

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

Office of Financial and Insurance Regulation,
Petitioner

v

Enforcement Case No. 10-7653

Tom Everhart and
Cash Money Brothers Payday Advance,
Respondents

For the Petitioner:

Scott Basel
Office of General Counsel
Office of Financial and Insurance
Regulation
P.O. Box 30220
Lansing, MI 48909-7720

For the Respondent:

Tom Everhart
Cash Money
Brothers Payday Advance
37883 Mound Road
Sterling Heights, MI 48310

Issued and entered
this 10th day of February 2011
by Ken Ross
Commissioner

FINAL DECISION

I. Background

On August 31, 2010, Chief Deputy Commissioner Stephen R. Hilker issued to Respondents an Order for Hearing, Administrative Complaint, and Statement of Factual Allegations in the above-captioned cases which set forth detailed allegations that Respondents violated the Deferred Presentment Service Transactions Act (MCL 487.2121, *et seq.*). The order required Respondents to take one of the following actions within 21 days: agree to and sign a settlement with the Office of Financial and Insurance Regulation (OFIR), file an answer to the allegations stated in the complaints and a statement that Respondents plan to attend the hearing,

or file a request for an adjournment giving good reasons why a postponement is necessary. Respondents failed to take any of these actions.

On December 9, 2010, the Petitioner filed a Motion for Final Decision in this case. Given Respondents' failure to comply with the order for hearing, Petitioner's motion is granted.

II. Findings of Fact and Conclusions of Law

The following facts and conclusions of law, taken from the August 31, 2010 Administrative Complaint, are adopted and made part of this Final Decision:

1. Section 11(1) of the Act, MCL 487.2131(1), provides: "a person shall not engage in the business of providing deferred presentment service transactions after June 1, 2006 without a license under this act. A separate license is required for each location from which the business of providing deferred presentment service transactions is conducted."
2. On January 27, 2010, an OFIR examiner conducted an on-site visit of Respondents' business.
3. The employee present stated that the Respondents were providing payday advances, deferred presentment service transactions; although the employee could not provide information as to exactly how many transactions had been completed.
4. On February 19, 2010, OFIR sent a letter to Respondents advising that a license was needed to conduct deferred presentment service transactions.
5. On March 15, 2010, the OFIR examiner conducted a follow-up visit to Respondents' business.

6. The examiner entered the building and asked the man behind the counter if the owner, Tom Everhart, was available, to which the man replied that the owner was not available. The man stated he would telephone the owner to determine when he would be available. The man then placed the telephone on the desk and stated that he was the owner.
7. Mr. Everhart stated that he had been conducting deferred presentment service transactions for approximately 5 months. He stated that he was closing out all of these transactions.
8. By providing deferred presentment service transactions without a license, Respondents violated section 11(1) of the Act.
9. Section 48(1) of the Act, MCL 487.2168(1), provides:

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.
10. Respondents reasonably should have known that conducting deferred presentment service transactions required an OFIR-issued license as provided in section 11(1) of the Act.

III. Order

Based on the conduct described above, it is ordered that:

1. Respondents shall cease and desist conducting deferred presentment service transactions without a license and thereby violating section 11(1) of the Act, and

2. Respondent Tom Everhart shall pay a civil penalty of \$5,000.00 for violating section 11(1) of the Act.

A handwritten signature in black ink, appearing to read 'K. Ross', is written above a horizontal line.

Ken Ross
Commissioner