

IN THE CIRCUIT COURT FOR ALLEGANY COUNTY, MARYLAND

PETITION OF: CASH-N-GO, INC., *et al* *

FOR JUDICIAL REVIEW OF THE *
DECISION OF THE:

CONSUMER PROTECTION DIVISION, *
OFFICE OF THE ATTORNEY GENERAL *
OF MARYLAND *

CASE NO. C-01-CV-20-000101

IN THE CASE OF:

CONSUMER PROTECTION DIVISION, *
OFFICE OF THE ATTORNEY GENERAL *

Proponent

v. *

CASH-N-GO, INC., *et al.*, *
Respondents *

Agency Case No.: 19-003-308458 *

Related OAH Case No.: OAG-CPD-04-19-11267

MEMORANDUM OF THE COURT

Pending before the Court is the Petition for Judicial Review of Cash-N-Go, Inc., seeking review of the Proposed Decision of the Office of Administrative Hearings dated October 25, 2019 and the Final Order by the Consumer Protection Division of the Office of the Attorney General (hereafter CPD) dated February 18, 2020. At issue is whether Cash-N-Go, Inc.’s practice of making certain advances of money to consumers in Maryland violated the Maryland Consumer Protection Act, Md. Code Ann., Comm. Law §§ 13-101 to 13-501; the Maryland Consumer Loan Law, Md Code Ann., Comm. Law §§ 12-301 to 12-317 and Md. Code Ann., Fin. Inst. §§ 11-201 to 11-223; the Maryland Interest and Usury Law, Md. Code Ann., Comm. Law § 12-101 to 12-127; and the Installment Loan-Licensing Provisions, Md. Code Ann., Fin. Inst. §§ 11-301 to 11-304. On April 1, 2019 the CPD filed a Statement of Charges against Petitioner Cash-N-Go, Inc. and against Cash-N-Go Pawnbrokers, LLC, Cash-N-Go Pawnbrokers, Inc. and Brent Jackson. The Petitioner and the other respondents denied all allegations of wrongdoing contending that the transactions at issue are “title pawns” and did not violate any of the Maryland consumer protection statutes. The matter was referred to the Office

of Administrative Hearings to conduct a contested case hearing. On July 16, 2019 a hearing was held and on October 26, 2019 a Proposed Decision was issued by the presiding Administrative Law Judge.

The Proposed Decision concludes that the transactions described as “title pawns” were, in fact, loans. The Proposed Decision further concluded that the transactions violated the consumer protection statutes as respondents were not licensed to make loans in Maryland, failed to make the required disclosures to the consumer, engaged in unfair trade practices, exceeded the statutory interest rate caps, took unpermitted security interests for loans of less than \$700.00 and engaged in illegal repossession activities. The CPD issued a Final Order on February 18, 2020 in which it adopted and incorporated all findings and conclusions contained in the Proposed Decision and ordered Cash-N-Go, Inc., Cash-N-Go Pawnbrokers, LLC, Cash-N-Go Pawnbrokers, Inc. and Brent Jackson to cease and desist from violating the Maryland Consumer Protection Act. The Final Order found that the Respondents were jointly and severally liable to provide restitution of amounts received in connection with all Maryland consumers who entered into vehicle title loans which was calculated to be at least \$2,200,000.00. The Agency also assessed a civil penalty of \$1,200,750.00 pursuant to Md. Code Ann., Com. Law § 13-410 (a).

On March 16, 2020 Cash-N-Go, Inc. filed a Petition for Judicial Review. On July 9, 2021 the Court held a hearing on the Petition.

1. Parties to the Judicial Review Proceeding

The Final Order applied to Respondents Cash-N-Go, Inc., Cash-N-Go Pawnbrokers, LLC, Cash-N-Go Pawnbrokers, Inc. and Brent Jackson. *See* Final Order page 3, paragraphs 6-8. The Petition for Judicial Review was filed by Cash-No-Go, Inc. as the sole petitioner. The remaining respondents did not file any response to the Petition stating their intention to participate in the action for judicial review. Md. Rule 7-204(a). As a result the Final Order as to Cash-N-Go Pawnbrokers, LLC, Cash-N-Go Pawnbrokers, Inc. and Brent Jackson remains intact and is enforceable against them.

2. Standard of Review

The Petitioner contends both in its Memorandum and at the hearing, that the Administrative Law Judge was legally incorrect in concluding that the questioned transactions

were loans as opposed to title pawns. Petitioner further contends that as this is an issue of law, the issue is reviewed by the Court based upon a non-deferential standard for correctness. The Court notes that interpreting the pure meaning of a statute would be reviewed by the Court without deference to the agency's conclusion. *Schwartz v. Md. Dept. of Natural Resources*, 385 Md. 534, 554 (2005). However, when a party challenges how an agency applies, as opposed to interprets a statute, a mixed question of law and fact is raised. *Bayly Crossing v. Consumer Protection*, 417 Md. 128, 138 (2010). The Court applies the substantial evidence standard when reviewing mixed questions of law and fact. *Cashcall, Inc., v. Md. Comm'r of Fin. Regulation*, 448 Md. 412, 426 (2016). The standard for substantial evidence review is "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Christopher v. Dept. of Health*, 381 Md. 188, 199 (2004).

In the instant case, the Petitioner does not challenge any statutory interpretation. Instead, Petitioner asserts that neither the Consumer Protection Act, the Consumer Loan Law, the Interest and Usury Law, or Installment Loan-Licensing Provision apply to the transaction under review because they constitute a title pawn and not a title loan. The resolution of the issue is a mixed question of law and fact and is reviewed based upon the substantial evidence standard. The Court will review the record to determine whether a reasoning mind could reasonably have reached the factual conclusion the agency reached.

3. Title Loan vs. Title Pawn

The Administrative Law Judge engaged in an exhaustive and detailed analysis of the differences and similarities between loan transactions and pawn transactions. Proposed Decision p. 32-40. The Petitioner notes that in the transaction, the customer is required to sign the title of the vehicle or a bill of sale but leave blank the name of the buyer. No other steps are taken to change ownership including submitting the documents to the Motor Vehicle Administration (MVA). The only document submitted to the MVA is a security interest filing on the vehicle for Petitioner's benefit.¹ The Administrative Law Judge also noted that the customers were required to keep the vehicle insured. Under Maryland law, it is the owner of the vehicle who has the responsibility to insure it. Md. Code Ann., Transp. §17-104(b). There was evidence that

¹ The Petitioner did not explain how, as the owner of property, they could validly hold a security interest in that property.

Petitioner promoted the product as a loan or title loan and that customers considered the product to be a loan. Customers were asked to provide, in addition to the title to the vehicle, a driver's license, social security number, proof of insurance, a utility bill, a pay stub and fill out a Customer Information Sheet providing contact information for employers and relatives. This type of information is consistent with underwriting a loan, not engaging in a pawn of personal property. There was evidence of repossession activity on the part of the Petitioner which is further indicative of a loan rather than a pawn. In order to avoid losing possession of the vehicle, the customer would have to pay a monthly fee to the Petitioner which equaled 30% of the principal amount advanced. Petitioner argues the monthly carrying charge was a "pawn shop fee," not a usurious interest payment.

The Administrative Law Judge concluded that these factors "support the conclusion that title pawns, like those at issue, are actually consumer loans." Proposed Decision page 40. Upon review of the record, the Court concludes there was substantial evidence to support the Administrative Law Judge's and Agency's findings. A reasoning mind could reasonably have reached the conclusion that Petitioner's alleged title pawns were consumer loans.

4. Petitioner's Lack of Compliance with Maryland Consumer Protection Statutes

The record reflects no dispute that the transactions entered into between consumers and the Petitioner did not comply with Maryland Consumer Loan Law, the Maryland Interest and Usury Law, or the Installment Loan-Licensing Provision. Petitioner has contended throughout these proceedings that it was not subject to those consumer protection statutes since they were not engaged in making loans. Having concluded that the transactions are consumer loans, the Court finds substantial evidence in the record to support the Administrative Law Judge and the Agency's finding that Petitioner made unlicensed consumer loans, charged usurious interest rates, made deceptive and misleading statements, failed to state material facts, took security interests in loans under \$700.00, failed to obtain a surety bond, failed to provide required written disclosures and illegally repossessed vehicles.

5. Remedy

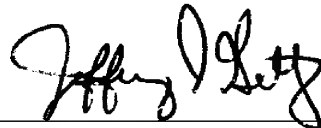
At the hearing on the Petition for Judicial Review, counsel for the Petitioner argued that there was a mistake made in calculating the amount of restitution to be paid to the Agency to

fund the Agency's restitution payment to consumers. The alleged mistake included adding the total amount of principal repayments made by the customers on the loans. Petitioner argues that such a calculation vastly overstates the injury to the consumer occasioned by the Petitioner's unlawful business practices. The agency responded that the Petitioner had no right to keep any payments that they received as a result of their unlawful lending activities and that the evidence produced at the hearing establishes that the Petitioner collected over \$2.2 million from consumers on the 1,601 loans made in Maryland from 2007 through 2016. The Court notes that Md. Code Ann., Com. Law §12-314 (b)(2) provides that a person "who makes a usurious loan may not receive or retain any principal interest or other compensation with respect to [that] loan." *B & S v. Consumer Protection*, 153 Md.App. 130, 169 (2003). The Agency's restitution order was not erroneous in its calculation and it shall be affirmed.

CONCLUSION

For the foregoing reasons, the Court affirms the Final Order issued by the Consumer Protection Division of the Office of the Attorney General dated February 18, 2020. A separate order shall be entered.

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Judge Jeffrey S. Getty