STATE OF NEWMEXICO REGULATION AND LICENSING DEPARTMENT FINANCIAL INSTITUTIONS DIVISION

IN THE MATTER OF:)	
ENCHANTED PROPERTIES, LLC,)	FID NO. 2018-SL-02
D/B/A CASH CORRAL, LLC,)	
SMALL LOAN LICENSE NOS. 01388,)	FINAL ORDER
01389 AND 01422,)	REVOCATION OF LICENSES
Respondent.)	

INTRODUCTION AND BACKGROUND

Pursuant to the New Mexico Small Loan Company Act of 1955("SLA"), §58-15-1 NMSA 1978, et seq, ("the Act"), the Director of the Financial Institutions Division ("the FID") of the State of New Mexico is responsible for the administration of the Act, including making determinations on applications for licensure, renewals of licensure, and revocations of licensure. Respondent, Enchanted Properties, LLC, D/B/A Cash Corral, LLC, has been licensed in the state of New Mexico under the Act to operate small loan businesses under two (2) separate licenses: No. 01389 (Tucumcari) and No. 01422 (Grants). Respondent previously held a third SLA license No. 01388 (Belen), which expired on June 30, 2018, which Respondent chose not to renew. After conducting an examination of Respondent's licensed locations for Small Loan License Nos. 01389 and 01422, and conducting an investigation for renewal of such licenses, the FID caused to be served upon the Respondent a Notice of Contemplated Action proposing the licenses be revoked and that renewal of the licenses be denied, and stating the grounds for the proposed revocations and denials. On December 20, 2018, before Hearing Officer Max Shepherd, the Respondent was afforded a full and appropriate hearing on the proposed actions to revoke and to deny license renewal by the FID. At the administrative hearing, the FID presented facts, evidence and testimony in support of the proposed revocations and denials of renewal of licensure; the Respondent was provided an opportunity to fully examine all evidence, to cross-examine the FID's witnesses and to present such argument and testimony in Respondent's favor. On the date of January 31, 2019, the FID received from Hearing Officer Max Shepherd the written "Hearing Officer's Report" for review and final determination on this matter by Director of the Financial Institutions Division Christopher Moya.

DETERMINATION

The FID hereby provides notice to the Respondent of the final determination of Director Christopher Moya revoking Small Loan license No. 01389 (Tucumcari) and license No. 01422 (Grants). In support of the Director's determination, the FID asserts as follows:

I. FINDINGS OF FACT

- At the hearing conducted on December 20, 2018, the FID called David Mora, Consumer Industry Manager for the FID, to testify. Respondent called Mr. Phillip Ferrant, Ms.
 Gallegos and Ms. Hines to testify. The Respondent did not tender any exhibits.
 The FID submitted the following exhibits at the hearing, which were made part of the record with no objection from Respondent:
 - Exhibit 1. Report of Examination of Respondent dated November 29, 2016;
 - Exhibit 2. Report of Examination of Respondent dated July 20, 2017;
 - Exhibit 3. A copy of the Notice of Contemplated Action, dated October 4, 2018;
 - Exhibit 4. A copy of NMSA 1978, §58-15-2;
 - Exhibit 5. A copy of NMSA 1978, §58-15-5;
 - Exhibit 6. A copy of NMSA 1978, § 58-15-6;
 - Exhibit 7. A copy of NMSA 1978, § 58-15-32;

Exhibit 8. A copy of NMSA 1978, § 58-15-33;

Exhibit 9. A copy of NMSA 1978, § 58-15-34;

Exhibit 10. A copy of NMSA 1978, §58-15-35;

Exhibit 11. A copy of NMSA 1978, § 58-15-36;

Exhibit 12. A copy of NMSA 1978, § 58-15-37;

Exhibit 13. A copy of NMSA 1978, § 58-15-38; and

Exhibit 14. A copy of 12.18.7.1 thru 12.18.7.16.

[Note: The statutes and rules listed in Exhibits 4 through 14 were the applicable laws in effect throughout calendar years 2016 and 2017, the period of time applicable to the issues under consideration for the above-captioned matter.]

- 2. Licensing year 2016 examinations of the three licensed locations operated by the Respondent at that time were conducted by FID Examiner Melissa Baca. The examinations began on November 29, 2016, and were concluded on February 27, 2017, with the Report of Examination ("ROE") released on March 10, 2017.
- 3. The Report of Examination for the 2016 licensing year exams set forth "Matters That Required Attention." [Exhibit 1.] These matters consisted of violations of §12.18.3.8 A & B of NMAC and NMSA 1978, §58-15-6 (A). The "Matters That Required Attention" on page 4 of Exhibit 1 only referred to Respondent's location in Grants, NM, while the matters cited on page 5 of Exhibit 1 referred to all three of Respondent's locations.
- 4. NMSA 1978, § 58-15-5 (F) states that as part of the privilege of being a small loan licensee, the licensee must demonstrate strong character and general fitness. To assist the Respondent in meeting its obligation of demonstrating strong character and general fitness, the examiner also conducted a review Respondent's business practices and

- procedures and included her findings in the ROE section headed "Recommended Control and Risk Management Procedures". This section set forth a discussion of the Respondent's practices and procedures that the examiner found to be problematic and thus suggesting a possible lack of strong character and fitness. [Pages 6-8 of Exhibit 1.]
- 5. Among the "Recommended Control and Risk Management Procedures" cited in Exhibit 1, page 7, as problematic was the language in Respondent's loan contracts which was found to be confusing and could lead barrowers to claim Respondent was violating the Unfair Practices Act, specifically NMSA 1978, § 57-12-1 (E)(1) and § 57-12-3. The recommendation was made that Respondent remove this language from Respondent's loan contract. The language at issue stated:
 - "I understand that by signing this contract I give Enchanted Properties, LLC dba Cash Corral, LLC full permission to debit my checking account electronically, if and when I do not pick up my check by the date promised in this contract."
- 6. Specifically, the concern identified in Exhibit 2 was that the cited language could lead a borrower to think he or she was getting a payday loan under NMSA 1978, § 58-15-2 (H) and § 58-15-35, which was not the case.
- 7. At the exit conference held on February 2, 2017, Mr. Ferrant, representing the Respondent, agreed to address the issues cited in "Matters That Require Attention."
 [Exhibit 1, page 3.] Mr. Ferrant was also required to submit written documentation to the Division setting forth the corrective actions he had taken to address the above-cited matters.
- 8. On July 17, 2017, Examiner Baca conducted a second examination of Respondent's three locations following the same procedures followed during the examination in 2016.
 [Exhibit 2.] During this examination in "Matters Requiring Immediate Attention,"

- Examiner Baca found that Respondent had accepted personal checks tendered by consumers and Respondent had agreed in writing to defer presentment of the checks until the date agreed to by the Respondent and the consumer.
- Licensees making payday loans were required to comply with the provisions of the SLA that were in effect at that time related to payday loans.
- 10. The determination was made that the Respondent was not complying with the statutory requirements for payday loans during the applicable time period. [Pages 4 and 5 of Exhibit 2.]
- 11. An exit conference was held on August 23, 2017, following the second examination of Respondent. In attendance at this exit conference were Ms. Baca, Mr. Mora for the FID, and Mr. Ferrant representing the Respondent. At this conference, Mr. Ferrant agreed to immediately discontinue the acceptance of post-dated checks to secure single payment loan agreements. [Page 3, Exhibit 2.]
- 12. However, during a follow up visit to the Respondent's Belen location the store manager disclosed to Ms. Baca that the Respondent had accepted checks from its borrowers with the same posted date as the loan origination. Examiner Baca requested, and was then given, two additional loan files that were originated after the exit conference. Both files contained a copy of an accepted post-dated check, one of which had already been deposited by the Respondent. [Page 3, Exhibit 2.]
- 13. Respondent was further found to be at risk of violating the Military Lending Act of 2007 (10 U.S. Code §987) in that Respondent was not requiring all borrowers to formally attest if they or any member of their immediate family were actively serving in the U.S. Military. The recommendation was made that Respondent avoid this risk by using a "Safe

- Harbor" by verifying the applicant's military affiliation through the MLA website. [Page 20, Exhibit 2.]
- 14. In addition to the cited statutory violations, the conclusion was reached that Respondent was, in fact, making loans constituting "payday" loans under the statutes of the SLA in effect at that time. What Respondent characterized as "installment loans" were actually in violation of the statutory and New Mexico Administrative Code provisions related to payday loans in effect at the time. These violations are set forth under "Matters Requiring Immediate Attention" in Exhibit 2.
 - a. NMSA 1978, § 58-15-33 (B) and (C). Respondent was charging fees in excess of those allowed for payday loans. [Page 6, Exhibit 2.] The examination of Respondent's business practices established that Respondent had been accepting postdated check with loans that by definition made the loans payday loans as far back as January 1, 2016 and Respondent had been charging fees in excess of those allowed under §58-15-33 (B) & (C) from that time. The FID's further examination of Respondent's practices and procedures indicated that Respondent had collected approximately \$17,345.77 in excessive fees during a period from January 1, 2016.
 - b. NMSA 1978, §58-15-6 (A). In all three locations, Respondent had not posted a current license as required by that statute. [Page 7, Exhibit 2]
 - c. NMSA 1978, § 58-15-37 (A) (B) & (C). None of Respondent's three locations were using the payday loan database system prior to making the payday loans. [Page 8, Exhibit 2]
 - d. NMAC 12.18.7.14 C. None of Respondent's three locations were recording a transaction identification number generated by the Director's certification database before making a payday loan. [Page 9, Exhibit 2]
 - e. NMSA 1978, §58-15-38 (A) (1 thru 5). None of Respondent's three locations were using twelve-point bold type within the context of mandatory wording for payday loans on payday loan agreements. [Page 10, Exhibit 2] f. NMSA 1978, §58-15-32 C. None of Respondent's three locations were
 - properly disclosing the consumer's right to rescind the payday loan agreements. [Page 11, Exhibit 2]
 - g. NMAC 12.18.7.13. None of Respondent's three locations were properly disclosing the consumer's right to a payment plan or providing consumers with a copy of the signed payment plan form. [Page 12, Exhibit 2]
 - h. NMSA 1978, §58-15-32 (B) (1) (2) and (3). In several instances in Respondent's three locations, Respondent failed to obtain written acknowledgment from borrowers in reference to a payday loan term that was shorter than the minimum 14 days. [Page 13, Exhibit 2]

- i. NMSA 1978, §58-15-32 (B) (1) (2) and (3). In several instances, Respondent in all three locations failed to meet the maximum 35 day loan maturity requirements. [Page 14, Exhibit 2]
- j. NMSA 1978, §58-15-34. Respondent, in all locations, contracted for a late fee or delinquency charge of five cents for each dollar loaned with a cap of \$10.00 that was prohibited on payday loans. [Page 15, Exhibit 2]
- k. NMSA 1978, §58-15-32(A). In all locations, Respondent made payday loans to consumers to which the total principal amount combined with all fees exceeded twenty-five percent of consumer's gross monthly income. [Page 16, Exhibit 2]
- 1. NMSA 1978, §58-15-34 (N). In all locations Respondent took checks in which blanks were left to be filled in after the execution of such checks, a practice prohibited by the statute. [Page 17, Exhibit 2]
- m. NMSA 1978, §58-15-38(B). In all locations, Respondent failed to display a sign as then required by this statute. [Page 18, Exhibit 2]
- 15. After each violation set forth in the "Matters Requiring Immediate Action," there was a statement of "Required Corrective Action." [Pages 4-18, Exhibit 2.] There is no evidence that Respondent took any action to implement any of these corrective actions.
- 16. Operational recommendations to licensees from the FID in ROE's are intended to provide guidance to licensees to insure that they meet the strong character and general fitness requirements of the SLA, which are a condition for obtaining or maintaining a small loan license.
- 17. While the issue of Respondent making loans that met the statutory elements of "payday loans" did not arise (or was not specifically mentioned) in the ROE of November 2016, the language in Respondent's loan contract noted as problematic in 2016 [Page 7, Exhibit 1], suggested that there could be a payday loan issue.
- 18. While no post-dated checks were found during the 2016 examination of Respondent's locations, during subsequent examinations of Respondent's practices and procedures post-dated checks from the period beginning January 1, 2016, were discovered. Further,

- one of Respondent's managers admitted Respondent was accepting post-dated checks as a condition of making a loan.
- 19. Ms. Hines testified that she was employed by Respondent from 2011 to 2014 and returned to the same location as manager in February of 2017.
- 20. Ms. Hines testified that the Respondent had been using the same loan contract since 2011. Ms. Hines testified that the Tucumcari location, where she was employed as manager, stopped taking checks at the time when a loan contract was entered into when she returned to that location in February 2017, however, she did not know what the policy on the acceptance of checks had been at that location before her return.
- 21. Ms. Gallegos testified that she was employed at the Respondent's Grants location since 2005 as the manager. Ms. Gallegos further testified that the Grants location did not take checks as a condition of making a loan; however, she testified that some customers sent in checks since they live far from Respondent's location.
- 22. Ms. Gallegos' testimony invites a logical conclusion that Respondent's location in Grants knowingly accepted post-dated checks received from borrowers that were sent in by mail.
- 23. Ms. Gallegos testified that she never demanded post-dated checks as a condition of making a loan. In explanation of why post-dated checks had been found in files in the Grants location, Ms. Gallegos testified that when Respondent previously used bank fund transfers they had to get all of the customer's information from a check and those checks had been in the file since 2007.
- 24. Ms. Gallegos acknowledged that the loan contract she utilized at Respondent's Grants location had not changed since 2005, and thus the contract still contained the language

- found to be problematic in 2016 [see paragraph 5, above] containing the reference to Respondent having possession of a "check" from the borrower.
- 25. Based on the ROE dated July 20, 2017 [Exhibit 2], during the follow-up examination visit to the Respondent's Belen location on November 9, 2017, the store manager, who did not testify at this hearing, disclosed to Examiner Baca that the Respondent had accepted checks from its borrowers with the same posted date as the loan origination date.
- 26. Examiner Baca testified that she requested the manager of Respondent's Belen location provide Examiner Baca with two additional files of loans originated after the exit conference of August 23, 2017 and upon examination of those files, both files contained a copy of an accepted check, one of which had already been deposited by Respondent.
- 27. Mr. Ferrant acknowledged in his testimony that he was aware of the Payday Loan Act provisions of the SLA that went into effect in 2007.
- 28. Mr. Ferrant further testified that in several of Respondent's small loan locations, when making a loan it was easier for his customers to give him a check in advance since many of his customers lived 50 or 60 miles away. However, Mr. Ferrant testified that he did not intend to be making payday loans when he accepted these checks.
- 29. Documented in the ROE dated July 20, 2017 [Exhibit 2], is that during the exit conference held on August 23, 2017, Mr. Ferrant agreed to stop taking post-dated checks to secure single payment loan agreements. However, the record does not reflect that any action was actually taken by Respondent to stop the acceptance of such checks on or after that date.

- 30. The FID's request for Respondent to make refunds in a total amount \$17,345.77 to customers who had received loans that met the statutory elements of payday loans was refused by Respondent. Further, Mr. Ferrant denied the Respondent was making payday loans.
- 31. The testimony related to the placement of brochures and licenses in the Respondent's licensed locations is contradictory. The November 29, 2016, ROE [Exhibit 1] states that Respondent's Grants location did not have the required brochures located by the main door entrance, and none of Respondent's three locations had the Respondent's license posted in a conspicuous place. [See pages 4 and 5 of Exhibit 1.] Mr. Ferrant testified that both issues had been addressed. Ms. Gallegos testified that the required brochures had been located by the front door of the facility since 2007, and the license was clearly visible.
- 32. Similar contradictions in the testimony and evidence exist related to security cameras and security alarms, and a Military Affiliation Verification being made part of the Respondent's loan application and/or contract. The ROE contains recommendations that these issues needed to be addressed, while the witnesses for Respondent testified those systems/devices and verification language had already been put in place.
- 33. However, there is no evidence that Respondent made any effort to address any of the other issues raised in the 2017 ROE [Exhibit 2] in the "Matters Requiring Immediate Attention" or "Operational Controls and Risk Management Procedures."
- 34. Specifically, there is no evidence that Respondent changed or deleted the contract language cited in the 2016 ROE [Exhibit 1; see also Paragraph 9, above] that gave

- Respondent the right to debit the consumer's checking account electronically under certain situations.
- 35. Further, there is no evidence that Respondent made any effort to comply with the statutory and regulatory requirements for making payday loans as set forth in: NMSA, §58-15-5; NMSA 1978, § 58-15-32 (A) (B) (C) (E); NMSA 1978, § 58-15-33(B) (C); NMSA 1978, § 58-15-34 (D) (G) (N); NMSA 1978, §58-15-35; NMSA 1978, § 58-15-36; NMSA 1978, § 58-15-37(A) (B) (C); NMSA 1978, § 58-15-38(A) (1-5) (B); 12.18.7.13 NMAC and 12.18.7.14(C) NMAC.

II. CONCLUSIONS OF LAW

- 1. The FID has jurisdiction over Respondent and the subject matter of this proceeding pursuant to §58-15-3 through §58-15-6 and §58-15-8, NMSA 1978, of the SLA.
- A decision to revoke a license under the SLA, or to deny renewal of a license under the
 Act, license must be supported by substantial evidence in the whole record. *Duke City
 Lumber Co. v. New Mexico Environmental Improvement Board*, 101 N.M. 291, 681 P.2d
 717 (1984).
- 3. Under whole record review, the court views the evidence in the light most favorable to the agency decision, *Wolfley v. Real Estate Comm'n*, 100 N.M. 187, 668 P.2d 303 (1983), but may not view favorable evidence with total disregard to contravening evidence. *New Mexico Human Servs. Dep't v. Garcia*, 94 N.M. 175, 608 P.2d 151 (1980).
- 4. To conclude that an administrative decision is supported by substantial evidence in the whole record, the court must be satisfied that the evidence demonstrates the reasonableness of the decision. Id.

- 5. At all relevant times related to the licensing periods under examination, a "payday" loan was defined by NMSA 1978, §58-15-2 (H) as a loan in which the licensee accepts a personal check or debit authorization tendered by the consumer and agrees in writing to defer presentment of that check until the consumer's next payday or another date agreed to by the licensee and the consumer.
- 6. Based on all the evidence presented and information received, the FID has proven by reasonable evidence and upon a preponderance of the evidence that Respondent required and accepted post-dated checks from borrowers as a condition of making loans to those borrowers, and therefore all such loans were required to be in compliance with the provisions for payday loans as defined in NMSA 1978, § 58-15-2 (H) [which was in effect during all times relevant to this matter]. [Pages 4-5 of Exhibit 2.]
- 7. Based on reasonable evidence and upon a preponderance of the evidence, the FID has proven Respondent engaged in actions of taking post-dated checks from borrowers as a condition of making loans, and thereby engaged in the making of payday loans (as the laws provided at the time) since January 1, 2016.
- 8. The FID has proven by reasonable evidence and upon a preponderance of the evidence that Respondent over charged borrowers \$17,345.77 in violation of NMSA 1978, §58-15-33 (B) (C).
- 9. The FID has proven by reasonable evidence and upon a preponderance of the evidence that in making payday loans Respondent has violated the following provisions of the Small Loan Act and associated New Mexico Rules in that the Respondent failed to comply with the terms and requirements of these provisions:

NMSA, §58-15-5;

NMSA 1978, § 58-15-32 (A) (B) (C) (E);

NMSA 1978, § 58-15-33(B) (C);

NMSA 1978, § 58-15-34 (D) (G) (N);

NMSA 1978, §58-15-35;

NMSA 1978 § 58-15-36;

NMSA 1978, § 58-15-37(A) (B) (C);

NMSA 1978, § 58-15-38(A) (1-5) (B);

12.18.7.13 NMAC; and

12.18.7.14(C) NMAC.

- 10. Contrary to the assertion of Mr. Ferrant at the hearing that the Respondent had not been properly mailed copies of the Reports of Examination, the evidence demonstrates both Exhibit 1 and Exhibit 2 had been emailed to Respondent. Receipt of those emailed copies of the exhibits by Mr. Ferrant, on behalf of Respondent, was confirmed by Mr. Ferrant's having responded to both emails and having participated in the exit interviews conducted after each Report of Examination had been received.
- 11. On the issues of the brochures, licenses, security devices and Military Affiliation Verification, the testimony of Respondent's witnesses will be accepted as credible, and those specific factors will not be further considered in relation to proposed action in the above-captioned matter.
- 12. The job training that Mr. Ferrant discussed in his testimony was not sufficient to meet operational controls and risk management requirements of the Division to demonstrate strong character and general fitness required by NMSA 1978, 58-15-5 (F) (1).

- 13. The violations of the law cited in the July 2017 ROE [Exhibit 2], coupled with Mr. Ferrant's refusal to take steps to eliminate those practices, were of such nature as to demonstrate a lack of the strong character and general fitness necessary to be licensed under the Small Loan Act.
- 14. Taking into account Mr. Ferrant's numerous years of experience as a licensee under the SLA and his admitted knowledge of the requirements for payday loans that were put into place in 2007 (and remained in effect until January 1, 2018) Respondent's violations of the Act in this matter must be deemed to have been intentional and knowingly committed.
- 15. The FID has proven by reasonable evidence and upon a preponderance of the evidence that Respondent, by failing to correct any of the major issues cited by the FID in the "Operational Control and Risk Management Procedures" in Exhibit 2, and in violating the above provisions of the Act and rules, failed to demonstrate the strong character and general fitness necessary under NMSA 1978, §58-15-5 (F) (1) to be a granted, or continue to hold, a small loan license.

III. DIRECTOR'S AUTHORITY FOR REVOCATION OF LICENSE

- 1. Pursuant to §58-15-3 NMSA 1978, all persons who engage in the business of lending in amounts of five thousand dollars (\$5,000) or less shall be required to be licensed by the director of the FID.
- 2. Pursuant to §58-15-8(A)(1) NMSA 1978, the director of the FID shall revoke a license issued pursuant to the Act, after providing notice and hearing, if "the licensee, either knowingly or without the exercise of due care to prevent same, has violated any provision

of the New Mexico Small Loan Act of 1955 . . . or any regulation or order made pursuant to and within the authority of the New Mexico Small Loan Act of 1955".

IV. NOTICE OF ADMINISTRATIVE/APPELLATE RIGHTS

Pursuant to §58-15-25 NMSA 1978, "[a]ny licensee or any person aggrieved by any act or order of the director pursuant to the New Mexico Small Loan Act of 1955 may file and appeal in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

V. ORDER

IT IS THEREFORE CONSIDERED, ORDRED AND ADJUDGED:

- A. Small Loan license No. 01389 (Tucumcari) and Small Loan license No. 01422 (Grants), previously issued to Respondent, Enchanted Properties, LLC, d/b/a Cash Corral, LLC, are hereby, for all the factual reasons and legal conclusions above-stated, REVOKED.
- B. That in accordance with the director's authority under the Act, the Respondent shall cease and desist from engaging in the business of lending in the state of New Mexico in amounts of five thousand dollars (\$5,000) unless and until Respondent obtains an appropriate and required license from the director.

DATED this **26** day of June 2019.

Christopher Moya

Director of Financial Institutions Division

Date

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of June, 2019, I mailed a true and correct copy of the foregoing Final Order Revocation of Licenses to the following parties at the addressed listed below.

Philip Ferrant Enchanted Properties, LLC D/B/A Cash Corral, LLC 602 Magic Mile Street Arlington, TX 76011 Resident Agent: Loretta Gallegos 505 E Roosevelt Ave #A Grants, NM 87020

