

STATE OF TENNESSEE  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
OFFICE OF THE COMMISSIONER

IN THE MATTER OF: )  
 )  
BILL TALLEY individually and )  
d/b/a TNT ANTIQUES ) TDFI NO.: 11-115-C  
 )  
 )  
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 Billy Talley, individually and d/b/a TNT Antiques (hereinafter "Respondent") violated and is violating 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. § 45-17-103, 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 Deferred Presentment Services Act, and any regulations promulgated pursuant to said Act.

4. 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.

5. Upon information and belief, the Respondent owns and operates, or at all times pertinent herein, owned and operated a sole proprietorship identified as TNT

Antiques (aka T&T Antiques) located at 107 East Main Street, Adamsville, Tennessee 38310.

6. 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

7. 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.

8. On June 14, 2011, Compliance Examiner Kevin Hicks (hereinafter "Hicks") conducted an examination of the Respondent at 107 East Main Street, Adamsville, Tennessee, pursuant to the Deferred Presentment Services Act.

9. During the course of the examination referenced in paragraph eight (8) 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.

10. Specifically, pursuant to the examination referenced in paragraph eight (8), the Department documented an approximate total of nineteen (19) checks being held for deferred presentment, totaling two-thousand seven hundred eighty-two dollars (\$2,782) including deferred presentment fees. The earliest check was dated 8/17/09 and the latest dated 7/3/11.

11. In addition, Respondent did not provide any supporting written agreements or other business records surrounding the checks being held for deferred presentment as required in TENN. CODE ANN. § 45-17-112.

12. Pursuant to the examination referenced in paragraph eight (8), Hicks drafted an examination report that included a “Violations from Examination” section. According to the examination report, under the “Violations from Examination” section, paragraph (1), Hicks 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 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....” Furthermore, Hicks noted in paragraph (2) that “[books and records are not maintain[ed] *sic* for inspection – TCA §45-17-112(a). Licensee does not maintain records for 2 years minimum for inspection.”

13. At the conclusion of the examination referenced in paragraph (8), Talley presented a hand-written statement, signed by him and dated June 14, 2011, stating the following: “I have been loaning money to friends for the last 5yrs. I charge 30.00 on 100.00 \$15.00 on fifty dollars. Max loan 300.00. I get a check for the amount when paid back then get said check.”

14. The examination report referenced in paragraph twelve (12) was signed by Hicks and by Talley on June 14, 2011 (6/14/11). According to the examination report, Talley was the Respondent’s Manager at the time of the examination. Talley was served

with a copy of the examination report, via hand-delivery, at the conclusion of the examination.

15. 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 business of deferred presentment services in the state of Tennessee.

16. The aforementioned pattern of engaging in the businesses of deferred presentment services without having first obtained a license from the Commissioner is a sufficient indicator that the Respondent will continue to unlawfully engage in said business in the state of Tennessee in the future.

#### CAUSES OF ACTION

17. The factual allegations as stated in paragraphs seven (7) through sixteen (16) 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.

18. The factual allegations as stated in paragraphs seven (7) through sixteen (16) 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

19. 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.

20. 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.

21. 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.

22. The factual allegations as stated in paragraphs seven (7) through sixteen (16) 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, by engaging in the business of deferred presentment services in the state of Tennessee without having first obtained the required

license from the Commissioner. This violation has 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. Consequently, the Commissioner has been deprived of the opportunity to make an informed determination of whether to grant the Respondent a license under the Deferred Presentment Services Act prior to doing business with Tennessee consumers.

EMERGENCY RELIEF

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

a. 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

b. 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

24. 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.

25. 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.

26. 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.

27. 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).

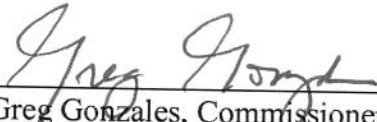
28. The Respondent may submit to the Commissioner a petition for stay of effectiveness of this EMERGENCY CEASE AND DESIST ORDER or the Final Order within seven (7) days of entry pursuant to TENN. CODE ANN. § 4-5-316.

29. 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.

30. 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 June 2011.

On behalf of the Department:

  
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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 0080 0000 1124 4819 and 7009 0080 0000 1124 4826, Return Receipts Requested, and via Federal Express Next Day Air, Tracking Numbers , to the following:

Mr. Bill Talley  
107 East Main Street  
Adamsville, TN 38310

Mr. Bill Talley  
P.O. Box 649  
Adamsville, TN 38310

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

  
Whitney M. Stone, Attorney  
Tennessee Department of Financial Institutions