or any of my Waffle House MGT. Any payment made after this time will incur a \$5 late fee per day as well as the loan being “Called”.”

Finally, the loan contract states:

“Your signature below constitutes a binding agreement. You also authorize Jim Cooper to immediately attach a lien to any earnings due. You also agree to pay any and all court costs (including lawyer and other legal fees) that might be incurred in the collection of this loan.”

The effect of a \$200.00 loan that was made to one employee on October 13, 2004 that failed to repay Cooper resulted in a \$420.00 judgment against the employee on January 4, 2005 [Case no. 05-S-00002].

4. The loan program was in effect for approximately 2+ years and Cooper kept extensive records. Numerous employees signed loan contracts and participated in the program.
5. KRS 286.4-420 states that no person shall engage in the business of making loans in the amount or of the value of fifteen thousand dollars (\$15,000) or less at a greater rate of interest, or consideration thereof than otherwise permitted by law without first obtaining a license from the executive director.
6. KRS 286.4-615(1) states that any loan in the amount of fifteen thousand dollars

(\$15,000) for which there has been charged, contracted for or received a greater rate of interest, discount or consideration, except as provided for by statute, is against public policy of this state.

7. KRS 286.4-991 states in part that any loan contract made in violation of this subtitle shall be void and the lender shall have no right to collect any principal, charges or recompense whatsoever.

CONCLUSIONS OF LAW

1. Cooper is in violation of KRS 286.4-420 by improperly engaging in the business of making consumer loans in the amount of less than \$15,000, by providing a small loan program to his employees of Sky Waffles, Inc., without first being licensed.

2. Cooper is in violation of KRS 286.4-615(1) by improperly charging a greater rate of interest that is allowed by statute and said interest rate charged is against the public policy of this state.

3. Any loan contract made by Cooper and his employees of Sky Waffles, Inc., past or present, is in violation of KRS 286.4-991 and is void.

AGREEMENT

1. Cooper agrees to **CEASE AND DESIST** from making any further loans without first being licensed by the executive director, as required by KRS 286.4-420.

2. Cooper agrees to **CEASE AND DESIST** forthwith the loan program that he has offered to his employees of Sky Waffles, Inc., which interest rate is in violation of KRS 286.4-615(1).

3. Cooper agrees that any loan contract that is outstanding is void and that he shall not collect any principal, charges or recompense whatsoever, as required by KRS 286.4-991(1). Cooper agrees to take no further steps to collect on any outstanding indebtedness.

4. Cooper agrees that any judgment that he has received against any person wherein the basis of the complaint is the failure to pay on the loan contract that is the subject of the complaint, shall be forthwith set aside by Cooper and dismissed with prejudice.

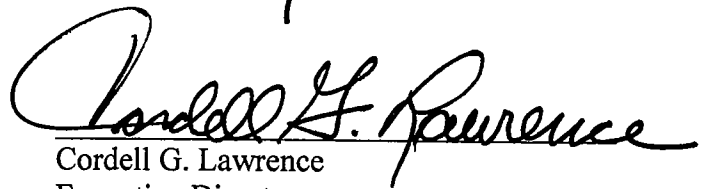
Cooper agrees to take no further steps to collect on the outstanding indebtedness.

5. Cooper shall provide to the executive director proof of compliance with this agreement within forty-five (45) days of its execution and entry into the administrative record of the OFI.

6. Cooper agrees to provide a copy of all records that are associated with the loan program to the executive at the time of the execution of the agreement.

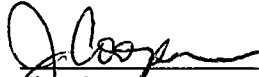
7. In regard to this matter, Cooper does not admit or deny the allegations in this agreement. Cooper agrees to waive its right to a demand hearing, where it would be entitled to legal representation, to confront and cross-examine witnesses for the OFI, and to present evidence on its own behalf. Further, Cooper agrees to and acknowledges the jurisdiction of the OFI over this matter and understands that this agreement is a matter of public record and may be disseminated as such.

IT IS SO ORDERED on this the 26 day of July, 2007


Cordell G. Lawrence
Executive Director

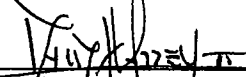
Consent to:

This the 23 day of July, 2007



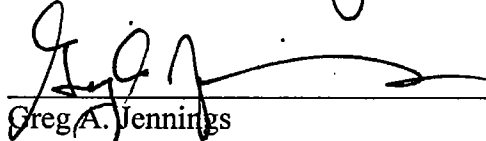
Jim Cooper
Sky Waffles, Inc.

This the 23 day of July, 2007



David H. Abney, II
Counsel for Cooper

This the 25th day of July, 2007



Greg A. Jennings
General Counsel
Counsel for the OFI