

**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**

**Agency Case No. 22-1078-L  
Docket No. 22-034564**

Petitioner,

**v**

**Jessica Jividen,**

Respondent.

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**ISSUED AND ENTERED**

**on December 14, 2022  
by Sarah Wohlford  
Senior Deputy Director**

**ORDER OF PROHIBITION**

**I. INTRODUCTION**

This matter concerns an enforcement action initiated by the Department of Insurance and Financial Services (DIFS) alleging that Jessica Jividen (Respondent) violated the Deferred Presentment Services Transactions Act (Act), MCL 487.2121, *et seq.*, in connection with the creation and/or processing of fraudulent deferred presentment contracts.

A hearing was scheduled for November 1, 2022. On the hearing date, Respondent failed to appear. Petitioner moved for a default judgment which was granted by the administrative law judge pursuant to Section 72(1) of the Administrative Procedures Act, MCL 24.272(1). On November 7, 2022, Administrative Law Judge David Marmon (Judge Marmon) issued a Proposal for Decision (PFD). In the PFD, Judge Marmon recommended that the Director issue a final order that prohibits Respondent from being employed by, an agent of, or an executive officer of a licensee under the Act. Judge Marmon based his recommendations on the pleadings, oral argument, and documentary evidence presented. The factual findings in the PFD are in accordance with the preponderance of the evidence and the conclusions of law are supported by reasoned opinion. For these reasons, and as set forth below, the PFD is adopted in full.

## II. EXCEPTIONS

Pursuant to the PFD, the parties had until November 28, 2022 to file exceptions to the PFD. No exceptions to the PFD were filed. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v Public Service Comm*, 136 Mich App 52 (1984).

## III. FINDINGS OF FACT

The Findings of Fact in the November 7, 2022 PFD are adopted in full and made part of this Final Order of Prohibition.

## IV. CONCLUSIONS OF LAW

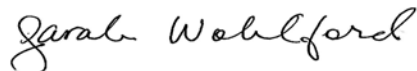
The Conclusions of Law set forth in the November 7, 2022 PFD are adopted in full and made part of this Final Order of Prohibition.

## V. ORDER

Therefore, it is **ORDERED** that:

1. The PFD is adopted and made part of this Order of Prohibition.
2. Respondent is prohibited from being employed by, an agent of, or an executive licensee under the Deferred Presentment Service Transactions Act, MCL 487.2121, *et seq.*
3. This Order of Prohibition shall be and is effective on the date it is issued and entered, as shown in the caption hereof. This Order remains in effect until terminated, modified, or set aside, in writing by the Director.

Anita G. Fox, Director  
For the Director:



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Sarah Wohlford, Senior Deputy Director

**STATE OF MICHIGAN**  
**MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

**IN THE MATTER OF:**

**Docket No.: 22-034564**

**Department of Insurance and Financial  
Services,  
Petitioner**

**Case No.: 22-1078-L**

**v**

**Agency: Department of  
Insurance and  
Financial Services**

**Jessica Jividen,  
Respondent**

**Case Type: DIFS-Insurance**

**Filing Type: Appeal**

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**Issued and entered  
this 7<sup>th</sup> day of November 2022  
by: David B. Marmon  
Administrative Law Judge**

**PROPOSAL FOR DECISION**

**Procedural History**

This is a proceeding held under the Deferred Presentment Service Transactions Act, MCL 487.2121 *et seq.* This contested case is also held in accordance with the Administrative Procedures Act, MCL 24.201 *et seq.* (APA), and the Administrative Hearing Rules of the Michigan Office of Administrative Hearings and Rules, Mich Admin Code R 792.10101 *et seq.* (Hearing Rules).

This proceeding commenced with the Department of Insurance and Financial Services (DIFS, or Petitioner), issuing a Notice of Intention to Prohibit (Notice) to Jessica Jividen (Jividen, or Respondent), on September 14, 2022. Attached to the Notice is a Statement of Factual Allegations in support of the Notice. Included within the Notice is a Notice of Hearing listing the date and time of the hearing, the name of the Administrative Law Judge (ALJ), and call-in instructions.

On September 14, 2022, DIFS sent a Request for Hearing to the Michigan Office of Administrative Hearings and Rules (MOAHR). The Request for Hearing stated the issue as “[w]hether Respondent’s actions were in compliance with the Mortgage Loan Originator Licensing Act, MCL 493.131.” On September 15, 2022, MOAHR issued a Notice of Telephone Hearing stating this same issue and scheduling the hearing for 9:00 a.m. on November 1, 2022. On September 28, 2022, DIFS sent to MOAHR an Amended Request for Hearing, which stated the issue as “[w]hether Respondent’s actions were in compliance with the Deferred Presentment Service Transactions Act, MCL 487.2169.” On October 21, 2022, MOAHR issued an Amended Notice of Telephone Hearing. The Amended Notice of Telephone Hearing did not restate the issue as reflected in DIFS’ Amended Request for Hearing but included updated information concerning the conference line call-in information.

On November 1, 2022, the contested case hearing was held by telephone as scheduled. Petitioner was represented by DIFS Staff Attorney Gary Grant. Respondent failed to call into the conference line.

After determining that Respondent was properly served notice of the hearing, the undersigned permitted Petitioner to proceed in Respondent’s absence.<sup>1</sup> The hearing proceeded pursuant to Section 72 of the Administrative Procedures Act of 1969 (APA), MCL 24.201 *et. seq.* A default was requested and granted on behalf of Petitioner pursuant to Section 78 of the APA.

Sec. 72(1) of the APA states:

(1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party. MCL 24.272(1).

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<sup>1</sup> Because Petitioner provided Respondent with ample information concerning the nature of its action, and because Respondent failed to appear, this ALJ concludes that the failure in the Notice of Telephone Hearing to cite the correct statute under which the hearing was to held did not violate Respondent’s due process rights.

Section 78(2) of the APA states:

(2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties. MCL 24.278(2).

Mich Admin Hearing Rule R 792.10134(2) provides for setting a default aside. This rule states:

Within 7 days after service of a default order, the party against whom it was entered may file a written motion requesting the order be vacated. If the party demonstrates good cause for failing to attend a hearing or failing to comply with an order, the administrative law judge may reschedule, rehear, or otherwise reconsider the matter as required to serve the interests of justice and the orderly and prompt conduct of proceedings.

The following exhibits were offered by Petitioner and admitted into evidence:

- P-1 Transaction History
- P-2 Jividen letter dated 3-9-21
- P-3 DIFS Investigative Memorandum dated 6-1-22

At the conclusion of the hearing, the record was closed.

**Issue and Applicable Law**

Whether Respondent's actions were in compliance with the Deferred Presentment Service Transactions Act, MCL 487.2169.

MCL 487.2169, Section 49 of the Deferred Presentment Service Transactions Act, provides as follows regarding fraud:

Sec. 49.

(1) If in the opinion of the commissioner a person has engaged in fraud, the commissioner may serve upon that person a written notice of intention to prohibit that person from being employed by, an agent of, or an executive officer of a licensee under this act. As used in this subsection, "fraud" includes actionable fraud, actual or constructive fraud, criminal

fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and, except as provided under subsection (7), set a hearing on a date within 60 days after the date of the notice. If the person does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

(3) If after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being a licensee or from being employed by, an agent of, or an executive officer of any licensee under this act.

(4) An order issued under subsection (2) or (3) is effective when served on a person. The commissioner shall also serve a copy of the order upon the licensee of which the person is an employee, agent, or executive officer. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the person subject to the order may apply to the commissioner to terminate the order.

(6) If the commissioner considers that a person served a notice under subsection (1) poses an imminent threat of financial loss to customers, the commissioner may serve upon the person an order of suspension from being employed by, an agent of, or an executive officer of any licensee. The suspension is effective on the date the order is issued and, unless stayed by a court, remains in effect until the commissioner completes the review required under this section, and the commissioner has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the commissioner and the person served with an order issued under subsection (6), the commissioner shall hold the hearing required under subsection (2) to review the suspension not earlier than 5 days or later than 20 days after the date of the notice.

(8) If a person is convicted of a felony involving fraud, dishonesty, or breach of trust, the commissioner may issue an order suspending or prohibiting that person from being a licensee and from being employed by,

an agent of, or an executive officer of any licensee under this act. After 5 years from the date of the order, the person subject to the order may apply to the commissioner to terminate the order.

(9) The commissioner shall mail a copy of any notice or order issued under this section to the licensee of which the person subject to the notice or order is an employee, agent, or executive officer.

(10) Within 30 days after the commissioner has notified the parties that the case has been submitted to him or her for final decision, the commissioner shall render a decision that includes findings of fact supporting the decision and serve upon each party to the proceeding a copy of the decision and an order consistent with the decision.

(11) Except for a consent order, a party to the proceeding or a person affected by an order issued under this section may obtain a judicial review of the order. A consent order may be reviewed as provided under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except for an order under judicial review, the commissioner may terminate or set aside any order. The commissioner may terminate or set aside an order under judicial review with the permission of the court.

(12) Unless ordered by the court, the commencement of proceedings for judicial review under subsection (11) does not stay the commissioner's order.

(13) The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under this section.

(14) Any current or former executive officer or agent who violates a final order issued under this section is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 1 year, or both.

(15) An executive officer who is subject to an order issued under this section and who meets all of the following requirements is not in violation of the order:

(a) He or she does not in any manner, directly or indirectly, participate in the control or management of a licensee after the date the order is issued.

(b) He or she transfers any interest he or she owns in the licensee to an unrelated third party within 6 months after the date the order is final.

**Findings of Fact**

Based on the default entered against Respondent, together with documents admitted to the record, as well as the Notice and the Statement of Factual Allegations attached thereto, the following facts are found to be established:

1. Jessica Jividen (Respondent) was an employee of deferred presentment licensee ACAC, Inc. doing business as Approved Cash (ACAC) (License #DP-0020347), located at [REDACTED] during all times relevant to this enforcement action. (Statement of Factual Allegations, p 1).
2. DIFS initiated an investigation on March 7, 2022, to determine whether Respondent's actions were in compliance with the Act. The investigation revealed fraudulent activity as follows:
  - (a) From approximately November 2020 through March 2021, Respondent actively participated in a scheme at ACAC whereby fraudulent deferred presentment contracts were created by ACAC employees for the purpose of embezzling or stealing money. More than 112 customer accounts were impacted by this scheme. Respondent created and/or processed multiple fake deferred presentment contracts by using current customer profiles without the customers' knowledge or consent and forging the customers' names on the contracts. Respondent also made false and unauthorized changes to the contact information for the customer profiles prior to creating and processing the fraudulent contracts. Respondent retained the funds that would otherwise have gone to the customers had the contracts been legitimate.



- (b) In an attempt to avoid detection of the fraud described above, Respondent engaged in a shell game whereby new fraudulent deferred presentment contracts were created to make it appear as if ACAC had received funds sufficient to pay off the original fraudulent transactions before they became due. This scheme remained undetected until March 2021, when ACAC's District Manager discovered the fraudulent transactions and terminated Respondent's employment.
- (c) The customer accounts impacted by Respondent's fraudulent transactions include, but are not limited to, the following:
  - 1. Customer SF, transaction date 2/24/21
  - 2. Customer LH, transaction date 2/19/21
  - 3. Customer HO, transaction date 2/19/21
  - 4. Customer MW, transaction date 2/24/21
  - 5. Customer JF, transaction date 2/10/21
  - 6. Customer RG, transaction date 2/26/21
  - 7. Customer DR, transaction date 2/17/21
  - 8. Customer JJ, transaction date 2/10/21
  - 9. Customer LL, transaction date 3/1/21
  - 10. Customer MR, transaction date 3/3/21
- (d) In March 2021, Respondent provided a written statement to ACAC wherein she admitted that she and another employee "started running fake loans under inactive customers names and keeping the money."

- (e) Because of the shell game described above and the involvement of multiple ACAC employees in the scheme, ACAC has been unable to quantify the precise amount of money that Respondent stole from the company but estimates that the entire scheme involved the issuance of fraudulent deferred presentment transactions for amounts totaling \$63,940. Upon detection of the fraud, ACAC ensured all fraudulent transactions were considered paid-in-full within the transactional system and reported closed within the Veritec database. (Statement of Factual Allegations, pp 1-2; Exhibits P-2 and P-3).

### **Conclusions of Law**

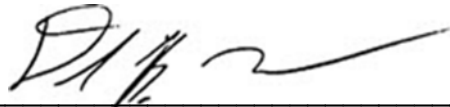
The principles that govern judicial proceedings also apply to administrative hearings. 8 *Callaghan's Michigan Pleadings and Practice* (2<sup>nd</sup> ed), §60.48. Per MCL 487.2169 Petitioner has the burden of proof to show by a preponderance of the evidence that Respondent engaged in fraud, thereby authorizing DIFS' Director to prohibit Respondent from being employed by, an agent of, or an executive officer of a licensee under the Deferred Presentment Service Transactions Act. As the Michigan Supreme Court has stated, "[p]roof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence." *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1; 367 NW2d 1 (1985). See also, *Martucci v Ballenger*, 322 Mich 270; 33 NW2d 789 (1948).

Petitioner has established by a preponderance of the evidence that Respondent engaged in the creation and/or processing of fraudulent deferred presentment transactions and committed theft and/or embezzlement against ACAC as described above. Accordingly, Respondent has engaged in fraud and has provided justification for

the Director to issue an Order of Prohibition consistent with the provisions of Section 49 of the Act.

**Proposed Decision**

The undersigned proposes that the above findings of fact and conclusions of law be adopted in a final order that prohibits Respondent from being employed by, an agent of, or an executive officer of a licensee under the Deferred Presentment Service Transactions Act, MCL 487.2121 *et seq.*



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**David B. Marmon**  
**Administrative Law Judge**

**Exceptions**

In accordance with MCL 24.281 and Mich Admin Code R 792.10132, a party may file Exceptions to this Proposal for Decision (PFD) within 21 days after the PFD is issued. An opposing party may file a Response to Exceptions within 14 days after exceptions are filed. Exceptions/Responses shall include the case name and docket number and be sent by e-mail (preferred) to: [MOAHR-GA@michigan.gov](mailto:MOAHR-GA@michigan.gov), by regular mail to: MOAHR-General Adjudication, P.O. Box 30695, Lansing, MI 48909, or by fax to: 517-763-0148. Also, a copy of Exceptions/Responses must be sent by e-mail to: [swinsonr@michigan.gov](mailto:swinsonr@michigan.gov) or by regular mail to: Department of Insurance and Financial Services, Office of General Counsel–Attn: Randie Swinson, P.O. Box 30220, Lansing, Michigan, 48909. A copy of any Exceptions/Responses must be timely sent to all other parties and attorneys of record in this matter.