THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2016-002063

South Carolina Department of Consumer Affairs, Appellant,

v.

A Bargain Center, LLC, Respondent.

REPLY BRIEF OF APPELLANT

Kelly H. Rainsford (S.C. Bar No. 15907)
James C. Copeland (S.C. Bar No. 100054)
Christine E. Thompson (S.C. Bar No. 101001)
Post Office Box 5757
Columbia, South Carolina 29250
(803) 734-4200
Attorneys for Appellant

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I. THE COMPLETE FAILURE OF RESPONDENT TO ABIDE BY THE LAW IS NOT A MERE TECHNICAL VIOLATION, THUS FULL ADJUSTMENTS ARE REQUIRED.

Respondent's Federal Truth in Lending Act ("TILA") violations were not a "technical" problem, as alleged by Respondent. (Resp. Brief p. 4). TILA is designed to assure delivery of meaningful disclosure of credit terms, so the consumer can shop for credit on an informed basis. Tuloka Affiliates, Inc. v. Moore, 275 S.C. 199, 203, 268 S.E.2d 293, 295 (1980); see also 15 U.S.C. § 1601(a) (2012). "The Act and regulations require that lenders clearly disclose loan terms to consumer borrowers and these disclosure requirements must be construed and applied in light of the congressional purpose of promoting the informed use of credit." General Motors Acceptance Corp. v. McMinn, 285 S.C. 67, 69, 328 S.E.2d 472, 474 (1985). Because TILA is a remedial act designed to protect consumers, courts construe its provisions liberally in favor of consumers. See McMinn, 285 S.C. at 69 (stating, "The disclosure requirements should be liberally construed to effectuate the congressional purpose of the Truth in Lending Act..."); Stafford v. Cross Country Bank, 262 F.Supp. 2d 776, 789 (W.D. Ky. 2003); Turner v. E-Z Check Cashing, Inc., 35 F. Supp. 2d 1042, 1047 (M.D. Tenn. 1999). The TILA violations committed by Respondent were severe and egregious because the "buy back" tickets issued by Respondent disclosed **none** of the credit terms required by TILA. (Pet. Exh. 1; Pet. Exh. 4; Transcript p. 40, lines 14–24; p. 160, line 13 – p. 163, line 24).

The South Carolina Department of Consumer Affairs ("Department") is perplexed by Respondent's argument that the complete failure to abide by the law constitutes, "clearly technical or non-substantive disclosure violations that do not adversely affect

information provided to the customer and have not mislead or otherwise deceived the customer." (Resp. Brief p. 8). In fact, the agreements contained no credit term disclosures to inform customers of the credit transaction, concealing annual percentage rates ("APR") as high as 1,200%, thereby misleading and deceiving every customer who pawned personal items at Respondent's store.

In cases where the APR or finance charge was inaccurately disclosed, the agency shall:

> require the creditor to make an adjustment to the account of the person to whom credit was extended, to assure that such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

15 U.S.C. § 1607(e)(1). The agency **shall require** an adjustment when it determines that a creditor's disclosure error resulted from "(A) a clear and consistent pattern or practice of violations, (B) gross negligence, or (C) a willful violation which was intended to mislead the person to whom the credit was extended." 15 U.S.C. § 1607(e)(2). In the present case, the "buy back" tickets entered into evidence as well as Ms. Burdo's testimony that Respondent entered into 50 to 150 pawn transactions each year proves Respondent's numerous disclosure errors resulted from "a clear and consistent pattern or practice of violations." 15 U.S.C. § 1607(e)(2)(A); (Pet. Exh. 1; Pet. Exh. 4; Burdo Statement; Transcript p. 62, line 3 – p. 63, line 15).

Based upon testimony and evidence presented, none of the "buy back" tickets contained an APR or any of the disclosure terms, required by TILA. (Pet. Exh. 1; Pet. Exh. 4; Transcript p. 40, lines 14–24; p. 160, line 13 – p. 163, line 24). As required by 15 U.S.C. § 1607(e)(1), the appropriate correlating adjustment is a return of all interest

collected from customers as well as all property forfeited by customers, or the monetary value of the forfeited property if Respondent no longer possesses the property.

II. IGNORACE OF THE LAW DOES NOT EXCUSE VIOLATIONS OF THE LAW.

Respondent repeatedly states that Mr. Cassidy (Respondent's owner) and Ms. Burdo (Respondent's employee) were unaware their actions violated the South Carolina Pawnbrokers Act ("Pawnbrokers Act"). However, "it is a well-settled maxim that ignorance of the law is no excuse." South Carolina Wildlife & Marine Resources Dep't v. Kunkle, 287 S.C. 177, 178, 336 S.E.2d 468, 469 (1985). In Kunkle, which involved a hunting license issued by a state agency, a hunter was charged with taking game fish illegally and fishing illegal traps. The hunter alleged he was unaware of the consequences of violating the statute, but the South Carolina Supreme Court found the hunter's claim that he did not know about the violations of the statute was without merit. Id. "In other words, innocence cannot be asserted of an action which violates existing law, and ignorance of the law will not excuse." Shevlin-Carpenter Co. v. Minnesota, 218 U.S. 57, 68, 30 S. Ct. 663, 666 (1910).

Further, the objective evidence in the record fails to support Respondent's assertions of ignorance. Respondent states witness Mr. Korzen – the very same witness Respondent's counsel called an "ignorant" man at the hearing – understood the transaction with Respondent, stating, "Mr. Korzen acknowledged he understood the transaction occurring [in] the Respondent's stores..." (Transcript p. 254, lines 24–25; Resp. Brief p. 6). If a so-called ignorant man understood the nature of the financial transactions taking place at Respondent's store, the Department questions how the

Respondent's owner and employee could possibly be so deceived by their own business model.

Moreover, the floor plan of Respondent's store was laid out exactly like a licensed pawnshop as testified to by Deputy Chief Investigator Green. (Transcript p. 217, lines 14–17; Pet. Exh. 8). Pawned items were separated from retail items, and the items were organized in the same way as a licensed pawnshop. (Transcript p. 216, line 24 – p. 217, line 4; p. 217, lines 5–13; Pet. Exh. 8). The "buy back" tickets were similar to pawn tickets found in a licensed pawnshop; however, the documents lacked the important disclosures, required by TILA, to inform consumers of the financial transaction. (Pet. Exh. 1; Pet. Exh. 4; Transcript p. 40, lines 14–24; p. 160, line 13 – p. 163, line 24). Regardless of Respondent's purported ignorance of the law, it remains true that such ignorance is no excuse for his flagrant violations. Kunkle, 287 S.C. at 178.

III. THE ADMINISTRATIVE FINE REQUESTED BY THE DEPARTMENT WAS NOT PUNITIVE IN NATURE, BUT A REASONABLE ASSESSMENT BASED ON SOUTH CAROLINA LAW.

Respondent alleges the fine requested by the Department would constitute punitive damages. (Resp. Brief p. 10). The fine assessed by the Administrative Law Court ("ALC") was an administrative fine, not an award of punitive damages. Respondent's allegation is without merit as the Department's request of an administrative fine in the amount of $10,500.00 is reasonable based on the facts of the case, and not punitive in nature.

The Pawnbrokers Act allows for an administrative fine of $750.00 for each violation of the Pawnbrokers Act. S.C. Code Ann. § 40-39-150(B) (2011). It was proven

at trial that Respondent committed one hundred and one (101) violations of the Pawnbrokers Act. (Pet. Exh. 1; Pet. Exh. 4; Brief; Order dated 7/21/16, p. 5). Thus, the request from the Department is far less than the maximum statutory penalty, and cannot be considered punitive. "We find the statutory penalties are set at 'such a low level, there is little basis for comparing it with any meaningful punitive damage award.'" James v. Horace Mann Ins. Co., 371 S.C. 187, 197, 638 S.E.2d 667, 672 (2006) (citing Collins Entm't. Corp. v. Coats & Coats Rental Amusement, 355 S.C. 125, 142, 584 S.E.2d 120, 129 (Ct. App. 2003)).

Respondent also alleges that the Department's administrative fine request would bankrupt Respondent. (Resp. Brief p. 10, 11). Respondent has introduced no evidence to support this claim at all. No evidence was entered into the record regarding Respondent's financial history. No evidence of Mr. Cassidy's net worth, business accounts, property, assets, investments, or even salary has been introduced by Respondent's counsel to prove that Respondent suffers from a precarious financial condition. Based upon the testimony of Mr. Cassidy, Respondent's owner, he owns multiple businesses, properties, helped establish a private school, and is considered to be a pillar of the community. (Transcript p. 44, line 24 – p. 45, line 6; p. 64, lines 13-20; p. 45, lines 17-25). This is hardly the profile of a man struggling to make ends meet. Thus, the lower court erred in assessing a negligible administrative fine, in reliance on a lack of Respondent's financial evidence.

CONCLUSION

The ALC erred in failing to order adjustments when the court correctly held that Respondent violated the Pawnbrokers Act by operating as a pawnbroker without first obtaining a Certificate of Authority from the Department. In reaching such a conclusion, the court should have ordered all monies received by Respondent in excess of the loan amount be returned to affected borrowers as required by the Pawnbrokers Act, TILA, and the respective regulations promulgated thereunder. The complete failure of Respondent to abide by the law is no mere technical violation, and full adjustments are required.

In regards to the administrative fine, ignorance of the law does not excuse violations of the law, and the ALC erred in assessing a negligible administrative fine in the amount of $2,500.00 against Respondent. In assessing such a negligible fine, the ALC failed to rely upon the record and abused its discretion. The Department's request of $10,500.00 was not punitive in nature, and should have been granted based on the evidence in the record. For the reasons set forth herein, this Court should reverse or modify the Orders of the ALC.

February 2, 2017

Kelly H. Rainsford (S.C. Bar No. 15907)
James C. Copeland (S.C. Bar No. 100054)
Christine E. Thompson (S.C. Bar No. 101001)
Post Office Box 5757
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PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal on Respondent, A Bargain Center, LLC, on February 2, 2017, by hand delivering a copy to their attorney of record, S. Jahue Moore, Esquire, Moore Taylor Law Firm, 1700 Sunset Boulevard, West Columbia, SC 29169.

February 2, 2017

Jennifer F. Daniels
Paralegal
2221 Devine Street, Suite 200
Post Office Box 5757
Columbia, South Carolina 29250
(803) 734-0047