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JUL 21 2016

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

South Carolina Department of Consumer Affairs,)
)
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Petitioner,)
)
)
vs.)
)
)
A Bargain Center, LLC,)
)
)
Respondent.)
_____)

Docket No.: 16-ALJ-30-0038-CC

FINAL DECISION AND ORDER

RECEIVED

OCT 03 2016

SC Court of Appeals

APPEARANCES: For the Petitioner: Christine E. Thompson, Esquire and James C. Copeland, Esquire
For the Respondent: S. Jahue Moore, Esquire

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (“the ALC” or “the Court”) for a final decision and order following a contested case hearing requested by the South Carolina Department of Consumer Affairs (“Petitioner” or “the Department”). On September 10, 2015, the Department, accompanied by the Lexington County Sheriff’s Office and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”), conducted an on-site investigation of A Bargain Center, LLC (“Respondent”). As a result, the Department determined that Respondent was in violation of the S.C. Pawnbroker Act (“the Act”) and the related regulation. See S.C. Code Ann. § 40-39-10 et seq. (2011) and S.C. Code of Ann. Regs. 28-200 (2011).

On October 7, 2015, the Department issued a letter to Respondent formally outlining the alleged violations. The Department mailed a second letter to Respondent’s counsel on November 30, 2015 setting forth similar information. On February 5, 2016, the Department filed a Request for a Contested Case Hearing with the ALC. Following notice to the parties, a hearing on the matter was held on May 17, 2016, at the South Carolina Administrative Law Court in Columbia, South Carolina.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passing upon their credibility, and taking into consideration the burden of persuasion by the parties, the

Court makes the following findings of fact by a preponderance of the evidence:

1. A Bargain Center, LLC (“the business” or “the store”) is registered with the South Carolina Secretary of State’s Office as a domestic limited liability company. Walter R. Cassidy, the owner and registered agent, established the business as a thrift store three (3) years ago. The store’s inventory varies, but generally, the store carries clothing, tools, small appliances, electronics, guns and ammunition. A Bargain Center, LLC is located in Lexington County at 225 South Monmouth Avenue, Swansea, South Carolina 29160.

2. Kevin Blake, a property crimes detective for the Lexington County Sheriff’s Office, testified that he first encountered A Bargain Center, LLC in August of 2015 while investigating an unrelated burglary. Specifically, Detective Blake went to the store to view property that he believed may have been stolen from the home of a local resident. He identified the victim’s property at the store and asked for any paperwork the store may have that could assist in identifying the person who sold the property to the store. When reviewing the paperwork, Detective Blake came across documents which he believed reflected pawn activity. He contacted the Department with his findings and was later present during the Department’s investigation of Respondent’s business.

3. Ken Middlebrooks and Joni Green, lead investigators for the Department, testified that they conducted the Department’s investigation of A Bargain Center, LLC on September 10, 2015. The investigation was initiated in response to information provided to the Department by the Lexington County Sheriff’s Office. Deputies from the Lexington County Sheriff’s Office and a field agent from ATF were also present during the investigation. As part of the investigation, business records were collected and pictures were taken of merchandise throughout the store. Investigators Middlebrooks and Green testified that they identified nineteen (19) transactions where Respondent loaned money to customers based on the security of pledged goods or where Respondent purchased items from customers on the condition that the items be redeemed by the customers for a certain price within a specified period of time. They also determined these nineteen (19) transactions constituted illegal pawn activity and informed Mr. Cassidy that the store must cease and desist such transactions immediately. Mr. Cassidy was given a copy of the S.C. Pawnbroker Act and was also informed that the store may be subject to a fine.

4. Walter R. Cassidy testified that Respondent does not lend money to customers based on the security of personal property. However, he stated the store has purchased property

from customers with the promise that the customer could buy the property back. Mr. Cassidy described this type of transaction as a "layaway deal" or "buy back" plan. He explained that under the "buy back" plan, the store purchased items from customers outright, usually at a price that was half the value of an item at which point the item belonged to the store. To repurchase the item, the customer was required to pay the amount the customer received plus a 30-50% mark-up. Customers were given fifteen (15) days to repurchase their items or they could pay a fifteen dollar (\$15) fee to extend the repurchase deadline. If customers failed to repurchase items within the specified time, the items were removed from the area designated for "buy back" plan items and placed on the floor to be sold. Mr. Cassidy testified that he did not know the store's "buy back" transactions could be considered loans or pawn activity, and he immediately ceased all such activity the day the Department informed him that these type transactions were illegal.

5. Brandie Burto, manager of the A Bargain Center, LLC, provided further testimony describing the "buy back" plan. According to Ms. Burto, when items were placed on "buy back," customers were given a ticket with the item's description, the amount paid to the customer, the amount the customer must pay to repurchase the item, and the number of days the customer had to repurchase the item. The store also maintained a copy of the ticket. If a customer wanted to extend the repurchase deadline, the customer paid a fifteen dollar (\$15) extension fee, and Ms. Burto made a hand-written notation on the store's copy of the ticket showing the amount paid and the new repurchase deadline. Ms. Burto also testified that she did not know the store was doing anything illegal by providing this service to their customers. Interest information was not shown on the tickets because Mr. Cassidy and Ms. Burto did not perceive any of the transactions as involving interest charges.

7. Michael Korzen, a frequent customer of the store, testified concerning his transactions with Respondent and his understanding of the store's "buy back" process. Mr. Korzen explained that in his experience, the store allowed customers to 1) purchase items from the store, 2) purchase items from the store under a layaway plan, 3) sell items to the store outright, and 4) sell items to the store under the "buy back" policy. He further stated that he sold and repurchased the same items from the store multiple times after paying the fifteen dollar (\$15) extension fee, and sometimes was forced to forfeit his items when he could not repurchase them before the deadline. Mr. Korzen testified that the store's "buy back" transactions were similar to transactions he made at pawn shops, however the pawn shops had lower fees and gave customers a longer

period of time to redeem their property.

LAW

Based upon the foregoing Findings of Fact, the Court concludes the following as a matter of law:

Jurisdiction over this case is vested with the ALC pursuant to sections 1-23-310 et seq. of the South Carolina Code (Supp. 2015), and section 1-23-600(B) of the South Carolina Code (Supp. 2015).

The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Furthermore, a trial judge who observes a witness is in the best position to judge the witness' demeanor and veracity and to evaluate the credibility of his testimony. See, e.g., Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990). The standard of proof in administrative proceedings is a preponderance of the evidence unless otherwise specified. Anonymous v. State Bd. of Med. Exam'rs, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1988).

Section 40-39-10 of the South Carolina Code defines "pawnbroker" as "**any person** engaged in the business of lending money on the security of pledged goods, or engaged in the business of purchasing tangible personal property on condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time." S.C. Code Ann. § 40-39-10(2) (2011) (emphasis added). Additionally, section 40-39-20 states that "no person may carry on the business of a pawnbroker in any location in this State without first having obtained a Certificate of Authority for each location from the Department of Consumer Affairs." S.C. Code Ann. § 40-39-20 (2011). Pursuant to section 40-39-150, if an action of a pawnbroker is in violation of chapter 39 of the Act or of a law or regulation of the State, the Department may file a request for a contested case hearing with the ALC. S.C. Code Ann. § 40-39-150(a) (2011); see also, S.C. Code Ann. § 40-39-20 (2011) ("[a]ll pawnbrokers conducting business in this State are under the authority of and regulation by the Department of Consumer Affairs ..."). An administrative law judge is authorized to impose administrative fines "upon persons violating any of the provisions of [the S.C. Pawnbroker Act]." S.C. Code § 40-39-150(b) (2011).

Respondent initially argues that the ALC lacks jurisdiction to hear this matter. The crux of Respondent's argument is that because Respondent does not possess a Certificate of Authority

to engage in the pawnbroker business, the Department has no regulatory authority over Respondent's activities and has no authority to request a contested hearing before the ALC. I find this argument meritless. Respondent's owner, store manager, and a repeat customer all testified that Respondent conducted transactions with customers that fall squarely within the definition of "pawnbroker." S.C. Code Ann. § 40-39-10(2) (2011). Investigators Middlebrooks and Green confirmed nineteen (19) instances where Respondent either loaned money secured by pledged goods or purchased tangible personal property from customers on the condition that the property could be redeemed for a fixed price within a specified timeframe.

Additionally, Respondent concedes that it never applied for or received a Certificate of Authority from the Department to operate as a pawnbroker in this State. The Department requests that this Court order Respondent to cease and desist operating as a pawnbroker, and that Respondent be assessed monetary fines totaling \$75,750. In essence, the Department alleges Respondent committed one hundred one (101) violations of the S.C. Pawnbroker Act related to the nineteen (19) transactions identified by Investigators Middlebrooks and Green, and is requesting that Respondent be fined seven hundred and fifty dollars (\$750) for each violation. See S.C. Code Ann. § 40-39-150(b) (2011). The Department also requests that Respondent be ordered to pay restitution to the affected consumers.

CONCLUSION

Based on the evidence presented in this matter, I find that Respondent operated as a pawnbroker without first obtaining a Certificate of Authority from the Department of Consumer Affairs. I also find that Respondent's actions constitute a violation of the S.C. Pawnbroker Act. Respondent's assertion that the transactions identified by Investigators Middlebrooks and Green were not pawn transactions, but rather some form of "buy-back" plan or "layaway deal" is unpersuasive.

While this Court recognizes the Department's authority to regulate pawnbroker activity, the determination of an appropriate fine for Respondent's violations is within the province of the ALC. See S.C. Code Ann. § 40-39-150(b) (2011) ("[t]he administrative law judge ... may impose administrative fines ... upon persons violating any of the provisions of this chapter..."). The Department requests that Respondent be fined the maximum amount for each of the one hundred one (101) violations it found; however, I find that while Respondent's actions warrant the imposition of a fine, a lower amount is appropriate under the circumstances of this case. Mr.

Cassidy and Ms. Burto testified that they were not aware that their actions violated the Act, and stopped accepting property under the "buy back" or "layaway plans" immediately after being contacted by the Department. In addition, the Department's investigators testified that Mr. Cassidy and Ms. Burto were cooperative in complying with their requests for documents and access to the building, and as far as they could determine, Respondent has not entered into any "buy back" or "layaway" agreements since having contact with the Department.

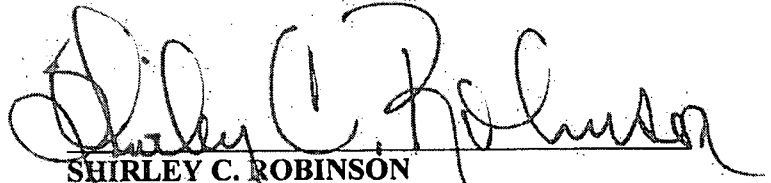
With respect to the Department's request that Respondent be ordered to pay restitution to its affected customers, I conclude that restitution is not appropriate given the facts in this case.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED** that Respondent shall immediately **cease and desist** operating as a pawnbroker, until such time as Respondent receives a valid Certificate of Authority from the Department to operate as a pawnbroker.

IT IS FURTHER ORDERED that Respondent shall pay an administrative fine to the Department in the amount of two thousand five hundred dollars (\$2,500) within thirty (30) days of the date of this order.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
South Carolina Administrative Law Judge

July 21, 2016
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served the order on the above entitled party or parties in accordance by depositing a copy thereof, in the United States mail, postage paid, or by the Emergency Mail Service addressed to the party(ies) or the attorney(s).

This 21 day of July, 2016
By: Jacob A. Anderson
Judicial Law Clerk

finance charges and the S.C. Pawnbroker Act requires that pawnbrokers comply with TILA. S.C. Code Ann. § 40-39-130 (2011). This argument was raised during the contested hearing and nothing in the Department's motion causes the Court to amend its finding that restitution is not appropriate in this case.

The Department also requests that this Court reconsider its finding that Mr. Cassidy and Ms. Burdo did not perceive any of the pawn transactions as involving interest charges. The Department points out that included on ticket #50, within Petitioner's Exhibit 1, is a handwritten note which indicates that interest was collected from a customer. The notation on ticket #50 reads that the customer "must pay 45.00 full interest to exte[n]d longer." Similar language is found on Ms. Burdo's Voluntary Statement, Petitioner's Exhibit 2, but does not appear on any other document in the Record. Ms. Burdo was questioned at the hearing regarding her use of the word "interest" on that "buy back" ticket and in her Voluntary Statement. She clearly explained that she should not have used the term "interest" because the store did not charge interest to customers in order to extend the time the customer had to reclaim an item. Mr. Cassidy, the store's owner, was also asked about interest during the contested case hearing. He stated that at no time did he charge customers interest fees. Interest charges were thoroughly discussed during hearing and the legal arguments on interest were considered by this Court. The arguments in the Department's motion do not cause the Court to change its finding concerning Mr. Cassidy's and Ms. Burdo's testimony regarding interest fees.

In addition, the Department argues that this Court incorrectly found that "customers were given fifteen (15) days to repurchase their items or they could pay a \$15 fee to extend the repurchase deadline." The Department asserts that the amount Respondent charged to its customers to extend the repurchase deadline varied and was not a standard \$15 fee. In fact, ticket #12 of Petitioner's Exhibit 1 reflects that a customer extended a repurchase deadline three times and was charged different amounts each time the deadline was extended. Therefore, the Court amends its finding, in so much as it indicated that Respondent charged its customers a set amount of \$15 to extend the repurchase deadline.

Finally, the Department argues that this Court erred in assessing an administrative fine in the amount of two thousand five hundred dollars (\$2,500). In its motion, the Department requests a monetary penalty that would admonish Respondent for its actions and deter others from behaving similarly. Specifically, an amount not less than ten thousand five hundred dollars (\$10,500) is

sought. Moreover, the Department argues that this Court's reasoning behind the administrative fine is flawed because the Court relied upon Mr. Cassidy's and Ms. Burdo's testimony that "they were not aware that their actions violated the Act, and stopped accepting property under the 'buy back' or 'layaway plans' immediately after being contacted by the Department." The Department states that Respondent was informed on September 10, 2015 that it was engaging in illegal pawn activity and directed to cease and desist such activity immediately. According to the Department, evidence in the Record shows that Respondent engaged in a "layaway" deal on October 15, 2015.

In assessing the monetary penalty against Respondent, the Court considered the quantity and severity of the violations alleged by the Department. Mr. Cassidy also gave unrefuted testimony that his store's entire inventory is worth no more than \$8,000 - \$12,000, and the Department's investigators testified that Mr. Cassidy and Ms. Burdo were very cooperative during the investigation. Although the Department asserts that Respondent continued to engage in illegal pawn activity beyond the date the Department informed Respondent that it must cease and desist such activity, the Department has identified no evidence in the record to support this assertion. In sum, the Department has presented nothing to persuade this Court to change its ruling as to the appropriate penalty for Respondent's violations.

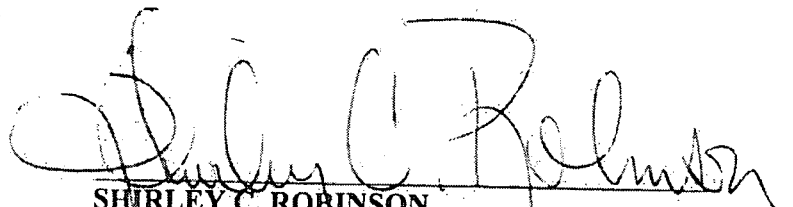
The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992) (citation omitted). A trial judge who observes a witness is in the best position to judge the witness' demeanor and veracity and to evaluate the credibility of his testimony. See, e.g., Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996) (citations omitted); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990) (citing Thompson v. Brunson, 283 S.C. 221, 321 S.E.2d 622 (Ct. App. 1984)). The standard of proof in a contested case is a preponderance of the evidence unless otherwise specified. S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2015); Anonymous v. State Bd. of Med. Exam'rs, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1988) (citation omitted). "A 'preponderance of the evidence' is evidence which convinces as to its truth." Gorecki v. Gorecki, 387 S.C. 626, 633, 693 S.E.2d 419 (Ct. App. 2010) (citing DuBose v. DuBose, 259 S.C. 418 424, 192 S.E.2d 329, 331 (1972)). Furthermore, because this Court hears a contested case *de novo* as the fact-finder, it is not bound by the Department's determination. See Engaging & Guarding Laurens County's Environment (EAGLE) v. S.C. Dept. of Health & Env'tl. Control, 407 S.C. 334, 344, 755 S.E.2d

444, 449 (2014) (citations omitted).

Having thoroughly considered the Department's motion and Respondent's response in opposition, the Court finds that its Final Decision and Order issued July 21, 2016 shall be amended in so much as it suggests that Respondent charged its customers a set fee of fifteen dollars (\$15) each time a customer requested that the repurchase deadline be extended. The findings of this Court shall be amended to reflect that the extension fees varied. All other arguments raised in the Department's motion were addressed in the Final Decision and Order, and the Department has brought to light nothing that causes this Court to, in any other way, change its final decision in this matter.

THEREFORE, IT IS HEREBY ORDERED that the Department's Motion for Reconsideration is **GRANTED IN PART** and **DENIED IN PART**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
South Carolina Administrative Law Judge

September 1st, 2016
Columbia, South Carolina

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