STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION

STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION,

Petitioner,

v.

EZPAWN FLORIDA, INC. and **INTEGRITY FLORIDA FUNDING, L.P.,**

Respondents.

_____/

Agency Administrative Proceeding No.: 2073-F-7/07

(DOAH Case No.: 07-3953)

FINAL ORDER AND NOTICE OF RIGHTS

On March 25, 2008, an Administrative Law Judge ("ALJ") with the Division of Administrative Hearings ("DOAH"), submitted his Recommended Order to the Petitioner, Office of Financial Regulation ("the Office"). Copies of the Recommended Order were simultaneously served on Respondents. A copy of the Recommended Order is attached hereto as Exhibit A. Respondents timely filed exceptions to the Recommended Order on April 9, 2008. Petitioner filed no exceptions, but did file a response to Respondents' exceptions on April 21, 2008. The matter is now before the Commissioner, as head of the Office, for final agency action.

Upon review of the entire record, the Office, being authorized and directed to administer Chapter 516, Florida Statutes, ("Consumer Finance Act"), hereby enters the following Final Order, ruling on all exceptions, and adopting the Findings of Fact and Conclusions of Law of the Recommended Order subject to the modifications herein below. Such modifications, however, are for clarification purposes only. The modifications are consistent with, and do not materially alter the basis for the ALJ's ultimate recommendation

and suggested penalty. Accordingly, as set forth below, the ALJ's recommendation and suggested penalty are adopted and incorporated herein by reference, as the Final Order of the agency.

STATEMENT OF THE ISSUE

The issue is whether certain loan transactions involving Respondents violated section 516.02, Florida Statutes, as alleged in the Amended Administrative Complaint.

STANDARD OF REVIEW

As a preface to the rulings on these exceptions, it is appropriate to comment on the standard of review imposed by law on an agency in reviewing recommended orders submitted by DOAH Administrative Law Judges.

When reviewing a recommended order, an agency may adopt a recommended order as the final order of the agency. § 120.57(1)(l), Fla. Stat. (2007). With respect to a recommended order's conclusions of law or interpretations of administrative rules, in its final order, an agency,

> may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.

§ 120.57(1)(l), Fla. Stat. (2007). With respect to findings of fact, the agency

> may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

§ 120.57(1)(l), Fla. Stat. (2007). Competent substantial evidence "is defined as 'such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.'" Manassa v. Manassa, 738 So.2d 997 (Fla. 1st DCA 1999)(citing DeGroot v. Sheffield, 95 So.2d 912, 916 (Fla. 1957). The evidence "should be 'sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.'" Id. "Neither may an agency's responsibility to determine if substantial evidence supports the administrative law judge's findings of fact be avoided by merely labeling, either by the administrative law judge or the agency, contrary findings as conclusions of law." Gross v. Dept. of Health, 819 So.2d 997, 1001 (Fla. 5th DCA 2002).

Additionally, an agency may not reweigh evidence submitted to an administrative hearing officer, resolve conflicts in the evidence, judge the credibility of witnesses or otherwise interpret the evidence anew. Brown v. Criminal Justice Standards and Training Comm., 667 So.2d 977, 979 (Fla. 4th DCA 1996) (citing *Heifetz v. Department of Business Regulation,* 475 So.2d 1277, 1281 (Fla. 1st DCA 1985).

Finally, an agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefore in the order, by citing to the record in justifying the action. § 120.57(1)(l), Fla. Stat. (2007).

RULINGS ON EXCEPTIONS

Respondents filed approximately thirty-seven pages of exceptions, in 104 separately numbered paragraphs, including extensive legal argument. The thrust of the Respondents' exceptions is to suggest that the Office recast the ALJ's findings, placing the argued form of the subject transactions and business practices over the substance of the same in the

apparent hope that by casting parts of the transactions in different terms that the true nature of the loans at issue might be confused.

The Office has carefully considered the Respondents' exceptions, as well as the responses thereto. To the extent necessary, individual exceptions are discussed in as much detail as is warranted by their context. Where exceptions have been directed at findings of the Recommended Order which the Office deems supported by competent substantial evidence in the record as a whole, these exceptions are rejected in summary fashion with minimal discussion. Any exception which is not specifically granted in the analysis which follows has been explicitly rejected as being without merit.

Throughout this order ¶ numbers indicated in parentheses refer to the paragraph number within the Respondents' April 9, 2008 exceptions where the exception is located. The "Finding of Fact No." or "Conclusion of Law No." refers to the paragraph number of the ALJ's Recommended Order, as referenced within Respondents' exceptions.

A. Respondents' Exceptions to Findings of Fact:

1. Respondents' take exception to the second sentence in Finding of Fact No. 2 (¶ 1) because Chapter 817, Part III, Florida Statutes ("CSO Act") does not require persons operating in compliance with its provisions to obtain a license. The exception is well taken to the extent that the CSO Act does not require licensure. However, the ALJ's underlying finding, that EZPawn was operating pursuant to the CSO Act, is supported by competent substantial evidence. Accordingly, the exception is GRANTED solely to clarify that EZPawn was not "licensed" under the CSO Act.

2. Respondents' exceptions to Findings of Fact Nos. 7, 10, 11, 14-16, 18, 23, 25-30, 32, 34, 35, 37-41, 43, 50 and 58-64 (¶¶ 2, 3, 5-13, 17-20, 22-25, 27-35, 40-43, 47-50, 52-54, and 56) are REJECTED. All of the challenged findings are supported by

competent substantial evidence in the record, considered as a whole and additional discussion is not warranted.

3. Respondents take exception to the second sentence of Finding of Fact No. 8 (¶ 4) to the extent that it characterizes the issue of whether the fee charged by EZPawn is a "cost of obtaining a consumer finance loan" as a question of fact, and subsequently suggests this conclusion is not supported by competent substantial evidence. The exception is well taken only to the extent that the issue of whether a particular charge constitutes interest pursuant to Chapter 516, Florida Statutes, is a question of law. However, the resolution of the circumstances surrounding a particular charge are factual issues. Contrary to the assertion of Respondents, the ALJ's determination is supported by competent substantial evidence. Accordingly, the exception is GRANTED in part, solely to clarify that the issue described is a question of law, but is REJECTED to the extent it suggests that the ALJ's conclusion is not supported by competent substantial evidence.

4. Respondents take exception to several findings of fact to the extent that refinance or loan renewals or fees associated with such transactions are characterized or otherwise termed "rollover" loans or fees. Specifically Respondents take exception to Findings of Fact Nos. 21, 22, 56, 57, 61, 63 and 64 (¶¶ 14, 15, 45, 46, 51, 55 and 57). The exceptions are based on semantics and ignore the facts that the ALJ's description of the rollover, renewal or refinance transactions are accurately described throughout the Recommended Order and are supported by competent substantial evidence. Accordingly, the exceptions are REJECTED.

5. Respondents take exception to the second sentence of Finding of Fact. No. 30 (¶ 26) to the extent it purports to find that the charge by EZPawn and the interest charged by Integrity are part of the aggregate cost of the loan. The Recommended Order

accurately describes the lending transactions. The findings in this regard are supported by competent substantial evidence. Accordingly, the exception is REJECTED.

6. Respondents take exception to Finding of Fact No. 39 (¶¶ 36-39). The exception again focuses on the form of the transactions in question and ignores the ALJ's examination of the substance of the transaction and the economic effect of each loan, which is supported by competent substantial evidence. The Office may not reweigh evidence to alter the ALJ's finding. Accordingly, the exception is REJECTED.

7. Respondents take exception to Findings of Fact Nos. 56 and 57 (¶¶ 45 and 46) regarding the rollover or extension associated with borrower N.H. Respondents misread the finding. The ALJ does not suggest that one loan was a rollover of the second. In fact, the rollover loan did take place on May 15, 2006 and was a rollover of a previous loan, not the June 6, 2006 loan. The finding of fact is supported by competent substantial evidence. Accordingly, the exceptions are REJECTED. See additional discussion ruling on these exceptions in paragraphs 4 and 8(c), herein.

8. Finally, Respondents take exception to several findings based on purported "typographical errors." Specifically, Respondents take exception as follows:

a. Respondents take exception to Finding of Fact No. 22 (¶ 16), asserting that in the first sentence, the phrase "CSO fees" should be changed to "CSO services" and that in the second sentence the phrase "charged in" should be deleted and replaced with the word "for." While such a change would ultimately be immaterial to the actual finding of fact, it cannot be conclusively stated that the suggested "typographical errors" were not intended. Therefore, the finding should not be disturbed and the exception is REJECTED.

b. Respondents take exception to Finding of Fact No. 28 (¶ 21), asserting that the word "actual" should be "annual." While specifically noting that such typographical error is immaterial to the actual finding of fact, the exception is GRANTED.

c. Respondents take exception to Finding of Fact No. 56 (¶ 44), asserting that the date of the "so-called rollover loan is June 15, 2007, not May 15, 2007 [*sic*]." Such exception is not well taken, inasmuch as the record contains competent substantial evidence that the loans to N.H., referenced in the Recommended Order occurred as described. Accordingly, the exception is REJECTED.

B. Respondents' Exceptions to Conclusions of Law:

9. **Exceptions directed to Conclusion of Law No. 70.** Respondents take exception to Conclusion of Law No. 70 (¶¶ 58-70), stating, "[t]he ALJ's conclusion that the cost of a consumer finance loan includes EZPawn's CSO fee is incorrect." This is the ultimate issue in this proceeding, and the ALJ's conclusion is correct. Accordingly, and for the additional reasons discussed below the exception is REJECTED.

The record in this case clearly supports the ALJ's factual findings upon which this conclusion is based. The Respondents, however, protest because in their view Florida law does not support the conclusion, the conclusion ignores the applicability of the CSO Act, and the purported CSO performs activities unrelated to the loan origination process. The Respondents' arguments are without merit.

First, with respect to Respondents' arguments about Florida law not supporting the ALJ's ultimate conclusion, it should be noted that none of the cases cited by Respondents suggests an alternative conclusion based on an interpretation of Chapter 516, Florida Statutes. Furthermore, none of the cases is persuasive based on the facts of this case.

Accordingly, the Respondents suggestion that the decision reached by the ALJ should be disregarded on this basis is without merit.

Second, the suggestion that the conclusion ignores the CSO Act is also without merit. In essence, the Respondents suggest that Chapter 516 cannot apply to the transactions at issue because it is preempted or implicitly overruled by Chapter 817, Florida Statutes. Specifically, Respondents suggested at the hearing that "the CSO Act post dates the Consumer Finance Act. And we believe has implicitly would [*sic*] overrule the Chapter 516 prohibition against this type of a fee being charged by a third party." (Hearing Transcript at p. 100). When the argument is considered further, it is easily dispensed.

The Office's exercise of jurisdiction in this case is based upon the Respondents' violations of the Consumer Finance Act. The CSO Act is not a finance statute. It does not expressly preempt the Consumer Finance Act nor contain any language dealing with interest rate calculations or charges that would allow loan interest rates to exceed 18 percent. Therefore, it does not provide an exception to section 516.02(2)(a), Florida Statutes.

In order for the Legislature to be deemed to have preempted the Consumer Finance Act through the enactment of Chapter 817, the statute must contain express and unambiguous preemption language. See Kligfeld v. State, Office of Financial Regulation, 876 So.2d 36, 38 (Fla. 4th DCA 2004). See also Lowe v. Broward County, 766 So.2d 1199, 1207 (Fla. 4th DCA 2000) (stating "[f]or the legislature to expressly preempt an area, the preemption language of the statute must be specific; 'express preemption cannot be implied or inferred'").

The Legislature is presumed to be familiar with the statutes it has passed; when it enacts a new statute, it is done with knowledge of prior statutes. State v. Springer, 965

So.2d 270, 271 (Fla. 5th DCA 2007). "The general presumption is that later statutes are passed with knowledge of prior existing laws, and a construction is favored which gives each one a field of operation, rather than the former being repealed by implication." Id.

The CSO Act contains no language that can be construed as an express preemption of Chapter 516. In fact, the CSO Act is silent on interest rates on loans and makes no reference to Chapter 516. Therefore, any repeal would have to have been implicit. The Fourth District in a case involving the Office, explained why "implicit repeal" is highly disfavored and that the proper method of statutory construction is to harmonize statutes:

> [I]f preemption is to exist, it would have to be implied. The Florida Supreme Court, however, has made clear that implied preemption is not favored under Florida law.
>
> In Flo-Sun, Inc. v. Kirk, 783 So.2d 1029 (Fla. 2001), the Florida Supreme Court emphasized that, in cases where one statute is alleged to have repealed another, "the general rule . . . is that implied repeals are not favored and will not be upheld in doubtful cases." Id. at 1035 (citing State v. Digman, 294 So.2d 325 (Fla. 1974)). "Moreover, before making a determination that a subsequent statute has impliedly repealed one previously enacted, there should appear either a positive repugnancy between the two statutes or a clear legislative intent that the later act prescribes the only governing rule." Kirk, 783 So.2d at 1035 (citing Atkinson v. State, 156 Fla. 449, 23 So.2d 524 (1945)); see also City of Punta Gorda v. McSmith, Inc., 294 So.2d 27 (Fla. 2d DCA 1974) (stating "[t]he general rule of legislative construction presumes later statutes are passed with knowledge of prior existing laws, and favors a construction which gives each a field of operation, rather than have one meaningless or repealed by implication").

Kligfeld, 876 So.2d at 38; see also Saridakis v. State, 936 So.2d 33, 35 (Fla. 4th DCA 2006). As in Kligfeld, there is certainly no positive repugnancy between the chapters at issue in this context, i.e. the Consumer Finance Act and the CSO Act. These transactions could be conducted lawfully provided the cumulative rate of interest does not exceed 18 percent. Since the statutes are not positively repugnant to one another, and there is no

express preemption between Chapter 516 and Chapter 817, preemption should not be read into the statutory scheme.

The staff analyses offered by the Respondents are unnecessary given the plain statutory language at issue in this case. They also do not support Respondents' argument that Chapter 817 preempts Chapter 516. There is nothing in the legislative history on the CSO Act that would remotely suggest that the Legislature implicitly wished to repeal Chapter 516, Florida Statutes.

Moreover, the Respondents' argument that the CSO Act should control because its passage post-dates the passage of the Consumer Finance Act relies on a premise that is demonstrably false. The CSO Act was passed in 1987. See Ch. 87-204, Laws of Fla. (1987). One year later, in 1988, the Legislature expressly amended the Consumer Finance Act to recognize the CSO Act and granted the Office enforcement authority over violations of the CSO Act under Chapter 516, Florida Statutes. See § 516.07(1)(g), Fla. Stat. (providing that "any violation of part III of Chapter 817" is a violation of Chapter 516 and constitutes grounds for disciplinary action); Chapter 88-342, § 7, at 1816, Laws of Fla. (1988). The Legislature was clearly aware of both Acts and intended for them to work in harmony with one another. Moreover, the CSO Act was not the "later-passed" legislation.

Ironically, if considered at all, the legislative staff analyses introduced by the Respondents support a conclusion opposite of that they suggest. The language in section 516.07(1)(g) dealing with the CSO Act was added to give the Office's statutory predecessor, the Department of Banking and Finance, the "authority to enforce Part III of Chapter 817 and Part II of Chapter 559, F.S., which deal with for-profit credit services or budget planning organizations, by using the civil disciplinary sanction of Chapter 516." See

Fla. H.R. Comm. on Regulatory Reform, HB 658 (1988) Staff Analysis at p. 2 (final March 2, 1988).

In short, despite Respondents' arguments to the contrary, there is no repugnancy between the CSO Act and the Consumer Finance Act and they can be easily harmonized.

Third, the Respondents' contention that the purported CSO performs activities unrelated to the loan origination process is more form over substance. Perhaps in an attempt to enhance the perception of the role EZPawn plays as a CSO, at the hearing Respondents referenced the fact that EZPawn offers a product called PRBC, which stands for Payment Reporting Builds Credit. (Hearing Transcript pp. 124, 164). They also mentioned this product in the Amended Prehearing Stipulation. (Joint Stipulation at p.2). To suggest this is one of the services EZPawn offers in its capacity as a credit services organization, however, is simply not compelling for several reasons. First, PRBC is not one of the services contracted for in the CSO Agreement between EZPawn and the borrower for which the CSO fee is paid. (Joint Stipulation at p.12, ¶ 36). Second, it is offered to all EZPawn customers in all eleven states where EZPawn does business, including the nine states where EZPawn is a direct lender and does not purport to be a credit service organization. (Petitioner's Exhibit S at p. 36). Third, PRBC is offered free of charge. (Hearing Transcript at pp. 170-171, Respondents' Exhibit S at p. 35; Petitioner's Exhibit T at p. 24). In fact, the enrollment form for PRBC highlights a critical distinction between a borrower's choice to enroll in PRBC and being charged the compulsory cost of the CSO Fee. (Respondents' Exhibit F). The enrollment form for PRBC specifically states that "[e]nrollment in credit reporting to PRBC is voluntary, and free to all EZMONEY Loan Services customers. Signing up for this service is not required to qualify for an EZ Loan." (Respondent's Exhibit F at p. 1). This is directly inapposite of the CSO fee, which is

required to qualify for a loan and represents over 95 percent of the cost to the borrower associated with the loan.

The Respondents' arguments against the ALJ's determination that the CSO fee constitutes interest pursuant to Chapter 516, Florida Statutes are unpersuasive. On the contrary, the ALJ's conclusion is not only correct, but the facts upon which it is based are amply supported by competent substantial evidence.

10. **Exceptions directed to Conclusion of Law No. 75.**

a. Respondents take exception to the second sentence in Conclusion of Law No. 75 (¶71) for the same reasons set forth in the exception above. For the same reasons set forth in the exceptions above this exception is also REJECTED.

b. Respondents take exception to the third sentence of Conclusion of Law No. 75 (¶ 72) because they assert the ALJ was incorrect in determining, "[t]he term [cost] is defined by its plain and ordinary meaning and that definition requires no agency expertise or legislative history." For the reasons discussed below the exception is REJECTED.

As the ALJ found, the plain language of the Consumer Finance Act leads to the conclusion that the CSO fee constitutes interest in this case. Despite this plain language, the Respondents offer alternative interpretations and argue that the legislature did not intend for CSO fees to be included in the interest calculation. Indeed, "legislative intent is the polestar that guides a court's statutory construction analysis." State v. J.M., 824 So.2d 105, 109 (Fla. 2002). In determining such intent and construing statutory provisions, it is well settled that the court must first look at the actual language used in the statute. See State v. Bodden, 877 So.2d 680, 685 (Fla. 2004). When a statute is clear, courts should not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. State v. Burris, 875 So.2d 408, 410 (Fla. 2004);

Lee County Electric Cooperative, Inc. v. Jacobs, 820 So.2d 297, 303 (Fla. 2002). Instead, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent. Burris, 875 So.2d at 410. Simply put, when interpreting a statute, courts are not at liberty to add words to the statute that were not placed there by the legislature. J.M., 824 So.2d at 111. In the instant case, the ALJ's construction cannot be said to be clearly erroneous.

At the hearing, the Respondents also suggested that a change in the definition of interest in 1988 was "not a substantive change," when the legislative history was examined. (Hearing Transcript, p. 104). Presumably, this contention is based on a staff analysis provided by Respondents that states that "[t]he definition of interest remains generally the same and is merely transferred from s. 516.20, F.S." Fla. S. Comm. on Commerce, CS for SB 141 (1988) Staff Analysis at p. 1 (March 1988). Such observation only demonstrates the potential folly of eschewing express statutory language in favor of attempts to divine the Legislature's intent from unclear legislative history. Notably, the Chapter Law, which included the actual language that was ultimately included in the statute, did not identify the specific changes to the definition of interest because there was a "[s]ubstantial rewording of [the] section." See Ch. 88-342, § 1, at 1810, Laws of Fla. (1988). Moreover, the language immediately preceding the observation on the definition of interest in the staff analysis specifically states that the definitions in that section were "substantially reworded." Fla. S. Comm. on Commerce, CS for SB 141 (1988) Staff Analysis at p. 1 (March 1988).

Finally, if the Legislature had intended there to be no change in the definition of interest, it would have used the same language. It did not. Compare § 516.01(5), Fla. Stat. (2007) with § 516.20, Fla. Stat. (1987). Any attempt to call the changes non-substantive based on a staff analysis is disproven when the prior and contemporary versions of the

definition are compared. The large differences in the actual language of the two statutes simply cannot be dismissed by pointing to an ambiguous statement in staff analysis suggesting that the two statutes are "generally" the same.

c. Respondents further take exception to the last sentence of Conclusion of Law No. 75 (¶¶85-86). The Respondents further suggest Chapter 516, Florida Statutes is a penal statute that requires strict construction. In fact, Chapter 516, Florida Statutes is a remedial statute. See Reuter v. Davis, Not reported in So.2d, 2006 WL 3743016 (Fla. 15th Cir. Ct. Dec. 12, 2006). The provisions of the Consumer Finance Act, and section 516.02, Florida Statutes, in particular, are designed to protect Florida consumers from paying excessive interest rates on loans under $25,000. See § 516.02, Fla. Stat. As a remedial statute, the Consumer Finance Act and section 516.02 should be liberally construed in favor of achieving its intended purpose. See Irven v. Department of Health and Rehabilitative Services, 790 So.2d 403, 405 (Fla. 2001); Golf Channel v. Jenkins, 752 So.2d 561, 565-566 (Fla. 2000); Chappell v. Construction Industries Recovery Fund, 835 So.2d 339, 340 (Fla. 3d DCA 2003). This exception is accordingly likewise REJECTED.

11. **Exceptions directed to Conclusion of Law Nos. 76 and 77.** Respondents take exception to Conclusion of Law Nos. 76 and 77 (¶¶87-88) to the extent that the same purport to conclude that the issue of whether the CSO fee is a cost of obtaining a consumer finance loan within the meaning of the Finance Act is a factual issue within the province of the trier-of-fact. As discussed in paragraph 3 above concerning Respondents' exception directed at Finding of Fact No. 8, the Office does not disagree with the proposition that whether a particular charge constitutes interest pursuant to Chapter 516, Florida Statutes, is a question of law, while the resolution of the specific circumstances surrounding a particular charge are factual issues. Again however, the point is inconsequential in this

instance. Contrary to the assertion of the Respondents, the ALJ's determination is ultimately supported by competent substantial evidence. Specifically, the ALJ carefully recites numerous facts throughout his Recommended Order that accurately describe the lending transactions at issue in this case. These facts are supported by competent substantial evidence. Accordingly, this exception is REJECTED.

12. **Exceptions directed to Conclusion of Law No. 78.**

a. Respondents take exception to the first sentence in Conclusion of Law No. 78 (¶ 89) because Respondents object to the ALJ resorting to the plain meaning of the language contained in the statute. Yet, and as discussed above, in construing statutory provisions, it is well settled that courts must first look at the actual language used in the statute. See State v. Bodden, 877 So.2d 680, 685 (Fla. 2004). When a statute is clear, courts should not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. State v. Burris, 875 So.2d 408, 410 (Fla. 2004); Lee County Elec. Coop., Inc. v. Jacobs, 820 So.2d 297, 303 (Fla. 2002). Instead, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent. Burris, 875 So.2d at 410. Simply put, when interpreting a statute, courts are not at liberty to add words to the statute that were not placed there by the legislature. State v. J.M., 824 So.2d 105, 111 (Fla. 2002). Consequently, this exception is REJECTED.

b. Respondents additionally take exception to the second sentence of Conclusion of Law No. 78 (¶¶ 90-97) "to the extent it purports to conclude that the evidence is clear and convincing that EZPawn and Integrity each required the CSO fee as a cost of the loan." Respondents suggest that, "[s]uch a conclusion is simply not supported by either substantial, competent evidence in the record of this proceeding or applicable law, and is

accordingly, erroneous." Contrary to such assertion, the facts found in support of this conclusion by the ALJ are supported by competent substantial evidence. Therefore, the exception is REJECTED.

c. Respondents take exception to the fifth sentence in Conclusion of Law No. 78 (¶ 98). Presumably, the Respondents mean the fourth sentence of Conclusion of Law No. 78. Respondents object because they believe the CSO fee is not consideration for the credit it extended and that they did not assume the risk of loss on the loans. The ALJ's determinations are supported by competent substantial evidence. Accordingly, this exception is also REJECTED.

d. Respondents also take exception to the final sentence of Conclusion of Law No. 78 (¶99) "to the extent it purports to conclude that EZPawn controlled the distribution of the loan proceeds." Again, the ALJ's determinations are supported by competent substantial evidence. Accordingly, this exception is REJECTED.

13. **Exception directed to Conclusion of Law No. 79.**

a. Respondents take exception to the first sentence of Conclusion of Law 79 (¶ 100) "to the extent it purports to conclude that the CSO fee does not fall within any statutory exception to the definition of interest in the Finance Act." While making this argument the Respondents fail to suggest what statutory exception would apply. Rather, they argue simply that, "the Finance Act should be construed in such a manner as to exclude a CSO fee from the definition of interest." The exception is REJECTED.

b. Respondents further take exception to Conclusion of Law 79 (¶101) "to the extent it concludes that the economic realities of the loan transactions show that the CSO fee was a cost requirement of the loans." In this exception Respondents simply reargue their version of the facts again. On the contrary, the facts recited throughout the ALJ's

Recommended Order, are supported by competent substantial evidence and the ALJ's conclusion that the fee charged by EZPawn is interest pursuant to Chapter 516, Florida Statutes is correct. Accordingly, the exception is REJECTED.

c. Respondents take exception to Conclusion of Law 79 (¶ 102) to the extent it purports to conclude that the form of each loan transaction lacks economic substance. The ALJ's conclusion is supported by competent substantial evidence. Therefore, this exception is also REJECTED.

14. **Exception directed to Conclusion of Law No. 81.** Respondents take exception to Conclusion of Law No. 81 (¶103) "to the extent the ALJ concludes that EZPawn acts as a loan broker." For the same reason as set forth in the response to the exceptions directed at Finding of Fact No. 43 (¶ 42) as discussed in paragraph two above, this exception is REJECTED.

15. **Exception directed to Conclusions of Law generally.** Finally, Respondents take exception to the Conclusions of Law generally "because the ALJ fails to conclude that Petitioner must establish by clear and convincing evidence that Respondents intended to violate the Finance Act by means of the CSO program . . . ." In short, the Respondents suggest that a violation of section 516.02(2) requires a finding of intent. This argument is without merit, and the exception is REJECTED.

Section 516.02(2)(b), Florida Statutes, does not contain any language indicating that proof of intent is required. There is also no intent requirement in sections 516.02(2)(a)&(c), which the Office is enforcing in this case, or section 5l6.23(2)(a), Florida Statutes, which allows the Office to enter a cease and desist order for violations of Chapter 516. To read the statute in the manner proposed by the Respondents would require the addition of language that the Respondents "knowingly" or "willfully" violated Chapter 516 in one or

more of these sections. This language plainly does not exist, and it is well-accepted that courts are not at liberty to add language to statutes. J.M., 824 So.2d at 111. The element of intent cannot be added to a statute that does not have an intent requirement.

Additionally, the Respondents' intent argument is wholly illogical. In this action, the Office is seeking prospective relief in the form of a cease and desist order. In effect, Respondents are suggesting that because they did not intend to violate the statute, they should be allowed to continue violating the statute. In other words, since "*we did not mean to violate the law, we should not be told to stop.*" Such a contention cannot be accepted.

FINDINGS OF FACT

1. Upon review of the record in this matter, the Office finds the Findings of Fact made by the ALJ in his Recommended Order to be supported by competent substantial evidence, and accordingly adopts, and incorporates herein by reference, the ALJ's Findings of Fact subject to the three minor clarifications that follow. Such clarifications have no material affect on the outcome of this matter. Specifically, they do not alter the basis for the ALJ's well-reasoned order, his recommendation or the suggested penalty at page 23 of the Recommended Order. In rendering the clarifications that follow, the Office is particularly mindful of the ALJ's role as finder of fact, and of the Office's duty to accept the ALJ's Findings of Fact that are supported by competent substantial evidence in the record.

2. Paragraph two (2) of the Recommended Order is modified with respect to its indication that EZPawn is "licensed" as a credit services organization operating pursuant to Chapter 817, Part III, Florida Statutes. Chapter 817, Part III, Florida Statutes does not require licensure. This clarification, however, should not be construed to modify or alter the ALJ's finding that EZPawn was operating pursuant to Chapter 817, Part III, Florida Statutes.

3. Paragraph eight (8) of the Recommended Order is modified to the extent that it finds that the determination of whether EZPawn's CSO fee is interest within the statutory definition provided at section 516.01(5), Florida Statutes is a finding of fact. The application of the definition of interest in Chapter 516 to the facts set forth in this matter constitutes a conclusion of law. However, this modification does not disturb the ALJ's well-reasoned, underlying conclusion that the fee in this instance is interest.

4. Paragraph twenty-eight (28) of the Recommended Order is modified solely to correct an obvious typographical error in the denotation of APR as "actual percentage rate," instead of the intended "annual percentage rate."

CONCLUSIONS OF LAW

5. The Office hereby adopts and incorporates by reference the Conclusions of Law set forth in the Recommended Order subject to the one clarification that follows.

6. As with respect to paragraph eight (8) in the Findings of Fact, paragraph seventy-six (76) of the Recommended Order is modified to the extent that it finds that the determination of whether EZPawn's CSO fee meets the statutory definition of interest provided at section 516.01(5), Florida Statutes is a factual issue. The application of the definition to the facts set forth in this matter constitutes a conclusion of law. However, this modification does not disturb the ALJ's well-reasoned, underlying conclusion that the fee in this instance is interest.

FINAL ORDER

Upon review of the complete record of this proceeding, having ruled on the Exceptions filed by Respondents in this matter and based on the foregoing findings of fact and conclusions of law, the recommendation in the Recommended Order is hereby

adopted, and it is accordingly ORDERED:

Respondents, EZPawn Florida, Inc. and Integrity Florida Funding, L.P., shall CEASE and DESIST the business practices proven in this proceeding.

DONE and ORDERED this 12th day of June, 2008, in Tallahassee, Leon County, Florida.

DON B. SAXON, Commissioner,
Office of Financial Regulation

NOTICE OF RIGHTS TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE OFFICE OF FINANCIAL REGULATION, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Final Order was sent to Daniel Manry, Administrative Law Judge, Division of Administrative Hearings, DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, and Charles Stutts, Esquire and G.

Calvin Hayes, Esquire, Holland & Knight, LLP, 100 North Tampa Street, Suite 4100, Tampa, FL 33602, counsel for Respondents, Integrity Florida Funding, L.P. and EZPawn Florida, Inc., by U.S. Mail, on this 12 day of June, 2008.

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