

COMMISSIONER OF	*	BEFORE THE
FINANCIAL REGULATION	*	COMMISSIONER OF
V.	*	FINANCIAL REGULATION
CASHCALL, INC., and	*	CFR FILE NO.: DFR-EU-2009-184
a/k/a JOHN PAUL REDDAM,	*	OAH FILE NO.: DLR-CFR-76A-10-21623
RESPONDENTS		
* * * * *	*	* * * * *

OPINION AND FINAL ORDER

Introduction

This matter came before the Maryland Commissioner of Financial Regulation (the "Commissioner") for argument on exceptions filed by CashCall, Inc. ("CashCall") and John Paul Reddam (collectively, the "Respondents"). On December 2, 2010, Administrative Law Judge Nancy E. Paige (the "ALJ") held a hearing on the merits at the Office of Administrative Hearings ("OAH") in Hunt Valley, Maryland. Thereafter, the ALJ issued the Proposed Decision (the "Proposed Decision"). In the Proposed Decision, the ALJ recommended that the Commissioner enter a final order that requires (1) the Respondents to cease and desist from engaging in "credit services business," (2) the Respondents to pay to the Commissioner a civil penalty of \$5,561,000.00, and (3) the records and publications of the Commissioner to reflect the Proposed Decision. On January 3, 2011, the Commissioner issued a Proposed Order (the "Proposed Order") which adopted the ALJ's Proposed Decision in its entirety, including the Recommended Order. Respondents set forth exceptions in Respondent's Exceptions to Proposed Order

of the Office of Administrative Hearing and Memorandum in Support of Respondent's Exceptions in January 2011.

This matter was stayed in 2011 by agreement of the Office of the Commissioner (the "Agency") and the Respondents, pending the final outcome of *Gomez v. Jackson Hewitt, Inc.*, 198 Md. App. 87 (2011), a case which, at the time of the request for Exceptions, was granted certiorari by the Maryland Court of Appeals. On June 22, 2012, the Court of Appeals issued its decision on *Gomez v. Jackson Hewitt, Inc.*, 427 Md. 128, 46 A.3d 443. Because *Gomez* had been decided, the stay was lifted, and the Respondents and the Agency proceeded with an Exceptions hearing.

The Respondents updated their exceptions in a letter to the Commissioner dated June 28, 2012 (the "Exceptions"). The Commissioner presided over the Exceptions hearing on the matter on August 10, 2012. The Respondents did not seek to produce new evidence at the hearing. The Commissioner has decided this matter and issues this Opinion and Final Order (the "Final Order") based on the hearing and the record.

The record before the Commissioner in considering the Exceptions in this case consisted of:

1. The Proposed Decision and Proposed Order;
2. The transcript (the "OAH Transcript") of the OAH proceedings in this matter;
3. All exhibits admitted into the record in the hearing before the ALJ, including the Consumer Loan Marketing, Origination, and Sale Agreement, by and between First Bank & Trust of Milbank [formerly Community State Bank], a bank chartered under the laws of the state of South Dakota, and CashCall, dated as of August 2, 2006 (the "Agreement"), and First Amendment to Consumer Loan Marketing, Origination, and Sale Agreement, by and between First Bank & Trust of Milbank, dated as of October 17, 2006 (the "First Amendment" and, together with the Agreement, the "Sealed Agreements"), which were admitted under seal by the ALJ in the OAH hearing,

reviewed and considered by the ALJ, and destroyed by the ALJ at the request of the Respondents;¹ and

4. The Exceptions.

Unless otherwise defined herein, capitalized terms used herein shall have the meanings assigned to them in the Proposed Decision and Proposed Order. Unless otherwise indicated, all citations to statutes are to the Maryland Annotated Code. Certain facts are summarized for purposes of explaining the decision herein. Certain facts stated in the Proposed Decision are reviewed, noted, and corrected herein. Facts not otherwise corrected are incorporated by reference in this Opinion and Final Order.

Background

On June 23, 2009, former Commissioner Sarah Bloom Raskin issued a Summary Order to Cease and Desist (the "2009 Order") against Respondents which prohibited Respondents from engaging in credit services business activities with Maryland consumers. The 2009 Order charged the Respondents with violating the Maryland Credit Services Business Act, Md. Code Ann., Commercial Law Article §§ 14-1901 through 14-1916 (the "MCSBA" or the "Act") and Md. Code Ann., Financial Institutions Article ("FI"), Title 11, Subtitles 2 and 3, by engaging in credit services business activities with Maryland consumers without being licensed. The action was taken under FI §§ 2-114 and 2-115. Specifically, the 2009 Order cited the following violations of the MCSBA: (1) taking fees without being licensed under § 14-1903(b) of the MCSBA; (2) failing to provide certain information in writing to the consumer under § 14-1905(b) of the MCSBA; (3) failing to comply with various contractual requirements

¹ See OAH Transcript at pp. 238 and 281. The Sealed Agreements have remained sealed for the purpose of the Exceptions Hearing. However, unlike OAH, the Agency will not destroy these documents. They will remain under seal in the custody of the Agency. If any court reviewing this matter wishes to review the Sealed Agreements, the Sealed Agreements will be made available to such court by the Agency.

under §§ 14-1906 and 14-1907 of the MCSBA; (4) failing to comply with requirements with respect to their advertisements under § 14-1903.1 of the MCSBA; and (5) failing to obtain the required surety bond under §§ 14-1908 and 14-1909 of the MCSBA. Moreover, the 2009 Order charged Respondents with engaging in illegal and predatory business activities that resulted in Maryland residents obtaining loans from out-of-state banks at rates that exceeded permissible rates in Maryland, violating § 14-1902(8) of the MCSBA.²

The Respondents contested the 2009 Order and a hearing was held at OAH on the matter. The ALJ made the following findings: Since January 2006, CashCall assisted 5,651 Maryland consumers in obtaining loans in amounts less than \$6,000.00 at interest rates ranging from 59% through 96%. Finding of Fact # 9. CashCall did not lend the money itself, but relied on exclusive contracts with out-of-state banks. Finding of Fact # 2 and Proposed Decision at p. 6. CashCall marketed these high-interest loans through television and other media. CashCall's advertisements directed consumers to its website, which provided loan applications and directions for completing the applications. Finding of Fact # 2 and Proposed Decision at p. 6. Moreover, CashCall maintained a call center to assist loan applicants. Finding of Fact # 2 and Proposed Decision at p. 7. Once an application was completed, CashCall forwarded the application to one of two out-of-state banks that made the loans (one bank was chartered in South Dakota and the other bank was chartered in Delaware). Finding of Fact #2 and Proposed Decision at pp. 6 and 7.

The ALJ stated that CashCall, pursuant to its contract with each bank, had the right to repurchase the loans within three days after the loans were funded. Finding of

² Section 14-1902(8) was renumbered by ch. 385 of the Acts of 2010 to 14-1902(9).

Fact # 6 and Proposed Decision at p. 7. The Sealed Agreements, however, *required* CashCall to purchase a loan three days after the loan was originated and the proceeds were disbursed by the bank to the consumer.³ Accordingly, the ALJ's finding of fact that CashCall had a "right" to purchase the loans is incorrect. CashCall was *obligated* to purchase the loans. The Sealed Agreements also provide that upon the assignment of a loan from the bank to CashCall, the bank's right, title and interest in the loans were assigned to CashCall. CashCall collected interest, penalties and fees from the borrowers. Proposed Decision at p. 7.⁴

The Proposed Decision describes the primary dispute in the OAH proceedings as whether the MCSBA covers CashCall's activities with Maryland consumers. According to the ALJ, CashCall argued that the MCSBA covered "credit repair." CashCall characterized its activities in Maryland as being a "marketing agent" for the out-of-state bank to make loans to Maryland residents. Because it was not in the business of credit repair, CashCall argued that the MCSBA did not apply to its activities. The ALJ disagreed with Respondents' argument and concluded that the definition of credit services business⁵ covered a broader range of activities, including assisting Maryland consumers to obtain an extension of credit from another. The ALJ found that CashCall's activities fell within the scope of the definition of credit services business because CashCall

³ See also Transcript at 259.

⁴ See also First Amendment, § 6.1(a).

⁵ "Credit services business" means any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform, any of the following services in return for the payment of money or other valuable consideration: (i) Improving a consumer's credit record, history, or rating or establishing a new credit file or record; (ii) Obtaining an extension of credit for a consumer; or (iii) Providing advice or assistance to a consumer with regard to either subparagraph (i) or (ii) of this paragraph. MCSBA, § 14-1901(e)(1), Md. Code Ann., Commercial Law Article.

assisted consumers in obtaining loans from out-of-state banks. Thereby, the ALJ concluded that Respondents were subject to the MCSBA. Proposed Decision at p. 10.

Respondents also argued that CashCall was not covered by the MCSBA because it did not charge any fees directly to the consumer borrowers. CashCall stated that it received a "royalty" payment from the South Dakota bank or the Delaware bank, as the case may be, in exchange for marketing services. CashCall argued that direct payment from the consumer is a pre-condition of finding that CashCall provided credit services to the Maryland consumers. In other words, because CashCall did not receive payments from the Maryland consumers, it was not a credit services business. If CashCall is not a credit services business, it is not subject to the MCSBA. The ALJ disagreed with this argument as well, concluding that CashCall's activities constituted assisting Maryland consumers in obtaining an extension of credit from others and that direct payment was not necessary for triggering the applicability of the MCSBA to CashCall's activities. Proposed Decision at p. 10.

With respect to the factual matter of whether CashCall collected fees from the Maryland consumers, the ALJ also found that the Respondents "did not collect any fees for any services related to the loans in issue." Finding of Fact # 3. Finding of Fact # 3 is incorrect. That error and the significance of it are discussed below.

Discussion

At the hearing on Exceptions, the Respondents based their argument that the Commissioner should vacate the Proposed Decision and Proposed Order on the Court of Appeals decision in *Gomez*. Respondents dropped the argument that the MCSBA was limited to credit repair and focused solely on whether direct payment from the consumer

to CashCall was a pre-requisite to finding that CashCall engaged in credit services business activities with Maryland consumers.

Was CashCall Paid Directly by Maryland Consumers to Assist them in Obtaining Extensions of Credit?

Respondents' argument at the Exceptions hearing was clear and simple: In order to find that a business is a credit services business, *Gomez* requires direct payment from the consumer to the business in return for credit services. Respondents rely on Finding of Fact # 3 in the Proposed Decision that found no direct payments were made to CashCall by a Maryland consumer for assistance in obtaining in loan. Instead, Respondents argued that CashCall merely collected a royalty fee from the lending banks. Because the ALJ found that there was no direct payment from the Maryland consumers to CashCall, CashCall contends that it is not a credit services business. Accordingly, if CashCall is not a credit services business, the MCSBA is inapplicable and the Proposed Decision and Order should be vacated.

At the Exceptions hearing, the Agency opposed the Respondents' argument that CashCall did not receive direct payments from Maryland consumers. It is the Agency's position that Finding of Fact # 3 is wrong. The Agency argued that *Gomez's* discussion of direct payments in the context of applying the MCSBA to refund anticipation loans required a re-review of the record before the ALJ, including the Sealed Agreements. In focusing on the direct-indirect payment distinction in these and other documents, it became clear that the facts in the record did not support the ALJ finding that no direct payments had been made from consumers to CashCall. In fact, the Agency argued that

this close review of the Sealed Agreements demonstrated that CashCall received fees directly from the consumers in connection with its role with respect to the loans.⁶

The Sealed Agreements⁷ describe CashCall's role as marketing and soliciting the loans and transmitting the application to the lender. The ALJ further describes the "marketing" efforts as including the provision of an on-line application, telephonic assistance with completing the application and submitting electronically, and transmitting the application to the lender. Proposed Decision at p. 10. The Sealed Agreements also provide that CashCall was required repurchase the loans three days after the loans were disbursed. CashCall purchased the loans for the full principal amount and directly collected from the Maryland consumers on the loans.

With the general relationship between the bank and CashCall as backdrop, a representative promissory note and disclosure statement demonstrates how the consumers paid fees directly to CashCall. Respondents' Exhibit #1 (admitted in the OAH hearing) is the First Bank & Trust Promissory Note and Disclosure Statement, dated as of December 12, 2006 (the "Promissory Note") for a \$2,600.00 consumer loan. The "financed" amount of the loan is shown as \$2,525.00. This is the amount received by the consumer. A

⁶ Respondents argued that COMAR 09.01.03.09A precludes the arguments presented by the Agency. I disagree. COMAR 09.01.03.09A provides that a party adversely affected by a proposed order shall have 20 days from the postmark date of the proposed order to file exceptions with the administrative unit. The Agency argued only that certain facts found by the ALJ and used by the Respondents as a basis for their legal argument were incorrect in light of a subsequent review of evidence admitted at the OAH hearing. Respondents also argue that the Agency's argument offended notions of fair play and substantial justice because these factual matters were not challenged by the Agency at the OAH hearing. I disagree. The OAH Transcript is clear that the Agency did not receive the Sealed Agreements *until* the OAH hearing. See OAH Transcript at p. 243. There is nothing unfair about drilling down to the truth of a matter, in this case, prompted by the Court of Appeals discussion of direct vs. indirect payment in *Gomez*.

⁷ Without determining whether the Respondents are entitled to have the Sealed Agreements kept confidential by the Agency, in deference to the Respondents' concern for the proprietary nature of the Sealed Agreements, the specific provisions of these agreements are not cited herein. Rather, the Sealed Agreements are generally referenced. Only those facts from the Sealed Agreements necessary to render this Opinion and Final Order are recited.

"Prepaid Finance Charge/Origination Fee" is listed at \$75.00. The \$75.00 fee is rolled into the principal amount of the loan.⁸ As a result, the total amount of principal due from the consumer is \$2,600.00.

In order to understand the significance of the \$75 fee, one must turn back to the Sealed Agreements. Pursuant to the Sealed Agreements, when CashCall purchased a loan, CashCall paid for the outstanding balance due, including all principal, interest, origination fees, and other charges or sums owed by the borrower. In other words, CashCall paid \$2,600 for the loan. Because the loan was transferred from the bank to CashCall three days later, the consumer did not make a single payment to the bank. CashCall paid the bank to purchase the loan. The consumer, however, directly paid CashCall, not the bank, because CashCall collected on the loan, which included the \$75.00.

In *Gomez*, the fees to Jackson Hewitt for *tax preparation* were rolled into the principal amount of the loan *and* the lending bank, not Jackson Hewitt, collected on the loan. The lending bank then paid Jackson Hewitt, resulting in no direct payment by the consumer to Jackson Hewitt. Here, the consumer paid CashCall for the principal, interest, and *fees* on the loan. Therefore, CashCall received direct payments from the consumer for fees in connection with the application and origination of the loan, as stated on the Promissory Note. In light of the foregoing, I find that there was a direct payment from the consumer to CashCall in connection with obtaining the loan and that CashCall provided credit services to Maryland consumers. Because CashCall was not licensed as a

⁸ See Promissory Note at p. 2.

credit services business, I deny the foregoing exception and uphold the Proposed Decision and Proposed Order.

Is *Gomez* Applicable to Respondents?

Aside from the factual issue regarding the consumers' payment of fees, the legal basis for Respondents' argument is that *Gomez* requires a direct payment from a consumer to a business before that business will be found to have engaged in credit services business activities. I disagree with Respondents that *Gomez* obliterates the Commissioner's jurisdiction over Respondents if the payments received by CashCall could be characterized as indirect.

First, *Gomez* is factually distinguishable from this matter in significant and relevant respects. *Gomez* applies to tax preparers who were marketing refund anticipation loans in the context of tax preparation services. In *Gomez*, the Court concluded that the services provided by Jackson Hewitt did not constitute credit services to a consumer unless the consumer paid Jackson Hewitt directly to facilitate the refund anticipation loan. One of the concerns of the Court of Appeals was that allowing indirect payment to trigger the application of the MCSBA in the context of refund anticipation loans could lead to the "absurd results in applying the statute to tremendous numbers of retailers throughout Maryland who have never registered under the [M]CSBA." *Gomez*, 427 Md. at 138. Specifically, the Court was concerned that "department stores, electronic retailers, big box retailers, bookstores, gas stations[, and] clothing retailers" would be subject to the MCSBA when assisting consumers in applying for credit offered by third-party banks. *Gomez*, 427 Md. 159. The Court was clearly focused on the fact that the

extension of credit was related to the services of the facilitator of the loan, *but* the primary commercial and contractual relationship between Ms. Gomez and Jackson Hewitt was related to tax preparation, not obtaining an extension of credit. The extension of credit was merely collateral to Jackson Hewitt's primary service of preparing tax returns. On the other hand, CashCall's solicitation, website applications, support services and assistance to consumers, and processing all zeroed in on obtaining a loan for a consumer. The record in this matter contains no evidence that CashCall provided any other services to the consumers. Application of the MCSBA to CashCall in this context creates no risk that department stores, retailers, or gas stations could be swept within the scope of the MCSBA.

In its detailed analysis of legislative history, the Court extensively discusses a number of bills through which the current provisions of the MCSBA were built. Originally, the Court explains, the legislation was aimed at the predatory practices of credit repair agencies. *Gomez*, 427 Md. at 160. However, amendments to the MCSBA in 2001 (ch. 630, SB 882, cross-filed at HB 973) and 2002 (ch. 561, HB 1193) show that the MCSBA encompasses third parties who, partnering with out-of-state banks, facilitate predatory lending against Maryland consumers.

The Court cites and discusses the following with respect to the 2001 legislation.

The "Background" section of an analysis produced by the Senate Finance Committee on S.B. 882 explains:

Under Maryland law, the permissible annual interest rate is 33% for small loans (under \$6,000). However, under federal law, a federally insured depository institution, whether federal or state-chartered, may charge the interest rate permitted in its home state to borrowers across state lines, regardless of the legal rate in the

borrower's state. Thus, for example, a bank in South Dakota, which has no interest limit, may charge a Maryland borrower an interest rate exceeding the State's 33% limit. *A credit services business, operating in Maryland, may broker the transaction between the borrower and the lender.*

Testimony on Deferred Presentment Services (SB 601 of 2001) indicated that *payday lenders are partnering with a federal bank in order to "import" rates into Maryland.*

(Emphasis added [by the Court].)

Included in the bill file is a letter, in support of S.B. 882, from the Director of Public Policy for the Maryland Center for Community Development to the Senate Finance Committee, which states that "out of state banks are exporting *payday loans* to Maryland through third parties — brokers. This bill will assure that the state has the ability to enforce the small loan laws by *prohibiting a broker from arranging a loan* that is otherwise illegal by state law." (Emphasis added [by the Court].) Also in the bill file is a letter to Senator Delores Kelley and Delegate Maggie McIntosh from Assistant Attorney General Robert Zarnoch (now an associate judge on the Court of Special Appeals of Maryland), in his capacity as Counsel to the General Assembly, opining that S.B. 882 "is not preempted by or in conflict with federal laws regulating national banks and federal savings and loan associations." The letter explains that S.B. 882

is primarily *aimed at "payday loans"* and particularly, third party arrangements that some federally-insured depository institutions, such as national banks and federal savings and loan associations, have entered into with local agents (usually a check cashing business) to broker such loans. Because these federally-insured depository institutions may charge[, under § 85 of the National Bank Act, *12 U.S.C. § 1 et seq.*,] the interest rate permitted in their home states to Maryland borrowers, a payday borrower may be charged interest in

excess of State usury laws. Senate Bill 882/House Bill 973 would not prevent federally-insured depository institutions from directly making payday loans at "exported" rates of interest. *The legislation is aimed only at local agents and the role they play in facilitating payday loans and interest rates in excess of those permitted by Maryland law. . . .*

(Emphasis added [by the Court].)

Finally, the bill file contains the Commissioner's written testimony regarding S.B. 882,

which would prohibit the facilitation of payday loans in Maryland *by third-party agents of lenders.*

During the 2000 Legislative Session the practice of out-of-state, federally insured depository institutions "exporting" high interest payday loans from the states where they are located into Maryland was raised. This practice is permitted by federal law. Nevertheless, by rejecting legislation that would have permitted these high cost loans to be made by Maryland domiciled lenders, the General Assembly made a strong public policy statement against such loans.

The federal preemption of State law as to the interest rates charged by the lenders together with alliances with third-party agents has provided some *check cashing agencies* with a means to avoid the Maryland usury law ceiling and to participate in making payday loans at unconscionable interest rates, far in excess of those permitted by Maryland law. While SB 882 does not and cannot interfere with the federally insured lender's ability to directly make those loans in Maryland, it does not prohibit local agents from facilitating the transactions. . . .

Under the [CSBA], if a lender compensates

a third-party to assist Maryland consumers obtain credit, the agents are subject to the Act. The Act does not prevent the exportation of interest rates or the making of high-cost payday loans, but it does subject the third party agents to the licensing, disclosure and other provisions of the Act.

(Italicized emphasis added [by the Court].)

In 2002, the General Assembly enacted ch. 561 which again amended the MCSBA to close a loop-hole related to the nature of credit covered by the 2001 provisions, broadening the scope of the law. Since 2002, § 14-1902(9) of the MCSBA has provided that:

A credit services business, its employees, and independent contractors who sell or attempt to sell the services of a credit services business shall not: . . . [(9)] Assist a consumer to obtain an extension of credit at a rate of interest which, except for federal preemption of State law, would be prohibited under Title 12 of this article.⁹

Based on its analysis of the legislative history, the Court found that the Maryland General Assembly was aiming not just at credit repair companies, but was focusing also on "payday lenders." *Gomez*, 427 Md. at 162. Whatever the characterization, the legislative history and the language of the bill clearly indicate the General Assembly's concern for protecting Maryland residents from the importation of usurious interest rates by businesses acting as agents for out-of-state banks.

The General Assembly amended the MCSBA one more time to provide that a credit services business was prohibited from charging or receiving any money or other valuable consideration in connection with an extension of credit that, when combined with any interest charged on the extension of credit, would exceed the interest rate

⁹ In *Gomez*, the Court of Appeals appears to have incorrectly cited the First Reading version of HB 1193, rather than the Enrolled version of the bill (ch. 561). The language from the Enrolled version appears above.

permitted for the extension of credit under the Commercial Law Article. See ch. 385 of the Acts of 2010 (HB 79, cross-filed with SB 678).¹⁰

The 2001, 2002, and 2010 legislation speaks to the on-going efforts by the General Assembly to protect Maryland residents from predatory lending practices of out-of-state banks partnering with "marketers" of high-interest, small-dollar loans. Against this backdrop, CashCall's activities fall squarely within the concerns and policies of the General Assembly in its amendments to the MCSBA. CashCall markets and provides substantial assistance to Maryland consumers who are looking for small-dollar consumer loans. The rates of interest of the loans facilitated by CashCall range from 59% to 96% - well over Maryland's 24% cap and 33% cap. For example, the \$2,600.00 loan made pursuant to the Promissory Note (described above) was subject to a 99.24% APR and

¹⁰ As noted by the Court in *Gomez*, testimony from the HB 79's sponsor states that HB 79:

merely clarifies that all fees associated with a *payday loan* fall under the usury cap here in the State of Maryland, which is for a loan above \$6,000 is [sic] 33%, below \$6,000 is 24%. The necessity for the bill is this new business model out there allowing an out-of-state business to surpass the usury caps here in the State which have been in place for at least the past 25 years. . . .

Gomez, 417 Md. at 167. Additionally, the Court noted the testimony of the Maryland Consumer Rights Coalition, stating that:

SB 678 is needed to close a loophole in [the CSBA] and supports *the legislature's intent to prohibit payday lending* in Maryland. Payday loans are not legal in Maryland and never have been. . . .

Then, payday lenders partnered with banks in a "rent-a-bank scheme." Working with out-of-state banks, the payday lenders claimed to be brokering loans for their partner banks. To redress the issue, the Maryland legislature amended the [CSBA] to prevent this practice. Undeterred, payday lenders then tried to disguise payday loans as secured transactions or as payments for other services. Ace Cash Express changed its loan design to claim such transactions were "secured." In 2002, the [CSBA] was amended to include secured transactions.

Recently, online lenders have tried again to subvert the Maryland legislature's decision to cap loans at 33 percent. Online payday lenders are partnering with predatory service organizations to charge interest plus service fees. . . .

Gomez, 427 Md. at 167-8.

resulted in a total payback of \$9,225.77. A review of the OAH Transcript reveals that the consumers who testified sought these loans in response to desperate situations, involving the death(s) of family members and the loss of employment. These consumers heard or saw ads, called CashCall, and worked with CashCall's employees to complete and submit loan applications. The record contains no evidence that CashCall provided any other services than facilitating these loans or had any other commercial relationship with the Maryland consumers other than assisting them with obtaining extensions of credit.

The question is whether a "marketer" of loans for out-of-state banks who receives an indirect payment from a consumer for providing services to facilitate a high-interest, small-dollar consumer loan is subject to the MCSBA and the Commissioner's jurisdiction to enforce the MCSBA. I conclude the answer is yes. In looking at the Court's analysis of the direct-indirect payment issue and the scope and intent of the MCSBA in *Gomez*, it is clear that the Court was not willing to impose licensing and consumer protection requirements on an industry that the General Assembly did not intend to be swept under the MCSBA without a clear indication, in the form of direct payment, that the consumer contracted with the industry for credit services.

The Court's focus on the direct nature of the payment was necessary to define the commercial relationship between consumers and tax preparers facilitating refund anticipation loans. The Court stated that "In the context of the [M]CSBA and § 14-1901(e) "in return" can reasonably be understood to envision an exchange of assistance between the provider of that assistance and to mean that any payment to the credit services business for such assistance in obtaining the extension of credit must come

directly from the consumer." (Emphasis original.) In the context of refund anticipation loans under the Jackson Hewitt model, the Court's interpretation makes sense. There, the consumer paid for and received tax preparation services from the tax preparer, Jackson Hewitt. The lender compensated Jackson Hewitt for marketing the loans at the tax preparer locations. There were two separate commercial relationships: tax preparation and borrowing. Under the Court's analysis, a direct payment for the credit services is necessary to define what party fulfilled what role in these separate commercial transactions. The Court in Gomez did not consider the circumstances in which the consumer engages in a single commercial transaction with the credit services business. With respect to CashCall, no clarification of its role in the lending process is necessary. The commercial relationship between CashCall and the consumer is clear: CashCall helped consumers obtain loans from out-of-state banks at rates that would otherwise be usurious under Maryland law. CashCall was integral, central, and necessary to the consumer in the process of applying for the loan - the *only* transaction that the consumer sought. The consumer's payment of a financing/origination fee, whether it is directly from the consumer to CashCall (as in this case), whether it is buried in the transaction between the bank and CashCall, or whether it is directed through the bank, ultimately compensates CashCall *in return* for its only commercial relationship with the consumer.

To make the applicability of the MCSBA contingent on whether a consumer has made a "direct" payment to CashCall would lead to absurd results. It is hard to believe that the Court of Appeals decision in *Gomez* was meant to strip Maryland residents of the consumer protections specifically and repeatedly intended by the Maryland General Assembly. If I accept Respondents' argument, I accept that any credit services business

is permitted to re-direct the path of a consumer payment through a myriad of creative business structures and transactions and avoid the MCSBA. This would include not only a payday lender, but even a credit repair provider. Accordingly, I reject Respondents' argument that the MCSBA requires direct payment.

In light of the foregoing, I reject the Exceptions and uphold the Proposed Decision and Proposed Order, subject to the factual corrections made herein.

Order

The Commissioner having considered the Exceptions, it is, by the Commissioner:

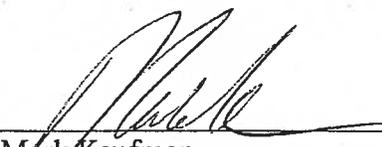
ORDERED, that Respondents cease and desist from engaging in the "credit services business;"

ORDERED, that Respondents pay to the Maryland Commissioner of Financial Regulation a civil penalty of \$5,651,000.00 within 30 days from the date of this Opinion and Final Order;

ORDERED that Respondents shall send all correspondence, notices, and civil penalties to the Commissioner at the following address: Commissioner of Financial Regulation, 500 North Calvert Street, Suite 402, Baltimore, Maryland 21202, Attn: Carmen Rivera, Paralegal.

ORDERED, that the records and publications of the Commissioner of Financial Regulation reflect this decision.

11/9/12
Date



Mark Kaufman
Commissioner of Financial Regulation