

Terms Completed

ORDER SUMMARY – Case Number: C-06-075

Name(s): WE 3 Holdings, LLC dba Payday Express;
Cathy Theiss
John Clark
Michael McKee

Order Number: C-06-075-06-CO01

Effective Date: August 4, 2006

License Number: DFI: 22868
Or NMLS Identifier [U/L] (Revoked, suspended, stayed, application denied or withdrawn)
 If applicable, you must specifically note the ending dates of terms.

License Effect: Revoked -stayed until August 4, 2008

Not Apply Until: _____

Not Eligible Until: _____

Prohibition/Ban Until: _____

Investigation Costs	\$276.04	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date July 25, 2006
Fine	\$1,000	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date July 25, 2006
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Judgment	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Satisfaction of Judgment Filed?		<input type="checkbox"/> Y <input type="checkbox"/> N		
No. of Victims:				

Comments: _____

1
2 **STATE OF WASHINGTON**
3 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
4 **CONSUMER SERVICES DIVISION**

5 IN THE MATTER OF DETERMINING
6 Whether there has been a violation of the
7 Check Cashers and Sellers of Washington by:

8 WE 3 HOLDINGS, LLC, d/b/a PAYDAY
9 EXPRESS and MICHAEL J. MCKEE, Owner and
10 Member, JOHN E. CLARK, Owner and Member,
11 and CATHY A. THEISS, Owner and Member,

12 Respondents.

NO. C-06-075-06-CO01

CONSENT ORDER

13 COMES NOW the Director of the Department of Financial Institutions (Director), through his designee
14 Chuck Cross, Division Director, Division of Consumer Services, and We 3 Holdings, LLC, d/b/a Payday Express,
15 Michael J. McKee, John E. Clark, and Cathy A. Theiss (hereinafter Respondents), by and through their attorney of
16 record, Scott M. Kane, and finding that the issues raised in the captioned matter may be economically and efficiently
17 settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter 31.45 of Revised
18 Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

19 **AGREEMENT AND ORDER**

20 The Department of Financial Institutions, Division of Consumer Services (Department) and Respondents
21 have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-06-075-06-SC01
22 (Statement of Charges) entered May 17, 2006 (copy attached hereto). Pursuant to chapter 31.45 RCW, the Check
23 Cashers and Sellers Act (Act) and RCW 34.05.060 of the Administrative Procedure Act, Respondents hereby agree to
24 the Department's entry of this Consent Order and further agree that the issues raised in the above captioned matter
25 may be economically and efficiently settled by entry of this Consent Order. The parties intend this Consent Order to
fully resolve all allegations raised in the Statement of Charges entered May 17, 2006.

CONSENT ORDER
We 3 Holdings, LLC, d/b/a Payday Express, Michael J.
McKee, John E. Clark, and Cathy A. Theiss
NO. C-06-075-06-CO01

1

DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200

1 Based upon the foregoing:

2 A. **Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter of the
3 activities discussed herein.

4 B. **Waiver of Hearing.** It is AGREED that Respondents have been informed of the right to a hearing
5 before an administrative law judge, and that Respondents have waived the right to a hearing and any and all
6 administrative and judicial review of the issues raised in this matter, or of the resolution reached herein.

7 C. **Consent to Be Bound By Order.** It is AGREED that the parties shall be bound by the terms and
8 conditions of this Consent Order as set forth herein.

9 D. **License Revocation (Stayed).** It is AGREED the Respondents are subject to a revocation of their
10 license to operate as a check casher or seller with a small loan endorsement.

11 It is further AGREED that Respondents' license revocation shall be stayed for the duration of this Consent
12 Order subject to the Department's authority to lift the stay and impose the license revocation pursuant to paragraph G
13 of this Consent Order.

14 It is further AGREED that if, after two (2) years from the date of entry of this Consent Order, the stay has
15 not been previously lifted, and the license revocation has not been previously imposed, and if a notification to lift the
16 stay or proceeding to lift the stay is not then pending by the Director to impose the license revocation, and if
17 Respondents have provided the Department with a written statement signed under penalty of perjury of the laws of
18 the State of Washington that they have complied with the terms and conditions of this Consent Order, then, in such
19 events, the Department shall consider this paragraph of this Consent Order fully performed and the stayed license
20 revocation will not be imposed on the Respondents.

21 It is further AGREED that if, after two (2) years from the date of entry of this Consent Order, notification to
22 lift the stay or proceeding to lift the stay is pending by the Director to impose the license revocation, then those
23 proceedings shall continue according to the terms of this Consent Order, as discussed in paragraph G below.
24
25

1 E. **Fine (Partially Stayed).** It is AGREED that Respondents are subject to a fine by the Department in the
2 amount of \$9,000 for failing to file and maintain a surety bond or approved alternative with the Department in
3 violation of RCW 31.45.030(5), calculated at \$100 per day for 90 days

4 It is further AGREED that Respondents shall pay to the Department \$1,000 of the total fine in the form of a
5 cashier's check that shall be made payable to the "Washington State Treasurer" and that shall be paid to the
6 Department immediately upon entry of this Consent Order, and that the balance of the fine (\$8,000) shall be stayed
7 for a period of two (2) years from the date of entry of this Consent Order, subject to the Department's authority to lift
8 the stay and impose the balance of the fine (\$8,000) discussed in paragraph G of this Consent Order.

9 It is further AGREED that if, upon expiration of said two (2) year period, the stay has not been previously
10 lifted, and the balance of the fine (\$8,000) has not been previously imposed, and if a notification to lift the stay or
11 proceeding to lift the stay is not then pending by the Director to impose the balance of the fine (\$8,000), then, in such
12 events, the Department shall consider this paragraph of this Consent Order fully performed and the stayed portion of
13 the fine (\$8,00) will not be collected from Respondents.

14 It is further AGREED that, if on the expiration of said two (2) year period a notification to lift the stay or
15 proceeding to lift the stay is pending by the Director to impose the balance of the fine (\$8,000), then those
16 proceedings shall continue according to the terms of this Consent Order, as discussed in paragraph G below.

17 F. **Prohibition from Participation in the Industry (Stayed).** It is AGREED that Respondents are subject
18 to a prohibition from participating in the conduct of the affairs of any check casher or seller subject to licensure by
19 the Director, in any manner, for a period of five (5) years from the date of entry of this Consent Order.

20 It is further AGREED that this prohibition shall be stayed for the duration of this Consent Order subject to
21 the Department's authority to lift the stay and impose the five (5) year prohibition pursuant to paragraph G of this
22 Consent Order.

23 It is further AGREED that if, after two (2) years from the date of entry of this Consent Order, the stay has
24 not been previously lifted, and the five (5) year prohibition has not been previously imposed, and if a notification to
25 lift the stay or proceeding to lift the stay is not then pending by the Director to impose the five (5) year prohibition,

1 and if Respondents have provided the Department with a written statement signed under penalty of perjury of the
2 laws of the State of Washington that they have complied with the terms and conditions of this Consent Order, then, in
3 such events, the Department shall consider this paragraph of this Consent Order fully performed and the stayed five
4 (5) year prohibition will not be imposed on the Respondents.

5 It is further AGREED that if, after two (2) years from the date of entry of this Consent Order, notification to
6 lift the stay or proceeding to lift the stay is pending by the Director to impose the five (5) year prohibition, then those
7 proceedings shall continue according to the terms of this Consent Order, as discussed in paragraph G below.

8 **G. Lifting of Stay and Imposing Sanctions.** It is AGREED that:

- 9 1. If the Department determines that Respondents are in violation of RCW 31.45.030(5), or
10 any of the terms and conditions of this Consent Order and the Department accordingly seeks
11 to lift the stay and impose the balance of the fine (\$8,000) and impose the license
12 revocation and five (5) year prohibition, the Department first will notify Respondents in
13 writing of its determination.
- 14 2. Respondents will be afforded ten (10) business days from the date of receipt of the
15 Department's notification to request in writing an expedited administrative hearing to be
16 held before an Administrative Law Judge (ALJ) from the Office of Administrative Hearings
17 (OAH).
- 18 3. Respondents' request for hearing must be sent to the Department and received by the
19 Department within ten (10) business days of the date of the receipt of the Department's
20 notice.
- 21 4. Respondents, in addition to a request for hearing, may provide a written response to include
22 any information pertaining to the alleged noncompliance.
- 23 5. The administrative hearing shall be expedited and follow the timing and processes
24 described in this Consent Order.
- 25 6. If Respondents do not request the expedited hearing within the stated time, the Department
will immediately impose the license revocation, impose the balance of the fine (\$8,000),
impose the five (5) year prohibition, and pursue whatever action it deems necessary to
collect the balance of the fine and impose the prohibition. The fine is due immediately
upon demand by the Department; Respondents must make payment by cashier's check
payable to the "Washington State Treasurer."
7. If requested, the hearing will be held within fifteen (15) business days (or as soon as the
schedule of the ALJ permits) from the due date for Respondents' request for hearing or
from the date of receipt of Respondents' timely request for hearing, whichever is sooner.
The parties will accommodate the prompt scheduling of the hearing.

1 8. The scope and issues of the hearing are limited solely to whether or not Respondents are in
2 violation of RCW 31.45.030(5), or any of the terms and conditions of this Consent Order.

3 9. At the conclusion of the hearing, the ALJ will issue an initial decision. Either party may
4 file a Petition for Review with the Director of the Department.

5 10. The Department's notification will include:

- 6 a) A description of the alleged noncompliance
- 7 b) A statement that because of the noncompliance, the Department seeks to lift the
8 stay and impose the revocation of Respondents' license, impose the balance of
9 the fine (\$8,000), and impose the five (5) year prohibition
- 10 c) The opportunity for Respondents to contest the Department's determination of
11 noncompliance in an administrative hearing before an ALJ of OAH
- 12 d) A copy of this Consent Order. The notification and hearing process provided
13 in this Consent Order applies only to this Consent Order. It is solely provided
14 in the event Respondents choose to contest the Department's determination of
15 noncompliance.

16 **H. Compliance Examinations.** It is AGREED that We 3 Holdings, LLC, d/b/a Payday Express is subject
17 to compliance examinations for two (2) years from the date of entry of this Consent Order to be conducted by
18 the Department at the Department's discretion (not to exceed one compliance examination per year), at
19 Respondents' expense. Respondents further AGREE to promptly respond and address any and all issues, if
20 any, identified in the compliance examinations to the satisfaction of the Department.

21 **I. Future Applications.** It is AGREED that the conduct giving rise to the issuance of the above-referenced
22 Statement of Charges will not be considered by the Department in the assessment of any future applications for check
23 cashier or seller licenses or small loan endorsements in the state of Washington in the event Respondents wish to
24 pursue such applications.

25 **J. Investigation Fee.** It is AGREED that Respondents shall pay to the Department an investigation fee in
the amount of \$276.04, calculated at \$69.01 per hour for four (4) staff hours devoted to the examination and
investigation in the form of a cashier's check made payable to the "Washington State Treasurer" upon entry of this
Consent Order.

1 **K. Notification of Current Address and Telephone Number(s).** It is AGREED that during the entire
2 term of this Consent Order Respondents must notify the Department in writing of any changes in their current main
3 address and telephone number(s) within five (5) days of such change.

4 **L. Authority of Department.** It is AGREED that nothing in this Consent Order shall be construed as
5 preventing the Department from fully exercising its authority and enforcing any provision of chapter 31.45 RCW
6 and chapter 208-630 WAC.

7 **M. Authority to Execute Order.** It is AGREED that the undersigned Respondents have represented and
8 warranted that they have the full power and right to execute this Consent Order on behalf of the parties represented.

9 **N. Non-Compliance with Order.** It is AGREED that Respondents understand that failure to abide by
10 the terms and conditions of this Consent Order may result in further legal action by the Director. In the event
11 of such legal action, Respondents may be responsible to reimburse the Director for the cost incurred in
12 pursuing such action, including but not limited to, attorney fees.

13 **O. Complete Cooperation with Department.** During the entire term of this order Respondents shall
14 cooperate fully, truthfully and completely with the Department. A failure to cooperate fully, truthfully and
15 completely is a breach of this order.

16 **P. Voluntarily Entered.** It is AGREED that the undersigned Respondents have voluntarily entered into
17 this Consent Order, which is effective when signed by the Director's designee.

18 **Q. Completely Read, Understood, and Agreed.** It is AGREED that Respondents have read this Consent
19 Order in its entirety and fully understand and agree to all of the same.

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

RESPONDENTS:

We 3 Holdings, LLC, d/b/a Payday Express
By:

Michael J. McKee 7-21-2006
Date
Michael J. McKee
Date
Owner and Member

Michael J. McKee 7-21-2006
Date
Michael J. McKee
Date
Individually

John E. Clark 7/21/2006
Date
John E. Clark
Date
Owner and Member

John E. Clark 7/21/2006
Date
John E. Clark
Date
Individually

Cathy A. Theiss 7-21-06
Date
Cathy A. Theiss
Date
Owner and Member

Cathy A. Theiss 7-21-06
Date
Cathy A. Theiss
Date
Individually

DO NOT WRITE BELOW THIS LINE

THIS ORDER ENTERED THIS 4th DAY OF ^{August} ~~July~~, 2006.



CHUCK CROSS

CHUCK CROSS
Director
Division of Consumer Services
Department of Financial Institutions

1
2
3
4
5
6
7
8
9

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

10
11
12
13
14

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Check Cashers and Sellers Act of Washington by:

NO. C-06-075-06-SC01

15
16
17
18
19
20
21
22
23
24
25

WE 3 HOLDINGS, LLC, d/b/a PAYDAY
EXPRESS and MICHAEL J. MCKEE, Owner
and Member, JOHN E. CLARK, Owner and
Member, and CATHY A. THEISS, Owner and
Member,

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO REVOKE LICENSE, IMPOSE FINE,
BAN FROM INDUSTRY, AND COLLECT
INVESTIGATION FEE

Respondents.

INTRODUCTION

Pursuant to RCW 31.45.110 and RCW 31.45.200, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.45 RCW, the Check Cashers and Sellers Act (Act). After having conducted an investigation pursuant to RCW 31.45.100, and based upon the facts available as of May 17, 2006, the Director institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents.

A. **We 3 Holdings, LLC, d/b/a Payday Express (We 3 Holdings, LLC)** was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a check casher with a small loan endorsement on December 28, 2001, and has continued to be licensed to date.

Respondent **We 3 Holdings, LLC** is licensed to conduct the business of a check casher with a small loan endorsement at 9623 32nd Street SE, Building B, Suite 101, Everett, WA 98205.

B. **Michael J. McKee (McKee)** is Owner and Member of Respondent **We 3 Holdings, LLC**.

C. **John E. Clark (Clark)** is Owner and Member of Respondent **We 3 Holdings, LLC**.

D. **Cathy A. Theiss (Theiss)** is Owner and Member of Respondent **We 3 Holdings, LLC**.

1 **1.2 Failure to Maintain Bond.** On October 14, 2002, the Department received notice from St. Paul Fire
2 and Marine Insurance Company that Respondent We 3 Holding, LLC's surety bond would be cancelled,
3 effective November 15, 2002. To date, despite Respondents' representations and Department requests,
4 Respondents have failed to provide the Department with the required surety bond or an approved alternative.

5 **1.3 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by
6 Respondents continues to date.

7 **II. GROUNDS FOR ENTRY OF ORDER**

8 **2.1 Requirement to Maintain Surety Bond.** Based on the Factual Allegations set forth in Section I
9 above, Respondents are in apparent violation of RCW 31.45.030(5) and WAC 208-630-030 for failing to file
10 and maintain a surety bond or approved alternative with the Department.

11 **2.2 Authority to Revoke License.** Pursuant to RCW 31.45.110(1)(b),(f),(l) and (2)(a), the Director may
12 revoke a license if a licensee is violating or has violated the Act including rules and orders, fails to maintain the
13 required bond, or commits any act or engages in conduct that demonstrates incompetence or untrustworthiness,
14 or is a source of injury or loss to the public.

15 **2.3 Authority to Impose Fine.** Pursuant to RCW 31.45.110(1)(b),(f),(l) and (2)(c), the Director may impose
16 a fine, not to exceed one hundred dollars per day for each day's violation of the Act, on any licensee or
17 applicant, or any director, officer, sole proprietor, partner, controlling person, or employee of a licensee or
18 applicant, that is violating or has violated the Act including rules and orders, fails to maintain the required bond,
19 or commits any act or engages in conduct that demonstrates incompetence or untrustworthiness, or is a source
20 of injury or loss to the public.

21 **2.4 Authority to Remove and Ban from the Industry.** Pursuant to RCW 31.45.110(1)(b),(f),(l) and
22 (2)(e), the Director may remove from office or ban from participation in the conduct of the affairs of any
23 licensee any director, officer, sole proprietor, partner, controlling person, or employee of a licensee that is
24 violating or has violated the Act including rules and orders, fails to maintain the required bond, or commits any
25

1 act or engages in conduct that demonstrates incompetence or untrustworthiness, or is a source of injury or loss
2 to the public.

3 **2.5 Authority to Collect Investigation Fee.** Pursuant to RCW 31.45.050(1), RCW 31.45.100, WAC 208-
4 630-015, WAC 208-630-020, WAC 208-630-023 and WAC 208-630-02303, the Director shall collect from the
5 licensee the actual cost of an examination or investigation of the business, books, accounts, records, files, or
6 other information of a licensee or person who the Director has reason to believe is engaging in the business
7 governed by the Act. The investigation charge will be calculated at the rate of sixty-nine dollars and one cent
8 (\$69.01) per hour that each staff person devoted to the investigation, plus actual expenses.

9 III. NOTICE OF INTENTION TO ENTER ORDER

10 Respondents' violations of the provisions of chapter 31.45 RCW and chapter 208-630 WAC, as set forth in
11 the above Factual Allegations and Grounds for Entry of Order, constitute a basis for the entry of an Order under
12 RCW 31.45.110 and RCW 31.45.200. Therefore, it is the Director's intention to ORDER that:

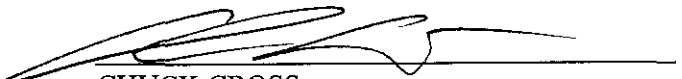
- 13 **3.1** Respondent We 3 Holdings, LLC, d/b/a Payday Express's license to conduct the business of a check
14 cashier with a small loan endorsement be revoked
- 15 **3.2** Respondents We 3 Holdings, LLC, d/b/a Payday Express, Michael J. McKee, John E. Clark, and Cathy A.
16 Theiss jointly and severally pay a fine of \$9,000 for failing to file and maintain a surety bond or approved
17 alternative with the Department in violation of RCW 31.45.030(5), calculated at \$100 per day for 90 days
- 18 **3.3** Respondent We 3 Holdings, LLC, d/b/a Payday Express be banned from participation in the conduct of the
19 affairs of any check cashier or check cashier with a small loan endorsement or check seller subject to
20 licensure by the Director, in any manner, for a period of five (5) years
- 21 **3.4** Respondent Michael J. McKee be banned from participation in the conduct of the affairs of any check
22 cashier or check cashier with a small loan endorsement or check seller subject to licensure by the Director, in
23 any manner, for a period of five (5) years
- 24 **3.5** Respondent John E. Clark be banned from participation in the conduct of the affairs of any check cashier or
25 check cashier with a small loan endorsement or check seller subject to licensure by the Director, in any
manner, for a period of five (5) years
- 3.6** Respondent Cathy A. Theiss be banned from participation in the conduct of the affairs of any check cashier
or check cashier with a small loan endorsement or check seller subject to licensure by the Director, in any
manner, for a period of five (5) years
- 3.7** Respondents We 3 Holdings, LLC, d/b/a Payday Express, Michael J. McKee, John E. Clark, and Cathy A.
Theiss jointly and severally pay an investigation fee in the amount of \$276.04, calculated at \$69.01 per
hour for the four (4) staff hours devoted to the investigation.

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

IV. AUTHORITY AND PROCEDURE


This Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Impose Fine, Ban from Industry, and Collect Investigation Fee (Statement of Charges) is entered pursuant to the provisions of RCW 31.45.110 and RCW 31.45.200, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

Dated this 17th day of May, 2006.



CHUCK CROSS
Director
Division of Consumer Services
Department of Financial Institutions


Presented by:



Rayne Tronset-Moore
Financial Legal Examiner



Approved by:



JAMES R. BRUSSELBACK
Enforcement Chief