BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: CHUCRI EL-MAASRI, doing business as SAN MARCOS CHECK CASHING, Respondent.	File No.: 100-0708 OAH No. L2006100864

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated February 22, 2007, is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter with the following technical and minor changes on the attached Errata Sheet pursuant to Government Code Section 11517(c)(2)(C).

This Decision shall become effective on April 5, 2007.

IT IS SO ORDERED this 4th day of April 2007.

CALIFORNIA CORPORATIONS COMMISSIONER

Preston DuFauchard

ERRATA SHEET

(Changes to Proposed Decision –Chucri El-Maasri, dba San Marcos Check Cashing)

(1) Page 2, item number 4, line 6: delete "dollar" after "$300" and before "transactions".

(2) Page 2, item number 5, line 1: delete "San Marco" and insert "San Marcos".

State of California - Department of Corporations

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PROPOSED DECISION

This matter was heard on January 26, 2007, in Los Angeles, by Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings, State of California.

Respondent Chucri El-Maasri (Respondent) was present and was represented by Randy McClure, Attorney at Law.

Complainant, Preston DuFauchard, California Corporations Commissioner (Commissioner), was represented by Judy L. Hartley, Senior Trial Counsel.

Oral and documentary evidence was presented and the matter was submitted for decision on January 26, 2007.

FACTUAL FINDINGS

1. Respondent was, and is, doing business as San Marcos Check Cashing (San Marcos). Respondent is licensed by the Commissioner as a deferred deposit transaction (DDT) originator under California Financial Code[1] section 23000 et seq. San Marcos' principal place of business is located at 273 S. Rancho Santa Fe Road, San Marcos, California, 92078. San Marcos provides cash to consumers, less a fee, and the consumer provides a post-dated check which San Marcos does not deposit until the designated date.

2. On July 18, 2006, the Commissioner began a regulatory examination of the books and records of San Marcos. The examination revealed a number of inadequacies in San Marcos' operation. First, San Marcos failed to keep and maintain DDT records for a period of two years from the date of the last transaction as required by Code section 23024

[1] All further statutory references are to the California Financial Code unless otherwise stated.

and California Code of Regulations, title 10, section 2025, subdivision (c)(l). San Marcos only retained records of its existing open transactions and not the records of completed transactions. Second, San Marcos routinely failed to disclose the annual percentage rate (APR) and the consumer payment obligations in violation of Code section 23035, subdivision (e)(l) and (2). Third, San Marcos charged excessive fees for DDTs involving amounts of $300.00. Under Code section 23036, subdivision (a), the maximum fee allowed is 15 percent of the face value of the check, or $45.00 for a $300.00 check. San Marcos charged a $50.00 fee on $300.00 transactions.

3. On March 6, 2006, San Marcos violated California Code of Regulations, title 10, section 2030, by filing a false annual report with the Commissioner. The annual report was false because it contained "estimated" information, rather than accurate information, as required. San Marcos could not provide accurate information because it did not keep and maintain sufficient records, as discussed above in factual finding 2.

4. In mitigation, after the Commissioner's audit, San Marcos put a sign in its window indicating that it would refund the portion of the fee ($5.00) that some consumers had overpaid. However, only two consumers accepted this offer. San Marcos was unable to contact the majority of its past customers that had been overcharged because San Marcos had no record of those transactions. Also in mitigation, San Marcos was only miscalculating the charge on $300 dollar transactions and not on transactions for lesser amounts. This is evidence that the over-charge was negligent, rather than intentional. As to Respondent's failure to disclose an accurate APR to the consumers, Respondent did not know how to calculate the APR, but he does now. Respondent has also revised his form so more of the required information is disclosed to consumers.

5. In sum, San Marco failed to maintain proper records, charged excessive fees, failed to disclose the APR on the transactions, and filed a false annual report. Respondent's filing of the false annual report is the most troubling conduct. The report was filed in March 2006. At that time, Respondent most certainly realized that he was missing the records to substantiate his "estimates." However, Respondent did not change his business practice, or contact the Department of Corporations for assistance, at that time. Instead, he continued to fail to properly maintain records until July 2006 when the Commissioner conducted an audit.

6. In aggravation, Respondent was aware of the conduct required in order to maintain his license. In November 2004, Respondent signed a "Declaration Regarding Law and Rules" of a California Deferred Deposit licensee (Exhibit 3). This declaration specifically informed Respondent that he needed to "keep and maintain all records for 2 years . . . ." Respondent's contention that he has now changed his business practices is not sufficient. Respondent agreed to perform certain acts in order to obtain his license, then he immediately disregarded that pledge, and then almost two years later later agreed to comply with the rules after his misconduct was discovered during an audit. Respondent's complete disregard of the rules governing his license indicates that he should not be allowed to continue being licensed.

LEGAL CONCLUSIONS AND DISCUSSION

1. California Financial Code section 23052 provides in pertinent part:

The commissioner may suspend or revoke any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:

(a) The licensee has failed to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of this division.
(b) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.

2. Cause exists to revoke or suspend Respondent's deferred deposit transaction license under Code section 23052, subdivisions (a) and (b), because of Respondent's failure to comply with Code sections 23024, 23035, subdivisions (e)(1) and (2), and 23036, subdivision (a), and California Code of Regulations, title 10, sections 2025 and 2030, for the reasoning set forth in factual findings 1-6.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Deferred Deposit Transaction license held by CHUCRI EL-MAASRI, doing business as SAN MARCOS CHECK CASHING, is revoked.

DATED: February 22, 2007.

CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings