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COMMISSIONERS OFFICE

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2020-AH-0018

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

AGREED ORDER FOR SETTLEMENT
R&R CASH EXPRESS, LLC

MAXON, INC. d/b/a LAKEWOOD CASH EXPRESS
and R & R CASH EXPRESS, LLC

RESPONDENTS

* * * * *

PARTIES

1. DFI is responsible for regulating and licensing deferred deposit licensees in accordance with the provisions of KRS 286.9 (the "Act") and the regulations promulgated pursuant thereto.

2. Respondent Maxon, Inc. ("Maxon"), d/b/a Lakewood Cash Express ("Lakewood"), is a Kentucky corporation with a principle business office location of 192 Steve Drive, Russell Springs, Kentucky 42642. Matt Gosser ("Gosser") is the owner of record and registered agent for Maxon. DFI issued Maxon a deferred deposit license, license number CC14639, to operate a deferred deposit transaction business with an operating location of 192 Steve Drive, Russell Springs, Kentucky 42642.

3. Respondent R & R Cash Express, LLC ("R & R") is a Kentucky corporation with a principle business office location of 616 Main Street, Russell Springs, Kentucky 42642. Kenvie Reese and Shane Richardson are the owners of record and registered agents for R & R Cash Express, LLC.

STATEMENTS OF FACT

4. On September 25, 2019, DFI conducted an examination of Respondents' Russell Springs business, referenced herein, pursuant to the Act. During the course of its examination, DFI discovered that on or about April 29, 2019, Respondent Gosser sold the Lakewood Cash Advance business to R & R without informing DFI or filing for a change of control authorization for the license. R & R employees then engaged in offering deferred deposit transactions with customers after the sale of the business without a license or authorization from the Commissioner of DFI.

5. Gosser, owner of Lakewood, entered into negotiations with Mr. Kenvie Reese and Mr. Shane Richardson to purchase his deferred deposit business during the spring of 2019. In preparation for the sale, Mr. Reese and Mr. Richardson filed articles of organization with the Kentucky Secretary of State on April 1, 2019 for R & R Cash Express, LLC.

6. On April 29, 2019, Gosser provided Mr. Reese and Mr. Richardson log in credentials and access to the deferred deposit licensee account database, known as the Veritec database ("Veritec"), and allowed them to conduct deferred deposit transactions under the Lakewood business name and address. Proceeds of the loans entered into by Mr. Reese and Mr. Richardson under the Lakewood name were deposited into the bank account of R & R.

7. A purchase agreement for the deferred deposit business was signed by the parties on May 1, 2019. Mr. Reese and Mr. Richardson, doing business as R & R, then relocated all business records and files to their store on Main Street in Russell Springs, Kentucky. The Respondents failed to notify DFI of the requested change of control within 15 days and failed to notify DFI of a change of address for the business.

8. R & R began operating the business from the new location on or about April 29, 2019 without obtaining a Kentucky deferred deposit license or receiving approval by the

commissioner for a change of control. Despite the official change in ownership, Gosser filed an Annual Renewal Application for the Lakewood deferred deposit license and paid the required renewal fee on or about June 24, 2019 on R & R's behalf. The renewal application did not include an updated address for the business or information concerning the new ownership.

9. On or about July 22, 2019, R & R filed a Change of Control Application with DFI. DFI reviewed the application and contacted R & R regarding deficiencies. The deficiencies included failing to provide an audited financial statement and proof of a surety bond. R & R provided the required audited financial statement several months later on January 17, 2020. Due to this delay, the application for Change of Control was deemed incomplete and abandoned.

10. As stated above, DFI conducted a routine, annual examination of Lakewood at 192 Steve Drive, Russell Springs, Kentucky on September 25, 2019. During the examination, DFI discovered Gosser had completed the sale of the Lakewood deferred deposit company to R & R, and the business had been relocated without prior approval of the commissioner.

11. As a result of this examination, DFI determined R & R conducted deferred deposit transactions from the new Main Street, Russell Springs, Kentucky location using the former Lakewood name and address. Furthermore, DFI determined, from April 29, 2019 to September 25, 2019, R & R entered into seventy-seven (77) unlicensed loan transactions. Contracts executed by R & R customers continued to use the Lakewood company name and former address on Steve Drive, Russell Springs, Kentucky. All customer checks related to these transactions were written to Lakewood, but deposited into the bank account of R & R.

12. A deferred deposit license is granted by DFI to an applicant after the potential licensee submits a specific deferred deposit application and the Commissioner for the Department of Financial Institutions approves the application. Currently there is a moratorium on the issuance

of new deferred deposit licenses; therefore, a new licensee must obtain a license through the transfer of control of an existing license. See KRS 286.9-040, -050,-060 and -070 and 808 KAR 9:050 Sect. 8.

13. Per KRS 286.9-140, a deferred deposit licensee is required to enter specific personal identifying information into the Veritec¹ database, in order to facilitate deferred deposit loan transactions. A deferred deposit licensee is provided designated, licensee specific log-in credentials in order to access the database and record transaction information for all deferred deposit transactions for the licensed entity. Access to this system is prohibited to unlicensed entities.

STATUTORY AUTHORITY

14. KRS 286.9-010 defines the following terms:

(8) “Control” means:

(a) “Ownership of, or the power to vote, directly or indirectly, twenty-five percent (25%) or more of a class of voting securities or voting interests of a licensee or applicant, or the person in control of a licensee or applicant;

(b) The power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority over a licensee or applicant, or the person in control of a licensee or applicant, or the person in control of a licensee or applicant; or

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or applicant, or the person in control of a licensee or applicant...

(13) “Deferred deposit service business” means a person who engages in deferred deposit transactions;

¹ Veritec is the third party database provider that develops, maintains and operates the database on behalf of DFI. Veritec works with DFI to provide information related to the business activities and transactions of all DFI deferred deposit licensees. DFI uses the database to facilitate regulatory oversight of the deferred deposit industry in Kentucky.

(14) “Deferred deposit transaction” or “deferred presentment service transaction” means, for consideration, accepting a payment instrument, and holding the payment instrument for a period of time prior to deposit or presentment in accordance with an agreement with or any representation made to the customer whether express or implied;...

(18) “Licensee” means a person duly licensed by the commissioner under this subtitle to conduct check cashing or deferred deposit service business in the Commonwealth;

15. KRS 286.9-020 states, in relevant part: “Except as provided in KRS 286.9-030, no person shall engage in the business of cashing checks or accepting deferred deposit transactions for a fee or other consideration without having first obtained a license. A separate license shall be required for each location from which the business of cashing checks or accepting deferred deposit transactions is conducted...”

16. KRS 286.9-035 states:

(1) “Any deferred deposit transaction agreement made with a person who is not licensed under this subtitle shall be void, and the person shall not collect any principal, fee, interest, charges, or recompense whatsoever.

(2) “The commissioner may void a deferred deposit transaction agreement when it is determined by the commissioner that the licensee has violated any provision of this subtitle. The licensee shall be allowed to recover from the customer any principal paid by the licensee to the customer, but the licensee shall not recover any service fee or other charge related to the deferred deposit transaction.

(3) “For the purposes of this section, “payment instrument” also includes debit authorization, electronic funds transfer, and any other form of electronic transmission of money.”

17. KRS 286.9-060 states, “Each application from a license shall be accompanied by:

(1) “An investigation fee of five hundred dollars (\$500) for Kentucky residents and five hundred dollars (\$500) for nonresidents of Kentucky for each location which shall not be subject to refund

but which, if the license is granted, shall constitute the license fee for the first license year or part thereof;

(2) "Audited financial statements prescribed by the commissioner; and

(3) "Evidence that the applicant has complied or will comply with all workers', and unemployment compensation laws of Kentucky."

18. KRS 286.9-070 states, in relevant part:

(3) "A license issued under this section shall remain in force and effect through the remainder of the fiscal year ended June 30 following its date of issuance, unless surrendered, suspended, or revoked under this subtitle. A license issued under this subtitle shall expire by June 30 following the date of its issuance unless renewed by the filing of a completed renewal application and payment of the required fees with the commissioner.

(4) "A licensee shall notify the commission in writing at least fifteen (15) business days before any change in the licensee's business location or name.

(5) "A licensee shall file a written request for a change of control of that licensee with the commissioner at least fifteen (15) business days prior to any change of control of the licensee. The commissioner may require additional information considered necessary to determine whether a new application for a license is required. The person who requests the approval for a change of control shall pay the cost incurred by the commissioner in investigating the change of control request.

(7) "The commissioner may deem an application or renewal application abandoned when the application received is incomplete and the applicant fails to provide any required information or fee under this subtitle or fails to respond to a request by the commissioner for further information."

19. KRS 286.9-100 states, in relevant part:

(2) "Before a licensee shall deposit with any bank or other depository institution a check cashed by the licensee, the check shall

be endorsed with the actual name under which the licensee is doing business...

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

20. KRS 296.9-102 states, in relevant part:

(4) "Any personal check accepted from a customer must be payable to the licensee.

(5) "Before a licensee shall present for payment or deposit a check accepted by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business."

21. KRS 286.9-110 states, in relevant part;

(1) "The commissioner may suspend, revoke, place on probation, condition, restrict, refuse to issue or renew a license, accept the surrender of a license in lieu of revocation or suspension, order that refunds to customers be made, or issue a cease-and-desist order, if the commissioner finds that the person, licensee, or a person in control of a licensee:

(b) "Does not meet, has failed to comply with, or has violated any provisions of this subtitle or any administrative regulation issued pursuant thereto, or any order of the commissioner issued pursuant thereto, or has violated any other law in the course of its or his or her dealings as a licensee..."

(f) "Does not conduct his or her business in accordance with the law or conducts business by a method that includes, or would include, activities that are illegal where performed, or has willfully violated any provision of this subtitle; or any administrative regulation promulgated or order of the commissioner issued hereunder;

(6) "The surrender or expiration of a license shall not affect the person's civil or criminal liability for acts committed prior to the license surrender or expiration. Revocation, suspension, refusal to renew, surrender, or expiration of a license shall not impair or affect the obligation of any preexisting contract between a licensee and a customer. The surrender or expiration of a license shall not affect a proceeding to suspend or revoke a license."

22. KRS 286.9-140(1) states, in relevant 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 transaction, date that the completed transaction is closed, and any additional information required by the commissioner."

23. KRS 286.9-991 states:

(1) "The commissioner may levy a civil penalty against a person who violates any provision of, or administrative regulation promulgated under, this subtitle or any order issued by the commissioner under this subtitle;

(2) "The civil penalty shall not be less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000) per violation for each day the violation is outstanding, plus the state's cost and expenses for the examination, investigation, and prosecution of this matter, including any reasonable attorney's fees and court costs."

(3) "Any civil penalties imposed may be in addition to any other remedy or penalty imposed in this subtitle."

VIOLATIONS

24. Maxon, as the licensed entity, failed to file a written request with the Commissioner for a change of control of deferred deposit license CC14639 at least fifteen (15) business days prior to the change of control of that license, in violation of KRS 286.9-070(5).

25. Furthermore, no other person or entity filed a written request with the Commissioner for a change of control of deferred deposit license CC14639 at least fifteen (15) business days prior to the reported change of control of the license, in violation of KRS 286.9-070(5).

26. Maxon and Gosser, as the owner of record for the licensed entity, failed to notify the Commissioner in writing, at least thirty (30) days prior to the discontinuance of the business, in violation of KRS 286.9-074(3).

27. Maxon and Gosser, as the owner of record for the licensed entity, failed to notify the Commissioner in writing of the change in physical location where the records will be preserved or archived as required by KRS 286.9-074(4).

28. R & R, Reese and Richardson entered into seventy-seven deferred deposit transactions without a license, in violation of KRS 286.9-020;

29. Maxon and Gosser provided access to the Veritec database to R & R, without prior approval of the commissioner, in violation of KRS 286.9-140(1);

30. R & R failed to provide audited financial statements due at time of application for transfer of license, as required, pursuant to KRS 286.9-060(2);

31. Maxon, R & R, Reese and Richardson engaged in unfair or deceptive acts and practices when R & R began doing business as Lakewood Cash Express prior to an application for change of control being granted by the commissioner, in violation of KRS 286.9-100(7);

ACTIONS FOR COMPLIANCE AND SETTLEMENT

32. DFI possesses a range of administrative authority in addressing violations of the Act, including registration revocation or denial, the imposition of civil penalties.

33. Respondent R & R, in the interest of economically and efficiently resolving this matter, agrees as follows:

a. Respondent R & R violated the provisions of KRS 286.9-020 when they entered in to seventy-one (71) unlicensed deferred deposit transactions;

b. Respondent R & R violated the provisions of KRS 286.9-070(5) when they failed to file a written request for a change of control at least fifteen business days prior to any change of control of the license;

c. Respondent R & R violated the provisions of KRS 286.9-100(7) when they began to conduct business as Lakewood Cash Express prior to the approval of a change of control by the Commissioner;

d. Respondent R & R agrees to pay a civil penalty in the amount of one thousand dollars (\$1,000.00) for the violations described herein;

e. Respondent R & R agrees to pay thirty-two thousand six hundred and seventy-one dollars and sixty-seven cents (\$32,671.67) in voluntary restitution to the customers impacted by the violations described herein, which includes five thousand and sixty-five dollars (\$5,065.00) in refunded interest;

f. All payments under this Order shall be in the form of a certified check or money order made payable to "Kentucky State Treasurer" and mailed to the Department of Financial Institutions, 2020-AH-0018, 500 Mero Street 2 SW 19, Frankfort, Kentucky, 40601; and

g. Respondent shall cease and desist from all future violations of the Act.

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

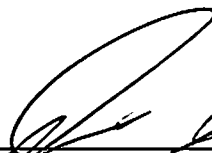
35. Respondent consents to and acknowledges the jurisdiction of DFI over this matter and that this Agreed Order is a matter of public record and may be disseminated as such.


36. In consideration of execution of this Agreed Order, Respondent for himself, and for his 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.

37. By signing below, Respondent acknowledges he has read the foregoing Agreed Order and acknowledges and fully understand its contents.

38. This Agreed Order shall constitute the Final Order in this matter for Respondent Maxon.

IT IS SO ORDERED on this the 14th day of September, 2021.


CHARLES A. VICE
COMMISSIONER


Justice Burse
Deputy Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Agreed Order** was sent on this the 14th day of September, 2021, by electronic mail and certified mail, return receipt requested, to:

Mr. Matt Gosser
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Mr. Jeff Hoover
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and,

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Name: Auison Keid

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