STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
BEFORE THE DIRECTOR

In the Matter of	**OAH Case No. 127544** **Agency Case PB-05-0099**
NORTHWEST CASH AND PAWN, INC. G.P., an Oregon corporation,	**FINAL ORDER**
Respondent.	

The Director of the Oregon Department of Consumer and Business Services (director), having considered this matter, the Proposed Order issued on September 11, 2006, and the Exceptions to the Proposed Order and the Notice of Exception to Investigative Costs filed by Respondent Northwest Cash and Pawn, Inc. G.P. (Respondent) dated October 10, 2006, hereby makes the following findings of fact, conclusions of law, and opinion, and issues the following Final Order.

HISTORY OF THE CASE

On February 7, 2006, the director issued an Order Assessing Civil Penalty, Order Assessing Investigation Costs, and Notice of Right to a Public Hearing to Respondent Northwest Cash & Pawn, Inc., G.P. On February 23, 2006, the director received a written request for hearing from Respondent. On March 6, 2006, the director issued an Amended Order Assessing Civil Penalties, Order Assessing Investigation Costs, and Notice of Right to Public Hearing. The matter was referred to the Office of Administrative Hearings on April 6, 2006. The matter was assigned to Administrative Law Judge (ALJ) Rick Barber. On May 23, 2006, the director issued a Second Amended Order to Cease and Desist, Order Assessing Civil Penalty, Order Assessing Investigation Costs, and Notice of Right to a Public Hearing (hereafter "Order"). A prehearing conference was held on June 5, 2006.

A hearing was held on August 21, 2006, in Salem, Oregon. Respondent appeared through David Craig Reese (Reese), and was represented by Thomas Armosino, Attorney at Law. The director appeared through Charles Donald (Donald) and Lonnie Bates (Bates) of

the Division of Finance and Corporate Securities (Division) of the Department of Consumer and Business Services, and was represented by Kyle J. Martin, Assistant Attorney General. The following witnesses testified in the hearing: Reese, Bruce Meyers (Meyers), Jim Hales (Hales), Bates, Donald, and Mathew Stormberg (Stormberg). The record of the hearing closed on August 21, 2006.

The ALJ issued a Proposed Order on September 11, 2006. The Proposed Order recommended that an order be issued requiring Respondent to cease and desist in its refusal to allow Jim Hales to redeem the collateral of his $10,000 loan and assessing a civil penalty in the amount of $2,500 against Respondent for its violation of ORS 726.400. The Proposed Order notified Respondent of the right to file written exceptions within 30 days of service. The Proposed Order did not make a recommendation regarding the assessment of the Division's investigation costs. On September 13, 2006, the Division requested by letter that Respondent file any exceptions or response to the proposed assessment of investigation costs against Respondent within thirty (30) days from the date of receipt of the letter. Respondent timely filed Respondent's Exceptions to Proposed Order and Respondent's Notice of Exception to Investigative Costs.

In accordance with ORS 183.650(2) and (3) and OAR 137-003-0665(3) and (4), the director identifies and explains herein those modifications to the proposed findings of historical fact and which change the outcome or basis for this Final Order from that in the Proposed Order. The director has made other changes to fully, adequately, or correctly set forth the material evidence in the record and to clarify, correct, or amend the findings of the ALJ, or explain the director's findings, conclusions, and opinion herein. The director has also made changes to correct spelling, grammar, textual placement, and other similar errors.

ISSUES

1. Whether Respondent violated ORS 726.400 when it deemed forfeit and refused to allow Jim Hales to redeem the silver bullion pledge for his approximate $10,000

loan.

2. If Respondent violated ORS 726.400, whether Respondent should be ordered to cease and desist from said violation and assessed a $2,500 civil penalty, pursuant to ORS 726.440 and 726.910.

3. Whether the Division's actual costs of the investigation into this matter in the amount of $600 must be assessed against Respondent, pursuant to ORS 726.250.

EVIDENTIARY RULINGS

Exhibits A1 through A28, offered by the Division, were admitted into the record. Exhibit R (pages 1 through 38) was also admitted into the record. Respondent objected to Exhibits A6 and A28, for reasons identified on the record. The Division objected to Exhibit R pages 12 and 21-38. All objections were overruled. The Division withdrew pages 6 and 8 of Exhibit A2, and Respondent did not object. Consequently, those two pages are considered withdrawn.

In addition to the exhibits, the documentary record of the hearing consists of the documents in the Division's Pleading Index (P1 through P7), with the additions of the Hearing Memoranda from DFCS (Doc. P8) and Respondent (Doc. P9).

The director accepts and adopts these evidentiary rulings.

STIPULATED FINDINGS OF FACT

In addition to the Findings of Fact included below, the parties stipulated to various facts during the course of the hearing. The stipulated facts include:

a. Northwest Cash & Pawn was first licensed to do business as a pawn shop on May 11, 2005.

b. Reese prepared the paperwork and carried out the loan transaction noted in Exhibit A2 at 3 in the same way he testified to preparing and carrying out the transactions recorded in Exhibit A2 at 1 and 2.

c. All of the efforts made by Hales to redeem the pawn during and after

September 2005 were done in the appropriate manner (the correct method and correct amount of money) but the attempts were refused because of Respondent's belief that the collateral for the pawn had been forfeited.

d. Before the summer of 2005, every time Hales returned to Respondent's store to extend or renew the terms of the loan, the procedures to extend the loan were the same as the procedures in the incident to which Hales testified.

e. All of the memoranda and documents in the record drafted by Bates and Donald are accurate as to what they would testify happened and what was said to them in the conversations reported therein.

FINDINGS OF FACT

1. Respondent is a pawn broker operating a pawn shop located at 119 SE 6th Street, Grants Pass, Oregon. Before becoming licensed with the Secretary of State's office on May 11, 2005, another pawn shop, Oregon Cash Company, Inc., did business at the same location. Originally a branch office of Oregon Cash Company (located in Medford), the Grants Pass store was sold to Reese on January 11, 2005. As part of the purchase agreement, Reese was to obtain his own license and to change the name of the company within four months. (Ex. R at 25.) The prior principal of Oregon Cash Company in Grants Pass was Stormberg, who remains the principal of the Medford Oregon Cash Company operation. As Reese was learning the pawn business, Stormberg served (and continues to serve) as an informal adviser to Reese. (Test. of Reese, Stormberg.) Northwest Cash & Pawn opened for business on May 11, 2005. (Stip. of Parties.) It is quite common for pawn brokers to allow multiple renewals of a pawn agreement. (Test. of Reese, Meyer, Stormberg.)

2. On November 20, 2003, Hales brought 3200 ounces of silver to the Grants Pass store of Oregon Cash Company. Hales pawned the silver in exchange for a loan of $10,000. Under the terms of the agreement (loan 081953), Hales was to pay the sum of

$10,891.78 on or before January 19, 2004, in order to redeem his pawn. Small print on the loan form advised Hales that there was a 30-day "grace period" after the initial 60 days, and further advised that any pawn not redeemed within that time period would be forfeited. (Ex. A2 at 12.) Hales knew the small print was there, but did not read it. (Test. of Hales.)

3. On January 20, 2004, one day after the collateral for the pawn was due to be redeemed, Hales came back into Oregon Cash Company to extend the pawn. Hales paid a finance charge of $891.78 at that time, and a new loan agreement (loan 083834) was signed by the parties. Under the new agreement, which had the word "renewed" stamped on it, Hales was given until March 20, 2004 to redeem the collateral for the pawn. (Ex. R at 2.) In late July 2004, Oregon Cash Company sent a mail-in audit form back to DFCS. Attached to the form was a forfeiture notice that had been sent out involving a different pledgor and different pawn. (Ex. A28.)

4. On March 19, 2004, Hales returned to Oregon Cash to extend the pawn. He again paid the finance charge (this time slightly lower since the principal of the loan had decreased), and a new loan agreement (loan 085659) was signed by the parties. Hales was given until May 18, 2004 to redeem the collateral for the pawn. (Ex. A2 at 10.)

5. On May 17 or 18, 2004, Hales returned to Oregon Cash to extend the pawn. He again paid the finance charge and a new loan agreement (loan 087399) was signed by the parties. Hales was given until July 17, 2004 to redeem the collateral for the pawn. (Ex. R at 4; test. of Reese and Meyers.)

6. On July 17, 2004, Hales returned to Oregon Cash to again extend the pawn. He again paid the finance charge and a new loan agreement (loan 089191) was signed by the parties. Hales was given until September 15, 2004 to redeem the collateral for the pawn. (Ex. R at 5a.)

7. On September 16, 2004, one day after the collateral for the pawn was due to be redeemed, Hales came back to Oregon Cash to extend the pawn. He again paid the

finance charge and a new loan agreement (loan 090839) was signed by the parties. Hales was given until November 15, 2004 to redeem the collateral for the pawn. (Ex. A2 at 9.)

8. On November 15, 2004, Hales came back to Oregon Cash to extend the pawn. He again paid the finance charge and a new loan agreement (loan 092489) was signed by the parties. Hales was given until January 14, 2005 to redeem the collateral for the pawn. (Ex. A2 at 7.)

9. On January 15, 2005, one day after the collateral for the pawn was due to be redeemed, Hales came back to Oregon Cash to extend the pawn. He again paid the finance charge and a new loan agreement (loan 094018) was signed by the parties. Hales was given until March 16, 2005 to redeem the collateral for the pawn. (Ex. A2 at 5.)

10. On March 16, 2005, Hales came back to Oregon Cash to extend the pawn. He again paid the finance charge and a new loan agreement (loan 095407) was signed by the parties. Hales was given until May 15, 2005 to redeem the collateral for the pawn. (Ex. A2 at 4.)

11. On May 16, 2005, one day after the collateral for the pawn was due to be redeemed, Hales came to Northwest Cash & Pawn, Inc. G.P. at the same address on 6th Street where Oregon Cash had been located. He came to extend the pawn once again. Hales paid the finance charge and Reese, on behalf of Respondent, agreed (in loan document 096884) to extend the dates of the pawn to July 15, 2005. The loan document that was filled out did not identify Northwest Cash & Pawn as the pawn shop; rather, it bore the name Oregon Cash Company, Inc. (Ex. A2 at 3.)

12. On July 16, 2005, one day after the collateral for the pawn was due to be redeemed, Hales came to Respondent's store and again sought to extend the dates to redeem the collateral for the pawn. Hales paid the finance charge and a new loan agreement (loan 098442) was signed, extending the date to redeem the collateral to September 14, 2005. (Ex. A2 at 2.)

13. On September 8, 2005, Hales came into Respondent's store to extend a different loan (one for $3,000.) (Ex. A2 at 1.) Although the payment on the $10,000 loan became due on September 14, 2005, Hales did not seek to redeem or extend that loan until after that date. On September 27 or 28, he called to find out the status of his silver. Bruce Meyers told him that the silver was forfeited to the pawn shop. (Test. of Meyers, Hales.)

14. Respondent had declared the pawn forfeited on September 19, 2005. (Ex. R at 11.) Between September 14 and 19, Reese contacted Stormberg to find out whether he was within his rights to keep the silver. Stormberg told Reese that he should keep the silver as forfeited. Respondent did not send a notice of forfeiture to Hales. (Test. of Reese.)

15. When Hales found out that Respondent was considering the silver forfeited, he contacted Lonnie Bates of DFCS to file a complaint. Bates spoke with Hales and with Reese. Reese told Bates that Respondent had not sent out a certified letter advising of the forfeiture. Bates told Reese that such a letter was necessary for forfeiture to occur; Reese indicated he would research the matter and get back to Bates. (Ex. A3.) Reese sought the assistance of counsel and, on October 12, 2005, attorney James Dole sent a letter to Bates advising that no notice of forfeiture was necessary to forfeit the silver. (Ex. A4.) On October 28, 2005, DFCS responded to Dole with its understanding of the notice requirement under the statute. (Ex. A6.)

16. On November 23, 2005, Charles Donald wrote to Reese, advising him that Respondent must immediately return the silver to Hales, with interest payments ending as of the date Hales first tried to redeem the pawn. Respondent was given seven days to comply. (Ex. A8.) On November 29, 2005, Dole wrote to Hales and gave him the opportunity to redeem the silver by paying the sum of $11,915.86. (Ex. A9.) Hales attempted to make the payment but, on November 30, Reese refused to allow the redemption and changed attorneys. (Ex. A10.) Hales made several efforts to obtain his silver from Respondent during the fall of 2005; all failed. As of the time of hearing in August 2006, Reese has the

silver in his personal residence. (Test. of Reese.)

17. Division staff spent over 10 hours conducting an investigation of Respondent in this matter. Division staff time is billed at $60 per hour to recover its actual costs of such an investigation. The Division's actual costs of investigation in this matter are at least $600. (Test. of Donald and Bates; Ex. A12, A13.)

CONCLUSIONS OF LAW

1. Respondent violated ORS 726.400 by deeming forfeit and refusing to allow Jim Hales to redeem the silver bullion pledge for his approximate $10,000 loan without having provided proper notice of forfeiture under ORS 726.400(2).

2. Respondent must cease and desist from violating ORS 726.400 and pay a civil penalty in the amount of $2,500, pursuant to ORS 726.440 and 726.910.

3. The Division's actual costs of investigation in this matter in the amount of $600 must be assessed against Respondent, pursuant to ORS 726.250.

OPINION

The decision in this case ultimately depends upon the interpretation of the language in ORS 726.400, which will be addressed below. Before addressing the statutory language, however, it is important to address two factual controversies that arose in this case. The first, in particular, is crucial to determining which part of the statute applies to resolve this case. In that context, the ALJ addressed the reliability of the evidence presented by the parties, which the Director accepts and adopts.

Insufficient Proof of 2004 Notice. The crux of Respondent's argument for forfeiture is that, on January 20, 2004, Respondent's predecessor in business sent a notice to Hales that satisfied the requirements of a forfeiture notice set forth in ORS 726.400. (Ex. R at 12.) Mathew Stormberg, in his testimony,[1] claimed that he sent the notice document to Hales by

[1] The ALJ noted that Stormberg testified by telephone. The ALJ's credibility/reliability assessment of Stormberg's testimony in this case was based upon the content of his testimony, and not on demeanor.

certified mail, return receipt requested, on January 20, 2004. (Test. of Stormberg.) However, for several reasons, the ALJ did not accept Stormberg's testimony as accurate or reliable in this case and the ALJ found that no notice was sent to Hales in January 2004.

During his testimony, Stormberg described the way Oregon Cash Company sent out forfeiture letters in 2004: First, Stormberg testified that he himself prepared all of the forfeiture letters for claims greater than $500, and took them to the post office to send them certified mail. Second, he testified that he always stapled the certified mail receipt to the loan contract, not to the copy of the forfeiture letter. Third, Stormberg testified that Oregon Cash only used one form to send forfeiture letters. (Test. of Stormberg.) The ALJ found that Exhibit A28, offered in rebuttal of Stormberg's testimony, impeaches Stormberg's testimony on all three points of his testimony.

Exhibit A28, a mail-in audit response that Oregon Cash Company sent to DFCS in late July 2004, contains another forfeiture letter (involving a different pledgor) from Oregon Cash Company, coincidentally dated January 20, 2004, the same date as Exhibit R at 12 was allegedly sent in this case. This second forfeiture letter was also sent from the Grants Pass store but on a *different form*. It was prepared and sent by "Kathy" (not Stormberg), and it had the return receipt attached to the notice itself, not to the loan document. (Ex. A28 at 16.) Thus, on all three points, Stormberg's testimony was shown to be unreliable.

There are other indicia of unreliability with regard to the alleged forfeiture notice. First, although Reese bought the business from Stormberg "lock, stock and barrel," Stormberg did not give him this forfeiture document purportedly sent out on January 20, 2004. Why would Stormberg keep that document rather than giving it to Reese along with the business? Second, no certificate of mailing is in evidence. If the certified mail receipt should have been stapled to the loan document, according to Stormberg, then that loan document should have been in Respondent's possession and Respondent could have submitted it as evidence. It was not.

Stormberg later testified that he retained the certified mail receipt and the notice for awhile but had "purged" the file (destroying the return receipt) because it had been two years since the transaction. This alleged purging occurred in early 2006, at a time when Stormberg knew that Respondent was in litigation concerning the Hales pawn, and knew that Respondent faced possible civil penalties. Since Stormberg and other pawn brokers contend that an early forfeiture notice would apply to an actual forfeiture possibly years later (depending on how many extensions they allow), it would be absurd for him to then destroy the evidence of service of that notice. The ALJ opined that he could not accept the testimony that Stormberg had possession of the document but then destroyed it with all of the legal matters still pending. The ALJ concluded that it was more likely that the letter was never sent in the first place.

The ALJ found the testimony of Stormberg unreliable and that no reliable evidence that Exhibit R at 12 even existed in January 2004, much less that it was sent by certified mail as required by the statute. In short, the ALJ found that the evidence fails to establish that a notice of forfeiture was ever sent to Hales by Oregon Cash Company or by Respondent.

The Director accepts and adopts these findings and conclusions by the ALJ.

Insufficient Proof of Oral Extension. The ALJ was also unable to find that Hales arranged an oral extension of his pawn with Reese when he was in Respondent's store on September 8, 2005. There is no doubt Hales was there on that date; he extended the pawn on the $3,000 loan. (Ex. A2 at 1.) After that, however, the stories of the witnesses are completely at odds with no clear indication of who is telling the truth. Hales testified that he was transacting an extension with Meyers on the smaller loan and saw Reese in the store. Hales claims he approached Reese and obtained a promise not to sell his silver on September 14 because Hales would be out of the area at a dental conference. (Test. of Hales.)

Reese testified that the conversation never happened, and there is no reliable evidence to dispute his testimony on this point. Meyers, who was also clearly present since his signature "B" appears on Exhibit A2 at 1, gave two stories of what occurred. First, he testified that he and Hales talked only about the weather when they transacted business on September 8. Later in his testimony, however, he stated that he reminded Hales of the other pawn coming up the following week. (Test. of Meyers.) Hales' testimony, likewise, involved a change in his story. Hales told Bates that he *called* and spoke to an unknown employee who granted him an extension of time. (Ex. A3 at 1.) This obviously differs from his testimony that he spoke to Reese *in person* on September 8. (Test. of Hales.)

With what the ALJ characterized as "a mishmash of testimony," he could not accept any of the witnesses' stories as accurate. Hales was the proponent of the claim that he had an oral extension from Reese on the larger loan; as such, he has the burden to establish that claim by a preponderance of the evidence. ORS 183.450(2). Hales (and therefore the Division) failed to establish an oral extension on the $10,000 loan.

The Director accepts and adopts these findings and conclusions by the ALJ.

No Notice, No Forfeiture. As indicated above, the interpretation of the notice provision in the statute is the key to the decision in this case. The pertinent language is found in ORS 726.400, which states:

> (1) Unless a longer loan period is agreed upon by the pledgor and the pawnbroker, all loans shall be made for a period of 60 days. However, a pledge may be redeemed and the pledge loan repaid at any time before the loan period expires. All pawn tickets shall clearly state the expiration date of the loan.
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> (2) Except for a pledge securing a pledge loan of less than $500, *before any pledge may be deemed forfeited, the pawnbroker after the expiration of the period mentioned in subsection (1) of this section must cause a notice to be given the pledgor as provided in this section.* The notice shall notify the pledgor of the forfeiture of the pledge. The notice shall be in writing and delivered postpaid by certified mail, return receipt required, in a securely closed envelope addressed to the pledgor at the last-known address shown on the pawnbroker's record. Delivery of a notice under this subsection

> occurs when the notice is mailed as provided in this subsection. The certified return receipt card or the returned envelope shall be kept on file by the pawnbroker for at least two years from date of mailing thereof as evidence of the notification. The postal costs and a reasonable charge for preparing the notice shall be borne by the pledgor. *A pledgor shall have a grace period of 30 days after the delivery of the notice required by this subsection in which to redeem the pledge*, or to renew the loan for one additional 60-day period, or less, by paying any renewal fee and all the accrued interest and fees to date. There shall be no grace period following the expiration of any renewal.
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> (3) Any pledge that is not redeemed within 30 days after the expiration of the 60-day loan period, or within the period of renewal, if any, shall be deemed forfeited and the pawnbroker shall thereby acquire all the right, title and interest of the pledgor therein to hold and dispose of the pledge as the pawnbroker's own property.

(Emphasis added.) The emphasized portions of subsection (2) describe what notice must be given to the pledgor (in this case, Hales), before forfeiture can take place. By statute, the grace period within which to redeem the pawn collateral occurs *after* the notice is given. Logically, if there is no notice there can be no forfeiture.

In the present case, Hales was supposed to redeem his silver on or before September 14, 2005. When he did not redeem in that period of time, Respondent had choices as to how to proceed. If Hales returned and wanted to renew for an additional period of time, Respondent could renew the pawn, as it had done on the five earlier occasions when Hales was late.[2] Second, it could send Hales a notice of forfeiture, indicating that the pledge was considered forfeited. Pursuant to statute, this notice of forfeiture could only be sent "*after* the expiration" of the agreed upon period. ORS 726.400(2) (emphasis added.)

If the notice of forfeiture was sent, Hales would then have the choice of paying the debt off and redeeming his silver within the 30 days, or of purchasing a *one-time* 60 day

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[2] "Renew the pawn" refers to the practice of the pawn brokers to grant extensions of time within which to repay the loan and reclaim the collateral. See discussion below. Five times out of the many extensions, the extension was allowed after the time to repay had expired.

extension (by paying the interest owed and the renewal fee.) ORS 726.400(2). However, no notice of forfeiture was ever sent to Hales. Respondent admits that it never sent a Notice of Forfeiture but it relies upon the notice allegedly sent by Stormberg on January 20, 2004. Once that first notice was sent to Hales, Respondent argues, no further notice of forfeiture would ever be required. Under this theory, a pawn broker would have the right at any time (after that first notice) to declare a forfeiture without notice or right to redeem if the pledgor was even one day late.

This argument suffers from two problems. First, as noted, no notice of forfeiture was sent to Hales by Respondent or by Stormberg's company. Second, Respondent's theory ignores the purpose of having a notice of forfeiture requirement in the first place.

However, the purpose of the statute is unimportant in this case because of Respondent's clear violation of the express language of the statute. Notice of forfeiture was required but was never sent to Hales. Since there was never a notice of forfeiture sent to Hales, the resolution of this case is simple and straightforward. If there is no notice of forfeiture, there can be no forfeiture. The notice of forfeiture is what starts the clock ticking; there is no "grace period" until *after* the notice of forfeiture is sent. ORS 726.400(2). In this case, the clock never started ticking. Consequently, Hales is entitled to recover the silver bullion upon payment of $11,915.86 to redeem the pawn.

Alternate Analysis. Recognizing the possibility that a reviewing body could disagree with the above conclusion that there was no notice in January 2004, the following addresses the pawn brokers' general argument[3] that only one forfeiture notice needs to be sent at the end of the first sixty days, with no further notice of forfeiture needed thereafter.

At the end of the 60 day period, for pledge loans of $500 or more, a notice of forfeiture is sent to the pledgor and the pledgor may redeem the collateral within 30 days,

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[3]The ALJ accepted the testimony of Stormberg and Reese that this interpretation is shared by many of their peers, which the director adopts.

seek a one time renewal of 60 days or less, or forfeit the collateral. ORS 726.400. At the end of the forfeiture period or the one time renewal, there is no need for another forfeiture notice. If the pledgor misses the time period to redeem, the collateral is forfeited.

The problem arises when multiple extensions are granted after a notice of forfeiture has been sent. One of the general disputes between the parties, although not ultimately dispositive in this case, concerns how many renewals or extensions a pawn broker may offer to the pledgor. If a pawn broker extends the period of time for the repayment of the loan, as Oregon Cash and Northwest Cash & Pawn did for Hales, is that the one-time renewal contemplated by the statute? According to the pawn brokers' argument, these additional time periods are the same as the one time renewal—that is, any failure to make a payment after that renewal leads to forfeiture without further notice. However, the interpretation of "renewal" in that argument does not match the statutory requirements, nor does it give any meaning to the concept of a *notice* of forfeiture.

As noted, the statute is based upon a 60-day loan (unless a different period is agreed upon), a forfeiture period and a one-time renewal. If pawn brokers are granting additional renewals—and the record is clear[4] that such renewals are happening quite often—how do those renewals fit within the statutory scheme? There are only two real alternatives. First, the extensions could be considered as an agreement by the parties for a different time period for the payment of the loan, as contemplated by the first sentence of ORS 726.400(1). Second, they could be an extra-statutory contractual agreement between the parties. The one thing they *cannot* be is an additional extension after the notice of forfeiture, since the statute expressly indicates there can only be the one time renewal after the notice of forfeiture for pledge loans of $500 or more.

If the renewals are an agreed-upon extension of the time period under ORS

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[4] Hales was given several extensions or renewals; the ALJ accepted the testimony that it is common to give several such "renewals," which the Director adopts.

726.400(1), then the language of the statute requires that for pledge loans of $500 or more there can be no forfeiture without a notice of forfeiture being issued *after* the time period has expired. If the renewals are extra-statutory, that is, renewals not contemplated by the statute, it does not change the statutory requirement for pledge loans of $500 or more that a notice of forfeiture must be sent after expiration of the loan and before the collateral is forfeited.

Furthermore, the pawn brokers' interpretation of the statute fails to give effect to what a notice of forfeiture is intended to do. The notice is clearly intended to give the pledgor a last chance to redeem his pledge for loans of $500 or more, either in the 30-day forfeiture period or, if the pledgor is willing to pay an additional amount, in the one time 60-day renewal period. The notice of forfeiture tells the pledgor that his options are almost exhausted—that he must redeem the collateral within the time period allowed or face the loss of the collateral. The logical purpose of the notice is to let the pledgor know that the pawn broker intends to keep the collateral if it is not redeemed.[5]

The mailing of a notice of forfeiture changes the relationship between the pawn broker and the pledgor; it accomplishes two things. First, it informs the pledgor of the pawn broker's intent to keep the collateral unless the original debt is paid. Second, it informs the pledgor how and when the debt may be paid. There are to be no more extensions other than the one renewal allowed in ORS 726.400(2).

Consequently, whether the practice in the industry is to allow a thousand extensions or only one before a notice of forfeiture for pledge loans or $500 or more, the notice of forfeiture signals the end of the line. A notice of forfeiture is to be issued when the pawn broker determines that the pledgor's options have run out. After the notice of forfeiture, the

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[5] This interpretation of the statute comes from its plain language, giving the words their ordinary meaning, as required in *PGE v. BOLI,* 317 Or 606, 610-612 (1993.) The language requires notice <u>of</u> forfeiture <u>before</u> forfeiture can lawfully occur.

pledgor's choices are to repay within the grace period or a *one-time* renewal, or to forfeit the collateral to the pawn broker.

The question arises: What happens if another renewal or extension is granted to that pledgor, on the same collateral, in spite of the one-time renewal language of the statute? The logical conclusion is that a new loan agreement exists and a new notice of forfeiture must be issued if the pawn broker decides to again seek forfeiture. The previous notice has already been, in Mr. Donald's words, "cast aside" by the additional extension and the parties are in a new contractual arrangement. In order to invoke forfeiture under this new contract, the pawn shop would be required to send out a notice of forfeiture as set forth in the statute.

In summary, the decision in this case is based upon Respondent's failure to send any notice of forfeiture to Hales. Without a notice of forfeiture, there can be no forfeiture. Alternatively, even if the Stormberg notice had actually been sent in 2004, it would not meet the requirements of a notice of forfeiture under ORS 726.400(2) for Hales' in 2005.

The Penalty Issue. In addition to the proposed cease and desist order, a civil penalty of $2,500 is proposed against Respondent for violating ORS 726.400 in the following particulars:

- By failing to provide written notice of forfeiture to Hales; and
- By treating the silver bullion (the collateral) as forfeited without complying with the statute.

The authority to assess a penalty, and the basis for such penalties, are found in ORS 726.910, which states in part:

> (1) Any person who violates ORS 726.040, 726.100, 726.110, 726.130, 726.270, 726.280, 726.285, 726.290, 726.300, 726.390, 726.400 or 726.410 or any rule adopted under ORS 726.260 or an order issued under ORS 726.440 shall forfeit a civil penalty in an amount determined by the Director of the Department of Consumer and Business Services of not more than $2,500. The civil penalty forfeited shall be paid into the State Treasury and credited as provided in ORS 705.145.

Respondent's refusal to return the collateral to Hales, when Respondent knew that it had not sent a notice of forfeiture to Hales, was a violation of ORS 726.400. Likewise, Respondent's continued treatment of the silver as forfeited property violates the statute. The statute quoted above requires the assessment of a civil penalty for such violation. The agency proposed a civil penalty in the amount of $2,500, which is the maximum penalty allowed. Respondent did not address the amount of the penalty in its argument, nor was any evidence presented that would tend to mitigate the imposition of the penalty.

The ALJ found the request for the maximum penalty to be well-taken, and recommended a civil penalty in the amount of $2,500 be assessed against Respondent for the statutory violation. Although there are some possible differences of interpretation in the forfeiture statute, there is no question that Respondent was required to (but did not) send a notice of forfeiture to Hales before it could declare the collateral forfeited. Respondent retained Hales' silver for a period of nearly a year without ever having sent him a notice of forfeiture. Reliance upon a mysterious and probably non-existent document from a previous company, one that (if it was sent) did not include all of the information needed, was not a reasonable reliance in this case. Respondent had no basis in law to treat the collateral as forfeited, and the maximum penalty is appropriate.

Based on the foregoing, the Director concludes that a $2,500 civil penalty is appropriate for Respondent's violation of ORS 726.400.

Investigation costs. The Order assessed against Respondent the actual costs of the investigation in this matter, pursuant to ORS 726.250, which provides, in part:

> (1)(a) For the purpose of discovering violations of this chapter or securing information required by the [director] under this chapter, the director at any time, either personally or by an examiner or other employee of the Department of Consumer and Business Services, may investigate the pledge loans and business and examine the books, accounts, records and files used in the pledge loans and business of every pawnbroker and of every person that the director has reason to believe is acting as a pawnbroker without a license, whether that person acts or claims to act as principal or agent, or under or without the authority of this chapter.

* * * * *

(c) The actual cost of each examination shall be paid to the director by every person examined. The director may maintain an action for recovery of costs in any court of competent jurisdiction.

Division staff testified about their activities investigating Respondent in connection with this matter. (Test. of Donald and Bates.) The exhibits submitted by the Division also reflect the investigation activities of Division staff, including records that itemize time spent by Donald and Bates on this matter (Ex. A12 and A13.) These activities were performed to investigate the pledge loans and business of Respondent within the meaning of ORS 726.250(1)(a) and, therefore, must be paid to the director by Respondent under ORS 726.250(1)(c).

With regard to the amount of the actual costs, Ex. A11 and A12 establish that Division staff spent at least 10 hours conducting the investigation of Respondent in this matter. Division staff time is billed at $60 per hour to recover its actual costs.

Although the Proposed Order did not make any recommendation regarding the assessment of the Division's investigation costs, based on the above it is clear that the Division's actual costs of investigating this matter are at least $600. ORS 726.250(1)(c) requires such costs to be paid by Respondent. Therefore, this Final Order assesses those actual costs against Respondent.

RESPONDENT'S EXCEPTIONS TO THE PROPOSED ORDER

Respondent's Exceptions 1 through 9: Respondent's exceptions to the proposed Findings of Fact 3 through 10 and 12 are all based on the same argument: That the ALJ mischaracterized extensions of the original loan as new loan agreements. Based on this assertion, Respondent argues that these findings should all reflect that each of the subsequent agreements made between Respondent and Hales were extensions of the original pawn agreement made November 20, 2003.

This issue has been addressed in detail in the *Opinion* section above. Respondent's

Exceptions 1 through 9 are without merit and are denied.

Respondent's Exception 10: Respondent takes exception to the sentence in proposed Finding of Fact 16: "Hales attempted to make the payment but, on November 30, Reese refused to allow the redemption and changed attorneys." This finding is supported by the record in this matter; in particular the testimony of Hales and Ex. A10. Respondent's Exception 10 has no merit and is denied.

Respondent's Exception 11: Respondent takes exception to the Conclusions of Law contained in the Proposed Order. Without offering any analysis or authority, Respondent asserts that the conclusions are contrary to law and unsupported by the record. The conclusions of law are supported by the record in this matter and consistent with the law, as explained in the *Opinion* section above. Respondent's Exception 11 is without merit and is denied.

Respondent's Exceptions 12 through 17: Respondent's exceptions relate to the Opinion section of the Proposed Order and simply argue that the ALJ should have made other Findings of Fact and Conclusions of Law. The analysis in the *Opinion* section above is supported by the record. Respondent's Exceptions 12 through 17 have no merit and are denied.

RESPONDENT'S EXCEPTION TO ASSESSMENT OF INVESTIGATIVE COSTS

Respondent filed an exception to the assessment of investigative costs. Respondent's argument is based on speculation about the reason the Proposed Order does not include a recommendation about the assessment of investigative costs. Regardless of the reason for that omission, as explained above in the section of the *Opinion* addressing "Investigation costs," the record establishes that the Division's actual costs of investigating this matter are at least $600 and must be paid by Respondent under ORS 726.250(1)(c). Respondent's exception is without merit and is denied.

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FINAL ORDER

Based on the foregoing and the record of this matter, IT IS ORDERED that:

1. Respondent Northwest Cash & Pawn, Inc. G.P. CEASE AND DESIST from violating ORS 726.400 by allowing Hales to redeem the silver bullion pledge for his approximate ten thousand dollar ($10,000) loan until proper notice of forfeiture is given hereafter for his pledge to be deemed forfeit under ORS 726.400(2), pursuant to ORS 726.440.

2. Respondent is assessed a CIVIL PENALTY in the amount of two thousand five hundred dollars ($2,500) for violation of ORS 726.400, pursuant to ORS 726.910.

3. Respondent is assessed the sum of six hundred dollars ($600) for the actual costs of investigation by the Division in this matter, pursuant to ORS 726.250.

Dated this 16th day of November, 2006 in Salem, Oregon.

CORY STREISINGER, Director
Department of Consumer & Business Services
State of Oregon

NOTICE OF REVIEW AND APPEAL RIGHTS

NOTICE: You are entitled to judicial review of this Order by the Oregon Court of Appeals pursuant to the provisions of ORS 183.480 and 183.482. Judicial review may be obtained by filing with the court a petition for review within sixty (60) days from the service of this Order. If you file a petition, you are requested to send a copy of the petition to the Division of Finance and Corporate Securities, Enforcement Section, 350 Winter Street NE, Room 410, Salem OR 97301-3881.

NOTICE OF EFFECT OF FAILURE TO PAY CIVIL PENALTY

NOTICE: You are hereby notified that, unless you timely appeal this Final Order, payment of the civil penalty is due within seventy (70) days after the date of service of this Final Order, and that if payment is not so made then, pursuant to ORS 183.745(6), the civil penalty will become a judgment against you that can be filed with the county clerk of any county in Oregon.

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