

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)
)
Ace Cash Express, Inc.,)
3255 Cornhusker Highway, Suite 5,)
Building B,)
Lincoln, Lancaster County, Nebraska;)
)
Ace Cash Express, Inc.,)
3537 West 13th Street, Suite 104,)
Grand Island, Hall County, Nebraska;)
)
Ace Cash Express, Inc.,)
3714 Cimarron Avenue, #230,)
Hastings, Adams County, Nebraska;)
)
Ace Cash Express, Inc.,)
228 West 42nd Street, Suite D-10,)
Kearney, Buffalo County, Nebraska;)
)
Ace Cash Express, Inc.,)
610 East 23rd Street, Suite B,)
Fremont, Dodge County, Nebraska;)
)
Ace Cash Express, Inc.,)
701 Galvin Road, Suite 116,)
Bellevue, Sarpy County, Nebraska;)
)
and)
)
Ace Cash Express, Inc.,)
3325 21st Street,)
Columbus, Platte County, Nebraska)

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
CONSENT AGREEMENT

THIS MATTER comes before the Nebraska Department of Banking and Finance (“DEPARTMENT”), by and through its Director, pursuant to its authority under the Delayed Deposit Services Licensing Act, Neb. Rev. Stat. §§ 45-901 to 45-929 (Reissue 2004; Cum. Supp. 2008; Supp. 2009) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-920

(Cum. Supp. 2008), the DEPARTMENT has examined the books, accounts, and records of Ace Cash Express, Inc., 3255 Cornhusker Highway, Suite 5, Building B, Lincoln, Lancaster County, Nebraska; Ace Cash Express, Inc., 3537 West 13th Street, Suite 104, Grand Island, Hall County, Nebraska; Ace Cash Express, Inc., 3714 Cimarron Avenue, #230, Hastings, Adams County, Nebraska; Ace Cash Express, Inc., 228 West 42nd Street, Suite D-10, Kearney, Buffalo County, Nebraska; Ace Cash Express, Inc., 610 East 23rd Street, Suite B, Fremont, Dodge County, Nebraska; Ace Cash Express, Inc., 701 Galvin Road, Suite 116, Bellevue, Sarpy County, Nebraska; and Ace Cash Express, Inc., 3325 21st Street, Columbus, Platte County, Nebraska ("ACE"). As a result of such examinations, and being duly advised and informed in the matter, the Director and ACE enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

FINDINGS OF FACT

1. ACE holds delayed deposit services business licenses under the Act. License #1980 was originally issued on March 3, 2006, to the Lincoln, Lancaster County, Nebraska location. License #1966 was originally issued on March 8, 2006, to the Grand Island, Hall County, Nebraska location. License #2009 was originally issued on March 12, 2008, to the Hastings, Adams County, Nebraska location. License #1967 was originally issued on March 8, 2006, to the Kearney, Buffalo County, Nebraska location. License #2010 was originally issued on March 12, 2008, to the Fremont, Dodge County, Nebraska location. License #1964 was originally issued on March 23, 2006, to the Bellevue, Sarpy County, Nebraska location. License #1965 was originally issued on March 3, 2006, to the Columbus, Platte County, Nebraska location. The licenses have been renewed annually on May 1st since that time, pursuant to Neb. Rev. Stat. § 45-910 (Cum. Supp. 2008).

2. On September 11, 2008, the DEPARTMENT commenced an examination of ACE's Lincoln, Lancaster County, Nebraska location pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008).

3. The September 11, 2008 Report of Examination ("Lancaster County 2008 Report") was forwarded to ACE on October 28, 2008. The Report noted a number of violations of the Act. ACE submitted responses received by the DEPARTMENT on December 4, 2008, and July 24, 2009.

4. On September 10, 2008, the DEPARTMENT commenced an examination of ACE's Grand Island, Hall County, Nebraska location pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008).

5. The September 10, 2008 Report of Examination ("Hall County 2008 Report") was forwarded to ACE on November 21, 2008. The Report noted a number of violations of the Act. ACE submitted responses received by the DEPARTMENT on December 29, 2008, and June 19, 2009.

6. On September 8, 2008, the DEPARTMENT commenced an examination of ACE's Hastings, Adams County, Nebraska location pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008).

7. The September 8, 2008 Report of Examination ("Adams County 2008 Report") was forwarded to ACE on November 21, 2008. The Report noted a number of violations of the Act. ACE submitted responses received by the DEPARTMENT on December 29, 2008, and June 19, 2009.

8. On September 9, 2008, the DEPARTMENT commenced an examination of ACE's Kearney, Buffalo County, Nebraska location pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008).

9. The September 9, 2008 Report of Examination ("Buffalo County 2008 Report") was forwarded to ACE on November 21, 2008. The Report noted a number of violations of the Act. ACE submitted responses received by the DEPARTMENT on December 28, 2008, and June 19, 2009.

10. On September 8, 2008, the DEPARTMENT commenced an examination of ACE's Fremont, Dodge County, Nebraska location pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008).

11. The September 8, 2008 Report of Examination ("Dodge County 2008 Report") was forwarded to ACE on October 28, 2008. The Report noted a number of violations of the Act. ACE submitted responses received by the DEPARTMENT on December 4, 2008, and June 19, 2009.

12. On September 30, 2008, the DEPARTMENT commenced an examination of ACE's Bellevue, Sarpy County, Nebraska location pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008).

13. The September 30, 2008 Report of Examination ("Sarpy County 2008 Report") was forwarded to ACE on November 7, 2008. The Report noted a number of violations of the Act. ACE submitted responses received by the DEPARTMENT on December 4, 2008, and June 19, 2009.

14. On September 10, 2007, and September 10, 2008, the DEPARTMENT commenced separate examinations of ACE's Columbus, Platte County, Nebraska location pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008).

15. The September 10, 2007 Report of Examination ("Platte County 2007 Report") was forwarded to ACE on March 18, 2008. The September 10, 2008 Report of Examination ("Platte County 2008 Report") was forwarded to ACE on October 28, 2008.

The Reports noted a number of violations of the Act. ACE submitted responses received by the DEPARTMENT on April 10, 2008, for the Platte County 2007 Report; and on December 4, 2008, and July 28, 2009, for the Platte County 2008 Report.

16. The DEPARTMENT has reviewed the responses submitted by ACE and has taken them into consideration in determining the appropriate actions to be taken in this matter.

17. References in this Consent Agreement to customers of ACE will be by way of initials, in order to protect the privacy of such customers. ACE knows or should know the identity of these customers. If ACE is unable to ascertain the identity of these customers, the DEPARTMENT will provide a list of these customers upon receipt of a written request.

18. The Platte County 2007 Report noted sixty (60) instances where customer records were not properly maintained and copies of customer checks were not maintained. The Platte County 2008 Report noted one (1) instance where customer AM's records were not properly maintained. The Lancaster County 2008 Report noted sixty-two (62) instances where customer records were not properly maintained. The Hall County 2008 Report noted forty-three (43) instances where customer records were not properly maintained and copies of customer checks were not maintained. The Buffalo County 2008 Report noted eighty-five (85) instances where customer records were not properly maintained and copies of customer records were not maintained. The Sarpy County 2008 Report noted one hundred seventy-two (172) instances where customer records were not properly maintained and copies of customer checks were not maintained. The Dodge County 2008 Report noted four (4) instances for customer SR, AC, PI, and KL where records were not properly maintained and copies of customer checks were not maintained.

The Adams County 2008 Report noted sixteen (16) instances where ACE failed to maintain copies of customer checks.

19. ACE's failure to properly maintain customer records and copies of customer checks in four hundred forty-three (443) instances represents four hundred forty-three (443) separate violations of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

20. The Platte County 2007 Report noted one (1) instance where the records of another business were kept with the delayed deposit services business records for customer GP.

21. ACE's failure to maintain the books, accounts, and records of the delayed deposit services business separate and apart from the books, accounts, and records of another business in one (1) instance represents a violation of Neb. Rev. Stat. § 45-916(1) (Cum. Supp. 2008).

22. The Hall County 2008 Report noted one (1) instance where ACE held checks for customer MY with an aggregate face value greater than \$500.00.

23. ACE's holding of more than one (1) check from a single maker with an aggregate face value greater than \$500.00 in one (1) instance represents a violation of Neb. Rev. Stat. § 45-919(1)(b) (Cum. Supp. 2008).

24. The Lancaster County 2008 Report noted five (5) instances where ACE held checks for customers SA, CP, LB, SG, and BG longer than statutorily allowed. The Platte County 2008 Report noted two (2) instances where ACE held checks for customers CM and KS longer than statutorily allowed.

25. ACE's holding of customer checks longer than statutorily allowed in seven (7) instances represents seven (7) separate violations of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008).

26. The Hall County 2008 Report noted one (1) instance where ACE accepted a check as repayment of a delayed deposit services transaction from customer MR.

27. ACE's acceptance of a check as repayment of a delayed deposit services transaction in one (1) instance represents a violation of Neb. Rev. Stat. § 45-919(1)(e) (Cum. Supp. 2008).

28. The Platte County 2008 Report noted one (1) instance where ACE failed to maintain a Same Day Transaction Verification Form ("SDTVF") for customer GW. The Dodge County 2008 Report noted one (1) instance where ACE failed to maintain a SDTVF for customer CD.

29. ACE's failure to maintain SDTVFs in two (2) instances represents two (2) separate violations of Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

30. The Platte County 2007 Report noted five (5) instances for customers MC(2), JG, GP, and NS where ACE failed to obtain completed SDTVFs. The Platte County 2008 Report noted eight (8) instances for customers JI, PU, JS, KF(2), GD, NH, and PC where ACE failed to obtain completed SDTVFs. The Lancaster County 2008 Report noted fifteen (15) instances where ACE failed to obtain completed SDTVFs. The Hall County 2008 Report noted two (2) instances for customer KW and AA where ACE failed to obtain completed SDTVFs. The Adams County 2008 Report noted five (5) instances for customers LA, JE, KF, AH, and TO where ACE failed to obtain completed SDTVFs. The Buffalo County 2008 Report noted two (2) instances for customers JF and DO where ACE failed to obtain completed SDTVFs. The Dodge County 2008 Report noted thirteen (13) instances for customers VM(2), SR(2), TL, CD(3) MH, AC, SH(2), and RV where ACE failed to obtain completed SDTVFs.

31. ACE's failure to obtain completed SDTVFs in fifty (50) instances represents fifty (50) separate violations of Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

32. The Lancaster County 2008 Report; Hall County 2008 Report; Dodge County 2008 Report; Buffalo County 2008 Report; Adams County 2008 Report; and the Platte County 2007 and 2008 Report all noted that the Automated Clearing House ("ACH") report requested by the DEPARTMENT examiners was not provided.

33. ACE's failure to provide the ACH report requested for each examination represents seven (7) violations of DEPARTMENT Delayed Deposit Services Interpretative Opinion #6.

34. The DEPARTMENT could conclude that the actions of ACE warrant the commencement of administrative proceedings to determine whether it should impose an administrative fine in an amount up to five thousand dollars per violation, plus investigation costs, pursuant to Neb. Rev. Stat. § 45-925 (Cum. Supp. 2008).

35. The DEPARTMENT incurred a minimum of two thousand dollars in investigation costs in this matter.

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 45-908 (Reissue 2004) provides that in order to issue a delayed deposit services business license, the Director must determine that the character and general fitness of the applicant and its officers, directors, and shareholders are such as to warrant a belief that the business will be operated honestly, fairly, efficiently, and in accordance with the Act.

2. Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008) provides that a licensee shall, at a minimum, include in its books and records copies of all application materials relating to makers, disclosure agreements, checks, payment receipts, and proofs of compliance required by Section 45-919.

3. Neb. Rev. Stat. § 45-916(1) (Cum. Supp. 2008) provides that the licensee may operate a delayed deposit services business at a location where any other business is operated or in association or conjunction with any other business if the books, accounts, and records of the delayed deposit services business are kept and maintained separate and apart from the books, accounts, and records of the other business.

4. Neb. Rev. Stat. § 45-919(1)(b) (Cum. Supp. 2008) provides that no licensee shall at any one time hold from any one maker a check or checks in an aggregate face amount of more than five hundred dollars.

5. Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008) provides that no licensee shall hold or agree to hold a check for more than thirty-four days.

6. Neb. Rev. Stat. § 45-919(1)(e) (Cum. Supp. 2008) provides that no licensee shall accept a check as repayment, refinancing, or any other consolidation of a check or checks held by the same licensee.

7. Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) sets forth acts which are prohibited to a licensee. These acts include entering into another delayed deposit transaction with the same maker on the same business day as the completion of a delayed deposit transaction unless prior to entering into the transaction the maker and the licensee verify on a form prescribed by the DEPARTMENT that completion of the prior delayed deposit transaction has occurred. The DEPARTMENT has prescribed the SDTVF for this purpose.

8. DEPARTMENT Delayed Deposit Services Interpretative Opinion #6 states that a licensee may collect a check by ACH processing after a check has been presented and returned to the licensee and the licensee follows NACHA processing rules.

9. Neb. Rev. Stat. § 45-925 (Cum. Supp. 2008) provides that if the Director finds, after notice and opportunity for hearing, that any person has violated the Act, the Director may order such person to pay an administrative fine of not more than five thousand dollars for each separate violation and the costs of an investigation.

10. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that ACE has violated the Act, and that an administrative fine in an amount of not more than five thousand dollars for each separate violation plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-925 (Cum. Supp. 2008).

11. Under the Act's statutory framework, the Director has the legal and equitable authority to fashion significant remedies.

12. It is in the best interest of ACE, and it is in the best interest of the public, for ACE and the DEPARTMENT to resolve the issues included herein.

CONSENT AGREEMENT

The DEPARTMENT and ACE agree as follows:

Stipulations: In connection with this Consent Agreement, ACE and the Director stipulate to the following:

1. The DEPARTMENT has jurisdiction as to all matters herein.
2. This Consent Agreement shall resolve all matters raised by the

DEPARTMENT's September 11, 2008 examination of ACE's Lincoln, Lancaster County

location; the DEPARTMENT's September 10, 2008 examination of ACE's Grand Island, Hall County, Nebraska location; the DEPARTMENT's September 8, 2008 examination of ACE's Hastings, Adams County, Nebraska location; the DEPARTMENT's September 9, 2008 examination of ACE's Kearney, Buffalo County, Nebraska location; the DEPARTMENT's September 8, 2008 examination of ACE's Fremont, Dodge County, Nebraska location; the DEPARTMENT's September 30, 2008 examination of ACE's Bellevue, Sarpy County, Nebraska location; and the DEPARTMENT's September 10, 2007 and September 10, 2008 examinations of ACE's Columbus, Platte County, Nebraska location. Should future circumstances warrant, the facts from these matters may be considered in future administrative actions by the DEPARTMENT.

3. This Consent Agreement shall be in lieu of all other proceedings available to the DEPARTMENT, except as specifically referenced in this Consent Agreement.

ACE further represents as follows:

1. ACE is aware of its right to a hearing on these matters at which it may be represented by counsel, present evidence, and cross examine witnesses. The right to such a hearing, and any related appeal, is irrevocably waived.

2. ACE is acting free from any duress or coercion of any kind or nature.

3. This Consent Agreement is executed to avoid further proceedings and constitutes an admission of violations of the Act solely for the purpose of this Consent Agreement and for no other purpose.

IT IS, THEREFORE AGREED as follows:

1. Within ten (10) days after the effective date of this Consent Agreement, ACE shall pay a fine of ten thousand dollars (\$10,000.00) for the four hundred forty-three (443)

instances where it failed to properly maintain customer files or maintain copies of customer checks in violation of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

2. Within ten (10) days after the effective date of this Consent Agreement, ACE shall pay a fine of fifty dollars (\$50.00) for the one (1) instance where it failed to maintain the books, accounts, and records of its delayed deposit services business separate and apart from the books, accounts, and records of another business in violation of Neb. Rev. Stat. § 45-916(1) (Cum. Supp. 2008).

3. Within ten (10) days after the effective date of this Consent Agreement, ACE shall pay a fine of one hundred dollars (\$100.00) for the one (1) instance where it held more than one check from a single maker with an aggregate face value greater than \$500.00 in violation of Neb. Rev. Stat. § 45-919(1)(b) (Cum. Supp. 2008).

4. Within ten (10) days after the effective date of this Consent Agreement, ACE shall pay a fine of one hundred dollars (\$100.00) for each of the seven (7) instances where it held customer checks longer than statutorily allowed in violation of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008).

5. Within ten (10) days after the effective date of this Consent Agreement, ACE shall pay a fine of five hundred dollars (\$500.00) for the one (1) instance where it accepted a check as repayment in violation of Neb. Rev. Stat. § 45-919(1)(e) (Cum. Supp. 2008).

6. Within ten (10) days after the effective date of this Consent Agreement, ACE shall pay a fine of one hundred dollars (\$100.00) for each of the two (2) instances where it failed to maintain SDTVFs for its customers in violation of Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

7. Within ten (10) days after the effective date of this Consent Agreement, ACE shall pay a fine of two thousand dollars (\$2,000.00) for the fifty (50) instances where it failed to obtain completed SDTVFs for its customers in violation of Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

8. Within ten (10) days after the effective date of this Consent Agreement, ACE shall submit to the DEPARTMENT a copy of the agreement with its financial institution(s) regarding processing of ACH transactions and provide the DEPARTMENT with a list of the names of all employees who are submitting/processing ACH transactions.

9. Within thirty (30) days after the effective date of this Consent Agreement, ACE shall submit to the DEPARTMENT a plan for the training of said employees regarding proper submission of ACH transactions. This plan shall include copies of any proposed training materials (if in-house training is contemplated) or a copy of the training agenda if external training is proposed.

10. Within ninety (90) days after the effective date of this Consent Agreement, ACE shall certify that all of said employees have been trained in proper submission of ACH transactions. ACE shall train every new employee who may process ACH transactions before that employee is allowed to process any ACH transaction, and shall maintain a record of the training of each such employee for review by the DEPARTMENT.

11. Within ten (10) days after the effective date of this Consent Agreement, ACE shall pay the DEPARTMENT's investigation costs in the amount of two thousand dollars (\$2,000.00).

12. The total amount of the fine, thirteen thousand five hundred fifty dollars (\$13,550.00), plus the total amount of investigation costs, two thousand dollars (\$2,000.00),

shall be payable in one check or money order in the amount of fifteen thousand five hundred fifty dollars (\$15,550.00) to the DEPARTMENT.


13. In the event ACE fails to comply with any of the provisions of this Consent Agreement, the DEPARTMENT may commence such action regarding ACE as it deems necessary and appropriate in the public interest.

14. If, at any time, the DEPARTMENT determines ACE has committed any other violations of the Act, the DEPARTMENT may take any action available to it under the Act.

15. The effective date of this Consent Agreement will be the date of the Director's signature.

DATED this 17th day of December, 2009.


Ace Cash Express, Inc.

By: 

Ted M. Eades, General Counsel
1231 Greenway Drive, Suite 600
Irving, Texas 75038
(972) 550-5000

DATED this 21st day of December, 2009.

**STATE OF NEBRASKA
DEPARTMENT OF BANKING AND FINANCE**

By: 

John Munn, Director
Commerce Court, Suite 400
1230 "O" Street
Lincoln, Nebraska 68508
(402) 471-2171