

South Dakota Department of Labor and Regulation
Division of Banking

IN THE MATTER OF:

Order No. 2017-3

OSPREY CAPITAL SD LLC
DBA Cash N Go Pawn
2204 S. Minnesota Ave.
Sioux Falls, SD 57105

CEASE AND DESIST ORDER

The Director of the South Dakota Division of Banking (“Division”), having determined that Osprey Capital SD LLC has engaged in, or is engaging in, or is about to engage in, acts or practices constituting violations of state law, hereby issues the following FINDINGS OF FACT, CONCLUSIONS OF LAW and CEASE AND DESIST ORDER.

A. PARTIES AND JURISDICTION

1. Osprey Capital SD LLC (“Osprey”) is a South Dakota limited liability company with its principal office in Sioux Falls, South Dakota.
2. Osprey does business as Cash N Go Pawn in both Rapid City and Sioux Falls, South Dakota.
3. Osprey previously was licensed by the Director as a money lender under SDCL Chapter 54-4.
4. The Division has jurisdiction over the licensing and regulation of persons and entities engaged in the business of lending money in South Dakota pursuant to SDCL 51A-2-1, SDCL Chapter 54-4, and its implementing rules at ARSD 20:07:20 et seq.
5. Pursuant to SDCL 54-4-48, the Division may issue a cease and desist order to any person engaging in the business of lending money without a license.

B. FINDINGS OF FACT

6. Osprey operates pawn shops in Rapid City and Sioux Falls under pawn broker licenses issued by those municipalities.
7. On June 14, 2017, based upon information received by the Division that Osprey was utilizing pawns as a device or pretense to evade the requirements of SDCL 54-4-44 and that the loans offered by Osprey constitute pay day loans in violation of SDCL 54-4-66, the Division issued a Cease and Desist Advisory to Osprey.
8. In conjunction with the Cease and Desist Advisory, the Division requested that Osprey provide the Division with records related to its pawn loan agreements including copies of any payroll deduction forms associated with the pawn loans, since November 21, 2016.
9. In response to the June 14, 2017 request for records, Osprey provided the Division with copies of pawn loan agreements from its Rapid City and Sioux Falls locations.
10. In its response to the June 14, 2017 request from the Division, Osprey indicated that:

“We are a non-recourse pawnbroker with no security interest. A customer brings in an item for pawn, we pay them money for that item, and if they fail to return with the money to purchase that item, we place it for sale on our shelves. Our only recourse if a customer chooses not to re-purchase their item is to sell that item.”
11. The Division reviewed Osprey’s April, May and June loan files.
12. The review of those loan files determined that approximately 47.39% of the files contained a payroll deduction form that was signed by the consumer.
13. The review of those files determined that all of the payroll deduction forms used by Osprey were directed to Native American Tribal Government entities.
14. The review of those files identified several violations of state law, including, but not limited to Osprey providing payday loans without the appropriate license and Osprey engaging in a device, subterfuge, or pretense to evade the requirements of SDCL 54-4-44.

15. In conjunction with pawns/loans to consumers, Osprey utilized payroll deductions in order to secure the repayment of pawns/loans.

16. Oftentimes, the value of the item “pawned” by the consumer with Osprey had little relationship to the pawn/loan amount. Generally, the “pawned” item was of such a character that Osprey would not recover the amount owed Osprey without the payroll deduction.

C. CONCLUSIONS OF LAW

17. Based upon the information contained in Paragraphs 1 through 16, the Director has determined that:

a. Osprey has engaged in, is engaging in, or is about to engage in, acts or practices which are in violation of the provisions of SDCL Chapter 54-4.

b. Osprey has engaged in, is engaging in, or is about to engage in the business of lending money without a license in violation of SDCL 54-4-40 and 54-4-52.

c. Osprey has engaged in, is engaging in, or is about to engage in the business of making payday loans without a license in violation of SDCL 54-4-40, 54-4-52, and 54-4-66.

d. A payroll deduction constitutes an assignment of salary or wages.

e. Osprey has engaged in, is engaging in, or is about to engage in a device, subterfuge, or pretense to evade the requirements of SDCL 54-4-44, in violation of SDCL 54-4-44.1.

f. The public interest will be irreparably harmed by delay in requiring Osprey’s practices to cease.

g. The public welfare requires immediate action to cease Osprey’s practices.

h. Any loans/pawns made by Osprey in violation of Chapter 54-4 are void and uncollectible as to any principal, fee, interest, or charge.

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED that:

Osprey shall:

1. Immediately cease making pawns/loans to consumers in violation of Chapter 54-4, or in any other way engaging in the business of lending money in South Dakota.
2. Immediately cease using payroll deductions/wage assignments, as security for or repayment of any pawns/loans.
3. Identify any and all pawns/loans made to consumers in which a payroll deduction or wage assignment was utilized for the collection of the pawn/loan amount, or used as security for the pawn/loan amount, and notify any such consumer that the loan is void and uncollectible as to any principal, fee, interest, or charge.

This Order is effective immediately upon signing and shall remain in effect unless set aside, limited, or suspended by the Division or upon court order after review under South Dakota law.

This Order shall not be construed as approving any act, practice, or conduct not specifically set forth herein which was, is, or may be in violation of relevant state or federal laws and regulations.

NOTICE OF HEARING

Any person aggrieved by this order, may, within thirty days after notice of this order has been mailed, file with the Division a written request for a hearing before the South Dakota Banking Commission ("Commission"). All proceedings before the Commission related to this order shall be held in conformance with SDCL Chapter 1-26.

DATED 9/13/2017

Bret Afdahl

Bret Afdahl
Director
Division of Banking

CERTIFICATE OF SERVICE

Delaine Campbell, Secretary to the South Dakota Division of Banking, does hereby certify that she served by mail a true copy of the CEASE AND DESIST ORDER on Brett Koenecke, Attorney for Osprey Capital SD, LLC, 503 South Pierre Street, P.O. Box 503, Pierre, SD 57501-0160, and Travis Ellerbroek, Registered Agent for Service of Process in South Dakota for Osprey Capital SD, LLC, 2204 S Minnesota Ave., Sioux Falls, SD 57105 properly addressed, postage prepaid, by mailing first class United States mail at the United States Post Office, Pierre, South Dakota.

Dated and mailed this 13th day of September, 2017.



Delaine Campbell
Secretary
South Dakota Division of Banking
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Pierre, SD 57501
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