BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Request for a Hearing on the Citations and Desist and Refrain Order issued by the California Corporations Commissioner to: NADIA K. HADDAD, Doing business as Cash It Quick, Respondent.	OAH No: L2008020258

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated April 15, 2008, is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective on ___July 24, 2008 _____.

IT IS SO ORDERED this 23rd day of __July 2008_____.

CALIFORNIA CORPORATIONS COMMISSIONER

_____
Preston DuFauchard

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In the Matter of the Request for a Hearing on the Citations and Desist and Refrain Order issued by the California Corporations Commissioner to: **NADIA K. HADDAD,** **Doing business as Cash It Quick,** **Respondent.**	**OAH No. L2008020258**

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on March 20, 2008, in Los Angeles. California. Complainant was represented by Miranda L, Maison, Senior Corporations Counsel. No appearance was made by, or on behalf of, Nadia K. Haddad (Respondent).

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on March 20, 2008.

FACTUAL FINDINGS

1. On December 28. 2007, a Desist and Refrain Order was signed by Steven C. Thompson, Special Administrator for the California Deferred Deposit Transaction Law, on behalf of Preston DuFauehard, California Corporations Commissioner (Commissioner), Department of Corporations (Department).

2. On January 26, 2008, Respondent filed a written request for hearing.

3. On February 11 and 15, 2008, Notices of Hearing for a February 26, 2008 hearing date were served on Respondent. On February 15, 2008, Respondent filed a motion to continue the February 26, 2008 hearing. That motion was granted. On February 25, 2008, an Amended Notice of Administrative Hearing, setting forth the dates (March 20 and 21, 2008). time and place of' hearing, was served by United States mail on Respondent.

4. Service of the Amended Notice of Hearing conformed to the requirements of Government Code sections 11505 and 11509.

5. On March 17, 2008, Respondent filed a motion to continue the hearing. That motion was denied, and notice of the denial was served on Respondent on March 18, 2008. Respondent's filing of her March 17, 2008 motion to dismiss demonstrated that she had actual notice of the March 20, 2008 hearing.

6. Respondent did not appear at the March 20. 2008 hearing. At Complainant's request, the matter proceeded as a default, pursuant to Government Code section 11520.

History of Licensure

7. On June 2, 2005, the Commissioner issued a Desist and Refrain Order (2005 Desist and Refrain Order) against Respondent, ordering her to desist and refrain from engaging in the business of deferred deposit transactions in California without a license, in violation of California Financial Code section 23005. In a Decision, effective August 24, 2005, the 2005 Desist and Refrain Order was upheld following a hearing at which Respondent failed to appear.

8. On July 15, 2005, Respondent applied to the Department for a license to engage in the business of deferred deposit transactions pursuant to California Financial Code section 23005.

9. Respondent's application included a signed declaration, designated as "Exhibit K" to the application, wherein Respondent attested under penalty of perjury:

> I (we) have obtained and read copies of the California Deferred Deposit Transaction law (Division 10 of the California Financial Code) and the Rules (Chapter 3, Title 10, California Code of Regulations) and am familiar with their content; and,
>
> I (we) agree to comply with all the provision[s] of the California Deferred Deposit Transaction Law, including any rules or orders of the Commissioner of Corporations,

10. Respondent also signed under penalty of perjury another declaration, designated as "Exhibit L" to the application, which states:

> The applicant will comply with all the federal and state laws and regulations (including Division 10, commending with Section 23000, of the Financial Code), if it offers, arranges, acts as an agent for, or assists a deferred deposit originator in the making of a deferred deposit transaction (Financial Code Section 23037 (i).)

11. On October 27, 2005, Respondent was issued two deferred deposit originator licenses. License Number 100-2682 was issued to Respondent, doing business as Cash It Quick, for her principal place of business located at 43535 North Gadsden Avenue, F,

Lancaster, California 93534 (Lancaster location). License Number 100-2683 was issued to Respondent for her additional Cash It Quick location at 18503 Victory Boulevard, Reseda, California 91335 (Reseda location).

12. Enclosed with the licenses sent to Respondent were letters stating the following:

> Under the California Deferred Deposit Transaction Law, commencing with section 23000 of Division 10 of the California Financial Code, there arc certain obligations and responsibilities that a licensee must comply with. The following information about a licensee's obligations and responsibilities regarding certain requirements of the California Deferred Deposit Transaction Law is provided for your reference.... [A] licensee should review and become familiar with all provisions of the law and the rules and regulations.

Inspections Respondent 's Locations and Issuance of Desist & Refrain Order

13. On October 17, 2007, the Department conducted a noticed regulatory examination, of Respondent's Lancaster location.

14. On October 18, 2007, the Department conducted a noticed regulatory examination of Respondent's Reseda location.

15. During both examinations, a Department examiner found that Respondent violated California Financial Code section 23035, subdivision (c), by failure to include required disclosures in the written notices that the licensee must separately distribute before entering into deferred deposit transaction agreements with customers. Additionally, the Department examiner found that Respondent Financial Code violated section 23035, subdivision (e), by using written agreements that lacked the required disclosures about the use of the criminal process against a consumer and about the prohibition of making deferred deposit transactions contingent on the purchase of another product or service.

16. Based on the violations found by the examiner during the October 17 and 18, 2007 examinations, the Commissioner issued the December 28, 2007 Desist and Refrain Order at issue in this case.

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17. The Desist and Refrain Order set forth the following violations:

Citation A. Licensee failed to include disclosure that customer cannot be prosecuted in a criminal action in conjunction with a deferred deposit transaction and cannot be threatened with criminal prosecution in the notice distributed to the customer prior to entering into the agreement in violation of Financial Code section 23035(c)(3). [[1]]

Citation B. Licensee failed to include the Department's toll free number, which is 1-(866) Ask Corp (275-2677), in the notice distributed to the customer prior to entering into the agreement in violation of Financial Code section 23035(c)(4),

Citation C. Licensee failed to include disclosure that the check is being negotiated as part of a deferred deposit transaction pursuant to section 23035 of the Financial Code and is not subject to the provisions of 1719 of the Civil Code and that no customer shall be required to pay treble damages if the check does not clear in the notice distributed to the customer prior to entering into the agreement in violation of Financial Code section 23035(c)(6).

Citation D. Licensee failed to include disclosure that customer cannot be prosecuted or threatened with prosecution to collect a deferred

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[1]California Financial section 23035, subdivision (c) states, in pertinent part:

Before entering into a deferred deposit transaction, licensees shall distribute to customers a notice that shall include, but not be limited to, the following:

[¶] …[¶]

(3) That the customer cannot be prosecuted in a criminal action in conjunction with a deferred deposit transaction for a returned check or be threatened with prosecution.

(4) The department's toll-free telephone number for receiving calls regarding customer complaints concerns.

[¶] …[¶]

(6) That the check is being negotiated as part of a deferred deposit transaction made pursuant to Section 23035 of the Financial Code and is not subject to the provisions of Section 1719 of the Civil Code. No customer may he required to pay treble damages if this check does not clear.

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deposit transaction in the Agreement in violation of Financial Code section 23035(e)(9). [[2]]

Citation E. Licensee failed to include disclosure that licensee cannot make a deferred deposit transaction contingent on the purchase of another product or service in the Agreement in violation of Financial Code section 23035(e)(11).

[¶] …[¶]

Pursuant to California Financial Code section 23050, Licensee is hereby ordered to desist and refrain from engaging in the business of deferred deposit transactions in the State of California in violation of the above-referenced sections.

18. The Desist and Refrain Order asessed administrative penalties totaling $15,000 ($3,000 for each citation), which Respondent was ordered to pay within 30 days from the date of the citations. Complainant's Statement in Support of Citations and Desist and Refrain Order, at page 6, stated that each $3,000 citation was broken down into $1,500 per location

19. At the administrative hearing, the evidence established the following:

(a) On October 17, 2007, at Respondent's Lancaster location, no separate written notices were distributed to customers prior to entering into deferred deposit transactions. Therefore, the notices required by Financial Code section 23035, subdivisions (c)(3), (c)(4: and (c)(6), were not provided to customers prior to entering into deferred deposit transactions.

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[2] California Financial section 23035, subdivision (e) states, in pertinent part:

An agreement to enter into a deferred deposit transaction shall be in writing and shall be provided by the licensee to the customer. The written agreement shall authorize the licensee to defer deposit of the personal check, shall be signed by the customer, and shall include all of the following:

(9) That the customer cannot be prosecuted or threatened with prosecution to collect.

[¶] …[¶]

(11) That the licensee cannot make a deferred deposit transaction contingent on the purchase of another product or service.

(b) On October 17, 2007, at Respondent's Lancaster location, written agreements to enter into deferred deposit transactions lacked the disclosure required by Financial Code section 23035, subdivision (e)(9), that the customer cannot be prosecuted or threatened with prosecution to collect on a deferred deposit transaction.

(c) On October 17, 2007, at Respondent's Lancaster location, written agreements to enter into deferred deposit transactions lacked the disclosure required by Financial Code section 23035, subdivision (e)(11), that the licensee cannot make a deferred deposit transaction contingent on the purchase of another product or service.

(d). On October 18, 2007, at Respondent's Reseda location, no separate written notices were distributed to customers prior to entering into deferred deposit transactions. Therefore, the notices required by Financial Code section 23035, subdivisions (c)(3), (c)(4; and (c)(6), were not provided to customers prior to entering into deferred deposit transactions.

20. The evidence did not establish violations of Financial Code section 23035, subdivisions (e)(9) or (e)(11), at Respondent's Reseda location on October 18, 2007. The written agreements obtained by the examiner from that location contained the notice required by Financial Code section 23035, subdivision (e)(9), that the customer cannot be prosecuted or threatened with prosecution to collect on a deferred deposit transaction. The written agreements also contained the disclosure required by Financial Code section 23035, subdivision (e)(11), that the licensee cannot make a deferred deposit transaction contingent on the purchase of another product or service.

LEGAL CONCLUSIONS

1(a). The preponderance of the evidence established good cause to affirm the December 28, 2007 Citations issued against Nadia Haddad, doing business as Cash It Quick, for violation of California Financial Code section 20235, subdivisions (c)(3), (c)(4), (c)(6), (e)(9) and (e)(11), at her Lancaster location, and for violation of California Financial Code section 20235, subdivisions (c)(3), (c)(4), (c)(6), at her Reseda location, as set forth in Factual Findings 11 and 13 through 19.

l(b). The preponderance of the evidence did not establish good cause to affirm the December 21, 2007 Citations issued against Nadia Haddad, doing business as Cash It Quick, for violation of California Financial Code section 20235, subdivisions (e)(9) and (e)(11), at her Reseda location, as set forth in Factual Finding 20.

2. The preponderance of the evidence established good cause to affirm the December 28, 2007 Desist and Refrain Order issued against Nadia Haddad, doing business as Cash It Quick, for violation of California Financial Code section 20235, subdivisions (c)(3), (c)(4), (c)(6), (e)(9) and (e)(11), at her Lancaster location, and for violation of California Financial Code section 20235, subdivisions (c)(3), (c)(4), (c)(6), at her Reseda location, as set forth in Factual Findings 11 and 13 through 19.

3. California Financial Code section 23058, subdivision (a) provides:

> If, upon inspection, examination or investigation, based upon a complaint or otherwise, the department has cause to believe that a person is engaged in the business of deferred deposit transactions without a license, or a licensee or person is violating any provision of this division or any rule or order there under, the department may issue a citation to that person in writing, describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars ($2,500).

4. The preponderance of the evidence established good cause to affirm $12,000 of the assessed administrative penalty set forth in the December 28, 2007 Desist and Refrain Order. Five violations were established at Respondent's Lancaster location and three violations were established at Respondent's Reseda location. The violations were assessed penalties of $1,500 each. Therefore, a total administrative penalty of $12,000 is affirmed.

ORDER

WHEREFORE, THE FOLLOWING ORDERS are hereby made:

1. The December 28, 2007 Citations, issued against Nadia K. Haddad, doing business as Cash It Quick, is affirmed in part and overruled in part, as follows: Citations A, B, C, D and E issued to Respondent's Lancaster location are affirmed. Citations A, B and C issued to Respondent's Reseda location are affirmed. Citations C and D issued to Respondent's Reseda location are overruled.

2. The December 28, 2007 Desist and Refrain Order and Citations, issued against Nadia K. Haddad, doing business as Cash It Quick, is affirmed. Pursuant to California Financial Code section 23050, Respondent is ordered to desist and refrain from engaging in the business of deferred deposit transactions in the State of California in violation of California Financial Code section 20235, subdivisions (c)(3), (c)(4), (c)(6), (e)(9) and (e)(11).

3. Pursuant to California Financial Code section 23058, Respondent is ordered to pay to the Commissioner an administrative penalty, totaling $12,000, within 30 days from the date of this Decision and Order.

DATED: April 15, 2008

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. JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings