

LAWRENCE G. WASDEN
Attorney General

BRIAN D. NICHOLAS – I.S.B. #3585
Deputy Attorney General
State of Idaho
Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031
Telephone: (208) 332-8092
Facsimile: (208) 332-8016
brian.nicholas@finance.idaho.gov

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE
OF THE STATE OF IDAHO**

STATE OF IDAHO, DEPARTMENT OF
FINANCE, CONSUMER FINANCE
BUREAU,

Complainant,

vs.

HYDRA FINANCIAL LIMITED LOAN
FUND I also d/b/a HYDRA FINANCIAL
LIMITED LOAN FUND II, HYDRA
LIMITED LOAN FUND III, & HYDRA
LIMITED LOAN FUND IV,

Respondent.

Docket No. 2012-6-12

**AMENDED ORDER TO CEASE AND
DESIST**

The State of Idaho, Department of Finance (Department), pursuant to the Idaho Credit Code, and specifically the provisions relating to payday loans, codified at Idaho Code § 28-46-401 *et seq.* (the payday loan provisions), hereby alleges the following facts that constitute a basis for the issuance of an order pursuant to Idaho Code § 28-46-402(4), requiring HYDRA FINANCIAL LIMITED LOAN FUND I also doing business as HYDRA FINANCIAL

LIMITED LOAN FUND II, HYDRA LIMITED LOAN FUND III, & HYDRA LIMITED LOAN FUND IV (collectively referred to herein as "Respondent"), to immediately cease and desist from violating the payday loan provisions of the Idaho Credit Code.

RESPONDENT

1. Respondent lists its principal address as Hydra Offices, Level 5, 22 The Terrace, Wellington 6011, New Zealand. One of the affiliates of Respondent lists an alternate physical address in Encino, California on its website. However, the business that is located at the Encino address claims that it is neither affiliated, nor has it ever been affiliated, with any of the companies collectively referred to herein as "Respondent." Respondent has not filed any business entity forms with the Idaho Secretary of State and is an entity of unknown form.

2. Respondent does not possess a license, as required by the Idaho Credit Code, to make regulated consumer loans in Idaho.

3. Respondent is listed as a lender on numerous payday lending websites and has its own domain websites, www.hydrfundii.com and www.hydrfundiii.com.

FINDINGS OF FACT

4. On or about June 18, 2012, an Idaho resident, DG, entered into an online pay day loan agreement with Respondent to obtain a loan in the amount of \$300.00. The agreement was memorialized in a contract emailed to DG on June 18, 2012, and on or about the same date, DG states that \$300.00 was deposited into her bank account. Pursuant to the contract, on the date that the loan matured, DG had the option to either pay off the loan in its entirety or refinance it. If DG chose to pay off the loan, \$390 would be debited from her bank account. Of that total

amount, \$90 was assigned as a finance charge. The contract gave Respondent authorization to debit DG's checking account on the loan due date.

5. The contract also required that DG notify Respondent if she wanted to pay down or pay off the loan, via phone, email, or fax, three (3) days before the loan due date. If DG failed to notify Respondent, the loan would automatically be refinanced and \$90 would be debited from her checking account.

6. On July 2, 2012, DG faxed a notification to Respondent that she wanted to pay down the loan on the next due date, July 6, 2012, and the subsequent due date, July 17, 2012 by paying an additional \$50. DG requested that the \$50 be applied to the principal balance, in addition to the applicable finance charge. Respondent acknowledged receipt of DG's fax and on July 6, 2012, Respondent debited DG's account \$90 for the finance charge and in a separate transaction, on the same date, \$50 for the principal. On July 20, 2012, Respondent debited DG's account \$75.00 for the finance charge and \$50.00 for the principal, again, in separate transactions.

7. On August 7, 2012, DG filed a complaint with the Department asserting that she became aware Respondent was not licensed. The Department faxed a letter to Respondent on September 5, 2012, requiring that it provide all information relating to DG's loan and a complete listing of its Idaho customers. The information was to be received by September 17, 2012. Respondent did not respond to the Department's request regarding the complaint filed by DG.

8. On or about July 15, 2012, an Idaho resident, SM applied for a pay day loan from Respondent. SM immediately received a response from Respondent that his application was denied. On July 17, 2012, SM received an email from Respondent stating that he was pre-approved for a \$200 loan. SM stated that he immediately left numerous voice messages with

Respondent to state that he no longer wanted to take out a loan. However, on July 18, 2012, \$200 was deposited into SM's bank account. SM made numerous attempts after the money was deposited to contact Respondent to state that he did not want the money that was deposited into his account. On August 9, 2012, Respondent attempted to debit SM's bank account twice, thus overdrawing SM's account. SM made contact with the company on August 10, 2012, and a representative of Respondent told SM that there wasn't anything it could do to resolve the issue. Additionally, the representative informed SM that it would be debiting SM's account on August 17, 2012 for \$150.00.

9. On August 11, 2012, SM filed a complaint with the Department asserting that he became aware Respondent was not licensed. The Department faxed and emailed a letter to Respondent on September 5, 2012, requiring that it provide all information relating to SM's loan and a complete listing of its Idaho customers. The information was to be received by September 17, 2012.

10. On September 14, 2012, Respondent replied to the Department's letter and stated that in an effort to resolve the situation, Respondent would forgive SM's loan balance. Respondent failed to submit a listing of all of its Idaho customers.

11. Additionally, Respondent stated in its letter to the Department, that it was exempt from Idaho's license requirement because it is a New Zealand company and Idaho does not have jurisdiction to regulate it.

12. Based on information provided to the Department, the Department concludes as follows:

- a. Respondent has solicited, at least, two Idaho residents for a loan, which resulted in a contractual agreement.

- b. Respondent loaned Idaho residents a total of \$500, and charged them fees of at least \$165.00, collectively.

CONCLUSIONS OF LAW AND VIOLATIONS

UNLICENSED PAYDAY LENDING IN IDAHO

13. The allegations set forth in paragraphs 1 through 12 above are fully incorporated herein by this reference.

14. Idaho Code § 28-46-401 provides as follows, in pertinent part:

28-46-401. Definitions. –(1) As used in this act, unless the context otherwise requires, “payday loan” means a transaction pursuant to a written agreement between a creditor and the maker of a check whereby the creditor:

- (a) Accepts a check from the maker;
- (b) Agrees to hold the check for a period of time prior to negotiation, deposit or presentment; and
- (c) Pays to the maker of the check the amount of the check, less the fee permitted by this chapter.

...

(3) As used in this section, “check” refers to a check or the electronic equivalent of a check.

15. Idaho Code § 28-46-402 provides as follows, in pertinent part:

28-46-402. – License required. – (1) No person shall engage in the business of payday loans, offer or make a payday loan, or arrange a payday loan for a third party lender in a payday loan transaction without having first obtained a license under this chapter. A separate license shall be required for each location from which such business is conducted.

16. The loan between Respondent and DG constitutes a payday loan within the meaning of Idaho Code § 28-46-401. Respondent loaned money to DG and DG authorized Respondent to debit her bank account on the loan due date. This is an electronic equivalent of a check.

17. Respondent, since it is engaged in the business of making payday loans, is required to be licensed pursuant to Idaho Code § 28-46-402.

REQUESTED RELIEF

18. Idaho Code § 28-46-402(4) provides that whenever the Director of the Department finds “that a person subject to this part has violated, is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of this part, or any rule promulgated under this act and pertinent to this part, the administrator may, in his discretion, order the person to cease and desist from the violations.”

ORDER

The Director, having reviewed the foregoing, good cause being shown, and the public interest being served thereby,

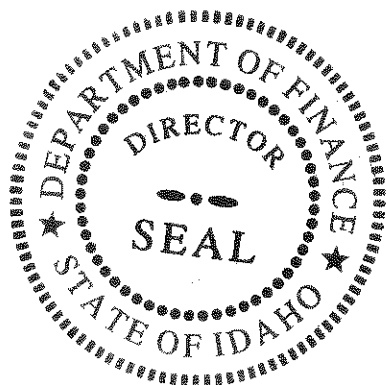
NOW, THEREFORE, the Director HEREBY FINDS that Respondent has violated the payday loan provisions of the Idaho Credit Code (section 400 of chapter 46, title 28, Idaho Code).

Pursuant to Idaho Code § 28-46-402, IT IS HEREBY ORDERED that Respondent and its agents and employees immediately CEASE AND DESIST from acts, practices, or omissions which constitute a violation of the Act, including specifically from engaging in making payday loans or other similar loans in Idaho without the license required by the Act.

This AMENDED ORDER TO CEASE AND DESIST is effective upon issuance.

IT IS SO ORDERED.

DATED this 3RD day of APRIL, 2013.



STATE OF IDAHO
DEPARTMENT OF FINANCE



GAVIN M. GEE, Director

NOTICE

Respondent is HEREBY NOTIFIED that this AMENDED ORDER TO CEASE AND DESIST is a final order of the Director.

Respondent may file a motion for reconsideration or request for hearing concerning this final order within fourteen (14) days of the service date of this order. Any such motion for reconsideration or request for hearing must be in writing, addressed to:

Michael Larsen
Consumer Finance Bureau Chief
Idaho Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031

A copy of such motion for reconsideration or request for a hearing shall also be served on the Department's counsel, Brian D. Nicholas, Deputy Attorney General, at the same address.

The Department will dispose of a motion for reconsideration within twenty-one (21) days of the receipt of a motion for reconsideration, or the motion will be considered denied by operation of law. Idaho Code § 67-5246(4); Idaho Rules of Administrative Procedure of the Attorney General (IRAP) at IDAPA 4.11.01.740.02.a. Should Respondent make a timely request for a hearing, the Department shall schedule a hearing within the twenty-one (21) day time period.

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order may appeal to the district court by filing a petition in the district court of the county in which:

- i. A hearing was held;
- ii. The final agency action was taken;
- iii. The party seeking review of the order resides, or operates its principal place of business in Idaho; or

- iv. The real property or personal property that was the subject of the agency action is located.

See IDAPA 04.11.01.740.02.b.

An appeal must be filed within twenty-eight (28) days of (a) the service date of this final order, (b) of an order denying a motion for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a motion for reconsideration or schedule a hearing, whichever is later. See Idaho Code § 67-5273. The filing of an appeal to the district court does not itself stay the effectiveness or enforcement of the order under appeal. See IDAPA 04.11.01.740.02.c.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of April, 2013, I caused a true and correct copy of the foregoing fully-executed AMENDED ORDER TO CEASE AND DESIST to be served on the following by the designated means:

Hydra Offices
Level 5, 22 The Terrace
Wellington 6011, New Zealand

- U.S. mail, postage prepaid
- Certified mail
- Facsimile: 855-284-7681
- Email: csfund4@hydrafl.co.nz

Hydra Financial Limited
Suite 05, 507 Lake Road Takapuna
Auckland 0622, New Zealand

- U.S. mail, postage prepaid
- Certified mail
- Facsimile:
- Email:

Paralegal 