

**STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Department of Insurance and Financial Services

**Enforcement Case No. 21-16460
Agency No. 21-009-CF**

Petitioner,

v

**Rapital Capital
Unlicensed**

Respondent.
_____ /

**Issued and entered
On May 26, 2022
by Judith A. Weaver
Senior Deputy Director**

ORDER TO CEASE AND DESIST

I. Background

Rapital Capital (Respondent) is an unlicensed foreign business that offers loans to Michigan consumers. The Department of Insurance and Financial Services (DIFS) received information that Respondent was charging interest in excess of what was permitted under Michigan law. After investigation and verification of the information, DIFS Staff concluded that Respondent violated numerous financial laws while engaging in the business of making loans to Michigan consumers.

On October 14, 2021, DIFS issued an Administrative Complaint and Notice of Intent to Issue an Order to Cease and Desist as well as an Order for Hearing which were served upon Respondent at the business address it holds out to the public. The Order for Hearing required Respondent to take one of the following actions within 21 days: (1) agree to a resolution of the case, (2) file a response to the allegations with a statement that Respondent planned to attend the hearing, or (3) request an adjournment. While Respondent, through its attorney, did acknowledge receipt of the Administrative Complaint and Notice of Intent to Issue an Order to Cease and Desist, Respondent failed to take any of the three actions identified above. Moreover, Respondent's attorney indicated that Respondent would not pursue this administrative proceeding further.

On **May 11, 2022**, DIFS Staff filed a Motion for Entry of Order to Cease and Desist. Respondent did not file a reply to the motion. Given Respondent's failure to respond, Petitioner's motion is granted. The Administrative Complaint, being unchallenged, is accepted as true. Based upon the Administrative Complaint, the Director makes the following Findings of Fact and Conclusions of Law.

II. Findings of Fact and Conclusions of Law

1. The Director is statutorily charged with the responsibility and authority to administer and implement the Regulatory Loan Act (RLA). See MCL 493.1 *et seq.*
2. The Director is granted general supervisory power over all persons engaging in the business of making loans of money, credit, goods, or things in action in the state of Michigan or with Michigan residents. MCL 493.1 *et seq.*; MCL 445.1851 *et seq.*
3. Rapital Capital (Respondent) describes itself as "a direct lender you can trust," providing "loans . . . designed to help you meet your short-term borrowing need." See <https://www.rapitalcapital.com/index.aspx#about>, last visited June 8, 2021. According to its website, its mailing address is [REDACTED].
4. DIFS received a consumer complaint indicating that Respondent is engaged in the business of making loans to Michigan consumers.
5. DIFS' subsequent investigation determined that Respondent provided a loan to Michigan customer C.R. on or about August 12, 2019. C.R. borrowed \$400.00 for 12 months, with a reported annual percentage rate (APR) of 419.96%. Finance charges totaled \$1,620.00, for a total of \$2,020.00 in payments over the 12-month term of the loan.
6. Respondent's loan included a returned item charge of \$30.00.
7. DIFS also computed that the APR for the C.R. loan was not 419.96%, but was actually 522.252%.
8. On or around November 6, 2019, DIFS sent a letter to Respondent. The letter asked Respondent to "[r]espond to each issue raised in the complaint," including "all actions [taken by Respondent] to resolve the complaint. The letter also asked Respondent to provide "a written statement" regarding "the activities being conducted under [Rapital Capital] and explain why the activity is being conducted prior to obtaining a license." The letter provided a link to DIFS website in order for Respondent to obtain a copy of the RLA and apply for a license.
9. Respondent did not reply to the November 6, 2019 letter.
10. On December 1, 2020, DIFS sent another letter to Respondent requesting information regarding loans originated by Respondent to Michigan residents.
11. Respondent replied through its counsel, [REDACTED], via a letter dated December 3, 2020. Although the letter stated "our principals have advised that they would be pleased to attempt the resolution of any customer complaints," it did not provide the requested information.

12. DIFS replied to Respondent's December 3, 2020 letter the following day, reminding Respondent that it was "engaging in Regulatory Lending activity in the state of Michigan without licensure . . . and without meeting an exception to licensure in violation of MCL 493.18 . . ." DIFS' December 4, 2020 letter also requested "a report containing comprehensive loan details and the identity of each Michigan consumer Rapital Capital has loan money to."
13. Respondent did not reply to the December 4, 2020 letter.
14. Respondent knew or reasonably should have known that, under MCL 493.13(1), the interest rate charged by licensees is limited to that provided by the Credit Reform Act, MCL 445.1851 *et seq.*
15. Respondent knew or reasonably should have known that, under MCL 493.18(1), it cannot charge an interest rate exceeding that charged by a licensee.
16. Respondent knew or reasonably should have known that, under MCL 445.1854(1), regulated lenders may charge a maximum of 25% interest on a loan.
17. Because Respondent is not licensed, it is not a regulated lender and thus subject to the interest rate stated in MCL 438.31.
18. Respondent knew or reasonably should have known that, under MCL 438.31, lenders are limited to charging a maximum interest rate of 7%.
19. By charging an annual percentage rate (APR) of 522.252%, Respondent violated MCL 493.13(1), MCL 493.18(1) and MCL 438.31.
20. Respondent knew or reasonably should have known that, under MCL 493.13(3), the interest rate for its loans must be "specifically expressed in every obligation signed by the borrower."
21. By inaccurately stating the APR as 419.96%, instead of 522.252%, Respondent violated MCL 493.13(3).
22. Respondent knew or reasonably should have known that, under MCL 445.1856(2), a regulated lender may charge no more than \$25.00 for an item returned for insufficient funds.
23. By maintaining a contract that charges a fee of \$30.00 for a returned item, Respondent violated MCL 445.1856(2).
24. Respondent knew or reasonably should have known that, under 12 CFR § 1026.18(e), it must disclose the APR to the borrower.
25. By inaccurately stating the APR as 419.96%, instead of 522.252%, Respondent violated 12 CFR § 1026.18(e).
26. Uncle Warbucks, a business entity formerly engaged in making unlicensed loans to Michigan consumers, was subject to a Final Order to Cease and Desist from violating the RLA and from engaging in the business of making loans in the state of Michigan on November 5, 2019 in

Enforcement Case No. 18-15238, Agency No. 18-069-RL. At that time, Uncle Warbucks was located at [REDACTED]. Currently, Uncle Warbucks is located next to Respondent at [REDACTED].

27. Respondent's conduct demonstrates that Respondent has, or is about to, engage in a practice posing a threat of financial loss or threat to the public welfare, or that Respondent has or is about to violate a law or rule, justifying an order requiring the Respondent to cease and desist pursuant to MCL 493.9a, and further requiring the following corrective affirmative actions:
 - a. Respondent to provide DIFS with a list of all Michigan borrowers, their contact information, and their complete account information;
 - b. Respondent to recalculate the accounts of all Michigan borrowers at an interest rate of 7% and secure refunds to the borrowers due to the excessive finance charges; and
 - c. Respondent to change its contract language so that it charges no more than \$25.00 for each item returned for insufficient funds and recalculate the accounts of all Michigan borrowers regarding all items returned for insufficient funds so that no more than \$25.00 is charged for each such returned item and secure refunds to the borrowers due to the excessive returned item charges.
28. On October 14, 2021, true copies of an Administrative Complaint and Notice of Intention to Issue Cease and Desist Order, Order for Hearing and Notice of Hearing were mailed by first class mail to Respondent at the following address of record on file with DIFS: 1329-C Arena Road, Lot 110, Kahnawake Mohawk Territory, Quebec, Canada J0L 1B0.
29. Respondent submitted an email response to the Administrative Complaint on or about November 1, 2021. However, the letter, while acknowledging the Administrative Complaint, was non-responsive to the allegations made in the complaint. Furthermore, the letter did not provide the information requested in the complaint. Attorneys for Respondent subsequently submitted a correspondence on November 21, 2021, to DIFS stating that Respondent had no interest in pursuing this matter further.
30. In paragraph 3 of the Order for Hearing, the Respondent was ordered to do one of the following within 21 days of the date of the Order: 1) agree to a resolution with the opposing party, 2) file a response to the allegations in the Administrative Complaint and file a statement that Respondent plans to attend the hearing as scheduled, or 3) file a request for an adjournment. Paragraph 5 states that failure to make the required filing shall constitute the default of Respondent in this contested case.
31. Respondent has failed to take any of the actions required by paragraph 3 of the Order. See Petitioner's Exhibit 1, Affidavit of Kelsey Rockey.
32. Despite DIFS Staff having made reasonable efforts to serve Respondent, Respondent has failed to appear and defend.

33. Therefore, where Respondent has received notice and was given an opportunity to have a hearing on this contested case and Respondent has not responded nor appeared to defend, the Petitioner is entitled to the entry of an Order to Cease and Desist the aforementioned unlawful conduct by Respondent.

III. Order

Based upon the Respondent's conduct and the applicable law cited above, it is ordered that:

1. Respondent shall **CEASE** and **DESIST** from violating the Regulatory Loan Act and Credit Reform Act as identified above.
2. Respondent shall provide to DIFS a list of all Michigan borrowers, their contact information, and their complete account information, **within 30 days from the date that this Order has been entered.**
3. Respondent shall recalculate the accounts of all Michigan borrowers at an interest rate of 7%, **within 60 days from the date that this Order has been entered.**
4. Respondent shall provide credits to all Michigan borrowers with open accounts for the amount of interest charged in excess of 7%, **within 60 days from the date that this Order has been entered.**
5. Respondent shall provide refunds to all Michigan borrowers with closed accounts for the amount of all interest charged in excess of 7%, **within 60 days from the date that this Order has been entered.**
6. Respondent shall provide proof to DIFS of the credits and refunds issued to all applicable Michigan borrowers, **within 90 days from the date that this Order has been entered.**
7. All documents required to be provided to DIFS shall be sent electronically to Diego R. Avila, Staff Attorney, AvilaD@michigan.gov or via mail, Diego R. Avila, Personal and Confidential, P.O. Box 30220, Lansing, MI 48909-7720.

Anita G. Fox, Director
For the Director:



Judith A. Weaver, Senior Deputy Director