

STATE OF ALABAMA
STATE BANKING DEPARTMENT
BUREAU OF LOANS

STATE OF ALABAMA)	
STATE BANKING DEPARTMENT)	
)	
Complainant,)	
)	
v.)	License No. DP-10237
)	
THE CHECK EXCHANGE)	
)	
Respondent.)	

FINAL ORDER

Having reviewed the entire record of the above-named proceeding, and the documents filed with the Alabama Banking Department regarding this matter (including the Recommended Order), the Supervisor, Bureau of Loans, makes the following rulings, findings, conclusions, determinations, and dispositions:

PROCEDURAL BACKGROUND

On or about November 19, 2015, the Alabama Banking Department (“the Department”) sent a Notice of Intent to Revoke License to The Check Exchange LLC and its President, Debra Fiame (“Fiame”).

On November 21, 2015, Administrative Law Judge Randy C. Sallé held an administrative hearing on behalf of the Department on its intent to revoke the license of The Check Exchange LLC. The Department was represented by Anne W. Gunter, Esq., Associate Counsel for the Department. Assistant Supervisor, Bureau of Loans, Lynne Windham and Examinations Coordinator Jeff Thomas testified on behalf of the Department. Fiame appeared and testified on behalf of the Respondent.

The ALJ entered a Recommended Order on Findings of Fact and Conclusions of Law on January 13, 2016. The Order held that the Respondent's failed to adhere to the Deferred Presentment Services Act and recommended the revocation of the Respondent's Deferred Presentment Services license.

FINDINGS OF FACT

The Findings of Fact as set forth in ALJ Sallé's January 13, 2016 Recommended Order are approved, adopted, and incorporated herein by reference.

CONCLUSIONS OF LAW

The Conclusions of Law as set forth in ALJ Sallé's January 13, 2016 Recommended Order are approved, adopted, and incorporated herein by reference.

DISPOSITION

Accordingly, the Supervisor, Bureau of Loans accepts the recommendation of ALJ Sallé and hereby revokes the license of The Check Exchange LLC (License No. DP-10237)

THEREFORE, the Department having determined that this Order is necessary and appropriate, The Supervisor of the Bureau of Loans, hereby REVOKES the Respondent's Deferred Presentment Services license.

Upon the effective date of this Order, The Check Exchange's status in the Veritec Statewide Database shall be changed to Restricted Status for 90 days. After 90 days, The Check Exchange's access to the Veritec Statewide Database will be terminated. Any remaining open loans will be administratively closed by the Department at the end of the 90 days.

The provisions of this Order shall be binding upon The Check Exchange LLC, any affiliated parties, and any successors and assigns thereof, effective immediately.

DONE and ORDERED by the Supervisor of the Bureau of Loans on the 21st day of
January, 2016.

/s/ Scott Corscadden
Scott Corscadden
Supervisor, Bureau of Loans

On November 19, 2015, the Department sent a letter to Debra Fiame (“Fiame”), owner of Check Exchange, indicating the Department’s intent to revoke Check Exchange’s deferred presentment license.²

On December 21, 2015, the undersigned hearing officer, on behalf of the Department, held an administrative hearing for the purpose of hearing the Department’s evidence and allowing Fiame to present such evidence and any response she had concerning the Department’s intent to revoke her company’s deferred presentment license.

Fiame appeared and testified on behalf of Check Exchange. The Department was represented by Anne W. Gunter, Esq., Associate Counsel for the Department.

The Department offered nineteen exhibits which were admitted into the record.

Findings of Fact

Having reviewed the documentary evidence, having heard the witnesses’ testimony, having observed the witnesses’ demeanor and assessed their credibility, the undersigned finds the greater weight of the evidence supports the following findings of fact:

² Department Exhibit 19.

1. The Department has jurisdiction under the Alabama Deferred Presentment Services Act, ALA. CODE § 5-18A-1, *et seq.* The Department acted within that jurisdiction and its authority in the examination and issuance of a Notice of Intent to revoke Check Exchange's license.

2. Fiamme is the owner of Check Exchange.

3. On June 1, 2015, the Department sent a memorandum to all Deferred Presentment Services Act licensees informing them a new statewide database would be implemented on August 10, 2015. The memorandum informed the licensees the database was with Veritec and that additional information would be sent from Veritec to the licensees regarding registration and training.

4. The June 1, 2015 memorandum read, “[a]ll licensees under the Deferred Presentment Services Act are required to begin using the database for all DP transactions conducted on or after August 10, 2015.”

5. During a routine examination of Check Exchange on August 27, 2015, Thomas, a Loan Examination Specialist at the time, found seventeen deferred presentment loans executed by Check Exchange after August 10, 2015 without verifying the borrower's eligibility *via* the Veritec database.³ Thomas also found

³ Department Exhibits 1 and 11.

four loans made prior to Check Exchange registering with Veritec. During the examination, Thomas saw Fiame historically adding loans into the Veritec database.

6. Check Exchange was properly registered to use the Veritec database by August 13, 2015.⁴

7. Based upon Check Exchange's failure to use the Veritec database pursuant to the June 1, 2015 memorandum, the Department sought to revoke Check Exchange's deferred presentment license.

8. Lynne Windham ("Windham"), Assistant Supervisor for the Bureau of Loans, testified on behalf of the Department. Windham testified owners were notified by a June 1, 2015 memorandum that a new database was going to be implemented for use on August 10, 2015. Windham also testified owners were reminded of the "go live" date by memorandum and instructed to register and train on the Veritec system prior to August 10, 2015.

9. Windham testified the purpose of the database was to limit liability for the borrower and the lender. Check Exchange was supposed to enter a borrower's information in Veritec to ensure the borrower had not hit the \$500.00 borrowing limit under the Deferred Presentment Act. Windham showed multiple examples of borrowers being given loans by Check Exchange who were above the limit. This was a result of Check Exchange failing to input the borrowers' information into

⁴ Testimony of Fiame and Department's Exhibits 8-10.

Veritec prior to making the loan. Windham testified she believes the violations justify revocation because of the sheer number of violations after Check Exchange was registered, trained and successfully used the Veritec database in prior instances.⁵ Windham asked Thomas what Fiame told him after she was confronted with the information and was told she replied, "I have no excuse." Windham testified the Department cannot constantly look over licensees' shoulders and the Department must be able to trust licensees to follow the law or put measures in place to follow the law. Windham opined Fiame's attitude toward compliance was not something the Department could tolerate.

8. Fiame admitted during her testimony employees of Check Exchange failed to use the newly implemented database for seventeen deferred presentment loans on or after August 10, 2015, and asked the Department for leniency. Fiame testified the violations were not intentional. Fiame's office assistant had passed away so Fiame and her daughter were running the business. Fiame explained she was in the hospital at times in August and her seventeen year old daughter was trying to run the business in her absence. Fiame asked the Department to consider her twelve years of business with no wrongdoing. Fiame also asked for a warning and an opportunity to correct the problems.

⁵ Department Exhibits 13-18.

Conclusions of Law

The State Banking Department Bureau of Loans, Regulation 155-2-4-.09

states, in pertinent part:

(1) In order to comply with the intent of the Act regarding the maximum loan amount for a single customer, the State Banking Department shall implement a common approved database with real-time access through an internet connection. Each licensee shall use the same approved third-party database service provider as determined by the State Banking Department.

...

(4) Licensees must submit accurate and timely information to the database service provider. Failure to do so may result in the assessment of civil money penalties and/or license revocation.

Check Exchange executed seventeen transactions during August 2015 without checking the Veritec database. This constitutes seventeen separate violations of Regulation 155-2-4-.09. Furthermore, the Deferred Presentment Services Act permits a fine of no more than \$1,000.00 for each transaction in violation under the chapter or license revocation.⁶

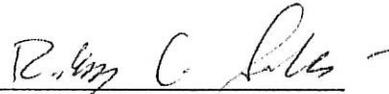
Recommendation

The undersigned has carefully considered all the evidence in this case. Check Exchange was registered and trained on the Veritec database. Respondent also used

⁶ ALA. CODE § 5-18A-16.

Veritec appropriately after registration and before the seventeen violations. Check Exchange failed to use the Veritec database on seventeen transactions in August 2015. Based upon Check Exchange's refusal to adhere to the laws and rules of the State Banking Department, license revocation is appropriate.⁷ Pursuant to the rules of the Department, the administrative staff's decision to revoke Check Exchange's license is appropriate and should be upheld.

Done this 13th day of January, 2016.


Randy C. Sallé
Administrative Law Judge
State Personnel Department
64 North Union Street
Montgomery, Alabama 36130
Phone: (334) 242-8353
Fax: (334) 353-9901

cc: Scott Corscadden, Supervisor, Bureau of Loans
Alabama State Banking Department
Center for Commerce
401 Adams Avenue
P. O. Box 4600
Montgomery, Alabama 36103-4600

⁷ Fiamé requested a warning as an alternative to license revocation. A warning might be appropriate if Fiamé was attempting to follow the law and committed an infraction or two; however, the evidence indicated a wanton disregard of the laws that govern deferred presentment transactions and resulted in seventeen infractions. This attitude cannot be condoned.

Anne W. Gunter, Esq.
Associate Counsel
Alabama State Banking Department
Center for Commerce
401 Adams Avenue
P. O. Box 4600
Montgomery, Alabama 36103-4600

The Check Exchange, LLC
Debra Fiame
910 14th Street
Phenix City, Alabama 36867