

OCCC CASE NO. L19-00186

IN THE MATTER OF:	§	BEFORE THE
	§	
	§	OFFICE OF CONSUMER
MASTER FILE NUMBER: 1400007447	§	
DELL FINANCIAL SERVICES LLC	§	CREDIT COMMISSIONER
ONE DELL WAY	§	
ROUND ROCK, TEXAS 78682	§	STATE OF TEXAS

ORDER TO MAINTAIN MINIMUM NET ASSETS NUNC PRO TUNC

The Office of Consumer Credit Commissioner (“OCCC”) issues this Order to Maintain Minimum Net Assets Nunc Pro Tunc against Dell Financial Services LLC (“Dell Financial”).¹

Clerical Error

This Nunc Pro Tunc Order is issued by the OCCC to correct a clerical error in the original Order to Maintain Minimum Net Assets that was served on Dell Financial on April 8, 2019. In footnotes 4, 5 and 6, the original order cites implementing rules for a net asset violation in Title 7 Texas Administrative Code Section 89.301(1). The corrected citation for implementing rules for regulated lenders is Title 7 Texas Administrative Code Section 83.301(1). Footnotes 7, 8, and 9 now cite Title 7 Texas Administrative Code Section 83.301(1).

A Nunc Pro Tunc Order may be issued to correct a clerical error.² Although a Nunc Pro Tunc Order is signed after an original order, the effect of a Nunc Pro Tunc Order relates back to the date the original order was signed.³ Therefore, any deadlines from the original order remain in place. If you fail to request a hearing by the deadline identified in the original Order dated April 8, 2019, this Order is considered final and enforceable.⁴

¹ Tex. Fin. Code § 14.208.

² Tex. R. Civ. P. 316

³ *Daniels v. Comm'n for Lawyer Discipline*, 142 S.W.3d 565, 573 (Tex. App. – Texarkana 2004); *Gen. Elec. Co. v. Canyon City Ice & Light Co.*, 136 S.W. 78, 79 (Tex. Civ. App. 1911).

⁴ Tex. Fin. Code § 14.208(c).

Statement of Facts and Law

Dell Financial is a regulated lender licensed by the OCCC under Chapter 342 of the Texas Finance Code. Dell Financial operates under master file number 1400007447 at two licensed locations, under license numbers 151095 and 112801. Dell Financial's compliance officer is Phillip Latham, and its designated contact address is One Dell Way, Round Rock, Texas 78682.

A regulated lender must report its minimum net asset within its annual reports with the Consumer Credit Commissioner ("Commissioner").⁵ A regulated lender must maintain for each office for which a license is held net assets of at least \$25,000 that are used or readily available for use in conducting the business of that office.⁶

Net assets are the total value of acceptable assets used or designated as readily available for use in the business, less liabilities, other than those liabilities secured by unacceptable assets.⁷ Unacceptable assets include, but are not limited to, goodwill, unpaid stock subscriptions, lines of credit, notes receivable from an owner, property subject to the claim of homestead or other property exemption and encumbered real or personal property to the extent of the encumbrance.⁸ Generally, assets are available for use if they are readily convertible to cash within 10 business days.⁹

The balance sheet submitted by Dell Financial with its 2017 annual report shows the company has a net asset that is below the requirement. On September 5, 2018, the OCCC sent a letter to Dell Financial instructing to either correct the balance sheet if an error was made, or to transfer enough assets to the business to meet the net assets requirement. The letter instructed Dell Financial to submit a corrected balance sheet and documentation supporting all changes. As of the date of this Order, the OCCC has not received the requested information.

The Commissioner may issue an injunction ordering a regulated lender to report and maintain the required net asset minimum if the Commissioner has reasonable cause to believe that the regulated lender is violating Chapter 342 of

⁵ Tex. Fin. Code § 342.559.

⁶ Tex. Fin. Code § 342.153(a).

⁷ 7 Tex. Admin. Code § 83.301(1).

⁸ 7 Tex. Admin. Code § 83.301(1).

⁹ 7 Tex. Admin. Code § 83.301(1).

the Texas Finance Code.¹⁰ The Commissioner has reasonable cause to believe that Dell Financial is violating Chapter 342 of the Texas Finance Code, and therefore issues this Order, because Dell Financial failed to maintain the minimum net asset requirements.

Order

IT IS ORDERED that Dell Financial Services LLC:

1. cease and desist from violating, and comply with the requirements set forth in 342.153(a) of the Texas Finance Code;
2. submit a new balance sheet with documents supporting all changes within 30 days of service of this Order, if it has not already done so; and
3. file timely, complete, and accurate annual reports reflecting compliance with the minimum net asset requirement.

Violation of Order

You may be assessed an administrative penalty of up to \$1,000 for each day of violation of this Order.¹¹ Multiple violations may also result in the suspension or revocation of your license.¹²

Right to Request Hearing

You have the right to request a hearing regarding this Order.¹³ Your request must be made in writing and sent to the OCCC not later than 30 days after you received the Order dated April 8, 2019. You must send your request to:

Alexandra Gullett
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, Texas 78705

¹⁰ Tex. Fin. Code § 14.208.

¹¹ Tex. Fin. Code § 14.208(c).

¹² Tex. Fin. Code § 342.156(2).

¹³ Tex. Fin. Code § 14.208(b).

If you request a hearing, a hearing on this matter will be set and conducted in accordance with Chapter 2001 of the Texas Government Code.¹⁴ If you fail to request a hearing by this deadline, this Order is considered final and enforceable.¹⁵

All communications with the OCCC concerning this matter must be through Alexandra Gullett, Assistant General Counsel, who may be contacted by mail at 2601 N. Lamar Blvd., Austin, Texas 78705, by telephone at (512) 936-7659, or by email to alexandra.gullett@occc.texas.gov.

Signed this 9th day of May, 2019.

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

¹⁴ Tex. Fin. Code § 14.208(b).

¹⁵ Tex. Fin. Code § 14.208(c).

CERTIFICATE OF SERVICE

I certify that on May 9, 2019, a true and correct copy of this Order to Maintain the Minimum Net Assets Nunc Pro Tunc has been sent to Dell Financial Services LLC by regular mail and certified mail, return receipt requested, at:

CMRRR: 91 7199 9991 7037 4758 9134
Dell Financial Services LLC
Attn: Phillip Latham, Compliance Officer
One Dell Way
Round Rock, Texas 78682

CMRRR: 91 7199 9991 7037 4758 9141
Dell Financial Services LLC
Attn: Corporate Service Company d/b/a CSC, Registered Agent
211 E. 7th Street Ste. 620
Austin, Texas 78701

/s/Alexandra Gullett
Alexandra L. Gullett
Assistant General Counsel
Office of Consumer Credit Commissioner
State Bar No. 24101840
2601 North Lamar Blvd.
Austin, Texas 78705
(512) 936-7659
(512) 936-7610 (fax)
alexandra.gullett@occc.texas.gov