

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	
)	FINDINGS OF FACT
Ace Cash Express, Inc.)	CONCLUSIONS OF LAW
10916 'Q' Street)	AND
Omaha, Douglas County, Nebraska)	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 45-930 (Reissue 2010; Cum. Supp. 2014) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2014), 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 held a delayed deposit services business license under the Act at all times relevant to the herein findings of fact and conclusions of law. License No. 1963 was originally granted February 28, 2006, and was been renewed annually on May 1st since that time pursuant to Neb. Rev. Stat. § 45-910 (Cum. Supp. 2014). Ace surrendered its delayed deposit business services license on July 2, 2015.

2. On January 5, 2015, the Department commenced an examination of Ace pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2014). This examination included an on-site visitation of Ace’s Omaha, Douglas County, Nebraska locations.

3. The January 5, 2015, Report of Examination (“Report”) was forwarded to Ace on June 1, 2015. The Report noted a number of violations of the Act. Ace submitted a response received by the Department on June 22, 2015.

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. The previous regular examination of Ace was conducted September 9, 2013 (“2013 Exam”), and revealed a number of violations of the Act. The 2013 Exam resulted in a Consent Agreement between the Department and Ace with an effective date of May 27, 2014. Repeat violations of the Act will be noted below.

6. 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.

7. Ace failed to properly maintain accurate payment records in fifty-eight instances for customers comprised of:

a. Twelve instances where Ace did not list a deposit date on a collections report for customers AC, KD, SG, PG, JH, LL, KM, TN, BA, KC, MJ, and SD;

b. Three instances where Ace provided incomprehensible collection reports for customers JH, BA, and RB;

c. Eleven instances where Ace listed incorrect amounts on receipts for customers AH, ER (2), ML (4), and CG (4);

d. One instance where a collected amount on an ACH report conflicted with a maker’s file for customer WP;

e. Four instances where transaction receipt records in customer's files did not appear on collection reports provided to the examiner for customers KC (2), RD, and ER;

f. Eleven instances where Ace's records conflicted between Maker's Files, collection reports, and ACH reports for customers RD, and ML (10);

g. Five instances where duplicate return items were listed on a collections report for customers CA, KD, JH, KM, and AB;

h. One instance of an incorrect date paid on an ACH receipt for customer JJ;

i. Six instances of customer's accounts being ACH'd in an amount greater than their check amount for customers HA, ML (2), ES (2), and ML;

j. Four instances where the ACH report did not reflect all collection-related ACH payments as listed on the collections report for customers DE, CM (2), and FC.

8. Ace failed to make records available to Department examiners in thirty-four instances comprised of:

a. Twenty-six instances where file documents, or receipts, were not available at the time of examination in the files of customers EA, SB, DL (2), LM, CG, JK, LY, SA, MB, RB, MC (5), SD (2), CG (2), CH, BH (2), BS, and ML (2);

b. Eight instances where the copies of returned checks were not available for customers SG, PG, LL, RD, ER, MB, SD, and ML.

9. Ace failed to obtain a Same Day Transaction Verification Form ("SDTVF") in one instance for customer JO.

10. Ace failed to obtain correctly completed SDTVFs in nine instances for customers EW, MK, DM, SS, LH, CG, MM, DM, and TS.

11. Ace deposited multiple checks through a back office capture process and failed to destroy the original checks within 90 days after the substitute checks were created.

12. Ace initiated an electronic debit transaction (“ACH”) to a maker’s account prior to deposit of the maker’s check in three instances for customers SD, LM, and AH.

13. 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. 2010).

14. 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 2010) 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 (Reissue 2010) 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. § 45-915.01(1) (Reissue 2010) provides that a licensee shall keep or make available the books and records relating to transactions made under the Delayed Deposit Services Licensing Act as are necessary to enable the Department to determine whether the

licensee is complying with the Act. The books and records shall be maintained in a manner consistent with accepted accounting practices.

4. The facts set forth in Finding of Fact No. 7 constitute fifty-eight repeat violations of Neb. Rev. Stat. § 45-915.01 (Reissue 2010) as noted in the 2013 Exam and corresponding Agreement.

5. The facts set forth in Finding of Fact No. 8 constitute thirty-four separate violations of Neb. Rev. Stat. § 45-915.01 (Reissue 2010).

6. Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010) provides that no licensee shall 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.

7. The facts set forth in Finding of Fact No. 9 constitute one repeat violation of Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010) and Neb. Rev. Stat. § 45-915.01 (Reissue 2010) as noted in the 2013 Exam and corresponding Consent Agreement.

8. The facts set forth in Finding of Fact No. 10 constitute nine separate repeat violations of Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010) and Neb. Rev. Stat. § 45-915.01 (Reissue 2010) as noted in the 2013 Exam and corresponding Consent Agreement .

9. Neb. Rev. Stat. § 45-919(2) (Reissue 2010) provides that completion of a delayed deposit transaction means the licensee has presented a maker's check for payment to a financial institution as defined in § 8-101.

10. As set forth in Department Interpretative Opinion #5, effective May 1, 2011, a licensee can initially present, or deposit, a check through a back office capture process provided the licensee has a copy of any agreements with its financial institution on file and the licensee develops a policy regarding destruction of the original check where the time frame for destruction of the original check which shall be no later than 90 days after the substitute check has been created.

11. The facts set forth in Finding of Fact No. 11 constitute multiple violations of Neb. Rev. Stat. § 45-919(2) (Reissue 2010) and Department Interpretative Opinion #5.

12. Neb. Rev. Stat. § 45-925 (Reissue 2010) 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.

13. 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 (Reissue 2010).

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

15. 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.

16. Neb. Rev. Stat. § 45-911 (Reissue 2010) provides that the surrender of a delayed deposit services business license shall not affect the licensee's civil liability for acts committed prior to such surrender, affect the liability for any fines which may be levied against the licensee

or any of its officers, directors, shareholders, partners, or members for acts committed before the surrender, affect the liability of the surety on the bond, or entitle such licensee to a return of any part of the annual license fee or fees.

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 January 5, 2015 examination of Ace's Omaha, Douglas County, Nebraska locations. 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 days after the effective date of this Consent Agreement, Ace shall pay a fine of Two Hundred Dollars (\$200.00) for each of the fifty-eight instances where Ace failed to properly maintain customer records in repeat violation of Neb. Rev. Stat. § 45-915.01 (Reissue 2010).

2. Within ten days after the effective date of this Consent Agreement, Ace shall pay a fine of Two Hundred Dollars (\$200.00) for each of the thirty-four instances it failed to provide records to the Department examiners in violation of Neb. Rev. Stats. § 45-915.01 (Reissue 2010).

3. Within ten days after the effective date of this Consent Agreement, Ace shall pay a fine of Two Hundred Dollars (\$200.00) for the one instance where Ace failed to obtain the SDTVF in repeat violation of Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010) and Neb. Rev. Stat. § 45-915.01 (Reissue 2010).

4. Within ten days after the effective date of this Consent Agreement, Ace shall pay a fine of One Hundred Dollars (\$100.00) for each of the nine instances where Ace failed to obtain correctly completed SDTVFs in repeat violation of Neb. Rev. Stat. § 45-919(1)(g) (Reissue 2010) and Neb. Rev. Stat. § 45-915.01 (Reissue 2010).

5. Within ten days after the effective date of this Consent Agreement, Ace shall pay a fine of Five Hundred Dollars (\$500.00) for the multiple instances where it deposited checks through a back office capture process and failed to destroy the original checks within 90 days after the substitute checks were created in violation of Neb. Rev. Stat. § 45-919(2) and Department Interpretative Opinion #5.

6. Within ten 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, Twenty Thousand Dollars (\$20,000.00), 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 Twenty Thousand Five Hundred Dollars (\$20,500.00) 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.

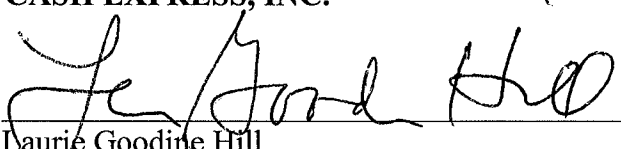
9. If, at any time, the Department determines Ace has committed any other violations of the Act, the Department may take any action available to it under the Act.

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

DATED this 29 day of October, 2015.

ACE CASH EXPRESS, INC.

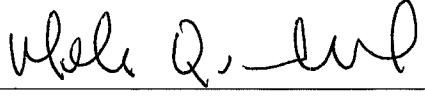
By: _____


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DATED this 2 day of November, 2015.

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

By: _____


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