

STATE OF TENNESSEE  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
OFFICE OF THE COMMISSIONER

IN THE MATTER OF: )  
 )  
BILL CROWE, individually and ) TDFI NO.: 11-064-C  
d/b/a THE CROW'S NEST, )  
 )  
Respondent. )

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EMERGENCY CEASE AND DESIST ORDER

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The Commissioner of the Tennessee Department of Financial Institutions (hereinafter "Commissioner"), having determined that Bill Crowe, individually and d/b/a The Crow's Nest (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," 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 Services Act, and any regulations promulgated pursuant to said Act.

6. Pursuant to TENN. CODE ANN. § 45-17-115(1) of the Deferred Presentment Services 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 Services 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 Services Act.

7. Upon information and belief, the Respondent owns and operates, or at all times pertinent herein, owned and operated a sole proprietorship identified as The Crow's Nest located at 7752 Rutledge Pike, Rutledge, Tennessee 37861.

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. Commencing May 3<sup>rd</sup> through the 5<sup>th</sup>, 2011, Compliance Examiner-in-Charge Jack T. Lay (hereinafter "Lay") conducted an examination of the Respondent at 7752 Rutledge Pike, Rutledge, Tennessee 37861, pursuant to the Title Pledge Act.

13. During the course of the examination referenced in paragraph twelve (12), the Department 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), the Department documented an approximate total of two hundred seventy-four (274) title pledge agreements covering the approximate time period of September 2, 2009 (09/02/09) through March 25, 2011 (03/25/11). Said documentation indicates that the Respondent had contracted for approximately sixteen thousand five hundred twenty-five dollars and one cent (\$16,525.01) in interest and title pledge fees during said period of time.

15. In addition, said documentation included business records bearing the designation "TITLE PLEDGE AGREEMENT AND DISCLOSURE/RECEIPT." Said business records identify the lender as "THE CROW'S NEST, 7752 RUTLEDGE PIKE RUTLEDGE, TN 37861" and identify the borrower as the "Pledgor." Said business records include the following language in pertinent part: "...[t]his contract shall be construed [sic] applied and interpreted pursuant to the laws of the State of Tennessee...." Said business records include the following language in pertinent part: "...[a]ddress any consumer complaints to: Department of Financial Institutions, Consumer Resources Division, Suite 400, 511 Union St., Nashville, TN 37219 Ph.: 800-778-4215 or 615-253-2023."

16. Pursuant to the examination referenced in paragraph twelve (12), Lay drafted an examination report that included a “Violations from Examination” section. According to said examination report, under the “Violations from Examination” section, Lay specifically noted in pertinent part: “[e]ntity is not currently licensed as a title pledge lender. TCA 45-15-105(a) provides that no person shall engage in the business of title pledge lending without having first obtained a license. 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....”

17. The examination report referenced in paragraph sixteen (16) was signed by Lay and by an individual named “Billy R. Crowe” (hereinafter “Crowe”) on May 6, 2011 (05/06/11). According to said examination report, Crowe was the Respondent’s Manager at the time of the examination. Crowe was served with a copy of the examination report, via hand-delivery, at the conclusion of the examination.

18. Commencing May 3<sup>rd</sup> through the 5<sup>th</sup>, 2011, Lay conducted an examination of the Respondent at 7752 Rutledge Pike, Rutledge, Tennessee 37861, pursuant to the Deferred Presentment Services Act.

19. During the course of the examination referenced in paragraph eighteen (18), the Department 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.

20. Specifically, pursuant to the examination referenced in paragraph eighteen (18), the Department documented an approximate total of four hundred eighty-four (484) deferred presentment services agreements covering the approximate time period of September 1, 2009 (09/01/09) through April 15, 2011 (04/15/11). Said documentation indicates that the Respondent had contracted for approximately eighteen thousand nine hundred nineteen dollars and sixty-three cents (\$18,919.63) in deferred presentment services fees during said period of time.

21. In addition, said documentation included business records bearing the designation "DEFERRED PRESENTMENT AGREEMENT/DISCLOSURE/ RECEIPT." Said business records identify the "Provider" as "THE CROW'S NEST, 7752 RUTLEDGE PIKE RUTLEDGE, TN 37861." Said business records include the following language in pertinent part: "I hereby acknowledge receipt of the above Truth In Lending Disclosures prior to entering into this deferred presentment agreement...This is a Deferred Presentment Transaction governed by Tenn. Code Ann. § 45-17-101, *et.[sic] seq....*" Said business records include the following language in pertinent part: "[b]y signing below CUSTOMER

represents that, after entering into this Agreement, he or she will not have more than two (2) checks outstanding to any deferred presentment licensee or licensees and that the aggregate face value of all outstanding checks issued by the CUSTOMER for deferred presentment, when combined with the face value of the Check that is the subject of this transaction, does not exceed \$500. CUSTOMER also certifies that he or she has received notice of the fees charged by Provider and the date (“Maturity”) on which the check may be deposited or presented by PROVIDER.”

22. Pursuant to the examination referenced in paragraph eighteen (18), Lay drafted an examination report that included a “Violations from Examination” section. According to said examination report, under the “Violations from Examination” section, Lay specifically noted in pertinent part: “[e]ntity is not currently licensed to engage in the Deferred Presentment Services Business. TCA § 45-17-103 provides that no person shall engage in the business of deferred [sic] presentment services without having first obtained a license. A separate license is required for each location from which the business is conducted. 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....”

23. The examination report referenced in paragraph twenty-two (22) was signed by Lay and by Crowe on May 6, 2011 (05/06/11). According to said examination report, Crowe was the Respondent's Manager at the time of the examination. Crowe was served with a copy of the examination report, via hand-delivery, at the conclusion of the examination.

24. Following the examinations referenced in paragraphs twelve (12) and eighteen (18), the Department received a facsimile dated May 10, 2011 (05/10/11), from "Bill Crowe" and "Barbara Crowe," stating the following on behalf of the Respondent in pertinent part: "[o]n Sept.1/2009 I [sic] Bill Crowe opened up the Crow's Nest Payday advance and Title loan business,...As for what we've done in order to correct the matter, We [sic] closed the door's [sic] to the crow's nest on May 3/2011 as soon as we spoke to Mr.Jack Lay [sic]. The titles and checks that we had left has [sic] been returned [sic] to the customers without charge,...We thought we had everything we needed, But [sic] we were wrong, Doing [sic] wrong was not our intent."

25. As of the entry date of this EMERGENCY CEASE AND DESIST ORDER, the Department has not received any licensure applications from the Respondent seeking licenses to lawfully engage in the businesses of title pledge lending and deferred presentment services in the state of Tennessee.

26. 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

27. The factual allegations as stated in paragraphs ten (10) through twenty-six (26) 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.

28. The factual allegations as stated in paragraphs ten (10) through twenty-six (26) 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.

29. The factual allegations as stated in paragraphs ten (10) through twenty-six (26) 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 Services 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.

30. The factual allegations as stated in paragraphs ten (10) through twenty-six (26) 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 Services Act.

#### POLICY STATEMENT

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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."

37. TENN. CODE ANN. § 45-17-103 of the Deferred Presentment Services 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.

38. In order to qualify for a deferred presentment services license, TENN. CODE ANN. § 45-17-104(a)(2) of the Deferred Presentment Services 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.

39. TENN. CODE ANN. § 45-17-104(a)(1) of the Deferred Presentment Services 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.

40. The factual allegations as stated in paragraphs ten (10) through twenty-six (26) 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 Services 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 Services Act prior to doing business with Tennessee consumers.

#### EMERGENCY RELIEF

41. 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 Services 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

42. 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. The Respondent has the right to be represented by counsel of the Respondent's own choice and at the Respondent's own expense.

43. 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.

44. 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.

45. 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).

46. 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.

47. 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.

48. 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 24<sup>th</sup> day of May 2011.  
*pc*

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 First Class Mail, Postage Prepaid, via United States Certified Mail, Certified Mail numbers 7009 2820 0003 6028 2955 and 7009 2820 0003 6028 2962, Return Receipts Requested, and via Federal Express Next Day Air, Tracking Numbers 8731 1893 4222 and 8731 1893 4233, to the following:

Mr. Bill Crowe  
7752 Rutledge Pike  
Rutledge, Tennessee 37861

Mr. Bill Crowe  
364 Owl Hole Gap Road, #3239  
Rutledge, Tennessee 37861-4226

This 24<sup>th</sup> day of May 2011.

  
Joseph A. Schmidt, Attorney  
Tennessee Department of Financial Institutions