

STATE OF NORTH CAROLINA
WAKE COUNTY

IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO. 03:082:CC

IN RE:)
)
THE MATTER OF CHECK INTO) **ORDER**
KWIK KASH, INC.)
)
Check Casher License No. 162)

THIS MATTER came on for hearing and was heard by the Commissioner of Banks, on May 5, 2003, pursuant to a Notice of Hearing under Article 3A of Chapter 150B of the North Carolina General Statutes, and N.C. Gen. Stat. § 53-284, to determine whether or not Check Into Kwik Kash, Inc. (hereinafter "Kwik Kash" or "Respondent"), should have its application for a branch office in Williamston, North Carolina denied, and its check casher license (issued under Article 22 of Chapter 53 of the North Carolina General Statutes) permanently revoked.

Appearing for the Consumer Finance Division in the Office of the Commissioner of Banks was L. McNeil Chestnut, a Special Deputy Attorney General and Anne J. Brown, an Assistant Attorney General.

Albert H. Thomas, Jr., the owner of Kwik Kash, who was present at the time administrative hearings scheduled for Monday, May 5, 2003, were convened at 9:00 a.m., after discussing a

related civil action with Mr. Chestnut, left the hearing room prior to the time the Kwik Kash matter was called for hearing. He was reached by phone and advised to return for the hearing of this matter but declined to do so. Therefore, Kwik Kash is deemed to have failed to appear in the matter.

Based on the exhibits submitted by the State and a summary of the evidence in this matter, the Commissioner made the following:

FINDINGS OF FACTS

1. The business of Kwik Kash has been under the control, direction and supervision of Albert H. Thomas, Jr. (hereinafter referred to as "Thomas"), the owner and sole shareholder of Respondent.

2. On October 22, 1998, Kwik Kash was licensed by the Commissioner of Banks to cash checks for a fee and was issued License No. 162.

3. Kwik Kash submitted renewal applications in 1999, 2000 and 2001 and continued to operate its check cashing business.

4. On July 16, 2002, Kwik Kash submitted an application to conduct a check cashing business at 145 West Main Street, Williamston, Martin County, North Carolina, and on September 18, 2002, submitted a renewal application for licensure as a check cashier.

5. Respondent was advised that the September 2002 renewal application would not be renewed pending investigation into allegations that he had continued a payday lending business, the authority for which expired on August 31, 2001, and violations of N.C. Gen. Stat. §§ 53-283(2) and (5), prohibited transactions.

6. Thomas informed W. Reitzel Deaton, Director of Consumer Industries in the Office of the Commissioner of Banks (hereinafter "OCOB"), by letter on September 1, 2001, that he felt a moral obligation to continue making payday loans to allow his customers a means to get out of the financial situation they were in, therefore, he had adopted a policy of making payday loans, payable over a period of up to 6 months, through September 30, 2001.

7. Through a "Policy Direction" issued by Thomas, he advised that Respondent would make loans of up to \$500, payable over a period of six months with post dated checks with no payment exceeding \$100. Kwik Kash employees were advised by Thomas that there was concern that his payday lending policy would not be allowed by the "North Carolina Banking Commission," and that those who felt that they could not operate under his policy were to resign by 5:00 p.m., Tuesday, September 24, 2001.

8. On October 4 and 5, 2001, Sherri L. Sadler, an examiner with the OCOB, examined the records in the Smithfield, North Carolina, office of Kwik Kash. The examination revealed that

Respondent was engaged in a payday lending business by accepting a series of postdated checks for the amount of the loan plus interest and then holding the postdated checks for up to 6 months. Payday loans were entered into after September 30, 2001. Ms. Sadler advised the employees in the Smithfield office to immediately cease any further payday lending and informed Thomas that as the legal authority for payday lending expired on August 31, 2001, he could no longer engage in that business.

9. On December 11, 2001, Bryan H. Parker, an examiner with the OCOB, examined the records in the Washington, North Carolina, office of Kwik Kash. The examination revealed that Respondent was still engaged in a payday lending business and had made hundreds of such loans with terms ranging from 11 to 171 days, and with annual percentage interest rates from 37.7% to 585.66%.

10. From September 1, 2001 through the date of Mr. Parker's examination, December 11, 2001, Kwik Kash had made a series of 2,606 payday loans totaling \$197,833.93 and collected \$29,674.72 in fees. Mr. Parker informed the owner, Mr. Thomas, to cease his payday lending business immediately.

11. On August 6, 2002, Bryan H. Parker again examined the records of the Washington, North Carolina office of Kwik Kash. The examination revealed that Respondent was not depositing checks within 3 business days as required by law, that Respondent had continued to engage in a payday loan business by accepting

postdated checks for the amount of the principal and interest, and holding these checks for as long as 6 months.

12. Since the date of the previous examination of Kwik Kash, December 11, 2001, through August 6, 2002, Respondent had made another 5,376 payday loans in the sum of \$466,950.42 and collected fees in the sum of \$70,041.30. Thus, from September 1, 2001 through August 6, 2002, Respondent made 8,360 payday loans in the sum of \$664,784.35 and collected fees on these loans of \$99,716.02.

13. Again, Mr. Parker advised Thomas to cease Kwik Kash's payday lending business.

Based on the foregoing Findings of Facts, the Commissioner makes the following:

CONCLUSIONS OF LAW

1. Pursuant to G.S. § 53-284(a), the Commissioner of Banks has jurisdiction over the Respondent and the subject matter of this action; and may, upon notice and opportunity for a hearing and issuing written findings, suspend or permanently revoke a check casher license for violation of Article 22 of Chapter 53 of the General Statutes, or any other applicable State or federal laws or rules.

2. Payday lending in North Carolina, the practice of arranging loans through acceptance of a post dated check not to

exceed \$300 dollars, with a maximum fee of \$15 per one hundred dollars borrowed, and repayable within a period of 30 days, was enacted in 1997 at G.S. § 53-281, and incorporated as part of the law to regulate check cashing businesses, Article 22 of Chapter 53 of the General Statutes. This provision of law, however, expired on August 31, 2001. Thereafter, there was no statutory authority for a person or entity to engage in payday lending in this State, thus the maximum rate of interest on consumer loans of up to \$600 was 36% per annum. This rate could only be charged by companies licensed by the Commission under the Consumer Finance Act, Article 15 of Chapter 53 of the General Statutes. Otherwise, the maximum interest rate on a general contract loan pursuant to G.S. § 24-1.1 is 16% per annum.

3. By continuing to engage in an extension of short term credit in return for one or more post dated checks, or a payday lending business, after August 31, 2001, Respondent, a licensed check casher, violated G.S. § 53-283(2), a provision of law which prohibits licensed check cashers from engaging in the business of making loans of money, or extensions of credit or other evidence of debt.

4. Respondent has never been licensed to engage in a consumer loan business. Thus, by making short term consumer loans of \$10,000 or less, and charging rates of interest in

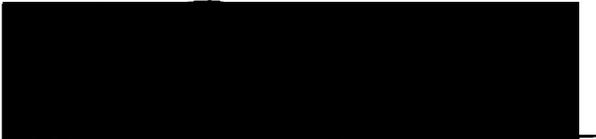
excess of those permitted by Chapter 24 of the General Statutes, violated the Consumer Finance Act at G.S. § 53-166(a).

5. Respondent, by making loans in excess of 585% per annum, violated North Carolina usury laws at G.S. § 24-1.1.

THEREFORE, IT IS ORDERED THAT the check casher license of Check Into Kwik Kask, Inc., No. 162, be and the same is hereby permanently revoked and the application by Check Into Kwik Kash, Inc., for authority to conduct a check cashing business at 145 West Main Street, Martin County, North Carolina, is denied.

PROVIDED FURTHER, the Commissioner shall retain jurisdiction over this matter, and the same shall remain open, to determine upon notice and opportunity for Kwik Kash to be heard in opposition, if any, of civil money penalties and restitution to consumers which may be ordered by the Commissioner for violation of Article 22 of Chapter 53.

This the 7th day of May, 2003.


Joseph A. Smith, Jr.
Commissioner of Banks