

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	
)	FINDINGS OF FACT
Lipsky & Associates, Inc.)	CONCLUSIONS OF LAW
1400 Santa Fe Drive, Suite 200)	AND
Weatherford, Texas)	CONSENT AGREEMENT
)	
NMLS No. 2164)	

THIS MATTER comes before the Nebraska Department of Banking and Finance (“Department”), by and through its Director, pursuant to its authority under the Nebraska Money Transmitters Act, Neb. Rev. Stat. §§ 8-2701 to 8-2747 (Reissue 2022; LB 92, 2023) (the “Act”). Pursuant to Neb. Rev. Stat. § 8-2744 (Reissue 2022), the Department has investigated alleged violations of the Act by Lipsky & Associates, Inc., 1400 Santa Fe Drive, Suite 200, Weatherford, Texas (“Lipsky”). As a result of such investigation, and being duly advised and informed in the matter, the Director and Lipsky enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement (“Consent Agreement”).

FINDINGS OF FACT

1. On March 29, 2023, the Department became aware of potential unlicensed money transmission activity conducted by Lipsky, which held a Nebraska Mortgage Banker license, and sent a request for information to Lipsky regarding business activities and transaction volume. On April 21, 2023, Lipsky responded to the request for information and provided transaction totals and a summary of business activities. On April 27, 2023, the Department notified Lipsky that Lipsky’s business constituted money transmission requiring licensing under the Act and the Mortgage Banker license was not the correct license for the activities conducted by Lipsky.

2. On July 28, 2023, Lipsky submitted a Money Transmitter License Application to the Department through the Nationwide Mortgage Licensing System and Registry (“NMLS”), under Identifier No. 2164. Lipsky had not been previously licensed by the Department as a money transmitter but was licensed as a mortgage banker.

3. On August 4, 2023, Lipsky submitted a prior activity affidavit as part of its money transmitter application to the Department. This affidavit detailed that Lipsky conducted money transmission business activities, which require a license under the Act, and provided information as to the volume of transactions for money transmission under the Act. The information in the affidavit correlated with Lipsky’s submission of information to the Department on April 21, 2023. The Department reviewed the affidavit; again, concluded that Lipsky’s business constituted money transmission requiring licensing under the Act; and notified Lipsky of its determination.

4. Lipsky has represented to the Department that Lipsky transacted business with Nebraska residents from January 1, 2022, to December 31, 2022, including 6,653 transactions generating \$17,678.34 in fees during the foregoing period. Lipsky was not licensed as a money transmitter with the Department during this period.

5. The Department incurred a minimum of Two Thousand Five Hundred Dollars (\$2,500.00) in investigation costs in this matter.

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 8-2716 (Reissue 2022) defines money transmission as the business of the sale or issuance of payment instruments or stored value or of receiving money or monetary value for transmission to a location within or outside of the United States by any and all means, including wire, facsimile, or electronic transfer. Notwithstanding any other provision of law, money transmission also includes bill payment services not limited to the right to receive payment

of any claim for another but does not include bill payment services in which an agent of a payee receives money or monetary value on behalf of such payee.

2. Neb. Rev. Stat. § 8-2725 (Reissue 2022) provides that a person shall not engage in money transmission without a license issued pursuant to the Act.

3. Neb. Rev. Stat. § 8-2726 (Reissue 2022) provides that to qualify for a license under the Act, an applicant at the time of filing for a license, and a licensee at all times after a license is issued, shall satisfy the following requirements: (a) Each applicant or licensee must have a net worth of not less than fifty thousand dollars; (b) The financial condition and responsibility, financial and business experience, and character and general fitness of the applicant or licensee must reasonably warrant the belief that the applicant's or licensee's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community; (c) Each corporate applicant or licensee must be in good standing in the state of its incorporation; and (d) Each applicant or licensee must be registered or qualified to do business in the state.

4. Section 8-2744 provides that if the Director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has violated the Act or any rule, regulation, or order of the Director thereunder, the Director may order such person to pay (a) an administrative fine of not more than five thousand dollars for each separate violation and (b) the costs of investigation.

5. The facts listed in above Finding of Fact No. 4 constitute a sufficient basis for the Director to have determined that Lipsky has violated the Act by engaging in unlicensed activity. In that instance, each of Lipsky's money transmitter transactions would constitute a separate violation of Section 8-2725. As a result, the Director would have cause to deny Lipsky's license application and/or could institute a proceeding to impose an administrative fine in an amount of

not more than five thousand dollars for each separate violation, plus costs of investigation, in accordance with Section 8-2744.

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 Lipsky, and it is in the best interest of the public, for Lipsky and the Department to resolve the issues included herein.

STIPULATIONS

In connection with this Consent Agreement, Lipsky 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 investigation of Lipsky in connection with its application for a license under the Act. Should future circumstances warrant, the facts from this matter may be considered in 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.
4. Except in an action by the Department to enforce the obligations in this Consent Agreement, this Consent Agreement is not intended to be deemed or used as (a) an admission of, or evidence of, the validity of any alleged wrongdoing, liability, or lack of any wrongdoing or liability; or (b) an admission of or evidence of, any such alleged fault or omission of Lipsky in any civil, criminal, arbitration, or administrative proceeding in any court, administrative agency, or other tribunal.

Lipsky further represents as follows:

1. Lipsky 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. Lipsky is acting free from any duress or coercion of any kind or nature.
3. This Consent Agreement is executed to avoid further proceedings. Lipsky neither admits nor denies the above Findings of Fact and Conclusions of Law, but executes this Consent Agreement in the interest of resolving the matters described in the above Findings of Fact and Conclusions of Law in an economical and efficient manner.

CONSENT AGREEMENT

IT IS THEREFORE AGREED as follows:

1. Within ten (10) days after the effective date of this Consent Agreement, Lipsky shall pay an administrative fine of Ten Thousand Dollars (\$10,000.00) for the alleged violations of Section 8-2725.
2. Within ten (10) days after the effective date of this Consent Agreement, Lipsky shall pay the Department's investigation costs in this matter in the amount of Two Thousand Five Hundred Dollars (\$2,500.00).
3. The total amount of the fine, Ten Thousand Dollars (\$10,000.00), plus the total amount of investigation costs, Two Thousand Five Hundred Dollars (\$2,500.00), shall be payable in one payment in the amount of Twelve Thousand Five Hundred Dollars (\$12,500.00) to the Department. Lipsky shall pay the fine and costs to the Department through the NMLS. An invoice will be created within NMLS and placed on the NMLS record of Lipsky. A corresponding license item will also be set on the NMLS record, indicating that there is an outstanding invoice to be paid.

If Lipsky prefers to pay the fine and costs outside of the NMLS, it may inform the Department of this preference and then make the payment by check, money order, or electronically to the Department via ACH. The Department will provide ACH payment instructions upon request.

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

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

6. Within ten (10) days after the Department's receipt of Lipsky's full payment of all fines and costs, the Department shall approve Lipsky's Money Transmitter License Application through the NMLS. If the license is issued in 2024, the license will expire on the last day of December 2024, unless sooner renewed for the following year, suspended, revoked, cancelled, or surrendered.

7. Within thirty (30) days after the effective date of this Consent Agreement, or within ten (10) days after the Department's approval of Lipsky's license application, whichever is sooner, Lipsky shall update its disclosure record on NMLS to include this Consent Agreement.

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

DATED this 11 day of January, 2024.

Lipsky & Associates, Inc.

DocuSigned by:

Daniel Ko

By: ADF26ACDBF4A483...

Daniel Ko, Vice President of Finance

1400 Santa Fe Drive, Suite 200
Weatherford, Texas 76086
571-730-2973

DATED this 11th day of January, 2024.



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

DocuSigned by:

Kelly Lammers

By: 81A8ACE4898B41D...

Kelly Lammers, Director

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