

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2016 - AH - 00018



DEPARTMENT OF FINANCIAL INSTITUTIONS

PETITIONER

VS.

**FINAL ORDER TO CEASE AND DESIST
AND ASSESSING CIVIL PENALTIES**

BARRY HOLDER

D/B/A BARRY HOLDER'S PAWN AND PAYDAY LOANS

RESPONDENT

The Department of Financial Institutions ("Department"), Petitioner, pursuant to KRS 286.9-120, KRS 286.9-991 and 808 KAR 9:030, by counsel, hereby brings this Final Order to Cease and Desist and Assessing Civil Penalties against the Respondent, Barry Holder, d/b/a Barry Holder's Pawn and Payday Loans, ("Respondent"). In support thereof, the Department states as follows:

PARTIES

1. The Department is the agency of Kentucky state government charged with the administration of the provisions of KRS Chapter 286, including KRS 286.9-010 through 286.9-991, and the rules and regulations promulgated thereunder.

2. Upon information and belief, the Respondent, Barry Holder, d/b/a Barry Holder's Pawn and Payday Loan, with a business location of 947A Highway 27, Somerset, Kentucky 42501, engaged in the business of cashing checks or accepting deferred deposit transactions for a fee or other consideration without having first obtained a deferred deposit license.

FACTS

3. The Department is responsible for regulating and licensing deferred deposit activity in accordance with the provisions of KRS 286.9 which provides it is unlawful for a person or

business to engage in the business of cashing checks or accepting deferred deposit transactions for a fee or other consideration without having first obtained a license from the Department .

4. On January 12, 2016, the Department received a phone call reporting that Respondent was suspected of engaging in the business of cashing checks or accepting deferred deposit transactions for a fee or other consideration without having first obtained a license.

The Department initiated an investigation based on this information and issued a subpoena, dated January 12, 2016, to Respondent, requesting all records pertaining to any deferred deposit transactions conducted by Respondent.

5. On January 21, 2016, the Department received correspondence from an additional Complainant stating Respondent was engaging in the business of cashing checks or accepting deferred deposit transactions for a fee or other consideration without having first obtained a license. Included in this correspondence was a written statement detailing Complainant's communication with Respondent regarding the unlicensed activity along with a brochure that was obtained from Respondent's business location.

6. On January 28, 2016, Chad Harlan and Jennifer Farley Doom, investigators from the Department's Consumer Protection Branch, traveled to Respondent's business location to serve the subpoena and interview Respondent as part of the Department's continuing investigation. During the course of the investigation, the Department obtained five (5) documents from Respondent consisting of contracts titled "Pay Day Loans", supporting the allegations that Respondent was engaging in deferred deposit activity without a license. (See attached Exhibit A)

7. During the January 28, 2016 investigation visit, Mr. Holder admitted to the Department investigators that he had engaged in the business of cashing checks or accepting deferred deposit transactions for a fee or other consideration without having first obtained a license

although Respondent had previously applied for a license and was informed, by the Department, there was a statutory moratorium on issuing deferred deposit licenses at this time.

8. Neither Barry Holder nor Barry Holder's Pawn and Payday Loans is registered with the Kentucky Secretary of State, nor is either entity registered as a deferred deposit licensee with the Department.

9. Based on the above referenced facts and evidence, the Department determined that Barry Holder, d/b/a Barry Holder's Pawn and Payday Loan was engaging in the business of cashing checks or accepting deferred deposit transactions for a fee or other consideration at Respondent's business location of 947A Highway 27, Somerset, Kentucky 42501 without having first obtained a license.

10. On May 6, 2016, an Administrative Complaint was sent, via certified mail, # 70141820000137682310, to Barry Holder Pawn and Payday Loans at the business address of record. Service was perfected on May 9, 2016 and a return receipt was received by the Department on May 11, 2016.

11. On July 21, 2016, an Amended Administrative Complaint was sent, via certified mail, #70141820000137729220, to Barry Holder Pawn and Payday Loans at the business address of record. Service was perfected on July 25, 2016 and a return receipt was received by the Department on July 27, 2016.

12. The Amended Administrative Complaint stated that the Respondent must file an Answer and request a hearing within twenty (20) days of receipt of the Complaint. The Administrative Complaint stated that if the Respondent did not file an Answer and request a hearing in a timely manner, the Commissioner may issue a Final Order.

13. More than twenty (20) days have passed since the mailing of the Administrative Complaint and the Respondent did not file an Answer nor request a hearing under KRS Chapter 13B.

STATUTORY AUTHORITY

14. KRS 286.9-020 states “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.”

15. Pursuant to KRS 286.9-010(13), a “deferred deposit service business” means a person who engages in deferred deposit transactions.

16. Pursuant to KRS 286.9-010(14), a "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.

17. Pursuant to KRS 286.9-010(18), a "Licensee" means a person duly licensed by the commissioner under this subtitle to conduct check cashing or deferred deposit service business in the Commonwealth.

18. KRS 286.9-010(22) defines "Person" as “any individual, partnership, association, joint stock association, trust, corporation, or other entity however organized.”

19. KRS 286.9-075(5) states “the commissioner shall have administrative power to investigate all complaints filed by any person if the complaints are not criminal in nature and if they relate to the check cashing or the deferred deposit service business.”

20. Pursuant to KRS 286.9-035(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.”

21. KRS 286.9-110(1)(b) states, “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”

22. 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 be not 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 costs and expenses for the examination, investigation, and prosecution of this matter, including 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.

COUNTS ONE THROUGH FIVE
**RESPONDENT ENGAGED IN THE BUSINESS OF ACCEPTING DEFERRED
DEPOSIT TRANSACTIONS FOR A FEE OR OTHER CONSIDERATION WITHOUT
FIRST OBTAINING A LICENSE IN VIOLATION OF KRS 286.9-020.**

21. Paragraphs 1 – 13 are incorporated herein by reference.

22. On January 18, 2016, Respondent entered into a deferred deposit transaction with customer "HS" in the principal amount of five hundred dollars (\$500) and assessed a ten percent (10%) fee of the principal amount owed, in the amount of fifty dollars (\$50) , as consideration for the "pay day loan" in violation of KRS 286.9-020.

23. On January 21, 2016, Respondent entered into a deferred deposit transaction with customer "JM" in the principal amount of one hundred dollars (\$100) and assessed a ten percent (10%) fee of the principal amount owed, in the amount of ten dollars (\$10), as consideration for the "pay day loan" in violation of KRS 286.9-020.

24. On January 26, 2016, Respondent entered into an additional deferred deposit transaction with customer "JM" in the principal amount of two hundred dollars (\$200) and assessed a ten percent (10%) fee of the principal amount owed, in the amount of twenty dollars (\$20), as consideration for the "pay day loan" in violation of KRS 286.9-020.

25. On January 27, 2016, Respondent entered into a deferred deposit transaction with customer "TH" in the principal amount of one hundred fifty dollars (\$150) and assessed a ten percent fee (10%) of the principal amount owed, in the amount of fifteen dollars (\$15) as consideration for the "pay day loan" in violation of KRS 286.9-020.

26. On January 27, 2016, Respondent entered into a deferred deposit transaction with customer "KC" in the principal amount of one hundred dollars (\$100) and assessed a fee of ten percent (10%) of the principal amount owed as consideration for the "pay day loan" in violation of KRS 286.9-020.

CONCLUSIONS OF LAW

27. Respondent unlawfully engaged in the business of cashing checks or accepting deferred deposit transactions for a fee or other consideration without having first obtained a license

from the Department to conduct a deferred deposit service business in Kentucky, as defined by KRS 286.9-010(13) and (14) and is not a deferred deposit licensee, as defined in KRS 286.9-010(18).

28. As a result of the above violations, grounds exist to declare all transactions conducted by Respondent in the business of cashing checks or accepting deferred deposit transactions for a fee or other consideration without having first obtained a license void pursuant to KRS 286.9-035(1).

29. Pursuant to KRS 286.9-120(1), the Respondent was properly served with written notice of intent to enter a Final Order for Respondent to immediately Cease and Desist from engaging in the deferred deposit service business under KRS 286.9-110(1)(b) and the intent to levy civil penalties under KRS 286.9-991, the grounds therefore, and given full notice and opportunity for an administrative hearing to be conducted in accordance with KRS Chapter 13B.

30. More than twenty (20) days have elapsed since the Respondent was provided with the notice required by KRS 286.9-120(1).

31. Respondent has neither submitted a timely answer to the Amended Administrative Complaint nor requested a hearing regarding the contemplated Final Order to Cease and Desist conduct of a deferred deposit service business.

32. Based on the Findings of Fact, Statutory Authority and Conclusions of Law set forth herein, Respondent should be Ordered to Cease and Desist engaging in the business of cashing checks or accepting deferred deposit transactions for a fee or other consideration without having first obtained a license from the Department to conduct a deferred deposit service business in Kentucky, as defined by KRS 286.9-010(13) and (14) and all transactions conducted by Respondent in the business of cashing checks or accepting deferred deposit transactions for a fee

or other consideration without having first obtained a license are void pursuant to KRS 286.9-035(1). In addition, civil penalties should be levied for violations of the KRS 286.9-020.

ORDER

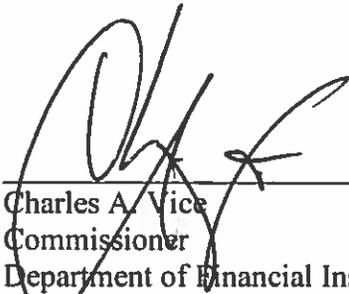
Based on the foregoing Findings of Fact, Statutory Authority and Conclusions of Law, the Commissioner hereby **ORDERS** as follows:

1. Respondent Barry Holder, d/b/a Barry Holder's Pawn and Payday Loan shall immediately **CEASE** and **DESIST** from engaging in the deferred deposit service business in Kentucky.

2. All deferred deposit transactions entered into by Respondent, who engaged in the business of cashing checks or accepting deferred deposit transactions for a fee or other consideration without having first obtained a license, are hereby declared **VOID**.

3. Respondent Barry Holder, d/b/a Barry Holder's Pawn and Payday Loan, shall pay a civil penalty in the amount of \$1,000.00 for each of the five (5) separate counts in which Respondent engaged in the act of cashing checks or accepting deferred deposit transactions for a fee or other consideration without having first obtained a deferred deposit license.

IT IS SO ORDERED on this the 20th day of Sept, 2016.



Charles A. Vice
Commissioner
Department of Financial Institutions
1025 Capitol Center Drive, Suite 200
Frankfort, KY 40601

NOTICE OF APPEAL RIGHTS

Pursuant to KRS 13B.140, you are hereby notified that you have a right to appeal this **Final Order** of the Commissioner. If you chose to appeal, you must file a written Notice of Appeal with the Franklin Circuit Court within thirty (30) days after the service of a copy of the Final Order. A copy of any Appeal petition must be served on the Commissioner.

CERTIFICATE OF SERVICE

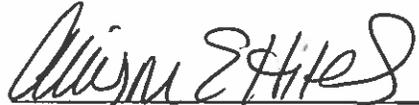
I hereby certify that a copy of the foregoing **FINAL ORDER TO CEASE AND DESIST AND ASSESSING CIVIL PENALTIES** was served by certified mail, postage paid, on this the 20 day of Sept, 2016.

To:

Barry Holder
D/B/A Barry Holder Pawn and Payday Loans
947A South Highway 27
Somerset, KY 42501

Hand delivered to :

Catherine Falconer, Attorney
Dept. of Financial Institutions
1025 Capitol Center Drive, suite 200
Frankfort KY 40601



KY Department of Financial Institutions

Name: Allison E. Hiles

Title: Executive Staff Advisor