

STATE OF ARKANSAS
SECURITIES DEPARTMENT

IN THE MATTER OF

CEASE AND DESIST ORDER

CASHIER INC./CAN-STOP LTD.,
THOMAS GRAVES, President,
KEVIN CALDWELL,
S & J FUNDING, INC.,
STEPHEN LeCOMTE, President,
CHRIS JONES,
and ALL PERSONS EMPLOYED BY OR
OTHERWISE AFFILIATED WITH THOSE
ENTITIES OR THOSE PERSONS

No. 02-12-S

CEASE AND DESIST ORDER

The Staff of the Arkansas Securities Department (the Staff) has received information and has in its possession certain evidence which indicates that CASHIER INC./CAN-STOP LTD., THOMAS GRAVES, KEVIN CALDWELL, S & J FUNDING, INC., STEPHEN LeCOMTE and CHRIS JONES have violated provisions of the Arkansas Securities Act (the Act), codified at Ark. Code Ann. §§ 23-42-101, *et seq.* (Repl. 2000).

FINDINGS OF FACT

An ongoing investigation has revealed the following facts.

1. Cashier Inc./Can-Stop Ltd. (Cashier) purports to be a Canadian company with its primary offices located at 199 Front Street, Suite 502, Belleville, Ontario K8N5H5.
2. Thomas Graves is the president of Cashier.
3. Kevin Caldwell (Caldwell) occupies a position with Cashier, the title of which is not known, that entails introducing prospective investors with sales persons. Caldwell is listed on Cashier's website as the contact person for persons interested in investing with Cashier, and a letter from Caldwell on Cashier letterhead was sent as an attachment to an email message to the prospective customer discussed later in this order.

4. S & J Funding, Inc. (S&J), is a Florida corporation incorporated on 14 February 2001 and located at 7957 Lagos De Campo Road, Tamarac, Florida 33351.
5. Stephen LeComte (LeComte) is the president and owner of S & J..
6. Chris Jones (Jones) is employed by S&J and solicits investors by telemarketing.
7. On 19 October 2001, an Arkansas resident (Prospect) was telephoned by an unknown person who purported to be employed by Cashier. The caller told Prospect about an investment opportunity in Cashier, which was described as a chain of businesses in Canada that made payday advances, i.e., cash advances on paychecks for a substantial fee. The caller obtained Prospect's email address and sent Prospect an email on that day with an attachment. The attachment, a twenty-two page document, begins with an unsigned cover letter from Caldwell that includes a website and a toll free 800 telephone number. The text of the email message contains the same 800 telephone number and purports to be from "Chris," who asks that Prospect call the 800 telephone number. The 800 telephone number is listed as belonging to S&J.
8. In Caldwell's cover letter Cashier is identified as the largest payday advance franchise in Canada with 64 locations. Due to the "strong demand" for Cashier's services, Cashier was raising \$1,900,000 USD (United States dollars). The investment was summarized on a single page entitled "Frequently Asked Questions." Cashier would use Prospect's money to make short term, payday advance loans to individuals. The investor was known as a factor and would be paid a fee of 3% per month for twelve months. At the end of the twelve months, Prospect would have the option of renewing the contract for another twelve months. Cashier would cover the risk factors associated with the payday

advance business, including returned checks and stop payments placed on checks by customers trying to avoid payment of their debt. Cashier could afford to cover this risk, it was stated, because it “earns an average of 30% return each and every 2 Weeks, or 720% annually.” The attachment also contained unverifiable Canadian tax forms and unverifiable and unaudited financial records of Cashier. Although Caldwell represented in the cover letter that Cashier was founded in 1997, these records covered only the year 2000; some covered all of the calendar year, 2000, and some covered only a part of that year.

9. A six page contract entitled “Accounts Receivable Purchase Agreement” (ARPA) confirmed the summary set out in the Frequently Asked Questions page. Investors were known as Factor or Purchaser throughout the agreement, and Cashier was known as Client or Seller throughout the agreement. In this contract Factor agreed to buy accounts receivable held by Cashier or to be held by Cashier in the future. The underlying business was described simply as “Payday Advances.” The taking of all risks was further clarified in subparagraph 4(K), wherein Cashier agreed to “repurchase from Factor in the event of a presumed dispute and/or breach of warranty, all checks, which have had 15 days, elapse since the original check date.” Cashier agreed in paragraph 2 to pay Factor 3% per month, “which extrapolates to a total return of 36% for said (12) twelve months,” and in paragraph 3 to pay Factor his original investment one week prior to the twelve month anniversary of the contract. In subparagraph 8(B), under the heading, Remedies, the contract provides as follows: “In the event of Client’s insolvency or bankruptcy, entire proceeds of segregated loan account at Client’s bank will be distributed equally to Factors on a pro rata basis.” This was the only

mention of a segregated account of any kind in the ARPA.

10. On 25 October 2001 Prospect received a telephone call from Jones. Jones reiterated the primary points of the offer as set out above. He made it clear that the business of Cashier was to make payday advances, i.e., short term loans against paychecks. He used the example of borrowing \$100 against one's paycheck and paying Cashier back \$130. The accounts receivable referred to in the written contract, Jones said, were the agreements the customers would make to pay the money borrowed back when they received their pay checks. Adding another feature not included in the written materials, Jones told Prospect that Prospect could not lose money in this venture because the funds invested by Prospect would be put in a "segregated" account that would be there for the investors even if Cashier became insolvent. As Jones said, referring to this segregated account, Cashier could not "buy a cup of coffee from that account." This representation was in contradiction to subparagraph 8(B) of the ARPA, which stated that in the event of Cashier's insolvency, the proceeds of the segregated loan account would be distributed equally to investors on a pro rata basis.
11. When Prospect asked Jones how he could verify the existence of this segregated account by calling the bank that held this account, Jones said that would be possible. When Prospect asked Jones if he could see any audited financial records on Cashier, Jones turned the phone over to LeComte, whom Jones described as his superior. LeComte told Prospect that the Bank of Montreal, where the segregated account would be held, would not verify the status of the account, and there was really no way to verify that information. He also told

Prospect that he could not see any audited financial records on Cashier. Because LeComte and Jones were not able to give Prospect all the information he wanted about Cashier, the conversation ended with both Prospect and LeComte agreeing that this investment was not for Prospect. Before the conversation ended, however, LeComte revealed that he and Jones were in Tamarac, Florida working for LeComte's "funding company," which LeComte refused to name. LeComte also refused to reveal what his commission was, telling Prospect "you don't need to know."

12. A check of the records of the Arkansas Securities Department (the Department) shows that none of the respondents are registered in any capacity in accordance with the Act.
13. A check of the records of the Department shows that no security issued by Cashier is registered in accordance with the Act.

CONCLUSIONS OF LAW

14. Ark. Code Ann. § 23-42-102(15)(A)(xi) (Repl. 2000) in pertinent part defines a security as an investment contract.
15. Ark. Code Ann. § 23-42-501 (Repl. 2000) provides that it is unlawful for any person to offer or sell any security which is not registered or which is not exempt from registration under the terms of the Act.
16. Ark. Code Ann. § 23-42-301(a) (Repl. 2000) prohibits as unlawful the transaction of business as a broker-dealer or agent by any person who is not registered with the Department as such.

17. Ark. Code Ann. § 23-42-102(2) (Repl. 2000) defines broker-dealer as any person engaged in the business of effecting transactions in securities for the account of others.
18. Ark. Code Ann. § 23-42-102(2)(A) (Supp. 1999) defines agent as, *inter alia*, an individual representing the issuer of securities or a broker-dealer and effecting or attempting to effect purchases or sales of those securities.
19. Ark. Code Ann. § 23-42-102(9) (Repl. 2000) defines issuer as any person, which is defined in Ark. Code Ann. § 23-42-102(11) (Repl. 2000) to include an individual (natural person), corporation, limited liability company or association, who issues or proposes to issue any security.
20. Ark. Code Ann. § 23-42-507(2) (Repl. 2000) provides that it is unlawful for any person in connection with the offer or sale of any security to make any untrue statement or omit to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which they are made.

OPINION

21. The following is true of the Accounts Receivable Purchase Agreement that Prospect was asked to purchase: 1) the investor would and could play only a passive role and not be involved in the day-to-day operations of the enterprise into which he was asked to invest; 2) the investor had no expertise or experience in operating a payday loan or payday advance business and was dependent on Cashier to manage and operate this business; and 3) because there was no limit on the number of investors nationwide, there were too many investors for any

individual investors to have any meaningful input into the management of these investments. The investors in Cashier would be involved in a common enterprise with the expectation of profits to be produced only from the managerial efforts of others. Therefore, under established legal precedent the Accounts Receivable Purchase Agreement in question here is an investment contract and therefore a security as defined at Ark. Code Ann. § 23-42-102(15)(A)(xi) (Repl. 2000).

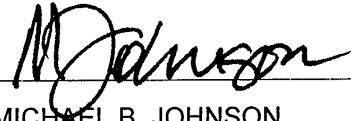
22. Because it caused the Accounts Receivable Purchase Agreement to be drafted and marketed, Cashier is the issuer of that investment contract in accordance with Ark. Code Ann. § 23-42-102(9) (Repl. 2000).
23. S&J, attempting to effect transactions in securities in the account of others, acted as a broker-dealer in this transaction as defined at Ark. Code Ann. § 23-42-102(2) (Repl. 2000) without being registered with the Department as such, as required by Ark. Code Ann. § 23-42-301(a) (Repl. 2000).
24. LeComte and Jones acted as agents of a broker-dealer and Caldwell acted as the agent of the issuer, all without being registered, which was in violation of Ark. Code Ann. § 23-42-301(a) (Repl. 2000).
25. All the respondents offered to sell these investment contracts either through agents or as agents without prior registration of the investment contracts in violation of Ark. Code Ann. § 23-42-501 (Repl. 2000).

26. The failure to furnish credible financial records or objective, verifiable information supporting the representations made in the written materials accompanying the Accounts Receivable Purchase Agreement that Cashier made an average of 30% profit “each and every 2 Weeks, or 720% annually” and therefore had the financial means to cover that risk of loss, which was said to be returned checks and checks not paid because of a stop payment placed on the checks, was the omission of material facts made in connection with the offer or sale of a security in violation of Ark. Code Ann. § 23-42-507(2) (Repl. 2000).
27. The representation made by Jones that Prospect could not lose his investment because the funds Prospect would invest would be placed in a segregated account that would only be used by Cashier to fund payday advance loans was in contradiction to the Accounts Receivable Purchase Agreement and was not supported by that agreement or any other written guarantee or contract. This representation was a material misstatement of fact and an untrue statement made in connection with the offer or sale of a security in contravention of Ark. Code Ann. § 23-42-507(2) (Repl. 2000).

ORDER

IT IS THEREFORE ORDERED that CASHIER INC./CAN-STOP LTD., THOMAS GRAVES, President, KEVIN CALDWELL, S & J FUNDING, INC., STEPHEN LeCOMTE, and CHRIS JONES, as well as others whose identities are not yet known who are in positions of control of CASHIER INC./CAN-STOP LTD. or S & J FUNDING, INC. and who are employed by or otherwise affiliated with CASHIER INC./CAN-STOP LTD. or S & J FUNDING, INC., directly or through other companies, **CEASE AND DESIST** from any further actions in the state of Arkansas in connection with the offer or sale of the securities described above and any other securities until such time as the securities and the persons offering them for sale are properly registered or shown to be exempt from registration pursuant to the Arkansas Securities Act.

WITNESS MY HAND AND SEAL this 5th day of April, 2002.

A handwritten signature in black ink, appearing to read "M. Johnson", is written over a horizontal line.

MICHAEL B. JOHNSON

ARKANSAS SECURITIES COMMISSIONER