

STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:)	
)	
GILES COUNTY CHECK CASHING &)	TDFI No.: 08-167-C
TITLE LOANS, LLC,)	
)	
Respondent.)	

EMERGENCY CEASE AND DESIST ORDER

The Commissioner of the Tennessee Department of Financial Institutions (hereinafter “Commissioner”), having determined that Giles County Check Cashing & Title Loans, LLC (hereinafter “Respondent), has violated the “Deferred Presentment Services Act” (hereinafter “Act”), Tennessee Code Annotated Sections (hereinafter “TENN. CODE ANN. §§”) 45-17-101, *et seq.*, and that extraordinary circumstances require immediate action in this matter, hereby issues the following EMERGENCY CEASE AND DESIST ORDER pursuant to TENN. CODE ANN. § 45-1-107(a)(4), TENN. CODE ANN. § 45-1-107(c), TENN. CODE ANN. § 45-17-103, TENN. CODE ANN. § 45-17-110, TENN. CODE ANN. § 45-17-115(1), and TENN. CODE ANN. § 45-17-116(c).

JURISDICTION AND IDENTIFICATION OF THE PARTIES

1. TENN. CODE ANN. § 45-1-104 provides that the Tennessee Department of Financial Institutions (hereinafter “Department”) is charged with the execution of all laws relative to persons doing or engaged in a banking or other business as provided in Title 45 (Banks and Financial Institutions).

2. TENN. CODE ANN. § 45-1-107(a)(4) provides that, in addition to other powers conferred by Title 45 (Banks and Financial Institutions), the Commissioner has the authority to order any person to cease violating a provision of Title 45 (Banks and Financial Institutions) or lawful regulation issued under Title 45 (Banks and Financial Institutions). Pursuant to TENN. CODE ANN. § 45-1-107(c), notice and opportunity for a hearing shall be provided in advance of the Commissioner issuing such an order, except that in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action but shall promptly afford a subsequent hearing upon application to rescind the action taken.

3. The Commissioner is responsible for the administration, enforcement, and interpretation of the Act, and any regulations promulgated pursuant to the Act. TENN. CODE ANN. §§ 45-17-101, *et seq.*

4. TENN. CODE ANN. § 45-17-103 states “[n]o person shall engage in the business of deferred presentment services without having first obtained a license. A separate license shall be required for each location from which the business is conducted.”

5. Pursuant to TENN. CODE ANN. § 45-17-115(1), if, after notice and opportunity for a hearing, the Commissioner finds that a person has violated the Act or any administrative regulation issued pursuant to the Act, the Commissioner has the authority to order the person to cease and desist violating the Act or any administrative rules issued pursuant to the Act. However, in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action without providing the opportunity for a prior hearing pursuant to TENN. CODE ANN. § 45-

17-116(c). In such circumstances, the Commissioner shall promptly afford a subsequent hearing upon an application to rescind the action that is filed with the Commissioner within twenty (20) days after receipt of the notice of the Commissioner's emergency action pursuant to TENN. CODE ANN. § 45-17-116(c).

6. The Respondent is a domestic, for-profit limited liability company organized under the laws of the state of Tennessee on February 17, 1998 (02/17/1998). The Respondent's principal office is located at 304 South 7th Street, Pulaski, Tennessee 38478. The Respondent's Registered Agent is Pat Bryan (hereinafter "Bryan"), with an address of 304 South 7th Street, Pulaski, Tennessee 38478. The Respondent's identification number with the Tennessee Department of State is 0345993.

7. The Commissioner issued the Respondent a license (license number 1386) to lawfully engage in the business of deferred presentment services in the state of Tennessee on March 13, 1998 (03/13/1998). Pursuant to TENN. CODE ANN. § 45-17-110, said license expired on September 30, 2008 (09/30/08) because the Respondent failed to renew its license. The Respondent failed to renew its license because it failed to file a licensure renewal application and pay the licensure renewal fee by September 1, 2008 (09/01/08), as required by TENN. CODE ANN. § 45-17-110.

FACTUAL ALLEGATIONS

8. At all times relevant hereto, the Respondent did not possess a license from the Commissioner to lawfully engage in the business of deferred presentment services in the state of Tennessee. The Department received a licensure application from the Respondent on November 20, 2008 (11/20/08). As of the entry date of this

EMERGENCY CEASE AND DESIST ORDER, the Respondent's licensure application is still pending before the Commissioner.

9. In a letter dated September 24, 2008 (09/24/08), from Stephen Henley (hereinafter "Henley"), Director of Licensing for the Compliance Division of the Department, and addressed to Bryan at the Respondent's principal office address, Henley stated "[y]our current license(s) will expire on September 30, 2008, and before you operate after the expiration date you must first obtain a new license pursuant to Tenn. Code Ann. § 45-17-103. Any business engaged in after September 30 without a license may result in the Department initiating an enforcement action against you."

10. The letter referenced in paragraph nine (9) was mailed, via United States certified mail, return receipt requested, and via United States first class mail, to the Respondent's principal office. The certified mail return receipt indicates that the letter was delivered on September 26, 2008 (09/26/08).

11. On November 17th and 18th, 2008 (11/17-18/08), Compliance Examiner-in-Charge G. Grant Gouveia (hereinafter "Gouveia") conducted an onsite examination of the Respondent at the Respondent's principal office pursuant to the Act.

12. During the course of the onsite examination referenced in paragraph eleven (11), Gouveia uncovered evidence that the Respondent had continued to engage in the business of deferred presentment services in the state of Tennessee, at its principal office, despite the fact that the Respondent's license (license number 1386) had expired as of September 30, 2008 (09/30/08) and despite the fact that the Respondent had received written notice from the Department that its license had expired on said date and

that it must obtain a new license prior to engaging in the business of deferred presentment services in the state of Tennessee.

13. Specifically, pursuant to the onsite examination referenced in paragraph eleven (11), Gouveia documented approximately seven hundred sixteen (716) unlicensed deferred presentment transactions covering the time period October 1, 2008 (10/01/08) through November 15, 2008 (11/15/08). Additionally, the evidence gathered indicated that the Respondent had contracted for approximately nineteen thousand seven hundred thirteen dollars and seventy-six cents (\$19,713.76) in fees during said time period.

14. Pursuant to the onsite examination referenced in paragraph eleven (11), Gouveia drafted an examination report dated November 18, 2008 (11/18/08) that included a "Violations from Examination" section. According to said examination report, under the "Violations from Examination" section, Gouveia specifically noted "[t]he examiner identified Deferred Presentment License #1386 expired on September 30, 2008....The examiner manually keyed pertinent information from 716 agreements into an Excel spreadsheet. This violates T.C.A. 45-17-103 that no person shall engage in the business of deferred presentment services without having first obtained a license. The entity will need to cease and desist operations at this time."

15. The examination report referenced in paragraph fourteen (14) was signed by Gouveia and by an individual named Sherry Thomas (hereinafter "Thomas") on November 19, 2008 (11/19/08). According to said examination report, Thomas was the Respondent's Manager at the time of the onsite examination. Thomas was served with a copy of the examination report, via hand-delivery, on said date.

16. Subsequent to the onsite examination referenced in paragraph eleven (11), Gouveia conducted a follow-up onsite examination on December 9, 2008 (12/09/08), at the Respondent's principal office pursuant to the Act.

17. During the course of the onsite follow-up examination referenced in paragraph sixteen (16), Gouveia uncovered evidence that the Respondent had continued to engage in the business of deferred presentment services in the state of Tennessee, at its principal office, despite the fact that the Respondent had been previously cited by the Department for violating the Act with regards to the licensure issue during the course of the onsite examination referenced in paragraph eleven (11).

18. Specifically, pursuant to the onsite follow-up examination referenced in paragraph sixteen (16), Gouveia documented approximately thirty-four (34) additional unlicensed deferred presentment transactions covering the time period November 19, 2008 (11/19/08) through November 21, 2008 (11/21/08). Additionally, the evidence gathered indicated that the Respondent had contracted for an additional nine hundred forty dollars and fifty cents (\$940.50) in fees during said time period.

19. Pursuant to the onsite follow-up examination referenced in paragraph sixteen (16), Gouveia drafted an examination report dated December 9, 2008 (12/09/08) that included a "Violations from Examination" section. According to said examination report, under the "Violations from Examination" section, Gouveia specifically noted "[t]he examiner performed an unlicensed deferred presentment exam on November 17, 2008 and November 18, 2008, and the examiner identified that the licensee had entered into 716 unlicensed deferred presentment agreements. The examiner performed a follow-up unlicensed deferred presentment activity on December 9, 2008, and the examiner

identified that the licensee entered into 34 deferred presentment agreements. This violates T.C.A. 45-17-103 that no person shall engage in the business of deferred presentment services without having first obtained a license. The entity will need to cease and desist operations at this time.”

20. The examination report referenced in paragraph nineteen (19) was signed by Gouveia and by Thomas on December 9, 2008 (12/09/08). According to said examination report, Thomas was the Respondent’s Manager at the time of the onsite follow-up examination. Thomas was served with a copy of the examination report, via hand-delivery, on said date.

21. The aforementioned pattern of engaging in the business of deferred presentment services without having first obtained a license from the Commissioner is an indicator that the Respondent will continue to engage in the business of deferred presentment services in the state of Tennessee in the future, notwithstanding the fact that the Respondent’s license expired on September 30, 2008 (09/30/08).

CAUSES OF ACTION

22. The factual allegations as stated in paragraphs eight (8) through twenty-one (21) of this EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that the Respondent has violated TENN. CODE ANN. § 45-17-103, in that the Respondent has engaged in the business of deferred presentment services in the state of Tennessee without having first obtained a deferred presentment services license from the Commissioner.

23. The factual allegations as stated in paragraphs eight (8) through twenty-one (21) of this EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that extraordinary circumstances require immediate action pursuant to TENN. CODE ANN. § 45-1-107(c) and TENN. CODE ANN. § 45-17-116(c).

POLICY STATEMENT

24. In order to qualify for a deferred presentment services license, TENN. CODE ANN. § 45-17-104(a)(2) requires an applicant, in addition to other requirements, to demonstrate the financial responsibility, financial condition, business experience, character, and general fitness sufficient enough to reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly.

25. Additionally, TENN. CODE ANN. § 45-17-104(a)(1) requires an applicant seeking a deferred presentment services license to demonstrate a minimum net worth, determined in accordance with generally accepted accounting principles, of at least twenty-five thousand dollars (\$25,000.00) available for the operation of each location.

26. The factual allegations as stated in paragraphs eight (8) through twenty-one (21) of this EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that the Respondent has violated TENN. CODE ANN. § 45-17-103, by engaging in the business of deferred presentment services in the state of Tennessee without having first obtained a deferred presentment services license from the Commissioner. Said violation has deprived the Commissioner of the opportunity to determine whether the Respondent has the requisite financial responsibility, financial

condition, business experience, character, and general fitness sufficient enough to reasonably warrant the belief that its business will be conducted lawfully and fairly, as well as the opportunity to determine whether the Respondent has satisfied the statutorily mandated minimum net worth requirement. Consequently, the Commissioner has been deprived of the opportunity to make an informed determination of whether to grant the Respondent a license under the Act prior to entering into deferred presentment service agreements with Tennessee consumers.

EMERGENCY RELIEF

27. Having considered the factual allegations contained herein, the Commissioner has determined that the Respondent has violated the Act and that extraordinary circumstances warrant immediate action.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Respondent shall cease and desist immediately from engaging in the business of deferred presentment services in the state of Tennessee without a deferred presentment services license pursuant to TENN. CODE ANN. § 45-1-107(a)(4), TENN. CODE ANN. § 45-1-107(c), TENN. CODE ANN. § 45-17-103, TENN. CODE ANN. § 45-17-110, TENN. CODE ANN. § 45-17-115(1), and TENN. CODE ANN. § 45-17-116(c).

28. The provisions of this EMERGENCY CEASE AND DESIST ORDER shall remain in full force and effect unless and until such time as any provision is modified, terminated, suspended or set aside by the Commissioner, an administrative judge, or any court having jurisdiction over the matters addressed herein.

NOTICE

29. The Respondent has the right to a prompt hearing for the purpose of contesting and obtaining rescission of this EMERGENCY CEASE AND DESIST ORDER. If a prompt hearing is timely requested by the Respondent, the hearing shall be conducted in accordance with the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101, *et seq.*, and pursuant to the Official Compilation Rules & Regulations of the State of Tennessee, Rules of Procedure for Contested Cases, Chapter 0180-6.

30. The sole issue to be considered at the prompt hearing is whether extraordinary circumstances required immediate action in this matter. This EMERGENCY CEASE AND DESIST ORDER does not constitute a final adjudication upon the merits, but merely constitutes a temporary, emergency order until such time that a contested case may be promptly instituted by the filing of a Notice of Charges and Opportunity for Hearing.

31. In order to request a prompt hearing, the Respondent must file a written request with the Commissioner within twenty (20) days from receipt of this EMERGENCY CEASE AND DESIST ORDER. Any written request for a hearing must be filed with the Commissioner, Tennessee Department of Financial Institutions, 414 Union Street, Suite 1000, Nashville, Tennessee 37219. If no such written request is timely filed with the Commissioner, this EMERGENCY CEASE AND DESIST ORDER shall be deemed a Final Order without further legal process.

32. The Respondent may file a Petition for Appeal with the Commissioner within fifteen (15) days of entry of this EMERGENCY CEASE AND DESIST ORDER pursuant to TENN. CODE ANN. § 4-5-315(b).

33. The Respondent may submit to the Commissioner a petition for stay of effectiveness of this EMERGENCY CEASE AND DESIST ORDER or the Final Order within seven (7) days of entry pursuant to TENN. CODE ANN. § 4-5-316.

34. The Respondent may file a Petition for Reconsideration with the Commissioner, stating the specific grounds upon which the relief is requested, within fifteen (15) days of entry of this EMERGENCY CEASE AND DESIST ORDER or the Final Order pursuant to TENN. CODE ANN. § 4-5-317.

35. The Respondent may seek judicial review of this EMERGENCY CEASE AND DESIST ORDER by filing a Petition for Judicial Review in the chancery court of Davidson County, Tennessee, within sixty (60) days of the date this Order becomes a Final Order. A Petition for Reconsideration does not act to extend the sixty (60) day period; however, if the Petition is granted, then the sixty (60) day period is tolled and a new sixty (60) day period commences from the effective date of the Final Order disposing of the Petition.

ENTERED AND EFFECTIVE this the 16TH day of December 2008.

On behalf of the Department:



Greg Gonzales, Commissioner
Tennessee Department of Financial Institutions