

APPENDIX IV - Braz Transfers, Inc., Saugus, MA - Findings of Fact and Temporary Order to Cease and Desist¹

By the Division of Banks
COMMONWEALTH OF MASSACHUSETTS
Suffolk, SS.

COMMISSIONER OF BANKS
FOREIGN TRANSMITTAL AGENCY LICENSING
AND CHECK CASHER LICENSING
Docket No. 2013-015

FINDINGS OF FACT AND TEMPORARY ORDER TO CEASE AND DESIST
In the Matter of BRAZ TRANSFERS, INC. Saugus, Massachusetts
Foreign Transmittal Agency License No(s): FT4449 et al.
And Check Cashier License No.: CC111542-353

The Commissioner of Banks (Commissioner) having determined that BRAZ TRANSFERS, INC., (Braz Transfers or the Corporation) located at 999 Broadway, Suite 500, Saugus, Massachusetts has engaged, or is engaged in, or is about to engage in, acts or practices constituting violations of Massachusetts General Laws chapters 169 and 169A, and applicable regulations found at 209 CMR 44.00 and 209 CMR 45.00 et seq., hereby issues the following TEMPORARY ORDER TO CEASE AND DESIST (Temporary Order) pursuant to General Laws chapter 169, section 13(b) and chapter 169A, section 9(b).

FINDINGS OF FACT

1. The Division of Banks (Division), through the Commissioner, has jurisdiction over the licensing and regulation of persons engaged in the business of a foreign transmittal agency pursuant to Massachusetts General Laws chapter 169.
2. The Division also has jurisdiction over the licensing and regulation of persons engaged in the business of a check casher pursuant to Massachusetts General Laws chapter 169A.
3. Braz Transfers is, and at all relevant times has been, a corporation conducting business in the Commonwealth of Massachusetts. Braz Transfer's main office is located at 999 Broadway, Suite 500, Saugus, Massachusetts.
4. According to the Division's records, Sostenas Souza is the President, Chief Executive Officer and fifty percent shareholder of Braz Transfers.
5. According to the Division's records, Deneir Rosa is the Treasurer and fifty percent shareholder of Braz Transfers.
6. Braz Transfers is licensed by the Commissioner as a foreign transmittal agency under Massachusetts General Laws chapter 169. According to records maintained on file with the Division, the Commissioner initially issued a foreign transmittal license to Braz Transfers on or about June 16, 2004, with license number FT3346. License number FT3346 authorized Braz Transfers to operate as a foreign transmittal agency at 144 Maverick Street, East Boston, Massachusetts.
7. Braz Transfers maintains a total of ninety-three (93) foreign transmittal agency licenses for 93 agents, for locations operated in the Commonwealth from which the Corporation conducts its foreign transmittal business.
8. Braz Transfers is a money services business as defined by The Bank Secrecy Act (BSA) and its implementing regulation at 31 C.F.R. Chapter X.
9. Braz Transfers is also licensed as a check casher under Massachusetts General Laws chapter 169A. According to records maintained on file with the Division, the Commissioner initially issued a check casher license to Braz Transfers on or about September 2, 2011, with license number CC111542-353. License number CC111542-353 authorized Braz Transfers to operate as a check casher at 377 Somerville Avenue, Somerville, Massachusetts.
10. Pursuant to Massachusetts General Laws chapter 169, section 10 and chapter 169A, section 10, the Division commenced an inspection of the books, accounts, papers, records, and files of Braz Transfers on February 5, 2013 (2013 examination).

A. Regulatory Background

11. On December 2, 2010, pursuant to Massachusetts General Laws chapter 169, section 13(b), the Division issued a Temporary Order to Cease and Desist (Order) against two authorized agent locations of Braz Transfers, Docket Number, 2010-375 based on findings of a November 29, 2009 examination. The Order issued by the Division alleged significant failures to comply with applicable state and federal laws, rules, regulations, and regulatory guidelines governing the conduct of two of Braz Transfer's authorized agents engaged in the foreign transmittal business in the Commonwealth.
12. The Order alleged that the Division's examiners reviewed certain information during an examination that indicated that Massachusetts consumer funds were transmitted through an entity that was unrelated to Braz Transfers or any other licensed money remitter from two of Braz Transfers agent locations. Additionally, the funds were remitted to Brazil through what appeared to be an unauthorized foreign agent in Brazil.
13. On July 6, 2011, Braz Transfers entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF A CONSENT ORDER (Consent Order) with representatives of the Division, to resolve matters identified in the Order. The provisions of the Consent Order required Braz Transfers to establish, implement and maintain appropriate procedures to ensure compliance with laws and regulations applicable to the foreign transmittal business. The Consent Order is incorporated herein by reference.

¹ Downloaded on March 16, 2014 from: <http://www.mass.gov/ocabr/banking-and-finance/laws-and-regulations/enforcement-actions/2013-dob-enforcement-actions/braz04012013.html>

B. Failure To Demonstrate the Financial Responsibility, Character, Reputation Integrity, and General Fitness to Maintain a License

14. Massachusetts General Laws chapter 169, section 12 relevant to the licensing of foreign transmittal agencies states: The commissioner may suspend or revoke any license issued pursuant to this chapter if he finds that: (a) the licensee has violated any provision of this chapter or any rule or regulation adopted hereunder or any other law applicable to the conduct of such business; or (b) any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the commissioner to refuse to issue such license.
15. The Division's regulation at 209 CMR 44.04(2) states in part:
 - (a) The Commissioner may deny an application to engage in the business of foreign transmittal agency, if the Commissioner upon review of the application and other relevant information, determines that the Applicant has not satisfied the requirements of M.G.L. c. 169 or 209 CMR 44.03.
 - (b) The Commissioner may also deny such an application if the Applicant has:
 1. violated any provision of M.G.L. c. 169 or 209 CMR 44.00;
 2. violated or engaged in a pattern of violations of any state or federal law applicable to the conduct of the business of a foreign transmittal agency and any rule, regulation or administrative order or directive promulgated thereunder;
 3. conducted, or will conduct, its business in an unsafe and unsound manner...
16. Books and records reviewed by the Division's examiners during the 2013 examination revealed that Braz Transfers failed to maintain the financial responsibility, character, reputation and integrity to conduct the foreign transmittal business in the Commonwealth as the Corporation conducted the foreign transmittal business in an unsafe and unsound manner by providing falsified records to Division's examiners, including falsified receipts of transfers allegedly made by Braz Transfers on behalf of Massachusetts consumers as specifically enumerated in this Temporary Order.

i. Falsification of Records Provided to the Division

17. Massachusetts General Laws chapter 169, section 8 states, in part:

All money received for transmission to a foreign country by any licensee shall be forwarded to the person to whom the same is directed within seven days following receipt thereof...
18. The Division's regulation 209 CMR 44.10(5) states:

Grounds for license revocation under M.G.L. c. 169, § 12 and the issuance of cease and desist orders under M.G.L. c. 169, § 13 shall include, but are not limited to, the following prohibited acts and practices by Licensees:
(5) failing to forward all money received for transmission to a foreign country to the person to whom the same is directed within seven days following receipt thereof.
19. Braz Transfers transmits money received from Massachusetts consumers primarily to Brazil. According to information reflected on the Corporation's 2012 annual report filed with the Division, Braz Transfers transmitted \$122,932,273.59 for Massachusetts consumers for calendar year 2012.
20. During the 2013 examination, the Division's examiners requested records reflecting proof of payment receipts for the following time periods: February 10, 2011 through February 11, 2011, November 16, 2011 through November 18, 2011 and November 28, 2012 through November 30, 2012. In addition, the Division's examiners requested and were provided proof of payment receipts from February 13, 2013 through February 20, 2013.
21. The Central Bank of Brazil authorizes and supervises the operations of foreign agents conducting business in Brazil. The Division's review of the directory of agents authorized to engage in foreign exchange transactions in Brazil available from the Central Bank of Brazil, indicates that two agent relationships currently maintained by Braz Transfers are authorized banks in Brazil, Bank Rendimento and Banco Paulista, S.A.
22. The Division's examiners review of the proof of payment receipts provided by Braz Transfers indicated that Massachusetts consumer funds were transmitted through either Bank Rendimento or Banco Paulista, S.A. The receipts provided by Braz Transfers appeared to have been generated by either Bank Rendimento or Banco Paulista, S.A.
23. During the examination, the Division's examiners contacted representatives at both Bank Rendimento and Banco Paulista, S.A., to request their assistance in verifying a sample of transactions that Braz Transfers represented had been remitted through both institutions. Both Banks cooperated fully with the Division's requests and agreed to review the information provided by the Division.
24. On February 26, 2013, the Division's examiners forwarded a representative of Banco Rendimento information on 40 transactions that Braz Transfers represented had been remitted through the Bank to the beneficiary in Brazil. On February 27, 2013, a representative of Banco Rendimento notified the Division's examiners that 21 of the 40 transactions had not been remitted through Banco Rendimento.
25. On February 27, 2013, the Division's examiners forwarded a representative of Banco Paulista, S.A., information on 20 transactions that Braz Transfers indicated had been remitted through the Bank to the beneficiary in Brazil. On March 4, 2013, a representative of Banco Paulista, S.A. notified the Division's examiners that 11 of the 20 transactions had not been remitted through Banco Paulista, S.A.

26. The Division's examiners also forwarded the representative of Banco Rendimento a copy of the proof of payment receipt provided by Braz Transfers to confirm its authenticity. On February 27, 2013, the representative from Banco Rendimento notified the Division's examiners that the receipt submitted for review had not been issued by Banco Rendimento.
27. On March 19, 2013 and March 20, 2013, based upon the information received by representatives at Banco Rendimento and Banco Paulista, S.A. the Division's examiners conducted a meeting with the Chief Compliance Officer and the Assistant Compliance Officer of Braz Transfers to discuss the concerns raised in Paragraphs 20 through 26 of this Temporary Order.
28. During both meetings, representatives of Braz Transfers did not dispute the information referenced in Paragraphs 20 through 26 of this Temporary Order.
29. On March 22, 2013, the Division received an email from representatives at Banco Paulista, S.A. stating that the institution had attempted to contact Braz Transfers regarding the irregularities in transactions and had requested a response by March 7, 2013. As of March 22, 2013, Braz Transfers had failed to respond to Banco Paulista, S.A.'s request. As a result, Banco Paulista notified Braz Transfers and the Division that their existing contract with Braz Transfers would be terminated as of April 26, 2013.
30. As of the date of this Temporary Order, Braz Transfers has failed to demonstrate that funds received for transmissions from Massachusetts consumers were remitted to their intended recipient within 7 days or at all. It is unknown how many Massachusetts consumers have been affected by Braz Transfers' failure to transmit funds through authorized institutions in Brazil, or if the practice is continuing to date.

ii. Failure to Notify the Division of Change in Ownership or Personnel

31. The Division's regulation at 209 CMR 44.08 states in part:
If any change occurs in the ownership of a Licensee, or in the name or residential address of the Licensee, or the office manager or of the person or persons in charge of an office, a notice shall forthwith be filed with the Commissioner who may thereupon cause such investigation to be made as he deems necessary, as if it were a new license. In the case of a Licensee which is a corporation, a change in the ownership of 10% or more of the stock thereof shall subject such corporation to the provisions of the preceding sentence.
32. During the March 20, 2013, meeting referenced in Paragraph 27 of this Temporary Order, representatives of Braz Transfers provided the Division's examiners a letter of resignation signed by Sostenas Souza and dated February 12, 2013. To date, the Corporation has failed to appropriately notify the Division of Sostenas Souza's resignation.
33. On March 26, 2013, due to the concerns raised in Paragraphs 20 through 30 of this Temporary Order, the Division's representatives held a meeting with Deneir Rosa and other representatives of the Corporation to discuss the concerns raised in this Temporary Order.
34. During the meeting, representatives of the Division were notified that the Corporation had undergone significant changes in management.
35. As of the date of this Temporary Order, Braz Transfers has failed to submit any written notification of any of the additional changes in management.
36. Due to the Corporation's failure to notify the Division of any of the aforementioned changes in senior management, the Division is unable to evaluate the condition of the Corporation.

Conclusions of Law

37. Based on the information contained in Paragraphs 1 through 36, by providing the Division's examiners with falsified records and proof of payment receipts, Braz Transfers has failed to demonstrate the financial responsibility, character, reputation, integrity, and general fitness that would warrant the belief that the business will be operated honestly, fairly, and soundly in the public interest in violation of General Laws chapter 169, section 6, the Division's regulation 209 CMR 44.03, and the Division's regulation 209 CMR 44.04.
38. Based on the information contained in Paragraphs 1 through 36, Braz Transfers, failed to ensure that funds received for transmissions to Brazil were remitted in violation of General Laws chapter 169 section 8 and the Division's regulation 209 CMR 44.10(5).
39. Based on the information in Paragraphs 1 through 36, Braz Transfers failed to notify the Division of changes in management at the office, in violation of the Division's regulation 209 CMR 44.08.
40. Based upon the information contained in Paragraphs 1 through 36, the public interest will be irreparably harmed by delay in issuing an Order to Cease and Desist under General Laws chapter 169, section 13(b) because, upon information and belief, Braz Transfers has collected funds from Massachusetts consumers that may not have been transmitted to beneficiaries in Brazil. As of the date of this Temporary Order, Braz Transfers has failed to demonstrate that those funds received for transmission from Massachusetts consumers were remitted to their intended recipient within 7 days or at all, and it is unknown if this is a continuing practice, that could possibly affect a growing number of Massachusetts consumers.
41. Based upon the information contained in Paragraphs 1 through 36, had the facts and conditions found therein existed at the time of Braz Transfers original foreign transmittal agency license applications, the Commissioner would have been warranted in refusing to issue such licenses.
42. Based upon the information contained in Paragraphs 1 through 36, had the facts and conditions found therein existed at the time of Braz Transfers original check casher license application, the Commissioner would have been warranted in refusing to issue such license.

43. Based upon the information contained in Paragraphs 1 through 36, the Commissioner has determined that:
 - a. Braz Transfers has engaged, or is about to engage in, acts or practices which warrant the belief that the Corporation is not operating honestly, fairly, soundly and efficiently in the public interest in violation of standards governing the licensing and conduct of a foreign transmittal agency including, but not limited to, the provisions under General Laws chapter 169 and the Division's regulations at 209 CMR 44.00 et seq.
 - b. Braz Transfers has engaged, or is about to engage in, acts or practices which warrant the belief that the Corporation is not operating honestly, fairly, soundly and efficiently in the public interest in violation of standards governing the licensing and conduct of a licensed check casher including, but not limited to, the provisions under General Laws chapter 169A and the Division's regulations at 209 CMR 45.00 et seq.
 - c. The public interest will be irreparably harmed by delay in issuing an ORDER TO CEASE AND DESIST to Braz Transfers.

ORDER TO CEASE AND DESIST

After taking into consideration the FINDINGS OF FACT and CONCLUSIONS OF LAW stated herein, it is hereby:

44. ORDERED that Braz Transfers, any and all officers, directors, employees, independent contractors, or agents operating on behalf of Braz Transfers, and their successors or assigns, shall immediately cease engaging directly or indirectly in the business of a foreign transmittal agency in Massachusetts, as defined in General Laws chapter 169, section 1, except as otherwise expressly permitted by the terms of this Temporary Order or by the Commissioner.
45. IT IS FURTHER ORDERED that Braz Transfers shall notify all independent contractors, or agents operating on behalf of Braz Transfers to immediately cease engaging directly or indirectly in the business of a foreign transmittal agency on behalf of Braz Transfers.
46. IT IS FURTHER ORDERED that Braz Transfers, any and all officers, directors, employees, independent contractors, or agents operating on behalf of Braz Transfers, and their successors or assigns, shall immediately cease engaging directly or indirectly in the business of a check casher in Massachusetts, as defined in General Laws chapter 169A, section 1, except as otherwise expressly permitted by the terms of this Temporary Order or by the Commissioner.
47. IT IS FURTHER ORDERED that Braz Transfers shall immediately secure all records, files, and documents (Records) relative to the Corporation's foreign transmittal agency and check cashing business. Braz Transfers is prohibited from destroying, altering, and/or modifying any of the referenced Records. The provisions of this Paragraph require Braz Transfers to ensure that all agents operating on behalf of Braz Transfers are directed to preserve all Records pursuant to the provisions of this Paragraph. The Records shall be available to the Commissioner in their entirety upon request.
48. IT IS FURTHER ORDERED that within five (5) days of the effective date of this Temporary Order, Braz Transfers shall submit to the Commissioner: a detailed record of the Corporation's pending transmittal orders for funds received from Massachusetts consumers. The records to be provided shall be as of the effective date of this Temporary Order.
49. IT IS FURTHER ORDERED that Braz Transfers shall immediately process and remit all transmittal orders for funds received from Massachusetts consumers with no loss to the consumer. It being understood that "no loss to the consumer" shall mean that if the Corporation is unable to remit funds collected for transmittal, the consumer shall be entitled to a refund of all funds and any fees collected by Braz Transfers. Braz Transfers shall submit a detailed record to evidence compliance of this Paragraph in conjunction with the Report submitted to the Division as outlined in Paragraph 48 of this Temporary Order. Evidence of compliance shall include but not be limited to: receipts confirming the transmittal of funds; check numbers of payments issued by the Corporation to evidence reimbursements made to consumers, and the amount reimbursed to each individual.
50. IT IS FURTHER ORDERED that Braz Transfers shall, within five (5) days of the effective date of this Temporary Order, provide the Division with a complete record of all checks cashed, including the dollar amount of the checks cashed and the fees charged by the Corporation to consumers during the period from September 2, 2011, through the effective date of this Temporary Order.
51. IT IS FURTHER ORDERED that this Temporary Order shall become effective immediately and shall remain in effect unless set aside, limited or suspended by the Commissioner or upon court order after review pursuant to General Laws chapter 30A.
52. IT IS FURTHER ORDERED that a hearing will be scheduled on this matter to determine whether or not such Temporary Order shall become permanent and final only upon receipt of a written request for such a hearing from the Braz Transfers within twenty (20) days of the effective date of this Temporary Order. If no hearing is requested within this twenty (20) day period, this Temporary Order shall become permanent and final until it is modified or vacated by the Commissioner.

BY ORDER AND DIRECTION OF THE COMMISSIONER OF BANKS:

Dated at Boston, Massachusetts, this 1st day of April, 2013

By **David J. Cotney**
Commissioner of Banks
Commonwealth of Massachusetts