

**COMMERCE COMMISSION**

**RAPID LOANS NZ LIMITED**

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**SETTLEMENT AGREEMENT**

**DATE January 13**

**2017**

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**THIS AGREEMENT** is made on the 13th day of January 2017

## Parties

**COMMERCE COMMISSION**, a statutory body established under section 8 of the Commerce Act 1986 (“Commission”).

**RAPID LOANS NZ LIMITED**, a limited liability company registered in New Zealand (company number 3579431) with a registered office at Floor 31, Vero Centre, 48 Shortland Street, Auckland, 1010, New Zealand (“**Rapid Loans NZ**”).

## 1 Background

- 1.1 The Commission has conducted an investigation into an allegation that Rapid Loans NZ has breached the Credit Contracts and Consumer Finance Act 2003 by charging unreasonable establishment, monthly administration and default fees during the period 1 July 2013 to 30 June 2015.
- 1.2 Rapid Loans NZ is a creditor for the purposes of the Credit Contracts and Consumer Finance Act 2003. It is an internet-based lender that provides personal loans to borrowers under consumer credit contracts. It operates from the Gold Coast, Australia with its sister company, Rapid Loans Pty Limited which lends in Australia.
- 1.3 Section 41 of the Credit Contracts and Consumer Finance Act 2003 requires that a consumer credit contract must not provide for a fee or default fee that is unreasonable. The Commission alleges Rapid Loans NZ’s establishment, monthly administration and default fees were unreasonable as it:
  - 1.3.1 was unable to justify how the amounts of the establishment, monthly administration and default fees that were charged to borrowers were reached.
  - 1.3.2 included some costs in the establishment, monthly administration and default fees that were not sufficiently closely connected to the actual fee charged.
- 1.4 Rapid Loans NZ has co-operated with the Commission’s investigation.
- 1.5 This Settlement Agreement sets out the terms on which the parties have agreed to resolve the Commission’s investigation.

## 2 Interpretation

**Affected loan** means a consumer credit contract entered into on or after 1 July 2013 to 30 June 2015 where Rapid Loans NZ is the creditor, this includes all active, closed and written off loans.

**Agreement** means this Settlement Agreement.

**Best endeavours** includes using information currently known to Rapid Loans NZ, as well as searches of Google, Facebook, White Pages and/or the electoral roll, and

taking any steps that Rapid Loans NZ would usually make to locate a non-paying debtor.

**CCCF Act** means the Credit Contracts and Consumer Finance Act 2003.

**Establishment fee** has the meaning as described in the affected loan as an 'Establishment fee' as part of the credit details outlining the amount the borrower owes at the date of the statement, including any fees charged by the lender.

**Monthly administration fee** has the meaning as described in the affected loan as a credit fee.

**Default fee** has the meaning as described in affected loan as a fee debited if any scheduled payment to the lender is made late after the due date, or is reversed or dishonoured or is otherwise not made without Rapid Loan NZ's default.

**Overcharge** has the meaning of the calculated overcharge of the establishment, monthly administration and default fee in accordance with clause 4.2.

### **3 Acknowledgment of breach**

- 3.1 Rapid Loans NZ acknowledges that it charged unreasonable establishment, monthly administration and default fees during the period 1 July 2013 to 30 June 2015 in likely breach of section 41 of the CCCF Act.

## **4 Actions to be taken by Rapid Loans NZ**

### **4.1 Overview of action to be taken**

4.1.1 To resolve the Commission's claim that Rapid Loans NZ has breached the CCCF Act, Rapid Loans NZ will:

- (a) calculate the overcharge on affected loans in accordance with clause 4.2.2 and credit or reimburse borrowers the overcharge in accordance with clauses 4.3 and 4.4;
- (b) write to relevant identified borrowers advising them about the effect of this settlement on them in accordance with clause 4.5;
- (c) publish the fact of this settlement and the availability of refunds on a website in accordance with clause 4.6;
- (d) provide the Commission with reports certifying that it has made refunds and paid the uplift amount in accordance with clauses 4.7 and 4.8.

### **4.2 Calculating the overcharge of the establishment, monthly administration and default fees**

4.2.1 Rapid Loans NZ has calculated the overcharge separately on each affected loan as of 7 November 2016.

4.2.2 To calculate the overcharge for each affected loan Rapid Loans NZ:

- (a) took the difference between:
  - (i) the establishment fee charged and the recalculated establishment fee of \$330.00;
  - (ii) each monthly administration fee charged and the recalculated monthly administration fee of \$29.16, multiplied by the number of occasions on which the monthly administration fee was charged;
  - (iii) each default fee charged and the recalculated default fee of \$26.17, multiplied by the number of occasions on which the default fee was charged; and
- (b) included an uplift of 5% on the amount calculated in clause 4.2.2(a) above to reflect the debtors lost opportunity to use the money.

4.2.3 Where as a result of the overcharge a credit amount exists, this will be repaid to affected borrowers as either a credit or reimbursement as detailed in clauses 4.3 and 4.4.

4.2.4 If Rapid Loans NZ identifies a debit amount after recalculating the loan based on the establishment, monthly administration and default fees in clause 4.2.2, this amount will not be charged to the borrower.

### **4.3 Crediting the balance of current loans**

4.3.1 Where a borrower continues to hold a loan with Rapid Loans NZ at the date of this Agreement, whether active or written off, Rapid Loans NZ:

- (a) credited the overcharge to the unpaid balance of the loan held by the borrower on 7 November 2016;
- (b) if the credit to the affected loan has the effect that the debtor has overpaid the loan, Rapid Loans NZ will provide a reimbursement to the borrower in accordance with clause 4.4; and
- (c) write to the borrower in accordance with clause 4.5 of this Agreement.

### **4.4 Reimbursing borrowers who held affected loans that are now closed**

4.4.1 If a borrower held an affected loan that is closed and if they have not received a credit to an unpaid balance of a current loan under clause 4.3 above, Rapid Loans NZ will:

- (a) if the overcharge is \$20.00 or more:

- (i) use its best endeavours to locate the borrower including writing to the borrower in accordance with clause 4.5 of the Agreement; and
  - (ii) reimburse the borrower by paying the borrower by 10 March 2017 the amount of overcharge; and
- (b) if the amount of the overcharge is less than \$20.00, Rapid Loans NZ will pay the borrower in accordance with clause 4.4.1(a)(ii) if the borrower contacts Rapid Loans NZ by 10 March 2017 seeking reimbursement under this Agreement.

#### **4.5 Notice requirements**

4.5.1 Rapid Loans NZ will by 30 January 2017 send a letter and email the borrower at their last known address advising the borrower:

- (a) that Rapid Loans NZ has entered into a settlement agreement with the Commission; and
- (b) that Rapid Loans NZ has overcharged the establishment, monthly administration and default fees on the affected loan; and
- (c) if Rapid Loans NZ is required to credit under clause 4.3 the unpaid balance of the affected loan or current loan at the date of the letter and email, if the affected loan or current loan has a current unpaid balance. This may be undertaken by the provision of a loan statement; and
- (d) if Rapid Loans NZ is required to make a payment under clause 4.4.1(a):
  - (i) the amount of the overcharge payable to the borrower; and
  - (ii) that the borrower should contact Rapid Loans NZ to arrange for that payment to be made to them.

4.5.2 Rapid Loans NZ has provided a copy of the template letter and email to the Commission for review on 14 November 2016. If the Commission reasonably considers that the details in the letter and email are required to be updated to reflect the information detailed in clause 4.5.1 the changes need to be made by Rapid Loans NZ by 30 January 2017.

4.5.3 Clause 4.5 does not apply if the amount of the overcharge is less than \$20.00.

#### **4.6 Locating Affected Borrowers**

4.6.1 Rapid Loans NZ will by 4 January 2017 publish the following information either on a website specifically created for this purpose or on a website currently operated by Rapid Loans NZ:

- (a) that Rapid Loans NZ has entered into a settlement with the Commission;
- (b) that Rapid Loans NZ has overcharged the establishment, monthly administration and default fees on affected loans;
- (c) that Rapid Loans NZ will provide reimbursement of the overcharge to affected borrowers;
- (d) that affected borrowers who are not a current customer of Rapid Loans NZ need to contact Rapid Loans NZ to obtain their credit or reimbursement in relation to the overcharge; and
- (e) Rapid Loans NZ's contact details.

4.6.2 Rapid Loans NZ will update the details on the website by 9 January 2017 if the Commission reasonably considers that is required and gives Rapid Loans NZ notice that the information detailed in clause 4.6.1 is not sufficiently clear.

4.6.3 If, after using its best endeavours, Rapid Loans NZ is unable to locate a borrower who is eligible for a payment pursuant to clause 4.4.1(a) of this Agreement by 1 May 2017, Rapid Loans NZ undertakes to treat the payment as if it were unclaimed money under the Unclaimed Money Act 1971, unless the parties agree otherwise.

#### **4.7 Interim Report**

4.7.1 Rapid Loans NZ undertakes, at its own expense, to provide to the Commission, an interim report recording the progress it has made with calculating the overcharge, crediting loan balances and locating and refunding borrowers in accordance with clauses 4.3 to 4.4 of this Agreement by 30 March 2017. This report must include the following information:

- (a) the name and loan number of the borrower that is entitled to receive a payment or have their loan credited in accordance with this Agreement.
- (b) the total amount of each overcharged establishment, monthly administration and default fees and payment the borrower is entitled to receive.

- (c) where the borrower has had its loan credited in accordance with clause 4.3 the loan number and the date of the adjustment.
  - (d) where the borrower has been paid in accordance with clause 4.4 and the date and method that the payment was made.
  - (e) where the borrower is entitled to but has not received a payment under clause 4.4, the steps that Rapid Loans NZ has taken to locate the borrower, and what further work it intends to do to locate the borrower.
  - (f) the total value of credits and payments made and not yet made.
- 4.7.2 The Commission may suggest, and Rapid Loans NZ agrees to consider, further steps to locate borrowers if Rapid Loans NZ has been unsuccessful in locating them under clause 4.4.1(a).
- 4.7.3 The Commission requires that the interim report be provided in an Excel format.

#### **4.8 Final Report**

- 4.8.1 Rapid Loans NZ undertakes, at its own expense, to provide to the Commission by 10 July 2017, a final report.
- 4.8.2 The final report must be prepared by an independent accountant approved by the Commission who has reviewed the work undertaken by Rapid Loans NZ. The reviewer must confirm that Rapid Loans NZ has undertaken the steps it has agreed to take in this Agreement.
- 4.8.3 The final report must include:
- (a) the reviewer's opinion on whether Rapid Loans NZ has undertaken the steps it has agreed to take in this Agreement;
  - (b) details of any steps that have not yet been completed, including when they are likely to be completed by Rapid Loans NZ;
  - (c) a summary of the refunds made to borrowers; and
  - (d) the following information:
    - (i) the name and loan number of the borrower that was entitled to receive a credit or payment to their loan in accordance with this Agreement.
    - (ii) the amount of the refund the borrower was entitled to receive.
    - (iii) where the borrower has had their loan credited in accordance with clause 4.3, the date of the credit.

- (iv) where the borrower has been paid in accordance with clause 4.4, the date and method that the payment was made.
- (v) where the borrower is entitled to but has not received a payment under clause 4.4, the steps that Rapid Loans has taken to locate the borrower, and what further work it intends to do to locate the borrower.
- (vi) the total value of the credits and payments made, not yet made and the amount of unclaimed money to be treated in accordance with the Unclaimed Money Act 1971, unless the parties agree otherwise.

4.8.4 The Commission requires that the final report be provided in an Excel format.

## **5 No Further Action by Commission**

- 5.1 The Commission will close its investigation into Rapid Loans NZ upon the signing of this Agreement.
- 5.2 The Commission will not issue or encourage any civil or criminal proceeding against Rapid Loans NZ and/or its Directors in relation to the conduct to which this Agreement applies other than any proceedings that may be brought as a consequence of Rapid Loans NZ's failure to comply with this Agreement.

## **6 Effect and Implementation of this Agreement**

- 6.1 Rapid Loans NZ and the Commission will each take such steps as are necessary or desirable to give full effect to the terms of this Agreement.
- 6.2 If necessary to give effect to the Agreement, the terms of this Agreement may be amended by the written agreement of the parties.
- 6.3 Nothing in this Agreement will limit or affect the ability of:
  - 6.3.1 the Commission to issue proceedings against Rapid Loans NZ in respect of matters not related to this investigation, or in respect of conduct engaged in by Rapid Loans NZ after the date of this Agreement or for breach of this Agreement;
  - 6.3.2 any person who has not consented to be bound by the terms of this Agreement from pursuing any rights available to him, her or it under the CCCF Act or under any other law.

## **7 Miscellaneous**


- 7.1 This Agreement will be governed and interpreted in accordance with the laws of New Zealand.
- 7.2 Rapid Loans NZ and the Commission agree that:





- 7.2.1 neither the Agreement nor the fact that Rapid Loans NZ has entered into the Agreement is confidential.
  - 7.2.2 the Agreement may be published on the Commission's website after it has been signed.
  - 7.2.3 the Commission may issue a media release about the Agreement.
  - 7.2.4 either Rapid Loans NZ or the Commission may make public statements (either separately or jointly) in relation to the Agreement after it has been signed.
  - 7.2.5 any public statement must be consistent with the matters set out in the Agreement.
- 7.3 Rapid Loans NZ agrees that it will not make any public comment in relation to the Agreement until after the Commission has issued any media release notifying the public of it. This media release will be published on the day the Commission posts its notice of this Settlement Agreement on the Commission's website.
- 7.4 Any notice or communication that is given or served under or in connection with this Agreement must be given in writing in the following manner:
- 7.4.1 If addressed to the Commission, by hand delivery or email to the following address:  
  
Commerce Commission  
44 The Terrace  
Wellington  
  
Attention: [REDACTED]  
Email: RapidLoansSettlement@comcom.govt.nz
  - 7.4.2 If addressed to Rapid Loans NZ, by hand delivery or email to the following address:  
  
Rapid Loans NZ Limited  
Floor 31, Vero Centre  
48 Shortland Street,  
Auckland, 1010  
New Zealand  
  
Attention: [REDACTED]  
Email: [REDACTED]

EXECUTION

SIGNED for and on behalf of  
COMMERCE COMMISSION

  
\_\_\_\_\_  
Dr Mark Berry  
Chair

SIGNED for and on behalf of  
RAPID LOANS NZ LIMITED

  
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DIRECTOR