



DECISION OF THE DIRECTOR

In the Matter of: *Business Practices and Consumer Protection Act [SBC 2004] c. 2, and
Payday Loans Regulation*

Respondent: National Money Mart Company also carrying business as Money Mart &
moneymart.ca

License Number: 67542

Case Number: 30311

Adjudicator: Robert Penkala

Date Issued: May 8, 2020

INTRODUCTION

Consumer Protection BC administers the *Business Practices and Consumer Protection Act* and the *Payday Loans Regulation*. National Money Mart Company carrying on business as Money Mart is a licensed payday lender operating in British Columbia. On October 10th, 2019 Consumer Protection BC inspected the respondent business at its Fort St. John, BC location. On February 18th, 2020 an inspector issued a Report to the Director alleging that the respondent had, in six payday loan agreements entered in April and May 2019, failed to ensure that repayment dates for the loans were set in accordance with section 23(2)(b) of the Regulation.

If the alleged contravention of the Regulation is found to have occurred Consumer Protection BC is authorized to order the respondent to take actions to correct its practices, return fees to borrowers, and pay costs of the inspection related to the Report. The authority to impose conditions on, suspend, or cancel, a payday lending licence may also be exercised.

OPPORTUNITY TO BE HEARD

Prior to an action being taken under the Act, the respondent must be provided with an opportunity to be heard. On February 26th I sent the respondent notice of this hearing, giving it until March 18th to respond to the Report. The notice indicated that after the respondent's opportunity to respond,

an adjudicator for Consumer Protection BC would determine whether the alleged violation occurred and take enforcement action if warranted. Money Mart responded to the Report on March 18th by email, attaching a one-page letter “addressing the concerns” in the Report. I conclude on this basis the required opportunity to be heard has been provided and exercised.

ALLEGED CONTRAVENTION

The Report alleges that the respondent contravened section 23(2)(b) of the PLR when it extended repayment dates in six payday loan agreements that failed to include two “pay periods”, as was required in the circumstances of the respective loan histories.

LEGISLATION

Payday Loans Regulation

Section 23

(1) In this section, "**pay period**" means

- (a) the period from the date on which the payday loan is entered into until the day on which the borrower next receives his or her pay or other income, or
- (b) a period during the term of a payday loan from the day on which a borrower receives his or her pay or other income until the day on which the borrower next receives his or her pay or other income.

(2) A payday lender who enters into a third or subsequent payday loan agreement with a borrower in a 62-day period must,

- (a) if the borrower is paid or otherwise receives income on a bi-weekly, semi-monthly or more frequent basis, provide in the loan agreement that repayment is to be spread over at least 3 pay periods, or
- (b) if the borrower is paid or otherwise receives income on a less frequent basis than that referred to in paragraph (a), provide in the loan agreement that repayment is to be spread over at least 2 pay periods.

Section 24

[...] if a payday lender contravenes section 23,

- (a) all amounts in relation to the payday loan other than the principal cease to be permissible charges, and
- (b) the borrower is not liable to pay the lender any amount that exceeds the principal of the payday loan.

EVIDENCE OF THE INSPECTOR

- The Inspector obtained and reviewed six payday loan agreements for loans issued by Money Mart to three individual borrowers on April 18, 2019 and May 17, 2019 [Exhibits 3 through 8].
- As provided by Money Mart business records, all the agreements relate to loans that were at least the third payday loans taken out by the borrowers within a 62-day period [Exhibit 10].

- Money Mart recorded the income sources for the three borrowers as “CTB”, for “Child Tax Benefit” (known, correctly, as the “Canada Child Benefit”, hereinafter “CCB”).
- The Report displays in “Table 2” two repayment instalments for each loan agreement
- The two repayment instalment dates are indicated as:
 - For the April 18th loans, May 22nd and June 18th
 - For the May 17th loans, June 21st and July 17th
- According to the Report, the borrowers were to receive one monthly child tax benefit cheque or deposit within the loan repayment period for each loan.

EVIDENCE OF THE RESPONDENT

The respondent has submitted a statement from its compliance officer, and no other documentary evidence. Below is essentially the entire response to the allegation:

- “We are in the process of implementing an IT fix which would prevent loaning to customers impacted by the various unequal payment dates [...]”
- “For all other impacted customers, we will refund the cost of credit. Once our review is complete and refunds provided we will share that information [...]”

ANALYSIS

The respondent does not dispute the Report’s allegations. It introduces no rebuttal evidence in relation to any of the assertions or analysis set out in the Report. However, I must assess the evidence in the Report in order to draw any final conclusions about the allegation.

I find that the Money Mart records cited by the Report provide a proper basis to conclude that all the payday loans in question were “third or subsequent loans” in a 62-day period, and therefore triggered the following requirement of section 23(2)(b) of the Regulation:

if the borrower is paid or otherwise receives income on a less frequent basis than that referred to in paragraph (a) [i.e., semi-monthly, then the payday lender must] provide in the loan agreement that repayment is to be spread over at least 2 pay periods.

The inspector states that all of the borrowers and Money Mart had in common anticipated CCB payments to be the source of income relative to the loans. That is consistent with the respondent’s business records, statements of its staff during inspection as conveyed by the Report, and very nearly admitted by Money Mart. I find it to be factually so. For both sets of loans (April 18 and May 17), “dates of advance” coincided with a “first” CCB payment. The repayment dates for each of the borrowers are such that in each case the second or two repayment dates falls before the second CCB payment relative to the loans’ initiation. In other words, the second repayment

instalment in the case of each loan falls after the first “pay period” as defined in the Regulation and within the second pay period.

The Regulation requires that repayment of “third and subsequent loans” within a 62-day period must be “spread over at least 2 pay periods”. The Report asserts that Money Mart failed to ensure the payday loan agreements provided for payments to be spread over *at least* two pay periods for each borrower. It says that two “borrower pay periods” needed to be included in the repayment schedules. I find that the loan repayments in each case were *partially* spread over two pay periods, however I construe, by the term “at least”, that the second repayment dates are premature relative to the repayment term required by the Regulation. In other words, in order to satisfy “*at least two pay periods*”, the loan agreements must permit two complete pay periods to occur within the repayment schedule.

I conclude the loan agreements that are the subject of the allegation state a second repayment date not within the second “pay period” but falling in all cases two days short of the borrowers’ receipt of the anticipated income. The Regulation deems the second “pay periods” to *include* the anticipated income, but that is not so in the case of the loan agreements identified by the Report. The respondent has therefore contravened section 23 (2)(b) of the Regulation, as alleged.

DUE DILIGENCE

The respondent is entitled to a complete defence of due diligence regarding the allegation if it shows that it took all reasonable steps to prevent the contraventions. In its submission Money Mart does not explain how it might have avoided misstating the relevant pay periods in its payday loan agreements relative to section 23(2) of the Regulation. It provides no evidence of steps taken to ensure compliance, therefore “due diligence” has not been established.

ENFORCEMENT ACTION

As an adjudicator determining that the violations occurred as alleged, I may take one or more of the following actions:

1. Issue a compliance order (under section 155 of the Act), directing the respondent to:
 - stop a specified act or practice and take specific actions to correct the issue;
 - return all fees to borrowers for payday loans that did not conform to section 23 (2) of the PLR; and,
 - repay Consumer Protection BC the costs of the relevant inspection, including the creation of the Report.
2. Take an action against the respondent’s licence, such as suspending, revoking, or imposing conditions to operate.

Having considered these possible enforcement actions, I determine that a compliance order is appropriate. I note also:

- The violation of section 23(2) of the Regulation is not “prescribed” for the purpose of administrative monetary penalty and therefore no such penalty may be considered.
- The Report cites an undertaking dated February 7, 2018, apparently involving similar previous allegations against the respondent, however the undertaking deals with resolution of the then-proceedings, confirms no contravention, and sets no condition alleged to have been breached in the circumstances described in the Report. Therefore the undertaking does not affect the outcome of this hearing.

Compliance Order

Having found the respondent responsible for contravention of section 23(2) , I have authority per section 155 (4)(d) of the Act to compel the respondent to comply with certain statutory remedies. In this case I order Money Mart to refund borrowers’ payday loan fees as stipulated by section 24 of the Regulation, and to verify its remediation of the lending practices leading to the irregularities cited in the Report. The respondent must also reimburse Consumer Protection BC for costs in the amount of **\$450** for the inspection relating to the contravention, including preparation of the Report.

RECONSIDERATION

A compliance order may be reconsidered in accordance with Division 1 of Part 12 of the Act, subject to the provisions outlined in sections 181 and 182 (2). A request for reconsideration must be submitted within 30 days of delivery of the order to the respondent. The request must be in writing, identify the error the person believes was made or other grounds for reconsideration, and be accompanied by a \$252 application fee. A request for reconsideration should be addressed to:

Consumer Protection BC
Attention: Shahid Noorani, Vice President, Regulatory Services
200 – 4946 Canada Way, Burnaby, BC V5G 4H7
shahid.noorani@consumerprotectionbc.ca

Decided April 16 / issued May 8, 2020 in Vancouver, BC.



Robert Penkala, Manager of Enforcement Hearings

Encl: Compliance Order