

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK**

IN THE MATTER OF:

**Aurora Sunmart Inc., and
Jamal Awad**

Aurora, Colorado

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Number 2015-04

ASSESSMENT OF CIVIL MONEY PENALTY

I. INTRODUCTION

The Financial Crimes Enforcement Network (“FinCEN”) has determined that grounds exist to assess a civil money penalty against Aurora Sunmart Inc. (“Aurora Sunmart” or the “MSB”), and its owner and general manager, Jamal Awad, pursuant to the Bank Secrecy Act and regulations issued pursuant to that Act.¹

Mr. Awad and Aurora Sunmart admit to the facts set forth below and that their conduct violated the Bank Secrecy Act. Mr. Awad and Aurora Sunmart consent to the assessment of a civil money penalty and enter the CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY (“CONSENT”) with FinCEN.

The CONSENT is incorporated into this ASSESSMENT OF CIVIL MONEY PENALTY (“ASSESSMENT”) by reference.

FinCEN has authority to investigate money services businesses (“MSBs”) for compliance with and violation of the Bank Secrecy Act pursuant to 31 C.F.R. § 1010.810, which grants FinCEN

¹ The Bank Secrecy Act is codified at 12 U.S.C. §§ 1829b, 1951-1959 and 31 U.S.C. §§ 5311-5314, 5316-5332. Regulations implementing the Bank Secrecy Act appear at 31 C.F.R. Chapter X.

“[o]verall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this chapter.” At all relevant times, Aurora Sunmart, an MSB in Colorado, was a “financial institution” and a “money services business” within the meaning of the Bank Secrecy Act and its implementing regulations. 31 U.S.C. § 5312(a)(2) and 31 C.F.R. §§ 1010.100(t) and (ff). Since at least 2008, Mr. Awad has served as Aurora Sunmart’s owner, general manager and anti-money laundering compliance officer.

The Internal Revenue Service, through the Small Business/Self-Employed Division (“IRS SB/SE”), examines MSBs for compliance with the Bank Secrecy Act under authority delegated from FinCEN. IRS SB/SE has conducted three exams of Aurora Sunmart that identified significant and repeated violations by the MSB.

II. DETERMINATIONS

An investigation conducted by FinCEN determined that, since 2008 through the present, Aurora Sunmart willfully violated the Bank Secrecy Act’s registration, program, and reporting requirements. Mr. Awad, as Aurora Sunmart’s owner, general manager, and compliance officer, willfully participated in these violations.²

A. Failure to Register as a Money Services Business

The Bank Secrecy Act and its implementing regulations require certain MSBs, including check cashers, to register with FinCEN by filing a Registration of Money Services Business (“RMSB”), and renewing the registration every two years. 31 U.S.C. § 5330 and 31 C.F.R.

² In civil enforcement of the Bank Secrecy Act under 31 U.S.C. § 5321(a)(1), to establish that a financial institution or individual acted willfully, the government need only show that the financial institution or individual acted with either reckless disregard or willful blindness. The government need not show that the entity or individual had knowledge that the conduct violated the Bank Secrecy Act, or that the entity or individual otherwise acted with an improper motive or bad purpose. Aurora Sunmart and Mr. Awad admit to “willfulness” only as the term is used in civil enforcement of the Bank Secrecy Act under 31 U.S.C. § 5321(a)(1).

§ 1022.380. Aurora Sunmart was required to register as an MSB with FinCEN because it conducted check cashing activities. Aurora Sunmart re-registered as a money services business with FinCEN on August 6, 2014, some 581 days after registration was due, and only after FinCEN had notified Aurora Sunmart of its investigation.

B. Violations of the Requirement to Establish and Implement a Written Anti-Money Laundering Program

As of July 24, 2002, the Bank Secrecy Act and its implementing regulations required MSBs to develop, implement, and maintain an effective written anti-money laundering (“AML”) program that is reasonably designed to prevent the MSB from being used to facilitate money laundering and the financing of terrorist activities. 31 U.S.C. §§ 5318(a)(2) and 5318(h); 31 C.F.R. § 1022.210.

Aurora Sunmart was required to implement a written AML program that, at a minimum:

(a) incorporates policies, procedures and internal controls reasonably designed to assure ongoing compliance; (b) designates an individual responsible to assure day to day compliance with the program and Bank Secrecy Act requirements; (c) provides training for appropriate personnel including training in the detection of suspicious transactions; and (d) provides for independent review to monitor and maintain an adequate program. 31 C.F.R. §§ 1022.210(c) and (d). Aurora Sunmart’s AML program was critically deficient in three of the four core elements.

Aurora Sunmart and Mr. Awad failed to implement an adequate AML program. Aurora Sunmart violated the Bank Secrecy Act’s AML program requirements by failing to implement adequate internal controls, failing to conduct adequate independent review for compliance, and failing to adequately train appropriate personnel. Because Mr. Awad was the designated compliance officer for Aurora Sunmart, it was his responsibility to understand how to comply with the Bank Secrecy Act, to ensure that the AML program was adequate for the risks associated with

the MSB's business, to maintain the required records, and to file the required Bank Secrecy Act reports.

Aurora Sunmart lacked internal controls necessary to ensure that it adequately assessed risk and the potential for money laundering. Aurora Sunmart's written AML compliance program lacked procedures for employees to follow when a customer presented a check greater than \$10,000 for cashing, or when a customer cashed multiple checks aggregating over \$10,000 within a single business day. Aurora Sunmart did not consistently implement its own written internal controls requiring a valid picture ID from all check cashing customers, obtaining the customer's Social Security Number and current address if the check cashing transaction amounted to more than \$10,000, and verifying that business customers provided proof of business registration or an Employer Identification Number. Aurora Sunmart also failed to provide sufficient internal controls for filing Currency Transaction Reports ("CTRs"). Aurora Sunmart lacked necessary procedures for verifying the accuracy of CTRs and for reviewing transactions to ensure that no required filings were missed. As discussed in detail below, Aurora Sunmart's AML program lapses resulted in repeated CTR reporting failures.

Aurora Sunmart's training program was similarly deficient. The training program was limited to employees reading a Western Union compliance program, which failed to address procedures related to check cashing. Moreover, Aurora Sunmart failed to conduct training for two of its five employees, despite employing them for several years. Aurora Sunmart's independent testing also failed to comply with BSA requirements. The testing consisted of completing a check list provided by Western Union, which did not cover check cashing. Accordingly, it was not tailored to the lines of business conducted by Aurora Sunmart. Additionally, the independent

review conducted by Aurora Sunmart incorrectly stated that all CTRs had been properly filed when, in fact, they had not as described below.

C. Failure to File Currency Transaction Reports

The Bank Secrecy Act requires money services businesses to file a CTR of each deposit, withdrawal, exchange of currency or other payment or transfer which involves a transaction in currency of more than \$10,000. 31 C.F.R. § 1010.311. MSBs must report currency transactions exceeding \$10,000, and must do so within 15 calendar days after the transaction occurs. 31 C.F.R. § 1010.306(a)(1). Multiple transactions must be treated as a single transaction if the money services business has knowledge that (1) the transactions are by or on behalf of the same person, and (2) they result in currency received (cash in) or currency disbursed (cash out) by the money services business totaling more than \$10,000 during any one business day. 31 C.F.R. § 1010.313(b). A copy of the CTR must be maintained by the money services business for five years from the date filed. 31 C.F.R. § 1010.306(a)(2). Aurora Sunmart failed to comply with Bank Secrecy Act CTR requirements by failing to file CTRs or by filing CTRs late. Mr. Awad willfully participated in these violations. On average, between 2009 and 2012, 49 percent of the CTRs filed by Aurora Sunmart were filed significantly late. Aurora Sunmart has not filed a CTR since September 2012.

In summary, over a multi-year period, Aurora Sunmart committed significant violations of Bank Secrecy Act registration, program, and reporting requirements. Mr. Awad willfully participated in these violations.

III. CIVIL MONEY PENALTY

FinCEN has determined that Aurora Sunmart and Mr. Awad willfully violated the registration, program, and reporting requirements of the Bank Secrecy Act and its implementing regulations, as described in the CONSENT, and that grounds exist to assess a civil money penalty for these violations. 31 U.S.C. § 5321 and 31 C.F.R. § 1010.820.

FinCEN has determined that the penalty in this matter will be \$75,000.

IV. CONSENT TO ASSESSMENT

To resolve this matter, and only for that purpose, Aurora Sunmart and Mr. Awad (hereinafter referred to as “the Parties”) consent to the assessment of a civil money penalty in the sum of \$75,000, and to the UNDERTAKING set forth in Section V below. The Parties also admit that they violated the Bank Secrecy Act’s registration, program, and reporting requirements.

The Parties recognize and state that they enter into the CONSENT freely and voluntarily and that no offers, promises, or inducements of any nature whatsoever have been made by FinCEN or any employee, agent, or representative of FinCEN to induce the Parties to enter into the CONSENT, except for those specified in the CONSENT.

The Parties understand and agree that the CONSENT embodies the entire agreement between the Parties and FinCEN relating to this enforcement matter only, as described in Section II above. The Parties further understand and agree that there are no express or implied promises, representations, or agreements between the Parties and FinCEN other than those expressly set forth or referred to in this document, and that nothing in the CONSENT or in this ASSESSMENT OF CIVIL MONEY PENALTY (“ASSESSMENT”) is binding on any other agency of government, whether Federal, State or local.

V. UNDERTAKING

By its execution of the CONSENT, the Parties, to resolve this matter, and only for that purpose, agree to the following UNDERTAKING. Contemporaneous with the execution of the CONSENT, Aurora Sunmart shall immediately cease operation of any business related to money transmission and other money service business that requires registration with FinCEN, and Mr. Awad shall immediately cease participating, directly or indirectly, in the conduct of the affairs of any money services business that requires FinCEN registration, until each and every one of the following conditions are met:

- (1) Aurora Sunmart has properly re-registered as a money services business with FinCEN;
- (2) Aurora Sunmart creates, and provides a written copy of, its training program to IRS SB/SE; such training program must cover all lines of money services business offered by Aurora Sunmart;
- (3) Aurora Sunmart provides training to each of its employees, and provides to IRS SB/SE written evidence of such training, including a certification of such training, the name of each employee who attended such training, and the dates of such training;
- (4) Aurora Sunmart implements an independent review of its internal controls; and
- (5) Mr. Awad certifies, under oath and in writing, that the above requirements have been met, and provides a copy of such certification to FinCEN and to IRS SB/SE.

Failure to comply with any provision of the UNDERTAKING, or engaging in the conduct of a money services business, will constitute a violation of the CONSENT. If FinCEN determines that a failure to comply with the UNDERTAKING has occurred, FinCEN may take any enforcement action against the Parties it deems appropriate, notwithstanding the Release in Part VI below. Additional actions taken by FinCEN may include, but are not limited to, the imposition of

