

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)
American Express Travel Related)
Services Company, Inc.,)
200 Vesey Street,)
MC 01-49-08,)
New York, New York)
)
American Express Prepaid)
Card Management Corporation,)
20022 North 31st Avenue,)
MC 08-01-08,)
Phoenix, Arizona)

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
CONSENT ORDER

THIS MATTER comes before the Nebraska Department of Banking and Finance (“DEPARTMENT”), by and through its Director, pursuant to its authority under the Nebraska Sale of Checks and Funds Transmission Act, Neb. Rev. Stat. §§ 8-1001 through 8-1017 (Reissue 2007; Cum. Supp. 2010) (“the Act”). Pursuant to Neb. Rev. Stat. § 8-1007 (Reissue 2007), the DEPARTMENT has investigated the actions of American Express Travel Related Services Company, Inc., 200 Vesey Street, MC 01-49-08, New York, New York (“TRAVEL”), and American Express Prepaid Card Management Corporation, 20022 North 31st Avenue, MC 08-01-08, Phoenix, Arizona (“PREPAID”). As a result of such investigation, and being duly advised and informed in the matter, the Director, TRAVEL, and PREPAID enter into the following Findings of Fact, Conclusions of Law, and Consent Order.

FINDINGS OF FACT

1. The DEPARTMENT issued an initial license pursuant to the Act to American Express Company, an affiliate of TRAVEL and PREPAID on January 7, 1966. American

Express Company remained licensed until 1983. On July 1, 1983, the DEPARTMENT issued a license pursuant to the Act to TRAVEL, which TRAVEL renewed annually through 2010. The DEPARTMENT issued an initial license pursuant to the Act to PREPAID on October 7, 2010.

2. On November 22, 2010, the DEPARTMENT received correspondence from outside legal counsel for TRAVEL and PREPAID designating a new contact person to receive all license related correspondence from the DEPARTMENT. PREPAID and TRAVEL designated the same person to be the contact for both licensees.

3. On May 2, 2011, the DEPARTMENT sent a notice to the designated contact person for TRAVEL and PREPAID reminding them that their licenses would expire on June 30, 2011, and notifying them that the forms necessary to renew the licenses were available on the DEPARTMENT's website.

4. On June 21, 2011, the DEPARTMENT sent a second notice to the designated contact person for TRAVEL and PREPAID again reminding them that the licenses would expire on June 30, 2011. In addition, the DEPARTMENT reminded outside legal counsel for PREPAID of the deadline as part of the DEPARTMENT's acknowledgment of correspondence it received from legal counsel on behalf of PREPAID.

5. TRAVEL and PREPAID both failed to submit a renewal application before the June 30, 2011 deadline.

6. On July 8, 2011, the DEPARTMENT issued a Notice of Expiration of the license held by TRAVEL and a Notice of Expiration of the license held by PREPAID pursuant to Neb. Rev. Stat. § 8-1012(4) (Reissue 2007). In pertinent part, the Notices of Expiration stated as follows:

The sale of checks and funds transmission license of Respondent automatically expired on July 1, 2011. Any sale of check and funds transmission business conducted after July 1, 2011, is in violation of the Nebraska Sale of Checks and Funds Transmission Act.

7. TRAVEL received its Notice of Expiration on July 13, 2011. PREPAID received its Notice of Expiration on July 12, 2011.

8. TRAVEL and PREPAID have a large number of agents located in Nebraska who offer the companies' products, including traveler's cheques and prepaid gift cards. On July 15, 2011, a DEPARTMENT employee visited one of PREPAID's agents and observed that the agent continued to stock PREPAID's prepaid gift card. On July 22, 2011, TRAVEL and PREPAID confirmed to the DEPARTMENT that they had continued offering their products in Nebraska after July 1, 2011.

9. On July 25, 2011, TRAVEL and PREPAID submitted their 2011 Sale of Checks and Funds Transmission License Renewal Applications to the DEPARTMENT. On August 2, 2011, the DEPARTMENT issued an Order of Provisional Renewal of Sale of Checks and Funds Transmission License to each company. Both of such Provisional License Renewals are effective until August 19, 2011. TRAVEL and PREPAID therefore conducted business in Nebraska for thirty-two (32) days without a license as required by the Act.

10. The DEPARTMENT has incurred a minimum of six thousand dollars (\$6,000.00) in investigation costs in this matter.

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 8-1002 (Cum. Supp. 2010) provides that no person shall engage in the business of selling checks, as a service or for a fee or other consideration,

without having first obtained a license under the Nebraska Sale of Checks and Funds Transmission Act.

2. Neb. Rev. Stat. § 8-1001(3) (Cum. Supp. 2010) defines the term “check” as any check, draft, money order, personal money order, or other instrument, order, or instruction for the transmission or payment of money.

3. Neb. Rev. Stat. § 8-1001(7) (Cum. Supp. 2010) defines the term “transmission” as a transfer by oral, written, or electronic means or instruction.

4. Neb. Rev. Stat. § 8-1009 (Reissue 2007) provides that each licensee shall, annually on or before July 1 of each year, file a license renewal application and pay to the Director a license fee of two hundred fifty dollars.

5. Neb. Rev. Stat. § 8-1012(4)(a) (Reissue 2007) provides that if a licensee fails to renew its license as required by Section 8-1009 and does not voluntarily surrender the license pursuant to Section 8-1012(3), the DEPARTMENT may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

6. Neb. Rev. Stat. § 8-1014 (Reissue 2008) provides, in part, that each transaction in violation of the Act, and each day that a violation of the Act continues, shall be a separate violation of the Act.

7. Neb. Rev. Stat. § 8-1,134(2) (Reissue 2007) provides, in part, that the Director may impose a fine, in addition to the costs of the investigation, upon a person found to have violated any provision of Chapter 8 of the Nebraska Statutes. The fine shall not exceed ten thousand dollars per violation for the first offense and twenty-five thousand dollars per violation for a second or subsequent offense involving a violation of the same provision of Chapter 8.

8. As stated in Finding of Fact #8, above, TRAVEL and PREPAID offer a variety of products in Nebraska, including traveler's cheques and prepaid cards, which constitute checks as defined by Neb. Rev. Stat. § 8-1001(3).

9. As stated in Findings of Fact #s 8 and 9, above, TRAVEL and PREPAID sold checks in Nebraska for thirty-two (32) days after their respective licenses had expired. TRAVEL and PREPAID therefore violated Neb. Rev. Stat. § 8-10012 by selling checks in Nebraska without a license. Each day that TRAVEL and PREPAID conducted business constituted a separate violation of the Act.

10. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that TRAVEL and PREPAID have violated the Act and that proceedings could be commenced to determine whether an administrative fine and costs should be imposed in accordance with Neb. Rev. Stat. § 8-1,134(2) (Reissue 1997).

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 TRAVEL and PREPAID, and in the best interest of the public, for TRAVEL, PREPAID, and the DEPARTMENT to resolve the issues included herein.

CONSENT ORDER

The DEPARTMENT and TRAVEL and PREPAID agree as follows:

Stipulations: In connection with this Consent Order, TRAVEL and PREPAID and the DEPARTMENT stipulate to the following:

1. The DEPARTMENT has jurisdiction as to all matters herein.

2. This Consent Order shall resolve all matters between the DEPARTMENT, TRAVEL, and PREPAID in connection with the Findings of Fact listed above. Should future circumstances warrant, the facts from this matter may be considered in a future administrative action by the DEPARTMENT.

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

TRAVEL AND PREPAID further represent as follows:

1. TRAVEL and PREPAID are aware of their right to a hearing on these matters at which they 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. TRAVEL and PREPAID are acting free from any duress or coercion of any kind or nature.

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

IT IS THEREFORE AGREED as follows:

1. Within ten (10) days after the effective date of this Consent Order, TRAVEL shall pay a fine of thirty-two thousand dollars (\$32,000.00) for engaging in the business of selling checks in Nebraska for thirty-two days after its license had expired.

2. Within ten (10) days after the effective date of this Consent Order, TRAVEL shall pay the DEPARTMENT's investigation costs in the amount of three thousand dollars (\$3,000.00).

3. Except as provided by paragraph 7, below, the total amount of the fine, thirty-two thousand dollars (\$32,000.00), plus the total amount of investigation costs, three thousand dollars (\$3,000.00), shall be payable by TRAVEL in one check or money order in the amount of thirty-five thousand dollars (\$35,000.00) to the DEPARTMENT.

4. Within ten (10) days after the effective date of this Consent Order, PREPAID shall pay a fine of thirty-two thousand dollars (\$32,000.00) for engaging in the business of selling checks in Nebraska for thirty-two (32) days after its license had expired.

5. Within ten (10) days after the effective date of this Consent Order, PREPAID shall pay the DEPARTMENT's investigation costs in the amount of three thousand dollars (\$3,000.00).

6. Except as provided by paragraph 7, below, the total amount of the fine, thirty-two thousand dollars (\$32,000.00), plus the total amount of investigation costs, three thousand dollars (\$3,000.00), shall be payable by PREPAID in one check or money order in the amount of thirty-five thousand dollars (\$35,000.00) to the DEPARTMENT.

7. In lieu of separate checks, TRAVEL and PREPAID may elect to submit a combined check or money order in the amount of seventy thousand dollars (\$70,000.00) representing the total amount of the fine, sixty-four thousand dollars (\$64,000.00), and the total amount of investigation costs in the amount of six thousand dollars (\$6,000.00). Such check or money order shall be payable to the DEPARTMENT.

8. Within five (5) business days after the receipt of the fines and investigation costs, the DEPARTMENT will vacate the Notices of Expiration and shall issue TRAVEL and PREPAID non-provisional licenses for the remainder of the 2011- 2012 licensing period.

9. The effective date of this Consent Order shall be the date of the Director's signature.

DATED this 12th day of August 2011.

**American Express Travel Related Services
Company, Inc.**

By: Carol V. Schwartz
Carol V. Schwartz
200 Vesey Street
MC 01-49-08
New York, New York 10285
(212) 640-3736

DATED this 15th day of August 2011.

**American Express Prepaid Card
Management Corporation**

By: John Munn
(Name)
20022 North 31st Avenue
MC 08-01-08
Phoenix, Arizona 85027
(623) 492-3357

DATED this 16th day of August, 2011.

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

By: John Munn
John Munn, Director
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