

IN THE MATTER OF:

ARCHWAY HOLDINGS GROUP, LLC

Respondent.

BEFORE THE MARYLAND

COMMISSIONER OF

FINANCIAL REGULATION

Case No.: CFR-FY2013-151

FINAL ORDER TO CEASE AND DESIST

WHEREAS, the Office of the Commissioner of Financial Regulation, a unit in the Department of Labor, Licensing and Regulation, a principal department of the State of Maryland (the “Commissioner” or “OCFR”) undertook an investigation into the business activities of Archway Holdings Group, LLC, (the “Respondent”); and

WHEREAS, as a result of that investigation, the Commissioner finds grounds to allege that Respondent violated various provisions of the Annotated Code of Maryland (the “Code”), including Commercial Law Article (“CL”), Title 12, Subtitle 3 and Financial Institutions Article (“FI”), Title 11, Subtitle 2, (collectively the “Maryland Consumer Loan Law” or “MCLL”), and the Commissioner finds that action under FI 2-115 is appropriate; and

WHEREAS, the Deputy Commissioner issued a Summary Order to Cease and Desist and Order to Produce (the “Summary Order”) against Respondent on February 21, 2014, after determining that Respondent was in violation of the aforementioned provisions of Maryland law, and that it was in the public interest that Respondent cease and desist from making any further

loans to Maryland consumers, and from collecting, directly or indirectly through third party collection agencies or law firms, on any loans previously made to Maryland consumers; and

WHEREAS, the Summary Order notified Respondent of, among other things, the following: that Respondent was entitled to a hearing before the Commissioner to determine whether the Summary Order should be vacated, modified, or entered as a final order of the Commissioner; that the Summary Order would be entered as a final order if Respondent did not request a hearing within 15 days of the receipt of the Summary Order; and that as a result of a hearing, or of Respondent's failure to request a hearing, the Commissioner may, in the Commissioner's discretion and in addition to taking any other action authorized by law, enter an order making the Summary Order final, issue penalty orders against Respondent, issue orders requiring Respondent to pay restitution and other money to consumers, as well as take other actions related to Respondent's business activities; and

WHEREAS, the Summary Order was properly served on Respondent via First Class U.S. Mail and Certified U.S. Mail; and

WHEREAS, Respondent failed to request a hearing on the Summary Order within the fifteen (15) day period set forth in FI §§ 2-115(a) and 11-215(b), and have not filed a request for a hearing as of the date of this Final Order to Cease and Desist (this "Final Order"); and

WHEREAS, the OCFR began an investigation into the Respondent's business activities as a result of a consumer complaint and has based its decision in this Final Order that Respondent engaged in unlicensed and predatory business practices in violation of various provisions of Maryland law, including but not limited to, violation of the MCLL, and are subject to the provisions of Maryland Consumer Credit Reporting Agencies Law ("CCRAL"), on the following determinations:

1. Pursuant to FI §11-204, “[u]nless a person is licensed by the Commissioner, the person may not: (1) [m]ake a loan; or (2) [i]n any way use any advantage provided by the Maryland Consumer Loan Law.”

2. Pursuant to CL §12-302, a “person may not engage in the business of making loans under this subtitle unless the person is licensed under or is exempt from the licensing requirements of Title 11, Subtitle 2 of the Financial Institutions Article, Annotated Code of Maryland, known as the Maryland Consumer Loan Law – Licensing Provisions.”

3. Pursuant to CL §12-301(c), a “lender” means a person who makes a loan under [Title 12, Subtitle 3 of the Commercial Law Article].”

4. Pursuant to CL §12-301(e), a “loan” “means any loan or advance of money or credit made under [Title 12, Subtitle 3 of the Commercial Law Article].”

5. Pursuant to CL §12-303, “[a] lender may not make a loan under this subtitle unless the loan is in an original amount or value which does not exceed \$6,000.”

6. CL §12-306 specifies the maximum interest rates which a lender is permitted to charge on a loan under Title 12, Subtitle 3 of the Commercial Law Article.

a. Section 12-306(a)(6)(i) provides as follows: “For any loan with an original principal balance of \$2,000 or less, 2.75 percent interest per month on that part of the unpaid balance not more than \$1,000.” Therefore, this section permits a lender to charge a maximum annual interest rate of 33 percent on unpaid principal balances up to \$1,000, and 24 percent on unpaid balances over \$1,000.

b. Section 12-306(a)(6)(ii) provides: “For any loan with an original principal balance of more than \$2,000, the maximum rate of interest is 2 percent per month on the unpaid

principal balance of the loan.” This section permits a lender to charge a maximum annual interest rate of 24 percent on the unpaid principal balance of the loan.

7. Interest on unpaid loan balances, refinanced loans, and computation of interest are discussed in CL §§12-306(b) through (d), which state the following respectively:

(b) *Interest on balance unpaid after original maturity date.*

If any principal balance remains unpaid 6 months after the loan matures as originally scheduled or deferred, the lender may not contract for, charge, or receive interest at a rate exceeding 6 percent simple interest per annum on the actual unpaid principal balances from time to time.

(c) *Refinanced loan.* If the lender refinances a loan in the ordinary course of business, he may not add to the principal balance or deduct from the proceeds of the new loan more than 60 days’ interest then due.

(d) *Computation of interest.*

(1) The lender shall compute interest on the actual unpaid principal balances outstanding from time to time, and he may not contract for, charge, or received interest in advance or compounded interest.

(2) For each day on which an unpaid principal balance is outstanding, the lender may charge on that unpaid balance $1/30^{\text{th}}$ of the interest permitted under this subtitle to be charged for 1 month.

* * *

8. CL §12-307(b) provides that, “[a] lender may collect from the borrower a fee not exceeding \$15 if payment is made with a check that is dishonored on the second presentment.”

9. CL §12-308 sets forth various duties that lenders have toward borrowers, including but not limited to, the duty to provide a statement containing specific language and provisions at the time the loan is made (CL §12-308(a)), the duty to provide receipts for payments (CL §12-308(b)), the obligation to permit prepayment of the loan, in full or in part without penalty (CL §12-308(c)), the duty to provide specific documents after full repayment of the loan (CL §12-308(d)), and the duty to provide a written statement of the account upon request from the borrower (CL §12-308(e)).

10. Pursuant to CL §12-313(a)(1), a lender may not “[d]irectly or indirectly contract for, charge, or receive any interest, discount, fee, fine, commission, charge, brokerage, or other consideration in excess of that permitted by this subtitle.”

11. CL §12-314 provides in relevant part, as follows:

(a) *Prohibited.* A person may not lend \$6,000 or less if the person directly or indirectly contracts for, or receives a greater rate of interest, charge, discount, or other consideration than that authorized by the laws of this State.

(b) *Loans unenforceable; exceptions.*

(1) A loan made in the amount of \$6,000 or less, whether or not the loan is or purports to be made under this subtitle, is unenforceable if a rate of interest, charged, discount or other consideration greater than that authorized by the laws of this State is contracted for by any person unless the excess rate contracted for is the result of a clerical error or mistake and the person corrects the error or mistake before any payment is received under the loan.

(2) The person who is neither a licensee nor exempt from licensing may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under this subsection.

* * *

(c) *Transactions made in another state.* This section does not apply to a loan transaction validly made in another state in compliance with a similar loan law of that state. However, a lender may not collect an amount that is more than the total amount that would be permitted if this subtitle were applicable. This section applies to all loans made by a lender domiciled in another state to a borrower who is a resident of this State if the application for the loan originated in this State.

12. Pursuant to CL §12-315, the provisions of Title 12, Subtitle 3 “shall be interpreted and construed to effectuate its general remedial purpose,”

13. The Commissioner’s investigatory powers under the MCLL are found in FI §11-214 which generally identifies persons subject to investigation (§11-214(a)), access and examination under oath (§11-214(b)).

14. Pursuant to Maryland’s Consumer Credit Reporting Agencies Law (“CCRAL” at CL §14-1201 *et seq.*), the Commissioner is responsible for enforcing laws regulating consumer

credit reporting. CL §§14-1217 and 14-1218 provide that the Commissioner has authority to conduct investigations, hold hearings, issue orders, promulgate regulations, and otherwise enforce the provisions of the CCRAL as well as other laws regulating consumer credit reporting.

15. Pursuant to CL §14-1213, a “person who furnishes information to a consumer reporting agency” is required within 30 days of discovering that they are not in compliance with consumer credit reporting laws, to notify the consumer of the failure to comply and to make “whatever adjustments are necessary to correct the noncompliance.”

16. The Fair Credit Reporting Act (“FCRA”, 15 U.S.C. §1681 *et seq.*) imposes specific responsibilities on persons who furnish information to consumer reporting agencies (“CRAs”) § 623 [15 U.S.C. §1681s-2]. This includes the duty to report information accurately to CRAs (§623(a)(1)), as well as the duty to correct and update information previously reported (§623(a)(2)). In particular, §623(a)(2) requires a person that “has furnished to a consumer reporting agency information that the person determines is not complete or accurate” to “promptly notify the consumer reporting agency of that determination” and provide any information needed to make it complete and accurate.

17. The following relevant and credible evidence, obtained pursuant to the Commissioner’s investigation, was considered in the issuance of the Summary Order: internet and e-mail marketing materials by Respondent; written communication between Respondent and Maryland consumers, public records and Maryland’s licensing records, agreements entered into with Respondent by Maryland consumers, bank statements and related information, and statements by Maryland consumers who had entered into agreements or had dealings with, Respondent:

a. Respondent is a purported Nevis, West Indies-based company that advertises its lending services on the internet at archwaygroupllc.com, including to residents of Maryland, where it specifically offers to provide “payday loans.” Respondent is not registered with the Maryland Department of Assessments and Taxation (“SDAT”).

18. On or about March 20, 2013, OCFR received a complaint related to a consumer “payday” loan agreement that Respondent had entered into with a Maryland consumer, [REDACTED] (“Consumer A”). Consumer A applied for the loan from the Respondent on or about October 3, 2012. Consumer A completed and submitted an on-line loan application while located in Maryland, thus the application for Consumer A originated in Maryland.

19. The loan transaction between Respondent and Consumer A included, among other things the following:

(a) Documents captioned “Loan Note and Disclosure” (the “Disclosure”) and Authorization Agreement for Preauthorized Payment (“the Agreement” and together, the “Documents”). The Disclosure reflected an application date of October 3, 2012 and indicated Respondent would provide Consumer A with a loan in the amount of \$250 (with an anticipated funding date of October 4, 2012), in exchange for which Consumer A was required to repay the principal (\$250) plus a \$75 finance charge, for a total payment of \$325. The due date for the entire repayment was October 12, 2012, which was eight days after the anticipated date Consumer A would receive the loan proceeds. The Disclosure reflects an APR of 1368.75% described as “the cost of your credit as a yearly rate.”

(b) The Documents provide that Respondent is entitled to collect a \$30 “Return Item Fee” if Consumer A’s ACH payment (electronic funds transfer) authorization is returned for any reason.

(c) The Agreement also indicates that unless Consumer A informed Respondent, in writing, at least three days prior to the payment due date that Consumer A wished to pay the loan off in full, only the finance fee would be withdrawn by ACH transfer and Consumer A's loan will automatically be "refinanced" and accrue new fees. The Agreement also required Consumer A to give Respondent and its "servicers and affiliates" permission to contact Consumer A at his "place of employment" or residence regarding his loan.

(d) Consumer A paid a total of \$637 on the original \$250 loan before eventually stopping payments.

20. Respondent's transactions with Consumer A constituted "loans" under CL §12-301(e), and thus the Respondent and any of its consumer loans to Maryland consumers are subject to the MCLL, which the Commissioner is charged with enforcing.

21. Respondent is not licensed by the State of Maryland to make consumer loans, nor is it exempt from licensing under MCLL. Therefore, Respondent's unlicensed consumer lending activities in Maryland violate the licensing provisions of the MCLL cited above, including FI §11-204 and CL §12-302.

22. The loan Respondent made to Consumer A involved usurious rates of interest, far in excess of the 24% or 33% annual interest rates permitted for these transactions under CL §12-306(a)(6). As such, Respondent violated numerous provisions of the MCLL, including, but not limited to, CL §§12-306(a)-(d), 12-313(a), 12-314(a), 12-314(b)(1), 12-314(b)(2), and 12-314(c).

23. Pursuant to CL §12-314(b)(1), as Respondent's loan to Consumer A contain a "rate of interest, charge, discount or other consideration greater than that authorized by the laws of this State", Respondent's loan to Consumer A is illegal and unenforceable. Additionally, all loans made by Respondent to all other unnamed Maryland consumers which contain a "rate of

interest, charge, discount or other consideration greater than that authorized by the laws of the State”, are also illegal and unenforceable. Further, pursuant to CL §12-314(b)(2), Respondent (who is neither licensed nor exempt from licensing), “may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under this subsection.” It follows that, not only are Respondent’s loans to Maryland consumers unenforceable, but Respondent is prohibited from collecting the principal amount of the loans from any of these consumers or from collecting any other money related to those loans (thus these loans are “uncollectable”).

24. Respondent’s written agreements with Consumer A violate various other provisions of the MCLL, including, but not necessarily limited to: they do not include the statements and disclosures required under CL §12-308(a) and Respondent did not provide Consumer A with receipts for payments as required under CL §12-308(b). Further, Respondent’s written agreements authorize Respondent to collect fees in excess of that allowed by law, such as stating that Respondent is entitled to collect a \$30 fee for returned payments, which violates CL §12-307(b) (permitting a maximum fee of \$15 for a check which is “dishonored on the second presentment”).

25. Additionally, as Respondent’s loan to Consumer A is illegal, unenforceable, and uncollectible, adverse or negative information pertaining to this loan (including any automatic “refinancing”) should not be reflected on the credit reports of Consumer A for any reason, including but not limited to, for reasons of nonpayment or default. Thus, pursuant to Respondent’s duties under both CL §14-1213 of the CCRAL and §623(a)(1) of the FCRA, Respondent is prohibited from submitting any negative information concerning its loan transactions involving Consumer A to CRAs, whether reported directly or through third party

collection agencies. Further, pursuant to Respondent's duties under both CL §14-1213 of the CCRAL and §623(a)(2) of the FCRA to correct and update information previously submitted to CRAs, Respondent is required to take corrective action to rectify its non-compliance with the credit reporting laws, including notifying Consumer A, of their non-compliance, as well as removing from the credit reports of Consumer A all adverse or negative information which Respondent or third party collection agencies acting on Respondent's behalf had previously submitted to CRAs concerning the loan transaction that Respondent had entered into with Consumer A.

26. According to the Commissioner's records, at no time relevant to the facts set forth in the Summary Order has the Respondent been licensed by the Commissioner to make consumer loans. Furthermore, Respondent has charged and received interest on loans made pursuant to its unlicensed and illegal activity, in excess of the amount permitted by Maryland law; and Respondent has violated multiple other provisions of State and federal laws, including the Maryland Consumer Loan Law, the Consumer Credit Reporting Agencies Law, and the Federal Fair Credit Reporting Act, all to the detriment of Maryland consumers.

27. Pursuant to the Commissioner's authority to conduct investigations under FI §§ 2-114 and 11-214 and under CL §§14-1217 and 14-1218, the Commissioner issued an Order to Produce (in conjunction with the Summary Order) on February 21, 2014, ordering Respondent to provide to the Commissioner within 15 days of receipt of the Summary Order a detailed list of all loan agreements which Respondent has entered into with Maryland consumers since January 1, 2006 to include specific information relative to each consumer's loan transaction with Respondent. Respondent has not produced the documents required by this Order to Produce, and

as the specified due date has passed, Respondent is in violation of FI §§2-114 and 11-214 and CL §§14-1217 and 14-1218.

NOW THEREFORE, having determined that Respondent waived its right to a hearing in this matter by failing to request a hearing within the time period specified in the Summary Order, and pursuant to FI §2-115 it is by the Commissioner hereby:

ORDERED that the Summary Order to Cease and Desist issued by Maryland Department of Labor, Licensing and Regulation, Office of the Commissioner of Finance Regulation on February 21, 2014, is entered as a Final Order of the Commissioner, and Respondent shall permanently **CEASE** and **DESIST** from making unlicensed consumer, installment, or any other loans to Maryland consumers; and that Respondent shall permanently **CEASE** and **DESIST** from collecting or attempting to collect on any loans previously made to Maryland consumers; and that Respondent shall permanently **CEASE** and **DESIST** from referring any loan accounts involving Maryland consumers to third party collection agencies; and that Respondent shall permanently **CEASE** and **DESIST** from reporting any negative or adverse information to credit reporting agencies concerning any loan transaction which Respondent entered into with Maryland consumers; and that Respondent shall take affirmative action to prevent any third party collection agencies, to which Respondent previously referred loan accounts involving Maryland consumers, from reporting any negative or adverse information to credit reporting agencies.

ORDERED that within 30 days of this Final Order, Respondent shall take corrective actions, including notifying the effected Maryland consumers that Respondent or their agents had impermissibly and incorrectly reported to credit reporting agencies negative or adverse information concerning the loan transactions which Respondent had entered into with the

Maryland Consumers identified herein; and shall remove from the effected Maryland Consumers' credit reports all adverse or negative information which Respondent or third party collection agencies acting on Respondent's behalf had previously submitted to Credit Reporting Agencies.

ORDERED that, pursuant to FI §2-115(b) and CL § 12-314(b) and upon careful consideration of (i) the seriousness of the Respondent's violations; (ii) the lack of good faith of Respondent, (iii) the nature of Respondent's violations; and (iv) the deleterious effect of Respondent's violations on the public and on the consumer lending businesses, Respondent shall pay to the Commissioner a total civil money penalty in the amount of **\$4,000**, which consists of the following:

<i>Prohibited Activity and Violation</i>	Penalty per Violation	x Number of Violations	= Penalty
<i>Unlicensed Lending in Violation of MCLL</i>	\$1,000	1 Loans with 1 Md. Consumer	\$1,000
<i>Charging Unlawful Rate of Interest (CL §12-306)</i>	\$1,000	1 Loan with 1 Md. Consumer	\$1,000
<i>Charging Prohibited Fees (CL §12-313)</i>	\$1,000	1 Loan with 1 Md. Consumer	\$1,000
<i>Failure to Comply with Duty of Lender (CL §12-308)</i>	\$1,000	1 Loans with 1 Md. Consumer	\$1,000
		Total	\$4,000

And it is further,

ORDERED that Respondent shall pay to the Commissioner, by cashier's or certified check made payable to the "Commissioner of Financial Regulation," the amount of **\$4,000** within fifteen (15) days from the date of this Final Order; and it is further

ORDERED that, all loan agreements which Respondent entered into with Maryland consumers described herein, are void and unenforceable (CL §12-314(b)(1)); and it is further

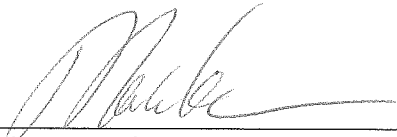
ORDERED that, as Respondent was neither licensed nor exempt from licensing, pursuant to CL §12-314(b)(2), Respondent may not retain any principal, interest or other compensation with respect to any loans made with any Maryland consumers, and therefore, full refunds of all sums collected from Maryland consumers shall be refunded; and it is further

ORDERED that, Respondents shall provide monetary restitution to Consumer A in the amount of \$637;

ORDERED that Respondent shall pay the required monetary award to Consumer A within 30 days of the date of the Final Order. Respondents shall make payment by mailing to each consumer a check in the amount specified above via U.S. First Class Mail at the most recent address of that consumer known to the Respondent. If the mailing of a payment is returned as undeliverable by the U.S. Postal Service, Respondent shall promptly notify the Commissioner in writing for further instruction as to the means of the making of said payment. Upon the making of the required payments, the Respondent shall furnish evidence of having made the payments to the Commissioner within sixty (60) days of this Final Order being signed, which evidence shall consist of a copy of the front and back of the cancelled check for each payment; and it is further

ORDERED that Respondent shall send all correspondence, notices, civil penalties and other required submissions to the Commissioner at the following address: Commissioner of Financial Regulation, 500 North Calvert Street, Suite 402, Baltimore, Maryland 21202, Attn: Proceedings Administrator.

6/27/04
Date



Mark A. Kaufman
Commissioner of Financial Regulation