

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RI 02920**

IN THE MATTER OF:

**Continental Exchange Solutions, Inc.
d/b/a RIA Financial Services,**

Applicant.

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DBR No. 10-B-0059

DECISION

I. INTRODUCTION

The above-entitled matter came before the Department of Business Regulation (“Department”) on the application (“Application”)¹ of Continental Exchange Solutions, Inc. d/b/a RIA Financial Services (“Applicant”) for a license to cash checks received by the Department on September 2, 2009. An Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer (“Notice of Hearing”) was issued on September 29, 2010 notifying 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 September 1, 2009, the Respondent submitted an application for a main office to be located at 10 Academy Avenue, Providence, RI and submitted on September 2, 2009 an application for a branch office at 1106 Broad Street, Providence, RI.²

¹ 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).

² The Notice of Hearing erroneously stated the address is 106 Broad Street and erroneously states the Application was filed in 2010 rather than 2009. The correct address was stipulated to at hearing.

Pursuant to R.I. Gen. Laws § 19-14.4-2, a Notice of the Application for both applications was published in the *Providence Journal* on April 14, 2010.

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 October 22, 2010 with all briefs being filed by January 14, 2011.³ 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 § 19-14.4-1 *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 Application should be granted pursuant to R.I. Gen. Laws § 19-14.4-2.

³ The Applicant requested that the hearing officer provide notification of her recommendation prior to the submission of the recommended decision to the Department Director. There is no basis in the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 *et seq.*, for such a request. (R.I. Gen. Laws § 42-35-11 refers to when a majority of officials making a decision have not heard the case or read the record).

IV. MATERIAL FACTS AND TESTIMONY

As a result of the notice, certain written objections⁴ were received by the Department (See Department's Exhibit One (1) (Application)) as follows:

1. Dan Rocco Baldelli, President of ABAL Check Cashing, Inc., located at 100 Bernon Street, Woonsocket, RI objected to granting the license because the number of check cashers in the State has quadrupled in the last five (5) years and also objected to out-of-state companies opening up businesses in State and taking the profits out-of-State.

2. By counsel Anthony's Check Cashing, Inc., located at 219 Manton Avenue, Providence, RI ("Anthony's") objected on the grounds that there is no need for another check cashing business in the community to be served by the Applicant and granting the license would adversely affect the financial stability of other cash checking businesses serving the community including the objector. Anthony's argued that there were several licensed check cashers within one (1) and two (2) miles of the Proposed Location as well other financial institutions so that a new check cashing business would harm the financial stability of Anthony's and other check cashers.

3. Luis Aponte, local city councilor objected on the basis of no need in the community. See below.

4. By counsel, Check Cashing R Us located 1300 Broad Street, Providence, RI ("R Us") objected on the basis that another nearby check cashing business would harm it financially and oversaturate the area.

5. Ocean State Check located at 52 River Avenue, Providence, RI objected in that it is located less than a mile from the Proposed Location and because the use of checks has declined but more than 20 check cashers have been licensed in Providence in

⁴ Written objections are allowed pursuant to R.I. Gen. Laws § 19-14.4-2.

the last three (3) years. (The Parties agreed this business had not opened at time of hearing. See below).

6. The Rhode Island Association of Financial Service Centers objected but later withdrew its objection by email to the Department.

At hearing, Ben Carillo (“Carillo”) testified on behalf of the Applicant. He testified that the Applicant is currently located at the Proposed Location and has been opened since 2004 providing services such as electronic fund transfers⁵ and phone cards. He testified that the Applicant would like to provide check cashing in order to offer complete services to its customers and to work within the community. He testified that the Applicant will provide competition and there is a demand for a check cashing service. See Respondent’s Exhibit One (1) (Applicant’s statistics regarding its current customers, services utilized, and predictions of use). He testified that the Applicant would provide the same pricing as its competitor and offer promotional pricing.

Luis Aponte (“Aponte”), City Councilor, testified against the Application. (He also filed a written objection, see above and see Application). He testified that he represents the city district in which the Proposed Location is located. He testified that he does not object to the services the Applicant currently provides. He testified that there is a traditional bank within one (1) mile which can provide check cashing services and there is also another check cashing business within one (1) mile of the Proposed Location and a new check cashing business will negatively impact that business. He testified that there has been much disinvestment on Broad Street and he has been working on bringing the area back so there is no need for another check cashing business. He testified that he has

⁵ The Applicant holds the appropriate licenses for the money transfers and as a seller of checks under R.I. Gen. Laws § 19-14-2.

been a councilor for 12 years and none of his constituents have ever requested a check cashing business.

Greg Constantino (“Constantino”), owner of R Us, testified against the Application. He testified that his company obtained its license in 2009. It is .4 miles from the Proposed Location. (See maps). He testified that he was the landlord for another check cashing business and when it went out of business, he renovated the business and invested \$100,000. At the time of the hearing, he testified that he had been opened for three (3) weeks and has two (2) employees but was not yet at capacity. He testified that his company offers the same services as the Applicant for telephone top-ups and money transfers. He testified that some of the Applicant’s proposed fees in Respondent’s Exhibit One (1) are actually different than his company’s fees in that his fees are lower than those listed for some of the services and are the same for others. He testified his store is a one-stop store and serves the same community as the Applicant and his employees are from the neighborhood. He testified that there is another check cashing business .8 miles away from the Proposed Location (however, the parties all agreed that that location had received a license but had not opened).

V. DISCUSSION

A. Arguments

R Us argued that its location and the Proposed Location are .4 miles apart and are in the same City Council, State Senate, and Representative district so that the Applicant would negatively impact R Us financially.

The Applicant argued that it will serve the needs of the community in that there is only one (1) other operating licensed check casher within one (1) mile of the Proposed

Location. The Applicant argued that since there is only one (1) check casher's within one (1) mile, the area is not saturated with check cashers which shows there is a need. The Applicant also relied on a survey of its customers showing that they would use check cashing services.⁶ The Applicant further argued that because there is only one (1) check casher in the community as defined in Banking Regulation 98-14.4 (see below), there will be a lack of choice and competition that will lead to a monopoly. The Applicant also argued that its check cashing services will be offered as an ancillary service to its current business of money transfers, bill payments, and prepaid processing services so it will not attempt to take away business from other licensed check cashers but to service its existing customers.

The Applicant argues that Aponte's testimony should be discounted as he did not know the extent of the check cashing businesses in the area and while he may want to attract banks, the General Assembly has found there is a need for check cashing businesses. In addition, the Applicant argues that while no one may have told Aponte of a need for a check cashing business that could be due to other factors such as unfamiliarity with the electoral process. The Applicant further argues that Aponte did not object to R Us' application (and as far as is known as no hearing was held on R Us' application) so presumably he thought there was a need for that business.

The Applicant argued that R Us had only been in business for three (3) weeks and did not describe its ability to service Spanish speaking customers. The Applicant argued that it provided evidence that its customers were mostly first generation Spanish speakers. Furthermore, it argued that R Us did not provide any evidence of number of

⁶ This survey was attached to the Applicant's brief but was not submitted at hearing and was actually taken in January, 2011 *after* the hearing and *after* the record had closed (except for briefs). Thus, it is not part of the record and is irrelevant.

checks cashed or financial documents showing potential harm. The Applicant argues that R Us is an agent for these services so cannot set its own prices unlike the Applicant which seeks to offer check cashing as “ancillary to its existing services.” (brief, p. 8).

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.

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. The criteria that need to be reviewed under the statute, “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. However, 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”, (sic) “fitting”, (sic) 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.*, 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*, it stated that “‘need’ is a relative term” and that “public convenience and necessity” has no well defined meaning.” *Domestic Safe Deposit Co.*, 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.

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* (7th 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.⁷

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) and R.I. Gen. Laws § 19-14.4-3 (compliance with the regulation). I will discuss the Applicant's arguments.

i. Considerations of Need

a. Monopoly

The Applicant argues there is only one (1) other operating check cashing business within one (1) mile of the Proposed Location and lack of competition will eventually lead to a monopoly which is not the intent of the statutory scheme. It should be noted that while one of the dangers of a monopoly is that a monopoly can set any price for services/products, there is a statutory limit on what fees can be charged for cashing checks. See R.I. Gen. Laws § 19-14.4-4. Thus, the argument is not so much to prevent a monopoly (which without a statutory limit could presumably charge much higher fees) but to promote competition. However, the Department has previously discussed that while competition would supposedly lower prices for consumers and encourage better service, it is not necessarily a persuasive argument. Additional competition, *per se*, should not factor strongly into this analysis unless there is a need to prevent monopolistic conditions. See *Eastern Specialty Finance Inc. d/b/a Check n' Go*, DBR No.: 06-B-099 (9/25/2006). There were no allegations at hearing that such monopolistic conditions exist in the community so there is no need for "competitive stimulation" or "anti-monopoly

⁷ The Applicant argued that since Route 95 bisects Broad Street, there isn't a one (1) mile community. However, one (1) mile is the community to be considered under said Regulation.

prophylaxis.” *Domestic Safe*, at 334. See also *Eastern Specialty*. In fact, the evidence at hearing was that while there might be some promotional rates offered by the Applicant, it would charge the same as R Us. Constantino testified that R Us’ fees were lower than the Applicant believed. Thus, the evidence is that the Applicant’s fees would be either the same or higher than R Us.

b. Aponte’s Testimony

The Applicant argued that Aponte’s testimony should be discounted. However, the Department has previously accepted the testimony of local elected officials for establishing the need for a check cashing business. In *In the Matter of Johanny Urbaz, d/b/a Stop and Check Cash* (9/12/97), the Department relied on an unverified petition of 475 people, the support of two (2) elected officials, and no check cashers within two (2) miles,⁸ to find that there was a need for a check cashing business. In *In the Matter of Danday, Inc.* (5/9/97), the Department relied on the support of two (2) local officials, an unverified petition of 75 people, and that there was only one (1) other licensed check casher about one (1) mile from the applicant to find there was a need for a check cashing business. In *In the Matter of Ocean State Check Express, Inc.* (7/1/98), the Department relied on the support of two (2) elected officials from Providence, letters from seventeen (17) area business people, an unverified petition of support from 454 members of the community, and the nearest check casher being 9/10 of a mile, to find a need for a check cashing business.

The Applicant argues that Aponte’s testimony should be discounted because he disagrees with the General Assembly which has found “that check cashing businesses provide important and vital services to Rhode Island citizens, that the number of check

⁸ At that time, the regulation established two (2) miles as the radius for community.

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.” (R.I. Gen. Laws § 19-14.4-2). However, the law actually states that the General Assembly supports check cashing businesses *but* they should be limited based on the needs of the communities they serve and the public interest is served by ensuring the financial stability of such businesses. Thus, Aponte’s testimony as to the needs of the community he serves is clearly relevant as the General Assembly does not support the licensing of check cashers that do not serve the needs of their communities.

Eastern Specialty addressed this same issue of community.⁹ The *Eastern Specialty* applicant did not have the support of the community but rather there was testimony from the community against the application. *Eastern Specialty* found that while the question of allowing the licensing of certain types of services is a policy judgment not made by the Department, the issue of whether there is a community need is best left to the actual community. In *Eastern Specialty*, community members testified there was no need and no demand and opposed the application. The same scenario is presented in this matter. The City Councilor, on behalf of his district where the Proposed Location is located, testified that there is no need for another check cashing business because there is already a check cashing business in the community. The Applicant speculates as to why Aponte’s constituents may not have raised the issue with him but the Applicant did not bring in any evidence supporting the need.

⁹ *Eastern Specialty Finance* involved an applicant for a pay-day loan licensing but the statutory mandates of a fact finding hearing on community need is the same.

It is clear that the Applicant has a successful business for its current products and services and it argues that those customers will also use a check cashing service but that does not necessarily translate into evidence that the community has a need for another check cashing business.¹⁰ Need in the statutory context does not mean a service that someone might use but rather need is a requirement or lack of something important. There is no evidence that the Applicant's lack of licensing is important for the community or its licensing is a requirement for the community (especially as the community already is being serviced by a check casher).

The Applicant disagrees with the Councilor's testimony. However, the Department has previously accepted local officials' testimony and support for check cashing applicants to find there is a need in a community for such a service. There is no reason to now discount such testimony from a local elected official from the actual district of the Proposed Location.

Based on the Department's previous decisions and testimony at hearing, the local official's testimony and the fact that there is a check cashing business in the community, there is no need for another licensed check casher's in the community.

¹⁰ As an aside, the Applicant argues that it would like to offer check cashing as an "ancillary" service to its other products and as a "service" to its customers. While the Applicant might want to offer the check cashing service and believe there is a need to offer to enhance the services it offers to the public by including check cashing, that belief does not necessarily mean there is a community need for the service. However, the Applicant is able to cash checks if the business is incidental to its retail business.

R.I. Gen. Laws § 19-14.4-1 provides in part as follows:

Exemptions from licensing. – No license to cash checks shall be required of any:

(3) Persons engaged in the business of cashing checks where that business is incidental to the person's retail sale of goods or services and the person charges not more than fifty cents (\$.50) per check cashed.

This decision is not determining whether such a service would be incidental to the Applicant's business but merely is pointing out that the statute allows for check cashing when it is ancillary to a business' services.

ii. Considerations of Financial Impact

The statute only 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. See *Eastern Specialty*. The Applicant argues it will not negatively impact R Us since it will provide services to its existing customers. R Us argued that it is a new business and its testimony was that it is not at capacity and it would be effected by a nearby competition. In its brief, the Applicant argued that its market is different from R Us since R Us does not seem to be targeting Spanish speakers as its customers which is the Applicant's customer base (as was presented at hearing). However, the Applicant relied on evidence not introduced at hearing to argue that R Us had a non-Spanish speaking teller. (page 7 of brief). The Applicant cannot rely on unsubstantiated evidence to argue that R Us is not targeting its same customers. There was no evidence introduced at hearing that the Applicant's customers would be different from R Us' customers. Under said regulation, the one mile radius is assumed to be the community.

In *In the Matter of: Prime Drug Inc.*, DBR No. 09-B-0240 (2/19/10) the Department found that a drug store that operated within one (1) mile of a financial services' check cashing business would serve the needs and the community and not negatively impact the existing check cashing business because the drug store would be servicing its existing customers for the drug store. However, in this matter, there is no evidence distinguishing the customers for the two (2) similar businesses. Nonetheless, the evidence of financial impact is speculative and moot with a finding of no need.

VI. FINDINGS OF FACT

1. The Department received the Application on September 2, 2009.
2. The Respondent published a notice of the Application in the *Providence Journal* on April 14, 2010.
3. The Department received the above-listed written objections.
4. On September 29, 2010, the Director of the Department issued an order assigning the undersigned as Hearing Officer and scheduling an investigative hearing on October 22, 2010.
5. A hearing was held on October 22, 2010 and a briefing schedule established. All briefs were filed by January 14, 2011.
6. R Us, a licensed check casher, is located approximately .4 miles from the Applicant.
7. The local City Councilor testified against the Application on the basis there was no need for another check cashing license in the community.

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*, 7th 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*.

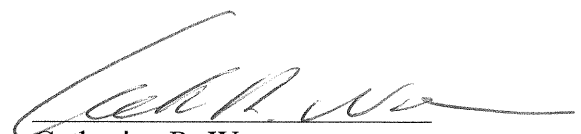
8. “The needs of the community” and the “public convenience and advantage” may vary depending on the community the proposed business is to serve.

9. The Applicant did not establish that there was a need for the check-cashing license.

VIII. RECOMMENDATION

Based on the forgoing, the undersigned Hearing Officer respectfully recommends that the Application be denied.

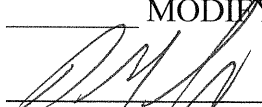
Dated: 3/4/11


Catherine R. Warren
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



Paul McGreevy
Director

Dated: 16th May 2011

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

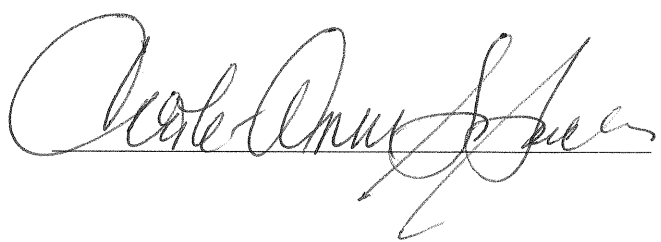
I hereby certify that on the 18th day of May, 2011 a copy of the above Decision was sent by first class mail to:

Edward Pare, Esquire
Brown Rudnick
10 Memorial Boulevard
Providence, RI 02903

John J. DeSimone, Esquire
DeSimone & DeSimone
735 Smith Street
Providence, RI 02908

and by electronic-delivery to:

Joseph Torti, Deputy Director
Neena Sinha Savage, Esquire
Department of Business Regulation
Pastore Complex
1511 Pontiac Avenue
Cranston, RI



Neena Sinha Savage