

FILED

COMMONWEALTH OF PENNSYLVANIA 2012 NOV 21 AM 9:39
DEPARTMENT OF BANKING AND SECURITIES

PA DEPT OF BANKING

COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF BANKING AND :
SECURITIES, BUREAU OF COMPLIANCE :
AND LICENSING :

v. :

CK MARKETING, Inc. :

Docket No.: 12 0100 (ENF-CO)

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania acting through the Department of Banking and Securities' ("Department") Bureau of Compliance and Licensing ("Bureau") enters into this Consent Agreement and Order ("Order") with CK Marketing, Inc. ("the Company") to resolve all issues regarding compliance with the requirements of the Consumer Discount Company Act ("CDCA"), 7 P.S. §§ 6201- 6219, and the Act of January 30, 1974, P.L. 13, No. 6 known as the Loan Interest Protection Law ("LIPL"), 41 P.S. §§ 101-605. Specifically, this Order addresses legal limitations on the business of soliciting, advertising, negotiating and making short-term loans for Pennsylvania residents in amounts less than \$25,000 in which the interest charged on the loans exceeded 6% per annum. The parties to the above-captioned matter, in lieu of litigation, and without admitting wrongdoing, and, intending to be legally bound, hereby agree to the terms of this Consent Agreement and Order ("Order").

BACKGROUND

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the CDCA and LIPL.

2. The Bureau is primarily responsible for administering and enforcing the CDCA and LIPL.

3. The Company's principle place of business is 4342 E. 31st Place, Yuma, AZ 85365-6553.

4. The Company offers and makes short-term loans of less than \$25,000 to consumers through the medium of the Internet, using various lead generators.

5. The Company contends that its existing practice is to filter out any loan applications from Pennsylvania consumers such that no loans are offered to residents of Pennsylvania.

6. The Company contends that on rare occasion its filtering system may fail when its system is down, or that information may not be accurate coming from an originating source, such as a lead generator, resulting, unintentionally and unknowingly, in a loan being made to a Pennsylvania resident.

7. Commencing February 1, 2009, the Department required persons that engage in the business of negotiating and making loans of \$25,000 or less to Pennsylvania residents where the interest and other charges on the loans exceed 6% per annum to obtain a consumer discount company license from the Department. *See Cash America Net of Nevada, INC. v. Department of Banking*, 978 A.2d 1028 (Pa. Cmwlth. July 10, 2009), *affirmed by* 8 A.3d 282 (Pa. 2010); *see also* 38 Pa.B. 3986 (2008).

8. The Company is not licensed by the Department as a consumer discount company and has never been licensed by the Department.

9. In the past year, four Pennsylvania residents filed complaints with the Department regarding loans they had obtained from the Company.

10. On or about August 2, 2012, the Bureau issued an order against the Company, ("August Order").

11. The August Order, for the reasons recited below, is hereby withdrawn and replaced by this Order.

12. The Company demonstrated good faith when it did not attempt collection of the defaulted loans made to Pennsylvania residents, directly or through a collection agency, and instead wrote-off the loans, principal and interest, prior to any request from the Bureau.

13. Given the Company's cooperation, good faith actions, and to save the parties considerable time and resources in litigation, the Bureau has agreed to withdraw the August order and enter into this Order to resolve the issues related to compliance with the CDCA and the LIPL.

RELIEF

14. Fine. The Company shall pay the Department a fine in the amount of \$10,000 within 30 days of the Effective Date of this Order as defined in paragraph 22 below. The payment shall be made by certified check or money order made payable to the "Pennsylvania Department of Banking and Securities" and mailed or delivered to the Compliance Division, Bureau of Compliance and Licensing, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

15. Corrective Action.

(a) Consumer Credits. In the event any other Pennsylvania residents are currently paying back loans of \$25,000 or less other than the four that notified the Department, the Company agrees it shall write-off all such loans in a manner consistent with the treatment it afforded the four prior Pennsylvania consumers referenced in paragraph 12 above.

(b) Cease and Desist Unlicensed Activity. From the Effective Date of this Order as defined in paragraph 21 below, the Company shall do all of the following:

(i) continue in its practice to cease and desist from advertising, soliciting, arranging, negotiating and making loans of \$25,000 or less to Pennsylvania residents in which the interest and other charges in the aggregate exceeds 6% per annum unless licensed by the Department as a consumer discount company;

(ii) notify in writing any and all lead generators with whom the Company does business that the Company does not accept loan applications from Pennsylvania residents, and request that the lead generators use their best efforts to cease and desist from providing an opportunity for Pennsylvania residents to apply for a short term loan.

(iii) continue in its practice to cease and desist from attempting to collect or collecting, directly or indirectly through third parties such as collection

agencies, interest or other consideration that exceeds 6% per annum for loans of \$25,000 or less made to Pennsylvania residents on a prospective basis

(iv) continue in its existing practice to cease and desist from transferring, assigning or selling to any persons, companies or entities of any kind whatsoever any loans that it has made to Pennsylvania residents of \$25,000 or less in which it has charged interest in excess of 6% per annum nor shall it purchase any loans that meet these parameters from February 1, 2009 forward; and

(v) continue in its existing practice to cease and desist from, directly or indirectly through third persons, filing a negative report with any credit reporting agency regarding any Pennsylvania resident to which it has provided a loan of \$25,000 or less from February 1, 2009 forward, for which it has charged interest in excess of 6% per annum.

(c) The Company shall provide corrective action described in paragraph 15 to all Pennsylvania consumers that file complaints with the Department within the applicable statute of limitation upon written notice by the Department of the filing of such a complaint.

(d) Department Remedies. Should the Department ascertain that the Company either (i) continued to offer loans of \$25,000 or less to Pennsylvania residents and charge interest in excess of 6% after the effective date of this Order, or (ii) failed to undertake or comply with any of its obligations set forth in this Order, or (iii) failed to pay the fine as set forth in Paragraph 14, the Bureau expressly reserves the right to seek enforcement in the Commonwealth Court or otherwise as provided by law.

(e) Upon execution of this Order by all parties, the Bureau will file it in the docket office and, by doing so, withdraws its August Order.

FURTHER PROVISIONS

16. Consent. The Company hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order, and agrees that it understands all of the terms and conditions contained herein. The Company, by voluntarily entering into this Order, waives any right to hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

17. Publication and Release. The Department will publish this Order pursuant to its authority in Section 302.A(5) of the Department of Banking Code. 71 P.S. § 733-302.A.(5).

18. Consumer Rights. This Order shall not limit or impair the consumers' rights under the LIPL. See 41 P.S. §§ 501-507.

19. Entire Agreement. This Order contains the whole agreement between the parties. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by mutual agreement by the parties.

20. Binding Nature. The Department and the Company intend to be and are legally bound by the terms of this Order. This Order shall be enforceable in a court of competent jurisdiction by the Department and the Company. This Order shall be admissible in court if relevant to the proceedings. This Order shall be binding upon and inure to the benefit of any of the Company, present and future owners, principals, directors, officers, members, partners, managers, agents, successors and assigns.

21. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

22. Effectiveness. The Company stipulates and agrees that this Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

23. Other Enforcement Action.

(a) The Department reserves all of its rights, duties, and authority to enforce all statutes, rules and regulations under its jurisdiction against the Company in the future regarding all matters not resolved by this Order.

(b) The Company acknowledges and agrees that this Order is only binding upon the Department and not any other local, state or federal agency, department or office regarding matters within this Order.

(c) Except as otherwise provided in Paragraph 15(d) of this Order, once the Company has fully complied with all of its obligations under this Order, the Department agrees that it will not bring an enforcement action of any kind against the Company or against any of its present or future members, principals, officers, managers, agents, employees, successors, or assigns for any conduct arising out of or related to the Company's lending activities with Pennsylvania consumers prior to the Effective Date of this Order related to the investigation by the Department that resulted in the August order or which is otherwise covered by this Order.

24. Authorization. The parties below are authorized to execute this Order and legally bind their respective parties.

25. Counterparts. This Order may be executed in separate counterparts and by facsimile or email.

26. Titles. The titles used to identify the paragraphs of this document are for the convenience of reference only and do not control the interpretation of this document.

WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the Commonwealth of Pennsylvania, Department of Banking and Securities, Bureau of Compliance and Licensing, and CK Marketing, Inc., do hereby execute this Consent Agreement and Order.

**FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES
BUREAU OF COMPLIANCE AND LICENSING:**

By: _____
Ryan Walsh
Chief of Compliance

Dated: November 21, 2012

FOR CK MARKETING, INC.:

By: _____
Kathleen Mason
Owner

Dated: 11/20/12