

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS



DEPARTMENT OF BUSINESS REGULATION  
DIVISION OF BANKING  
1511 PONTIAC AVENUE, BUILDING 68-2  
CRANSTON, RHODE ISLAND 02920

Telephone (401) 462-9503

IN THE MATTER OF:

MULTISERVICE GUATE, INC.

DECISION ON APPLICATION FOR A LICENSE TO CASH CHECKS UNDER R. I.  
GEN. LAWS §§ 19-14-3 AND 19-14.4-2

DECISION

Hearing Officer: Ellen R. Balasco, Esq.

Date of Hearing: December 9, 2013

Appearances:

For the Department: Neena Sinha Savage, Esq.

For the Applicant: Joanna M. Achille, Esq.

For Objector *Check Cashing R Us*: John J. DeSimone, Esq.

For Objector *The Gold Loan Company*: Dan R. Baldelli, President

**I. INTRODUCTION**

The above-entitled matter came before the Department of Business Regulation (“Department”) on the application (“Application”)<sup>1</sup> of Multiservice Guate, (Applicant”) for a license to cash checks received by the Department on or about November 18, 2011. A Notice of

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<sup>1</sup> A copy of the Application was marked and admitted as a full exhibit, Department’s Exhibit One (1).

Hearing (“Notice of Hearing”) was issued on July 10, 2013 noticing this matter for hearing before the undersigned hearing officer under delegation of authority by the Director of Department. The Notice of Hearing states that the Respondent submitted an application to cash checks at the location of his existing business - 773 Broad Street, Central Falls, Rhode Island 02863.

R.I. Gen. Laws § 19-14-2 requires the Director of the Department to investigate the needs of the community to be served by the proposed location in an application and the effect that the granting of the license will have on the financial stability of other check cashing businesses that may be serving the community. The Director has the authority to issue such a license or to deny the application. To investigate the needs of the community and the effect on other check cashing businesses serving the community, the Director set the matter down for hearing to provide a forum for the Applicant and any objectors to present evidence concerning these issues, subject to rebuttal and cross-examination, under oath, and on the record. A hearing was held on December 9, 2013.

## **II. JURISDICTION**

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 19-14-1 *et seq.*, R.I. Gen. Laws § 19-14-12 *et seq.*, R.I. Gen. Laws § 19-14.4-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

R.I. Gen. Laws § 19-14-2 requires licensure with the Department for various business activities, including cashing checks for a fee. Further, R.I. Gen. Laws § 19-14.4-2 requires that applicants publish a notice of application. The statute also provides for objections to an

application to be submitted to the Department in writing. Upon receipt of written objections to an application, the statute requires the Director of the Department (“Director”) to investigate the needs of the community to be served from the location specified in the application and the effect that granting the license will have on the financial stability of other check cashing businesses that may be serving the community. The Director has the authority to issue or deny such license based upon the conclusions reached with respect to these factors. The parties objecting to the issuance of the check cashing license were notified in writing by the Department of the date for hearing.

### **III. ISSUE**

The issue in this matter is whether the Applicant should be granted a License to Cash Checks, pursuant to R.I. Gen. Laws § 19-14.4-1 *et seq.*

### **IV. MATERIAL FACTS AND TESTIMONY**

After having published Notice of the Application in the Providence Journal on July 16, 2012, the Division of Banking received certain written objections<sup>2</sup> described as follows:

1. Dan R. (Rocco) Baldelli, owner of the Goldloan Company located at 100 Bernon Street, Woonsocket, RI, filed a written complaint received at the Division of Banking on July 25, 2012. He appeared at hearing to support his objection.

2. Gregory Costantino, President of Check Cashing R Us, Inc. 1300 Broad Street, Providence, RI, filed a written objection received at the Division of Banking on April 12, 2013. He appeared at hearing represented by counsel to support his objection.

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<sup>2</sup> Written objections are allowed pursuant to R.I. Gen. Laws § 19-14.4-2.

3. State Representative Agostinho F. Silva, District 56, filed a written objection received at the Division of Banking on April 12, 2013. He did not appear at the hearing to support his objection.

Dan (Rocco) Baldelli is the owner of a business which engages in check cashing, but it is not located in the vicinity of the applicant business. He stated that he does not own a business in the city, nor does he reside there. He does not contend that the granting of a check cashing license for Multiservice Guate, Inc. will cause financial harm to him or his business. He cited two studies which focused on communities outside the State of Rhode Island regarding payday lending which he believes support his objection to the granting of another check-cashing business in this State. The studies he quoted, conducted in 2009 and 2006, concerned the payday lending industry being negatively impacted by small business check cashing businesses. He contends that the number of check cashing businesses per capita is over-saturated, and more of these services will be detrimental to the industry and consumers. He further opined that the growth of the "illegal, unlicensed check-cashers" is contributing to an impact on the industry.

Gregory Costantino, owns a business named Check Cashing R Us, with one licensed location at 1300 Broad Street, Central Falls, RI. He has secured a check cashing license certificate from the City of Central Falls, after a favorable ruling at a hearing at the Department of Business Regulation on April 11, 2012 to open a second location at 355 Broad Street in Central Falls. No business has yet been established at that location. He works 10 hours per week at the Providence location and employs two persons there. He has no employees who will work at the Central Falls location when it is opened. No evidence was presented that Mr. Costantino's prospective business location in Central Falls would be financially impacted by the

granting of the applicant's license. He testified that he also works at his family business, and is an elected Representative in the Rhode Island General Assembly.

He has invested fifty thousand dollars (\$50,000.00) to properly equip his building to conform to the requirements of the check cashing licensing laws and regulations. Mr. Costantino stated that he is aware that the business is off thirty percent (30%) at a check cashing business named World Travel in Central Falls, but he did not present any documentary evidence or witnesses to support this statement.

Counsel for Mr. Costantino presented James McLaughlin as a witness, who is also a State Representative. He is not, nor has he ever been involved in the check cashing business and is not familiar with this type of business, or the owners of Multiservice Guate, Inc. The location of the applicant business is in his elected district. He offered his personal opinion that granting this application would not promote the needs of the community.

Both Celia Lopez and her husband Jose Medina appeared and offered testimony in support of the application. Together they established the applicant business Multiservice Guate, Inc. in December of 2004. They have lived in Central Falls for over seventeen years. Their testimony established that the business is family owned and operated, and the application for check cashing license was filed in response to what they believe to be a growing need based on comments from their customers. The only employees of the business are Lopez and Medina, each working 10 hour shifts seven days each week. The services provided by this business are money wiring, sale of telephone calling cards, prepaid mobile telephones and bill paying.

They have established what they described as a large base of "regular" customers in their Central Falls community with whom they have established personal relationships over the years.

They know their customers by name. The owners do not advertise their services; rather their new customers come to the business after word-of-mouth recommendations. The vast majority of their customer base is of Hispanic culture, and Spanish-speaking. The applicant owners are from Guatemala, and Spanish is their primary language. Ms. Lopez especially believes that this is why customers patronize the applicant business.

Though they currently cash checks for customers only incidental to a purchase<sup>3</sup>, both Lopez and Medina testified that their customers have routinely asked them to cash checks without the necessity of purchasing other goods or services from them. They stated that the number of checks they are currently cashing which are incidental to a purchase is approximately one hundred (100).

The applicant also presented a witness named Marvin Sandoval, who has been a regular weekly customer of its business for a number of years. He testified that he resides in the neighborhood, and uses Multiservice Guate, Inc. to wire money, at the same time he cashes his weekly paycheck; sometimes depositing the funds into a savings account, and sometimes wiring funds. He has referred many customers to the applicant business. He believes that the check cashing license should be granted to the applicant.

## V. DISCUSSION

R.I. Gen. Laws § 19-14.4-1 *et seq.* provides the statutory authority for the regulation of check cashing businesses. R.I. Gen. Laws § 19-14.4-4(2)(b) states the legislative intent for this regulatory framework:

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<sup>3</sup> Pursuant to R.I. Gen. Laws § 19-14.4-1(3), no check cashing license is required for persons engaged in the business of cashing checks where that business is incidental to the person's retail sale of goods or services and the person charges not more than fifty cents (\$.50) per check cashed.

The general assembly finds and declares that check cashing businesses provide important and vital services to Rhode Island citizens, that the number of check cashing businesses should be limited in accordance with the needs of the communities they are to serve, and that it is in the public interest to promote and foster the check cashing businesses and to insure the financial stability thereof.

Therefore, R.I. Gen. Laws § 19-14.4-2(c) and (d) requires as follows:

(c) The director or the director's designee shall cause an investigation of the needs of the community for the establishment of a check cashing business at the location specified in the application and the effect that granting the license will have on the financial stability of other check cashing businesses that may be serving the community in which the business of the applicant is proposed to be conducted. If the issuance of a license to engage in the check cashing business at the location specified will not promote the needs and the convenience and advantage of the community in which the check cashing business of the applicant is proposed to be conducted, then the application may be denied.

(d) The director or the director's designee shall investigate to ascertain whether the qualifications and requirements have been met. Within ninety (90) days after the publication of the notice, if the director or the director's designee finds that the qualifications have been met, he or she shall issue to the applicant a license to engage in the business of cashing checks in this state.

Thus, under the statute, if the application will not promote the need and the convenience and advantage of the community, the application may be denied. The Department must also evaluate the effect that a new check casher would have on the financial stability of other check cashing businesses already serving the community.

It is clear from the case law that the “needs of the community” as well as the “public convenience and advantage” are factors which require each application to be reviewed within the specific factual context of that application.

Section (g) of *Banking Regulation 98-14.4 Check Cashing* states that the interpretation of “community” shall be as follows:

The Director, in reviewing an application for license to cash checks shall consider the proposed licensee’s community, as required by R.I. Gen. Laws § 19-

14.4-1, to include the community as proposed by the applicant in its application or business plan, which community in no event shall be less than a one (1) mile geographic radius of the proposed location.

This is the only concrete definition in the statutory/regulatory standard. Therefore, it is necessary to evaluate the needs of the community within a one (1) mile geographic radius of the proposed location. *Black's Law Dictionary* (7<sup>th</sup> Ed.), defines the term "community" as a neighborhood or vicinity, but adds in its definition "people who reside in a locality in more or less proximity. A society or body of people living in the same place, under the same laws and regulations who have common rights, privileges or interests. It connotes a congeries of common interests arising from associations – social, business, religious, governmental, scholastic, recreational."

The need, convenience, and advantage of the community is also required to be analyzed within the context of the "community" as defined in said regulation which relates to an applicant's proposed community which in no event shall be less than one (1) mile from the proposed location. Therefore, if an applicant proposes that its community is only the area within one-half mile of its proposed location, the regulation states that the community cannot be less than one (1) mile from a proposed location. Thus, it is necessary to review the community as described in the Application as well as a one (1) mile geographic radius.

It is necessary to also analyze the facts presented in the Application and determine whether the Applicant's specific context meets the criteria in R.I. Gen. Laws § 19-14.4-2(c) and (d), R.I. Gen. Laws § 19-14-12 and R.I. Gen. Laws § 19-14.4-3.

In this case, then, a determination must be made as to whether the community that the Applicant seeks to serve, its current and prospective customers of its existing business, has a need for the Applicant's check cashing service. As both applicants testified that their customers are primarily Spanish speaking, who have migrated from mostly Latin American countries, and that this is the reason they patronize this establishment, it appears they are serving a very particular community within the City of Central Falls. The members of that community are requesting check cashing services at that location.

The statute also requires that the Department consider an applicant's financial impact on competing businesses. It does not mandate that the applicants themselves provide that their entry into the market would not be harmful to other check cashing businesses. The Applicant is not required to prove a negative. At the hearing in this matter, no objector established that granting this application would have a negative financial effect on an existing competing business. Rather, the two objectors who do operate check cashing businesses are not located in the community served by the applicants. Mr. Costantino intends to extend his business by opening a location in that community, but he has not yet done so. Therefore, any comment that it would negatively impact him is conjecture, at best.

The Applicants argue that their customers, who reside within the community they serve, have been requesting check cashing services at their business without having to purchase another service. It was correctly pointed out by an objector that there are businesses currently cashing checks without a required license (referred to as "illegal, unlicensed check cashers" by Mr. Baldelli). It may be inferred then, that it would be in the State's interest to create another

licensed check casher to compete against these unlicensed check cashers and to hopefully deter their unlicensed activities by driving customers to licensed establishments.

**V. FINDINGS OF FACT**

1. The Division of Banking received the Application on or about November 18, 2011.
2. Notice of the Application was published in the *Providence Journal* on or about July 16, 2012.
3. The Department received three written objections, one of which was from an elected State Representative. The two other written objectors appeared at hearing, and a different elected State Representative was presented as an additional witness by one of those objectors.
4. A full evidentiary hearing was held on December 9, 2013 at which both the applicant and one of the objectors were represented by counsel.
5. The facts, as detailed in sections I. through IV. *supra.* are incorporated herein by reference and adopted as findings of fact in this matter.

**VI. CONCLUSIONS OF LAW**

1. R.I. Gen. Laws § 19-14.4-2(c) requires the Department to consider “the needs of the community for the establishment of a check cashing business at the location specified in the application” and to “evaluate the effect that granting the license will have on the financial stability of other check cashing businesses that may be serving the community.”

2. If the Department finds that the check cashing business at the location specified will not “promote the needs and convenience and advantage of the community in which the check cashing business of the applicant is proposed to be conducted[.]” R.I. Gen. Laws § 19-14.4-2(c)

authorizes the Department to deny the application.

3. “Community” means “the community as proposed by the applicant in its applicant or business plan, which community in no event shall be less than a one (1) mile geographic radius of the proposed location.” *Banking Regulation 98-14.4*.

4. This Applicant operates an existing business which currently cashes checks for its patrons, incidental to their purchase of other goods or services provided.

5. The parties who appeared at hearing to object to the granting of this application failed to provide sufficient, verifiable proof that the granting of the application would have a significant negative effect on the financial stability of their own and other check cashing businesses serving this community.

6. The Applicant has established that the granting of its application for a check cashing business will promote the convenience and advantage of the community which it currently serves.

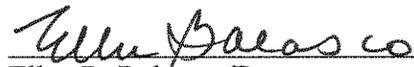
7. The Applicant has demonstrated, based on evidence the undersigned finds convincing and unrefuted, that this is not a new check cashing business, and allowing it to cash checks for its current and future customers not incident to purchase will serve the convenience and advantage of the community they serve.

8. The objectors offered no substantiated evidence on the record that the needs in the community, alleged to exist by Applicant, are currently being served by any other licensed check cashing business.

**VIII. RECOMMENDATION**

Based on the foregoing, the undersigned Hearing Officer respectfully recommends that the Application be granted, subject to verification by the Banking Division of the Department that the Applicant has met all other requirements as set forth in R.I. Gen. Laws § 19-14.4-1 *et seq.* and *Check Cashing Banking Regulation 98-14.4.*

Dated: 14 July 2014

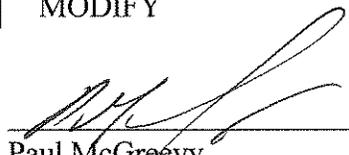
  
Ellen R. Balasco, Esq.  
Hearing Officer

**ORDER**

I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

- ADOPT
- REJECT
- MODIFY

Dated: 15 July 2014

  
Paul McGreevy  
Director

**NOTICE OF APPELLATE RIGHTS**

**THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.**

**CERTIFICATION**

I hereby certify that on the 15<sup>th</sup> day of July, 2014 a copy of the above Decision was sent by first class mail to: Joanna Achille, Esq. Aponte, Cardona & Assoc., 597 Broad Street, Central Falls, RI 02863; and John J. DeSimone, Esq., DeSimone Law Offices, 735 Smith Street, Providence, RI 02908 and by electronic-delivery to the following parties at the Department of Business Regulation: Joseph Torti, Deputy Director and Neena Sinha Savage, Esq.

