

OCCC CASE NO. L18-00150

IN THE MATTER OF:	§	BEFORE THE
	§	
MASTER FILE NUMBER: 10720	§	OFFICE OF CONSUMER
OSWALDO E. DELGADO	§	
d/b/a O R FINANCIAL SERVICES	§	CREDIT COMMISSIONER
313 S. MAIN ST.	§	
DEL RIO, TEXAS 78840	§	STATE OF TEXAS

**ORDER TO CEASE AND DESIST, TO TAKE AFFIRMATIVE ACTION,
AND TO MAKE RESTITUTION**

The Office of Consumer Credit Commissioner (“OCCC”) issues this Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution against Oswaldo E. Delgado d/b/a O R Financial Services (“O R Financial Services”), based on the violations of law described below.¹

Statement of Facts and Law

O R Financial Services is a regulated lender licensed by the OCCC under Chapter 342 of the Texas Finance Code.

O R Financial Services’ designated contact address is 313 S. Main St., Del Rio, Texas 78840, and its compliance officer is Oswaldo E. Delgado. O R Financial Services operates under master file number 10720 at three licensed locations:

- 313 South Main St., Del Rio, Texas 78840 (license number 47247, issued on September 27, 2005);
- 590 E. Main St. Ste. B, Eagle Pass, Texas 78852 (license number 54593, issued on January 26, 2009); and
- 2108 Chihuahua St. Suite 3, Laredo, Texas 78043 (license number 152021, issued on February 13, 2015).

O R Financial Services makes consumer loans under Chapter 342, Subchapter F of the Texas Finance Code. The current maximum cash advance for a Subchapter F loan is \$1,400.² Subchapter F contains maximum interest rates

¹ Tex. Fin. Code § 14.208.

² Tex. Fin. Code § 342.259; OCCC, Tex. Credit Letter (Feb. 20, 2018). The maximum cash advance for a Subchapter F loan is adjusted annually based on the consumer price index. Tex. Fin. Code §§ 341.201, 341.203, 342.259. From July 1, 2017, through June 30, 2018, the maximum cash advance for a Subchapter F

that are alternatives to the other interest-rate provisions of Chapter 342.³ If a loan is subject to Subchapter F, then the lender may charge interest up to \$4 per month for each \$100 of the cash advance.⁴

Because the maximum cash advance for a Subchapter F loan is \$1,400, a lender is not authorized to charge interest at the Subchapter F maximum rate for a loan over \$1,400. Instead, the lender is limited to the interest rates described by Chapter 342, Subchapter E.⁵ For all loan amounts, Subchapter E authorizes the lender to charge interest at an effective annual rate up to 18% per year.⁶

Chapter 342 and its implementing rules prohibit lenders from making duplicate loans to exceed interest limitations.⁷ Under Chapter 342, a lender may not induce or permit a person to be obligated under more than one loan contract at a time with the purpose or effect of obtaining an amount of interest greater than what would be authorized under Subchapter E or Subchapter F.⁸ Under Title 7, Chapter 83 of the Texas Administrative Code, a lender may have more than one loan contract with the same borrower at the same time, but the total interest charges on all cash advances must not exceed the total interest charges that could be legally imposed on one cash advance that equals to the total of the separate cash advances.⁹ The OCCC may require refunds of interest charges in excess of what could legally be charged under Chapter 342.¹⁰ The OCCC may prescribe the method of determining excess charges.¹¹

The OCCC examined O R Financial Services' Laredo location on April 7, 2017. The examination revealed that O R Financial Services violated Chapter 342 and its implementing rules by making multiple loans to the same borrowers with the effect of exceeding the maximum cash advance under Subchapter F. For example, O R Financial Services made a \$1,300 loan to a borrower on February 2,

loan was \$1,380. OCCC, Tex. Credit Letter (Feb. 7, 2017).

³ Tex. Fin. Code §§ 342.252(a), 342.259(a).

⁴ Tex. Fin. Code §§ 342.252(a)(3)(B), 342.259(a)(2). Subchapter F uses the term "installment account handling charge" to refer to the interest charge authorized in connection with a Subchapter F loan.

⁵ Tex. Fin. Code § 342.201 (providing interest limitation for loans under Chapter 342, Subchapter E), § 342.502(A) (prohibiting a lender from directly or indirectly charging an amount that is not authorized under Chapter 342).

⁶ Tex. Fin. Code §§ 303.002, 303.003, 303.009, 342.201(d). Currently, the weekly ceiling authorized for Subchapter E loans under Section 342.201(d) is 18% per year. OCCC, Tex. Credit Letter (Aug. 21, 2018).

⁷ Tex. Fin. Code § 342.501(a); 7 Tex. Admin. Code § 83.851.

⁸ Tex. Fin. Code § 342.501(a).

⁹ 7 Tex. Admin. Code § 83.851(a).

¹⁰ 7 Tex. Admin. Code § 83.851(a).

¹¹ 7 Tex. Admin. Code § 83.851(a).

2017, and made another \$1,300 loan to the same borrower on February 3, 2017. In the examination report, the OCCC instructed O R Financial Services to refund the interest charged in connection with these transactions down to an effective annual interest rate of 18% per year. This instruction applied to loans entered from November 19, 2015, to the date of the examination report.

The OCCC examined O R Financial Services' Eagle Pass location on September 14, 2017. The examination revealed that O R Financial Services violated Chapter 342 and its implementing rules by making multiple loans to the same borrowers, with the effect of yielding excessive interest charges. In the examination report, the OCCC instructed O R Financial Services to refund the interest charged in connection with these transactions down to an effective annual interest rate of 18% per year. The OCCC instructed O R Financial Services to respond to the examination report's instructions no later than November 13, 2017.

The OCCC performed a follow-up examination of O R Financial Services' Laredo location on December 20, 2017. The examination revealed that O R Financial Services had continued to violate Chapter 342 and its implementing rules by making multiple loans to the same borrowers to exceed the Subchapter F maximum cash advance. The examination also revealed that O R Financial Services had not made all the refunds it was instructed to make in the previous April 2017 examination report. In the examination report, the OCCC repeated its instruction to make refunds for loans that exceeded the maximum cash advance under Subchapter F. The OCCC instructed O R Financial Services to respond to the examination report's instructions no later than March 18, 2018.

In April 2018, O R Financial Services sent refunding documentation to the OCCC. The refunding documentation listed some refunds of interest charges for the Laredo and Eagle Pass locations. The OCCC reviewed the refunding documentation, and found that the documentation did not include refunds for all the noncompliant duplicate loans that the OCCC found during its examinations. For example, records obtained during the December 2017 examination reflect that O R Financial Services made a \$1,300 loan and a \$700 loan to the same borrower on the same date, June 30, 2017. Each loan included interest at the maximum rate that would be authorized under Subchapter F. A refund to this borrower was not listed in the refunding documentation that O R Financial

Services sent to the OCCC in April 2018. Therefore, O R Financial Services has not completed the OCCC's examination instructions.

O R Financial Services violated Chapter 342 of the Texas Finance Code and its implementing rules by making multiple loans with the same borrowers to exceed applicable interest limitations. To correct this violation, O R Financial Services must refund interest charged in these transactions down to an effective annual interest rate of 18%, based on the total cash advance provided to each borrower.

Authority

If the Consumer Credit Commissioner ("Commissioner") has reasonable cause to believe that a person is violating Chapter 342 of the Texas Finance Code, the Commissioner may issue an order to cease and desist from the violation, an order to take affirmative action, or both to enforce compliance.¹² Additionally, the Commissioner may order a person who violates Chapter 342 or a rule adopted under Chapter 342 to make restitution to an identifiable person injured by the violation.¹³

The Commissioner has reasonable cause to believe that O R Financial Services is violating Chapter 342 of the Texas Finance Code, and Title 7, Chapter 83 of the Texas Administrative Code by making multiple loans to the same borrowers to exceed applicable interest limitations.

Order

IT IS ORDERED that:

1. O R Financial Services must cease and desist contracting for, charging, or receiving excessive interest under Chapter 342 of the Texas Finance Code.
2. O R Financial Services must cease and desist entering multiple loans with the same borrower to exceed applicable interest limitations under Chapter 342 of the Texas Finance Code.

¹² Tex. Fin. Code § 14.208(a).

¹³ Tex. Fin. Code § 14.251(b).

3. **No later than October 1, 2018**, O R Financial Services must review all consumer loans that it entered from November 19, 2015, to the present at all three of its licensed locations.
4. **No later than October 1, 2018**, O R Financial Services must identify each transaction entered from November 19, 2015, to the present where the borrower was obligated to O R Financial Services under more than one loan at the same time, with the effect of exceeding the applicable maximum cash advance under Chapter 342, Subchapter F of the Texas Finance Code.
5. **No later than October 1, 2018**, O R Financial Services must refund interest charged in these transactions down to an effective annual interest rate of 18%, based on the total cash advance provided to each borrower.
6. With respect to maintaining proof of refunds:
 - a. O R Financial Services must maintain complete and accurate records of all refunds, including copies of refund checks for closed accounts and ledgers showing account credits for open accounts, until the later of the following:
 - i. the OCCC's next examination of O R Financial Services,
 - ii. the fourth anniversary of the date of the loan, or
 - iii. the second anniversary of the date on which the final entry is made in the borrower's record.¹⁴
 - b. **No later than October 8, 2018**, O R Financial Services must create a spreadsheet labeled "L18-00148ORFinancialServices Restitution." The spreadsheet must clearly list the grand total amount of refunds provided to all borrowers. In addition, the spreadsheet must list each borrower who received a refund as described above, including borrowers who received a refund in response to OCCC examination instructions. The spreadsheet must include a row for each borrower and the following columns:
 - i. account number;
 - ii. name of borrower;

¹⁴ See 7 Tex. Admin. Code § 83.833(b), (g).

- iii. dates of the loans made to the borrower;
 - iv. amount of interest charged to the borrower as a dollar amount;
 - v. amount of interest refunded to the borrower as a dollar amount;
 - vi. date of the refund; and
 - vii. form of the refund (i.e. check for closed account, and credit on open account).
- c. **No later than October 8, 2018**, O R Financial Services must provide the OCCC with a copy of the spreadsheet. The spreadsheet must be sent by e-mail to Matthew Nance at matthew.nance@occc.texas.gov.

Violation of Order

O R Financial Services may be assessed an administrative penalty of up to \$1,000 for each day of violation of this Order.¹⁵ Multiple violations of this Order may result in the revocation of O R Financial Services' license.¹⁶

Right to Request Hearing

O R Financial Services has the right to request a hearing regarding this Order.¹⁷ O R Financial Services' request must be made in writing and sent to the OCCC not later than 30 days after O R Financial Services receives this Order. O R Financial Services must send its request to:

Matthew Nance
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, Texas 78705

If O R Financial Services requests a hearing, a hearing on this matter will be set and conducted in accordance with Chapter 2001 of the Texas Government Code.¹⁸ If O R Financial Services fails to request a hearing by this deadline, this

¹⁵ Tex. Fin. Code § 14.208(c).

¹⁶ Tex. Fin. Code § 342.156.

¹⁷ Tex. Fin. Code § 14.208(b).

¹⁸ Tex. Fin. Code § 14.208(b).

Order is considered final and enforceable.¹⁹

All communications with the OCCC concerning this matter must be through Matthew Nance, Deputy General Counsel, who may be contacted by mail at 2601 N. Lamar Blvd., Austin, Texas 78705, by telephone at (512) 936-7660, or by email to matthew.nance@occc.texas.gov.

Signed this 24th day of August, 2018.

/s/ Leslie Pettijohn
Leslie L. Pettijohn
Consumer Credit Commissioner
State of Texas

¹⁹ Tex. Fin. Code § 14.208(c).

CERTIFICATE OF SERVICE

I certify that on August 24, 2018, a true and correct copy of this Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution has been sent to Oswaldo E. Delgado d/b/a O R Financial Services by regular mail and certified mail, return receipt requested, at:

CMRRR# 91 7199 9991 7038 3509 9514

Oswaldo E. Delgado d/b/a O R Financial Services

Attn: Oswaldo E. Delgado, Compliance Officer and Statutory Agent

313 S. Main St.

Del Rio, Texas 78840

/s/ Matthew Nance

Matthew J. Nance

Deputy General Counsel

Office of Consumer Credit Commissioner

State Bar No. 24074794

2601 North Lamar Blvd.

Austin, Texas 78705

(512) 936-7660

(512) 936-7610 (fax)

matthew.nance@occc.texas.gov