

COMMISSIONER OF BANKING
STATE OF WEST VIRGINIA

In the Matter of:

**REQUEST FOR AUTHORIZATION TO
ENGAGE IN OTHER BUSINESS ACTIVITY BY
A REGULATED CONSUMER LENDER
filed on behalf of
KENTUCKY FINANCE, INC.
(Re: Acting as Agent for Soliciting and Servicing Sales
Finance Contracts on Behalf of an Affiliate)**

DECISION ON AUTHORIZATION REQUEST

On April 11, 1997 Associates Corporation of America on behalf of its licensed Regulated Consumer Lender affiliate, Kentucky Finance, Inc., of West Virginia by letter, requested of the West Virginia Commissioner of Banking a DECISION ON AUTHORIZATION pursuant to W. Va. Code § 46A-4-110 in regards to the solicitation and servicing of in-state and out-of-state sales finance contracts held or purchased by its Delaware affiliate, Kentucky Finance Co., Inc. in the same office, room, or place of business in which the Applicant, acting as a regulated consumer lender licensee, conducts the business of making regulated consumer loans.

Upon review of this request, the Commissioner of Banking has determined that such activity is sufficiently related to the business of transacting regulated consumer loans; that the nature and character of the activity will not per se facilitate evasions or contradictions of Article 4, Chapter 46A of the West Virginia Code or the rules issued thereunder; and that the solicitation and servicing of sales finance contracts on behalf of its Delaware affiliate

will not be detrimental to the consumers of this state-- Provided the activity, procedures and limitations set forth herein are followed.

The decision to grant this type of authority is tempered with concern that the consumer be provided the protections of West Virginia's Consumer Credit and Protection Act ("WVCCPA") in transactions made in West Virginia or involving West Virginia residents. At the same time it needs to be recognized that the general approach of the WVCCPA is to permit assignees to collect the rates and charges set forth in the sales finance contract lawful in the state where the transaction was made.

Kentucky Finance Co., Inc. (hereinafter "KFCI-DE") engages in the purchase of sales finance contracts from merchants in Ohio and Kentucky as well as West Virginia. Accounts created by in-store sales in Ohio and Kentucky, as well as in-home sales originated in customers' homes located in Ohio and Kentucky are made in conformity with those states' respective laws. Similarly, credit sale agreements in West Virginia made by merchants, either in stores or homes in West Virginia, are extended on terms in conformity with the WVCCPA. State law provides that:

(5) An assignee of a consumer credit sale contract may collect, receive or enforce the sales finance charge provided in said contract, and any such charge so collected, received or enforced by an assignee shall not be deemed usurious or in violation of this chapter or any other provision of this code if such sales finance charge does not exceed the limits permitted to be charged by a seller under the provisions of this chapter.

(6) Notwithstanding subsection (5) of this section, a resident lender who is the assignee of a consumer credit sales contract from a credit grantor in another state, and said contract was executed in such other state to finance a retail purchase made by the consumer when the consumer was in that other state, may collect, receive or enforce the sales finance charge and other charges including late fees provided in said contract under the laws of the state where executed. Such charge shall not be deemed to be usurious or in violation of the provisions of this chapter or any other provisions of this code. [W. Va. Code § 46A-3-104(5) and (6)]

There is no special licensing requirement for a business which merely engages in the solicitation and purchase of consumer credit sale contracts from West Virginia or at offices in West Virginia, unless the purchaser is affiliated with the credit provider pursuant to a

standing arrangement. W. Va. Code § 31A-2-5(b). Were KFCI-DE to conduct the business of such purchases at its own separate offices in West Virginia no prior approval would be needed from the Commissioner. However, KFCI-DE seeks to have Kentucky Finance, Inc. of West Virginia act as agent to conduct these activities from, and to have these credit accounts serviced at, their West Virginia regulated consumer lender offices. These activities would thus first require approval by the Commissioner pursuant to W. Va. Code § 46A-4-110.

To the extent that Kentucky Finance, Inc. of West Virginia acts as agent to solicit and service consumer credit sale contracts held by its Delaware affiliate, KFCI-DE, one could contend that it was acting in the capacity of a collection agency subject to W. Va. Code § 47-16-3. However, Kentucky Finance, Inc. of West Virginia is exempt from those licensing provisions because under W. Va. Code § 47-16-2(b) it is made clear that the term “collection agency” does *“not mean or include...industrial loan companies [or]... small loan companies (supervised lenders)....”* As is stated in W. Va. Code § 46A-4-112 all *“references in other chapters of this code to supervised loans, supervised lenders, industrial loans, industrial loan companies and licensees thereof, as well as to article seven [§ 31-7-1 et seq.], chapter thirty-one of this code, shall, after the operative date of this chapter, and despite the repeal of said statute, be read, construed and understood to mean and to have reference, respectively, to regulated consumer loans, regulated consumer lenders, regulated consumer lender licensees, and to this article.”*

In conducting such activities for KFCI-DE, records pertaining to their in-state and out-of-state sales contracts serviced at the offices of Kentucky Finance, Inc. of West Virginia shall be coded and maintained in a manner so as to allow examiners to readily distinguish these records from those of its regulated consumer loan licensee (“RCL”).

Regardless, however, of whether the sales contracts are solicited, held or merely serviced at the offices of Kentucky Finance, Inc. of West Virginia, those transactions which are governed by West Virginia’s rates and charges shall be subject to assessment under W. Va. Code § 46A-4-105(5). This section provides that *“[t]he commissioner of*

banking shall charge and collect from each regulated consumer lender and pay into a special revenue account in the state treasury for the department of banking an annual assessment payable on the first day of July, computed upon the total outstanding gross loan balances and installment sales contract balances net of unearned interest as is set out in section eight [§ 31A-2-8], article two, chapter thirty-one-a of this code.” To provide otherwise would result in an RCL being able to evade this section while placing the regulatory burden of compliance and complaint resolution upon this office and the State of West Virginia.

Any deviation from the above-stated guidelines will result in the revocation of this written authorization of the Applicant to engage in the business of making loans in the same office, room or place of business in which the solicitation and servicing as agent for in-state and out-of-state sales finance contracts on behalf of its Delaware affiliate, Kentucky Finance Co., Inc., takes place. Subject to the terms and conditions set forth herein: AUTHORIZATION IS HEREBY GRANTED.

SGB

Sharon G. Bias
Commissioner of Banking

Date: 4/16/97