

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
1511 PONTIAC AVENUE  
BUILDINGS 68 AND 69  
CRANSTON, RI 02920**

IN THE MATTER OF: :  
:   
**PRIME DRUG, INC.,** : **DBR NO. 09-<sup>B</sup>240**  
:   
RESPONDENT. :

**DECISION AND ORDER**

**I. INTRODUCTION**

The above-entitled matter came before the Department of Business Regulation (“Department”) on the application of Prime Drug, Inc. (“Respondent”) for a license to cash checks (“Application”) received by the Department on January 20, 2009. Pursuant to R.I. Gen. Laws § 19-14.4-2(a)<sup>1</sup> Notice of the Application was published in the *Providence Journal* on June 4, 2009. On June 12, 2009 the Department received an objection from William P. Staderman, President of Monimen, Inc. (a Rhode Island licensed check casher) (“Monimen”) stating that it:

...protest [sic] the granting of the license to Prime Drug located at 613 Cranston Street, Providence because of the proximity to Monimen. Inc. Granting this license will cause financial hardship to Monimen Inc.

<sup>1</sup> R.I. Gen. Laws § 19-14.4-2 states in pertinent part:

**Public notice of application.** – (a) Upon the filing of any application in due form, accompanied by the required fee and documents, notice thereof shall be published in a newspaper of general circulation in this state. Each notice shall contain:

- (1) The name of the applicant;
- (2) The location of the proposed site; and
- (3) A statement that any comment or objection by anyone in relation to the application should be submitted in writing to the director or the director's designee for consideration within ten (10) business days of the date of publication.

...

On December 16, 2009, the Director of the Department issued an order appointing a Hearing Officer and scheduled a hearing on January 7, 2010 at 9:00 a.m. (“Notice of Hearing”). The hearing was continued to January 12, 2010 at Respondent’s request.

**II. JURISDICTION**

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws §§ 19-14-1 *et seq.*, 19-14.4-1 *et seq.*, 42-14-1 *et seq.*, and 42-35-1 *et seq.*

**III. ISSUE**

The issue in this matter is whether the Respondent’s Application should be denied based solely on Monimen’s objection pursuant to R.I. Gen. Laws § 19-14.4-2(c) and (d)<sup>2</sup>?

**IV. MATERIAL FACTS AND TESTIMONY**

The material facts stated herein are set forth in chronological order as the information was received by the Department either in writing or at the hearing. The hearing convened at the Department on January 12, 2010. As stated in the Notice of Hearing, the purpose of the hearing was to address the following issues: (i) the need for the establishment of a check cashing business in the community to be served by Respondent from 613 Cranston Street in Providence, Rhode Island; (ii) the extent, if any, that the other check cashing businesses may be served by Respondent from 613 Cranston Street, Providence, Rhode Island; and (iii) the extent that granting of the branch certificate would

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<sup>2</sup> R.I. Gen. Laws §§ 19-14.4-2(c) and (d) state:

...

(c) The director or the director's designee shall cause an investigation of the needs of the community for the establishment of a check cashing business at the location specified in the application and the effect that granting the license will have on the financial stability of other check cashing businesses that may be serving the community in which the business of the applicant is proposed to be conducted. If the issuance of a license to engage in the check cashing business at the location specified will not promote the needs and the convenience and advantage of the community in which the check cashing business of the applicant is proposed to be conducted, then the application may be denied.

have on the financial stability of other check casing businesses serving the community to be served by Respondent from 613 Cranston Street in Providence, Rhode Island. The undersigned Hearing Officer is therefore only rendering this decision on the issues raised by Monimen's objection and not on the entire Application. The Department did not present evidence related to whether the Respondent meets all of the other statutory and regulatory qualifications for licensure and those issues are not before the undersigned Hearing Officer.

On October 23, 2006 the Director of the Department issued a Decision and Order, which granted a conditional check cashing license to Respondent. The Respondent's check cashing license was not issued until December 15, 2006. Pursuant to Section 14(C) of the Department's Central Management Regulation 2 ("CMR 2") (entitled *Rules of Procedure for Administrative Hearings*) the undersigned takes administrative notice of the fact that Respondent's initial license was revoked on June 23, 2008. That revocation was appealed to Superior Court and is currently pending.

Counsel for Respondent presented a motion to deny and dismiss the objection based on the doctrines of collateral estoppel and *res judicata*. Respondent asserts that Monimen's current objection asserts the same basis as in Monimen's 2006 objection to Respondent's 2006 application for check cashing license. Monimen responded by asserting that this is a new proceeding, on a new application, that requires statutory compliance with all statutory requirements. Monimen's counsel further argued that the facts and circumstances related to the community are different than in 2006 and it is appropriate to take current community needs into account in evaluating the current

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(d) The director or the director's designee shall investigate to ascertain whether the qualifications and requirements have been met. Within ninety (90) days after the publication of the notice, if the director or the director's designee finds that the qualifications have been met, he or she shall issue to the applicant a license to engage in the business of cashing checks in this state.

application. The undersigned Hearing Officer took the Respondent's motion and Monimen's rebuttal under advisement.

Monimen's bases its objection on: i) Respondent's proximity to Monimen (.4 miles from Monimen); ii) Respondent's change in its "community" based on the suspension of Respondent's pharmacy and liquor license; iii) Monimen's ability to serve the community's need; and, iv) adverse impact on Monimen's financial stability if Respondent's license application is granted. Respondent confirmed that its pharmacy license is suspended and stated that it is currently scheduled for hearing before the Department of Health. Additionally, Respondent stated that its liquor license "expired;" however, it is the Hearing Officer's understanding that the liquor license is tied to the pharmacy license (which was suspended by the Department of Health). Respondent confirmed that once the pharmacy license is resolved, they will address the liquor license issue. Monimen's counsel also stated that Respondent's application states that they do not intend to accept utility payments when in fact they are accepting utility payments. Respondent confirmed that it is accepting utility payments and decided to do so after the submission of the application. Respondent acknowledged that it would amend its application to reflect this fact. Monimen asserts that because of all of these changes (lack of liquor license and pharmacy license), the Respondent no longer has the customer base as a community that it once did and therefore, the Respondent's community is actually the community that is currently being served by Monimen.

Monimen also stressed that it fulfills the current community need. Monimen has been a full service financial service center at 370 Cranston Street in Providence, Rhode Island since 2003. Prior to 2003, the location at which Monimen is currently located was a licensed check cashing business since 1989. Monimen asserts that its customers live or

work within a mile radius of its location and have been customers for many years. Because a large number of Monimen's customers are Hispanic (which according to Monimen is the demographic composition of the area), all employees at Monimen are fluent in Spanish and serve a convenience and need to the community. Monimen asserts that Respondent did not offer any particular conveniences or advantages in its application to this specific community.

Monimen also asserts that its profits were reduced as a result of the issuance of the Respondent's 2006 check cashing license. When the undersigned Hearing Officer requested documentation (financial statements), Monimen's counsel withdrew its objection with respect to any facts related to Monimen's declining revenue in 2006, 2007, and 2008 (which is the time frame in which Respondent previously held a check casher's license).

Prime Drug currently holds a retail sales license, a license to sell cigarettes, a license to sell lottery games, and handles utility payments. Respondent asserts that it still has many customers. Respondent further stresses that it is lawfully organized, has been in business for over forty 40 years, and there exist many differences between its and Monimen's business model. According to Respondent, Monimen is engaged in "financial services" according to its annual report filed with the Rhode Island Secretary of State's office while Respondent is engaged in retail sales as a convenience store and provides vital and necessary services to the community. Respondent further asserts that it generates sales tax to the community and State of Rhode Island. During Prime Drug, Inc.'s over forty (40) year existence, they have continuously cashed checks for their customers. They have not been required to obtain a check-cashing license because under R.I. Gen. Laws § 19-4.4-1(3) an individual or entity must be licensed as a check casher *only*

if they charge a fee in excess of fifty cents (\$0.50) per cashed check. Respondent states that it is not currently cashing checks. Respondent asserts that denying its application on the basis of potential impact to Monimen is promoting a monopoly and has an adverse impact on the community. Respondent states that competition would be good for the community and cited as an example the disparity in fees between it and Monimen for check cashing fees. According to Respondent (and confirmed by Monimen), Monimen charges 1.5 percent for checks up to \$1000 and 2 percent for checks over \$1,000. Prime Drug would charge a 1 percent fee for all checks. The use of check cashing business will serve needs of customers to pay bills (utilities) and allow customers to spend money within the community which is also good for state revenue. Furthermore, Respondent stated through its witnesses that it anticipates hiring two (2) full time employees and provide them with benefits. This is also an additional benefit to the public.

In response to Monimen's assertion that Respondent would be affecting Monimen's customer base and the community needs are currently being met, Respondent asserts that in 2006 there were two other check cashing businesses (owned by Johany Urbaez) within a one and one-half mile radius of Prime Drug, and those businesses are no longer in existence. Respondent also asserted that the area around Prime Drug does not have banks. Pursuant to Section 14(C) of CMR 2, the undersigned Hearing Officer takes administrative notice of the facts regarding the number of check-cashing businesses in the community in 2006 (See October 23, 2006 DBR Decision, *In the Matter of Prime Drug, Inc.*, DBR No. 06-L-0127 ("2006 Decision")). In addition to the two (2) check cashing facilities owned by Johanny Urbaez that are no longer in business, the 2006 Decision discusses Dinero Express, another licensee of the Department, that is no longer in business. Respondent asserts that there is currently one check-cashing facility in a one-

mile radius of Prime Drug, and therefore there is room for another check-cashing licensee as a benefit to this community without potential harm to Monimen. Carmine D. DeTomasio (Vice-President of Respondent) confirmed these facts (presented in opening argument by counsel) during his testimony later in the hearing.

Respondent then presented two (2) witnesses in support of its position. The first witness, Dominic Colarusso, President of Respondent, testified that he has been owner of Prime Drug since 1960s. Mr. Colarusso presented a certified copy 2008 of Annual Report filed with the Rhode Island Secretary of State's office indicating that the current owners of Respondent are Mr. Colarusso and Carmine D. DeTomasio (not Carmine A. DeTomasio who was Mr. Colarusso's former business partner and is Carmine D. DeTomasio's father). Mr. Colarusso testified that this was a change in ownership from the prior application.

Mr. Colarusso testified that he has been an owner of the Respondent for forty-four (44) years and the facility has been located at 613 Cranston Street for that entire period. Mr. Colarusso stated that they have cashed checks from the beginning and initially did not charge a fee. Mr. Colarusso testified that Respondent and he, as co-owner, has had a positive role in the community, been good to customers in that he has taken care of his customers in time of need (bailed them out, let them charge, given them free medicine, etc.), and more people know him in the community than know Mr. Staderman (Monimen's owner). Mr. Colarusso testified that the community has not changed and it is the same community. Additionally, he testified that the area surrounding Monimen is not safe and Respondent's customers would not be safe walking to Monimen after 5:00 o'clock in the evening

Mr. Carmine D. DeTomasis, Vice-President of Respondent, and a co-owner, testified that prior to the revocation of Respondent's license, it was cashing approximately 6,000 checks per month. Mr. DeTomasis testified that if the check cashing license was granted, he anticipates that 2,000 checks would be cashed per month. He further anticipates that the number of checks cashed would increase over time. He confirmed that the Respondent is not currently cashing checks.

Carmine D. DeTomasis testified that he has been a Rhode Island resident for thirty-nine (39) years and Mr. Colarusso testified that he has been a Rhode Island resident for eighty-one (81) years.

Mr. DeTomasis confirmed compliance with BR 98-14.4 Section 98-14.4-5 which requires all check cashing licensees install bullet proof glass and partitions that meet or exceed Underwriters Laboratories Level II ballistics standards at all check cashing stations, transaction windows, counters and similar areas where the exchange of funds, checks, money orders, and other transactions take place. The premise as constructed for the 2006 check cashing application, is in the same condition and there have been no changes to the bulletproof glass and/or alarm system according to Mr. DeTomasis. Mr. DeTomasis submitted to photographs as evidence of the condition of the relevant area.

During Mr. Colarusso's cross examination, Monimen's counsel established that now that Respondent did not have its liquor license and pharmacy license, Respondent is primarily a retail convenience store and there are many retail convenience stores in the area. Mr. Colarusso testified that the convenience stores are not the same as Respondent and he has a strong tie to the community based on his past relationship with the community as a pharmacist. Mr. Colarusso was also asked whether a financial institution



had cited Respondent for violating check cashing guidelines and Mr. Colarusso responded that he did not recall.

Mr. DeTomasio was cross-examined with respect to location of Johanny Urbaz's now closed two (2) check cashing locations. Mr. DeTomasio did not know exactly how far the Johanny Urbaz facilities were and the Hearing Officer indicated that those facts could be obtained via administrative notice of the 2006 Decision. The 2006 Decision (pages 10-11) states ...“Respondent is one and one-half (1.5) miles from Mr. Urbaz's location at 913 Eddy Street and one (1) mile from his location at 1300 Broad Street[.]”

The record was left open for Monimen to submit evidence that Mr. Staderman has been authorized by the corporate entity to represent its interests in the administrative proceeding. On January 18, 2010, the Department received a “Corporate Resolution” dated December 22, 2009 signed by Mr. Staderman which confirmed a meeting of Monimen's Board of Directors on December 22, 2009 in which Mr. Hanley was voted to be retained to represent Monimen Inc.'s objection in this administrative proceeding.

## V. DISCUSSION

### A. **Respondent's Motion to Dismiss**

Respondent's counsel has presented an objection to Monimen's objection on the legal basis that the doctrines of *res judicata*, collateral estoppel, and administrative finality apply to administrative hearings and bar the re-litigation of these issues because the issues have been decided in the 2006 Decision. The undersigned agrees that these doctrines apply to administrative hearings, but does not agree that the application of the doctrines to the facts herein prohibit another administrative proceeding given that the Respondent's license has been revoked and that the factual context related to the issues has changed significantly since 2006. Additionally, taking Respondent's construction of

the legal doctrines at face value without taking the intervening facts into account results in barring administrative regulatory agencies from reviewing relevant facts even after a license revocation and re-application. That is not consistent with the agency's duty to protect the public interest nor is it consistent with statutory and regulatory paradigm that requires regulatory investigation of all material facts related to each application (regardless of whether the licensee has held licenses in the past). Given the material change in circumstances due to Respondent's license revocation almost two (2) years ago, the proposition that these legal doctrines have the effect of barring regulatory review within an established review process is both unreasonable and dangerous.

This harsh result related to the application of the doctrines of collateral estoppel, res judicata and administrative finality has been contemplated and discussed by the Rhode Island Supreme Court. In *State v. Gauthier*, 871 A.2d 347, 358 (R.I. 2005) the Rhode Island Supreme Court stated that:

...The doctrine of collateral estoppel provides that “ ‘when an issue of ultimate fact has once been determined by a *valid and final judgment*, that issue cannot again be litigated between the same parties in any future lawsuit.’ ” *State v. Werner*, 865 A.2d 1049, 1055 (R.I.2005) (quoting *Santiago II*, 847 A.2d at 254). “For collateral estoppel to apply and bar a party from relitigating an issue, there must be ‘(1) an identity of issues, (2) the previous proceeding must have resulted in a *final judgment on the merits*, and (3) the party against whom collateral estoppel is asserted must be the same or in privity with a party in the previous proceeding.’ ” *Id.* Because its application “ ‘is capable of producing extraordinarily harsh and unfair results [.]’ ” however, we have held that we will “not apply the doctrine ‘mechanically’ in situations in which it would lead to inequitable results.” *Foster-Glocester Regional School Committee v. Board of Review*, 854 A.2d 1008, 1017 (R.I.2004) (quoting *Casco Indemnity Co. v. O'Connor*, 755 A.2d 779, 782 (R.I.2000)). (Emphasis added)

For these reasons, the undersigned Hearing Officer recommends that Respondent's Motion to Dismiss the objection be denied and the objection be considered.

**B. Legal Authority**

R.I. Gen. Laws § 19-14.4-1, *et seq.* provides the statutory authority for the regulation of check cashing businesses. R.I. Gen. Laws § 19-14.4-4(2)(b) states the legislative intent for this regulatory framework:

The general assembly finds and declares that check cashing businesses provide important and vital services to Rhode Island citizens, that the number of check cashing businesses should be limited in accordance with the needs of the communities they are to serve, and that it is in the public interest to promote and foster the check cashing businesses and to insure the financial stability thereof.

Therefore, R.I. Gen. Laws § 19-14.4-2(b) requires the Department to evaluate the evidence presented and determine whether the proposed license will meet the “needs of the communities” the applicants are to serve and (as stated in R.I. Gen. Laws § 19-14.4-2(c)) to evaluate “the effect that granting the license will have on the financial stability of other check cashing businesses that may be serving the community.”

The criteria that need to be reviewed, “needs of the community” and “convenience and advantage” are not defined in the statute and therefore, lack any precise definition that may be applied to all facts. Furthermore, several cases that are not directly on point discuss similar concepts that may provide a paradigm for the review of this Application.

The Rhode Island Supreme Court discussed the higher standard “public convenience and necessity” in *Abbott v. Public Utilities Commission*, 48 R.I. 196, 136 A. 490 (1927), specifically with respect to meaning of convenience. In that case, the Supreme Court wrote:

The expression “public convenience and necessity” has not a well defined and precise meaning. “Convenience” is not used colloquially in the statute as the appellant appears to consider. It is not synonymous with “handy” and “easy of access” although the question of ease of access may well enter into the determination of the public’s convenience. “Convenience” shall be given an interpretation in accord with its regular meaning of “suitable”, “fitting”, and “public convenience” has reference to something fitting or suited to the public need.

*Abbott*, 136 A. at 491.

The Rhode Island Supreme Court also examined the “public convenience and necessity” standard in *Domestic Safe Deposit Company, et al. v. Hawksley, et al.*, 111 R.I. 224, 301 A.2d 342 (1973). The Court discussed the “public convenience and necessity” standard with respect to a consumer finance business seeking a certificate to begin operations in Rhode Island. Relying on *Abbott, supra*, it stated that “‘need’ is a relative term” and that “public convenience and necessity” has no well defined meaning.” *Domestic Safe Deposit Co.*, 301 A.2d at 344. The Court gave no further consideration to the definition of “need” but went on to examine the evidence put before the Board of Bank Incorporation. After its review, it found that there was competent evidence in the record to show the requisite need and that the public convenience and necessity would be served. *Id.* at 346.

It is clear from the case law that the “needs of the community” as well as the “public convenience and advantage” are factors which require each application to be reviewed within the specific factual context of that application. *Banking Regulation 98-14.4*, entitled *Check Cashing*, defines “community” to mean “the community as proposed by the applicant in its applicant or business plan, which community in no event shall be less than a one (1) mile geographic radius of the proposed location.” This is the only

concrete definition in the statutory/regulatory standard. Therefore, it is necessary to evaluate the needs of the community within a one (1) mile geographic radius of the proposed location. *Black's Law Dictionary (7<sup>th</sup> Ed.)*, defines the term "need" as "the lack of something important; a requirement." In this case, then, it is necessary to determine whether the community that the applicant seeks to serve, its current and prospective customers of its pharmaceutical, liquor, and other retail businesses, has a need for the Respondent's check cashing service.

It is necessary to analyze the facts presented in the Respondent's Application and determine whether Respondent's specific context meets the criteria in R.I. Gen. Laws § 19-14.4-2(c), (d), and 19-14.4-3. In this matter, the undersigned Hearing Officer recommends that Respondent's application not be denied solely based on Monimen's objection because the Respondent has demonstrated that allowing it to hold a check-cashing license meets the "needs and the convenience and advantage of the community they are to serve." Additionally, the evidence presented further demonstrates that granting Respondent a check-cashing license will not negatively impact the financial stability of other check cashing businesses that may be serving the community in which Respondent will be engaged in check cashing.

### **C. Needs/Convenience/Advantage of the Community**

The factual context relating to the needs, convenience, and advantage of the community has changed significantly since Respondent's application in 2006. There are two (2) fewer check-cashing facilities and Dinero Express (which was discussed in detail in the 2006 Decision) is no longer in existence. Respondent does not have a pharmacy license or a liquor license. Respondent, has been for over forty (40) years, and will be a retail convenience store offering a myriad of services to the community which include

selling of retail good, lottery tickets, cigarettes, and payment of utilities. Respondent testified, that while it is not currently cashing checks, it has cashed checks as a convenience to its customers since 1966. Given that there is only one check-cashing facility in the one-mile radius of Respondent and no banks in that area, the evidence presented in the investigatory hearing present compelling evidence that a check-cashing license will serve the needs of the community.

The need, convenience, and advantage of the community is also required to be analyzed within the context of the “Community” as defined in BR98-14.4-5(g) which states that in reviewing an application for a license to cash checks, the Director “shall consider the proposed licensee’s community as required by R.I. Gen. Laws § 19-14.4-2, to include the community as proposed by the applicant in its application or business plan, which community in no event shall be less than one (1) mile geographic radius of the proposed location.” That is, it is necessary to review the community as described in the Application as well as a one (1) mile geographic radius of 613 Cranston Street in Providence, Rhode Island.

Respondent has established that the community it is seeking to service is comprised of its current and future customers of its retail business functions. In 2006, there were two (2) other licensed check cashers within a one (1) mile radius of Respondent. Currently, there is one, Monimen. And, Respondent has established that the business model of Monimen (a financial services entity with no retail sales functions) is different than Respondent. Given the closure of the three (3) other entities (Dinero Express and Mr. Urbaez’s two check-cashing facilities), and the apparent differences in fees charged by Monimen and Respondent, the community would benefit from the existence of another check-cashing facility.

**D. Financial Stability of Other Check Cashing Businesses That May Be Serving the Community**

The only other entity within a one (1) mile geographic radius from Respondent is Monimen, Inc. Monimen, Inc. is located approximately four-tenths (0.4) of one (1) mile from Respondent. Mr. Staderman, President of Monimen, Inc., asserts that the granting of a license to Respondent will negatively impact Monimen, Inc. because they are both within one (1) mile of each other. Location of the applicant is not the only criteria for licensure of check cashers. The undersigned Hearing Officer also has to consider the business plan and target customer base within the context of the Application. As stated herein, the business models of Respondent and Monimen are different. Mr. Staderman testified that the demographic served by his business is primarily Hispanic. Additionally, the fact that Respondent has been a viable business presence in the community for over forty (40) years and always cashed checks cannot be ignored. These facts support the proposition that Monimen, Inc. (which is primarily a check-casher according to its own assertions) would not attract customers seeking to purchase retail goods and/or services. Therefore, Monimen, Inc. and Respondent have two (2) different and distinct business plans and contexts that have supported established check-cashing activities by each, at the same time, with no harm to Monimen, Inc. Therefore, there was no credible evidence presented that Monimen, Inc. would suffer financially.

**VI. FINDINGS OF FACT**

1. The Department received the Application on January 20, 2009.
2. The Respondent published a notice of the Application in the *Providence Journal* on June 4, 2009.
3. The Department received the Monimen, Inc. Objection on June 12, 2009.

4. This hearing is only related to Monimen, Inc.'s Objection and not on the granting of the Respondent's check-cashing application.
5. On December 16, 2009 the Director of the Department issued an order assigning the undersigned as Hearing Officer and scheduling an investigative hearing on January 7, 2010 at 9:00 a.m. The hearing was continued at Respondent's request to January 12, 2010 at which time a hearing on the merits of the objection was held.
6. Respondent was issued a check-cashing license on December 15, 2006 and that license was revoked by Order of the Department on June 23, 2008. The revocation was subsequently appealed to Superior Court where it is currently pending.
7. Respondent's pharmacy license was suspended by the Department of Health and the Respondent is currently pursuing a hearing on the suspension of the pharmacy license.
8. Respondent does not currently hold a liquor license.
9. Monimen, Inc., a licensed check casher since 2003, is located approximately four tenths (0.4) of one (1) mile away from Respondent's proposed check cashing location.
10. Respondent has been in business for over forty (40) years as a retail convenience store, pharmacy, and liquor store.
11. Respondent currently holds a retail sales license, a license to sell cigarettes, a license to sell lottery games, and handles utility payments.
12. Monimen's business is primarily "financial services."



13. In 2006, Johanny Urbaez d/b/a Johnny Cash, a previously licensed check casher, had two (2) licensed facilities but the closest to Respondent was approximately one and six tenths (1.6) mile from Respondent. Mr. Urbaez's facilities are no longer in business.
14. Dinero Express, another facility engaged in financial services, and located within one (1) mile of Respondent in 2006 is no longer in business.
15. The premise as constructed for the 2006 check cashing application, is in the same condition and there have been no changes to the bulletproof glass and/or alarm system and therefore is in compliance with BR 98-14.4.
16. Mr. Hanley's assertion that Respondent's close proximity to Monimen and Respondent's evidence regarding its current check-cashing activities constitute evidence that establish "financial hardship" lacks merit because there is no data to support that assertion or that establishes that assertion.
17. There is currently only one (1) check cashing facility (Monimen) and no banks within a one (1) mile radius of Respondent.
18. Respondent has established that there is a need for a check cashing service for its current and prospective customers and that their will be an advantage to the community to have more than one (1) licensed check cashing facility within a one (1) mile radius.
19. Respondent anticipates cashing approximately 2,000 checks per month and an increase in that volume over time.
20. Monimen was properly authorized to object to Respondent's application.

## **VII. CONCLUSIONS OF LAW**

1. R.I. Gen. Laws § 19-14-2 requires an individual or entity to obtain a check-cashing

license in order to engage in the business of check-cashing such as that sought by Respondent in the Application.


2. R.I. Gen. Laws § 19-14.4-2(c) requires the Department to consider “the needs of the community for the establishment of a check cashing business at the location specified in the application” and to “evaluate the effect that granting the license will have on the financial stability of other check cashing businesses that may be serving the community[.]”
3. If the Department finds that the check cashing business at the location specified will not “promote the needs and convenience and advantage of the community in which the check cashing business of the applicant is proposed to be conducted, R.I. Gen. Laws § 19-14.4-2(c) authorizes the Department to deny the Applicant.
4. The phrases “needs of the community” and “convenience and advantage” are vague expressions lacking any precise definition.
5. “Public convenience” refers to something fitting or suited to the public need. *Abbott*, 136 A. at 491.
6. The term “need” is defined as “the lack of something important; a requirement.” *Black’s Law Dictionary*, 7<sup>th</sup> Ed.
7. “Community” means “the community as proposed by the applicant in its applicant or business plan, which community in no event shall be less than a one (1) mile geographic radius of the proposed location.” *Banking Regulation 98-14.4*.
8. “The needs of the community” and the “public convenience and advantage” may vary depending on the community the proposed business is to serve.

9. The Respondent established that there was a need for the check-cashing license.
10. The objection filed by Monimen, Inc. did not present sufficient evidence establishing that granting Respondent a check-cashing license will not promote the needs and the convenience and advantage of the community, which Respondent is proposing to serve through its check-cashing license.

**VIII. RECOMMENDATION**

Based on the evidence presented on the objection at hearing, the undersigned Hearing Officer respectfully recommends that the application not be denied solely based on Monimen's objection and is subject to the Department's further review of the Respondent's Application and compliance with all other relevant statutory and regulatory requirements.

Dated: 2/18/10

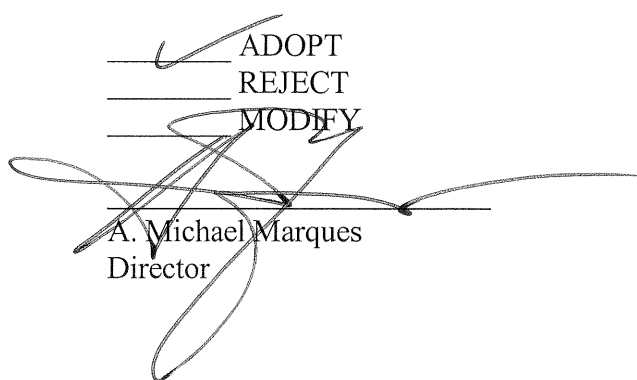
  
\_\_\_\_\_  
Neena Sinha Savage  
Hearing Officer

**ORDER**

I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

Dated: 02-19-2010

ADOPT  
 REJECT  
 MODIFY

  
\_\_\_\_\_  
A. Michael Marques  
Director

**NOTICE OF APPELLATE RIGHTS**

**THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.**

**CERTIFICATION**

I hereby certify that on the 19<sup>th</sup> day of February, 2010 a copy of the above Decision was sent by ~~first class mail and certified mail~~, postage prepaid to:

Anthony R. Leone, Esq.  
Leone Law, LLC  
1345 Jefferson Boulevard  
Warwick, RI 02886

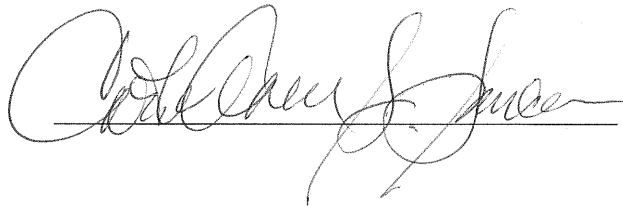
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370 Cranston Street  
Providence, RI 02903

And by hand-delivery to:

Joseph J. Torti III, Associate Director and Superintendent of Banking  
Department of Business Regulation

Steven L. Cayouette  
State Chief Bank Examiner  
Department of Business Regulation

A handwritten signature in cursive script, appearing to read "Steven L. Cayouette", written over a horizontal line.