

Kimberly A. Zurz
Director

2009 JUN 19 PM 4:10
Zurz
Director

In the matter of:

KENDRI'S LLC

dba COLORTYME CASH LOANS

4770 Roosevelt Blvd.

Middletown, OH 45044

Case No. M2009-573

SETTLEMENT AND CONSENT ORDER

WHEREAS, the Ohio Department of Commerce, by and through the Superintendent of the Division of Financial Institutions ("Division"), is charged with the responsibility of enforcing the Ohio Mortgage Loan Act, codified at Ohio Revised Code ("R.C.") §§ 1321.51 to 1321.60; and

WHEREAS, Kendri's LLC ("Respondent") is an Ohio limited liability company dba Colortyme Cash Loans which is registered with the Division to conduct business under the Ohio Mortgage Loan Act pursuant to R.C. § 1321.52. The business address of record for Respondent's main office is 4770 Roosevelt Boulevard, Middletown, Ohio 45044. The Respondent operates under the certificate of registration of SM.501590; and

WHEREAS, on May 19, 2009, the Division sent via certified mail a Notice of Violation ("the Notice") to Kendri's LLC to its main office business address; and

WHEREAS, the Notice contained allegations and findings that:

1. The Respondent has made a business practice of issuing its loan proceeds in the form of a check or money order for which an affiliated licensed check casher in the same business location as Respondent then charges the borrower a fee to cash. To the extent that this fee is shared or passed back to the Respondent, this fee is improper and in violation of R.C. 1321.57(H)(1), which limits the permissible fees that can be "charged or received" by an OMLA registrant.
2. The business of having an affiliate check cashing licensee cashing loan proceeds check, whether written on the Respondent's own account, as a certified check, or as a money order, is not an other business permissible pursuant to R.C. 1321.51(H)(2), but rather is part of the underlying loan transaction.
3. The Respondent, by having an affiliated check cashing licensee charge a fee to cash the loan proceeds check provided to its OMLA customers at the same location where the loan is made, is in the alternative to paragraph 2 above, conducting another business that tends to conceal an evasion of the OMLA, sections R.C. 1321.51 to 1321.60.

4. The Respondent has made a business practice of charging its OMLA borrowers twenty-five dollars for returned or dishonored checks. To the extent that this fee exceeds the statutory maximum of twenty dollars plus any actual bank fees paid to Respondent's bank, this fee is improper and in violation of R.C. 1321.57(K), which limits the permissible fees that can be "charged or required" by an OMLA registrant.
5. The Respondent has made a business practice of charging its OMLA borrowers a late fee of 5% of the total of payments at the time the loan is originated. To the extent that this fee is being imposed before the tenth day after the due date is improper and in violation of R.C. 1321.57(L), which limits the permissible fees that can be "charged or required" by an OMLA registrant.
6. The Respondent has not been properly maintaining an alphabetical index of all borrowers in violation of O.A.C. 1301:8-3-04(B)(5) at each registered location.
7. The Respondent has not been properly maintaining the ledger record in violation of O.A.C. 1301:8-3-04(A)(2). The ledger record fails to show the contractual rate of interest in violations of 1301:8-3-04(A)(2)(e). The ledger also fails to show the chronological entry of all debits, credits, payments and charges, received assessed or disbursed in connection with the loan in an identifiable manner or order to show the actual date of receipt, assessment or disbursement and the balance due on the account in violation of 1301:8-3-04(A)(2)(o).
8. The loan agreements fail to set forth accurately the terms of the loan in violation of O.A.C. 1301:8-3-12(A). Specifically, the annual percentage rate is incorrectly understated and the term of the loan is ambiguous because the loan agreement appears to be fourteen days in the paragraph entitled "Payment Terms" but a different number of days sometimes appear in the TILA disclosure box entitled "Due Date."
9. The Respondent is closing loans using a different name than the name on its certificate of registration and has not submitted a request to change its name prior to originating loans under the new name in violation of R.C. 1321.53(C). The consumer loan agreements show the creditor/payee name at Kendri's LLC dba Colortyme Fast Loans. The Division issued a certificate of registration to Kendri's LLC dba Colortyme Cash Loans.
10. Respondent is not giving the borrower a copy of the loan contract marked "paid" or "cancelled" upon repayment by the borrower in violation of O.A.C. 1301:8-3-13(A).

WHEREAS, Kendri's LLC admits the allegations of the Division but avers that: (i) it erroneously considered the check cashing charges to be permissible under its affiliates' check cashing license CC.700368, and that it has rectified its practices so as to conform with the

requirements of the OMLA and its rules; and (ii) to avoid the cost and uncertainty of litigation Respondent agrees to enter into this Consent Order for purposes of settlement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises set forth herein, the parties agree to the following:

- A. The parties acknowledge and agree to the accuracy of the foregoing recitals.
- B. This Settlement and Consent Order represents a compromise between the parties for the full, complete, and final settlement of all of their claims, differences, and causes of action with respect to the allegations contained in the Notice.
- C. The parties agree that the terms of this Settlement and Consent Order bind the parties hereto, and their shareholders, partners, members, assigns, and successors in interest.
- D. The Division hereby terminates the Notice of Violation issued May 19, 2009, and agrees that it shall not, as long as Respondent is in compliance with this Settlement and Consent Order pursue the matters set forth in such Notice through its administrative process, including any pending licensing application. Nothing, however, in this order shall be deemed to prevent the Division or its employees, agents, or assigns from participating in, as a witness or otherwise, any lawful action by another, or obeying any lawful court order, arising out of or related to the matters set forth in the Notice.
- E. Respondent acknowledges lawful service and receipt of the Notice, and stipulates to the jurisdiction of the Division in this matter.
- F. The Respondent hereby agrees to forego its administrative remedies, and waive any and all rights to an administrative hearing, as well as any right to appeal this matter or order.
- G. The Division and Respondent acknowledge and agree that nothing herein prevents the latter from issuing its loan proceeds as a check, certified check, or money order, but it shall cease and desist from charging to cash such loan proceed instruments at its OMLA lending offices, unless the borrower was originally provided the option to have the proceeds in cash.
- H. This Settlement and Consent Order shall be effective on the date it is signed by or on behalf of the Superintendent of the Division of Financial Institutions and on such date it will become a final order.
- I. This Settlement and Consent Order contains the entire agreement between the parties as to the matters set forth herein and no promises, conditions or obligations, either expressed or implied, other than those set forth herein, shall be binding on either party.

For purposes of effecting this Settlement and Consent Order, it is hereby ORDERED and DECREED that:

1. The parties to this Settlement and Consent Order shall abide by the terms of this order as agreed.
2. The Respondent shall cease and desist from allowing its affiliated check cashing licensees from charging its borrowers a fee to cash loan proceeds checks or money orders that Respondent provides in connection with its loan transactions in violation of R.C. §§ 1321.57(H)(1) and 1321.551 and shall conform its practices in the future to all requirements of state law.
3. The Respondent understands that any breach of this Settlement and Consent Order may result in the institution of further administrative proceedings, including suspension or revocation, the imposition of additional fines and any other remedy available to the Division.


LEIGH A. WILLIS

Deputy Superintendent for Consumer Finance
Division of Financial Institutions

6/23/09
Date

APPROVED AND AGREED:

Kendri's LLC dba Colortyme Cash Loans

By: 

Title: Member

6-16-09
Date