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.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On October 7, 2015, the South Carolina Department of Consumer Affairs ("Department") issued a letter to A Bargain Center, LLC ("Respondent") notifying Respondent of alleged violations of the South Carolina Pawnbrokers Act ("Pawnbrokers Act"), S.C. Code Ann. §§ 40-39-10 to -160 (2011), and offering to resolve the matter if Respondent would cease and desist pawnbroker activity and pay a fine in the amount of $10,500.00. (R. pp. 321-323). On October 21, 2015, Respondent's attorney sent a letter to the Department indicating Respondent would cease and desist pawnbroker activity but would not pay a fine. (R. pp. 327-328). The Department responded in a letter dated November 30, 2015, stating Respondent would be required to pay a fine based on the number and severity of the violations. (R. pp. 324-326). Respondent's attorney reiterated in a letter dated December 22, 2015, that Respondent would not pay any fine to the Department. (R. p. 329).

On February 5, 2016, the Department filed a request for contested case hearing at the Administrative Law Court, where the case was assigned to the Honorable Shirley Robinson.[1] (R. pp. 11-22). The Department requested that the court order Respondent to cease and desist from engaging in pawnbroker activity, deliver business records for inspection, pay an administrative fine, and issue restitution for the affected consumers. (R. pp. 11-22). The court held a hearing on May 17, 2016, and issued a Final Decision and Order on July 21, 2016. In the Order, the court found Respondent operated as a pawnbroker without first obtaining a Certificate of Authority from the Department, violating the Pawnbrokers Act. (R. pp. 1-6). The court imposed a fine in the amount of $2,500.00 but concluded that restitution was not appropriate given the facts in this case. (R. pp. 1-6).

On August 1, 2016, the Department filed a motion requesting the court reconsider, alter, or amend its Final Decision and Order. (R. pp. 30-34). The Department requested the court issue an order requiring Respondent to: (1) refund all interest collected from customers as well as items forfeited by customers, or their monetary value if Respondent no longer possessed them; and (2) pay a fine of at least $10,500.00 based on the large number of violations, Respondent's continued illegal activity after being warned by the Department, and Respondent knowingly accepting interest payments in violation of state and federal law. (R. pp. 30-34). On August 8, 2016, Respondent's attorney provided the court with a response in opposition to the Department's motion for reconsideration.[2] (R. p. 330).

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[1] The law in effect at the time required the Administrator of the Department to file a request for contested case hearing at the Administrative Law Court rather than issue an Administrative Order. S.C. Code Ann. § 40-39-150(A) (2011).

[2] The Department was neither copied on nor served with this response and was unaware of its existence until the court issued its Order on the Department's Motion for Reconsideration.

On September 1, 2016, the court issued and the Department received an Order on the Department's Motion for Reconsideration modifying one of its findings regarding fees imposed by Respondent. (R. pp. 7-10). The court, however, denied the remainder of the arguments contained in the Department's motion and declined to adjust the fine amount or order restitution. (R. pp. 7-10). The Department timely served and filed its Notice of Appeal to this Court on October 3, 2016.

FACTS

The Department is responsible for administering and enforcing the South Carolina Pawnbrokers Act ("Pawnbrokers Act"), S.C. Code Ann. §§ 40-39-10 to -160 (2011). S.C. Code Ann. § 40-39-20 (2011). Respondent conducts business at 225 S. Monmouth Avenue, Swansea, S.C. 29160. (R. p. 77, lines 1-4). Respondent is not currently and has never been licensed by the Department to operate as a pawnbroker. (R. p. 76, lines 13-18).

In August 2015, the Lexington County Sheriff's Office provided the Department with evidence indicating Respondent may be in violation of the Pawnbrokers Act. (R. p. 316; p. 182, line 15-p. 183, line 14). On September 10, 2015, the Department, the Lexington County Sheriff's Office, and the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives conducted an onsite investigation of Respondent. (R. p. 316). During the onsite visit, the Department's investigators located an area that was segregated from the retail store and accessible only from behind the counter. (R. p. 248, line 7-p. 249, line 6; pp. 317-320). Deputy Chief Investigator Joni Green testified that the segregated area is very similar to a holding area she would see in a pawnshop. (R. p. 250, line 24–p. 251, line 4). In addition, Investigator Green testified that the organization of the segregated area, including the numbered shelves, resembled what she sees in pawnshops.

(R. p. 251, lines 5-13; pp. 317-320). Investigator Green testified that in her experience as an investigator of pawnshops, Respondent's store had a similar layout to that of a pawnshop. (R. p. 251, lines 14-17; pp. 317-220).

During the onsite visit, the Department identified twenty (20) transactions[3] in which Respondent purchased 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:

R. p.	Name	Transaction Date	Item	Price Paid	"Buy Back" Amount	Buy Back On or Before
307	Edmonds	7/16/2015	40 inch Flat Screen T.V.	75.00	112.50	7/31/2015
309	Addy	7/21/2015	Frigidaire A/C Window Unit	30.00	45.00	8/6/2015
308	Addy	7/29/2015	AC Gold	25.00	45.00	8/15/2015
311	Korzen	8/4/2015	Air Compressor	25.00	37.50	8/17/2015
306	Wanamaker	8/11/2015	2 S.S. rings & 1 10KT ring	20.00	30.00	8/26/2015
293	Archer	8/11/2015	Camcorder, DVD Player	45.00	67.50	8/26/2015
294	Hollomark	8/12/2015	*Missing*	40.00	60.00	8/26/2015
295	Davis	8/13/2015	14 KT Charm	70.00	105.00	8/30/2015
296	Hart	8/15/2015	Shop Vac	20.00	30.00	8/30/2015
297	Clark	8/17/2015	Level	20.00	30.00	9/1/2015
312	Korzen	8/18/2015	Olevia 32 inch T.V.	40.00	60.00	9/2/2015
298	Crum	8/21/2015	10 KT Ring	50.00	75.00	9/5/2015
299	Hart	8/22/2015	Weedeater	25.00	37.50	9/6/2015
300	Jones	8/24/2015	2- 5000 BTU Haier A/C	60.00	90.00	9/7/2015
301	Johnson	8/25/2015	2 Fishing Poles, Tackle	35.00	52.50	9/8/2015
302	Worley	8/26/2015	Laptop	*Illegible*	125.00	*Illegible*
303	Douglas	8/27/2015	Commercial Leaf Blower	40.00	60.00	9/12/2015

[3] In the Investigative Summary, Chief Investigator Middlebrooks referenced twenty-one (21) transactions. (R. p. 316). It was subsequently determined that one (1) of these transactions was a duplicate. Later, when investigators obtained an additional "buy back" agreement dated April 21, 2015, the total number of "buy back" transactions increased to twenty-one (21).

R. p.	Name	Transaction Date	Item	Price Paid	"Buy Back" Amount	Buy Back On or Before
304	Craft	8/28/2015	Kobalt 16pc Socket Set	15.00	22.50	9/12/2015
305	Hart	8/29/2015	Sears Battery Charger	25.00	37.50	9/14/2015
314	Korzen	9/8/2015	Olevia T.V.	40.00	60.00	9/29/2015

(R. pp. 293-314). For each of the twenty (20) transactions, the investigators found a document issued by Respondent outlining the details of the transaction. (R. pp. 293-314). Respondent referred to these transactions as "buy back" transactions or "layaways." (R. p. 315; p. 67, lines 2-12; p. 81, lines 4-17). During the Department's onsite visit, Respondent's employee provided a voluntary statement explaining that "buy back" transactions mean Respondent buys an item for a certain amount (e.g., $10.00 on the 1st of the month) and agrees to let the customer buy it back by a certain date for a higher amount (e.g., $15.00 on the 15th of the month). (R. p. 315). The employee also explained that the customer has the option to pay interest to extend the deadline to buy the property back for fifteen (15) more days. (R. p. 315). The employee also stated that Respondent conducts between 100 and 150 "buy back" transactions each year. (R. p. 315). At the hearing, Respondent's employee modified her statement to say Respondent conducts between 50 and 100 "buy back" transactions each year. (R. p. 96, line 3-p. 97, line 15).

Respondent's owner also explained the "buy back" transactions during his testimony at the hearing. According to the owner, when he purchases an item, he sets the "buy back" price by adding "30, 40 to 50 percent." (R. p. 67, line 22). The owner further testified that he determines the deadline for the "buy back" by giving the customer fifteen (15) or twenty (20) days, depending on the customer. (R. p. 68, line 8). If the customer could not pay the "buy back" amount by the deadline, he would give the customer more time but "[t]hey have to pay the markup on it." (R. p. 68, line 22–p. 69, line 6).

During the onsite visit on September 10, 2015, the Department's investigators informed both Respondent's owner and employee that violations were identified and advised Respondent to cease and desist from pawnbroker activity. (R. p. 316; p. 217, lines 8-18). The investigators also informed Respondent that a violations letter would be forthcoming. (R. p. 316).

During the course of the investigation, the Department noticed three (3) of the twenty (20) transactions identified on September 10, 2015, belonged to Michael Korzen. (R. p. 310-314). In preparation for the hearing, the Department's investigators met with Michael Korzen on April 5, 2016. (R. p. 113, line 22). During that meeting, Mr. Korzen provided a written statement as well as additional documents not previously provided by Respondent, including a "buy back" agreement from April 2015 and a Layaway Agreement from October 2015. (R. p. 113, line 22; pp. 310-314). In total, the record includes five (5) agreements for transactions between Respondent and Mr. Korzen:

R. p.	Name	Transaction Date	Item	Price Paid	"Buy Back" Amount	Buy Back On or Before
310	Korzen	4/21/2015	Chicago Electric Welding Machine	25.00	37.50	5/8/2015
311	Korzen	8/4/2015	Air Compressor	25.00	37.50	8/17/2015
312	Korzen	8/18/2015	Olevia 32 inch T.V.	40.00	60.00	9/2/2015
314	Korzen	9/8/2015	Olevia T.V.	40.00	60.00	9/29/2015
313	Korzen	10/2/2015	Olevia T.V.	*Layaway Agreement*		

(R. pp. 310-314; p. 119, line 14–p. 125, line 14).

At the hearing, Mr. Korzen testified he first sold an item to Respondent because he needed money for gas to get to his jobs. (R. p. 116, line 24-p. 117, line 2). Mr. Korzen testified he knew that at a pawnshop a person would have thirty (30) days to make a payment and would have ninety (90) days before the person lost the item. (R. p. 136, line 10-p. 137, line 15). Mr. Korzen also testified it was more expensive to sell items to Respondent than at a pawnshop. (R. p. 137, line 16

-p. 138, line 25). Despite the differences between Respondent and a licensed pawnshop operating in compliance with the law, Mr. Korzen testified he was forced to go to Respondent because he did not have transportation to travel to a licensed pawnshop. (R. p. 139, lines 1-7).

Mr. Korzen testified at the hearing about the transactions he entered into with Respondent. (R. p. 112, line 7-p. 140, line 10). Mr. Korzen testified that he used his Chicago Electric Welding Machine to get $25.00 from Respondent in April 2015. (R. p. 120, lines 5-13). He testified that he made three (3) or four (4) payments to extend the deadline for buying back the welder. (R. p. 121, lines 6-7). The agreement in the record shows at least three (3) payments of $12.50 to extend the deadline for buying back the welder. (R. pp. 310-314). Ultimately, however, Mr. Korzen lost the welder because he did not have the money to pay the full "buy back" amount of $37.50. (R. p. 121, lines 15-24). Thus, Mr. Korzen received $25.00 in exchange for the welder, paid three (3) payments of $12.50 to extend the deadline to buy it back, and ultimately lost the welder because he did not have the funds to pay $37.50 all at once.

Mr. Korzen next testified that he used his air compressor to get $25.00 from Respondent in August 2015. (R. p. 121, line 25-p. 122, line 12). His testimony and the agreement in the record indicate Mr. Korzen paid at least two (2) payments of $12.50 to extend the deadline for buying back the air compressor. (R. p. 122, lines 13-15; pp. 310-314). Ultimately, however, Mr. Korzen lost the air compressor because he did not have the money to pay the full "buy back" amount of $37.50. (R. p. 122, line 24-p. 123, line 7). Thus, Mr. Korzen received $25.00 in exchange for the air compressor, paid two (2) payments of $12.50 to extend the deadline to buy it back, and ultimately lost the air compressor because he did not have the funds to pay $37.50 all at once.

While Mr. Korzen was paying Respondent to extend the deadline to retrieve his air compressor, he pawned his 32-inch television to get $40.00 from Respondent. (R. pp. 310-314).

Fortunately, Mr. Korzen was able to retrieve the television from Respondent by paying $60.00 without extending the deadline beyond September 2. (R. p. 124, lines 8-10). However, he used the same television to get $40.00 from Respondent on September 8, 2015. (R. pp. 310-314). According to the agreement, the deadline for buying back the television was September 29, 2015. Respondent's employee testified that Mr. Korzen lost his television.[4] (R. p. 262, line 25). Because of the Department's instructions to Respondent during the September 10 visit, Mr. Korzen was able to retrieve his television by paying the original loan amount of $40.00. (R. p. 313; p. 262, line 3-p. 263, line 12).

[4] It is not clear how Mr. Korzen could have "lost" his television under the September 8 agreement when the Department instructed Respondent on September 10 that such agreements were in violation of the Pawnbrokers Act and, therefore, all items must be returned to the customers for the amount borrowed.

ARGUMENTS

I. THE ADMINISTRATIVE LAW COURT ERRED IN FAILING TO ORDER RESTITUTION BECAUSE SOUTH CAROLINA CASE LAW DICTATES THAT THE CONTRACTS OF AN UNLICENSED ENTITY ARE VOID AND UNENFORCEABLE AND STATE LAW REQUIRES EXCESS CHARGES TO BE REFUNDED UPON WRITTEN DEMAND.

Pursuant to the South Carolina Administrative Procedures Act ("APA"), an appellate court may reverse or modify the decision of the Administrative Law Court if the finding, conclusion, or decision reached is erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by an error of law. S.C. Code Ann. § 1-23-610(B) (Supp. 2015); S.C. Coastal Conservation League v. S. C. Dep't of Health & Envtl. Control, 380 S.C. 349, 361, 669 S.E.2d 899, 905 (Ct. App. 2008), rev'd on other grounds, 390 S.C. 418, 702 S.E.2d 246 (2010). "'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but it is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981).

A. THE ADMINISTRATIVE LAW COURT ERRED IN FAILING TO ORDER RESTITUTION BECAUSE SOUTH CAROLINA CASE LAW DICTATES THAT THE CONTRACTS OF AN UNLICENSED ENTITY ARE VOID AND UNENFORCEABLE.

The Administrative Law Court erred in failing to order restitution when the court correctly held that Respondent violated the South Carolina Pawnbrokers Act ("Pawnbrokers Act"), S.C. Code Ann. §§ 40-39-10 to -160 (2011), by operating as a pawnbroker without first obtaining a Certificate of Authority from the Department. (R. p. 5). The court should have held that because Respondent operated as a pawnbroker without a license, Respondent's "buy back" agreements

were void and unenforceable and ordered Respondent to return all interest collected as well as all property forfeited or the monetary value if Respondent no longer possessed the property.

South Carolina case law dictates the contracts of an unlicensed entity are void and unenforceable. W & N Constr. Co. v. Williams, 322 S.C. 448, 450, 472 S.E.2d 622, 623 (1996); see Berkebile v. Outen, 311 S.C. 50, 53 & n. 2, 426 S.E.2d 760, 762 & n. 2 (1993) (stating "an illegal contract has always been unenforceable" and "courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution."); Jackson v. Bi-Lo Stores, 313 S.C. 272, 277, 437 S.E.2d 168, 170 (Ct. App. 1993) (holding contract secured by illegal conduct cannot be enforced). The Pawnbrokers Act governs the pawnbroker industry and provides that all pawnbrokers conducting business in South Carolina are under the authority of and regulated by the Department. S.C. Code Ann. § 40-39-20 (2011). 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. S.C. Code Ann. § 40-39-20 (2011); S.C. Code Ann. Regs. 28-200(B)(1) (2011). A pawnbroker is "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).

In order to be licensed as a pawnbroker, a person must file an application with the Department and pay an application fee of $275.00. S.C. Code Ann. § 40-39-120 (2011); S.C. Code Ann. Regs. 28-200(B)(2) (2011). The person must maintain a $5,000.00 bond in the Department's favor, or other evidence of financial responsibility, including but not limited to, letters of credit or certificates of deposit. S.C. Code Ann. § 40-39-50 (2011). Further, each applicant must "file proof of his net worth which must be a minimum of . . . [$35,000.00] until that time as liability insurance

covering the contents of the pawn location is secured by the pawnbroker." Id.; S.C. Code Ann. Regs. 28-200(B)(3) (2011). In addition, the pawnbroker must submit to a criminal background check by the law enforcement agency having jurisdiction where the applicant intends to do business. S.C. Code Ann. § 40-39-20 (2011). A person convicted of a felony after July 1, 1988, may not be issued a Certificate of Authority to carry on the business of a pawnbroker or in any manner engage in the business of a pawnbroker. Id.

The court correctly held that Respondent operated as a pawnbroker without obtaining a Certificate of Authority from the Department. (R. p. 288, lines 6-13; p. 5). It was undisputed that Respondent has never had a Certificate of Authority to operate as a pawnbroker in South Carolina. In fact, Respondent's owner testified that he never obtained a Certificate of Authority from the Department to operate a pawnshop because he did not want a pawnshop. (R. p. 76, lines 13-18). Respondent's owner even told the Department's Deputy Chief Investigator Joni Green that he is not interested in becoming a licensed pawnbroker because the maximum interest rate a pawnbroker can charge does not seem high enough to be worth his time. (R. p. 255, lines 5-15).

All of the evidence in the record supported the court's finding that Respondent was clearly engaged in the business of a pawnbroker because Respondent was agreeing to purchase "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). (R. pp. 293-314). Respondent conducted the purported thrift store in an identical manner as a pawnshop. (R. p. 5). Respondent took personal belongings from a borrower in exchange for a loan, provided a time period by which the borrower could regain possession of their property for a specific price, segregated items from the general store inventory, and marked items accordingly. (R. pp. 1-6; p. 315; p. 95, lines 19-24; p. 188, line 1; p. 248, line 7-p. 251, line 17; pp. 293-314; pp. 317-320).

The confirmed 21 transactions presented by the Department at trial coupled with the between 50 and 150 "buy back" transactions testified to by Respondent's employee demonstrate a clear and consistent pattern of Respondent operating as a pawnbroker without a license. (R. pp. 293-314; p. 315; p. 96, line 3-p. 97, line 15). Although Respondent attempted to disguise the business activity's true character in holding the transactions out to the public as a "buy back" or "layaway," the court correctly found Respondent's labelling of the transactions as "buy backs" or "layaways" to be "unpersuasive" in ruling Respondent's activities "fall squarely within the definition of 'pawnbroker.'" (R. p. 5). Thus, Respondent entered into pawn transactions without a Certificate of Authority to operate as a pawnbroker.

Based on the court's findings and South Carolina case law, each "buy back" agreement created between Respondent and the customer is void and unenforceable because Respondent was not licensed to conduct pawn transactions in this State. Failure to deem the contract unenforceable creates the absurd result of the court essentially upholding a contract that is violate of public policy and statutory law. See Berkebile, 311 S.C. at 53, 426 S.E.2d at 762 (courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the constitution); TNS Mills, Inc. v. S.C. Dep't of Revenue, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) (holding that a statutory provision shall not be ignored and the Court shall interpret the statute so as to avoid an absurd result as "the Court must presume the Legislature did not intend a futile act, but rather intended its statutes to accomplish something."); see also Grant v. Butt, 198 S.C. 298, 17 S.E.2d 689 (1941); Rountree v. Ingle, 94 S.C. 231, 234, 77 S.E. 931, 932 (1913). It follows that for the twenty-one (21) agreements in the record as well as the additional transactions testified to during the hearing, Respondent should be ordered to return all interest collected and property acquired as a result of these void and unenforceable agreements.

The relevant finding of fact here is whether Respondent operated as a pawnbroker without a Certificate of Authority. The court found the Respondent did. (R. p. 5). If restitution is not appropriate in this case, where the judge found that people were being taken advantage of by an unlicensed pawnbroker (R. p. 288, lines 6-13), when would restitution ever be appropriate? Allowing Respondent to benefit from the ill-gotten gains of its illegal behavior would allow people to take advantage of consumers, the exact situation the Legislature intended to prevent when it passed the Pawnbrokers Act. W & N Constr., 322 S.C. at 450, 472 S.E.2d at 623 (stating "licensing statutes protect the public").

The court made an error of law by failing to order restitution in this case. This Court is within its authority to reverse or modify the court's decision based on an error of law and require Respondent to issue restitution. See S.C. Code Ann. § 1-23-610(B) (Supp. 2015).

B. THE ADMINISTRATIVE LAW COURT ERRED IN FAILING TO ORDER RESTITUTION BECAUSE RESPONDENT WOULD BE UNJUSTLY ENRICHED DUE TO UNLICENSED ACTIVITY AND STATE LAW REQUIRES EXCESS CHARGES BE REFUNDED UPON WRITTEN DEMAND.

In addition to not meeting any of the licensing requirements to operate a pawnshop, Respondent violated several key requirements applicable to pawn transactions. First, a pawnbroker is restricted in the amount of interest he can charge to loan money in a pawn transaction. S.C. Code Ann. § 40-39-100 (2011). For pawn loans not exceeding $50.00, a pawnbroker would only be allowed to charge a maximum of $2.50 per thirty-day period for each $10.00 loaned. S.C. Code Ann. § 40-39-100(1) (2011). (R. pp. 331-335). Thus, for a loan of $25.00, a pawnbroker would not be allowed to charge more than $6.25 interest for a thirty-day loan (i.e., $2.50 x 2.5). Id. (R. p. 252, lines 18-24; pp. 331-335). Respondent, however, charged

$12.50 interest for a fifteen-day loan. (R. pp. 310-311). This was twice as much interest for half the length of the loan period.

Second, in a pawnshop, a borrower cannot be required to pay more than the interest payment in order to extend the due date for the pawn loan by thirty (30) days. (R. p. 196, lines 6-10; p. 223, lines 14-19). Thus, for a loan of $25.00, a pawnbroker would not be allowed to charge more than $6.25 interest to extend the loan due date by thirty (30) days. See S.C. Code Ann. § 40-39-100(1) (2011). Respondent, however, charged $12.50 interest to extend the loan due date by only fifteen (15) days. (R. pp. 310-311). This was twice as much interest to extend the loan for half as much time.

Third, a pawnbroker is restricted from making loans for less than a thirty-day period. See S.C. Code Ann. § 40-39-100 (2011); see also S.C. Code Ann. § 40-39-10(5) (2011) ("when computations are made for a fraction of a month, a day is one-thirtieth of a month"). The South Carolina Pawnbrokers Act ("Pawnbrokers Act"), S.C. Code Ann. §§ 40-39-10 to -160 (2011), defines a "month" as "that period of time from one date in a calendar month to the corresponding date in the following calendar month, but if there is no corresponding date, then the last day of the following month . . . ." S.C. Code Ann. § 40-39-10(5) (2011). Based on the definition of "month" in the Pawnbrokers Act, the due date for a pawn loan is the corresponding date in the following calendar month. As such, for a pawn loan made on April 21, 2015, the due date would be May 21, 2015. For comparison, if the pawn loan is made on October 31, 2015, the due date would be November 30, 2015, given that November does not have a 31st. Respondent gave customers only fifteen (15) days to pay the amount due rather than the thirty (30) days that applies to a pawnbroker. (R. pp. 310-311).

Fourth, in a pawnshop, the title of the property does not vest in the pawnbroker until the loan remains unpaid for a period of sixty (60) days from the due date or any renewal or extension thereof. S.C. Code Ann. § 40-39-110 (2011). Department Chief Investigator Middlebrooks explained at the hearing that the sixty-day period allows borrowers the opportunity to try to catch up on the interest owed before losing the pawned item. (R. p. 196, lines 10-24; p. 223, lines 17-23). As such, if the due date for the loan is May 21, 2015, the earliest vesting date would be July 20, 2015. This means that a borrower could take out a pawn loan on April 21, 2015, and he would not lose his item until July 20, 2015, even if he fails to make any payments at all. Respondent, however, took the property after only fifteen (15) days if the customer failed to make a payment rather than waiting ninety (90) days as required in a compliant pawnshop. (R. pp. 310-311).

Respondent violated various requirements of the Pawnbrokers Act by imposing excessive fees and failing to give borrowers ample time to get their property back. Such violations had an impact on the individuals the law was intended to protect. See W & N Constr. Co. v. Williams, 322 S.C. 448, 472 S.E.2d 622 (S.C. 1996). A review of repeat customer Mr. Korzen's transactions with Respondent illustrates how the transactions would have been different had he gone to a licensed pawnbroker operating in compliance with the Pawnbrokers Act.

Mr. Korzen first pawned his welder:

Name: Korzen Item: Chicago Electric Welding Machine		Transaction Date: 4/21/2015 Price Paid by Respondent: $25.00	
Actual Buy Back Transaction		**Legal Pawn Transaction**	
Finance Charge:	$12.50	Max Finance Charge:	$6.25
Buy Back Amount:	$37.50	Max Amount Due:	$31.25
Buy Back on or before:	5/8/2015	Earliest Due Date:	5/21/2015
		Earliest Vesting Date:	7/20/2015
Required to pay $12.50 to extend 15 days • Paid $12.50 to extend to 5/23/15 • Paid $12.50 to extend to 6/7/15 • Paid $12.50 to extend to 6/22/15		Pay $6.25 to extend 30 days	

S.C. Code Ann. §§ 40-39-10, -100, -110 (2011). (R. p. 310; pp. 331-335). It appears from the handwritten entries on the agreement as well as Mr. Korzen's testimony that he lost the welder on or about June 22, 2015. (R. p. 310; p. 121, lines 15-24). Mr. Korzen paid at least $37.50 to Respondent but ultimately lost his welder to Respondent twenty-eight (28) days before he would have lost it without paying a dime at a compliant pawnshop. (R. p. 121, lines 6-14). Furthermore, Mr. Korzen would have only been required to pay $6.25 to extend the due date by thirty (30) days in a compliant pawnshop. Instead, Respondent required him to pay $12.50 to extend the deadline by a mere fifteen (15) days. (R. p. 310; p. 120, line 19-p. 121, line 14).

Mr. Korzen next pawned his air compressor:

Name: Korzen Item: Air Compressor		Transaction Date: 8/4/2015 Price Paid by Respondent: $25.00	
Actual Buy Back Transaction		**Legal Pawn Transaction**	
Finance Charge:	$12.50	Max Finance Charge:	$6.25
Buy Back Amount:	$37.50	Max Amount Due:	$31.25
Buy Back on or before:	8/17/2015	Earliest Due Date:	9/4/2015
		Earliest Vesting Date:	11/3/2015
Required to pay $12.50 to extend 15 days • Paid $12.50 to extend to 8/28/15 • Paid $12.50 to extend to 9/12/15		Pay $6.25 to extend 30 days	

S.C. Code Ann. §§ 40-39-10, -100, -110 (2011). (R. p. 311; pp. 331-335). It appears from the handwritten entries on the agreement as well as Mr. Korzen's testimony that he lost the air compressor on or about September 12, 2015. (R. p. 311; p. 122, line 24-p. 123, line 7). Thus, Mr. Korzen paid at least $25.00 to Respondent but ultimately lost his air compressor to Respondent fifty-two (52) days before he would have lost it without paying a dime at a compliant pawnshop. (R. p. 122, line 13-p. 123, line 7). Furthermore, Mr. Korzen would have only been required to pay $6.25 to extend the due date by thirty (30) days in a compliant pawnshop. Instead, Respondent required him to pay $12.50 to extend the deadline by a mere fifteen (15) days. (R. p. 311).

As discussed previously, Mr. Korzen used his Olevia Television twice to get $40.00 from Respondent. The first transaction occurred on August 18, 2015. (R. p. 312). Fortunately, Mr. Korzen was able to retrieve the television from Respondent by paying $60.00 without extending the deadline beyond September 2. (R. p. 124, lines 2-10). This was twice the dollar amount permitted by the Pawnbrokers Act for the finance charge and quadruple the Annual Percentage Rate. (R. pp. 331-335). However, he used the same television to get $40.00 from Respondent on September 8, 2015. (R. p. 314).

Name: Korzen Item: Olevia Television		Transaction Date: 9/8/2015 Price Paid by Respondent: $40.00	
Actual Buy Back Transaction		**Legal Pawn Transaction**	
Finance Charge:	$20.00	Max Finance Charge:	$10.00
Buy Back Amount:	$60.00	Max Amount Due:	$50.00
Buy Back on or before:	9/29/2015	Earliest Due Date:	10/8/2015
		Earliest Vesting Date:	12/7/2015
Required to pay $20.00 to extend 15 days		Pay $10.00 to extend 30 days	

S.C. Code Ann. §§ 40-39-10, -100, -110 (2011). (R. p. 314; pp. 331-335). It appears Mr. Korzen was unable to make any payments to extend the deadline to buy back the television and, therefore,

lost his television on or about September 29, 2015.[5] Mr. Korzen lost his television to Respondent sixty-nine (69) days before he would have lost it at a compliant pawnshop. Nevertheless, after the Department's intervention, Mr. Korzen was able to retrieve his television from Respondent by paying the original loan amount of $40.00. (R. p. 313; p. 262, line 17-p. 263, line 12).

When examining Mr. Korzen's transactions, it is clear how offensively Respondent was taking advantage of the customers. Even though Mr. Korzen realized he would have fared better if he had gone to a compliant pawnshop, he did not have the resources to do so. (R. p. 136, line 10-p. 139, line 7). Indeed, he went to Respondent for money to get gas to go to work. (R. p. 116, line 17-p. 117, line 2).

After hearing Mr. Korzen's testimony, the court fully appreciated the egregiousness of how Respondent took advantage of his customers. At the end of the hearing, the court stated:

> Yeah. But Mr. Moore your client was operating without proper authority. He was operating as a pawnbroker and Mr. Korzen that came in, I mean, that's, you know, those are the type of individuals that I am assuming that a lot of his customers consist of. People like that. And that's obviously -- he was taking, I mean, **he was being taken advantage of**.

(R. p. 288, lines 6-13) (emphasis added). Despite the court's statements that Respondent was taking advantage of his customers, the court refused to order restitution. It is unclear what changed between the time of the hearing and the issuance of the final decision. In fact, the court did not make any separate findings of fact on which it based its conclusion that "restitution is not appropriate given the facts in this case." (R. p. 5; p. 8). Nevertheless, as a result of the court's ruling, Respondent is being permitted to retain the interest collected and even the items forfeited as a result of these void and unenforceable contracts made in violation of state law.

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[5] Respondent's employee testified that Mr. Korzen lost his television. (R. p. 262, line 25). Again, Mr. Korzen should not have "lost" his television pursuant to the September 8 agreement because the Department told Respondent on September 10 that all items must be returned upon payment of the amount borrowed.

The court made an error of law by failing to order restitution in this case. This Court is within its authority to reverse or modify the court's decision based on an error of law and require Respondent to refund excess charges and return borrower's property. See S.C. Code Ann. § 1-23-610(B) (Supp. 2015). To recover on a theory of restitution in this case, the Department must show: (1) the customers conferred a non-gratuitous benefit on Respondent; (2) Respondent realized some value from the benefit; and (3) it would be inequitable for Respondent to retain the benefit without paying the customers for the value of the benefit. See JASDIP Props. SC, LLC v. Estate of Richardson, 395 S.C. 633, 640, 720 S.E.2d 485, 489 (Ct. App. 2011) (quoting Sauner v. Pub. Serv. Auth., 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003)). Customers went to Respondent in need of money. They sold their personal property to Respondent for a portion of its true value in the hopes they would be able to return in fifteen (15) days and buy the property back at 150% of the amount borrowed. When the customer was able to buy the property, Respondent benefitted from the interest paid. (R. p. 265, line 22-p. 266, line 2). When the customer was unable to buy the property within fifteen (15) days but had enough to extend the deadline to buy it back, Respondent benefitted from that interest paid. Most egregious, however, is when the customer was unable to pay the full price or even a payment to extend the deadline. In those instances, Respondent kept the borrower's personal belongings, receiving a benefit far in excess of the value of the money loaned to the customer. For a $25.00 loan to Mr. Korzen, Respondent received $37.50 in payments and eventually kept Mr. Korzen's welder. For another $25.00 loan, Respondent received $25.00 in payments and eventually kept Mr. Korzen's air compressor. By refusing to order Respondent to return all interest collected and forfeited items, or their monetary value if no longer in Respondent's possession, the court allowed Respondent to be unjustly enriched as a result of illegal operations and void and unenforceable contracts.

Moreover, the Pawnbrokers Act provides that no pawnbroker may charge or collect any fees, costs, or assessments other than those specifically allowed in Title 40, Chapter 39. S.C. Code Ann. § 40-39-40 (2011). Pursuant to the definition of "pawnbroker," this restriction applies to "any person engaged in the business" of pawnbrokering and is not limited to businesses licensed as a pawnbroker. S.C. Code Ann. § 40-39-10(2) (2011). According to the law, a pledgor is not obligated to pay a charge in excess of that allowed by Title 40, Chapter 39, and is owed a refund of any excess charge paid within ten (10) days of written demand. S.C. Code Ann. § 40-39-160(2) (2011). This requirement to refund excess charges is not limited to licensed pawnbrokers as it applies to any pledgor paying a charge in excess of that allowed in the Pawnbrokers Act. It applies equally to all businesses operating as a pawnbroker regardless of whether the business is properly licensed. In fact, it would be illogical that a business operating as an unlicensed pawnbroker would avoid the requirement to refund excess charges. See TNS Mills, Inc. v. S.C. Dep't of Revenue, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) (holding that a statutory provision shall not be ignored and the Court shall interpret the statute so as to avoid an absurd result as "the Court must presume the Legislature did not intend a futile act, but rather intended its statutes to accomplish something."). There would be no deterrent to those businesses choosing to operate as an unlicensed pawnbroker for as long as possible knowing that if they are caught they will be able to keep all forfeited items and interest collected.

In this case, Respondent charged fees in excess of what is allowed by statute. Each of the customers involved in the twenty-one (21) transactions in the record has the statutory remedy to submit a written demand to Respondent for a refund of excess fees pursuant to Section 40-39-160(2). Even assuming Respondent willingly refunded the excess fees upon demand, it is illogical to require the customers to request those refunds, particularly when the customers are

unsophisticated or, as Respondent's counsel stated, "are pitiful and they are ignorant." (R. p. 288, lines 24-25). When the Department has brought an action and the court has found that a business operated as an unlicensed pawnbroker, it is nonsensical that each of the individual customers would have to separately request a refund of the excess fees from Respondent. Ranucci v. Crain, 409 S.C. 493, 500, 763 S.E.2d 189, 193 (2014) (a court will not construe a statute in a way that leads to an absurd result or renders it meaningless). The Department should be able to obtain refunds for all of the 50 to 150 "buy back" transactions conducted by Respondent.

II. THE ADMINISTRATIVE LAW COURT ERRED IN FAILING TO ORDER RESTITUTION BECAUSE THE FEDERAL TRUTH IN LENDING ACT DICTATES THAT AGENCIES SHALL REQUIRE AN ADJUSTMENT OF FINANCE CHARGES WHEN FINDING VIOLATIONS THEREOF.

The lower court correctly stated, "Respondent operated as a pawnbroker," in holding the business's "actions constitute a violation of the S.C. Pawnbroker Act." (R. p. 5). 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 South Carolina Pawnbrokers Act ("Pawnbrokers Act"), Federal Truth in Lending Act ("TILA"), and respective regulations promulgated thereunder. See S.C. Code Ann. § 40-39-130 (2011); S.C. Code Ann. Regs. 28-200; 15 U.S.C. § 1607 (2012); 12 C.F.R. § 1026 (2015).

The South Carolina Administrative Procedures Act ("APA"), provides the standards by which an appellate court may review and modify a decision of the Administrative Law Court. Section 1-23-610(B) provides:

> The court of appeals may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
> (a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;
(c) made upon unlawful procedure;
(d) affected by other error of law;
(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

"'As to factual issues, judicial review of administrative agency orders is limited to a determination [of] whether the order is supported by substantial evidence.'" MRI at Belfair, LLC v. S.C. Dep't of Health & Envtl. Control, 379 S.C. 1, 6, 664 S.E.2d 471, 474 (2008) (referring to the standard of review provided in § 1-23-380(A)(6)); see Reliance Ins. Co. v. Smith, 327 S.C. 528, 535-536 n. 6, 489 S.E.2d 674, 678 n. 6 (Ct. App. 1997) (noting the standards of review provided in § 1-23-380(A)(6) and § 1-23-610(D) are "essentially identical").

The Pawnbrokers Act regulates the pawnbroker industry in this state. S.C. Code Ann. § 40-39-20 (2011). In addition to setting forth licensing, financial responsibility, and net worth requirements, the law places limitations on fees a pawnbroker may assess a borrower and requires disclosure of such fees be made in compliance with TILA. Id. Specifically, Section 40-39-130 mandates "[a]ll pawnbrokers shall comply with the Federal Truth in Lending Act." S.C. Code Ann. § 40-39-130 (2011). The Pawnbroker regulation further provides for compliance with TILA and its accompanying Regulation Z when a pawnbroker issues the pawn memorandum, often referred to as a pawn ticket, to the borrower. S.C. Code Ann. § 40-39-80 (2011); S.C. Code Ann. Regs. 28-200(C)(1)(a) (2011).

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). In passing TILA, Congress found consumer awareness of the cost of credit to be central to the informed use of credit

and prevention of unfair practices in the consumer credit space. 15 U.S.C. § 1601(a) (2012). To accomplish its consumer protection objectives, TILA and Regulation Z require a business to disclose certain material terms to a consumer before consummation of a loan contract. 15 U.S.C. § 1638(a)–(b) (2012); 12 C.F.R. §§ 1026.17(a)–(b), 1026.18 (2015). Among the required disclosures in a closed-end credit transaction are the finance charge and Annual Percentage Rate ("APR"). 15 U.S.C. §§ 1602(v), 1638(a)(3)–(4) (2012); 12 C.F.R. § 1026.18(d)–(e) (2015).

A finance charge[6] is "the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit." 15 U.S.C. § 1605(a) (2012). The APR is "a measure of the cost of credit, expressed as a yearly rate." 12 C.F.R. § 1026.22(a)(1) (2015); see also 15 U.S.C. § 1606(a) (2012). To aid in the borrower's understanding of the transaction, Regulation Z requires a creditor disclose these terms with their correlating descriptor:

- the finance charge, "using that term, with a brief description such as 'the dollar amount the credit will cost you.'" 12 C.F.R. § 1026.18(d) (2015).
- the APR, "using that term, with a brief description such as 'the cost of your credit as a yearly rate.'" 12 C.F.R. § 1026.18(e) (2015).

The Federal Reserve System, the federal agency which formerly held promulgating authority for Regulation Z[7], provided a sample form showing the manner in which the finance charge and APR should be disclosed by a business to a borrower on the loan agreement:

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[6] It is important to note that most laypersons/consumers will consider "finance charges" and "interest" to be synonymous with one another. In fact, the common definition of "finance charge" is "an additional payment, usu. in the form of interest, paid by a retail buyer for the privilege of purchasing goods or services in installments. This phrase is increasingly used as a euphemism for *interest*." Black's Law Dictionary (10th ed. 2014). An "interest rate" is the "percentage that a borrower of money must pay to the lender in return for the use of the money . . . ." Id.

[7] On July 21, 2011, general rule-making authority was transferred from the Federal Reserve Board to the Consumer Financial Protection Bureau. 12 U.S.C. § 5512 (2011).

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. %	FINANCE CHARGE The dollar amount the credit will cost you. $	Amount Financed The amount of credit provided to you or on your behalf. $	Total of Payments The amount you will have paid after you have made all payments as scheduled. $

(Excerpt from H-2 – Loan Model Form (from Appendix H to Part 1026 – Closed-End Model Forms and Clauses)).

When viewing the requirements of TILA and the sample form in comparison to the memorandum Respondent provided to borrowers, it is clear Respondent's version is woefully deficient. The only items Respondent includes on the memorandum related to loan cost are the amount of the loan and the redemption price. (R. pp. 293-314). The contract lacks any reference to finance charges, APR, or any other material terms required to be disclosed pursuant to state and federal law. (R. pp. 293-314; p. 74, lines 14-24; p. 194, line 13-p. 197, line 24). Such a lack of information tips the tables in favor of Respondent as borrowers are deprived of knowledge of the transaction's overall cost, impeding their ability to make an informed decision of whether to enter into the contract. Respondent's omission of required terms resulted in numerous transactions reaching quadruple digit interest rates, including borrower Mr. Korzen, pawning his personal belongings to Respondent at an extraordinary rate of 1,200% APR. (R. p. 254, line 13-p. 255, line 6; pp. 293-314).

The enforcement provision contained in Section 108 of TILA, as codified in 15 U.S.C. § 1601 et seq., evidences Congress's strong intent of obtaining compliance with the law's consumer protections and states:

> Each agency [with enforcement powers] ***shall require*** an adjustment [of the finance charge] when it determines that such 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) (2012) (emphasis added). The South Carolina General Assembly echoed this intent when providing "the administrator has the administrative enforcement powers set forth in Section 108 of the Federal Truth in Lending Act." S.C. Code Ann. § 40-39-130 (2011). Such enforcement powers are transferred to the Administrative Law Court as it serves as the sole venue by which the Department can pursue enforcement actions. S.C. Code Ann. § 40-39-150 (2011). Holding otherwise would result in making Section 40-39-130 moot, ignoring legislative intent. See TNS Mills, Inc. v South Carolina Department of Revenue, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) (holding that a statutory provision shall not be ignored and the Court shall interpret the statute so as to avoid an absurd result as "the Court must presume the Legislature did not intend a futile act, but rather intended its statutes to accomplish something.").

As stated previously, a review of Respondent's "buy back" agreements show the phrases designed to educate the consumer on what their credit with Respondent costs are nowhere to be found. (R. pp. 293-314; p. 74, lines 14–24; p. 194, line 13-p. 197, line 24). Thus, Respondent violated TILA each and every time the business entered into a pawn transaction with a South Carolina borrower. The evidence in the record confirms twenty-one (21) instances whereby Respondent acted as a pawnbroker. (R. p. 5). Statements and testimony further revealed Respondent failed to provide the required disclosures to adequately inform its customers of the cost of credit extended between 50 and 150 times. (R. p. 315; p. 96, line 3-p. 97, line 15; p. 74, lines 14-24; p. 194, line 13-p. 197, line 24). The confirmed 21 transactions presented by the

Department at trial coupled with the between 50 and 150 "buy back" transactions testified to by Respondent's employee demonstrate a clear and consistent pattern of TILA violations.

Further, Respondent's method of operations indicates gross negligence as well as a willful intent to mislead borrowers. Respondent conducted the purported thrift store operations in an identical manner as a pawnshop. (R. p. 5). Respondent took personal belongings from a borrower in exchange for a loan, provided a time period by which the borrower could regain possession of their property for a specific price, segregated items from the general store inventory, and marked items accordingly. (R. pp. 1-6; p. 315; p. 95, lines 19-24; p. 188, line 1; p. 248, line 7-p. 251, line 17; pp. 293-314; pp. 317-320). Respondent, however, attempted to disguise his business activity's true character in holding the transactions out to the public as a "buy back" or "layaway." Respondent utilized these labels in an attempt to deceive the business's customers who, as conceded by Respondent through counsel, "are pitiful and they are ignorant . . . ." (R. p. 288, lines 24-25). The lower court echoed such sentiment in acknowledging Respondent was taking advantage of Mr. Korzen and other consumers like him. (R. p. 288, lines 6-13). Respondent believed by failing to obtain proper authority to operate as a pawnbroker the business could evade the Pawnbrokers Act and the Department's purview, and charge rates in excess of those permitted by law. (R. pp. 4–5; p. 255, lines 5-15). The rates were four times higher than what a compliant pawnbroker can charge. S.C. Code Ann. § 40-39-100 (2011). (R. p. 254, line 16-p. 255, line 15; pp. 293-314).

As a matter of state and federal law, and as based on the evidence in the record as a whole, Respondent must be ordered to pay restitution to all affected consumers in the form of refunding finance charges paid. See 15 U.S.C. § 1607(e)(2) (2012). The court found Respondent's labelling of the transactions at the center of the hearing as "buy backs" or "layaways" to be "unpersuasive"

in ruling Respondent's activities "fall squarely within the definition of 'pawnbroker.'" (R. p. 5). The court erred, however, in determining the facts of the case did not warrant restitution. (R. p. 6; p. 8). Ruling the 50 to 150 transactions testified to as being subject to the Pawnbrokers Act in itself warrants an order of restitution pursuant to Section 108 of TILA and Section 40-39-130, much less the additional actions taken by Respondent indicating the conduct meets the threshold of 15 U.S.C. § 1607(e)(2)(B), (C) (2012).

Failure to provide for restitution in this matter ignores legislative intent, ignores statutory language, and disregards case law. "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); McClanahan v. Richland County Council, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002) ("All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute."). The statute's language is considered the best evidence of legislative intent and shall not be ignored. Id.; TNS Mills, Inc., 331 S.C. at 620, 503 S.E.2d at 476.

The court's failure to order the return of finance charges borrowers paid to Respondent given the clear mandate of TILA and the Pawnbrokers Act could be viewed as a manifest disregard of the law. See Weimer v. Jones, 364 S.C. 78, 80, 610 S.E.2d 850, 852 (2005) (citing Bazzle v. Green Tree Fin. Corp., 351 S.C. 244, 268, 569 S.E.2d 349, 361 (2002), vacated and remanded on other grounds, 539 U.S. 444 (2003); Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009); S.C. Code Ann. § 1-23-350 (2005). The lower court was aware TILA applied to pawnbrokers operating in South Carolina. The Department's Prehearing Brief addressed the requirement that a

pawnbroker's memorandum to a consumer must meet the requirements of TILA pursuant to Section 40-39-80 and Regulation 28-200(C)(1)(a). (R. p. 27). The Brief also explained the Department's enforcement powers set forth in Section 108 of TILA pursuant to Section 40-39-130. (R. p. 28). Furthermore, the Department's Chief Investigator testified at the hearing that Respondent's actions violated TILA. (R. p. 194, lines 4-25). While ruling the Pawnbrokers Act, thus TILA, applied to Respondent's actions, the court refused to apply the remedy in TILA to the pawn transactions at issue in this case. (R. pp. 4–5). The Department again pointed out the applicability of TILA to the court in a Motion for Reconsideration. (R. pp. 30-31). And again, the court did not order restitution as required by TILA. (R. pp. 7-8). The lower court simply stated that the "argument was raised during the contested case hearing and nothing in the Department's motion causes the Court to amend its finding that restitution is not appropriate in this case." (R. p. 8).

The lower court's refusal to apply TILA to the transactions at hand and to provide findings of fact underlying such failure was also arbitrary and capricious. "A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." Deese v. S.C. State Bd. of Dentistry, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985).

The lower court did not make any separate findings of fact on which it based its conclusion that TILA did not apply to the Respondent's pawn activity and failed to address such discrepancy when requested through the Department's Motion for Reconsideration. (R. pp. 1–6; pp. 7-10). A final decision in a contested case shall include findings of fact and conclusions of law, separately stated. S.C. Code Ann. § 1-23-350 (2005); Rule 29(C), SCALC. "An administrative body must

make findings which are sufficiently detailed to enable this Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings." Porter v. S.C. Public Serv. Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1998); see also Converse Power Corp. v. S.C. Dep't of Health & Envtl. Control, 350 S.C. 39, 46, 564 S.E.2d 341, 345 (Ct. App. 2002).

This Court previously held that the Administrative Law Court was constrained from awarding consumer refunds of excess charges, categorizing such monies as damages and citing a provision of statutory law which the court construed as limiting the Administrative Law Court's authority. S.C. Dep't of Consumer Affairs v. Foreclosure Specialists, Inc., 390 S.C. 182, 700 S.E.2d 468 (Ct. App. 2010). Unlike the situation presented in Foreclosure Specialists, the Pawnbrokers Act provides the Administrative Law Court with exclusive jurisdiction over matters arising thereunder. S.C. Code Ann. § 40-39-150 (2011). The Act also explicitly grants the Department, and by extension the Administrative Law Court, the administrative enforcement powers of Section 108 of TILA, including the return of excess charges. Id.; S.C. Code Ann. § 40-39-130 (2011). Thus, the lower court possesses the ability to require restitution to those consumers affected by Respondent's violations of TILA. As a matter of law, TILA demands it. See 15 U.S.C. § 1607(e)(2) (2012).

Alternatively, the Department asserts the Administrative Law Court was granted authority to issue restitution by the Legislature. See City of Rock Hill v. S.C. Dep't of Health and Envtl. Control, 302 S.C. 161, 165, 394 S.E.2d 327, 330 (1990) ("As creatures of statute, regulatory bodies . . . possess only those powers which are specifically delineated. By necessity however, a regulatory body possesses not only the powers expressly conferred on it but also those which must be inferred or implied to effectively carry out the duties for which it is charged.") (citing City of

Columbia v. Bd. of Health and Envtl. Control, 292 S.C. 199, 202, 355 S.E.2d 536, 538 (1987)). This issue was not addressed by the court in Foreclosure Specialists as the case was decided on other grounds. See S.C. Dep't of Consumer Affairs v. Foreclosure Specialists, Inc., 390 S.C. 182,186, 700 S.E.2d 468, 470 (Ct. App. 2010).

The Administrative Procedures Act ("the APA"), the Administrative Law Court's enabling statute, delegates penalty authority and equity jurisdiction to the Administrative Law Court through Section 1-23-600(F). See also S.C. Code Ann. § 1-23-630(A) (2005). Pursuant to Section 1-23-600(F), a state agency may request equitable relief from the Administrative Law Court if the agency has statutory authority to seek injunctive relief as the court "has the same power at chambers or in open hearing as do circuit court judges and to issue those remedial writs as are necessary to give effect to its jurisdiction." S.C. Code Ann. §§ 1-23-600(F), -630(A) (2005). The Department is granted the power to seek a cease and desist order from the Administrative Law Court under the Pawnbrokers Act, providing the agency the ability to further seek additional equitable relief from the court. S.C. Code Ann. § 40-39-150(A) (2011); §§ 1-23-600(F), -630(A) (2005); see State v. Holcomb, 245 S.C. 63, 138 S.E.2d 707 (1964) (In upholding the granting of an injunction, the Court rejected the appellant's contention that because the only remedy statutorily provided was a criminal one, the court was prohibited from granting equitable relief and held that the purpose of the statute was one of protecting the public and an injunction "would furnish more effectual and complete relief.").

The court errantly disregarded state and federal requirements as well as its own authority in failing to require Respondent to return illegal finance charges imposed, a ruling unsupported by the record. Based on the above, the Department respectfully requests this Court require

Respondent to return the charges collected in violation of applicable laws to the aggrieved consumers.

III. THE ADMINISTRATIVE LAW COURT ERRED IN FAILING TO CONSIDER THE MULTITUDE AND EGREGIOUSNESS OF RESPONDENT'S PAWNBROKERS ACT VIOLATIONS, THE GOAL OF DETERRENCE IN ISSUING A FINE, AND THE DEPARTMENT'S EXPERTISE WHEN THE COURT CONCLUDED A NEGLIGIBLE ADMINISTRATIVE FINE WAS WARRANTED IN THIS CASE.

In assessing a penalty against Respondent in the nominal amount of $2,500.00, the Administrative Law Court failed to rely upon the record and abused its discretion. An appellate court may reverse or modify the decision of the Administrative Law Court if the finding, conclusion, or decision reached is erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by an error of law. S.C. Code Ann. § 1-23-610(B) (2005); S.C. Coastal Conservation League v. S. C. Dep't of Health & Envtl. Control, 380 S.C. 349, 361, 669 S.E.2d 899, 905 (Ct. App. 2008), rev'd on other grounds, 390 S.C. 418, 702 S.E.2d 246 (2010). "'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but it is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981).

Pursuant to the South Carolina Pawnbrokers Act ("Pawnbrokers Act"), S.C. Code Ann. §§ 40-39-10 to -160 (2011), the administrative law judge is given authority to assess administrative fines upon those found in violation of the Act. S.C. Code Ann. § 40-39-150(B) (2011). Specifically, in addition to ordering a pawnbroker to cease and desist from violating the Pawnbrokers Act:

> The administrative law judge also may impose administrative fines of up to seven hundred fifty dollars for each offense upon persons violating any of the provisions of this chapter up to a maximum of fifteen thousand dollars for the same set of transactions or occurrences. Each violation constitutes a separate offense.

S.C. Code Ann. § 40-39-150(B) (2011). South Carolina case law provides discretion to an administrative agency when administering a penalty permitted by statute. See S.C. Dep't of Revenue v. Meenaxi, Inc., 790 S.E.2d 792 (2016). When a matter appears before the Administrative Law Court, the court acts as the fact-finder and "it is [the ALC's] prerogative . . . to impose an appropriate penalty based on the facts presented." S.C. Dep't of Revenue v. Sandalwood Soc. Club, 399 S.C. 267, 280, 731 S.E.2d 330, 337 (2012) (quoting Walker v. S.C. Alcoholic Beverage Control Comm'n, 305 S.C. 209, 210, 407 S.E.2d 633, 634 (1991)).

The Department introduced evidence of 21 pawn agreements through which Respondent committed at least 101 violations of state and federal law. (R. pp. 293-314; pp. 23-29; p. 5). Violations included imposing excessive fees, failing to give borrowers ample time to get their property back, and failing to provide adequate disclosures to borrowers. (R. p. 120, line 19-p. 121, line 14; pp. 293-314; p. 74, lines 14-24; p. 194, line 13-p. 197, line 24). Statements and testimony at trial further revealed Respondent conducted between 50 and 150 pawn transactions. (R. p. 315; p. 96, line 3-p. 97, line 15). The court ordered Respondent pay a fine of $2,500 as the penalty for such conduct, an amount equaling $24.75 per violation if only taking the violations identified in the Department's investigation into account and forgiving the additional violations testified to by Respondent. (R. p. 6). In reaching the amount, the lower court relies upon Respondent's owner's and employee's testimony that they were unaware their actions were not permitted by law. (R. p. 6). The record shows otherwise.

Respondent's method of operations indicates a willful intent to operate as a pawnshop and mislead borrowers. Respondent conducted the purported thrift store in an identical manner as a

pawnshop. (R. p. 5). Respondent took personal belongings from a borrower in exchange for a loan, provided a time period by which a customer could regain possession of their property for a specific price, segregated items from the general store inventory, and marked items accordingly. (R. pp. 1-6; p. 315; p. 95, lines 19-24; p. 188, line 1; p. 248, line 7-p. 251, line 17; pp. 293-314; pp. 317-320). Department Deputy Chief Investigator Joni Green testified that the layout of Respondent's store is identical to that of a pawnshop, specifically identifying the organizational style and numbered shelves of the segregated area where borrower's belongings are held. See S.C. Code Ann. Regs. 28-200(D)(5) (2011). (R. p. 251, lines 5-17; pp. 317-320).

Respondent, however, attempted to disguise his activity's true character in holding the transactions out to the public as a "buyback" or "layaway." Respondent utilized these labels in an attempt to deceive the business's customers who, as conceded by Respondent through counsel, "are pitiful and they are ignorant . . . ." (R. p. 288, lines 24-25). The lower court echoed such sentiment in acknowledging Respondent was taking advantage of the consumers who pawned items to Respondent- consumers the law was intended to protect. (R. p. 288, lines 6-13). This sentiment of the court seems to have dissipated, however, between the hearing and issuance of the Order as the court fails to acknowledge the knowing and egregious conduct engaged in by Respondent in issuing such a nominal fine. In W & N Construction, the South Carolina Supreme Court explained that licensing statutes exist to protect the public, and permitting an unlicensed entity "to circumvent the licensing requirements by payment of a small fine would defeat the legislative intent." 322 S.C. at 450, 472 S.E.2d at 623. In assessing a negligible administrative fine in light of Respondent's many serious violations, the court arbitrarily ignored the overwhelming weight of the evidence by issuing a penalty that defeats the Legislature's intent of consumer protection.

Not only is the fine amount inadequate as based upon Respondent's numerous violations and predatory actions, the court clearly failed to consider deterrence when making its penalty determination. In assessing an administrative penalty, the court "should give effect to the major purpose of a civil penalty – ***deterrence***." Midlands Util., Inc. v. S.C. Dep't of Health & Envtl. Control, 313 S.C. 210, 212, 437 S.E.2d 120, 121 (Ct. App. 1993) (emphasis added); see also S.C. Dep't of Revenue v. Meenaxi, Inc., 790 S.E.2d 792 (2016); S.C. Dep't of Revenue v. Sandalwood Soc. Club, 399 S.C. 267, 731 S.E.2d 330 (2012). "Deterrence" is defined as "[t]he act or process of discouraging certain behavior, particularly by fear . . . ." Black's Law Dictionary (10th ed. 2014); see Ga. Carolina Bail Bonds, Inc. v. City of Aiken and Goddard, 354 S.C. 18, 24, 579 S.E.2d 334, 337 (Ct. App. 2003) (When seeking to ascertain the meaning of an undefined statutory term, dictionaries may be utilized.).

The Pawnbrokers Act provides the framework by which a person can obtain a Certificate of Authority to operate a pawnshop, the majority of which impose a cost upon the applicant. An applicant must pay an application fee of $275.00 per location, maintain a $5,000.00 bond, file proof of net worth of at least $35,000.00 until that time as liability insurance is secured and submit to a criminal background check by a law enforcement agency. S.C. Code Ann. §§ 40-39-20, -50, -120 (2011); S.C. Code Ann. Regs. 28-200(B) (2011). Considering the application fee and other fees associated with becoming a licensed pawnbroker, a penalty in the amount of $2,500.00 does not sufficiently deter another business entity from operating as an unlicensed pawnbroker. Further, violators of the law such as Respondent who charge borrowers twice the dollar amount and quadruple the APR that the Pawnbrokers Act allows results in profit from such noncompliance. (R. p. 254; line 16-p. 255, line 6; p. 265, line 22-p. 266, line 1; pp. 293-314). The penalty amount is inconsequential when viewed in light of the monies Respondent saved by not complying with

the licensing requirements and profits Respondent gained through charging borrowers rates in excess of those permitted by law or otherwise obtaining property from borrowers who are unable to pay Respondent. See S.C. Code Ann. § 40-39-100 (2011). (R. pp. 293-314).

The lower court further acted in an arbitrary and capricious manner by not deferring to the Department's expertise and ordering an administrative penalty amounting to less than a quarter of the Department's original settlement offer to Respondent. (R. pp. 5–6; pp. 321-323; pp. 324-326). See Deese v. S.C. State Bd. of Dentistry, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985) ("A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.").

South Carolina's deference doctrine provides that courts defer to an agency's interpretation of statute when the agency is charged with administering the statute "unless there is a compelling reason to differ." Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 34, 766 S.E.2d 707 (2014). In discussing the deference doctrine, the South Carolina Supreme Court stated "we give deference to agencies both because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations." Id.; see Brown v. Bi-Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003) ("We recognize the Court generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulation.").

The Legislature granted authority to the Department to administer and enforce the Pawnbrokers Act in 1988. S.C. Code Ann. § 40-39-20 (2011); S.C. Code Ann. Regs. 28-200 (2011). As a part of its regulatory responsibilities, the Department conducts compliance reviews of its licensees to ensure compliance with state law and consumer protection. S.C. Code Ann.

§ 40-39-90 (2011); S.C. Code Ann. Regs. 28-200(C) (2011). When the Department's Chief Investigator Ken Middlebrooks was asked how many compliance reviews his team of investigators conducts each year, he testified "...probably somewhere in the neighborhood of 400, 420." (R. p. 182, lines 13-14). The high number of on-site compliance reviews conducted by the Department displays a close interaction between the Department and the industries that it regulates. Thus, the Department has decades of experience regarding the legal history of the pawnbroker industry as well as knowledge of pawnbrokers daily operations.

The Department relied upon its history of administering and enforcing the Pawnbrokers Act and information gathered from the onsite investigation when offering to accept a settlement of $10,500.00 to resolve Respondent's twenty-one (21) transactions entered into in violation of the Pawnbrokers Act. (R. pp. 321-323; pp. 324-326). Respondent repeatedly refused the offer, thus the Department filed a Request for a Contested Case Hearing. (R. pp. 327-328; p. 329; pp. 11-22).

In its filing, the Department requested the court impose the maximum permitted penalty for Respondent's 101 violations. (R. p. 14; p. 28). The Department reiterated the request at the hearing as based upon the additional violations testified to, the egregiousness of Respondent's actions and time and effort put into the investigation and trial. (R. p. 268, line 15-p. 270, line 10). The lower court imposed a fine of $2,500.00 and refused to reconsider such amount upon the Department's request. (R. p. 34; p. 9). In confirming the trivial fine, the lower court arbitrarily considered the testimony of Respondent's owner that the store's inventory was worth $8,000–$12,000 while disregarding the testimony of the Department's Deputy Chief Investigator. (R. p. 9). During the hearing, Deputy Chief Investigator Joni Green discussed the financial model of a pawnshop, and testified that pawnbrokers make the bulk of their revenue from interest payments.

(R. p. 253, lines 4-18). The lower court erred in viewing the store's inventory as the sole indicator of Respondent's ability to pay as the store's inventory is neither an indicator of Respondent's financial condition nor relevant in an assessment of an administrative penalty.

The record does not show a compelling reason for the Court to order a fine less than the Department's initial settlement proposal. The lower court erroneously ordered a negligible administrative fine in view of the Department's expertise, additional violations identified during the hearing, egregiousness of Respondent's actions, and improbability of such an amount deterring a business from violating the Pawnbrokers Act.

CONCLUSION

For the reasons set forth herein, this Court should reverse or modify the Orders of the Administrative Law Court as follows:

1. Order Respondent to refund 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, for all of the pawn transactions conducted;
2. Order Respondent to provide the records for the up to 150 "buy back" transactions;
3. Order Respondent to pay an administrative fine of at least $10,500.00; and
4. Such other and further relief the Court deems appropriate.

March 23, 2017

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