

7/17/13 Sent Regular
& Certified Mail

ORDER

BEFORE THE ADMINISTRATOR
STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF BANKING

TO: Archer Direct, LLC
1521 Concord Pike #300
Wilmington, DE 19803
Respondent

PURPOSE

This is an order issued by the Administrator, State of Wisconsin, Department of Financial Institutions, Division of Banking and directed to respondent.

JURISDICTION and AUTHORITY

The State of Wisconsin, Department of Financial Institutions, Division of Banking ("division") shall enforce all laws relating to the lending of money under s. 138.14, Stats., in the State of Wisconsin, and shall enforce and cause to be enforced every law relating to the supervision and control thereof. Sec. 220.02(2)(b), Stats.

The intent of s. 220.02(2)(b), Stats., is to give the division jurisdiction to enforce and carry out all laws relating to small loan companies or other loan companies or agencies. Sec. 220.02(3), Stats.

Respondent is not licensed under s. 138.14, Stats., with the division. Upon information and belief, respondent is located at the address indicated above.

Respondent is a regulated entity under the supervision and control of the division. Sec. 220.04(9)(a)2., Stats.

The division may issue any general or special order in execution of or supplementary to s. 138.14, Stats. Sec. 138.14(8)(a), Stats.

FINDINGS

The division finds as follows:

1. On or about March 11, 2013, the division received a complaint filed against respondent by Ms. (" "), a Wisconsin resident. The complaint included a copy of Ms. 's loan agreement with respondent. **Exs. 1 and 2.**

2. loan agreement indicates that she obtained a \$500 loan from respondent on January 17, 2013. The loan had an annual percentage of 1,368.75% and a due date of January 25, 2013. The agreement indicates that one payment in the amount of \$650 would be due on the due date if declined the option of

refinancing her loan. If refinancing was accepted, [redacted] would pay the finance charge of \$150 on her due date. [redacted]'s loan agreement also provided respondent with authorization to process an ACH debit to [redacted]'s bank account on her due date.

3. Pursuant to s. 138.14(1), Stats., "Payday loan" includes a transaction between an individual with an account at a financial establishment and another person, including a person who is not physically located in this state, in which the person agrees to accept the individual's authorization to initiate one or more electronic fund transfers from the account, to wait a period of time before initiating the electronic fund transfer or transfers, and to loan to the individual, for a term of 90 days or less, before initiating the electronic fund transfer or transfers, an amount that is agreed to by the individual.

4. Pursuant to s. 138.14(2), Stats., a person may not originate or service a payday loan involving a Wisconsin resident without first having obtained a payday lender license from the division for each place of business at which the person originates or services payday loans involving Wisconsin residents. The license is required for all payday loans made to a Wisconsin resident, regardless of whether the loan is made by face-to-face contact, mail, telephone, Internet, or any other means.

5. On March 13, 2013 and April 1, 2013, the division wrote to respondent regarding respondent's unlicensed payday lending activity. **Exs. 3 and 4.**

6. On or about April 9, 2013, the division received a letter from respondent's legal counsel, the Law Offices of Franke Schultz & Mullen ("FSM"). FSM indicated that [redacted]'s transaction does not concern a "payday loan" as that term is defined in s. 138.14, Stats., and indicated that the State of Wisconsin does not have jurisdiction over respondent because respondent is not a Wisconsin corporation, does not maintain any employees in Wisconsin, has never solicited a Wisconsin citizen for business, and has never purposely availed itself of Wisconsin law. FSM indicated that respondent has written off [redacted]'s account and marked it as paid in full. FSM did not respond to the division's request that respondent provide its assurance that it would no longer originate or service payday loans for Wisconsin residents nor did respondent issue a refund to [redacted] for all amounts [redacted] paid to respondent. **Ex. 5.**

7. On April 12, 2013, the division wrote to FSM and explained why [redacted]'s loan was a payday loan. The division asked FSM to provide their assurance that respondent refunded all amounts [redacted] paid to respondent and asked that respondent provide their assurance that it would stop originating and servicing Wisconsin payday loans until properly licensed. **Ex. 6.**

8. On or about June 4, 2013, the division received a letter from FSM restating that respondent has no contacts with the state of Wisconsin and the Department lacks jurisdiction. FSM also indicated that, pursuant to a choice-of-law provision in the agreement between respondent and [redacted] Wisconsin law is inapplicable. **Ex. 7.**

9. Respondent violated s. 138.14(2), Stats., by originating and servicing a payday loan involving a Wisconsin resident without first having obtained a payday lender license from the division.

10. Pursuant to s. 138.14(15)(b), Stats., if a person who is not licensed under s. 138.14, Stats., makes a payday loan to a customer, the loan is void, the customer is not obligated to pay any amounts owed on the loan, and the customer may recover from the person all amounts the customer has paid to the person.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED AS FOLLOWS:

Respondent shall not originate or service payday loans involving Wisconsin residents.

Respondent shall immediately discontinue any and all violations of s. 138.14, Stats., and ch. DFI-Bkg 75, Admin. Code.

Respondent shall refund to _____ any and all monies that have been paid to respondent by _____. The refund check shall be made payable to _____ and shall be forwarded to the division along with the voided loan agreement, a letter of explanation to _____ and a stamped envelope addressed to _____. The check, voided loan agreement, letter, and stamped envelope shall be received by the division no later than August 16, 2013.

For each Wisconsin resident for whom respondent originated or serviced a payday loan on or after January 1, 2011, respondent shall refund any and all moneys that the Wisconsin resident paid to respondent, and if the loan is unpaid, shall void said unpaid loan. Respondent shall forward to the division the voided loan agreements, refund checks, letters of explanation, and stamped envelopes addressed to each Wisconsin resident. The checks, voided loan agreements, letters and stamped envelopes must be received by the division by August 16, 2013.

The provisions of this order shall be binding upon respondent and respondent's directors, officers, employees, agents, successors, assigns, and other persons participating in the conduct of its affairs. The provisions of the order shall remain effective and enforceable except to the extent that, and until such time as, any provisions of this order shall have been modified, terminated, suspended, or set aside by the division.

The effective date of this order shall be the date it is served, and service is complete upon mailing. Secs. 227.48(1), Stats., and DFI—Bkg 11.09, Admin. Code.

Dated and mailed at Madison, Wisconsin this 17th day of July, 2013.

By: _____
Michael J. Mach, Administrator
Wisconsin Department of Financial Institutions
Division of Banking
P.O. Box 7876
201 W. Washington Avenue, Suite 500
Madison, WI 53707-7876
tel. (608) 266-0451
fax (608) 267-6889

APPEAL

The procedures to appeal this order are set forth in s. 227.42, Stats. Pursuant to s. 227.42(1), Stats., any person filing a written request with an agency for hearing shall have the right to a hearing which shall be treated as a contested case if:

- (a) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;
- (b) There is no evidence of legislative intent that the interest is not to be protected;
- (c) The injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and
- (d) There is a dispute of material fact.

All four criteria set for in s. 227.42(1), Stats., must be met for a person to have the right to a hearing. In particular, the attention of an individual or entity requesting a hearing is directed to the requirement to demonstrate that there is a dispute of material fact regarding the basis or bases for the action being taken by the division.

The request shall be sent to:

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