

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

Attached is the Administrative Judge's decision in your case before the **Commissioner of the Tennessee Department of Financial Institutions**, called an Initial Order, with an entry date of **July 18, 2019**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and states the specific reasons why you think the decision is incorrect. The APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is no later than **August 2, 2019**. A new 15 day period for the filing of an appeal to the **Commissioner** (as set forth in paragraph (2), below) starts to run from the entry date of an order disposing of a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an appeal. Such an Appeal must be **received** by the APD no later than 15 days after the date of denial of the Petition. *See* TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **A Party Files an Appeal of the Initial Order:** You may appeal the decision to the **Commissioner**. Mail to the APD a document that includes your name and the above APD case number, and states that you want to appeal the decision to the **Commissioner**, along with the specific reasons for your appeal. The APD must **receive** your written Appeal no later than 15 days after the entry of the Initial Order, which is no later than **August 2, 2019**. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.
3. **The Commissioner decides to Review the Initial Order:** In addition, the **Commissioner** may give written notice of the **Commissioner's** intent to review the Initial Order, within 15 days after the entry of the Initial Order.

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the **Commissioner** renders a Final Order.

If none of the actions in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order. **IN THAT EVENT, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

STAY

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for a stay must be **received** by the APD within 7 days of the date of entry of the Initial Order, which is no later than **July 25, 2019**. *See* TENN. CODE ANN. § 4-5-316.

NOTICE OF APPEAL PROCEDURES

REVIEW OF A FINAL ORDER

1. **A Party may file a Petition for Reconsideration of the Final Order:** When an Initial Order becomes a Final Order, a party may file a Petition asking for reconsideration of the Final Order. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and states the specific reasons why you think the Final Order is incorrect. If the Initial Order became a Final Order without an Appeal being filed, and without the **Commissioner** deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the **Commissioner** rendered a Final Order, the **Commissioner** will consider the Petition. The APD must **receive** your written Petition for Reconsideration no later than 15 days after: (a) the issuance of a Final Order by the **Commissioner**; or (b) the date the Initial Order becomes a Final Order. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing the Final Order will be adjusted. If no action is taken within 20 days of filing of the Petition, it is deemed denied. *See* TENN. CODE ANN. § 4-5-317.
2. **A Party Files an Appeal of the Final Order:** A person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review “in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person’s discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County,” within 60 days of (a) the date of entry of a Final Order; or (b) the date the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317. A reviewing court also may order a stay of the Final Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-322 and 4-5-317.
3. **A Party may request a stay of the Final Order:** A party may file a Petition asking for a stay that will delay the effectiveness of the Final Order. If the Initial Order became a Final Order without an Appeal being filed, and without the **Commissioner** deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the **Commissioner** rendered a Final Order, the **Commissioner** will consider the Petition. A Petition for a stay of a Final Order must be **received** by the APD within 7 days after the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-316.

FILING

To file documents with the Administrative Procedures Division, use this address:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, TN 37243-1102
Fax: (615) 741-4472

**STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS
OFFICE OF THE COMMISSIONER**

IN THE MATTER OF:)
)
Checkcash Xpress, Inc.,)
)
 Petitioner,)
)
v.)
)
TENNESSEE DEPARTMENT)
OF FINANCIAL INSTITUTIONS,)
COMPLIANCE DIVISION,)
)
 Respondent.)

**Docket No.: 03.00-155045J
03.00-155046J**

INITIAL ORDER

This matter came to be heard before Administrative Judge Steve R. Darnell, assigned to the Administrative Procedures Division of the Tennessee Department of State, and sitting for the Commissioner of the Tennessee Department of Financial Institutions (hereinafter “Commissioner”) pursuant to Tennessee Code Annotated Section (hereinafter “TENN. CODE ANN. §”) 4-5-301(d). The Compliance Division of the Tennessee Department of Financial Institutions (hereinafter “Respondent” or “Division”) was represented by Troy A. McPeak, Assistant General Counsel with the Tennessee Department of Financial Institutions (hereinafter “Department”). Checkcash Xpress, Inc. (hereinafter “Petitioner” or “Renewal Applicant”) was represented by C. Brad Sproles.

INITIAL ORDER

This matter is a “contested case” governed by the “Uniform Administrative Procedures Act,” TENN. CODE ANN. §§ 4-5-101, *et seq.*, and Chapter 1360-04-01 of the “Uniform Rules of Procedure for Hearing Contested Cases before Administrative State Agencies.” This matter was initiated by the Petitioner for the purposes of seeking review of the Division’s denials of renewal Title Pledge and Deferred Presentment license applications. After consideration of the pleadings, argument of counsel, and the record as a whole, it is **DETERMINED** that an Initial Order should be entered **UPHOLDING** the Division’s denials of renewal Title Pledge and Deferred Presentment license applications. This conclusion is based upon the following findings of fact and conclusions of law:

FINDINGS OF FACT – TITLE PLEDGE LICENSE

1. The Compliance Division of the Tennessee Department of Financial Institutions (“Division”) commenced this contested case pursuant to the “Tennessee Title Pledge Act,” TENN. CODE ANN. §§ 45-15-101, *et seq.*
2. The Commissioner of the Department is responsible for the administration, enforcement, and interpretation of the Tennessee Title Pledge Act and any rules promulgated pursuant to the Tennessee Title Pledge Act.
3. The Division is the lawfully designated representative through which the Commissioner regulates any and all persons subject to the Tennessee Title Pledge Act.
4. Checkcash Xpress, Inc. (“Renewal Applicant”) is a for-profit corporation with an address of: 2718 N John B Dennis Hwy, Kingsport, TN 37660. Its registered agent for service of process is The Hale Law Firm, a professional corporation, 416 State St. Suite B, Bristol, TN 37620-5909.

5. On November 25, 2016, the Division received a renewal application on behalf of the Renewal Applicant. The Renewal Applicant submitted the renewal application with the Division in order to renew the Renewal Applicant's license for 2017 to lawfully engage in the business of a title pledge lender at multiple locations pursuant to TENN. CODE ANN. § 45-15-106 of the Tennessee Title Pledge Act.

6. As part of the renewal application process, the Department obtained criminal history information on the Renewal Applicant as permitted by TENN. CODE ANN. § 45-15-106 of the Tennessee Title Pledge Act.

7. In a letter dated November 21, 2017, the Commissioner denied the renewal application because the Renewal Applicant had failed to satisfy the requirements set forth in TENN. CODE ANN. §§ 45-15-106(a)(2) of the Tennessee Title Pledge Act. Specifically, the Commissioner found that the Renewal Applicant pled guilty on August 22, 2016, to two counts of criminal conspiracy to commit assault, one count of criminal conspiracy to possess greater than 10 pounds of marijuana for sale or distribution, a felony, and one count of possession of marijuana. The letter provided written notice of the grounds supporting the denial, and provided written notice of the Renewal Applicant's right to submit a written demand for a hearing pursuant to TENN. CODE ANN. § 45-15-106(f) of the Tennessee Title Pledge Act.

8. In a letter dated December 22, 2017, the Renewal Applicant submitted a written demand for a hearing pursuant to TENN. CODE ANN. § 45-15-106(f) of the Tennessee Title Pledge Act.

CONCLUSIONS OF LAW – TITLE PLEDGE LICENSE

9. TENN. CODE ANN. § 45-15-105(a) of the Tennessee Title Pledge Act states, in pertinent part, that “[n]o person shall engage in the business of title pledge lending without first

obtaining a license. A separate license shall be required for each location from which the business is conducted.”

10. TENN. CODE ANN. § 45-15-106(i) of the Tennessee Title Pledge Act provides that:

Licenses issued pursuant to this chapter expire on December 31. A license may be renewed for the ensuing twelve-month period upon application by the license holder showing continued compliance with the requirements of this section and the payment of the nonrefundable supervision fee, as provided in § 45-1-118(i). A licensee making timely and complete application for renewal of its license may continue to operate under its existing license until its application is approved or denied. The completed renewal application and the payment of the annual supervision fee must be sent to the department on or before December 31, but no earlier than November 1, of each year.

11. Pursuant to TENN. CODE ANN. § 45-15-106(i), the Tennessee Title Pledge Act requires a renewal applicant to show continued compliance with licensing requirements in order to obtain a renewal license.

12. TENN. CODE ANN. § 45-15-106(a) of the Tennessee Title Pledge Act provides that:

To qualify for a license, an applicant shall satisfy the following requirements:

(1) The applicant has a tangible net worth that comprises tangible assets less liabilities of not less than seventy-five thousand dollars (\$75,000) for each location; and

(2) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification has been met, and for the purpose of investigating compliance with this chapter, the commissioner may review and approve:

(A) The relevant business records and the capital adequacy of the applicant;

(B) The financial responsibility, financial condition, business experience, character, and general fitness of any person who is a director, officer, a shareholder who owns five percent (5%) or more of the applicant, or owns or controls the applicant; and

(C) Any record on the part of the applicant, or any person referred to in subdivision (a)(2)(B), of any criminal activity, any fraud or other act of personal dishonesty, any act, omission or practice that constitutes a breach of a fiduciary duty, or any suspension, removal or administrative action by any agency or department of the United States or any state, from participation in the conduct of any business.

13. TENN. CODE ANN. § 45-15-106(f) of the Tennessee Title Pledge Act provides that:

If the commissioner determines that an applicant is not qualified to receive a license, the commissioner shall notify the applicant in writing that the application has been denied, stating the basis for denial. If the commissioner denies an application, or if the commissioner fails to act on an application within ninety (90) days after the filing of a properly completed application, the applicant may make written demand to the commissioner for a hearing before the commissioner on the question of whether the license should be granted. Any hearing shall be conducted pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. In the hearing, the burden of proving that the applicant is entitled to a license shall be on the applicant. A decision of the commissioner following any hearing on the denial of license is subject to review under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

FINDINGS OF FACT – DEFERRED PRESENTMENT SERVICES LICENSE

14. The Compliance Division of the Tennessee Department of Financial Institutions (“Division”) commenced this contested case pursuant to the “Tennessee Deferred Presentment Services Act” (hereinafter “Tennessee DP Act”), TENN. CODE ANN. §§ 45-17-101, *et seq.*

15. The Commissioner of the Department is responsible for the administration, enforcement, and interpretation of the Tennessee DP Act and any rules promulgated pursuant to the Tennessee DP Act.

16. The Division is the lawfully designated representative through which the Commissioner regulates any and all persons subject to the Tennessee DP Act.

17. Checkcash Xpress, Inc. (“Renewal Applicant”) is a for-profit corporation with an address of: 2718 N John B Dennis Hwy, Kingsport, TN 37660. Its registered agent for service of process is The Hale Law Firm, a professional corporation, 416 State St. Suite B, Bristol, TN 37620-5909.

18. On November 25, 2016, the Division received a renewal application on behalf of the renewal Applicant. The Renewal Applicant submitted the renewal application with the

Division in order to renew the Renewal Applicant's license for 2017 to lawfully engage in the business of deferred presentment services at multiple locations pursuant to TENN. CODE ANN. § 45-17-110 of the Tennessee DP Act.

19. As part of the renewal application process, the Department obtained criminal history information on the renewal applicant as permitted by TENN. CODE ANN. § 45-17-104 of the Tennessee DP Act.

20. In a letter dated November 21, 2017, the Commissioner denied the renewal application because the Renewal Applicant had failed to satisfy the requirements set forth in TENN. CODE ANN. §§ 45-17-104(a)(2) of the Tennessee DP Act. Specifically, the Commissioner found that the Renewal Applicant pled guilty on August 22, 2016, to two counts of criminal conspiracy to commit assault, one count of criminal conspiracy to possess greater than 10 pounds of marijuana for sale or distribution, a felony, and one count of possession of marijuana. The letter provided written notice of the grounds supporting the denial, and provided written notice of the Renewal Applicant's right to submit a written demand for a hearing pursuant to TENN. CODE ANN. § 45-17-113 of the Tennessee DP Act.

21. In an email dated January 30, 2018, the Renewal Applicant submitted a written demand for a hearing pursuant to TENN. CODE ANN. § 45-17-113 of the Tennessee DP Act.

**CONCLUSIONS OF LAW – DEFERRED PRESENTMENT SERVICES
LICENSE**

22. TENN. CODE ANN. § 45-17-103 of the Tennessee DP Act states, in pertinent part, that “[n]o person shall engage in the business of deferred presentment services...without having first obtaining a license.... A separate license shall be required for each location from which the business of deferred presentment services is conducted.”

23. TENN. CODE ANN. § 45-17-110(a) of the Tennessee DP Act provides that:

Licenses issued pursuant to this chapter shall expire on December 31. A license may be renewed for the ensuing twelve-month period upon application by the license holder showing continued compliance with the requirements of § 45-17-104 and the payment to the commissioner annually, between November 1 and December 31, of the nonrefundable supervision fee, as provided in § 45-1-118(i). A licensee making timely and complete application and payment for renewal of its license shall be permitted to continue to operate under its existing license until its application is approved or denied.

24. Pursuant to TENN. CODE ANN. § 45-17-110(a), the Tennessee DP Act requires a renewal applicant to show continued compliance with licensing requirements in order to obtain a renewal license.

25. TENN. CODE ANN. § 45-17-104(a) of the Tennessee DP Act provides that:

(1) The applicant shall have a minimum net worth determined in accordance with generally accepted accounting principles of at least twenty-five thousand dollars (\$25,000) available for the operation of each location; and

(2) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification has been met, and for the purpose of investigating compliance with this chapter, the commissioner may review and approve:

(A) The relevant business records and the capital adequacy of the applicant;

(B) The competence, experience, integrity and financial ability of any person who is a director, officer, or ten percent (10%) or more shareholder of the applicant or owns or controls the applicant; and

(C) Any record, on the part of the applicant, or any person referred to in subdivision (a)(2)(B), of any criminal activity, any fraud or other act of personal dishonesty, any act, omission or practice that constitutes a breach of a fiduciary duty or any suspension, removal or administrative action by any agency or department of the United States or any state, from participation in the conduct of any business.

26. TENN. CODE ANN. § 45-17-113 of the Tennessee DP Act provides that:

(a) If the commissioner determines that an applicant is not qualified to receive a license, the commissioner shall notify the applicant in writing that the application has been denied, stating the basis for denial.

(b) If the commissioner denies an application, or if the commissioner fails to act on an application within ninety (90) days after the filing of a properly completed application, the applicant may make written demand to the commissioner for a

hearing before the commissioner on the question of whether the license should be granted.

(c) Any hearing on the denial of a license shall be conducted pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. In the hearing, the burden of proving that the applicant is entitled to a license shall be on the applicant. A decision of the commissioner following any hearing on the denial of a license is subject to review under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

ADDITIONAL CONSOLIDATED FINDINGS OF FACT AND CONCLUSIONS OF LAW

27. The Renewal Applicant, Checkcash Xpress, Inc., is a corporation wholly owned by Raymond Mims. It was established in 2005, and it is licensed to provide both deferred presentment services and title pledge loans for all three of its locations. Mr. Mims continues to own Renewal Applicant as well as other businesses, and has owned additional or other businesses in the past. This is the first significant action taken against Renewal Applicant's licenses under the Tennessee Title Pledge Act and the Tennessee DP Act.

28. The Administrative Procedures Act prohibits relying on hearsay, and the criminal presentments do contain hearsay. However, the Department's statutes, specifically TENN. CODE ANN. § 45-15-106 (a)(2)(C) and § 45-17-104(a)(2)(C), authorize the Commissioner to review any record regarding criminal activity. The presentments, even though they're hearsay, are appropriate under the statute for the Commissioner to consider.

29. From the testimony, the guilty pleas, and the presentments, it appears that sometime in 2014, Mr. Mims entered into a criminal conspiracy with others to purchase marijuana that would be returned to Tennessee for resale. Mr. Mims advanced \$20,000 to one of his coconspirators to purchase marijuana in Texas. The coconspirator returned from Texas without the marijuana and without the \$20,000. Subsequently, Mr. Mims and one of the other coconspirators conspired to commit criminal activities against Mr. Thomas's family, one of the

coconspirators, and Mr. Mims was provided some marijuana that the coconspirators had obtained.

30. Mr. Mims was arrested based on the allegations contained in the presentments that are Exhibit 2. He was arrested prior to the presentments made in 2015. The presentments contain five allegations concerning Mr. Mims's conduct that was publicized in the Tri-Cities area. An anonymous individual made the Department aware of Mr. Mims's involvement. The anonymous individual knew that Mr. Mims was licensed at Checkcash Xpress, Inc. and felt significantly enough about it to place the Department on notice of his arrest.

31. In count one, Mr. Mims was charged with criminal conspiracy to commit first degree murder of Tony Thomas, a class A felony. Subsequently in the plea deal, Mr. Mims pled guilty to criminal conspiracy to commit assault, a class B misdemeanor. The count one felony charge alleged that Mr. Mims and his coconspirator, Bradley Joe Hirst, made threats against Tony Thomas who was one of their coconspirators.

32. In count two, Mr. Mims was charged with criminal conspiracy to commit first degree murder of Kimberly Thomas, a class A felony. Subsequently in the plea deal, Mr. Mims pled guilty to criminal conspiracy to commit assault, a class B misdemeanor. The allegation in count two was that Mr. Mims and Mr. Hirst conspired to do bodily harm to Mr. Thomas's wife, Kimberly Thomas.

33. In count three, Mr. Mims was charged with criminal conspiracy to commit first degree murder of Kymora Thomas, the eight-year old daughter of Tony and Kimberly Thomas, a class A felony. Subsequently in the plea deal, count three was dismissed in its entirety.

34. In count four, Mr. Mims was charged with criminal conspiracy to possess more than ten pounds of marijuana with the intent to sell or deliver, a class E felony. Subsequently in

the plea deal, Mr. Mims pled guilty to count four as charged. The allegations in the presentment reflect Mr. Mims's conspiracy with Mr. Thomas and Mr. Hirst to purchase fifty pounds of marijuana.

35. Mr. Mims pled guilty to count five as charged for possession of marijuana, a class A misdemeanor.

36. On the three misdemeanors, Mr. Mims was sentenced to six months in jail and ordered to serve 75 percent of the sentenced time. On the class E felony, he was sentenced to two years in prison and ordered to serve 30 percent of the sentenced time. All four convictions were ordered to be served concurrently. Mr. Mims served approximately seven months in prison. He was originally arrested on April 28, 2014. He was indicted one year later on April 28, 2015, and he entered his guilty pleas on January 12, 2017.

37. Considering the underlying set of facts of the guilty pleas and based on the evidence presented at the Administrative Hearing, it is **CONCLUDED** that the Division made the correct decision in denying the renewal license applications submitted pursuant to the Tennessee Title Pledge Act and the Tennessee DP Act.

38. It is **CONCLUDED** that the convictions here, even ignoring what's in the presentments, involve a thought process that because of the difficulty in the criminal enterprise engaged in, Mr. Mims and Mr. Hirst were going to do bodily harm to Mr. and Mrs. Thomas. Here, Mr. Mims certainly had the type of intent to violate the law that shows moral turpitude. Mr. Mims advanced cash to purchase marijuana for resale and then threatened bodily harm when the criminal conspiracy went awry. These crimes reflect moral turpitude.

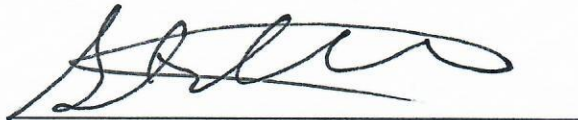
39. It is **CONCLUDED** that the Renewal Applicant has failed to show continued compliance with the character and general fitness requirements contained in TENN. CODE ANN.

§§ 45-15-106 (a)(2) and 45-17-104(a)(2). With that type of criminal conduct, the Department cannot license a person to be engaged in financial services.

40. Accordingly, the evidence presented at the administrative hearing held on April 30, 2019, shows by a preponderance of the evidence that the Division's decision to deny the license renewal applications of the Renewal Applicant under the Tennessee Title Pledge Act and the Tennessee DP Act should be upheld.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Renewal Applicant's applications for licensure under the Tennessee Title Pledge Act and the Tennessee DP Act should be denied. To qualify for licenses under the Acts, the character and general fitness of the applicant shall reasonably warrant to belief that the applicant's business will be conducted lawfully and fairly. Based on the evidence presented at the administrative hearing held on April 30, 2019, the Division's decision to deny licensure to the Renewal Applicant under both Acts was proper, and is upheld.

This Initial Order entered and effective this 18th day of JULY, 2019.



Steve R. Darnell

Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 18th day of JULY, 2019.



J. Richard Collier, Director
Administrative Procedures Division