

FILED

2015 MAR -4 PM 3: 36

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

PA DEPARTMENT OF
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF BANKING AND	:	
SECURITIES, COMPLIANCE OFFICE,	:	
Petitioners	:	
	:	
v.	:	Docket No.: <u>150005</u> (BNK-ORD)
	:	
GRACE PERIOD, INC.;	:	
DIME-A-DAY SOLUTIONS;	:	
GRACED LENDING, LLC; and	:	
VENTURES IN GRACE, INC;	:	
jointly and severally,	:	
Respondents	:	

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Compliance Office enters into this Consent Agreement and Order ("Order") with Grace Period, Inc., Dime-A-Day Solutions, Graced Lending, LLC, and Ventures in Grace, Inc. (collectively "Respondents"). The purpose of this Order is to further compliance with the requirements of Pennsylvania law, specifically the Consumer Discount Company Act ("CDCA"), 7 P.S. §§ 6201- 6219, the Act of January 30, 1974, P.L. 13, No. 6 known as the Loan Interest Protection Law ("LIPL"), as amended by Act of April 12, 2012, 41 P.S. §§ 101-605, and the Act of 1065, P.L. 490, No. 249, known as the Money Transmitter Act ("MTA"), 7 P.S. § 6101-6118.

The Parties to the above-captioned matter, jointly and severally, in lieu of litigation, and without admitting wrongdoing, voluntarily agree to the terms of this Order.

PARTIES

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the CDCA and the LIPL.

2. The Compliance Office has the responsibility to administer and enforce the CDCA, and the LIPL on behalf of the Department.

3. The Compliance Office operates from its offices at 17 North Second Street, Suite 1300, Harrisburg, Pennsylvania 17101.

4. Grace Period, Inc. was organized pursuant to the laws of Pennsylvania as a non-profit in May of 2007 for the purpose or purposes of providing "financial services to the 'unbanked' and 'financially underserved.'"

5. Dime-A-Day Solutions was organized pursuant to the laws of Pennsylvania in May 2014 as a non-profit to provide educational programs for the community.

6. Graced Lending, LLC was organized pursuant to the laws of Pennsylvania in May, 2014 as a limited liability company.

7. Grace Period, Inc., Graced Lending, LLC and Dime-A-Day Solutions operate out of the office location at 632 E. Ohio Street, Pittsburgh, Pennsylvania 15212.

8. Ventures in Grace, Inc. was organized in May 2007.

9. Respondents voluntarily agree to this Order to avoid litigation, but without admitting wrongdoing or liability, and for the purpose of maintaining good will with the Commonwealth.

10. Respondents, on behalf of themselves and any company or corporation under their control now or in the future, represent that it is not their intention to apply for a license before the Department of Banking and Securities. Respondents acknowledge that their stated intention not to apply for a license is consideration upon which the Department based its agreement to the

terms and conditions of this Order. Accordingly, any such license application would be a breach of this agreement in the event such application is filed before the relief outlined in paragraphs 30 through 33 below is satisfied.

FACTUAL ALLEGATIONS

11. The Compliance Office alleges that beginning in 2007 and continuing through January 2015, Respondents acting together engaged in the business of consumer lending by arranging, negotiating and making short-term consumer loans in amounts of \$25,000 or less, which loans were paid back through automatic electronic transfers from consumers' bank accounts on consumers' respective pay-dates.

12. The Compliance Office alleges that Respondents also advertised, marketed, solicited, and serviced those loans.

13. The Compliance Office alleges that Respondents charged, collected, contracted for and received interest, discount, bonus, fees, fines, commissions and other consideration, under the nomenclature "interest," "initiation fee," and "club dues" which in the aggregate exceeds 6% per annum on the amount of the loan.

14. The Compliance Office alleges that, acting together, Respondents arranged, negotiated, or made approximately 4,000 loans in denominations of less than \$500, and, on some loans, but not all loans, interest exceeded that allowed by law when all fees are aggregated.

15. The Compliance Office alleges that Respondents did not hold a license under the CDCA at the time they advertised, marketed, solicited, arranged, negotiated, made, and serviced loans in the amount of \$25,000 or less, at interest in excess of that allowed by the LIPL and the CDCA, nor were they chartered as a bank, credit union or other authorized financial institution.

16. The Compliance Office alleges that Respondents did not hold a money transmitter license at the time they arranged and negotiated loans.

AUTHORITY OF THE DEPARTMENT

17. Section 202 of the LIPL, limits interest charged on all loans, not otherwise regulated by state or federal law, to a simple rate of 6% per annum. 41 P.S. § 202.

18. Section 3 of the CDCA requires any principal, employee, agent or broker, in the Commonwealth of Pennsylvania engaged in the business of arranging, negotiating or making loans or advances of money on credit, in the amount or value of \$25,000 or less, at rates or fees in excess of those otherwise permitted by law to be charged, to have a license. 7 P.S. § 6203; *Cash America Net of Nevada, LLC v. Dep't of Banking*, 8 A.3d 282 (Pa. 2010).

19. Section 11 of the CDCA requires any principal, agent or broker, who advertises or solicits the business of lending money in Pennsylvania to have a license issued by the Department. 7 P.S. § 6211; *Cash America*.

20. Section 13 of the CDCA, limits interest charged on loans of less than \$25,000 to \$9.50 per hundred, plus a service charge of \$1.50 for each \$50.00 up to \$150.00, and Section 17.1 limits interest charged on such loans to 24%. 7 P.S. §§ 6213, 6217.1.

21. Section 3 of the CDCA provides that interest, discount, bonus, fees, fines, commissions or other consideration are aggregated into the calculation of interest. *See Pa. Dep't of Banking v. NCAS of Del., LLC*, 948 A.2d 752 (2008).

22. Section 14.B of the CDCA prohibits the charging, contracting, collecting or receiving of interest, discounts, fees, fines, commissions, charges or other considerations in excess of the interest or discount, service charges, extension charges, deferment charges, default charges, recording and satisfaction fees, premiums for insurance, attorney's fees, court costs, repossession expenses, storage charges, and selling expenses authorized by the CDCA. 7 P.S. § 6214.

23. Section 2 of the MTA prohibits a person from engaging in the business of transmitting money for a fee without a license. 7 P.S. § 6202.

ALLEGED VIOLATIONS

24. The Compliance Office alleges that Respondents violated the CDCA when they engaged in certain activities in the Commonwealth, specifically the acts of advertising, marketing, and soliciting short-term consumer loans in Pennsylvania at rates and charges in excess of that which the Respondents were authorized to charge without a license. 7 P.S. §§ 6203, 6211.

25. The Compliance Office alleges that Respondents further violated the CDCA when they made arranged, negotiated and made short-term consumer loans in Pennsylvania at rates and charges in excess of that which the Respondents were authorized to charge without a license. 7 P.S. §§ 6203, 6211.

26. The Compliance Office alleges that Respondents violated the LIPL when they charged and collected aggregated interest on consumer loans in excess of 6% without a license under the CDCA, or other legal authority. 41 P.S. § 202.

27. The Compliance Office alleges that Respondents violated the MTA when, for a fee, they electronically received funds from consumer for the purpose of transmitting those funds to another, namely a local credit union, because they had no license to transmit such monies. 7 P.S. § 6102.

28. Respondents dispute the Compliance Office's allegations and assert that the contractual arrangements made by Respondents with their customers allowed Respondents' customers to earn back any fees paid by continuing membership participation with Respondents' end goal and primary purpose to be to encourage its customers to become savers as opposed to

borrowers. Respondents also assert that the contractual arrangements produced the intended effect of increasing the financial preparedness of its members by compelling and incentivizing the creation of cash reserves that reduce or eliminate the need for future borrowing, and that the members' ability to recover costs associated with the loans was in keeping with the spirit and intent of the Pennsylvania laws referred to above.

RELIEF

29. Cease and Desist. Immediately upon the execution of this Order, Respondents shall begin to take all measures necessary to refrain from, and to cease and desist from engaging in the consumer discount business, including, but not limited to, measures necessary to cease and desist from the following:

- (a) arranging or making any loan to any Pennsylvania consumer;
- (b) selling or assigning to any third party any individual, batch, or portfolio of loans previously made to Pennsylvania consumers by any natural or corporate person, if the loans are in amounts less than \$25,000 with interest rates, aggregated with all fees, dues and savings, exceeding 6% per annum;
- (c) soliciting, marketing, or advertising any loan product to Pennsylvania residents over billboards, mass transit, radio, television, print, through the internet and or mails, or by any other means whatsoever, whether the advertisements are in their own names, or in the name of any other lender.
- (d) collecting any fees or charges, other than interest at a rate of 6% per annum on any outstanding loans, from any Pennsylvania consumer.

30. Restitution. Respondents, jointly and severally, shall use available resources (existing capital and loan payments collected) in the following manner:

(a) As soon as possible, but in no event greater than 90 days from the date this agreement is executed and to the extent resources permit, Respondents shall remit, to Pennsylvania consumers with open and active accounts, the balance of those dollars given to Respondents by the consumers. (Those dollars would have been given to Respondents subsequent to the consumers achieving a zero dollar balance on loans, which amounts were identified as "savings" by Respondents). If resources do not permit full refunds of these accounts, repayment of those dollars shall be prorated;

(b) As soon as possible, but in no event greater than 90 days from the date this agreement is executed, and only to the extent resources remain available after remitting "savings" dollars are paid back to Pennsylvania consumers with open and active accounts as provided by subsection (a) above, Respondents will refund to Pennsylvania consumers with open and active accounts those payments identified by Respondents as "initiation fees" or "club dues." If resources do not permit full refunds of "initiation fees" and "club dues," repayment of those dollars shall be prorated as resources permit.

31. Beginning thirty days after execution of this Order, and thirty days thereafter, Respondents shall provide a progress report in writing to the Compliance Office. Within seven days of full compliance with provisions (a) and (b) of paragraph 30, Respondents will provide the Compliance Office with a final report to include information on all payments made to consumers to include the date of payment, the amount of the payment, and each consumer's full name including middle initial.

32. Upon the Effective Date of this Order as set forth in paragraph 39 below, Respondents shall request removal of all reports, if any, made in regard to Pennsylvania consumer loans to any credit reporting agency.

FURTHER PROVISIONS

33. Consent. The parties hereby knowingly, willingly, voluntarily and irrevocably consent to the entry of this Order, agree that they understand all of the terms and conditions contained herein, and waive any right to hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

34. Publication. The Department will publish this Order pursuant to its authority in Section 302.A(5) of the Department of Banking Code. 71 P.S. § 733-302.A(5).

35. Consumer Rights. This Order shall not limit or impair the consumers' rights under the LIPL. *See* 41 P.S. §§ 501-507.

36. Entire Agreement. This Order contains the whole agreement between the parties. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by mutual agreement by the parties.

37. Binding Nature. The Department and Respondents intend to be and are legally bound by the terms of this Order. This Order shall be enforceable in a court of competent jurisdiction by the Department and Respondents. This Order shall be binding upon and inure to the benefit of Respondent's present and future owners, principals, directors, officers, members, partners, managers, agents, employees, successors and assigns.

38. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

39. Effectiveness. Respondents hereby stipulate and agree that the Order shall become effective on the date that the Compliance Office executes the Order.

40. Other Enforcement Action.

(a) The Department reserves all of its rights, duties, and authority to enforce all statutes, rules and regulations under its jurisdiction against Respondents in the future regarding all matters not resolved by this Order.

(b) Respondents acknowledge and agree that this Order is only binding upon the Department and not any other local, state or federal agency, department or office regarding matters within this Order.

41. Authorization. The parties below are authorized to execute this Order and legally bind their respective parties.

42. Counterparts. This Order may be executed in separate counterparts and by facsimile or email.

43. Titles. The titles used to identify the paragraphs of this document are for the convenience of reference only and do not control the interpretation of this document.

WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the Commonwealth of Pennsylvania, Department of Banking and Securities, Compliance Office and Grace Period, Inc., Dime-A-Day Solutions, Graced Lending, LLC, and Ventures in Grace, Inc., jointly and severally, do hereby execute this Consent Agreement and Order.

**FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES**

Signature: Redacted

Title: Director

Compliance Office
Department of Banking and Securities

Date: March 4, 2015

FOR GRACE PERIOD, INC.

Signature: Redacted

Print: Anthony White

Title: President

Date: 3-4-15

FOR GRACED LENDING, LLC

Signature: Redacted

Print: Daniel Krebs

Title: Member

Date: 3-4-15

FOR DIME-A-DAY SOLUTIONS

Signature: Redacted

Print: PATRICK T. DRUDY

Title: EXECUTIVE DIRECTOR

Date: 3/4/15

FOR VENTURES IN GRACE, INC.

Signature: Redacted

Print: Daniel Krebs

Title: President

Date: 3-4-15