

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS



DEPARTMENT OF BUSINESS REGULATION  
DIVISION OF BANKING  
1511 PONTIAC AVENUE, BUILDING 68-2  
CRANSTON, RHODE ISLAND 02920

Telephone (401) 462-9503

IN THE MATTER OF:

CHECK CASHING R US, INC. : DBR Number 12-B-003

NOTICE OF HEARING ON APPLICATION FOR A LICENSE TO CASH  
CHECKS UNDER R. I. GEN. LAWS §§ 19-14-3 AND 19-14.4-2

DECISION

I. INTRODUCTION

The above-entitled matter came before the Department of Business Regulation (“Department”) on the application (“Application”)<sup>1</sup> of Check Cashing R Us, Inc., (Applicant”) for a license to cash checks received by the Department on or about March 8, 2011. A Notice of Hearing (“Notice of Hearing”) was issued on January 5, 2012 noticing this matter for hearing before the undersigned hearing officer under delegation of authority by the Director of Department. The Notice of Hearing states that on or about March 8, 2011, the Respondent submitted an application to establish a branch office at 355 Broad Street, Central Falls, Rhode Island 02863.

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<sup>1</sup> Subsequent to hearing, a copy of the Application was forwarded to the undersigned (and all parties) and it is now marked and admitted as Department’s Exhibit One (1).

Pursuant to R.I. Gen. Laws § 19-14.4-2, notices of the Application were published in the *Providence Journal* on March 11, 2011 and again on April 11, 2011.

R.I. Gen. Laws § 19-14-2 requires the Director of the Department to investigate the needs of the community to be served by the proposed location in an application and the effect that the granting of the license will have on the financial stability of other check cashing businesses that may be serving the community. The Director has the authority to issue such a license or to deny the application. To investigate the needs of the community and the effect on other check cashing businesses serving the community, the Director set the matter down for hearing to provide a forum for the Applicant and any objectors to present evidence concerning these issues, subject to rebuttal and cross-examination, under oath, and on the record. A hearing was held on February 6, 2012. The hearing related solely to the Application for the branch office (“Proposed Location”).

## **II. JURISDICTION**

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 19-14-1 *et seq.*, R.I. Gen. Laws § 19-14-12 *et seq.*, R.I. Gen. Laws § 19-14.4-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

## **III. ISSUE**

The issue in this matter is whether the Applicant should be granted a check casher branch certificate, pursuant to R.I. Gen. Laws § 19-14-12.

#### **IV. MATERIAL FACTS AND TESTIMONY**

As a result of the notice, certain written objections<sup>2</sup> were received by the Department as follows:

1. Julia C. Salazar, President of World Travel and Financial Services (“World Travel”), located at 440 Dexter Street, Pawtucket, Rhode Island sent a written objection by letter dated March 15, 2011. World Travel currently holds a valid check casher license for that location. The stated grounds for the objection was that the proposed location is too close to his business, in that it is less than one-quarter mile away and 3 city blocks from World Travel. The objection stated that his “business will have a significant negative financial impact, this is a 1 square mile city and there are four check cashing licenses already.”

2. On April 19, 2011, Domingo Guzman, owner of Xtreme Computers, LLC presented an objection by electronic mail to the issuance of this branch certificate. Xtreme Computers currently holds a valid check casher license. That written objection stated that “the City of Central Falls is 1 square mile, and already has 2 licensed locations that are more than enough for the community.” Mr. Guzman also alleged that there are more than five unlicensed locations engaging in check cashing without a license in that city.

Gregory Costantino, President of Check Cashing R Us, Inc. appeared at hearing represented by counsel. He first offered testimony in support of its application. Mr. Costantino stated that he intended to hire his employees from the local community and that he would offer a scholarship to a High School senior to help support the local community. Mr. Costantino explained that his primary competitor was the Bank of

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<sup>2</sup> Written objections are allowed pursuant to R.I. Gen. Laws § 19-14.4-2.

America located “next door” to Check Cashing R Us. He aims to offer a less expensive alternative to Bank of America’s money order and check cashing fees. Mr. Costantino further explained that World Travel offered more services than Check Cashing R Us’ services such as travel and insurance agencies; therefore Check Cashing R Us is not in direct competition with World Travel but rather Checks R Us would directly compete with Bank of America.

Mr. Costantino expressed that the community is in need of another check cashing business and that it would be more convenient for local residents to use Check Cashing R Us because of its location. Mr. Costantino showed that he could make a profit by charging competitive fees for check cashing and money orders. The lower fees charged by Check Cashing R Us would offer customers an alternate business to cash their checks.

The Department provided notice of the hearing date to each of the parties having filed objections, however, only Domingo Guzman, owner of Xtreme Computers appeared at hearing. Julia Salazar of World Travel and Financial Services did not appear.

Mr. Guzman testified next in support of his objection to the granting of the application. Mr. Guzman expressed that the check cashing business is struggling. Guzman explained that most of his customers reside in Central Falls, near Check Cashing R Us. With two licensed check cashing businesses and many illegal check cashing operations located in the immediate vicinity, there would be a negative financial impact on his business if another license were to be granted. There would be an affect of lowered financial gain resulting in Mr. Guzman need to lay-off employees.

Accompanying Mr. Guzman was William P. Staderman, who testified as a witness supporting Mr. Guzman’s objection. Mr. Staderman defended the validity of Mr.

Guzman's financial projections. There was question as to whether the projections had a proper foundational basis. Mr. Staderman simply stated that the law asks whether Xtreme Computers would be damaged, and Mr. Guzman's survey shows that some of his customers would go to Check Cashing R Us. Mr. Staderman stated that despite a non-formal survey being taken, the fact that some of Xtreme Computers' customers would cash their checks with Check Cashing R Us is sufficient in showing that Xtreme Computers would be financially harmed if another check cashing license were to be issued in the area.

There was an objection to Mr. Staderman's testimony being considered as an expert, in that he had not been formally qualified as such. The undersigned Hearing Officer indicated that she would leave the record open in this matter subject to receipt of Mr. Staderman's resume or curriculum vitae. In consideration of that document, the Hearing Officer indicated that she would give requisite weight to his sworn statements at hearing.

He testified that the federal government would begin a process that would essentially put all benefit checks onto pre-paid debit or credit cards through federal law. The use of prepaid debit or credit cards would vastly decrease the amount of checks being cashed and strongly damage the check cashing business. Therefore, Mr. Staderman claims the last thing check cashing businesses needs is additional competition.

## **V. DISCUSSION**

### **A. Arguments**

The Applicant argued that it will serve the needs of the community in that there is a more affordable means to obtain money orders and cash checks. Applicant states that

there is a need in the community for a business to compete against the high fees charged by Bank of America. Check Cashing R Us would force all check cashers to offer their services at a competitive price. Applicant also argues that it would be in the State's interest to create another licensed check casher to compete against the illegal check cashers.

Applicant questioned the validity of the evidence presented by Mr. Guzman. Applicant alleges that his financial projections were not based on a proper foundation. An expert surveyor did not perform the survey; Mr. Guzman simply asked his customers whether they would begin cashing their checks at Check Cashing R Us. There is no record of how many people were surveyed or what their responses entailed. Applicant requests that the evidence not be used to determine whether Check Cashing R Us would create a negative financial impact to other businesses in the community due to the informal nature of Mr. Guzman's survey.

#### **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(c) and (d) requires as follows:

(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.

(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.

R.I. Gen. Laws § 19-14-12(a) also provides the statutory authority for financial institution's branch offices:

(a) Additional places of business may be maintained under the same license upon written application to the director or the director's designee for the establishment of an additional branch office . . . if he or she shall find that allowing the licensee to engage in business in the additional branch location will promote the convenience and advantage of the community in which the licensee desires to conduct his or her business, the director or director's designee shall issue and deliver a branch certificate, signed by the director or director's designee which shall be authority for the operation of the business under the license at the branch location.

Thus, under the statute, if the application will not promote the need and the convenience and advantage of the community, the application may be denied. The Department must also evaluate the effect that a new check casher would have on the financial stability of other check cashing businesses already serving the community.

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.

Section (g) of *Banking Regulation 98-14.4 Check Cashing* states that the interpretation of "community" shall be as follows:

The Director, in reviewing an application for license to cash checks shall consider the proposed licensee's community, as required by R.I. Gen. Laws § 19-14.4-1, to include the community as proposed by the applicant in its application 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 existing business, has a need for the Applicant's check cashing service.

The need, convenience, and advantage of the community is also required to be analyzed within the context of the "community" as defined in said regulation which relates to an applicant's proposed community which in no event shall be less than one (1) mile from the proposed location. Therefore, if an applicant proposes that its community is only the area within one-half mile of its proposed location, the regulation states that the community cannot be less than one (1) mile from a proposed location. Thus, it is necessary to review the community as described in the Application as well as a one (1) mile geographic radius.

It is necessary to analyze the facts presented in the Application and determine whether the Applicant's specific context meets the criteria in R.I. Gen. Laws § 19-14.4-2(c) and (d), R.I. Gen. Laws § 19-14-12 and R.I. Gen. Laws § 19-14.4-3.

The statute requires that the Department consider an applicant's financial impact on competing businesses. It does not mandate that the applicants themselves provide that

their entry into the market would not be harmful to other check cashing businesses. The Applicant is not required to prove a negative.

The Applicant argues that it his business offers a more affordable means to obtain money orders and cash checks. Applicant states that this community has a need for a business to compete against the high fees charged by competing check cashing businesses. Check Cashing R Us would force all check cashers to offer their services at a more competitive price. Applicant also argues that it would be in the State's interest to create another licensed check casher to compete against the illegal check cashers.

Applicant further argues that Mr. Guzman's evidence showing financial hardship to other check cashing businesses is flawed. Counsel for the Applicant raised an issue with the survey's foundational basis. Based on his testimony, Mr. Guzman had performed the survey with roughly fifty (50) to one-hundred (100) of his customers within about one month's time. Mr. Guzman alleges that 50%-60% of the customers stated that they would choose Check Cashing R Us instead of Xtreme Computers. However, there is no record of the survey. Applicant questions the validity of the survey because an expert surveyor did not perform it, and because the survey's method is unreliable and undocumented.

## **VI. FINDINGS OF FACT**

1. The Division of Banking received the Application on or about March 8, 2011.
2. The Respondent published a notice of the Application in the *Providence Journal* on or about March 11, 2011, and on April 11, 2011.
3. The Department received the above-listed written objections.

4. On January 5, 2012, the Director of the Department issued an order assigning the undersigned as Hearing Officer.

5. A hearing was held on February 6, 2012.

## **VII. CONCLUSIONS OF LAW**

1. R.I. Gen. Laws § 19-14-12 requires an individual or entity to obtain a check-cashing branch office 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. “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.*

5. The sole party who appeared at hearing to object to the granting of this application failed to provide sufficient, verifiable proof that the granting of the application would have a significant negative effect on the financial stability of his and other check

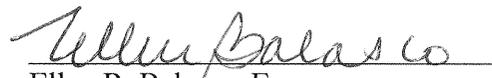
cashing businesses serving this community.

6. The Applicant has established that the granting of its application for an additional branch office will promote the convenience and advantage of the community.

**VIII. RECOMMENDATION**

Based on the foregoing, the undersigned Hearing Officer respectfully recommends that the Application be granted.

Dated: April 10, 2012

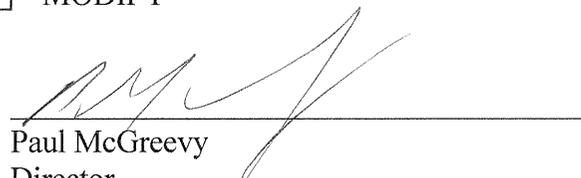
  
Ellen R. Balasco, Esq.  
Hearing Officer

**ORDER**

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

- ADOPT
- REJECT
- MODIFY

Dated: 11 April 2012

  
Paul McGreevy  
Director

NOTICE OF APPELLATE RIGHTS

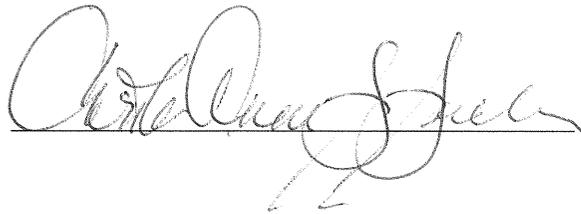
THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS 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 12<sup>th</sup> day of April, 2012 a copy of the above Decision was sent by first class mail to:

Robert D. Goldberg, Esq. at 226 Cottage Street, P. O. Box 557, Pawtucket, RI 02862,  
Gregory Costantino, Check Cashing R Us, 1300 Broad Street, Providence, RI 02903 and to  
Domingo Guzman, Xtreme Computers, Inc. 914 Lonsdale Ave., Pawtucket, RI 02863  
and by electronic-delivery to the following parties at the Department of Business Regulation:

Joseph Torti, Deputy Director  
Neena Sinha Savage, Esquire

A handwritten signature in cursive script, appearing to read "Joseph Torti", written over a horizontal line.