



**DEPARTMENT OF BANKING AND CONSUMER FINANCE
STATE OF MISSISSIPPI**

In the matter of:

**Fred E. Stanley d/b/a "Check Time"
812 D Spring Street
Waynesboro, MS 39367**

ORDER TO CEASE AND DESIST

**ORDER OF THE COMMISSIONER
OF
THE DEPARTMENT OF BANKING AND CONSUMER FINANCE
OF THE STATE OF MISSISSIPPI**

THIS DAY this cause came on for consideration by the Commissioner of Banking and Consumer Finance (DBCF), and the Commissioner having considered the evidence presented, and being fully informed and advised in the premises, finds as follows:

1. The Commissioner has jurisdiction over the Respondent and the subject matter pursuant to Section 75-67-501 et seq., of the Mississippi Code of 1972, Annotated, same being the "Mississippi Check Cashers Act. The Respondent is Mr. Fred E. Stanley, an individual, d/b/a "Check-Time" (Licensee # 0001).

2. Section 75-67-527 (3) of the Mississippi Code of 1972, Annotated, authorizes the Commissioner of the Department of Banking and Consumer Finance to enter an Order requiring any persons in violation of the provisions of Section 75-67-505 (1)(a) et seq., of the Mississippi Code of 1972, to stop or refrain from violations of the aforesaid Act.

3. This Order is based on the facts and information received by the DBCF that Fred Stanley d/b/a Check-Time, has sworn, or caused to be sworn, criminal indictments

against numerous borrower-customers for “Felony Bad Checks” pursuant to §§ 97-19-55 et seq., most of which criminal actions appear directly related to delayed deposit transactions conducted pursuant to the Check Cashers Act.

4. The DBCF has reasonable cause to believe the Respondent utilizes criminal prosecution to collect what appears to be a purely “civil” debt based on a dishonored “delayed deposit check.” The actions of the Respondent appear to be in violation of Section 75-67-515 (10) of the Mississippi Code of 1972 and/or other Mississippi laws.

5. Section 75-67-515 (10) states: “[i]f a check is returned to a licensee from a payor financial institution because there are insufficient funds in or on deposit with the financial institution to pay the check, the licensee or any other person on behalf of the licensee shall not institute or initiate any criminal prosecution against the maker or drawer of the personal check with the intent and purpose of aiding in the collection of or enforcing the payment of the amount owed to the check casher by the maker or drawer of the check.”

6. The “bad checks” are, in most cases, dishonored upon their first presentment to the customers’ banks as a result of “NSF” (i.e. insufficient funds). The “NSF” checks are not eligible for criminal prosecution. Miss. Code §75-67-515(10). Respondent appears to be making multiple presentations of the check to the borrower’s financial institution until such a time as the check is returned because the account is “closed.” In most instances there is a time lapse of several months or years between the date on the check, and the date it is returned unpaid as a result of the account being “closed.” Once the check is returned and marked “Account Closed,” the Respondent then swears affidavits to begin felony criminal proceedings.

7. The “Account Closed” exception to the general statutory prohibition on criminal prosecution, as interpreted by the Department, is only applicable: if the delayed deposit check is returned to the licensee by the payor financial institution on the first instance of presentment and is returned unpaid as result of the borrower-customer intentionally closing his/her bank account such that intent to defraud can be presumed on the part of the borrower. In other words, criminal liability under the Bad Check laws can only be pursued by a licensee (creditor) if the borrower’s bank account was intentionally closed prior to the first presentment, and the check is returned to the licensee unpaid and marked “Account Closed” on the first instance of presentment for payment. No subsequent instances of presentment and return for “Account Closed” should be the basis of a criminal prosecution, absent highly unusual circumstances.

8. Generally, a “creditor” cannot cause a borrower to be criminally prosecuted, indicted, convicted, etc., with the intent and for the purpose of collecting a civil debt. Likewise, the creditor’s agent is also prohibited from the same actions. No one, including any authorized agent of any of the Respondent, is allowed to do or take any action that the Respondent himself cannot legally conduct.

THEREFORE, IT IS HEREBY ORDERED, that the Respondent and any and all authorized agents acting on his behalf, immediately cease and desist from filing any and all new criminal charges/actions/affidavits, the basis of which is a past-due loan or dishonored delay-deposit check, against any borrower-customer of Check Time unless and until this Order is released or amended by further order of the Commissioner.

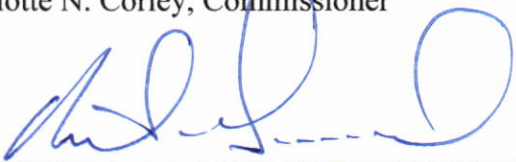
IT IS FURTHER ORDERED, that with regard to criminal actions based on a past-due loan or dishonored delay-deposit check, the Respondent shall not take any action to further or otherwise advance criminal indictments and/or prosecutions in any way, shape or form against a borrower-customer, unless and until this Order is released or amended by further order of the Commissioner. All active or currently pending criminal actions against any borrower-customer of Check Time shall, at the very least, be voluntarily or administratively "stayed" until further instructions are provided by the Commissioner, or otherwise in compliance with any valid order of a Court of proper jurisdiction. Nothing in this Order shall preempt or otherwise interfere with the Court's control over its own docket. A copy of this Order shall be provided by the DBCF to the offices of both Circuit Judges for the 10th Circuit District, and the office of District Attorney for the 10th Circuit District, Mr. E.J. (Bilbo) Mitchell and his bad-check unit.

IT IS FURTHER ORDERED, that the Respondent shall maintain copies of all business records that are in any way related to a borrower-customer including, but not limited to, all records related to collection activity, and any legal proceedings against any borrower-customer. No business records related to loans or delayed deposit checks shall be destroyed, deleted or otherwise made unavailable until further notice from the Commissioner.

IT IS FURTHER ORDERED, that nothing contained in this Order shall prohibit the Commissioner of Banking and Consumer Finance or any other appropriate person or law enforcement authorities from initiating and pursuing any other civil or criminal violations, penalties and remedies against the above named Respondents as provided by law.

SO ORDERED, this the 13th day of August, 2015

Department of Banking and Consumer Finance
Charlotte N. Corley, Commissioner

BY:  _____

TITLE: EXAMINER _____