

NEW YORK STATE DEPARTMENT
OF FINANCIAL SERVICES

In the Matter of

CONEY ISLAND PAYROLL SERVICES, INC.

**CONSENT ORDER UNDER
NEW YORK BANKING LAW §§ 39 and 44**

The New York State Department of Financial Services (the “Department”) and Coney Island Payroll Services, Inc. (“Coney Island”) are willing to resolve the matters described herein without further proceedings.

WHEREAS, Coney Island has been licensed by the Department as a commercial check casher since 2005 (via both temporary and permanent licenses) pursuant to Article 9-A of the Banking Law;

WHEREAS, Coney Island operates a check cashing business at two locations, 1122 Coney Island Avenue, Brooklyn, New York, and 249 West 29th Street, New York, New York;

WHEREAS, in 2016 Coney Island cashed over 55,000 checks, with a total value exceeding \$256 million;

WHEREAS, in 2015 the Department conducted an examination of Coney Island covering the period from January 1, 2008 to February 28, 2013 (the “2015 Examination”), which found serious and systemic deficiencies in multiple areas of Coney Island’s Bank Secrecy Act (“BSA”) and Anti-Money Laundering (“AML”) compliance program, as well as numerous violations of New York state and federal laws and regulations;

WHEREAS, in 2015 and 2016, Coney Island responded to the Department’s examination;

WHEREAS, in February 2018, the Department conducted another examination of Coney Island, as of November 30, 2017 (the “2018 Examination”), which again identified serious and systemic deficiencies in multiple areas of Coney Island’s BSA and AML compliance program, as well as numerous violations of New York state and federal laws and regulations. Coney Island responded to this examination shortly thereafter.

The Department hereby finds as follows:

The Department’s Findings After Examination

Background

1. A check casher is a business that cashes a check, draft or money order for customers for a fee. Check cashers offer customers the ability to immediately obtain funds without going to a bank or opening a bank account. Check cashers operating in New York must be licensed by the Department.

2. One way that bad actors may attempt to utilize check cashers for improper purposes is to obtain cash through the practice of “structuring.” “Structuring” may occur when a person executes financial transactions in a specific pattern, like breaking up a larger sum into smaller transactions. The purpose of structuring typically is to avoid triggering the obligation of a check casher like Coney Island to file reports with the federal government required by the BSA.¹

3. New York laws and regulations require check cashers like Coney Island, among other things, to maintain effective controls to guard against money-laundering and certain other illicit activities, such as purposeful structuring by customers.

¹ See, e.g., 31 C.F.R. § 1010.100(xx) (defining structuring as conducting, or attempting to conduct, one or more transactions in currency “for the purpose of evading the reporting requirements. . .”).

The 2015 Target Examination

4. In 2015, the Department conducted an examination of Coney Island to determine its compliance with federal and state BSA/AML requirements. The 2015 Examination included transaction testing of high-volume and high-frequency customers; review of customer files, currency transaction reports (“CTRs”) and daily activity sheets; and interviews with key staff members.

5. The 2015 Examination identified serious and systemic deficiencies in virtually all areas of Coney Island’s BSA/AML compliance program, and numerous violations of New York and federal laws and regulations. For example, the Department found that approximately 26 percent of Coney Island’s customers routinely cashed checks that were made out in the precise amount of \$10,000, which (whether or not including the fee charged by Coney Island) is just slightly below the legal reporting threshold: any transaction in currency exceeding \$10,000 in value.

6. The total amount of these type of questionable transactions identified in the examination amounted to approximately \$38 million for the 2015 Examination review period. The relatively high percentage of customers involved in cashing checks for \$10,000, along with the significant volume of such checks being cashed by Coney Island, strongly suggests these customers were engaged in improper structuring. Further, this evidence demonstrates that, at a minimum, Coney Island was aware of this conduct and tolerated it. In all events, Coney Island failed to take adequate steps to address their customers’ apparent structuring activity.

7. The 2015 Examination determined that Coney Island’s AML program document, a generic document drafted by a third-party and not tailored to Coney Island’s business operations in any reasonable way, provided insufficient guidance concerning how Coney Island’s employees

should follow or document compliance with the regulations of the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

8. The 2015 Examination determined that Coney Island failed to conduct adequate due diligence on its customers. For example, its records demonstrated that the lines of business for many customers could not be readily determined, and many customer files lacked the required corporate information, basic identification, and verification of identity records for customers and their authorized representatives.

9. The 2015 Examination identified a pattern of late CTR filings and inaccurate, incomplete paperwork associated therewith. Examiners identified over a million dollars of reportable activity for which no CTRs were filed. Of those CTRs that were filed during the examination period, hundreds lacked transaction or filing dates. Moreover, approximately one third of Coney Island's total CTR filings were 81 days late, on average.

The 2018 Examination

10. In February 2018, the Department conducted another examination of Coney Island. Though Coney Island was on notice of its problematic practices due to a report of the examination provided to Coney Island by the Department following the 2015 Examination, the 2018 Examination nevertheless determined that many of the deficiencies identified in 2015 remained unremediated. For example, during the 2018 examination period, Coney Island filed over a hundred CTRs outside of the mandated timeframe.

11. Among other things, Coney Island failed to implement adequate steps to identify and seek to prevent possible structuring activity by customers. The Department's review of a sample of customer transactions disclosed numerous additional instances of possible structuring by the Coney Island's customers.

12. The 2018 Examination determined that certain books and records kept by Coney Island were not accurate. Certain shareholder expenses were paid through Coney Island's bank accounts and not correctly posted as distributions. Moreover, weaknesses in the licensee's accounting controls, including the reporting of expenses and distributions, resulted in inaccuracies in the Annual Reports.

13. Additionally, Coney Island's transaction monitoring program was deficient. For example and without limitation, Coney Island's written policies were merely re-statements of the Superintendent's regulations, and not at all tailored to Coney Island's specific business practices, as required. Nor were there any formal procedures for monitoring customer transactions, and no documentation was maintained to substantiate that reviews of suspicious transactions were conducted.

14. The 2018 Examination determined that Coney Island cashed certain large dollar commercial checks it knew were likely to be dishonored based on prior customer history. In some instances, these bad checks were returned mere days before a new bad check from that same commercial maker was presented to Coney Island for payment.

15. The 2018 Examination also noted that the most recent risk assessment conducted by Coney Island did not adequately address the risks associated with its specific customer base, products and services. Deficiencies in the risk assessment were also identified in documents governing AML policies and procedures. These documents are key components of an adequately-functioning compliance system, and are necessary to ensure that money-laundering and other suspicious activities are sufficiently detected.

16. Additionally, the 2018 Examination determined that Coney Island cashed well in excess of 100 checks (some of which were in the precise amount of \$10,000) without recording

the name of the actual maker of the check in its daily record of checks cashed, as required. For example, for a substantial number of checks, Coney Island recorded the maker of the check as "Chase Online Bill Payment."

NOW THEREFORE, to resolve this matter without further proceedings, pursuant to the Superintendent's authority under Sections 39 and 44 of the Banking Law, the Department and Coney Island hereby stipulate and agree to the terms and conditions listed below requiring further review of Coney Island's business activities, for remediation, and for imposition of a civil monetary penalty:

Violations of Laws and Regulations

17. Coney Island failed to establish and maintain an effective and compliant anti-money laundering program, in violation of 3 N.Y.C.R.R. § 417.2.

18. Coney Island failed to maintain and make available true and accurate books, accounts, and records reflecting all transactions and actions, in violation of 3 N.Y.C.R.R. § 400.2.

Settlement Provisions

Monetary Payment

19. Coney Island shall pay a penalty pursuant to Banking Law §§ 39 and 44 to the Department in the amount of \$75,000.00. It shall pay the entire amount in six equal monthly installments, with the first installment to be paid within 30 days after the full execution of this Consent Order, and with each successive payment paid within 30 days of the prior payment. Coney Island agrees that it will not claim, assert or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the penalty paid pursuant to this Consent Order.

Immediate Compliance Consultant

20. Coney Island shall engage an independent third-party of the Department's choosing, within ten (10) days of the full execution of this Consent Order, to immediately consult about, oversee and address deficiencies in Coney Island's compliance function, including, without limitation, compliance with New York law and regulations including, but not limited to, BSA/AML and OFAC requirements and regulations (the "Compliance Consultant").

21. The Compliance Consultant shall work with the Department and Coney Island to implement changes or modifications to policies, procedures or personnel that may be made immediately to address any identified deficiencies in Coney Island's compliance function.

22. The Compliance Consultant shall also conduct a review of Coney Island's transaction activity for the three-year period from July 1, 2015 through June 30, 2018 for the purpose of informing Coney Island's remediation efforts by determining whether suspicious activity involving high risk customers or transactions or possible money laundering at, by, or through Coney Island were properly identified and remediated in accordance with New York laws and regulations (the "Transaction Review"). The Transaction Review shall be conducted pursuant to a methodology determined by and in the sole discretion of the Department, following consultation with the Compliance Consultant and Coney Island.

23. The term of the Compliance Consultant's engagement shall extend for a period of one year, to be extended in the sole discretion of the Department.

Full and Complete Cooperation of Coney Island

24. Coney Island agrees that it will fully cooperate with, and support the work of, the Compliance Consultant including but not limited to, providing full and complete access to all relevant personnel, consultants, and third-party service providers, files, reports, or records, whether

located in New York, Brooklyn, or any other location sought. Coney Island further commits and agrees that it will fully cooperate with the Department regarding all terms of this Consent Order.

Breach of Consent Order

25. In the event that the Department believes Coney Island to be in material breach of the Consent Order, the Department will provide written notice to Coney Island and Coney Island must, within ten (10) business days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is not material or has been cured.

26. The parties understand and agree that Coney Island's failure to make the required showing within the designated time period shall be presumptive evidence of Coney Island's breach. Upon a finding that Coney Island has breached the Consent Order, the Department has all the remedies available to it under New York Banking and Financial Services Law and may use any evidence available to the Department in any ensuing hearings, notices, or orders.

Waiver of Rights

27. The parties understand and agree that no provision of this Consent Order is subject to review in any court or tribunal outside the Department.

Parties Bound by the Consent Order

28. This Consent Order is binding on the Department and Coney Island, as well as any successors and assigns. This Consent Order does not bind any federal or other state agency or law enforcement authority.

29. No further action will be taken by the Department against Coney Island for the specific conduct set forth in this Order, provided that Coney Island complies with the terms of the Order.

Notices

30. All notices or communications regarding this Consent Order shall be sent to:

For the Department:

Terri-Anne Caplan
Senior Assistant Deputy Superintendent for Enforcement
New York State Department of Financial Services
One State Street
New York, NY 10004

Alice McKenney
Attorney
New York State Department of Financial Services
One State Street
New York, NY 10004

For Coney Island:

Joseph Richter
Coney Island Payroll Services, Inc.
1122 Coney Island Avenue
Brooklyn, NY 11230

with a copy to:

Mark Schlussek, Esq.
Zeichner Ellman & Krause LLP
1121 Avenue of the Americas
New York, NY 10036

Miscellaneous

31. Each provision of this Consent Order shall remain effective and enforceable until stayed, modified, suspended or terminated by the Department.

32. No promise, assurance, representation, or understanding other than those contained in this Consent Order has been made to induce any party to agree to the provisions of the Consent Order.

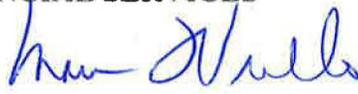
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IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed this 31st day of January, 2019.

CONEY ISLAND PAYROLL SERVICES, INC.

By: 
JOSEPH RICHTER

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

By: 
MARIA T. VULLO
Superintendent of Financial Services

By: 
MATTHEW L. LEVINE
Executive Deputy Superintendent for Enforcement