

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	
)	FINDINGS OF FACT
Kearney Cash, Inc.,)	CONCLUSIONS OF LAW
1600 East 25 th Street,)	AND
Kearney, Buffalo 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 45-929 (Reissue 2004; Cum. Supp. 2006; Supp. 2007) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-920 (Supp. 2007), the DEPARTMENT has examined the books, accounts, and records of Kearney Cash, Inc., 1600 East 25th Street, Kearney, Buffalo County, Nebraska (“KEARNEY CASH”). As a result of such examination, and being duly advised and informed in the matter, the Director and KEARNEY CASH enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

FINDINGS OF FACT

1. KEARNEY CASH holds a delayed deposit services business license under the Act. License #1849 was originally granted June 24, 1998, and has been renewed annually on May 1st since that time pursuant to Neb. Rev. Stat. § 45-910 (Cum. Supp. 2006).
2. On September 12, 2006, the DEPARTMENT commenced an examination of KEARNEY CASH pursuant to Neb. Rev. Stat. § 45-920 (Supp. 2007). This examination included an on-site visitation of KEARNEY CASH’s Kearney, Buffalo County, Nebraska location.

3. The September 12, 2006 Report of Examination (“Report”) was forwarded to KEARNEY CASH on November 28, 2006. The Report noted a number of violations of the Act. KEARNEY CASH submitted responses received by the DEPARTMENT on January 3, 2007; February 7, 2007; and August 3, 2007.

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

5. The previous regular examination of KEARNEY CASH conducted January 31, 2005 (“2005 Exam”) also noted a number of violations of the Act. The findings of the 2005 Exam resulted in a Consent Agreement between KEARNEY CASH and the DEPARTMENT, effective April 12, 2006. Repeat violations of the Act will be noted below.

6. The Report noted one instance for customer CY where the customer’s records were unavailable to the examiner.

7. KEARNEY CASH’s February 7, 2007 response stated with respect to customer CY that:

I have enclosed pay-off receipts and signed contracts for all but CY (customer’s name redacted). I am unable to locate her receipt and contract due to misfiling. We have made huge changes as suggested to ensure this does not happen in the future.

8. KEARNEY CASH’s failure to provide records of customer CY upon request represents a violation of Neb. Rev. Stat. § 45-908(1) (Reissue 2004).

9. The Report noted nine instances where customers were charged fees in excess of the face amount of the customer's check and the statutorily allowed penalty fee.

10. KEARNEY CASH's February 7, 2007 response stated that:

I was only able to find the 9 accounts that were already reviewed by Mr. Flores. I have since re-Moved [sic] the \$2.00 charges on the accounts leaving only the \$15.00 return fee. We also [sic] pay the fee out of our pocket now.

11. KEARNEY CASH's attempt to collect amounts in excess of the face amount of the check and the statutorily allowed penalty represents nine separate violations of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2006).

12. The Report noted three instances where customers DA, ME, and AC were charged two penalties for the same transaction.

13. KEARNEY CASH's February 7, 2007 response states:

When checks are deposited on separate dates for a customer, they are generally returned [sic] on separate dates also. Our system automatically adds a \$15.00 return fee to each check returned if they are entered on different dates. The 3 mentioned checks are the only instances of this error that I was able to find since 2-02-2005. I have also contacted our software programmer and asked the fees be removed from the customer accounts as I am unable to do it from my computer. I have made several attempts to contact the customers that paid the double fee to no avail.

14. KEARNEY CASH's attempt to collect two penalty fees for one transaction for customers DA, ME, and AC represents three separate violations of Neb. Rev. Stat. § 45-917(1)(c) (Cum. Supp. 2006).

15. The Report noted that between July 14, 2006 and September 12, 2006 where a Same Day Transaction Verification Form (SDTVF) was not in use and had not been obtained or completed for KEARNEY CASH's customers.

16. KEARNEY CASH's August 3, 2007 response states:

I have come up with the total number of “same day” delayed deposit transactions that were done without the use of the Same Day Transaction Verification Forms from July 14th 2006 [sic] to Sept. 12th 2006 [sic]. The total number is 1019 (one thousand and nineteen). I hope this fulfills your request.

17. KEARNEY CASH’s failure to obtain or complete SDTVF in one thousand nineteen instances between July 14, 2006 and September 12, 2006 represents one thousand nineteen separate violations of Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2006).

18. The DEPARTMENT could conclude that the actions of KEARNEY CASH 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. 2006).

19. The DEPARTMENT incurred a minimum of five hundred 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. To operate efficiently, a licensee must ensure that transactions with customers are conducted accurately and that the records concerning those transactions are accurately kept.

2. Neb. Rev. Stat. § 45-917(1)(c) (Cum Supp. 2006) provides that every licensee shall, at the time any delayed deposit service transaction is made, give to the maker of the

check, or if there are two makers, to one of them, a notice written in plain English disclosing any penalty not to exceed fifteen dollars which the licensee will charge if the check is not negotiable on the date agreed upon. Each attempt to charge two penalties for the same transaction is a separate violation of the statute.

3. Neb. Rev. Stat. § 45-919(1)(g) (Cum Supp. 2006) 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 licensee shall retain written proof of compliance with this subdivision. If a licensee fails, or is unable, to provide such proof to the DEPARTMENT upon request, there shall be a rebuttable presumption that a violation of this subdivision has occurred and the DEPARTMENT may pursue any remedies or actions available to it under the Act.

4. Neb. Rev. Stat. § 45-925 (Cum. Supp. 2006) 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.

5. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that KEARNEY CASH has violated the Act, and that an administrative fine in an amount of not more than five thousand dollars for each violation plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-925 (Cum. Supp. 2006).

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

7. It is in the best interest of KEARNEY CASH, and it is in the best interest of the public, for KEARNEY CASH and the DEPARTMENT to resolve the issues included herein.

CONSENT AGREEMENT

The DEPARTMENT and KEARNEY CASH agree as follows:

Stipulations: In connection with this Consent Agreement, KEARNEY CASH 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 12, 2006 examination of KEARNEY CASH. Should future actions 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.

KEARNEY CASH further represents as follows:

1. KEARNEY CASH 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. KEARNEY CASH 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, KEARNEY CASH shall pay a fine of one hundred dollars (\$100.00) for being unable to produce on demand customer CY's records in violation of Neb. Rev. Stat. § 45-908(1) (Reissue 2004).

2. Within ten (10) days after the effective date of this Consent Agreement, KEARNEY CASH shall pay a fine of one hundred dollars (\$100.00) for each of the nine violations of Neb. Rev. Stat. § 45-917(1)(c) (Cum Supp. 2006) where nine customers were charged in excess of the face amount of the check and penalty fees allowed by statute.

3. Within ten (10) days after the effective date of this Consent Agreement, KEARNEY CASH shall pay a fine of one hundred dollars (\$100.00) for each of the three violations of Neb. Rev. Stat. § 45-917(1)(c) (Cum. Supp. 2006) where customers DA, ME, and AC were charged two penalty fees for a single transaction.

4. Within twenty (20) days after the effective date of this Consent Agreement, KEARNEY CASH shall submit proof to the DEPARTMENT that it has refunded the total amount of all fees collected from customers DA, ME, and AC that were charged in excess of the schedule of fees that was posted at the business location.

5. Within ten (10) days after the effective date of this Consent Agreement, KEARNEY CASH shall pay a fine of five thousand dollars (\$5,000.00) for the one

thousand nineteen violations of Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2006) where the Same Day Transaction Verification Form was not obtained.

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

7. The total amount of the fine, six thousand three hundred dollars (\$6,300.00), 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 six thousand eight hundred dollars (\$6,800.00) to the DEPARTMENT.

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

9. If, at any time, the DEPARTMENT determines KEARNEY CASH 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 14 day of AUG, 2008.

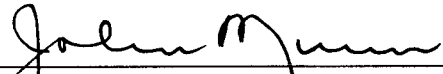
KEARNEY CASH, INC.

By: 
Steven Andrews, President

1600 East 25th Street
Kearney, NE 68847
(308) 234-6679

DATED this 18th day of August, 2008.

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

By: 

John Munn, Director

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