

TERMS COMPLETE

CONSENT ORDER SUMMARY - Case Number: C-08-337

Name(s) Avrek Financial Corp
Michael R. Smith

Order Number C-08-337-09-CO01

Effective Date December 16, 2009

License Number DFI: 29415

License Effect Revoked

Not Apply until December 17, 2014

Prohibition/Ban until December 17, 2014

Investigation Costs	\$845.37	Due	Paid Yes	Date 12/15/2009
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Assessment(s)	\$	Due	Paid Y N	Date
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Monetary Penalty	\$1,500	Due	Paid Yes	Date 12/15/2009
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Other

Special Instructions

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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

NO. C-08-337-09-CO01

CONSENT ORDER

AVREK FINANCIAL CORP, and
MICHAEL R. SMITH, Director/President and
Owner,

Respondents.

COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Deborah Bortner, Division Director, Division of Consumer Services, and Avrek Financial Corp (hereinafter Respondent Avrek) and Michael R. Smith, Director/President (hereinafter Respondent Smith), and finding that the issues raised in the above-captioned matter may be economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter 31.04 of Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

AGREEMENT AND ORDER

The Department of Financial Institutions, Division of Consumer Services (Department) and Respondents have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-08-337-09-SC01 (Statement of Charges), entered May 19, 2009, (copy attached hereto). Pursuant to chapter 31.04 RCW, the Consumer Loan Act (Act) and RCW 34.05.060 of the Administrative Procedure Act, Respondents hereby agree to the Department's entry of this Consent Order and further agree that the issues raised in the above-captioned matter may be economically and efficiently settled by entry of this Consent Order. The parties intend this Consent Order to fully resolve the Statement of Charges.

Based upon the foregoing:

CONSENT ORDER
C-08-337-09-CO01
Avrek Financial Corp, and
Micheal R. Smith

DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

1 **A. Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter of the
2 activities discussed herein.

3 **B. Waiver of Hearing.** It is AGREED that Respondents have been informed of the right to a hearing
4 before an administrative law judge, and that they hereby waive their right to a hearing and any and all
5 administrative and judicial review of the issues raised in this matter, or of the resolution reached herein.
6 Accordingly, Respondents by their signatures below hereby withdraw their appeal from the Office of
7 Administrative Hearings.

8 **C. License Revocation.** It is AGREED that Respondent Avrek's license to conduct the business of a
9 consumer loan company is revoked.

10 **D. Prohibition from Industry.** It is AGREED that Respondents are prohibited from participating in the
11 conduct of the affairs of any consumer lender licensed by the Department or any person subject to licensure or
12 regulation by the Department for five (5) years from the date of entry of this Consent Order in any capacity.

13 **E. Application for License.** It is AGREED that Respondents shall not apply to the Department for any
14 license under any name for a period of five years from the date of entry of this Consent Order. It is further
15 AGREED that, should Respondents apply to the Department for any license under any name at any time later than
16 five years from the date of entry of this Consent Order, Respondents shall be required to meet any and all
17 application requirements in effect at that time.

18 **F. Fine.** It is AGREED that Respondents shall pay to the Department a fine of \$1,500, in the form of a
19 cashier's check made payable to the "Washington State Treasurer," upon entry of this Consent Order.

20 **G. Investigation Fee.** It is AGREED that Respondents shall pay to the Department an investigation fee
21 of \$845.37, in the form of a cashier's check made payable to the "Washington State Treasurer," upon entry of this
22 Consent Order.

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1 **H. Authority to Execute Order.** It is AGREED that the undersigned Respondents have represented and
2 warranted that they have the full power and right to execute this Consent Order on behalf of the parties
3 represented.

4 **I. Non-Compliance with Order.** It is AGREED that Respondents understand that failure to abide
5 by the terms and conditions of this Consent Order may result in further legal action by the Director. In the
6 event of such legal action, Respondents may be responsible to reimburse the Director for the cost incurred in
7 pursuing such action, including but not limited to, attorney fees.

8 **J. Voluntarily Entered.** It is AGREED that the undersigned Respondents have voluntarily entered into
9 this Consent Order, which is effective when signed by the Director's designee.

10 **K. Completely Read, Understood, and Agreed.** It is AGREED that Respondents have read this
11 Consent Order in its entirety and fully understand and agree to all of the same.

12 **RESPONDENTS:**

13 **Avrek Financial Corp.**

14 By: 

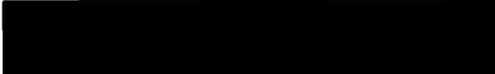
15 Micheal R. Smith
16 Director/President and Owner

12/11/09
Date

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18 Micheal R. Smith
19 Individually

12/11/09
Date

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21 Thomas Dickson, WSBA No. 11802
22 Attorney at Law
23 Attorney for Respondents

12/8/09
Date

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DO NOT WRITE BELOW THIS LINE

THIS ORDER ENTERED THIS 16th DAY OF December, 2009.


DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:


FATIMA BATIE
Financial Legal Examiner



Approved by:


JAMES R. BRUSSELBACK
Enforcement Chief

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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
CONSUMER SERVICES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

AVREK FINANCIAL CORP, and
MICHAEL R. SMITH, Director/President and
Owner,

Respondents.

NO. C-08-337-09-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO REVOKE LICENSE, PROHIBIT
FROM INDUSTRY, COLLECT ANNUAL
ASSESSMENT, COLLECT LATE FEES, IMPOSE
FINE, and COLLECT INVESTIGATION COSTS.

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INTRODUCTION

Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

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I. FACTUAL ALLEGATIONS

1.1 Respondents:

A. **Avrek Financial Corp**, (Respondent Avrek) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a Consumer Loan Company on February 8, 2006, and continues to be licensed to date.

B. **Michael R. Smith** (Respondent Smith) is Director/President and owner of Respondent Avrek.

1.2 Licensed Location: Respondent Avrek is licensed to conduct the business of a Consumer Loan Company at:

3 Hutton Centre Dr Ste 100
Santa Ana, CA 92707

1 **1.3 Annual Report:** An annual report is due to the Department on or before the first day of March of each
2 year, concerning the business and operations of each licensed place of business conducted during the preceding
3 calendar year. The annual report must be made under oath and must be in the form prescribed by the Director.
4 To date, Respondents have not provided the annual reports relating to the 2007 and 2008 calendar years which
5 were due by March 1, of the following year. The annual report for the year ending December 31, 2009 will be
6 due no later than March 1, 2010.

7 **1.4 Annual Assessment:** A calculation worksheet and an annual assessment fee are due to the Department
8 on or before the first day of March of each year, relating to the previous calendar year. To date, Respondents
9 have not provided the calculation worksheets or paid the annual assessment fees for the following calendar
10 years: 2007, which was due by March 1, 2008 and 2008, which was due by March 1, 2009. The calculation
11 worksheet and annual assessment fee for the year ending December 31, 2009 will be due no later than March 1,
12 2010.

13 **1.5 Surety Bond:** The Hartford Fire Insurance Company notified the Department on July 22, 2008, that
14 Respondent Avrek's surety bond would be cancelled effective September 15, 2008. To date, Respondents have
15 not provided a reinstatement of the cancelled surety bond, or a replacement surety bond or approved alternative.

16 **1.6 Failure to Respond to Directives.** On March 15, 2008, July 25, 2008 and September 15, 2008, the
17 Department served directives on Respondents by First-Class mail. These directives were not returned by the
18 United States Postal Service. These directives required Respondents to provide the 2007 missing Annual
19 Report and pay the 2007 Annual Assessment. To date, the Department has not received a response to these
20 directives.

21 **1.7 Change in Address:** Mail from the Department addressed to Respondent Avrek's licensed location
22 and sent via Federal Express has been returned marked "Recipient/Company has moved. No forwarding
23 address is available." To date, Respondents have not notified the Department in writing of a change in the
24 location of its place of business or obtained the Department's approval for a change in the location of its place
25 of business.

1 **1.8 On-Going Investigation:** The Department's investigation into the alleged violations of the Act by
2 Respondents continues to date.

3 **II. GROUNDS FOR ENTRY OF ORDER**

4 **2.1 Requirement to File Annual Report:** Based on the Factual Allegations set forth in Section I above,
5 Respondents are in apparent violation of RCW 31.04.155 and WAC 208-620-430 for failing to provide an
6 annual report to the Director, under oath and in the form prescribed by the Director, on or before the first day of
7 March, concerning the business and operations of each licensed place of business conducted during the
8 preceding calendar year.

9 **2.2 Requirement to Calculate and Pay Annual Assessment:** Based on the Factual Allegations set forth
10 in Section I above, Respondents are in apparent violation of RCW 31.04.085 and WAC 208-620-430 for failing
11 to provide to the Director a completed annual assessment calculation worksheet and failing to pay to the
12 Director an annual assessment fee on or before the first day of March, relating to the previous calendar year.

13 **2.3 Requirement to Maintain Surety Bond:** Based on the Factual Allegations set forth in Section I
14 above, Respondents are in apparent violation of RCW 31.04.045(3) and WAC 208-620-320 for failing to file
15 and maintain a surety bond or approved alternative with the Director.

16 **2.4 Requirement to Respond to Directives.** Based on the Factual Allegations set forth in Section I above,
17 Respondents are in apparent violation of RCW 31.04.145 for failure to comply with a directive issued by the
18 Department.

19 **2.5 Requirement to Notify Director of Change in Address:** Based on the Factual Allegations set forth in
20 Section I above, Respondents are in apparent violation of RCW 31.04.075 and WAC 208-620-470 for changing
21 its place of business from the street address designated in the license without notifying the Director in writing
22 and without obtaining the Director's prior approval.

23 **III. AUTHORITY TO IMPOSE SANCTIONS**

24 **3.1 Authority to Revoke License.** Pursuant to RCW 31.04.093(3) and WAC 208-620-570(1), (6), and
25 (11), the Director may revoke a license if a licensee fails to pay any fee due the state of Washington, or fails to

1 comply with any specific order or demand of the Director lawfully made and directed to the licensee in
2 accordance with the Act, or violates any provision of the Act or any rule adopted under the Act either
3 knowingly or without exercise of due care.

4 **3.2 Authority to Prohibit from the Industry.** Pursuant to RCW 31.04.093(6), the Director may issue
5 orders removing from office or prohibiting from participation in the conduct of the affairs of any licensee, or
6 both, any officer, principal, employee, or loan originator or any person subject to the Act for suspension or
7 revocation of a license to engage in lending, or perform a settlement service related to lending, in this state or
8 another state or failure to comply with any order or subpoena issued under this chapter.

9 **3.3 Authority to Collect Annual Assessments and Late Fees.** Pursuant to RCW 31.04.085 and WAC 208
10 620-430(1) each licensee must pay to the Director an annual assessment as determined in rule by the Director by
11 March 1st of the following year. Pursuant to WAC 208-620-430(2) a licensee that fails to submit the required
12 annual report and worksheet by the March 1st due date is subject to a penalty of fifty dollars per report for each day
13 of delay.

14 **3.4 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of up to one
15 hundred dollars per day on a licensee, its employee or loan originator, or other person subject to the Act for any
16 violations of the Act, or failure to comply with any order or subpoena issued by the director under this chapter.

17 **3.5 Authority to Collect Investigation Fee.** Pursuant to RCW 31.04.145(3) and WAC 208-620-590(1), upon
18 completion of any investigation of the books and records of a licensee or other person subject to the Act, the
19 Department will furnish to the licensee or other person subject to the Act a billing to cover the cost of the
20 investigation. The investigation charge will be calculated at the rate of sixty nine dollars and one cent (\$69.01) per
21 hour that each staff person devoted to the investigation.

22 **3.6 Authority to Issue Orders Directing Action:** Pursuant to RCW 31.04.093(5)(b), the Director may
23 issue an order directing a licensee to take such affirmative action as is necessary to comply with the Act.
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1 **IV. NOTICE OF INTENTION TO ENTER ORDER**

2 Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as set forth in
3 the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis
4 for the entry of an Order under RCW 31.04.093, RCW 31.04.165 and RCW 31.04.205. Therefore, it is the
5 Director's intention to ORDER that:

- 6 **4.1** Respondent Avrek's license to conduct the business of a Consumer Loan Company be revoked;
and
- 7 **4.2** Respondent Michael R. Smith be prohibited from participation in the conduct of the affairs of any
licensed consumer loan company, in any manner, for a period of five (5) years; and
- 8 **4.3** Respondent Avrek and Respondent Michael R. Smith provide to the Director completed
9 Consolidated Annual Reports and Annual Assessment Worksheets, including all required
supporting documentation, for each of the years ended December 31, 2007 and December 31,
10 2008, respectively. Additionally, Respondent Avrek and Respondent Michael R. Smith provide to
the Director a completed Consolidated Annual Report and Annual Assessment Worksheet,
11 including all required supporting documentation, for the year ending December 31, 2009, on or
before March 1, 2010; and
- 12 **4.4** Respondent Avrek and Respondent Michael R. Smith jointly and severally pay the delinquent
Annual Assessments due for the years ended December 31, 2007 and December 31, 2008,
13 respectively, as calculated in accordance with the instructions for the Annual Assessment
Worksheets for the same years, less any amounts previously paid by Respondent Avrek's bonding
14 company. Additionally, Respondent Avrek and Respondent Michael R. Smith jointly and
severally pay the Annual Assessment for the year ending December 31, 2009, as calculated in
15 accordance with the instructions for the Annual Assessment Worksheet for the same year, on or
before March 1, 2010; and
- 16 **4.5** Respondent Avrek and Respondent Michael R. Smith jointly and severally pay a late penalty
17 calculated at \$50 per day for each report, less any amounts previously paid by Respondent Avrek's
bonding company; and
- 18 **4.6** Respondent Avrek and Respondent Michael R. Smith jointly and severally pay a fine, which as of
the date of this Statement of Charges totals \$12,000; and
- 19 **4.7** Respondent Avrek and Respondent Michael R. Smith jointly and severally pay an investigation
20 fee, which as of the date of this Statement of Charges totals \$607.29, calculated at \$69.01 per hour
for 8.8 staff hours devoted to the investigation; and
- 21 **4.8** Respondent Avrek and Respondent Michael R. Smith maintain records in compliance with the Act
22 and provide the Director with the location of the books, records and other information relating to
Respondent Avrek's consumer loan company business, and the name, address and telephone
23 number of the individual responsible for maintenance of such records in compliance with the Act.

V. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Prohibit From Industry, Collect Annual Assessment, Collect Late Fees, Impose Fine, and Collect Investigation Costs. (Statement of Charges) is entered pursuant to the provisions of RCW 31.04.093, RCW 31.04.165, RCW 31.04.202 and RCW 31.04.205, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

Dated this 19th day of May, 2009.

[Redacted signature]

DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

[Redacted signature]

FATIMA BATIE
Financial Legal Examiner Supervisor



Approved by:

[Redacted signature]

JAMES R. BRUSSELBACK
Enforcement Chief