

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	FINDINGS OF FACT
)	CONCLUSIONS OF LAW
Ace Cash Express, Inc.,)	AND
10916 Q Street,)	CONSENT AGREEMENT
Omaha, Douglas County, Nebraska)	

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., 10916 Q Street, Omaha, Douglas County, Nebraska (“ACE”). As a result of such examination, 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 a delayed deposit services business license under the Act. License #1963 was originally issued on February 28, 2006. The license has been renewed annually on May 1st since that time, pursuant to Neb. Rev. Stat. § 45-910 (Cum. Supp. 2008).
2. On November 9, 2009, the DEPARTMENT commenced an examination of ACE pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008). This examination included an on-site visitation of ACE’s Omaha, Douglas County, Nebraska location.

3. The November 9, 2009 Report of Examination (“Report”) was forwarded to ACE on December 30, 2009. The Report noted a number of violations of the Act. ACE submitted a response received by the DEPARTMENT on February 17, 2010.

4. The DEPARTMENT has reviewed the response submitted by ACE and has taken it into consideration in determining the appropriate actions to be taken in this matter.

5. 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.

6. The Report noted one hundred twenty-eight (128) instances where customer records were not properly maintained for customers.

7. ACE’s failure to properly maintain customer records in one hundred twenty-eight (128) instances represents one hundred twenty-eight (128) separate violations of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

8. The Report noted six (6) instances where ACE charged a fee in excess of fifteen dollars per one hundred dollars advanced to customers AS, DB, LE, SJ, MF, and KW.

9. ACE’s charging a fee greater than fifteen dollars per one hundred dollars advanced in six (6) instances represents six (6) separate violations of Neb. Rev. Stat. § 45-918 (Reissue 2004).

10. The Report noted fifty-nine (59) instances where ACE failed to obtain completed Same Day Transaction Verification Forms (“SDTVFs”) for its customers.

11. ACE's failure to obtain completed SDTVFs in fifty-nine (59) instances represents fifty-nine (59) separate violations of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008).

12. The Report noted that ACE failed to provide back office capture agreements with its financial institution for the examiner's review.

13. ACE's failure to provide back office capture agreements for the examiner's review represents a violation of DEPARTMENT Delayed Deposit Services Interpretative Opinion #5 and Neb. Rev. Stat. § 45-915.01(1) (Cum. Supp. 2008).

14. 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).

15. The DEPARTMENT incurred a minimum of five hundred dollars (\$500.00) 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 (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. A licensee shall further make available books and records as are necessary to enable the DEPARTMENT to determine if the licensee is complying with the Act.

3. Neb. Rev. Stat. § 45-918 (Reissue 2004) provides that no licensee may charge a fee in excess of fifteen dollars per one hundred dollars advanced.

4. Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) provides that a licensee shall not enter 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.

5. 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.

6. DEPARTMENT Delayed Deposit Services Interpretative Opinion #5 states that when utilizing back office capture, a licensee must have a copy of any agreement with its financial institution regarding Check 21 for examiner review on file at each store location utilizing Check 21.

7. 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).

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

9. 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 November 9, 2009 examination of ACE's Omaha, Douglas County, Nebraska location. Should future circumstances warrant, the facts from this matter may be considered in a future administrative action 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 five thousand dollars (\$5,000.00) for the one hundred twenty-eight (128) instances it failed to properly maintain customer records or payment receipts 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 five hundred dollars (\$500.00) for each of the six (6) instances it charged a fee in excess of fifteen dollars per one hundred dollars advanced in violation of Neb. Rev. Stat. § 45-918 (Reissue 2004).

3. Within twenty (20) days after the effective date of this Consent Agreement, ACE shall refund the fees collected in violation of Neb. Rev. Stat. § 45-918 (Reissue 2004) and provide proof of such refund to the DEPARTMENT.

4. Within ten (10) days after the effective date of this Consent Agreement, ACE shall pay a fine of fifty dollars (\$50.00) for each of the fifty-nine (59) instances it failed to obtain completed SDTVFs in violation of Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-915.01(2) (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 failing to have its back office capture agreement available for the examiner's review in violation of DEPARTMENT Delayed

Deposit Services Interpretative Opinion #5 and Neb. Rev. Stat. § 45-915.01(1) (Cum. Supp. 2008).

6. Within ten (10) days after the effective date of this Consent Agreement, ACE shall pay the DEPARTMENT's investigation costs in the amount of five hundred dollars (\$500.00).

7. The total amount of the fine, eleven thousand four hundred fifty dollars (\$11,450.00), plus the total amount of investigation costs, five hundred dollars (\$500.00), shall be payable in one check or money order in the amount of eleven thousand nine hundred fifty dollars (\$11,950.00) to the DEPARTMENT.

8. 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.

9. 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.

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

DATED this 13th day of July, 2010.

Ace Cash Express, Inc.

By: TMEades
Ted Michael Eades, Senior Vice President

1231 Greenway Drive, Suite 600
Irving, Texas 75038

DATED this 14th day of July, 2010.

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

By: John Munn
John Munn, Director

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