

STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:)	
)	
DOUGLAS E. BROCKWELL,)	TDFI NO.: 10-106-C
individually and d/b/a BROCKWELL)	
CHECK ADVANCE/TITLE LOANS,)	
)	
Respondent.)	

EMERGENCY CEASE AND DESIST ORDER

The Commissioner of the Tennessee Department of Financial Institutions (hereinafter "Commissioner"), having determined that Douglas E. Brockwell, individually and d/b/a Brockwell Check Advance/Title Loans (hereinafter "Respondent") violated and is violating the "Tennessee Title Pledge Act" (hereinafter "Title Pledge Act"), Tennessee Code Annotated Sections (hereinafter "TENN. CODE ANN. §§") 45-15-101, *et seq.*, and the "Deferred Presentment Services Act" (hereinafter "Deferred Presentment Act"), TENN. CODE ANN. §§ 45-17-101, *et seq.*, and that extraordinary circumstances require immediate action in this matter, hereby issues the following EMERGENCY CEASE AND DESIST ORDER pursuant to TENN. CODE ANN. § 45-1-107(a)(4), TENN. CODE ANN. § 45-1-107(c), TENN. CODE ANN. § 45-15-105(a), TENN. CODE ANN. § 45-15-118(a)(1), TENN. CODE ANN. § 45-15-118(b)(3), TENN. CODE ANN. § 45-17-103, TENN. CODE ANN. § 45-17-115(1), and TENN. CODE ANN. § 45-17-116(c).

JURISDICTION AND IDENTIFICATION OF THE PARTIES

1. TENN. CODE ANN. § 45-1-104 provides that the Tennessee Department of Financial Institutions (hereinafter "Department") is charged with the execution of all laws relative to persons doing or engaged in a banking or other business as provided in Title 45 (Banks and Financial Institutions).

2. TENN. CODE ANN. § 45-1-107(a)(4) provides that, in addition to other powers conferred by Title 45, the Commissioner has the authority to order any person to cease violating a provision of Title 45 or lawful regulation issued under Title 45. Pursuant to TENN. CODE ANN. § 45-1-107(c), notice and opportunity for a hearing shall be provided in advance of the Commissioner issuing such an order, except that in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action but shall promptly afford a subsequent hearing upon application to rescind the action taken.

3. The Commissioner is responsible for the administration, enforcement, and interpretation of the Title Pledge Act, and any regulations promulgated pursuant to said Act.

4. Pursuant to TENN. CODE ANN. § 45-15-118(a)(1) of the Title Pledge Act, if, after notice and opportunity for a hearing, the Commissioner finds that a person has violated said Act or any administrative regulation issued pursuant to said Act, the Commissioner has the authority to order the person to cease and desist violating said Act or any administrative rules issued pursuant to said Act. However, in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action without providing the opportunity

for a prior hearing pursuant to TENN. CODE ANN. § 45-15-118(b)(3) of the Title Pledge Act. In such circumstances, the Commissioner shall promptly afford a subsequent hearing upon an application to rescind the action that is filed with the Commissioner within twenty (20) days after receipt of the notice of the Commissioner's emergency action pursuant to TENN. CODE ANN. § 45-15-118(b)(3) of the Title Pledge Act.

5. The Commissioner is responsible for the administration, enforcement, and interpretation of the Deferred Presentment Act, and any regulations promulgated pursuant to said Act.

6. Pursuant to TENN. CODE ANN. § 45-17-115(1) of the Deferred Presentment Act, if, after notice and opportunity for a hearing, the Commissioner finds that a person has violated said Act or any administrative regulation issued pursuant to said Act, the Commissioner has the authority to order the person to cease and desist violating said Act or any administrative rules issued pursuant to said Act. However, in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action without providing the opportunity for a prior hearing pursuant to TENN. CODE ANN. § 45-17-116(c) of the Deferred Presentment Act. In such circumstances, the Commissioner shall promptly afford a subsequent hearing upon an application to rescind the action that is filed with the Commissioner within twenty (20) days after receipt of the notice of the Commissioner's emergency action pursuant to TENN. CODE ANN. § 45-17-116(c) of the Deferred Presentment Act.

7. The Respondent owns and operates, or at all times pertinent herein, owned and operated a sole proprietorship identified as Brockwell Check Advance/Title Loans, located at 3330 Highway 79 North, Suite C, Paris, Tennessee 38242.

8. The Commissioner has never issued the Respondent a license to lawfully engage in the business of title pledge lending in the state of Tennessee.

9. The Commissioner has never issued the Respondent a license to lawfully engage in the business of deferred presentment services in the state of Tennessee.

FACTUAL ALLEGATIONS

10. At all times pertinent herein, the Respondent did not possess a license from the Commissioner to lawfully engage in the business of title pledge lending in the state of Tennessee.

11. At all times pertinent herein, the Respondent did not possess a license from the Commissioner to lawfully engage in the business of deferred presentment services in the state of Tennessee.

12. On May 20, 2010 (05/20/10), Compliance Examiner-in-Charge Kevin Hicks (hereinafter "Hicks") conducted an examination of the Respondent at 3330 Highway 79 North, Suite C, Paris, Tennessee 38242, pursuant to the Title Pledge Act.

13. During the course of the examination referenced in paragraph twelve (12), Hicks uncovered evidence that the Respondent had engaged in the business of title pledge lending in the state of Tennessee despite the fact that the

Commissioner had never issued the Respondent a license to lawfully engage in the business of title pledge lending in the state of Tennessee.

14. Specifically, pursuant to the examination referenced in paragraph twelve (12), Hicks documented a total of two (2) title pledge agreements covering the approximate time period of April 20, 2010 (04/20/10) through the date of the examination (05/20/10). Said documentation indicated that the Respondent had contracted for approximately two hundred ninety-four dollars (\$294.00) in title pledge fees during said period of time.

15. Pursuant to the examination referenced in paragraph twelve (12), Hicks drafted an examination report that included a "Violations from Examination" section. According to said examination report, under the "Violations from Examination" section, Hicks specifically noted in pertinent part "[t]CA 45-15-105(a) provides that no person shall engage in the business of title pledge lending without having first obtained a license. Entity is not currently licensed as a title pledge lender. TCA 45-15-105(b) provides that any loan made without a license is void, in which case the person making the loan forfeits the right to collect any moneys, including principal, interest, and any other fee paid by the pledgor in connection with the title pledge agreement. Furthermore, TCA 45-15-118 provides that the Commissioner may take an administrative action against any person found to be in violation of the Title Pledge Act. Only two accounts were found during this unlicensed period:...."

16. The examination report referenced in paragraph fifteen (15) was signed by Hicks and by an individual named Douglas E. Brockwell (hereinafter "Brockwell") on May 20, 2010 (05/20/10). According to said examination report, Brockwell was the Respondent's Manager at the time of the examination. Brockwell was served with a copy of the examination report, via hand-delivery, on May 20, 2010 (05/20/10).

17. On May 20, 2010 (05/20/10), Hicks conducted an examination of the Respondent at 3330 Highway 79 North, Suite C, Paris, Tennessee 38242, pursuant to the Deferred Presentment Act.

18. During the course of the examination referenced in paragraph seventeen (17), Hicks uncovered evidence that the Respondent had engaged in the business of deferred presentment services in the state of Tennessee despite the fact that the Commissioner had never issued the Respondent a license to lawfully engage in the business of deferred presentment services in the state of Tennessee.

19. Specifically, pursuant to the examination referenced in paragraph seventeen (17), Hicks documented a total of approximately fifty-seven (57) new deferred presentment agreements and a total of approximately twenty-four (24) renewals/rollovers covering the approximate time period of December 26, 2009 (12/26/09) through the date of the examination (05/20/10). Said documentation indicated that the Respondent had contracted for approximately two thousand four hundred thirty-nine dollars (\$2,439.00) in deferred presentment services fees concerning new deferred presentment agreements and approximately eight

hundred seventy dollars (\$870.00) in deferred presentment services fees concerning renewals/rollovers during said period of time.

20. Pursuant to the examination referenced in paragraph seventeen (17), Hicks drafted an examination report that included a “Violations from Examination” section. According to said examination report, under the “Violations from Examination” section, Hicks specifically noted in pertinent part “[t]CA 45-17-103 Provides that no person shall engage in the business of deferred presentment services without having first obtained a license. Entity is not currently licensed to engage in the Deferred Presentment Services Business. TCA 45-17-115 provides that the Commissioner may take an administrative action against any person found to be in violation of the Deferred Presentment Services Act....”

21. The examination report referenced in paragraph twenty (20) was signed by Hicks and by Brockwell on May 20, 2010 (05/20/10). According to said examination report, Brockwell was the Respondent’s Manager at the time of the examination. Brockwell was served with a copy of the examination report, via hand-delivery, on May 20, 2010 (05/20/10).

22. Subsequent to the examinations referenced in paragraphs twelve (12) and seventeen (17), the Department received a licensure application from the Respondent on or about June 4, 2010 (06/04/10), seeking a license to lawfully engage in the business of deferred presentment services in the state of Tennessee. As of the entry date of this EMERGENCY CEASE AND DESIST ORDER, the Respondent’s licensure application is still pending before the

Commissioner.

23. In addition, on or about June 8, 2010 (06/08/10), the Department received an undated letter from Brockwell stating the following on behalf of the Respondent: “[t]his information is in regards to the Audit done on May 20, 2010 by Kevin Hicks. We were asked to send out refund checks and credit customers [sic] accounts for any fees or charges they paid. The enclosed copies are the new balances for each customers [sic] account....” Said letter indicated that Brockwell was the owner of Brockwell Check Advance/Title Loans. The evidence to date indicates that the Respondent has voluntarily refunded approximately three hundred fifty-six dollars (\$356.00) in title pledge fees to consumers as well as eight thousand forty dollars (\$8,040.00) in deferred presentment services fees to consumers.

24. The aforementioned pattern of engaging in the businesses of title pledge lending and deferred presentment services without having first obtained licenses from the Commissioner is a sufficient indicator that the Respondent will continue to unlawfully engage in said businesses in the state of Tennessee in the future.

CAUSES OF ACTION

25. The factual allegations as stated in paragraphs ten (10) through twenty-four (24) of this EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that the Respondent violated and is violating TENN. CODE ANN. § 45-15-105(a) of the Title Pledge Act, in that the

Respondent has engaged in the business of title pledge lending in the state of Tennessee without having first obtained a title pledge lender's license from the Commissioner.

26. The factual allegations as stated in paragraphs ten (10) through twenty-four (24) of this EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that extraordinary circumstances require immediate action pursuant to TENN. CODE ANN. § 45-1-107(c) and TENN. CODE ANN. § 45-15-118(b)(3) of the Title Pledge Act.

27. The factual allegations as stated in paragraphs ten (10) through twenty-four (24) of this EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that the Respondent violated and is violating TENN. CODE ANN. § 45-17-103 of the Deferred Presentment Act, in that the Respondent has engaged in the business of deferred presentment services in the state of Tennessee without having first obtained a deferred presentment services license from the Commissioner.

28. The factual allegations as stated in paragraphs ten (10) through twenty-four (24) of this EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that extraordinary circumstances require immediate action pursuant to TENN. CODE ANN. § 45-1-107(c) and TENN. CODE ANN. § 45-17-116(c) of the Deferred Presentment Act.

POLICY STATEMENT

29. TENN. CODE ANN. § 45-15-105(a) of the Title Pledge Act states that no person shall engage in the business of title pledge lending in this state without having first obtained a license from the Department. A separate license is required for each location from which the business is conducted.

30. TENN. CODE ANN. § 45-15-105(b) of the Title Pledge Act states that any title pledge agreement entered into without a title pledge lender's license is void as a matter of law, in which case the unlicensed lender making the loan forfeits the right to collect any moneys, including principal, interest, and any fees paid by the pledgor in connection with the title pledge agreement.

31. In order to qualify for a title pledge lender's license, TENN. CODE ANN. § 45-15-106(a)(2) of the Title Pledge Act requires an applicant to demonstrate the financial responsibility, financial condition, business experience, character, and general fitness sufficient enough to reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly.

32. TENN. CODE ANN. § 45-15-106(a)(1) of the Title Pledge Act requires an applicant seeking a title pledge lender's license to demonstrate a tangible net worth, which comprises tangible assets less liabilities, of not less than seventy-five thousand dollars (\$75,000.00) for each location.

33. TENN. CODE ANN. § 45-15-106(d)(3) of the Title Pledge Act requires an applicant seeking a title pledge lender's license to obtain a surety bond or an irrevocable letter of credit, in the amount of twenty-five thousand dollars (\$25,000.00) per location, for the benefit of any person who is injured by the

fraud, misrepresentation, breach of contract, financial failure, or violation of the Title Pledge Act.

34. TENN. CODE ANN. § 45-15-117 of the Title Pledge Act states that “[a]ny person who intentionally violates any provision of this chapter commits a Class A misdemeanor.”

35. TENN. CODE ANN. § 45-17-103 of the Deferred Presentment Act states that no person shall engage in the business of deferred presentment services without having first obtained a license from the Department. A separate license shall be required for each location from which the business is conducted.

36. In order to qualify for a deferred presentment services license, TENN. CODE ANN. § 45-17-104(a)(2) of the Deferred Presentment Act requires an applicant to demonstrate the financial responsibility, financial condition, business experience, character, and general fitness sufficient enough to reasonably warrant the belief that the applicant’s business will be conducted lawfully and fairly.

37. TENN. CODE ANN. § 45-17-104(a)(1) of the Deferred Presentment Act requires an applicant seeking a deferred presentment services license to demonstrate a minimum net worth, determined in accordance with generally accepted accounting principles, of at least twenty-five thousand dollars (\$25,000.00) available for the operation of each location.

38 The factual allegations as stated in paragraphs ten (10) through twenty-four (24) of this EMERGENCY CEASE AND DESIST ORDER, incorporated by reference as though specifically set forth herein, are sufficient to

establish by a preponderance of the evidence that the Respondent violated and is violating TENN. CODE ANN. § 45-15-105(a) of the Title Pledge Act and TENN. CODE ANN. § 45-17-103 of the Deferred Presentment Act, by engaging in the businesses of title pledge lending and deferred presentment services in the state of Tennessee without having first obtained the required licenses from the Commissioner. Said violations have deprived the Commissioner of the opportunity to determine whether the Respondent has the requisite financial responsibility, financial condition, business experience, character, and general fitness sufficient enough to reasonably warrant the belief that the Respondent's business will be conducted lawfully and fairly, as well as the opportunity to determine whether the Respondent has satisfied the statutorily mandated minimum net worth requirements and the surety bond/irrevocable letter of credit requirement (the surety bond/irrevocable letter of credit requirement is applicable to title pledge lender applicants only). Consequently, the Commissioner has been deprived of the opportunity to make an informed determination of whether to grant the Respondent licenses under the Title Pledge Act and the Deferred Presentment Act prior to doing business with Tennessee consumers.

EMERGENCY RELIEF

39. Having considered the factual allegations contained herein, the Commissioner has determined that the Respondent violated and is violating the Title Pledge Act and the Deferred Presentment Act and that extraordinary circumstances warrant immediate action in this matter.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

a. That the Respondent shall cease and desist IMMEDIATELY from engaging in the business of title pledge lending in the state of Tennessee without a title pledge lender's license pursuant to TENN. CODE ANN. § 45-1-107(a)(4), TENN. CODE ANN. § 45-1-107(c), TENN. CODE ANN. § 45-15-105(a), TENN. CODE ANN. § 45-15-118(a)(1), and TENN. CODE ANN. § 45-15-118(b)(3);

b. The Respondent shall cease and desist IMMEDIATELY from engaging in the business of deferred presentment services in the state of Tennessee without a deferred presentment services license pursuant to TENN. CODE ANN. § 45-1-107(a)(4), TENN. CODE ANN. § 45-1-107(c), TENN. CODE ANN. § 45-17-103, TENN. CODE ANN. § 45-17-115(1), and TENN. CODE ANN. § 45-17-116(c); and

c. The provisions of this EMERGENCY CEASE AND DESIST ORDER shall remain in full force and effect unless and until such time as any provision is modified, terminated, suspended or set aside by the Commissioner, an administrative judge, or any court having jurisdiction over the matters addressed herein.

NOTICE

40. The Respondent has the right to a prompt hearing for the purpose of contesting and obtaining rescission of this EMERGENCY CEASE AND DESIST ORDER. If a prompt hearing is timely requested by the Respondent, the hearing shall be conducted in accordance with the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101, *et seq.*, and pursuant to the Official Compilation Rules & Regulations of the State of Tennessee 1360-04-01.

41. The sole issue to be considered at the prompt hearing is whether extraordinary circumstances required immediate action in this matter. This EMERGENCY CEASE AND DESIST ORDER does not constitute a final adjudication upon the merits, but merely constitutes a temporary, emergency order until such time that a contested case may be promptly instituted by the filing of a Notice of Charges and Opportunity for Hearing.

42. In order to request a prompt hearing, the Respondent must file a written request with the Commissioner within twenty (20) days from receipt of this EMERGENCY CEASE AND DESIST ORDER. Any written request for a hearing must be filed with the Commissioner, Tennessee Department of Financial Institutions, 414 Union Street, Suite 1000, Nashville, Tennessee 37219. If no such written request is timely filed with the Commissioner, this EMERGENCY CEASE AND DESIST ORDER shall be deemed a Final Order without further legal process.

43. The Respondent may file a Petition for Appeal with the Commissioner within fifteen (15) days of entry of this EMERGENCY CEASE AND DESIST ORDER pursuant to TENN. CODE ANN. § 4-5-315(b).

44. The Respondent may submit to the Commissioner a petition for stay of effectiveness of this EMERGENCY CEASE AND DESIST ORDER or the Final Order within seven (7) days of entry pursuant to TENN. CODE ANN. § 4-5-316.

45. The Respondent may file a Petition for Reconsideration with the Commissioner, stating the specific grounds upon which the relief is requested, within fifteen (15) days of entry of this EMERGENCY CEASE AND DESIST ORDER or the Final Order pursuant to TENN. CODE ANN. § 4-5-317.

46. The Respondent may seek judicial review of this EMERGENCY CEASE AND DESIST ORDER by filing a Petition for Judicial Review in the chancery court of Davidson County, Tennessee, within sixty (60) days of the date this Order becomes a Final Order pursuant to TENN. CODE ANN. § 4-5-322. A Petition for Reconsideration does not act to extend the sixty (60) day period; however, if the Petition is granted, then the sixty (60) day period is tolled and a new sixty (60) day period commences from the effective date of the Final Order disposing of the Petition.

ENTERED AND EFFECTIVE this 15TH day of June 2010.

On behalf of the Department:




Greg Gonzales, Commissioner
Tennessee Department of Financial Institutions

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Order have been forwarded via United States Certified Mail, Certified Mail Number 7007 2680 0001 5612 8449, and via Federal Express Next Day Air, Tracking Number 8707 2759 5420, to the following:

Douglas E. Brockwell
Brockwell Check Advance/Title Loans
3330 Highway 79 North, Suite C
Paris, Tennessee 38242

This 15TH day of June 2010.



Joseph A. Schmidt, Staff Attorney
Tennessee Department of Financial Institutions