

**STATE OF NEW MEXICO
REGULATION AND LICENSING DEPARTMENT
FINANCIAL INSTITUTIONS DIVISION**

IN THE MATTER OF:)	
)	FID NO: 2015-05
BARRY BLACKWELL,)	
)	ORDER DENYING RENEWAL
RESPONDENT.)	OF LICENSE

INTRODUCTION

On April 17, 2015, the Director of the Financial Institutions Division (“the Division”) for the State of New Mexico, acting by and pursuant to the authority of the New Mexico Small Loan Act, Section 15 of Chapter 58 of the New Mexico Statutes Annotated, issued an administrative notice of contemplated action to deny Small Loan Company license renewal for BARRY BLACKWELL (“Respondent”) under administrative cause number 2015-05.

On April 22, 2015, Respondent was duly served with a true copy of the Notice of Contemplated Action to Deny License Renewal and Notice of Hearing by United States certified mail, postage prepaid, and addressed to Respondent at the last known address: 905 W. 2nd St., Roswell, NM 88203.

The Hearing was set for and held on May 1, 2015 at 10:00 am at 2550 Cerrillos Rd., Santa Fe, NM 87505.

NOW THEREFORE, after consideration of the examination that began on or about January 20, 2015 and the evidence presented by the Notice of Contemplated Action and by Respondent in the hearing pursuant to §58-15-5 NMSA 1978, the Director hereby issues the following Findings of Fact, Conclusions of Law and Order Denying License Renewal.

I. FINDINGS OF FACT

1.1 On or about January 20, 2015, an examination of Barry Blackwell (“Respondent”) doing business as Blackwell, Barry, dba B & R Enterprises – “Cash Now” was commenced by the Financial Institutions Division of Regulation and Licensing. The following violations were cited immediately:

- a) Insufficient fund fees exceeded the maximum allowed of \$15.00. §58-15-33 NMSA 1978.
- b) Overstated Annual Percentage Rate. §58-15-32 (I) and Truth in Lending Act (TILA).

2.1 Verification of active loans on the required database, indicated that no loans had been entered on the database since December 19, 2008. As a result of this examination, it was discovered that Respondent had failed to report to the certified consumer reporting service (Veritec), as required by §58-15-37 NMSA 1978 and 12.18.7.15 NMAC.

3.1 The Report of Examination was issued on March 3, 2015.

4.1 Respondent remitted a response to the ROE on March 13, 2015 in which he stated that he apologized for his misimpression that only title and installment loans were required to report but that he was “up and running with veritec [*sic*] 100%.”

5.1 Respondent reported payday loans on the Veritec database until December 18, 2008 indicating that he was aware of the requirement to report payday loans on Veritec.

6.1 A report from Veritec dated March 16, 2015 indicated that Respondent had not complied with the requirements of §58-15-33 NMSA 1978 as stated in his letter.

7.1 Based on the anticipated volume and significance of the violations cited in the Report of Examination, the scope was expanded further and in the 20 additional loan files that were reviewed, 358 violations were discovered. The violations are summarized as follows:

a. Respondent allowed loans to renew, refinance, or extend rather than requiring payment in full or offering a payment plan. This violation was committed 139 times in the 20 files and is a violation of Section 58-15-34 (A) NMSA 1978.

b. Respondent did not require payment in full when the loan was due but allowed interest only payments or partial payments and charged the consumer the fees with each renewal, refinance, or extension. Respondent did not, however, enter into a new contract with each renewal, refinance, or extension. This violation was committed 139 times in the 20 files and is a violation of Section 58-15-34 (E) NMSA 1978.

c. Respondent failed to enter payday loans on the Veritec system or update the loans as required by the Small Loan Act. This violation was committed in 18 of the 20 files and is a violation of Section 58-15-37 (A), (B), (C) NMSA 1978. Respondent entered two loans on the Veritec database on or about March 31, 2015, which are the only compliant loans since 2008.

d. Respondent made loans to consumers that exceeded 25% of their gross monthly income. This violation was committed 15 times in the 20 files and is a violation of Section 58-15-32 (A) NMSA 1978.

e. Respondent made loans for terms of less than 14 days, however, failed to obtain written acknowledgment from the consumer. This violation was committed 22 times in the 20 files and is a violation of Section 58-15-32 (B) (2) NMSA 1978.

- f. Respondent made one loan with a term in excess of 35 days in the 20 files reviewed. §58-15-32 (b) (1).
- g. Respondent failed to provide receipts of payments to consumers. §58-15-32 (E) NMSA 1978.
- h. Respondent charged a \$25 fee for insufficient funds. The New Mexico Small Loan Act allows for a \$15 fee for insufficient funds. §58-15-33 (E) NMSA 1978.
- i. Respondent failed to correctly disclose the Annual Percentage Rate (APR). This violation occurred 38 times in the 20 files reviewed and is a violation of Section 58-15-32 (I) NMSA 1978 and Truth in Lending Act: 12 C.F.R. 226.14(a).
- j. Respondent did not have mandatory consumer brochure available to all borrowers near the front entrance of the store. NMAC 12.18.3.8 (A), (B).
- k. Respondent failed to obtain current income documentation for borrowers. NMAC 12.18.7.10.
- l. Respondent failed to search the database to insure that consumers were not indebted, for payday loans, elsewhere which would have made them ineligible for a payday loan from Respondent. §58-15-37 (A) NMSA 1978, NMAC 12.18.7.14 (A). Respondent entered two loans on the Veritec database on or about March 31, 2015, which are the only compliant loans since 2008.
- m. Respondent failed to obtain the borrower's signature on loan contracts that were typically for renewals. Renewals are not a permissible option for payday loans pursuant to the Small Loan Act. §58-15-34 (A). This violation occurred 44 times in the 20 files reviewed and the loans are voidable.

8.1 Respondent filed an application for renewal of license on April 2, 2015.

II. CONCLUSIONS OF LAW

The Director CONCLUDES that:

1.2 Paragraphs 1.1 through 8.1 enumerated in Section I above, are re-alleged and are incorporated by reference herein.

2.2 Licenses; investigation of application; issuance; denial; issuance of renewal license;

denial of renewal license Respondent fails to meet the requirements of § 58-15-5 (H)

NMSA 1978, which states in relevant part:

A written application for license renewal shall be filed on or before March 31 of each year, and thereupon the director shall investigate the facts and review the files of examinations of the applicant made by the director's office and of complaints filed by borrowers, if any. The director shall deliver a renewal license to the applicant if the director finds that:

- (1) no valid complaints of violations or abuses of the New Mexico Small Loan Act of 1955 or of the regulations of the director promulgated under that act have been filed by borrowers;**
- (2) examinations of the affairs of the applicant indicate that the business has been conducted and operated lawfully and efficiently within the declared purposes and spirit of the New Mexico Small Loan Act of 1955; and**
- (3) the financial responsibility, experience and general fitness and character of the applicant remain such as to command the confidence of the public and to warrant the belief that the business will continue to be operated lawfully and efficiently within the purposes and spirit of the New Mexico Small Loan Act of 1955;**

3.2 Respondent admitted to all of the factual allegations with the exception of 8.1 as his receipt indicates that the renewal application was mailed prior to March 31, 2014 and was, therefore, timely filed.

III. ORDER

NOW, THEREFORE, THE DIRECTOR HEREBY ORDERS:

Pursuant to Section 58-15-5 (H) NMSA 1978, the Director must find that Respondent meets the requirements of Section 58-15-5 (H) (1), (2), and (3). The Director hereby denies Respondent a license renewal due to conduct that demonstrates reckless disregard for the requirements of the Small Loan Act Pursuant to Section 58-15-5 (I) NMSA 1978. The Director orders that fees that were collected by Respondent, in violation of the Act, be refunded or applied to the principal owed to Respondent. A calculation of the fees to be refunded is attached hereto and becomes a part of this order. Respondent remains licensed until June 30, 2015. Respondent is prohibited from entering into new loan agreements either with new customers or existing customers. Respondent will, however, be permitted to collect any balances that remain after application of refunded fees, that are collectible prior to June 30, 2015. Respondent is ordered to cease business on July 1, 2015. Small loan business that is conducted, by Respondent, after July 1, 2015 is considered unlicensed activity and will be referred to the proper law enforcement agency.

IT IS SO ORDERED.



Cynthia Richards
Director
Financial Institutions Division

May 6, 2015

Date

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing to be delivered by certified mail to the Respondent's registered agent, listed below, on or before the ____ day of May, 2015.

Valerie Hayas