6-1005-7118-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF COMMERCE

In the Matter of The Check Cashing Place, Inc., a Minnesota Corporation	FINDINGS OF FACT, CONCLUSIONS. RECOMMENDATION AND MEMORANDUM

The above-entitled matter came on for hearing before Allan W. Klein, Administrative Law Judge, on December 3, 1992, in Minneapolis.

Appearing on behalf of Respondent Check Cashing Place, Inc. was William Franklin, who in turn was represented by Attorney Randall D. B. Tigue, 2620 Nicollet Avenue, Minneapolis, Minnesota 55408.

Appearing on behalf of the Department of Commerce was Michael A. Sindt, Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101.

The record closed on January 21, 1993, upon receipt of the final memorandum.

Notice is hereby given that, pursuant to Minn. Stat. _ 14.61 the final decision of the Commissioner of Commerce shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Bert McKasy, Commissioner, Department of Commerce, 133 East Seventh Street, St. Paul, MN 55101.

STATEMENT OF ISSUE

Was the currency exchange operation at 1000 West Broadway in Minneapolis licensed and operated so that the Cease and Desist Order dated July 21, 1992 should be either made permanent, or vacated?,

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. William J. Franklin operated a furniture sales business at 1000 West

Broadway in Minneapolis from 1972 to 1992. This business operated under the
names of Gamble's Furniture and Broadway Sales. Franklin also operated a check cashing service at the same location. In addition to this furniture operation, Mr. Franklin also operated a check cashing business at 505 East Lake Street in Minneapolis from 1987 to 1992.

2. In 1989, the Legislature enacted Chapter 247, Laws of 1989, regulating the currency exchange business for the first time. That law, which took effect on August 1, 1989, specified that existing currency exchanges had to submit an application for a license by October 1, 1989, and no currency exchange could operate without a license after December 31, 1989. The basic prohibition of the act specified that no person could engage in the business of a currency exchange without first obtaining a license. The act also specified that a person could operate currency exchanges at more than one location with one license. The act also provided that the application for a license must state the location of all currency exchange locations operated by the applicant. It went on to specify that if a licensee proposed to change the name or location of any of its currency exchanges or add a new currency exchange location, then the licensee must file an application for approval of the change and obtain an amended license.

3. On January 4, 1990, the Department of Commerce processed a "currency exchange license application" which was timely submitted by Franklin with a fee of $350. Exhibit 1. The application form contains a number of instructions to the applicant. Among them is the following:

> If applicant is an individual proprietorship doing business under a name other than the first and last name of the owner, attach a copy of the Certificate of Assumed Name issued by the Secretary of State.

A separate paragraph, similar in tone, required corporate applicants to attach a copy of the Articles of Incorporation. At the end of that paragraph, however, is a note indicating that a currency exchange licensee may only do business under the name which appears on the license.

4. Franklin filled out the form indicating himself as an individual proprietor, but listing two business names. The first was Broadway Sales, located at 1000 West Broadway in Minneapolis. The second was Easy Money Check Cashing, located at 505 East Lake Street.

5. At the bottom of the form is a fee schedule, indicating that there is a $250 "application review fee", a $50 "license fee", and a $50 "addition of new location fee". The fee schedule also lists a number of other fees, which are not applicable to this situation. Franklin had placed a check mark next to each of the three fees listed above. The application was submitted with a $350 check.

6. Attached to the application was a Certificate of Assumed Name from

the Secretary of State, indicating that in April of 1985, the name "Easy Money Check Cashing" had been registered. There was no corresponding certificate for "Broadway Sales". Also attached to the application (as required) was a schedule of check cashing fees which Franklin would charge his customers. This schedule is labeled, at the top, as follows:

> Broadway Sales
> Easy Money Check Cashing
> 1000 West Broadway
> Minneapolis, Minnesota 55411

7. The same names and address appeared at the top of the cover letter which accompanied the application.

8. When the application was received, the check was separated from it, and the application form was processed. In the space where Franklin had typed in the names and addresses of the two Minneapolis locations, a Department employee had written the words "Must Apply Separately". Testimony at the hearing established that it was the Department's policy to require separate licenses for each assumed name, and separate application and license fees as well, so that if Franklin wanted to operate at the West Broadway location under the name "Broadway Sales", and at the East Lake Street location under the name "Easy Money Check Cashing". then Franklin would have to submit two application fees and two license fees, for a total of $600. Cheri McLean of the Department's licensing division returned the application to Franklin, with the handwritten notation, "Must Apply Separately", next to the name of Broadway Sales. The $350 check was also returned to him.

9. Shortly after receiving the returned application form, Franklin went to the Department's offices and met with Ms. McLean in her office. She explained to him the requirement that he pay a total of $600 if he wanted to operate under two business names. She advised him that if he wanted to operate both businesses under a single name, he could do so without paying two separate fees. Franklin advised her at that time that he wished to operate at both locations under the name "Easy Money Check Cashing". Franklin left her office under the assumption that he would be allowed to operate at both locations under the same name without having to pay a double fee. McLean, however, believed that Franklin still wanted to use different names at the two locations, and that he would be submitting another application and supporting documents for the "Broadway Sales", 1000 West Broadway location. On February 26, 1990, Franklin submitted a new check for $300, which the Department credited to his "Easy Money Check Cashing" application.

10. The Department never sent Franklin any letter stating that it was waiting for his second application.

11. Franklin did continue to operate at both locations using the name "Easy Money Check Cashing".

12. During the summer of 1990, Franklin called the Department and asked where the license was. He was told that there was a delay in issuing certificates, but that it would arrive shortly.

13. On October 29, 1990, McLean sent a letter to Franklin at the East Lake Street address, indicating that his currency exchange license had been approved, and the certificate was enclosed with the letter. Exhibit 2. The letter went on to explain that the license would not expire until December 31, 1991, and would expire each December 31 thereafter. The reason for the delay between the application and the actual issuance of the certificate had nothing to do with Franklin individually -- the delay was caused by the Department licensing currency exchanges for the first time, and it just took time to get the process in place.

14. Sometime in January of 1992, the Department sent out a form letter to Franklin, again at the East Lake Street address. Exhibit 3. The form

letter indicates that all licensees must, by February 28, 1992, renew their licenses. The form letter indicates that the licensee must sign, date and return the form letter with a $50 check, that attached to the form letter should be the exact name of the owner along with current position/title, social security number and current residential address and phone number, as well as a copy of the current fee schedule and a list of each location in which business is conducted. The letter goes on to state that if the form letter and renewal fee is not returned by February 28, 1992, the license will lapse.

15. On February 18, 1992, Franklin signed the form letter in the space indicated, and prepared a check for $50. Exhibit B. There is no drawer's name or address printed on the check. Instead, handwritten on the check is the following:

Easy Money Check Cashing Place
1000 W Broadway
Mpls., MN 55411

In the "Memo" line at the bottom left-hand corner of the check, there is handwritten: 1992 currency exchange license. Franklin hand-delivered the renewal form and check to Ms. McLean on or about February 19, but there was no substantial conversation between them at that time.

16. Where the form letter requests the name, title, social security number, etc. of the sole proprietor, there is written only "William J. Franklin". Where the form letter requests a copy of the current fee schedule, there is written "IOOO W Broadway - Mpls, MN 55411 529-9577". In other words, the personal information on Franklin was incomplete because it did not include his social security number, current residential address and phone number. The current fee schedule was not attached. There was no list of each location attached, but the appropriate location information for the West Broadway operation was written on the form letter, albeit in the wrong space.

17. The form letter, along with the check, was returned to the Department on or about February 19, well before the deadline of February 24.

18. The Department's records contain a copy of a letter, dated March 11, 1992, allegedly sent to Easy Money Check Cashing at the East Lake Street

address. Exhibit 4. This letter indicates that the renewal application and $50 fee had been received, but that the application was deficient for failing to fully answer the questions about personal identifying data, fee schedule, and locations. The letter goes on to state that Franklin had until March 23 to complete the data, and that if it was not supplied by that date, the license would lapse. Exhibit 4. There is no evidence in the record as to the circumstances of mailing this particular letter. All that is known is that a copy is in the Department's file.

19. Franklin never received the March 11 letter. He did not respond to it in any way. The letter is addressed exactly the same way as the October 29, 1990 form letter was addressed, and the same way that the January 1992 renewal notice was addressed. All three letters were addressed to 505 East Lake Street, Minneapolis 55411. In fact, the zip code is incorrect. 55411 is the correct zip code for the West Broadway address, but it is not the correct zip code for the East Lake Street address. The correct zip code for the East Lake

Street address is 55408. However, the October 1990 letter and the January 1992 letter used the wrong zip code, yet Franklin did receive both of them.

20. On January 14, 1992, Franklin entered into a management agreement with a Chicago-based entity doing business as the Check Cashing Place, Inc. Exhibit E. The management agreement, which is 14 pages in length, recites that Franklin is doing business as Easy Money Check Cashing at 1000 West Broadway in Minneapolis, and that Franklin is licensed by the Department of Commerce at that location. The management agreement runs for a term of ten years. Franklin received a $10,000 advance, and the total sum to be paid to him (over a period of months) was to be $50,000.

21. On March 31, 1992, the Check Cashing Place, Inc. submitted an application to amend its existing currency exchange license to add a new location -- 1000 West Broadway in Minneapolis. Exhibit 5. Check Cashing Place, Inc. had a license for a location on East Seventh Street in St. Paul. and was seeking to amend that license to add the 1000 West Broadway location. The cover letter, from a Chicago law firm, indicates that the Check Cashing Place, Inc. had an option to acquire the check cashing business at the West Broadway location, and intended to exercise the option.

22. In the course of processing the amendment application, the Department discovered that there was not a current license in effect for the 1000 West Broadway location. An enforcement investigator for the Department went to the location on June 23, 1992 and discovered that there was indeed a check cashing business in operation there, operating under the name of Check Cashing Place. Moreover, the enforcement investigator noticed that there was a completely separate check cashing operation (operating under the name of "The Unbank") immediately across the street. Later it was discovered that there was yet another currency exchange within one-half mile of the West Broadway location. During the 1992 legislative session, the Legislature had passed amendments to the currency exchange law. These amendments, which became effective on April 24, 1992, imposed a one-half mile separation requirement for new places of business that began operating on or after that effective date. Laws of Minnesota 1992, ch. 504, _ 2, subd. 2. Moreover, the 1992 legislation also prohibited a licensee from entering into a management agreement for a currency exchange business. Id., subd. 3.

23. On July 21, 1992, a Cease and Desist Order was issued to the Check Cashing Place, Inc. at 1000 West Broadway and to the Check Cashing Place, Inc. through its Chicago attorneys. Exhibit 7. The Cease and Desist Order is based on the Department's position that there was no license for the 1000 West

Broadway location, and that the currency exchange business in operation there
was in violation of the licensing law.

24. On July 22, the Department sent a letter to the Check Cashing Place,
Inc. through its Chicago attorneys, indicating that the March license
amendment application was denied because of the one-half mile spacing
limitation. Exhibit 6.

25. A request for a hearing was made within the 30 days required by the
statute. Notice of and Order for Hearing, paragraph 2.

26. On August 3, 1992, Franklin visited the Department's enforcement
investigator to protest the Cease and Desist Order. He indicated that he
had

always been properly licensed for the West Broadway location. However, Franklin could not produce any license certificate or documentation (other than his explanation of the foregoing events) to support his claim.

27. On August 19, 1992, the Department issued a Cease and Desist Order to Franklin, d/b/a Easy Money Check Cashing, at 505 East Lake Street. The Order finds that Franklin is not licensed at that location, and that he does not own the real estate or operate any business there. Attachment I to January 19 Memorandum of Michael A. Sindt. There was no appeal from this Order.

28. On September 17, 1992, the Department issued a third Cease and Desist Order. This Cease and Desist Order was issued to William J. Franklin, d/b/a Broadway Sales and/or Gamble's Furniture at the 1000 West Broadway address. ID, Attachment 2. This Order appears to be designed to respond to the suggestion that the currency exchange operation at 1000 West Broadway was only "incidental to primary business", which is part of an exemption from the licensing requirements in the statute. The Order alleges various facts regarding the relationship between the furniture business and the check cashing business, and concludes that the check cashing business is not incidental to the primary business, and thus the exemption is not available. There was no appeal from this Order.

29. On August 10, 1992, Franklin entered into a plea agreement with the United States Attorney for the District of Minnesota. Franklin agreed to enter a plea of guilty to a charge of assisting in the structuring of a July 1989 transaction to avoid currency transaction reporting requirements, in violation of Title 31, U.S. Code, _ 5324(3) and 5322(a). Franklin claims that one of his employees was the wrongdoer, and that he did not condone or encourage her at all.

Based upon the foregoing Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. That the Commissioner of Commerce and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. __ 45.027, subd. 5 and 14.57 - 14.69.

2. Timely notice of the hearing was given, and the Department has complied with all other substantive and procedural requirements of law and rule.

3. That William J. Franklin does have standing to contest the Cease and Desist Order issued to The Check Cashing Place, Inc. on July 21, 1992 and the denial of the license application on July 22, 1992. See Memorandum.

4. That the currency exchange operation at 1000 West Broadway was never licensed by the Department.

5. That the Department is not equitably estopped from asserting that the location at 1000 West Broadway was never properly licensed.

6. That even if the Department were equitably estopped, and the location at 1000 West Broadway were determined to have been licensed up to December 31, 1991, Franklin's attempt at renewal was properly denied by the Department because he failed to supply all of the required data, and thus any such license did lapse on December 31, 1991.

7. That the Cease and Desist Order dated July 21, 1992 was proper in that it correctly alleged that the operation at 1000 West Broadway was not licensed.

8. That The Check Cashing Place, Inc.'s application to add the location at 1000 West Broadway was properly denied because of the separation requirement.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATIONS

1. That the Cease and Desist Order of July 21, 1992 be made permanent; and

2. That the denial of The Check Cashing Place, Inc.'s application for a new location at 1000 West Broadway be affirmed.

Dated this 10th day of March, 1993.

ALLAN W. KLEIN
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. _ 14.62, subd. 1. the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded.

MEMORANDUM

The easiest way to understand this tangled web of misunderstandings and mistakes is to go through them chronologically.

The initial question which must be asked is whether or not the Department is equitably estopped from denying that Franklin was licensed at 1000 West

Broadway on the basis of his conversation with Ms. McLean in January or February of 1990. Although I believe that Franklin ended up asking her to license both locations under one name in order to avoid having to pay two

fees, McLean did not understand it that way, and proceeded as if Franklin would soon be submitting a second application and paying the double fee. This is confirmed by the fact that Franklin only paid $300, rather than $350, and the fact that Franklin never received a certificate for the 1000 West Broadway address.

This is not a situation where a governmental employee has given out false information or an incorrect interpretation of the law, and a member of the public relied upon it to his detriment. See , for example, Department of Human Services v. Muriel Humphrey Residences, 436 N.W.2d 110, 118 (Minn. App. 1989). Nor is it a case where governmental silence or inaction is wrong because there was a duty to speak. Su, New Ulm Telcom, Inc., 399 N.W.2d 111 (Minn. App. 1987). Instead, this is a case where there was a simple failure of communication. Franklin was communicating one thing, but McLean heard something else. In such a case, equitable estoppel is not appropriate.

Regardless of the equitable estoppel situation with regard to the initial license, the renewal form was never properly filled out and thus any license that may have existed for the 1000 West Broadway location did lapse. The Department claims to have sent a letter to Franklin, outlining the deficiencies and setting a new deadline for the submission of a complete application. Franklin never received the letter. Although the letter bore the wrong zip code, that error had not prevented the receipt of two previously letters which were similarly addressed. There is a rebuttable presumption that a letter, properly addressed with postage prepaid, was received by an addressee if the sender demonstrates proper mailing of the document through evidence of habit or custom, coupled with some evidence that these procedures were complied with in the particular instance. See , for example, Thomas v. Fey", 405 N.W.2d 450 (Minn. App. 1987). In that case, there was a dispute about whether or not a document was actually received by the addressee. The sender kept a copy, which bore a handwritten notation, "8-7-86 il", which a trial judge assumed was the date which the document was actually mailed by a clerk with the initials "il". The Court of Appeals held that this evidence was inadequate to create a presumption of receipt in the face of testimony from the addressee that it was not received. In the case of Nafstad v. Merchant, 303 Minn. 569, 570-71, 228 N.W.2d 548, 550 (1975), the court noted that there must be some evidence that the ordinary custom or habit was complied with in the particular instance of the document at issue. In other words, it is not enough to say that the Department's licensing agency routinely places outgoing correspondence in an envelope, runs it through a postage meter, and places it in a tray for pickup by a mail person. In addition, there must also be testimony that in the case of the particular letter at issue, these steps were followed, in order to invoke the presumption. There was no such evidence in the record regarding the March 11 letter.

Franklin's position, that he never received the letter, is buttressed by the circumstances of its contents. The materials which it requested from Franklin was all simple and straightforward. It was certain personal identifying data (which he had already supplied in his initial application), a copy of the fees which he charged his customers for cashing checks, and a list of locations where he operated. All of this information had already been supplied to the Department at one time or another, and there is no logical reason why Franklin could not have supplied it again. Given the fact that he had already received some cash in connection with the management agreement,

and the fact that he was scheduled to continue to receive additional payments over a period of months, it makes no sense for him not to take the easy steps demanded in the letter in order to keep his license current. But while it has been found that the letter was not received by Franklin, that does not mean that his renewal application was complete, or that the Department must renew him. If Franklin had somehow indicated on his renewal form that there was no change from the original application for any of the requested information, he would be on firmer footing in saying the Department was being unreasonable. For example, when the form requests a copy of his current fee schedule, he could have written something like "no change from original schedule already submitted" or something to that effect. But he did not. The Department has no way of knowing whether or not his fees have changed. While certainly the reasonable thing to do would be for the Department to send him a letter or contact him by telephone, the ultimate burden is on Franklin to supply the requested information. Therefore, Franklin was not licensed, and the Cease and Desist Order was properly issued, and should be made permanent.

At the start of the hearing, Mr. Sindt moved for a default judgment on the grounds that The Check Cashing Place, Inc. did not appear at the hearing. Mr. Tigue responded that Mr. Franklin was a real party in interest, and could properly appear and contest the Cease and Desist Order, both on his own behalf and on behalf of The Check Cashing Place, Inc. because of the Management Agreement between the two. The Administrative Law Judge ruled that he would take the motion under advisement, and that the hearing would go forward.

The Motion for a default judgment is properly denied because of the Managemnt Agreement between Franklin and The Check Cashing Place, Inc. ("CCP"). In that Agreement, Franklin agrees to maintain his license in his name for the term of the Agreement (ten years). With regard to the currency exchange operation at 1000 West Broadway, Franklin was the licensee and CCP was his agent. While the Order was issued to CCP, not Franklin, Franklin is entitled to assert CCP's interest, as well as his own, in the proceeding. The underlying purpose of the doctrine of standing is to assure that there is a sufficient case or controversy between the parties so that the issue is

properly and competently presented. See, for example, Twin Ports Convalescent, Inc. v. Minnesota State Board of Health, 257 W.W.2d 343 (Minn. 1977). Clearly, Franklin did vigorously assert both interests at the hearing. A secondary reason for the standing doctrine is to assure a party that he will not be subjected to multiple claims for the same relief. That will not happen in this case. CCP was named in the Order, and allowed Franklin to appear. As such, in light of their contractual arrangement in the Management Agreement, they are bound by the results of this proceeding. There will not be multiple proceedings. Therefore, there was no default by CCP.

A.W.K.