BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues of: THE CALIFONRIA CORPORATION COMMISSIONER, Complainant, vs. ALLEN C. NADER, doing business as ADVANCE CALIFONRIA, Respondent,	File No.: 100-3111 OAH No.: L2006040103
In the Matter of the Desist and Refrain Order of: THE CALIFONRIA CORPORATIONS COMMISSIONER, Complainant, vs. ALLEN C. NADER, individually, and doing business as ADVANCE CALIFORNIA Respondent.	File No.: 100-3111 OAH No.: L2006040101

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Commissioner of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective on August 10, 2006.

IT IS SO ORDERED this 9th day of August 2006.

CALIFORNIA CORPORATIONS COMMISSIONER

Preston DuFauchard

BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

In the Matter of the Statement of Issues of: THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, vs. **ALLEN C. NADER**, doing business as **ADVANCE CALIFORNIA**, Respondent.	File No. 100-3111 OAH No. L2006040103
In the Matter of the Desist and Refrain Order of: THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, vs. **ALLEN C. NADER**, individually, and doing business as **ADVANCE CALIFORNIA**, Respondent.	File No. 100-3111 OAH No. L2006040101

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on May 1, 2006, in Los Angeles, California.

Judy L. Hartley, Senior Corporations Counsel, represented Wayne Strumpfer, Acting California Corporations Commissioner (Complainant).

Allen C. Nader (Respondent) appeared and represented himself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on May 1, 2006.

FACTUAL FINDINGS

1. On March 9, 2006, Complainant authorized the Statement of Issues, in his official capacity. On March 28, 2006, Complainant personally served Respondent with a Desist and Refrain Order, dated March 9, 2006, that directed Respondent to desist and refrain from engaging in unlicensed deferred deposit transactions. On March 29, 2006, Respondent signed a Notice of Defense; he thereafter mailed it to the Department of Corporations (the Department), and this action ensued.

2. On January 24, 2006, Respondent filed an application with the Department for a license to make deferred deposit transactions. The application is pending and, by this action, Complainant seeks its denial.

3. A deferred deposit transaction is also called a payday loan, or a cash advance. These transactions allow an individual to receive cash by writing a check to a state licensed entity in an amount equal to the amount of cash sought. The licensed entity accepting the check loans the individual the money, and agrees to delay depositing the check until a date certain.

4. For an undisclosed time, Respondent worked at a business offering check cashing, money wiring, and cash advance services. On April 27, 2005, by written agreement, Respondent took ownership of that same business. As part of the agreement, Respondent (buyer), and the owner (seller) agreed as follows: First, "[s]eller will be responsible for all liabilities before the date buyer can take over the store completely." (Exhibit 10(II).) Second, "[b]uyer will be responsible for all deposits, rent, insurance and liabilities after [sic] take over the store." (*Ibid.*) Respondent argued at hearing, despite the April 27, 2005 written agreement, he did not take over the store until May 26, 2005, when the previous owner had completed Respondent's informal training on how to operate the business. Respondent argued that, pursuant to the buyer/seller agreements between himself and the previous owner, no liability attached to him prior to May 26, 2005. Respondent's argument provides him no relief. (*See*, Legal Conclusion 8, *post*.)

5. On February 8, 2005, the Department sent a form letter to a number of businesses the Department had reason to believe might have been making unlicensed deferred deposit transactions, including Respondent's business. The letter legally defined a deferred deposit transaction, and prohibited unlicensed deferred deposit transactions. The letter required a response. Respondent did not respond to this letter.

6. On May 17, 2005, because the Department received no response to its letter, the Department sent an examiner to Respondent's business to investigate possible unlicensed deferred deposit transactions. At hearing, the examiner testified credibly regarding the facts of her investigation. The examiner visited Respondent's business and observed that

Respondent's storefront advertised check cashing, money wiring, and cash advance services. Though Respondent was not present at his business on that day, the examiner eventually spoke with Respondent, at least once, between May 17, 2005 and May 24, 2005, and reviewed a variety of documents produced by Respondent. The examiner completed her investigation and concluded that Respondent had made at least two deferred deposit transactions, and advertised such services without a license. Additionally, sometime during the examiner's investigation, the examiner informed Respondent to refrain from making deferred deposit transactions and cease advertisements, until licensed.

7. Respondent claimed the examiner never informed him to refrain from making deferred deposit transactions, or to remove his advertisements. Respondent's claims were not credible. (*See*, Legal Conclusion 10, *post*.)

8. On May 31, 2005, the Department sent Respondent a letter referencing the examiner's conclusions. The Department instructed Respondent to confirm in writing that he would not engage in deferred deposit transactions, and that he would agree to remove all signs and notices advertising such transactions, until licensed. Respondent did not respond to this letter.

9. On June 7, 2005, the Department sent Respondent another letter identical in content to that of its May 31, 2005 letter. Respondent did not respond to this letter.

10. Respondent argued at hearing that he never received the Department's February 8, 2005, May 31, 2005, or the June 7, 2005 letters, and was, therefore, unaware of the Department's prohibitions throughout that time. The Department addressed each of the three letters to Respondent, using the address it has on record for Respondent's business, and mailed all three letters in the same manner the Department mails its correspondence generally. Consequently, the evidence did not prove Respondent's argument. (*See*, Legal Conclusion 9, *post*.)

11. On December 2, 2005, the Department sent Respondent a letter noting no response to its previously sent correspondence. The letter contained information identical in content to that of its two previous letters. This time, on December 12, 2005, Respondent wrote to the Department asserting, among other things, he never denied making deferred deposit transactions since taking over the business, and he had not received any correspondence from the Department before the December 2, 2005 letter. Additionally, Respondent agreed to cease deferred deposit transactions, and to remove all signs from the store, until licensed.

12. On December 5, 2005, a second examiner from the Department visited Respondent at Respondent's business. The examiner asked an attending individual (not Respondent) for information on how to obtain a payday loan, and was given information, including a loan application. Respondent was present during this second examiner's visit. At the examiner's request, Respondent gave him access to all of the loan files on the

premises. The files showed that, between May 31, 2005 and December 5, 2005, Respondent's business engaged in at least 64 deferred deposit transactions.

13. On December 29, 2005, Respondent signed an Application for a License under the California Deferred Deposit Transaction Law. The Department received that application on January 24, 2006.

14. Respondent claimed he filed a similar application in May 2005 and paid the applicable fees. In support of his claim, at hearing, Respondent presented a photocopy of an application, dated May 17, 2005 and the front side of Respondent's check, dated May 19, 2005, in the amount of the application fee. The application's execution section showed an execution date of May 17, 2005, but that page was not a photocopy; it was an original. Respondent did not prove he applied for a license in May 2005. (*See*, Legal Conclusion 11, *post*.)

15. Respondent argued that he did not know of the requirements to obtain a license. He asserted that if he violated any laws, it was not intentional, but due to his lack of knowledge of the processes for deferred deposit transactions and the licensing requirements. Respondent's arguments lack merit. (*See* Legal Conclusions 9, 10, & 12, *post*.)

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's application for a deferred deposit transaction license, pursuant to Financial Code section 23011, as set forth in Factual Findings 2, 6, 10, 12-13, & 14, and Legal Conclusions 3-11.

2. Cause exists to sustain Complainant's Refrain and Desist Order, pursuant to Financial Code section 23050, as set forth in Factual Findings 1 & 12, and Legal Conclusions 4, 6, 8, & 12.

3. Financial Code section 23001, subdivision (a) states,

> (a) "Deferred deposit transaction" means a transaction whereby a person defers depositing a customer's personal check until a specific date, pursuant to a written agreement, as provided in section 23035.

4. Financial Code section 23005, subdivision (a) states in pertinent part,

> (a) No person shall offer, originate, or make a deferred deposit transaction, arrange a deferred deposit transaction for a deferred deposit originator, act as an agent for a deferred deposit originator, or assist a deferred deposit originator in the origination of a deferred deposit transaction without first obtaining a license from the commissioner and complying with the provisions of this division.

5. Financial Code section 23011 states in pertinent part:

(a) Upon reasonable notice and the opportunity to be heard, the commissioner may deny the application for any of the following reasons:

(1) Any false statement of material fact has been made in the application.

[¶] . . . [¶]

(3) The applicant . . . has violated any provision of this division or the rules thereunder or any similar regulatory scheme of the State of California or a foreign jurisdiction.

6. Financial Code section 23050 states:

Whenever, in the opinion of the commissioner, any person is engaged in the business of deferred deposit transactions, as defined in this division, without a license from the commissioner, or any licensee is violating any provision of this division, the commissioner may order that person or licensee to desist and to refrain from engaging in the business or further violating this division. If within 30 days, after the order is served, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded.

7. Evidence Code section 641 states:

A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail.

8. Respondent did not deny making unlicensed deferred deposit transactions. The evidence proved he made at least 64 unlicensed deferred deposit transactions between May 31, 2005, and December 5, 2005. Since the unlicensed transactions occurred after May 26, 2005, Respondent's assertion that he did not take over the business, and was, therefore, not liable for transactions made before May 26, 2005, provides him no relief. Respondent violated Financial Code sections 23005, subdivision (a), and 23011, subdivision (a)(3).

9. Regarding his assertion that he never received the Department's first three letters, Respondent claimed as proof, the fact that he responded timely to the December 2, 2005 letter, the only letter he asserts he received. However, the Department's evidence proved it mailed the first three letters in the same and routine manner that it does all of its mail, and it mailed those letters to the same address to which it mailed the December 2, 2005 letter. Complainant, therefore, is allowed the presumption that Respondent received the Department's May 31, 2005, and June 7, 2005 letters, and Respondent is deemed to have

been advised of his violations, and directed to cease such actions. (Evid. Code § 641; *See*, *Craig v. Brown & Root, Inc.* (2000) 84 Cal.App.4th, 416, 421-422.) Since Respondent did not take ownership of the business until April 27, 2005, the presumption does not apply to the February 8, 2005 letter.

10. Respondent's assertion that the first examiner did not inform him to refrain from making unlicensed transactions was not credible. The Department's examiner testified credibly that, in the course of her investigation, she told Respondent to stop making deferred deposit transactions and cease advertisements, until licensed. Respondent compromised his credibility by asserting he never received the Department's correspondence (*see*, Legal Conclusion 9, *ante*), and by proffering a false application for licensure. (*See*, Legal Conclusion 11, *post*.) Therefore, Complainant's evidence carried greater weight, and proved that, no later than May 24, 2005, the first examiner made Respondent aware of the licensing requirement and directed Respondent to cease deferred deposit transactions.

11. Respondent argued he initially filed an application for a deferred deposit transaction license on May 17, 2005, and the Department failed to process his application timely. Respondent's assertion, if true, would not shield him from a violation of the applicable law, in that he was nonetheless required to possess a license before engaging in deferred deposit transactions. Furthermore, the evidence did not support Respondent's assertion. At hearing, Respondent presented a photocopy of the alleged application for licensure, but the page showing a May 2005 execution date, is not a photocopy. (Exhibit A.) Whereas Respondent's writing on every other page of the application has a grainy, photocopied appearance, the execution page shows Respondent's writing in smooth, dark ink. In this way, the writing is noticeably distinct from the rest of the application. Therefore, Respondent did not prove the May 2005 application was a kept photocopy. Had Respondent established his alleged May 2005 application was a complete photocopy, Respondent would have had to produce additional evidence to prove he had filed it with the Department. Instead, the evidence proved Respondent attempted to falsely draft the proffered application to look like a photocopy. Respondent's actions to falsify an application establishes violations of Financial Code section 23011, subdivisions (a)(1) and (a)(3).

12. By asserting he filed an application for licensure in May 2005, Respondent contradicted his other assertion that, not until December 2005, was he made aware he required a deferred deposit transaction license. To file an application when he claimed he did, he would have had knowledge of the licensing requirement in May 2005, approximately seven months earlier than he asserted. These contradictory claims compromised Respondent's credibility further. To protect the public, it is, therefore, necessary to deny Respondent's application for a deferred deposit transaction license, and sustain Complainant's Desist and Refrain Order.

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ORDER

1. Respondent Allen C. Nader's application for a deferred deposit transaction license, filed on January 24, 2006, is denied.

2. The Department's Desist and Refrain Order, dated March 9, 2006, is sustained.

DATED: May 23, 2006

DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings