

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**STATE OF CALIFORNIA**  
**BUSINESS, TRANSPORTATION AND HOUSING AGENCY**  
**DEPARTMENT OF CORPORATIONS**

TO: FSM GROUP, INC.  
(DBA FSM PROCESSING, INC.)  
RICHARD MOSELEY  
(aka Richard F. Moseley, aka Richard Moseley, Sr.)  
11 East Gregory, Suite. 200  
Kansas City, MO 64114

**DESIST AND REFRAIN ORDER**

**(For violations of section 23005(a) of the California Financial Code)**

The California Corporations Commissioner finds that:

1. At all relevant times, FSM Group, Inc., DBA FSM Processing, Inc., (“FSM”) was a Missouri Corporation, with its principal place of business located at 11 East Gregory, Suite 200, Kansas City, Missouri 64114.

2. Richard Moseley, aka Richard F. Moseley, aka Richard Moseley, Sr., (hereafter referred to as “Moseley”) is, and was at all relevant times herein, President and Director of FSM.

3. FSM and Moseley have engaged, and are continuing to engage in the business of deferred deposit transactions by originating deferred deposit transactions as described below.

4. An investigation conducted by the California Corporations Commissioner (“Commissioner”) in April 2006 revealed that FSM and Moseley were offering deferred deposit transactions or payday loans to the public through affiliate companies that provide Internet based platforms for obtaining payday loans by means of an Automated Clearing House (“ACH”), which is equivalent to issuing a personal check. Under the Internet-based deferred deposit transaction, the borrower provides details of his account, which he authorizes the lender to debit electronically on the due date.

5. FSM and Moseley had been originating and offering deferred deposit transactions to California residents over the Internet since at least March 2005. FSM and Moseley advance loans

1 and impose fees and charges that are in excess of the amount allowed under the California Deferred  
2 Deposit Transaction Law (“CDDTL”) practice. (California Financial Code § 23000 et seq.).

3 6. In or about March 2005, FSM originated a deferred deposit transaction with a  
4 California resident, which authorized FSM to electronically debit the borrower’s account by  
5 means of an ACH with the loan amount, fees and charges, on the due date.

6 7. In or about September 28, 2005 the Department sent a letter to FSM specifically  
7 informing it that it could not engage in the business of deferred deposit transactions unless and  
8 until a CDDTL license was obtained from the Commissioner. The Department requested  
9 pertinent information from FSM, including but not limited to, written statements that it had  
10 ceased engaging in the business of originating deferred deposit transactions in California, and  
11 written assurances that an application for a license under the CDDTL would be filed with the  
12 Department within 30 days, up to and including October 28, 2005.

13 8. In or about October 7, 2005 the Department received a letter dated October 6, 2005  
14 from FSM stating that it had not engaged in deferred deposit transactions and was therefore not  
15 subject to CDDTL.

16 9. In or about October 12, 2005 the Department responded to FSM’s October 6, 2005  
17 letter, reiterating that FSM was originating deferred deposit transactions through the Internet  
18 without having first obtained a license from the Department, in violation of the CDDTL. The  
19 Department specifically informed FSM that a deferred deposit transaction business conducted  
20 over the internet using the electronic equivalent of a check was subject to the CDDTL, and a  
21 license to engage in lending or originating deferred deposit transactions issued from another state  
22 was not authorization to engage in lending services or originating deferred deposit transactions to  
23 California residents. Further requests were made on FSM to furnish the Department with  
24 evidence of FSM’s authority to conduct lending business in California without a CDDTL license,  
25 or provide assurances that it would not engage in further offer and origination of payday loans to  
26 California residents until a license was obtained.

27 10. A deferred deposit transaction is a written transaction whereby one person gives funds  
28 to another person upon receipt of a personal check, and it is agreed that the personal check would not

1 be deposited until a later date. "Personal check" referenced in Financial Code section 23001 includes  
2 "the electronic equivalent of a personal check".

3 11. FSM and Moseley have not been issued a license by the Commissioner authorizing  
4 them to engage in the business of deferred deposit transactions under the CDDTL.

5 12. FSM and Moseley are not exempt from the licensing requirements of California  
6 Financial Code section 23005.

7 By reason of the foregoing, FSM Processing, Inc. and Richard Moseley, aka Richard F.  
8 Moseley, aka Richard Moseley, Sr., have engaged in the business of deferred deposit transactions  
9 without having first obtained a license from the Commissioner in violation of California Financial  
10 Code section 23005.

11 Pursuant to California Financial Code section 23050, FSM Processing, Inc. and Richard  
12 Moseley, aka Richard F. Moseley, aka Richard Moseley, Sr., are hereby ordered to desist and  
13 refrain from engaging in the business of deferred deposit transactions in the State of California  
14 without first obtaining a license from the Commissioner, or otherwise being exempt. This Order  
15 is necessary, in the public interest, for the protection of consumers and is consistent with the  
16 purposes, policies and provisions of the California Deferred Deposit Transaction Law. This order  
17 shall remain in full force and effect until further order of the Commissioner.

18 California Financial Code section 23050 provides

19 Whenever, in the opinion of the commissioner, any person is engaged in the  
20 business of deferred deposit transactions, as defined in this division, without  
21 a license from the commissioner. . . the commissioner may order that person  
22 or licensee to desist and to refrain from engaging in the business . . . . 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.

23 Dated: May 8, 2006  
24 Los Angeles, California

25 WAYNE STRUMPFER  
26 Acting California Corporations Commissioner

27 By \_\_\_\_\_  
28 Steven C. Thompson  
Special Administrator

California Deferred Deposit Transaction Law

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28