

Modern Financial Services

Association of Alabama

General Membership & Board Meeting

Need Direction:

E-mail: genefss@charter.net
Call: 205-620-0220

Sirote & Permutt, P.C.
2311 Highland Avenue, South
Birmingham, AL 35205

Attendees for Lunch:

E-mail: genefss@charter.net
Fax: 205-663-0210

Welcome to Modern Financial Services:

Wow!! It has been a hectic 1st quarter. The tax man has knocked on our door again, thank goodness tax season is over. The State Banking Department is on the job conducting audits, and the long arm of AmSouth Bank reached out and touched me last week telling me "Boy, we don't want your business any more". I am having to work harder than ever to try to maintain my customer base.

We have a lot of work ahead of us as an association. I'm afraid there is not much we can do as far as the tax man knocking on our door each year, but we must strengthen our relationship with State Banking and we must find some way to work with our local banks in order to for us to be able to maintain our business checking accounts.

We need each other. There is strength in numbers. Please maintain your membership with your association. If you are not currently a member, we need you, if you know someone who is not a member, be sure to encourage them to join.

We need to be sure we join together for our general meeting on May 18, 2005. This is your association and your association needs your involvement.

See you in Birmingham on May 18.

*James Chamblee,
President*

- Bank Discontinuance

- Bankruptcy Reform

Discussion Topics

- Association Needs & Responsibilities

- Industry Compliance Issues

- Arbitration in Deferred Presentment

May 18, 2005 10:00 - 1:00

Arbitration In Deferred Presentment Transactions

A recent decision from the 11th Circuit Court of Appeals in Atlanta is significant for deferred presentment providers. In *Jenkins v. First American Cash Advance of Georgia, LLC and First National Bank in Brookings*, a class action lawsuit had been brought in which the plaintiff alleged that the payday loan agreements violated Georgia's usury laws and the Georgia RICO statute because the "true" lender was not the bank but instead

was the deferred presentment provider. The defendants sought to compel arbitration, based upon the deferred presentment contract arbitration provision. The District Court had denied the defendants' motion to compel arbitration after holding that the arbitration agreement was unconscionable under Georgia law because, among other reasons, it precluded class action. The 11th Circuit Court of Appeals reversed. It did so on several grounds:

1 The 11th Circuit found a sufficient connection to interstate commerce so that the Federal Arbitration Act could apply.

2 The Court held that the District Court was wrong in rejecting the arbitration agreement on the grounds of preclusion of class action relief, holding that the plaintiffs would have no difficulty finding a lawyer to represent them in an individual action because the Georgia RICO statute permits a successful plaintiff to recover counsel fees from the defendant.

3 The Court rejected the plaintiff's claim that the case should not be arbitrated because the arbitration provision was in an alleged "usurious" loan agreement void under Georgia law, holding that such broad-based challenges to the entire contract (rather than just to the arbitration provision) are for the arbitrator to decide.

This case is significant for many reasons, including that it undermines the decision of JAMS not to enforce an arbitration agreement's preclusion of class-wide arbitration. This decision is in line with a very recent federal District Court decision in Alabama in *Gipson v. Cross*

Country Bank, holding that it is for the courts and not for the arbitrator or an arbitration organization, to deal with a challenge to an arbitration clause based upon preclusion of class arbitration.

Compliance Seminars

The MFSA hosted three seminars last fall on compliance with the Alabama Deferred Presentment Act. One each in Birmingham, Huntsville and Montgomery. Our Association Counsel, Maury Shevin and Mr. Scott Corcadden, Supervisor of the Alabama Banking Department - Bureau of Loans. Each program was well attended with an abundance of information placed in discussion from all sides.

Members, if you have not received your copy of the Department's responses to the questions initiated within the seminars please notify Gene Smith at genefss@charter.net.

MFSA anticipates holding an additional seminar this fall with an opportunity to learn more about industry compliance, audits, money service businesses, collections and the latest on bank discontinuances.

Watch for Additional Information this Summer.

Bank Discontinuance

There have been significant developments on the issue of bank discontinuance. The Financial Crimes Enforcement Network (FINCEN) of the United States Department of Treasury has acknowledged the problems that bank discontinuance causes. In a recent letter to the Financial Services Centers of America, Inc. (FISCA), the Associate Director for Regulatory Policy and Programs Division, William D. Langford, Jr., stated that he took very seriously the important role that check cashers and other money service businesses play in providing financial services to segments of society that may not have access to traditional bank accounts. He stated that FINCEN remains committed to working with FISCA and others to ensure continued access to bank accounts.

In a series of articles in American Banker Online, different deferred presentment providers have written articles berating banks for their discontinuance policy. One author asked why banks don't discontinue accounts for fast food restaurants since they may contribute to obesity or why they do not close accounts of bicycle shops because that industry may become unprofitable. The role and responsibility of banks, in the nature of public utilities, have also been discussed.

FISCA continues to take the lead in promoting this issue, including the attendance at a public hearing at the Department of Treasury in the beginning of March. We will discuss bank discontinuance and other issues at our General Meeting April 19, 2005, in Birmingham.

Bank Discontinuance - Part II

Your Association is working in conjunction with the Mississippi Check Cashiers Association, Mississippi Title Loan Association, Tennessee Cash Advance Association, Tennessee Title Pledge Association and FisCa in an effort to encourage FinCen to wage into industry problems concerning banking relationships.

Please look to <http://myNet11.tripod.com/banks/htm> to see how you can help in this endeavor. Look, Learn, Act. We need everyone's participation in order to succeed.

Looking for Members

We continue to attract new members. Two of our newest are Check-n-Go and Advance America. We would like to thank them for their interest in our Association and our State.

If you are not a member please consider membership. Even though a new organization we are continually working on improving our industry relationships with our Regulators, Legislators and each other.

Our industry still have many issues that will confront us in the coming months. Department Regulations, Bank Discontinuances, Audits and Compliance Issues just to name a few. Our dues are minimal compared to the investment you have placed into each of your offices.

For membership information please contact Gene Smith at genefss@charter.net or 205-620-0220. He will be able to forward the documentation needed to join.



IDEAL
Software Systems, Inc.

Joy Yarborough
Account Executive

4909 Great River Drive • PO Box 3065 • Meridian, MS 39303
601-693-1673, ext 172 • Sales: 1-800-964-3325 • Fax: 601-693-2302
E-Mail: jyarborough@idealss.com
www.idealss.com

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