STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

Department of Insurance and Financial Services,

Petitioner,

Case No. 19-1045-DP
Docket No. 19-025251

v

Community Business Consulting, Inc.
License No. DP-0021119

Respondent.
_____/

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Issued and entered
this 19th day of May 2021
by Anita G. Fox
Director

FINAL DECISION

I. BACKGROUND

This matter concerns an enforcement action initiated by the Department of Insurance and Financial Services (DIFS) staff alleging that Respondent Community Business Consulting, Inc. (Respondent) violated Michigan's Deferred Presentment Service Transactions Act, MCL 487.2121, *et seq.*

(Act). At all relevant times, Respondent was licensed to engage in deferred presentment service transactions in Michigan.

The parties filed cross-motions for summary disposition. Both parties were represented by counsel at oral argument on July 14, 2020. On August 17, 2020, Administrative Law Judge Erick Williams (Judge Williams) issued a Ruling on Cross Motions for Summary Disposition (Ruling) with an opportunity to request a hearing on the two remaining issues in his Ruling. Neither party sought a hearing within 14 days of issuance of the Ruling; therefore, the Ruling was subsequently deemed a Proposal for Decision (PFD) pursuant to MCL 24.281. In the PFD, Judge Williams ruled in favor of DIFS' dispositive motion on the following allegations:

- **Serial Finance Charges:** Respondent violated MCL 487.2155(1) when it collected finance charges on re-loans.
- **Checks Not Deposited:** Respondent violated MCL 487.2155(7) when it failed to cash the customer's check prior to a re-loan.
- **Re-Loans Versus New Loans:** Respondent's re-loans are not new payday loans. In the absence of payment to the customer, Respondent's re-loans do not fit the statutory definition of MCL 487.2122(1)(g), and they violate MCL 487.2153(3)(c).
- **Promise to Defer Collection:** Respondent violated MCL 487.2152(2)(l) and MCL 487.2141 by failing to promise in its loan contract forms that it will take no steps to collect the debt until the maturity date.
- **Unfair Examination:** The March 11, 2019 Weigold letter did not constitute a final, binding decision clearing Respondent of charges.
- **District Court Approval:** The 36th District Court did not adjudicate and approve Respondent's re-loaning practice.

Judge Williams ruled in favor of Respondent with respect to the following allegations:

- **Customer Signatures:** In the absence of a rule requiring handwritten signatures, there is insufficient evidence to conclude that Respondent violated MCL 487.2152(1) or MCL 487.2141 by failing to require handwritten signatures on its loan contracts.
- **Multiple Addresses:** Respondent did not violate MCL 487.2152(2)(b) by using two business addresses on its loan contracts.
- **Description of Complaint Procedure:** Respondent was in substantial compliance with MCL 487.2152(2)(m) when it gave customers a phone number to call if they want to complain.
- **Using the Word "Interest":** Respondent's use of the word "interest" on its loan contract forms was not prohibited or misleading, and Respondent therefore does not violate MCL 487.2153(1).
- **Credit Card Fee:** Respondent did not violate MCL 487.2153(4)(e) because there is no evidence Respondent collected a 4% credit card fee from its customers and because Respondent stopped listing the fee after October 2018.
- **Debit Card Match:** Respondent did not violate MCL 487.2155(11) because it is "impossible to unequivocally conclude"[1] that Respondent's practice of accepting partial payment by debit card is a violation of the Act.

Judge Williams deemed there to be insufficient facts upon which to base a decision related to the alleged violations of MCL 487.2153(1) or MCL 487.2153(4)(e) regarding excessive loan amounts. Judge Williams concluded the evidence lacked the "amount of the actual [GC] transaction,"[2] which is needed to evaluate the alleged violations concerning excessive loan amounts. Judge Williams also deemed there to

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[1] *See* PFD, p 40.
[2] *See* PFD, p 30.

be insufficient facts upon which to rule concerning the allegation of fraud. Judge Williams specifically concluded that the question of whether Respondent committed fraud in violation of MCL 487.2167(1)(b) is a contested issue of fact.[3]

Finally, Judge Williams agreed with DIFS that Respondent committed knowing violations of MCL 487.2167(1)(c)(e) and (f) when it elected not to abandon its re-loaning practice, when it continued to fail to pay loan proceeds to customers, and when it falsely reported transactions as "closed." Judge Williams noted that Respondent "knew in February 2018 that its business practices were incompatible with the statutory scheme."[4] Judge Williams concluded that Respondent is subject to sanctions for "knowing violations" pursuant to MCL 487.2167(1)(c), (e) and (f), and MCL 487.2168(1).

Judge Williams based his recommendation on the pleadings, documentary evidence presented by the parties in support of their competing motions for summary disposition, and oral argument. Judge Williams' recommendation is in accordance with the preponderance of the evidence subject to the modifications set forth below in Sections III and IV herein.

II. EXCEPTIONS

Pursuant to an Order Extending Time to File Exceptions, the parties had until September 25, 2020 to file exceptions to the PFD.[5] On September 15, 2020, DIFS filed its Exceptions to the PFD. On September 25, 2020, Respondent filed its Exceptions to the PFD. On September 29, 2020, Respondent filed its Response to DIFS' Exceptions to the PFD. Finally, on October 6, 2020, DIFS filed its Response to Respondent's Exceptions to the PFD. The exceptions and responses are summarized in the paragraphs that follow using the same headings reflected in the PFD where feasible.

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[3] *See* PFD, p 36.
[4] *See* PFD, p 38.
[5] *See* Item No. 2 on the Certified Record.

A. Customer Signatures

In its Exceptions to the PFD, DIFS made clear that it does not agree with Judge Williams' assessment of the signature requirement set forth in MCL 487.2152(1), and that, for the 136 transactions displayed in Exhibits P1-P27, the agreements did not contain a signature or evidence of a customer's intent to authenticate the document. DIFS notes that, "at a minimum," 36 transaction agreements contained a blank customer line, and the remaining 100 contained a printed phrase "Borrower Verbally Authorized via Phone."[6] DIFS contends the aforementioned phrase is neither an electronic signature nor does it convey "a *customer's* intent to authenticate the Agreement."[7]

In its Response to DIFS' Exceptions filed on September 29, 2020 (hereafter "Response to DIFS' Exceptions"), Respondent argues that Judge Williams was correct in his interpretation of the signature requirement and noted that there was no "record or other evidence" to conclude that Respondent violated MCL 487.2152(1) or MCL 487.2141 by failing to require handwritten signatures on loan contracts. Respondent further contends that there was clearly a contract, despite the absence of a handwritten signature, because the 36th District Court granted seven default judgments, which requires first establishing that a contract existed on which to base the judgment.

B. Using the Word "Interest"

DIFS further objected to the PFD on the basis that DIFS does not take the position that Respondent violated Section 33(1) of the Act, MCL 487.2153(1), with respect to Respondent's use of the word "interest" in its agreements. Rather, DIFS contends that the phrase "the borrower shall pay interest" contained in Respondent's Agreement (*See* Exhibit P30) violates Section 32(2)(i) of the Act, MCL 487.2152(2)(i), which, according to DIFS, requires the Agreement to state a clear description of the

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[6] *See* DIFS' Exceptions to the PFD, p 2.
[7] *Id.* (Emphasis in original)

customer's payment obligation. Although DIFS agrees with Judge Williams that there is no express prohibition against using the word "interest" in the Act, DIFS argues that Respondent's Agreement must still contain a clear description of the customer's payment obligation pursuant to Section 32(2)(i) of the Act. DIFS claims that, by using the phrase "borrower shall pay interest" in the Agreement, Respondent conveys a payment obligation that is expressly forbidden by the Act, i.e., a deferred presentment service transaction is an agreement for a licensee to pay a customer an agreed amount for a fee and defer the presentment of a customer's check in connection with that transaction. *See* Section 2(1)(g) of the Act, MCL 487.2112(1)(g). It is not a loan or the borrowing of money. DIFS claims that a description of a payment obligation that is prohibited by the Act cannot be deemed to be clear to a borrower.

In its Response to DIFS' Exceptions on this issue, Respondent contends that each of its contracts, as evidenced by Exhibit P30, sets out clearly, in separate boxed areas, and with clearly titled separate columns, that its customer is paying a "Finance Charge" that is the sum of the service fee ("SRVC/ADV FEE") and the State's database fees ("ST of MI DATABASE FEE"). Respondent disagrees with DIFS that using the word "interest" to explain the calculation of the lesser finance charge renders unclear what is "so thoroughly and evidently clear" on the cover page of each of Respondent's agreements as to the payment obligation.

C. Description of Complaint Procedure

In its third Exception to the PFD, DIFS argues Judge Williams should have granted its motion for summary disposition with regard to Respondent's alleged violation of Section 32(2)(m) of the Act, MCL 487.2152(2)(m), on the basis that Respondent's Agreement in Exhibit P30, dated May 31, 2019, does not contain a description of the process a drawer may use to file a complaint against the licensee.

In response, Respondent argues that the referenced provision of the Act requires informing customers of the process that they "may" use "to file" a complaint but does not require a description of all

methods to file nor a description of the entire complaint process. Respondent agrees with Judge Williams that "giving customers a phone number to call if they want to complain is a serviceable description of the complaint process," as required by Section 32(2)(m). Respondent further noted that it made changes to its agreements which includes a 10-point list that included notice of the complaint process.

D. Credit Card Fee

DIFS further disputes the PFD with regard to Judge Williams' conclusion that a violation of Section 33(4)(e) of the Act, MCL 487.2153(4)(e), requires evidence of Respondent collecting—as opposed to merely charging—a credit card fee. DIFS specifically contends that it has never argued that Respondent "collected" a credit card fee from customers but has only argued that Respondent "charged" the fee. Because Judge Williams correctly found that the 4% credit card fee appears among the list of fees on the standard contract form through October 2018, DIFS argues Judge Williams should have ruled in DIFS' favor on this issue and found a violation of Section 33(4)(e) of the Act.

In response to DIFS' Exception, Respondent disputes DIFS' position that the mere appearance of a since-discontinued phrase "4% credit card fee," in an agreement—despite never being collected from a customer—is a violation of Section 33(4)(e) of the Act. Respondent concluded that, because there is no evidence that it collected a 4% credit card fee from its customers, and because it stopped listing the fee after October 2018, it did not violate Section 33(4)(e), MCL 487.2153(4)(e), and thus, DIFS' exception to the PFD on this issue should be rejected.

E. Debit Card Match

In its fifth Exception to the PFD, DIFS disputes Judge Williams' conclusion that section 35(11) of the Act, MCL 487.2155(11), is ambiguous, which conclusion prevented Judge Williams from determining that Respondent's acceptance of a partial payment by debit card violates Section 35(11). DIFS highlights the fact that the Act is an enabling statute that seeks to authorize a specific transaction that, if not for the

Act, would be a violation of common usury or lending laws. DIFS notes that, as an enabling statute, the full powers and authority of a licensee to act are found within the confines of the language of the Act. The Act allows the use of a debit card to "redeem" a check, i.e., to pay to the licensee an amount equal to the face amount of a check included in a deferred presentment transaction. Therefore, DIFS argues, silence in the statute as to whether a debit card can be used for another purpose does not deem the provision ambiguous, but rather, because another purpose is not authorized, it cannot be done. DIFS concludes that its motion for summary disposition that Respondent violated Section 35(11) of the Act as to the 136 transactions should be granted.

In response to DIFS's Exception, Respondent notes that DIFS is "exceedingly extreme and erroneously improper" in its statutory interpretation. Respondent argues that the statutory provision at issue provides that a "licensee shall only accept a payment by debit card to redeem a check the licensee is holding **if** the drawer certifies to the licensee that the debit card draws from the same account on which the check is drawn."[8] Respondent argues that the word "if" is a conditioning word, and that the plain language of Section 35(11), means that a debit card must be certified as drawing from the same bank on which the customer's check is drawn *only if* a customer is fully redeeming a loan by debit card. In its Exceptions to the PFD, Respondent contends that its practices satisfy the definition of "redeem" in the Act because "the 'equal to' phrase in the 'redeem' definition allows [Respondent] to accommodate a hardship situation, whereby a customer with the inability to physically appear at [Respondent's] office on the loan maturity date … needs to take out a new loan that same day."[9]

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[8] *See* Respondent's Response to Petitioner's Exceptions, dated September 29, 2020 (emphasis in original).
[9] *See* Respondent's Exceptions to the PFD, p 7.

F. Fraud

In its sixth Exception to the PFD, DIFS disagrees with Judge Williams' conclusion that the question of whether Respondent violated Section 47(1)(b) of the Act, MCL 487.2167(1)(b), is a contested issue of fact. DIFS noted that, although Judge Williams laid out a well-reasoned basis for requiring further inquiry into whether Respondent's actions amounted to fraud, DIFS argues that Judge Williams failed to assess Respondent's conduct as it relates to dishonest activities or making misrepresentations, which are also cause for sanctions under Section 47(1)(b). DIFS highlighted Judge Williams' conclusion in the PFD that Respondent's violations of the Act were "knowing."[10] DIFS contends that, by renewing and extending transactions for a fee, charging unallowable fees, knowingly entering inaccurate information into the Veritec database and closing transactions prior to fulfillment of the debt obligation, and stating numerous times to DIFS examiners that Respondent had altered its practices, when, in fact, it had not, Respondent engaged in dishonest activities and made misrepresentations.[11]

In response to DIFS' Exception, Respondent argues that the standard for a knowing violation of the Act is a subjective notion of what was in an individual's mind at any one time and that there has been no sworn testimony to that effect despite Respondent's repeated demands for a full hearing. Respondent argues that if, in the event a final decision contains any findings of violations of the Act, there should be no penalties assessed due to the lack of evidence concerning state of mind in that the standards for knowing violations "knowingly" and "due care" are both subjective.[12] Finally, Respondent contends in its Exceptions to the PFD that DIFS has waived the fraud allegation as it failed to demand a hearing required by the PFD.

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[10] *See* PFD, pp 36-38.
[11] *See* DIFS' Exceptions to PFD, p 5.
[12] *See* Respondent's Exceptions to the PFD, p 37.

G. Serial Finance Charge

In its Exceptions to the PFD, Respondent disagrees with Judge Williams' findings in the PFD related to serial finance charges and reiterated that Respondent's practices were intended "simply [to allow] customers to do remotely what is fully allowed under the Act if transacted physically in person."[13] Respondent contends that the Act, specifically sections 2(1)(c)(i), (iv), (v), and 2(1)(c), and 33(3)(c), permit Respondent's practices of allowing "hardship customers to use remote services to accomplish the exact same result: to pay the finance charge and principal of an existing loan, thereby 'closing' the existing loan, and then to open and receive access to the proceeds of a new loan."[14] Respondent concludes that such practices are allowed under a reasonable interpretation of the permissive language to "close" a loan by "any civil remedy" or "a repayment plan agreed on by the customer," to "redeem" the customer's check "and by providing [Respondent] access to an amount "equal to" the customer's check.[15] Finally, in its Response to Respondent's Exceptions to the PFD, DIFS notes that it is not the PFD ruling that limits a licensee's actions, but is, instead, the Act itself. DIFS also notes that Respondent did not raise the issue of customer hardship at any point during the underlying proceedings.[16]

H. Checks Not Deposited

In its Exceptions to the PFD, Respondent disagrees that it failed to properly close an existing loan and noted that, for sections 2(1)(c)(i), (iv), (v), and 2(1)(r) to have meaning, they "must be recognized as allowable ways to 'close' a loan." Respondent again argues that sections 2(1)(c)(iv) and (v) are intended to "deal with unanticipated or unique problems a customer may have."[17] Respondent concludes that, by relying on the "any civil remedy" or "a repayment plan agreed on by the customer" language contained in

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[13] *See* Respondent's Exceptions to the PFD, p 10.
[14] *Id.*
[15] *Id.*, pp 10-11.
[16] *See* DIFS' Response to Respondent's Exceptions, p 2.
[17] *Id.*, pp 18-19.

the aforementioned sections of the Act, the customer pays the finance charge by debit card and pays Respondent by providing Respondent access to an amount "equal to" the principle of the existing loan to "close" the existing loan. According to Respondent, these "customer-[Respondent] agreement procedures" comply with the Act.

I. Re-Loans Versus New Loans

In Respondent's Exceptions to the PFD, Respondent disagrees with Judge Williams' conclusion that its re-loans are not new loans and that they violate MCL 487.2153(3)(c). Respondent again argues that, for those customers at issue with transportation problems or other hardships that prevent them from physically appearing at its office on the existing loan date, Respondent and the customer lawfully reached a "[Respondent]-customer hardship agreement" as allowed under the Act.[18] Respondent contends that these permissible agreements are the only way a "hardship customer" is able to close an existing loan and, on that same date, open and receive access to new loan proceeds.

J. Promise to Defer Collection

In its Exceptions to the PFD, Respondent further argues that Judge Williams mis-quoted its standard contract language and that the actual contract language is sufficiently clear to any person that the customer has not agreed to anything other than Respondent's right to deposit the customer's check only "on the Payment Due Date," not before or after.[19] Respondent argues that it therefore complied with MCL 487.2152(2)(l).

K. Unfair Examination

In its Exceptions to the PFD, Respondent contends that, due to DIFS' "erroneous foundational factual allegation, i.e., citing the February 2018 DIFS examination as the basis for all alleged violations of

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[18] *Id.*, p 21.
[19] *Id.*, p 27.

the Act, Respondent fundamentally mis-framed its entire defense and [submitted] unnecessary and prejudicial exhibits into the record."[20] On this basis, Respondent further argues that all findings in the "Knowing Violations" section of the PFD should be disallowed and stricken from the record.

L. District Court Approval

Respondent further argues, in its Exceptions to the PFD, that Judge Williams erred when he concluded that the 36th District Court would not have had the opportunity to assess CDC's compliance with the Act during its collection actions against delinquent customers.

Finally, DIFS requests relief in its Exceptions to the PFD. DIFS specifically requests that Respondent's violations of the Act referenced in the PFD be adopted in the Final Decision, in addition to the additional violations DIFS raised in its Exceptions. DIFS seeks license revocation, maximum fees, and restitution as applicable. Respondent contends that, even if a Final Order contains findings of violations on the part of Respondent, there should be no penalties assessed due to the lack of evidence that any violation was a "knowing violation."

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Findings of Fact in the August 17, 2020, Proposal for Decision are adopted and made a part of this Final Decision, subject to the following modification:

1. On page 34, paragraph 1, of the PFD the following sentence: "The Weigold letter can be construed as a final decision because it was not made after a hearing" shall be deemed changed to: "The Weigold letter cannot be construed as a final decision because it was not made after a hearing."

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[20] *Id.*, pp 29-30.

Moreover, the Conclusions of Law in the August 17, 2020, Proposal for Decision are adopted and made part of this Final Decision, subject to the following modifications:

1. Respondent violated Section 32(1) of the Act, MCL 487.2152(1), when it substituted the phrase "Borrower Verbally Authorized via Phone" for the customer's signature requirement in 100 of the transaction Agreements at issue, and for the remaining 36 Agreements, which contained only a blank customer signature line.[21] Although there is no requirement in the Act for a "handwritten signature," there must minimally be evidence of a customer's intent to authenticate the Agreement, which was not reflected by the substituted language nor by the blank customer signature line.
2. Respondent violated Section 2152(2)(i) of the Act, MCL 487.2152(2)(i), when it inserted language in its Agreement that "borrower shall pay interest," which—in light of the prohibition against charging interest contained in Section 33(4)(a) of the Act—renders the customer's payment obligation unclear.
3. Respondent violated Section 32(2)(m) of the Act, MCL 487.2152(2)(m), when it failed to include in its Agreement (Exhibit P30) a "description of the process a drawer may use to file a complaint against the licensee" as required by Section 32(2)(m). "Substantial compliance" with Section 32(2)(m), as Judge Williams concluded in the PFD to find in favor of Respondent, is irrelevant when assessing compliance with unambiguous statutory mandates.
4. Respondent violated Section 33(4)(e) of the Act, MCL 487.2153(4)(e), when it charged a credit card fee, as evidenced by Exhibit P32, which is expressly forbidden by the Act. Contrary to

[21] *See* Exhibits P1-P27.

Judge Williams' conclusion in the PFD, whether Respondent actually *collected* the fee is irrelevant to the question of whether Respondent complied with Section 33(4)(e).

5. Respondent violated Section 35(11) of the Act, MCL 487.2155(11), when it allowed customers to use a debit card to pay the finance charge as part of Respondent's re-loan arrangement. Contrary to Judge Williams' conclusion in the PFD, Section 35(11) of the Act is unambiguous.
6. There is insufficient evidence to conclude that Respondent violated MCL 487.2153(1) or MCL 487.2153(4)(e) concerning the transaction with customer GC on October 17, 2018. The parties had sufficient opportunity to present evidence on this issue, and the record is now closed.
7. Respondent violated Section 47(1)(b) of the Act, MCL 487.2167(1)(b), when it knowingly or through lack of due care, engaged in dishonest activities and made misrepresentations by conducting the activities set forth in pages 36 through 38 of the PFD and as restated herein.

With the above modifications, the PFD's Findings of Fact and Conclusions of Law are adopted, made part of this Final Decision, and the Conclusions of Law restated, as follows:

1. **Serial Finance Charges:** DIFS has met its burden of proof that Respondent violated MCL 2155(1) when it collected finance charges on re-loans.
2. **Checks Not Deposited:** DIFS has met its burden of proof that Respondent violated MCL 487.2155(7) when it failed to cash the customer's check prior to a re-loan.
3. **Re-Loans Versus New Loans:** DIFS has met its burden of proof that Respondent's re-loans are not new payday loans. In the absence of payment to the customer, Respondent's re-loans do not fit the statutory definition of MCL 487.2122(1)(g), and they violate MCL 487.2153(3)(c).
4. **Promise to Defer Collection:** DIFS has met its burden of proof that Respondent violated MCL 487.2152(2)(l) and MCL 487.2141 by failing to promise in its loan contract forms that it will take no steps to collect the debt until the maturity date.

5. **Unfair Examination:** DIFS' examination was not unfair.
6. **Multiple Addresses:** DIFS has not met its burden of proof that Respondent violated MCL 487.2152(2)(b) by using two business addresses on its loan contracts.
7. **District Court Approval:** The 36th District Court did not adjudicate and approve Respondent's re-loaning practice.
8. **Customer Signatures:** DIFS has met its burden of proof that Respondent violated MCL 487.2152(1) by failing to require a signature on its loan contracts.
9. **Description of Complaint Procedure:** DIFS has met its burden of proof that Respondent violated MCL 487.2152(2)(m) by failing to provide in its loan contracts a description of the process a drawer may use to file a complaint against the licensee.
10. **Using the Word "Interest":** Although Respondent's use of the word "interest" in its loan contract is not expressly prohibited by the Act, DIFS has met its burden of proof that Respondent violated MCL 487.2152(2)(i) by including the phrase "borrower shall pay interest," which renders the customer's payment obligation unclear in light of the Act's explicit prohibition against charging interest.
11. **Credit Card Fee:** DIFS has met its burden of proof that Respondent violated MCL 487.2153(4)(e) when it entered into an agreement with a customer, *see* Exhibit P32, in which a 4% credit card fee was charged.
12. **Debit Card Match:** DIFS has met its burden of proof that Respondent violated MCL 487.2155(11) when it allowed customers to use a debit card to pay the finance charge as part of Respondent's re-loan arrangement.

13. **Excessive Loan Amount:** DIFS did not meet its burden of proof that Respondent violated MCL 487.2153(1) or MCL 487.2153(4)(e) concerning the transaction with customer GC on October 17, 2018.

14. **Dishonest Activities:** DIFS met its burden that Respondent violated Section 47(1)(b) of the Act, MCL 487.2167(1)(b), when it knowingly or through lack of due care, engaged in dishonest activities and made misrepresentations by conducting the activities set forth in pages 36 through 38 of the PFD and as restated herein.

The PFD contains Conclusions of Law supporting findings of repeated knowing violations of the Act and repeated occurrences of a lack of due care, for which enhanced sanctions are appropriate. Accordingly, this Final Decision orders revocation of Respondent's license; *see* Section 47(1)(c)(suspension or revocation of licenses are remedies within the Director's authority following a finding of knowing (or through lack of due care) violations of the Act)). Revocation of Respondent's license is an appropriate sanction in this case due to the evidence of Respondent's established practice or pattern of knowing violations of the Act.

IV. ORDER

Therefore, it is ORDERED that:

1. The PFD is adopted, subject to the above modifications, and made part of this Final Decision.
2. By engaging in repeated knowing (or through lack of due care) violations of the Act, Respondent's actions justify the imposition of sanctions pursuant to Sections 47(1)(b), 47(1)(c), and 47(1)(e) of the Act, MCL 487.2167(1)(b); MCL 487.2167(1)(c); MCL 487.2167(1)(e).

3. Respondent Community Business Consulting, Inc.'s deferred presentment service transactions provider license, License No. DP-0021119, shall be **REVOKED**, effective the day immediately following the issuance of this Final Decision.

4. The revocation of Respondent's license is based upon the following violations of the Act:

    a. Respondent's 136 violations of Section 32 of the Act, MCL 487.2152(1), by Respondent substituting the phrase "Borrower Verbally Authorized Via Phone" for the customer's signature requirement in 100 of the transaction Agreements at issue, and for the remaining 36 Agreements that only contained a blank customer line.

    b. Respondent's violation of Section 32 of the Act, MCL 487.2152(2)(i), by inserting language that "borrower shall pay interest" which renders borrower's payment obligation unclear under the Agreement.

    c. Respondent's 136 violations of Section 32 of the Act, MCL 487.2152(2)(l), by failing to promise in its loan contract forms that it will take no steps to collect the debt until the maturity date.

    d. Respondent's 136 violations of Section 32 of the Act, MCL 487.2152(2)(m), when it failed to include in the Agreements "a description of the process a drawer may use to file a complaint against the licensee."

    e. Respondent's 136 violations of Section 33 of the Act, MCL 487.2153(3)(c), by failing to pay loan proceeds to the customer each time Respondent wrote a re-loan contract.

    f. Respondent's violation of Section 33 of the Act, MCL 487.2153(4)(e), when it charged a credit card fee, which is expressly forbidden by the Act.

    g. Respondent's 136 violations of Section 35 of the Act, MCL 487.2155(1), when it collected finance charges on re-loan Agreements.

h. Respondent's 136 violations of Section 35 of the Act, MCL 487.2155(7), when it failed to cash customers' checks prior to a re-loan.

i. Respondent's 136 violations of Section 35 of the Act, MCL 487.2155(11), when it allowed the customers to use a debit card to pay the finance charge as part of Respondent's re-loan arrangement.

j. Respondent's violations of Section 47 of the Act, MCL 487.2167(1)(b), when it knowingly, or through lack of care, engaged in dishonest activities and made misrepresentations by conducting the activities set forth in pages 36 through 38 of the PFD and as restated herein.

5. Respondent shall immediately **CEASE and DESIST** from engaging in the business of deferred presentment service transactions.

6. The deferred presentment service transactions license of Respondent Community Business Consulting, Inc. (License No. DP-0021119) is **REVOKED**, commencing the day immediately following the issuance of this Final Decision.

Anita G. Fox
Director

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

IN THE MATTER OF:	**Docket No.: 19-025251**
Department of Insurance and Financial Services, **Petitioner**	**Case No.: 19-1045-DP**
	Agency: Department of Insurance and Financial Services
v	
Community Business Consulting, Inc, **Respondent**	**Case Type: DIFS-Insurance**
	Filing Type: Sanction
_____/	

Issued and entered
this 17th day of August 2020
by: Erick Williams
Administrative Law Judge

RULING ON CROSS MOTIONS FOR SUMMARY DISPOSITION

This opinion grants in part and denies in part the parties' cross motions for summary disposition. A summary of the particular rulings is on pages 38 through 40.

The Department of Insurance and Financial Services (DIFS) conducted an on-site examination of Community Business Consulting, Inc (CBC), a licensed payday lender, on February 12, 2018, and a follow-up examination from June 18 to 26, 2019. DIFS issued a complaint against CBC on January 3, 2020 and an amended complaint on March 18, 2020, alleging violations of the Deferred Presentment Service Transactions Act, MCL 487.2121 *et seq*. (referred to below as the Payday Lending Act). David M. Toy represents DIFS. John F. Leone represents CBC. The parties have filed cross-motions for summary disposition.

Michigan's Payday Lending Act requires that a customer have only one outstanding loan with any given lender at any given time, and no loan can be outstanding for longer than 31 days. At the end of the loan term, the lender must collect the debt. If a payday lender is licensed and operates within those constraints, the lender can collect a finance charge that would otherwise exceed the criminal usury rate. DIFS' principal argument in this case is that CBC is violating the payday lender law by extending loans over a period longer than 31 days, during which CBC continues to collect finance charges.

APPLICABLE LAW

Criminal Usury Statute

MCL 438.41 reads:

> A person is guilty of criminal usury when, not being authorized or permitted by law to do so, he knowingly charges, takes or receives any money or other property as interest on the loan or forbearance of any money or other property, at a rate exceeding 25% at simple interest per annum or the equivalent rate for a longer or shorter period. Any person guilty of criminal usury may be imprisoned for a term not to exceed 5 years or fined not more than $10,000.00, or both.

Michigan Uniform Commercial Code

MCL 440.1201 (2) (kk) reads:

> (kk) "Signed" includes any symbol executed or adopted by a party with present intention to adopt or accept a writing....

MCL 440.3104 (6) reads:

> (6) “Check” means a draft, other than a documentary draft, payable on demand and drawn on a bank or a cashier's check or teller's check....

MCL 440.3401 reads:

> (1) A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under section 3402.
>
> (2) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

Michigan Uniform Electronic Transactions Act

MCL 450.832 (h) reads:

> (h) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record...

MCL 450.837 reads:

> (1) A record or signature shall not be denied legal effect or enforceability solely because it is in electronic form.
>
> (2) A contract shall not be denied legal effect or enforceability solely because an electronic record was used in its formation.
>
> (3) If a law requires a record to be in writing, an electronic record satisfies the law.
>
> (4) If a law requires a signature, an electronic signature satisfies the law.

MCL 450.842 (7) reads:

> This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

Federal Electronic Signatures In Global And National Commerce Act

15 USC 7001 (a) reads:

> (a) In general. Notwithstanding any statute, regulation, or other rule of law (other than this subchapter and subchapter II), with respect to any transaction in or affecting interstate or foreign commerce—
>
> (1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and
>
> (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

15 USC 7004 (a) reads:

> Subject to subsection (c)(2), nothing in this subchapter limits or supersedes any requirement by a Federal regulatory agency, self-regulatory organization, or State regulatory agency that records be filed with such agency or organization in accordance with specified standards or formats.

Michigan Payday Lending Act

MCL 487.2122 (1) reads in part:

> (1) As used in this act: ...
>
> (b) "Check" means a draft that is payable on demand and drawn on a bank, savings bank, savings and loan association, or credit union....
>
> (c) "Closed" in connection with a deferred presentment service transaction means that 1 of the following has occurred concerning each of the customer's checks that is the basis of the deferred presentment service transaction:
>
> (i) The check is redeemed by the customer by payment to the licensee of the face amount of the check in cash or payment from a debit card that meets the requirements of section 35(11).
>
> (ii) The check is exchanged by the licensee for a cashier's check or cash from the customer's financial institution.
>
> (iii) The check is deposited by the licensee and the licensee has evidence that the person has satisfied the obligation.
>
> (iv) The check is collected by the licensee or its agent through any civil remedy available under the laws of this state.
>
> (v) The check is collected by means of a repayment plan agreed on by the customer and the licensee or as the result of credit counseling where the licensee is paid the amount agreed upon by the licensee under that plan.
>
> (vi) The check is collected by the licensee under section 35(9) and the licensee has evidence that the person has satisfied the obligation....

(g) Subject to subsection (2), "deferred presentment service transaction" means a transaction between a licensee and a customer under which the licensee agrees to do all of the following:

(i) Pay to the customer an agreed-upon amount in exchange for a fee.

(ii) Hold a customer's check for a period of time before negotiation, redemption, or presentment of the checks....

(o) "Maturity date" means the date on which a drawer's check is to be redeemed, presented for payment, or entered into the check-clearing process in a deferred presentment service transaction....

(r) "Redeem" means that the customer pays to the licensee an amount equal to the face amount of a check included in a deferred presentment service transaction, on or before the maturity date or after the check is deposited and returned unpaid by the drawee, and the licensee returns the check to the customer.

MCL 487.2141 (section 21 of the act) reads:

Each licensee shall keep and use in its business any books, accounts, and records the commissioner requires under this act. A licensee shall preserve the books, accounts, and records for at least 3 years, unless applicable state or federal law concerning record retention requires a longer retention period.

MCL 487.2152 (section 32 of the act) reads in part:

(1) A licensee shall document a deferred presentment service transaction by entering into a written deferred presentment service agreement signed by both the customer and the licensee.

(2) A licensee shall include all of the following in the written deferred presentment service agreement:

(a) The name of the customer.

(b) The name, street address, facsimile number, and telephone number of the licensee.

(c) The signature and printed or typed name of the individual who enters into the deferred presentment service agreement on behalf of the licensee.

(d) The date of the transaction.

(e) The transaction number assigned by the database provider, if any.

(f) The amount of the check presented to the licensee by the customer.

(g) An itemization of the fees to be paid by the customer.

(h) A calculation of the cost of the fees and charges to the customer, expressed as a percentage rate per year.

(i) A clear description of the customer's payment obligation under the agreement.

(j) A schedule of all fees associated with the deferred presentment service transaction and an example of the amounts the customer would pay based on the amount of the deferred presentment service transaction.

(k) The maturity date.

(L) A provision that the licensee will defer presentment, defer negotiation, and defer entering a check into the check-clearing process until the maturity date.

(m) A description of the process a drawer may use to file a complaint against the licensee....

MCL 487.2153 (section 33 of the act) reads in part:

(1) A licensee may enter into 1 deferred presentment service transaction with a customer for any amount up to $600.00. A licensee may charge the customer a service fee for each deferred presentment service transaction. A service fee is earned by the licensee on the date of the transaction and is not interest. A licensee may charge both of the following as part of the service fee, as applicable:

(a) An amount that does not exceed the aggregate of the following, as applicable:

(i) Fifteen percent of the first $100.00 of the deferred presentment service transaction.

(ii) Fourteen percent of the second $100.00 of the deferred presentment service transaction.

(iii) Thirteen percent of the third $100.00 of the deferred presentment service transaction.

(iv) Twelve percent of the fourth $100.00 of the deferred presentment service transaction.

(v) Eleven percent of the fifth $100.00 of the deferred presentment service transaction.

(vi) Eleven percent of the sixth $100.00 of the deferred presentment service transaction.

(b) The amount of any database verification fee allowed under section 34(5).

(2) A licensee shall not enter into a deferred presentment service transaction with a customer if the customer has an open deferred presentment service transaction with the licensee or has more than 1 open deferred presentment service transaction with any other licensee, and shall verify whether the customer has an open deferred presentment service transaction with the licensee or has more than 1 open deferred presentment service transaction with any other licensee by complying with section 34.

(3) At the time of entering into a deferred presentment service transaction, a licensee shall do all of the following: ...

(b) Provide a copy of the signed agreement to the drawer.

(c) Pay the proceeds under the agreement to the drawer by delivering a business check of the licensee, a money order, or cash, as requested by the drawer.

(4) At the time of entering into a deferred presentment service transaction, a licensee shall not do any of the following:

(a) Charge interest under the agreement.

(b) Include a maturity date that is more than 31 days after the date of the transaction.

(c) Charge an additional fee for cashing the licensee's business check or money order if the licensee pays the proceeds to the drawer by business check or money order.

(d) Include a confession of judgment in the agreement.

(e) Except as provided in this act, charge or collect any other fees for a deferred presentment service transaction....

MCL 487.2155 (section 35 of the act) reads in part:

(1) A licensee shall not renew a deferred presentment service agreement. A licensee may extend a deferred presentment service agreement only if the licensee does not charge a fee in connection with the extended transaction. A licensee who extends an agreement under this subsection shall not create a balance owed above the amount owed on the original agreement.

(2) If a drawer enters into 8 deferred presentment service transactions with any licensee in any 12-month period, the licensee shall provide the drawer an option to repay that eighth transaction and each additional transaction in that 12-month period pursuant to a written repayment plan subject to the following terms:

(a) The drawer shall request the repayment plan, either orally or in writing, within 30 days after the maturity date of the deferred presentment service transaction.

(b) The drawer shall repay the transaction in 3 equal installments with 1 installment due on each of the next 3 dates on which the drawer receives regular wages or compensation from an employer or other regular source of income, pursuant to a written repayment plan agreement.

(c) The drawer shall pay a fee to the licensee for administration of the repayment plan. The initial amount of the fee is $15.00. Beginning March 1, 2011, and by March 1 of every fifth year after March 1, 2011, the licensee may adjust the fee by an amount determined by the director to reflect the cumulative percentage change in the Detroit consumer price index over the preceding 5 calendar years. As used in this subsection, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area from the Bureau of Labor Statistics of the United States Department of Labor.

(d) The drawer shall agree not to enter into any additional deferred presentment transactions during the repayment plan term....

(4) During the term of a repayment plan by a drawer under this section, the database provider shall notify the licensee at the time the licensee submits the required customer information to the database for that customer that the customer is presently in a repayment plan under this section with 1 or more other

licensees and the licensee shall not enter into a deferred presentment transaction with that individual.

(5) A licensee shall not present a check for payment before the maturity date or during the term of the repayment plan. In addition to the remedies and penalties under this act, a licensee that presents a check for payment before the maturity date or during the term of the repayment plan is liable for all expenses and damages caused to the drawer and the drawee as a result of the violation. If a drawer has not requested a repayment plan on or before the maturity date, the licensee may redeem, present for payment, or enter the check into the check-clearing process under the terms of the original deferred presentment service transaction agreement.

(6) A drawer satisfies his or her obligation under a deferred presentment service agreement when the check the licensee is holding is paid by the drawee or is redeemed by the drawer by paying to the licensee an amount equal to the full amount of the check.

(7) Unless the drawer has entered into a written repayment plan under subsection (2), a licensee shall deposit a check held in connection with a deferred presentment service transaction on the maturity date if the check is not redeemed in the manner described in section 2(1)(c)(i), or exchanged in the manner described in section 2(1)(c)(ii), on or before the maturity date.

(8) A licensee shall deposit a check held in connection with a deferred presentment service transaction on any repayment plan installment date described in subsection (2) if the drawer fails to make the installment payment....

(10) If the payment to satisfy an outstanding deferred presentment transaction obligation is made in person, the licensee shall immediately return the check held in connection with the deferred presentment service transaction to the drawer. If the payment to satisfy the obligation is not made in person, the licensee shall return the check to the drawer by mailing it to the address listed on the deferred presentment transaction service agreement within 1 business day after the licensee obtains evidence that the drawer has satisfied the obligation.

(11) A licensee shall only accept a payment by debit card to redeem a check the licensee is holding if the drawer certifies to the licensee that the debit card draws funds from the same account on which the check is drawn.

(12) As used in this section, "telephone-initiated entry" means a debit transaction to a drawer's account that is processed through an automated clearing house, as

> that term is defined in section 1 of 2002 PA 738, MCL 124.301, and initiated pursuant to an authorization obtained from the drawer orally by telephone.

MCL 487.2167 (section 47 of the act) reads in part:

> (1) The commissioner may, after notice and hearing, suspend or revoke a license if the commissioner finds that the licensee has knowingly or through lack of due care done any of the following: ...
>
> (b) Committed any fraud, engaged in any dishonest activities, or made any misrepresentations.
>
> (c) Violated this act or any rule or order issued under this act or violated any other law in the course of the licensee's dealings as a licensee.
>
> (d) Made a false statement in the application for the license, failed to give a true reply to a question in the application, or failed to reply to a request of the commissioner authorized in this act.
>
> (e) Demonstrated incompetency or untrustworthiness to act as a licensee.
>
> (f) Engaged in a pattern or practice that poses a threat of financial loss or threat to the public welfare....
>
> (3) A notice served under this section shall contain a statement of the facts constituting the violation or pattern of practice and shall fix a time and place at which the commissioner will hold a hearing to determine whether the commissioner should issue an order to suspend or terminate 1 or more licenses of the licensee....

EXHIBITS

DIFS Exhibits

P1-A	Baldwin, Loan documents	12/7/2018
P1-B	Baldwin, Loan documents	12/21/2018
P1-C	Baldwin, Loan documents	1/4/2019
P1-D	Baldwin, Loan documents	1/18/2019
P1-E	Baldwin, Loan documents	2/1/2019
P1-F	Baldwin, Loan documents	2/18/2019
P2-A	Campbell, Loan documents	7/11/2018
P2-B	Campbell, Loan documents	8/8/2018

P2-C	Campbell, Loan documents	9/12/2018
P2-D	Campbell, Loan documents	10/10/2018
P2-E	Campbell, Loan documents	11/14/2018
P2-F	Campbell, Loan documents	12/12/2018
P2-G	Campbell, Loan documents	1/9/2019
P3-A	Chapman, Loan documents	7/14/2018
P3-B	Chapman, Loan documents	7/27/2018
P3-C	Chapman, Loan documents	8/13/2018
P3-D	Chapman, Loan documents	8/24/2018
P3-E	Chapman, Loan documents	9/10/2018
P3-F	Chapman, Loan documents	9/24/2018
P4-A	Dewberry, Loan documents	7/5/2018
P4-B	Dewberry, Loan documents	9/12/2018
P4-C	Dewberry, Loan documents	9/29/2018
P5-A	Drake, Loan documents	11/8/2018
P5-B	Drake, Loan documents	11/29/2018
P5-C	Drake, Loan documents	12/13/2018
P5-D	Drake, Loan documents	12/28/2018
P5-E	Drake, Loan documents	1/10/2019
P6-A	Edwards, Loan documents	9/8/2018
P6-B	Edwards, Loan documents	9/24/2018
P6-C	Edwards, Loan documents	10/5/2018
P6-D	Edwards, Loan documents	11/2/2018
P6-E	Edwards, Loan documents	11/17/2028
P6-F	Edwards, Loan documents	12/20/2018
P6-G	Edwards, Loan documents	12/28/2018
P6-H	Edwards, Loan documents	1/25/2019
P6-I	Edwards, Loan documents	2/8/2019
P7-A	Griggs, Loan documents	7/9/2018
P7-B	Griggs, Loan documents	7/26/2018
P8-A	High, Loan documents	12/21/2018
P8-B	High, Loan documents	1/4/2019
P8-C	High, Loan documents	1/18/2019
P8-D	High, Loan documents	2/1/2019
P8-E	High, Loan documents	2/15/2019
P9-A	Horton, Loan documents	4/10/2019
P9-B	Horton, Loan documents	4/24/2019
P10-A	Humber, Loan documents	7/14/2018
P10-B	Humber, Loan documents	7/27/2018
P10-C	Humber, Loan documents	8/10/2018
P10-D	Humber, Loan documents	8/24/2018
P10-E	Humber, Loan documents	9/10/2018

P10-F	Humber, Loan documents	9/24/2018
P11-A	D Jones, Loan documents	10/19/2018
P11-B	D Jones, Loan documents	11/2/2018
P11-C	D Jones, Loan documents	11/16/2018
P11-D	D Jones, Loan documents	11/30/2018
P11-E	D Jones, Loan documents	12/14/2018
P11-F	D Jones, Loan documents	12/28/2018
P12-A	Jacqueline Jones, Loan documents	8/31/2018
P12-B	Jacqueline Jones, Loan documents	9/14/2018
P12-C	Jacqueline Jones, Loan documents	9/28/2018
P12-D	Jacqueline Jones, Loan documents	10/13/2018
P12-E	Jacqueline Jones, Loan documents	10/26/2018
P12-F	Jacqueline Jones, Loan documents	11/9/2018
P13-A	Jasmine Jones, Loan documents	10/9/2018
P13-B	Jasmine Jones, Loan documents	10/23/2018
P13-C	Jasmine Jones, Loan documents	11/7/2018
P13-D	Jasmine Jones, Loan documents	11/20/2018
P13-E	Jasmine Jones, Loan documents	11/29/2018
P13-F	Jasmine Jones, Loan documents	12/13/2018
P14-A	Lesure, Loan documents	9/7/2018
P14-B	Lesure, Loan documents	9/21/2018
P14-C	Lesure, Loan documents	10/5/2018
P14-D	Lesure, Loan documents	10/19/2018
P15-A	Lewis, Loan documents	12/29/2018
P15-B	Lewis, Loan documents	2/1/2019
P16-A	Lovelady, Loan documents	8/28/2018
P16-B	Lovelady, Loan documents	9/9/2018
P16-C	Lovelady, Loan documents	10/5/2018
P16-D	Lovelady, Loan documents	10/19/2018
P17-A	Phillips, Loan documents	10/12/2018
P17-B	Phillips, Loan documents	10/26/2018
P17-C	Phillips, Loan documents	11/9/2018
P17-D	Phillips, Loan documents	11/26/2018
P17-E	Phillips, Loan documents	12/7/2018
P17-F	Phillips, Loan documents	12/21/2018
P18-A	Powell, Loan documents	12/7/2018
P18-B	Powell, Loan documents	12/21/2018
P18-C	PowellLoan documents	1/4/2019
P18-D	Powell, Loan documents	1/18/2019
P18-E	Powell, Loan documents	2/1/2019
P18-F	Powell, Loan documents	2/15/2019
P19-A	Purkins, Loan documents	9/7/2018

P19-B	Purkins, Loan documents	9/22/2018
P19-C	Purkins, Loan documents	10/5/2018
P19-D	Purkins, Loan documents	10/22/2018
P19-E	Purkins, Loan documents	11/5/2018
P19-F	Purkins, Loan documents	12/28/2018
P20-A	Shaw Loan documents	10/26/2018
P20-B	Shaw Loan documents	11/27/2018
P20-C	Shaw Loan documents	12/19/2018
P20-D	Shaw Loan documents	1/25/2019
P21-A	Stinson, Loan documents	8/1/2018
P21-B	Stinson, Loan documents	8/15/2018
P21-C	Stinson, Loan documents	9/4/2018
P21-D	Stinson, Loan documents	9/19/2018
P21-E	Stinson, Loan documents	10/1/2018
P21-F	Stinson, Loan documents	10/17/2018
P22-A	K Washington, Loan documents	10/5/2018
P22-B	K Washington, Loan documents	10/19/2018
P22-C	K Washington, Loan documents	11/2/2018
P22-D	K Washington, Loan documents	11/16/2018
P22-E	K Washington, Loan documents	11/30/2018
P22-F	K Washington, Loan documents	12/14/2018
P23-A	S Washington, Loan documents	12/19/2018
P23-B	S Washington, Loan documents	1/1/2019
P23-C	S Washington, Loan documents	1/16/2019
P23-D	S Washington, Loan documents	1/29/2019
P24-A	White Loan documents	8/1/2018
P24-B	White Loan documents	9/4/2018
P24-C	White Loan documents	10/1/2018
P24-D	White Loan documents	12/4/2018
P24-E	White, Loan documents	1/2/2019
P24-F	White, Loan documents	2/2/2019
P25-A	Wilkerson, Loan documents	12/28/2018
P25-B	Wilkerson, Loan documents	1/11/2019
P25-C	Wilkerson, Loan documents	1/24/2019
P25-D	Wilkerson, Loan documents	2/8/2019
P25-E	Wilkerson, Loan documents	2/22/2019
P26-A	Williams, Loan documents	1/3/2019
P26-B	Williams, Loan documents	1/16/2019
P26-C	Williams, Loan documents	1/30/2019
P26-D	Williams, Loan documents	2/18/2019
P26-E	Williams, Loan documents	2/27/2019
P27-A	Wilson, Loan documents	12/28/2018

P27-B	Wilson, Loan documents	2/1/2019
P27-C	Wilson, Loan documents	2/15/2019
P28	High, Loan documents	12/4/18
P29	Brown, Loan documents	8/3/2018
P30	Burton, Loan documents	5/31/2019
P31	Chapman, Loan documents	10/17/2018
P32	Dewberry, Loan documents	7/7/2018

CBC Exhibits

R1	Griggs, Loan documents	9 Jul 18
R2	Griggs, Loan documents	26 Jul 18
R3	Griggs affidavit	
R4	CBC reply to DIFS February 2018 examination report	
R5	CBC reply to Page letter of 11 Dec 18	
R6	Page email, 31 Jan 19	
R7	Page and CBC emails 21 Feb 19 and 11 Mar 19	
R8	Weigold letter 11 Mar 19	
R9	Boyce and Page emails 12 Mar 19	
R10	Page and CBC emails 14 Jun 19 and 18 Jun 19	
R11	Taranto letter 25 Jul 19	
R12	“Update Debit Card Info Sheet"	
R13	Brown email 5 Dec 18	
R14	Brown and CBC emails, 18 Mar 19, and 27 Mar 19	
R 15	Boyce and Brown emails 14 May 19 and 18 Jun 19	
R16	Brown and Boyce emails 27 Jun 19.	
R17	Veritec printouts for Brown 3 Aug 18 and 20 Sep 18	
R18	Intuit QuickBooks printouts for Brown 13 Sep 18 and 19 Sep 18	
R19	Veritec printout for Burton 31 May 19	
R20	Veritec printouts for Griggs 9 Jul 19	
R21	Veritec printouts for Griggs 26 Jul 19	
R22	36th District Court Judgment re Chapman	
R23	36th District Court Judgment re Dewberry	
R24	36th District Court Judgment re Horton	
R25	36th District Court Judgment re Lesure	
R26	36th District Court Judgment re Lovelady	
R27	36th District Court Judgment re Stinson	
R28	36th District Court Judgment re Washington	

SERIAL FINANCE CHARGES

Some customers have a series of transactions with CBC. When a customer takes out a loan but is unable to pay it off by the first maturity date, the customer and CBC typically reach an agreement. CBC calls these agreements "re-loans" and this opinion refers to this practice as re-loaning.

CBC's re-loaning practice typically has the following features: When a customer takes out a loan but is unable to pay it off by the first maturity date, CBC (1) collects the accrued finance charge, (2) takes no steps to collect the outstanding principal, (3) does not pay the customer any additional money, (4) sets a new maturity date, and | (5) imposes another finance charge due at the new maturity date.

Exhibits P1A through P27 document about 136 transactions in which re-loan agreements were made and a finance charge imposed. For example, the Chapman transactions, detailed below, fit this pattern. It is not clear when Ms. Chapman first started doing business with CBC. Presumably, on her very first visit, CBC loaned her $300 with the understanding that she would pay it back, with a finance charge, by a certain maturity date. Evidently, she could not pay the $300 back by the maturity date, so Chapman and CBC subsequently entered into a series of re-loan agreements. Six of those re-loan agreements are detailed below. Each time a re-loan agreement was written, CBC collected the finance charge, paid Chapman nothing, and rolled-over the original $300 debt. Over the six transactions illustrated in Exhibits P3A thru P3F, CBC collected the following finance charges.

Chapman Re-loans

Exhibit	Maturity Date	Finance Charge Collected
P3A	14 Jul 18	$42.49
P3B	27 Jul 18	$42.49
P3C	13 Aug 18	$42.49
P3D	24 Aug 18	$42.49
P3E	10 Sep 10	$42.49
P3F	24 Sep 18	$42.49
	Total	$254.94

In the course of the six re-loans, over a period of about 72 days, CBC collected in the aggregate $254 interest on a $300 debt. According to the truth-in-lending disclosures accompanying these re-loans, Chapman was paying interest at annual percentage rates

ranging between 397% and 469%. After the series of re-loans, Chapman still owed CBC $300.

DIFS' report of the February 12, 2018, examination cited CBC for charging a finance charge on a re-loan contract that is not properly closed – an alleged violation of MCL 487.2155 (1), which reads in part:

> A licensee shall not renew a deferred presentment service agreement. A licensee may extend a deferred presentment service agreement only if the licensee does not charge a fee in connection with the extended transaction....

Under the Payday Lending Act, a lender can extract a finance charge (interest) for a period no longer than 31 days. If the lender agrees to extend the maturity date, the lender cannot charge interest during the extended period.

DIFS February 12, 2018 examination report noted that one customer had made a partial payment on their account, paying only the finance charge. Then CBC closed the transaction and opened a new transaction that included a new finance charge. The examiners claimed that CBC was not allowed to "renew" a customer's transactions and charge an additional finance. CBC responded to that citation by stating that it had refunded that customer's service fee. Exhibit R4, pp 7-8.

Nonetheless, CBC continued its re-loaning practice with other customers, after the February 2018 examination. CBC continued to collect finance charges on re-loans. For example, CBC collected finance charges on the following re-loan contracts:

Customer	**Re-loan Date**	**Finance Charge Collected**	**Exhibit**
Chapman	10 Sep 2018	$42.49	Exhibit P3E
White	1 Oct 2018	$42.49	Exhibit P24C
Shaw	27 Nov 2018	$101.49	Exhibit P20B
White	4 Dec 2018	$42.49	Exhibit P24D
Williams	3 Jan 2019	$76.49	Exhibit P26A
Williams	18 Feb 2019	$51.85	Exhibit P26D
Horton	24 Apr 2019	$54.49	Exhibit R9B

CBC now argues that the law permits it to collect finance charges on re-loans because re-loans are new loans and not extensions of prior loans.

I disagree with CBC's argument that re-loans are entirely new transactions. In a re-loan transaction, several features of the prior loan are rolled over into the re-loan. The

maturity date of the prior loan is the same as – or very near -- the inception date of the new loan. The principal of the re-loan is typically the same amount as the prior loan. CBC does not give the borrower new money when it writes a re-loan; the amount of loan proceeds given to the customer are the same from the old loan to re-loan. Those features suggest that re-loans are extensions of prior loans and not new loans.

MCL 487.2155 (1) forbids charging interest or finance fees on loan extensions or renewals. CBC violates MCL 487.2155 (1) by collecting a finance charge on re-loans. DIF's motion for summary disposition is granted with respect to MCL 487.2155 (1), and CBC's motion for summary disposition with respect to this issue is denied.

CHECKS NOT DEPOSITED

The payday lending act contemplates that a typical customer will borrow money from a payday lender by writing check, giving it to the lender to hold, and promising to pay the loan off, together with a finance charge, by a maturity date that is no longer than 31 days later. If the customer does not pay the loan off in time, the lender cashes the customer's check.

DIFS alleges that CBC does not cash customers' checks on the loan maturity date.

It is important to note that CBC does not generally take checks from its customers. At the hearing, DIFS presented evidence of about 136 loan contracts. In only about two transactions (L Campbell, Exhibit P2D, and High, Exhibit P28) is there documentation of a check handwritten by a customer and presented to CBC.

Instead of taking checks from its customers, CBC arranges to access money directly from its customers' bank accounts using the automated clearinghouse system – a vehicle sometimes called a "remotely created check" or a "demand draft." Remotely created checks and demand drafts do not require a handwritten signature.

See generally, Jodie Bernstein, "*Demand Draft Fraud*" (Federal Trade Commission, April 15, 1996), https://www.ftc.gov/public-statements/1996/04/demand-draft-fraud, which reads in part:

> Once a consumer provides his or her checking account number, an ... actor can generate a document that looks exactly like the checks in the consumer's checkbook -- imprinted with the consumer's name, address, phone number and, most importantly, the account numbers and the numbers necessary to route the draft through the banks' check clearing system. The only difference is that in place of the consumer's signature, there is a notation such as "pre-approved" or "signature on file." The ... actor deposits this draft the same as any conventional

> check, and in most cases, it clears in exactly the same way as a conventional check; the lack of a handwritten signature is not a problem in processing it.... Despite the potential for fraudulent misuse, demand drafts are a completely legitimate, though relatively unfamiliar, payment method.... The Uniform Commercial Code requires that checks or drafts be signed, but unbeknownst to many consumers, the signature need not take any particular form, and the authority to sign can be granted orally....

DIFS has not alleged that checks without handwritten signatures are forbidden by the Payday Lending Act. "Demand drafts" and "remotely created checks" are "checks" as defined by MCL 487.2122 (1) (b), which reads in part:

> "Check" means a draft that is payable on demand and drawn on a bank, savings bank, savings and loan association, or credit union....

Whether an instrument is a handwritten check or a demand draft or remotely created check, the instrument is nonetheless a check under the payday lending act, and the lender has an obligation to cash it (or collect its value in some way) on the maturity date if the customer has not paid off the loan.

MCL 487.2155 (7) reads:

> (7) Unless the drawer has entered into a written repayment plan under subsection (2), a licensee shall deposit a check held in connection with a deferred presentment service transaction on the maturity date if the check is not redeemed in the manner described in section 2(1)(c)(i), or exchanged in the manner described in section 2(1)(c)(ii), on or before the maturity date.

CBC admits that, when a maturity date arrives and the customer has not paid off the loan, CBC and the customer typically negotiate a re-loan, as described above, whereupon CBC refrains from cashing the customer's check.

CBC argues that it is allowed to collect any amount it agrees to collect, not necessarily the full amount of the customer's check, thereby "closing" the loan and paving the way to write a new loan. CBC bases its argument on MCL 487.2122 (1) (c) (v), which reads:

> The check is collected by means of a repayment plan agreed on by the customer and the licensee or as the result of credit counseling where the licensee is paid the **amount agreed upon** by the licensee under that plan.

I disagree. The clause CBC relies on, MCL 487.2122 (1) (c) (v), is part of the definition of "closing" a loan in MCL 487.2122 (1) (c), which contains a list of several ways in which loans can be closed, exchanged or redeemed.

CBC's duty to collect the full amount of an unpaid loan on the maturity date comes from MCL 487.2155 (7), which reads in part:

> ... a licensee shall deposit a check held in connection with a deferred presentment service transaction on the maturity date if the check is not redeemed in the manner described in [MCL 487.2122 (1) (c) (i)], or exchanged in the manner described in [MCL 487.2122 (1) (c) (ii)], on or before the maturity date.

Granted, there are exceptions to the lender's duty to cash a customer's check. The exceptions are spelled out in MCL 487.2155 (7), and they are MCL 487.2122 (1) (c) (i) or (c) (ii). But here is no exception for loans closed under MCL 487.2122 (1) (c) (v), the clause upon which CBC relies.

The law does not allow CBC to avoid its obligation to collect the unpaid principal on the maturity date by agreeing to collect a different amount.

By failing to cash the customer's check prior to a re-loan CBC violates MCL 487.2155 (7). DIFS' motion for summary disposition is granted with respect to MCL 487.2155 (7), and CBC's motion for summary disposition with respect to this issue is denied.

RE-LOANS VERSUS NEW LOANS

CBC argues that its re-loans are not extensions of a prior loan and not roll-overs of existing debt. CBC argues that its re-loans are entirely new payday loans.

I disagree. CBC's re-loans, by definition, are not payday loans. Payday loans are defined in MCL 487.2122 (1) (g) (i) as follows:

> (g) Subject to subsection (2), "deferred presentment service transaction" means a transaction between a licensee and a customer under which the licensee agrees to ... (i) Pay to the customer an agreed-upon amount in exchange for a fee....

If a re-loan were a new loan, CBC would need to pay the proceeds to the customer. But CBC does not pay any money to the customer when it writes a re-loan. For example, as discussed above, CBC paid $300 to Ms. Chapman at the start of their transactions, and in each subsequent re-loan agreement, CBC paid her nothing.

The duty to pay loan proceeds to the customer is also found in MCL 487.2153 (3) (c), which reads in part:

> At the time of entering into a deferred presentment service transaction, a licensee shall ...
>
> (c) Pay the proceeds under the agreement to the drawer by delivering a business check of the licensee, a money order, or cash, as requested by the drawer.

In the absence of payment to the customer, CBC's re-loans do not fit the statutory definition of MCL 487.2122 (1) (g) and they violate MCL 487.2153 (3) (c).

In DIFS's February 12, 2018, examination of CBC, the examiners cited CBC for failing to maintain records of disbursements to customers' accounts. CBC responded, saying that, "Procedures have been updated to ensure that a record of each disbursement to customers account is kept on file..." Exhibit R4, page 2. Nonetheless CBC persisted in its re-loaning practice.

Because it fails to pay the loan proceeds to the customer each time it writes a re-loan contract, as MCL 487.2122 (1) (g) and MCL 487.2153 (3) (c) would otherwise require, CBC is in no position to argue that the re-loan is a new loan.

CBC's motion for summary disposition, insofar as it is based on the allegation that CBC's re-loans are new loans, is denied.

THE TEXTS OF CBC LOAN CONTRACTS

Standard Contract Form – Pre October 2018

CBC uses standard contract forms. The text of the contracts reads approximately as follows:

> Community does not offer payment plan extensions. Therefore, loans and applicable bat must be paid off in full on their due date. There is NO GRACE PERIOD! If the loan is not paid in full on the Due Date, Community will coordinate with your Employer to start Payroll Wage Garnishment Procedures. The Finance Charge must be paid off in full before the Principal can start to be paid down.
>
> This Loan Agreement, Promissory Note, and Security Agreement is entered into by and between CREDITOR/LENDER and BORROWR/DEBTOR as of the above date, subject to the terms and conditions set forth and any and all

representations BORROWER has made to LENDER in connection with this transaction.

LOAN AGREEMENT. You have requested a loan (the "LOAN") in the amount of the Amount Financed stated above (the "PRINCIPAL"). At your specific request, we as LENDER do hereby advance to you the Principal Amount. This loan is offered under the Laws governing money, interest, and usury. You as BORROWER shall pay in cash to LENDER the amount set forth by the installment schedule above when due pursuant to the *[content missing]*

Promissory Note. Any notice that we as LENDER are required to provide you pursuant to the Agreement and/or the Uniform Commercial Code of the State of Michigan will be deemed reasonable if sent to you at the address set forth by you above at least five (5) days before the event with respect to which notice is required. In the event the loan is repaid prior to maturity, BORROWER shall pay interest at the rate set forth as the ANNUAL PERCENTAGE RATE above for the number of days the loan is outstanding and there will be no prepayment penalty. The amount set forth above as the FINANCE CHARGE is deemed a service fee by Michigan law and is *[content missing]*

TRUTH OF APPLICATION. You certify that the information stated on this contract is true and correct. You understand that we are relying upon the Application and this Agreement. You authorize us to verify any information through any source including the use of a credit report.

CUSTOMER'S BANK CHARGES. You will not hold LENDER or our agents responsible for depositing any check(s) or for any fees you must pay as a result of any check(s) being deposited at your bank.

DEFAULT. You will be in default under this Agreement if: (a) you stop payment on the check(s) we deposit or otherwise fail to pay the Total of Payment on or before the Payment Due Date shown above, or (b) you provide false or misleading information about yourself, your employment or your financial condition (including the account on which any check(s) is (are) drawn) prior to entering this Agreement, or (c) any of the following things happen to you: death, failure to pay your other debts as they come due, appointment of a committee, receiver or other custodian of any of your property, or the commencement of a case under the Federal Bankruptcy Laws by or *[content missing]*

CONSEQUENCES OF DEFAULT. Should you stop payment on a check(s) or otherwise be in default under this Agreement, we may at our option, exercise any one or more of the following remedies: (a) we may charge a default fee of

$20.00; (b) if payment is not made after written demand, we may go to court and get a judgment against you for the then unpaid amount of your obligations to us. In the event the judgment is entered in our favor, we may seek to collect this judgment through all judicial means necessary, including attaching your non-exempt property, or garnisheeing your wages; (c) if we have to hire an attorney to help us collect the amount you owe us, your signature on this Agreement constitutes your agreement to pay all of our reasonable attorney's fees, court costs, and other expenses, including the costs of foreclosure and legal remedies that we incur in collecting; (d) if we are advised by your bank or other financial institution that a check(s) has (have) been altered, forged, stolen, obtained through fraudulent means negotiated without legal authority, or represents the proceed of illegal activity, we are required by law to notify the Michigan Attorney General's Office and if the check(s) is (are) returned to us by your bank for any of these reasons, we may not release the check(s) without the consent of the *[content missing]*

METHOD OF PAYMENT. You understand that a check will be held for deposit for no longer than fifteen (15) days. You agree that we may deposit a check held for deposit on the Payment Due Date if you have not paid us in cash or certified funds the amount of the Total of Payments on the Payment Due Date. If Payment is made prior to depositing a check held for deposit, we will return the check held for deposit to you at the time we receive *[content missing]*

GOVERNING LAW. Both this Agreement and the Application were executed at our offices listed above in the State of Michigan and that they and this Transaction shall he governed by and construed and enforced solely in accordance with the laws of the State of Michigan. YOU AGREE THAT THE STATE. COURTS LOCATED IN THE STATE OF MICHIGAN WILL HAVE EXCLUSIVE JURIDICTION AND VENUE OF ACTION TO ENFORCE THIS AGREEMENT.

Make your check payable to lender listed above, date your check for today. Deposits cannot exceed 14 days.

I, the undersigned authorize the LENDER to initiate debit entries and if my check is returned unpaid for any reason an NSF fee up to $25 will be charged. I attest that I have carefully read the terms and conditions of this contract and agree to them.[1]

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[1] This text is based on Exhibit R1 and Exhibit P1A. The parts of the contract where it is noted that content is missing seem to be regularly missing in all the exhibits, and I have been unable to determine what the missing content is.

Additional Language – After October 2018

In about October 2018, CBC added a section to its standard contract that reads approximately as follows (the standard contract language, quoted above, remains the same):

1. A deferred presentment service transaction is not intended to meet long-term financial needs. We can only defer cashing your check for up to 31 days.

2. You should use this service only to meet short-term cash needs.

3. State law prohibits us from entering into this transaction with you if you already have a deferred presentment service agreement in effect with us or have more than one deferred presentment service agreement in effect with any other person who provides this service.

4. We must immediately give you a copy of your signed agreement.

5. We will pay the proceeds of this transaction to you by check, by money order, or in cash, as you request.

6. State law entitles you to the right to cancel this agreement and receive a refund of the fee. To do this, you must notify us and return the money you receive today by the time this office closes tomorrow or on our next business day if we are not open tomorrow.

7. State law prohibits us from renewing this agreement for a fee. You have to pay an agreement in full before obtaining additional money from us.

8. State law prohibits us from using any criminal process to collect on this agreement.

9. State law entitles you to information regarding filing a complaint against us if you believe that we have violated the law. If you feel we are acting unlawfully, you should call the Department Insurance & Financial Services toll-free at 1-877-999-6442.

10. If you are unable to pay your deferred presentment service transaction and have entered into 8 deferred presentment service transactions with any licensee in any 12-month period, state law entitles you to request a repayment of that transaction in installments. We are required to advise you of this option at the

> time it is available. If you elect this option, you must notify us; either orally or in writing, within 30 days after the maturity date of the deferred presentment transaction. The notice must be provided to us at our place of business. You may be charged an additional fee when the transaction is rescheduled in installments. You will be ineligible to enter into a deferred presentment service transaction with any licensee during the term of the repayment plan. If we refuse to provide this option under the stipulations above, you should contact the Department of Insurance & Financial Services toll-free at 1-877-999-6442.[2]

Customer Signatures

DIFS alleges that CBC has failed to have its loan contracts signed by the customer. CBC admits that it typically makes transactions over the phone. CBC concedes that, as a matter of practice, it does not require borrowers to be physically present to sign re-loan contracts. Of the 136 loan contracts in this record, only one (Exhibit 28) seems to bear the customer's handwritten signature.

DIFS alleges that in failing to have its contracts signed by the customer, CBC has violated MCL 487.2152 (1) which reads:

> (1) A licensee shall document a deferred presentment service transaction by entering into a written deferred presentment service agreement signed by both the customer and the licensee.

The report of the February 12, 2018, examination, Exhibit R4, page 9, alleged that customer signatures were missing on loan contracts, and the examiner alleged a violation of MCL 487.2152 (1). In response to that examination report, CBC stated that, "Procedures have been updated to ensure that each loan agreement is signed by the customer and a licensee representative."

CBC tried to comply. Prior to about October 2018, the customer signature line on re-loan contracts in the CBC loan files was blank. Beginning in about October 2018, CBC started placing on the customer signature lines a phrase that reads, "borrower verbally authorized via phone." The Campbell series of contracts, Exhibits P2A through P2D, illustrate this change. CBC started placing that legend on its contracts in October 2018:

Campbell Contract Forms: Customer Signature Line

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[2] This text is based on Exhibit P9B (Horton, 24 Apr 2019), Exhibit P11A (Jones, 19 Oct 2018), Exhibit P5A (Drake, 8 Nov 2018).

Date	Signature Line
11 Jul 18	blank
8 Aug 18	blank
12 Sep 18	blank
10 Oct 18	“borrower verbally authorized via phone”
14 Nov 18	“borrower verbally authorized via phone”
12 Dec 18	“borrower verbally authorized via phone”
9 Jan 19	“borrower verbally authorized via phone”

CBC now argues that the Payday Lending Act does not define “signature”, thus a customer’s signature taken over the phone can qualify as a signature.

The issue here is whether a phrase on the customer signature line such as, “borrower verbally authorized via phone” constitutes a signature.

I agree with CBC’s position on that issue. MCL 487.2152 (1) does not require that signatures on payday lending contracts be handwritten.

There is no general requirement in law that a signature must be handwritten. The Michigan Uniform Commercial Code does not require handwritten signatures. MCL 440.1201 (2) (kk), reads:

> (kk) "Signed" includes any symbol executed or adopted by a party with present intention to adopt or accept a writing....

As discussed above, banks routinely cash checks without handwritten signatures.[3]

Federal and state electronic signature laws explicitly state that handwritten signatures are not required. MCL 450.837 reads:

> (1) A record or signature shall not be denied legal effect or enforceability solely because it is in electronic form.
>
> (2) A contract shall not be denied legal effect or enforceability solely because an electronic record was used in its formation....
>
> (4) If a law requires a signature, an electronic signature satisfies the law....

15 USC 7001 (a) reads:

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[3] Bernstein, “*Demand Draft Fraud*” (Federal Trade Commission, April 15, 1996), https://www.ftc.gov/public-statements/1996/04/demand-draft-fraud

> (a) In general. Notwithstanding any statute, regulation, or other rule of law (other than this subchapter and subchapter II), with respect to any transaction in or affecting interstate or foreign commerce—
>
> (1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and
>
> (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

As a regulatory agency, DIFS probably has jurisdiction to promulgate an explicit rule requiring handwritten signatures on payday lending contracts.

MCL 487.2141 reads:

> Each licensee shall keep and use in its business any books, accounts, and records the **commissioner requires** under this act....

MCL 450.842 (7) reads:

> This section does not preclude a governmental agency of this state from **specifying additional requirements** for the retention of a record subject to the agency's jurisdiction.

15 USC 7004 (a) reads:

> Subject to subsection (c)(2), nothing in this subchapter limits or supersedes any **requirement** by a Federal regulatory agency, self-regulatory organization, or State regulatory agency that records be filed with such agency or organization in accordance with specified **standards or formats**.

But DIFS has published no such rule. The February 12, 2018, examination report, Exhibit R4, does not cite any rule, standard, format, or requirement that signatures on payday lending contracts must be handwritten.

In the absence of a rule requiring handwritten signatures, there is not enough evidence to conclude that CBC violates MCL 487.2152 (1) or MCL 487.2141 by failing to require handwritten customer signatures on loan contracts. Accordingly, CBC's motion for

summary disposition with respect to MCL 487.2152 (1) and MCL 487.2141 is granted, and DIF's motion for summary disposition on that issue is denied.

Multiple Addresses

DIFS alleges that CBC has an incorrect name and address on it loan agreements. In the exhibits attached to DIF's motion, all or nearly all, of the 136 loan contracts contain two addresses for the lender:

> Community Short Term Loans
> 18570 Grand Avenue, Suite 100
> Detroit, Michigan, 48223
>
> Community Business Consulting Inc (CBC)
> PO Box 760222
> Lathrup Village, Michigan, 48076

DIFS alleges that CBC's use of two business addresses on its contract forms violates MCL 487.2152 (2) (b), which reads:

> (2) A licensee shall include all of the following in the written deferred presentment service agreement: ...
>
> (b) The name, street address, facsimile number, and telephone number of the licensee.

I disagree with DIFS' allegation that the use of two addresses violates MCL 487.2152 (2) (b). The law requires at least one address, but it does not prohibit two addresses. CBC argues that both addresses are accurate. There is not enough evidence to conclude that the two addresses are misleading in any way.

CBC does not violate MCL 487.2152 (2) (b) by using two business addresses on its loan contracts. DIFS' motion for summary disposition on this issue is denied, and CBC's motion for summary judgment on this issue is granted.

Using the Word "Interest"

DIFS alleges that CBC uses the word "interest" in its loan contracts. CBC's standard contract form (quoted above) contains the following sentence:

> In the event the loan is repaid prior to maturity borrower shall pay interest at the rate set forth as the annual percentage rate above for the number of days the loan is outstanding, and there will be no prepayment penalty.

The same sentence appears in all, or nearly all, the CBC contracts that have been submitted in evidence.

DIFS alleges that the use of the word "interest" is a violation of MCL 487.2153 (1), which reads in part:

> ... A service fee is earned by the licensee on the date of the transaction and is not interest.

I disagree with DIFS' argument that the word "interest" is prohibited. There is no explicit prohibition in MCL 487.2153 (1). The word "interest" in this context is not misleading. Interest is the charge a borrower pays for the opportunity to borrow money, and that is exactly what CBC makes its customers pay.

CBC does not violate MCL 487.2153 (1) by using the word "interest" in its contracts. DIFS' motion for summary disposition is denied with respect to MCL 487.2153 (1). CBC's motion for summary disposition with respect to this issue is granted.

Promise to Defer Collection

DIFS alleges that CBC's loan agreements do not contain a promise that CBC will defer presentment and negotiation – and defer entering a check into the check-cashing process -- until the maturity date.

DIFS alleges that, in CBC's loan contracts, there is no promise that CBC will take no steps to collect the debt until the maturity date in violation of MCL 487.2152 (2) (L), which reads:

> (2) A licensee shall include all of the following in the written deferred presentment service agreement: ...
>
> (l) A provision that the licensee will defer presentment, defer negotiation, and defer entering a check into the check-clearing process until the maturity date.

That allegation is uncontested. In neither the standard contract language (quoted above) nor the additional contract language added after October 2018 (quoted above) is there a promise that CBC will defer collection efforts until the maturity date. Indeed, in CBC's re-loaning practice, CBC defers collection of the customer's check indefinitely.

In CBC's loan contracts, there is no promise that CBC will take no steps to collect the debt until the maturity date in violation of MCL 487.2152 (2) (L). DIFS's motion for summary disposition is granted with respect to MCL 487.2152 (2) (L) and MCL 487.2141, and CBC's motion for summary disposition on this issue is denied.

Description of Complaint Procedure

DIFS alleges that CBC's loan agreements do not contain a description of the process a customer may use to file a complaint against CBC.

DIFS alleges that, in CBC's loan contracts, there is no description of the complaint procedure in violation of MCL 487.2152 (2) (m), which reads:

> (2) A licensee shall include all of the following in the written deferred presentment service agreement: ...
>
> (m) A description of the process a drawer may use to file a complaint against the licensee.

Clearly, in CBC's standard contract form, there is no reference to the complaint process at all. However, in the additional language added after October 2018, CBC has apparently tried to address the issue by adding the following language in Item #9:

> State law entitles you to information regarding filing a complaint against us if you believe that we have violated the law. If you feel we are acting unlawfully, you should call the Department Insurance & Financial Services toll-free at 1-877-999-6442.

Following DIFS' February 12, 2018, examination of CBC, there was correspondence between DIFS and CBC during which DIFS suggested changes to the description of the complaint process. CBC made changes. DIFS has not alleged that those changes are inadequate.

Giving customers a phone number to call if they want to complain is a serviceable description of the complaint process. CBC is in substantial compliance with MCL 487.2152 (2) (m). CBC's motion for summary disposition is denied with respect to that issue, and DIFS' motion for summary disposition on that issue is denied.

CHAPMAN TRANSACTION -- EXCESSIVE LOAN AMOUNT

DIFS alleges that, in the 17 Oct 2018 transaction involving Ms. Chapman (Exhibit P31), CBC advanced a loan for $673 or $676.

DIFS alleges a violation of MCL 487.2153 (1), which reads in part:

> (1) A licensee may enter into 1 deferred presentment service transaction with a customer for any amount up to $600.00....

and MCL 487.2153 (4) (e), which reads:

> (4) At the time of entering into a deferred presentment service transaction, a licensee shall not do any of the following: ...
>
> (e) Except as provided in this act, charge or collect any other fees for a deferred presentment service transaction.

CBC concedes that there was an error in the truth-in-lending box in the Chapman contract. The amount of the loan should have been entered as $600 but mistakenly $673 was entered into the “amount financed” box.

There is not enough information in Exhibit 31 to determine (1) how much money CBC actually advanced Ms. Chapman, (2) how CBC calculated the finance charge, or (3) how much CBC collected from Ms. Chapman. Without that information, we do not know the amount of the actual transaction. Without knowing the amount of the actual Chapman transaction, it is impossible to determine whether CBC violated MCL 487.2153 (1) or MCL 487.2153 (4) (e).

Because the facts are inadequate and in contest, DIFS’ motion for summary disposition on the loan amount issue is denied, and CBC’s motion for summary disposition with respect to that issue is also denied.

CREDIT CARD FEE

DIFS alleges that CBC collected an additional 4% credit card fee from customers who made debit card payments. DIFS alleges a violation of MCL 487.2153 (4) (e), which reads:

> (4) At the time of entering into a deferred presentment service transaction, a licensee shall not do any of the following: ...
>
> (e) Except as provided in this act, charge or collect any other fees for a deferred presentment service transaction.

The 4% credit card fee appears among a list of fees on the standard contract form through October 2018. Contracts written after October 2018 do not mention the fee, for example:

Credit Card Fee Listed on Contract

Customer	Contract Date	Fee Listed	Exhibit
White	1 Aug 18	listed	P24A
White	4 Sep 18	listed	P24B
L Campbell	10 Oct 18	listed	P2D
L Campbell	14 Nov 18	not listed	P2E
Wilson	28 Dec 18	not listed	P27A
Williams	3 Jan 19	not listed	P26A

DIFS concedes that there is no evidence that CBC actually collected a credit card fee, even when it was listed. CBC changed its business practices after the first DIFS examination and stopped listing the credit card fee.

Because there is no evidence that CBC collected a 4% credit card fee from its customers, and because CBC stopped listing the fee after October 2018, no violation of MCL 487.2153 (4) (e) can be established. DIFS' motion for summary disposition is denied, and CBC's motion for summary disposition with respect to the credit card fee is granted.

Debit Card Match

DIFS argues that CBS accepted payment by debit card for amounts less than the full amount of the debt and that CBS failed to obtain certification from customers that the

debit card used for payment was from the same account on which the check was drawn, in violation of MCL 487.2155 (11) which reads:

> (11) A licensee shall only accept a payment by debit card to redeem a check the licensee is holding if the drawer certifies to the licensee that the debit card draws funds from the same account on which the check is drawn.

It is uncontested that CBC takes payments from customers who use debit cards to pay their finance charges or other charges associated with their loans. As discussed above, CBC accepts payment on the maturity date of amounts less than the full principal.

DIFS argues that debit cards can only be used to pay off a debt entirely, not to make a partial payment. DIFS' reading of MCL 487.2155 (11) is that it only allows lenders to accept payment by credit card to redeem a debt. DIFS relies on the definition of "redeem" in MCL 487.2122 (1) (r), which reads:

> "Redeem" means that the customer pays to the licensee an amount equal to the face amount of a check included in a deferred presentment service transaction ...

DIFS argues that under MCL 487.2155 (11) and MCL 487.2122 (1) (r), a debit card can only be used to redeem a debt, that is, to pay off a loan in full. DIFS argues that when a customer uses a debit card to pay the finance charge as part of CBC's typical re-loan arrangement, that is an improper use of a debit card, and payment by debit card for that purpose is illegal.

I disagree with DIFS' argument. MCL 487.2155 (11) does not explicitly forbid using a debit card for a partial payment, and it can be read two ways.

Another way to read the statute is as follows: MCL 487.2155 (11) governs when certification is necessary. Certification is necessary only when a card is used for a full payoff. When a card is used for any other purpose, certification is not necessary. According to that reading, the statute is silent on the issue of whether a debit card can be used for another purpose.

Because MCL 487.2155 (11) is ambiguous, it is impossible to conclude that CBC's practice of accepting partial payment by debit card is a violation of MCL 487.2155 (11).

Of course, this is not to say that CBC's practice of accepting partial payment is not a violation of the Payday Lending Act. As discussed above, CBC's practice of accepting partial payment violates MCL 487.2155 (7).

Because it is impossible to conclude unequivocally that CBC's practice of accepting partial payment by debit card is a violation of MCL 487.2155 (11), DIFS' motion for summary judgment is denied and CBC's motion for summary judgment is granted.

UNFAIR EXAMINATION

CBC argues that DIFS' examination process was unfair. DIFS closed its first examination in March 2019 without issuing a complaint against CBC. Later, DIFS switched theories, performed a second examination, and issued a complaint. CBC argues that because the first exam was closed in March 2019, the problems raised in the examination were no longer a valid basis for enforcement action. CBC argues that agencies cannot switch theories in the middle of a case, and DIFS should be estopped from raising new issues in the second examination that had been closed earlier.

DIFS argues that there are no such limits on its enforcement powers, and I agree. CBC's claim that it was cleared of all alleged violations is based on the March 11, 2019, letter by Mark Weigold, Director of DIFS' Consumer Finance Section, who wrote:

> The Consumer Finance Section of the Department of Insurance and Financial Services has received and reviewed your response to the above referenced examination. The examination is considered closed. [Exhibit R8]

I disagree with CBC's interpretation of the Weigold letter for two reasons. First, the letter does not explicitly say that CBC was cleared of all cited violations. Second, the Weigold letter was not a final agency decision.

MCL 24.281 reads in part:

> (1) When the official or a majority of the officials of the agency who are to make a final decision have not heard a contested case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served on the parties, and an opportunity is given to each party adversely affected to file exceptions and present written arguments to the officials who are to make the decision...
>
> (2) The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact and law necessary to the proposed decision, prepared by a person who conducted the hearing or who has read the record.
>
> (3) The decision, without further proceedings, shall become the final decision of the agency in the absence of the filing of exceptions or review by action of the agency within the time provided by rule...

The Weigold letter can be construed as a final decision because it was not made after a hearing.

CBC's motion for summary disposition, based on the argument that the March 11, 2019 Weigold letter constitutes a final, binding decision clearing CBC of any charges, is denied.

DISTRICT COURT APPROVAL

CBC submitted evidence of several default judgments and garnishment orders against delinquent customers in the 36th District Court.

CBC argues that the fact that it has been allowed to pursue collection actions against delinquent customers implies that the 36th District Court has approved CBC's re-loaning practice.

I disagree. All we have from the 36th District Court are registers of action. We do not have pleadings, transcripts, or orders. In a default proceeding it is not likely that a judge has occasion to evaluate the propriety of CBC's lending practices. A District Court would certainly not have jurisdiction to assess CDC's compliance with the Payday Lending Act.

CDC's motion for summary disposition is denied to the extent that it relies on an argument that the 36th District Court has adjudicated and approved CBC's re-loaning practice.

FRAUD

DIFS argues that CBC acted dishonestly when it renewed loans, charged interest on re-loans, and put inaccurate information into the statewide database. DIFS argues that CBC is subject to sanctions under MCL 487.2167 (1) (b), which reads:

> (1) The commissioner may, after notice and hearing, suspend or revoke a license if the commissioner finds that the licensee has knowingly or through lack of due care done any of the following: ...
>
> (b) Committed any fraud, engaged in any dishonest activities, or made any misrepresentations.

Titan Insurance v Hyten, 491 Mich 547; 817 NW2d 562 (2012) restated the elements of fraud:

> ... the general rule is that to constitute actionable fraud it must appear: (1) That defendant made a material representation; (2) that it was false; (3) that when he made it he knew that it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) that he made it with the **568 intention that it should be acted upon by plaintiff; (5) that plaintiff acted in reliance upon it; and (6) that he thereby suffered injury. Each of these facts must be proved with a reasonable degree of certainty, and all of them must be found to exist; the absence of any one of them is fatal to a recovery.... (cites omitted)

M&D v WB McConkey, 231 Mich App. 22, 29; 585 NW2d 33, 37 (1998), held that a party to a transaction commits fraud when the party suppresses a material fact, which the party in good faith is duty-bound to disclose.

In my view, there is not enough evidence on this record to conclude that CBC committed fraud. CBC offered in its defense Exhibit R3, an affidavit from a customer who had a series of transactions with CBC. The customer wrote:

> I, Adrienne Griggs, fully agreed to the loans with Community Business Consulting, Inc. (CBC) that originated July 9, 2018, July 26, 2018, and any other loan that does not bear my physical signature. I verbally authorized most of my loans with CBC over the phone. And I am very thankful for this convenience.
>
> I also entered into several repayment plans with CBC and agreed that CBC could collect the finance charge on the existing loan and close out that existing loan. I also understood this repayment plan agreement required me to pay the usual finance charge on the new loan. This repayment plan with CBC allowed me to enter into a new loan agreement without going into further debt and without having to come up with $500 cash to hand over to CBC, only to have CBC hand the $500 cash back to me. Again, I am very thankful for this particular service.
>
> I am a happy satisfied customer of Community Business Consulting, Inc. They have been a great help to me in a time of brief financial difficulty. I will be more than willing to testify at a hearing to these facts. Exhibit R3.

Of course, the fact that one borrower is satisfied hardly proves that CBC has complied with the Payday Lending Act.

But Ms. Griggs' statement is, in a sense, relevant to the fraud issue. It illustrates the fact that a borrower in a desperate financial situation might agree, knowingly, with eyes wide open, to do business with a usurious lender. Usury is outlawed not necessarily because it is fraudulent but because it is oppressive. There is not enough evidence on

this record to prove that Ms. Griggs, or any other borrowers, were somehow deceived when they did business with CBC.

Whether CBC has committed fraud in violation of MCL 487.2167 (1) (b) is a contested issue of fact. DIFS' motion for summary disposition on the fraud issue is denied, and CBC's motion for summary disposition on the fraud issue is denied.

KNOWING VIOLATIONS

DIFS argues that CBC knowingly violated the Payday Lending Act and is subject to sanctions under MCL 487.2167 (1) (c), (e) and (f), which read:

> (1) The commissioner may, after notice and hearing, suspend or revoke a license if the commissioner finds that the licensee has knowingly or through lack of due care done any of the following: ...
>
> (c) Violated this act or any rule or order issued under this act or violated any other law in the course of the licensee's dealings as a licensee....
>
> (e) Demonstrated incompetency or untrustworthiness to act as a licensee.
>
> (f) Engaged in a pattern or practice that poses a threat of financial loss or threat to the public welfare.

and MCL 487.2168 (1), which reads:

> (1) If the commissioner finds that a person has violated this act, state or federal law, or an applicable rule or regulation, the commissioner may order the person to pay a civil fine of not less than $1,000.00 or more than $10,000.00 for each violation. However, if the commissioner finds that a person has violated this act and that the person knew or reasonably should have known that he or she was in violation of this act, the commissioner may order the person to pay a civil fine of not less than $5,000.00 or more than $50,000.00 for each violation. The commissioner may also order the person to pay the costs of the investigation.

I agree. In DIFS' February 12, 2018, examination of CBC, the examiners warned CBC about three major violations of the Payday Lending Act – extending loans, failing to pay loan proceeds to customers, and falsely reporting transactions as "closed".

First, in DIFS's first examination of CBC, the examiners cited CBC for extending loans in violation of MCL 487.2155 (1). In response to the examination report, CBC stated they do not offer extensions. Exhibit R4.

Nonetheless, more than a year later, CBC was continuing to write re-loans that were, in effect, extensions of previously written loans.

Loan Extensions – Re-loans -- One Year after First Examination

Customer	Exhibit	Date
High	R8E	15-Feb-19
Powell	R18F	15-Feb-19
Baldwin	R1F	18-Feb-19
Horton	R9A	10-Apr-19
Horton	R9B	24-Apr-19

Second, in DIFS's first examination of CBC, the examiners cited CBC for writing payday loans but failing to pay loan proceeds to customers. In DIFS' report of the February 12, 2018 examination, the examiners cited CBC for failing to maintain records of disbursements to customers' accounts. CBC responded, saying that, "Procedures have been updated to ensure that a record of each disbursement to customers account is kept on file..." Exhibit R4, p 2.

Nonetheless, CBC continued its re-loan practice despite the examiners' citation. In re-loans written a year after the examination, CBC continued to pay its customers no loan proceeds. For example, in the six Baldwin transactions documented in Exhibits P1A through P1F, spanning December 7, 2018, through February 18, 2019, CBC wrote re-loan agreements in which the customer was paid nothing. Also, in the six Powell transactions documented in Exhibits P18A through P18F, CBC wrote re-loan agreements in which the customer was paid no loan proceeds.

Third, the DIFS' report of the February 12, 2018, examination cited CBC for reporting a transaction as "closed" when the loan had not been paid off entirely. The examination report alleged that it was improper to notify the statewide database that a transaction had been closed when the customer had not satisfied the entire obligation. In response to the examination report, CBC stated that, "Procedures have been updated to ensure that a transaction is only closed in the Veritec Database when the customer satisfies the obligation." Exhibit R4, p 2.

CBC never followed through on its promise to ensure that transactions would not be closed without a payoff of the entire principal. CBC continued the practice of collecting less than the full principal amount on the maturity date, rolling over the unpaid principal from one loan to the next, and booking the transaction as "closed."

So-called "Closed" Loans That Were Really Only Rolled Over

Customer	Date	Unpaid Principal Rolled Over	Exhibit
Griggs	9 Jul 2018	$500	Exhibit 7A
Chapman	13 Aug 2018	$300	Exhibit P3C
Edwards	24 Sep 2018	$300	Exhibit P6B
Jones	19 Oct 2018	$292	Exhibit P11A
Drake	10 Jan 2019	$300	Exhibit P3E
Horton	24 Apr 2019	$400	Exhibit P9B

CBC's business model involves extending the terms of loans and collecting interest at usurious rates during the extended period. That is not a technical violation. It is a major departure from what the regulatory scheme contemplates. To comply with the Payday Lending Act, CBC would need to drastically change its business practices. CBC knew in February 2018 that its business practices were incompatible with the statutory scheme. DIFS examiners warned CBC that it was improperly extending loans, failing to pay loan proceeds to customers, and falsely reporting transactions as "closed."

In the face of warnings that its re-loaning practice was illegal, CBC chose not to abandon its re-loaning practice. Doing so, CBC is subject to sanctions for "knowing violations" under MCL 487.2167 (1) (c), (e) and (f) and MCL 487.2168 (1).

DIFS' motion for summary disposition with respect to MCL 487.2167 (1) (c), (e) and (f) and MCL 487.2168 (1) is granted, and CBC's motion for summary disposition with respect to this issue is denied.

SUMMARY

Serial Finance Charges: CBC violates MCL 487.2155 (1) by collecting finance charges on re-loans. DIF's motion for summary disposition is granted with respect to MCL 487.2155 (1), and CBC's motion for summary disposition with respect to this issue is denied.

Checks Not Deposited: The law does not allow CBC to avoid its obligation to collect the unpaid principal on the maturity date by agreeing to collect a different amount. By failing to cash the customer's check prior to a re-loan CBC violates MCL 487.2155 (7). DIFS' motion for summary disposition is granted with respect to MCL 487.2155 (7), and CBC's motion for summary disposition with respect to this issue is denied.

Re-Loans Versus New Loans: CBC's motion for summary disposition, insofar as it is based on the allegation that CBC's re-loans are new loans, is denied.

Customer Signatures: In the absence of a rule requiring handwritten signatures, there is not enough evidence to conclude that CBC violates MCL 487.2152 (1) or MCL 487.2141 by failing to require handwritten customer signatures on loan contracts. CBC's motion for summary disposition with respect to MCL 487.2152 (1) and MCL 487.2141 is granted. DIF's motion for summary disposition on that issue is denied.

Multiple Addresses: CBC does not violate MCL 487.2152 (2) (b) by using two business addresses on its loan contracts. DIFS' motion for summary disposition on this issue is denied, and CBC's motion for summary judgment on this issue is granted.

Using the Word "Interest": The word "interest" as it appears in CBC loan contract forms is neither prohibited nor misleading. CBC does not violate MCL 487.2153 (1) by using the word "interest" in its contracts. DIFS' motion for summary disposition is denied with respect to MCL 487.2153 (1). CBC's motion for summary disposition with respect to this issue is granted.

Promise to Defer Collection: In CBC's loan contracts, there is no promise that CBC will take no steps to collect the debt until the maturity date in violation of MCL 487.2152 (2) (L). DIFS's motion for summary disposition is granted with respect to MCL 487.2152 (2) (L) and MCL 487.2141, and CBC's motion for summary disposition on this issue is denied.

Description of Complaint Procedure: Giving customers a phone number to call if they want to complain is a serviceable description of the complaint process. CBC is in substantial compliance with MCL 487.2152 (2) (m). CBC's motion for summary disposition is denied with respect to that issue, and DIFS motion for summary disposition on that issue is denied.

Chapman Transaction -- Excessive Loan Amount: Without knowing the amount of the actual Chapman transaction, it is impossible to determine whether CBC violated MCL 487.2153 (1) or MCL 487.2153 (4) (e). Because the facts are inadequate and in contest, DIFS' motion for summary disposition on the loan amount issue is denied, and CBC's motion for summary disposition with respect to that issue is also denied.

Credit Card Fee: Because there is no evidence that CBC collected a 4% credit card fee from its customers, and because CBC stopped listing the fee after October 2018, no violation of MCL 487.2153 (4) (e) can be established. DIFS motion for summary disposition is denied, and CBC's motion for summary disposition with respect to the credit card fee is granted.

Debit Card Match: Because it is impossible to conclude unequivocally that CBC's practice of accepting partial payment by debit card is a violation of MCL 487.2155 (11), DIFS' motion for summary judgment is denied and CBC's motion for summary judgment is granted.

Unfair Examination: CBC's motion for summary disposition, based on the argument that the March 11, 2019 Weigold letter constitutes a final, binding decision clearing CBC of any charges, is denied.

District Court Approval: CDC's motion for summary disposition is denied to the extent that it relies on an argument that the 36th District Court has adjudicated and approved CBC's re-loaning practice.

Fraud: Whether CBC has committed fraud in violation of MCL 487.2167 (1) (b) is a contested issue of fact. DIFS' motion for summary disposition on the fraud issue is denied, and CBC's motion for summary disposition on the fraud issue is denied.

Knowing Violations: In the face of warnings that its re-loaning practice was illegal, CBC chose not to abandon its re-loaning practice. Doing so, CBC is subject to sanctions for "knowing violations" under MCL 487.2167 (1) (c), (e) and (f) and MCL 487.2168 (1). DIFS' motion for summary disposition with respect to MCL 487.2167 (1) (c), (e) and (f) and MCL 487.2168 (1) is granted, and CBC's motion for summary disposition with respect to this issue is denied.

DEMAND FOR HEARING or PROPOSAL FOR DECISION

This opinion disposes of the entire case except for two issues – the issue of fraud under MCL 487.2167 (1) (b), and the alleged excessive loan amount in the Chapman transaction under MCL 487.2153 (1) or MCL 487.2153 (4) (e). If a party wishes to demand a hearing on one of those issues, the party may file a demand for a hearing within 14 days after this opinion is issued, and our office will schedule a hearing. If no demand for hearing is filed within that time, this opinion will become a proposal for decision under MCL 24.281, and an aggrieved party may file exceptions.

EXCEPTIONS

If after 14 days no demand for hearing has been filed and this opinion becomes a proposal for decision, then pursuant to MCL 24.281, 2015 AACS R 792.10132, and 2015 AACS R 792.10608, a party may file exceptions within 21 days after the opinion is issued. An opposing party may file a response to exceptions within 14 days after exceptions are filed. File exceptions and responses with Christy Capelin, Department of

Insurance and Financial Services, Office of General Counsel, PO Box 30220, Lansing, Michigan, 48909, and send a copy to the other parties.

Erick Williams

Erick Williams
Administrative Law Judge