

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BT PROFESSIONAL SERVICES, INC.,)
)
 Petitioner,)
)
 vs.) Case No. 96-6136
)
 DEPARTMENT OF BANKING AND)
 FINANCE, DIVISION OF BANKING,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on August 19, 1998, by video teleconference at Miami, Florida, before Errol H. Powell, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jonathan K. Thiele, Esquire
6780 Coral Way, Suite 200
Miami, Florida 33155

For Respondent: Robert Alan Fox
Assistant General Counsel
Department of Banking and Finance
The Fletcher Building
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STATEMENT OF THE ISSUES

The issue for determination is whether Petitioner is eligible for registration as a check casher.

PRELIMINARY STATEMENT

By letter dated November 22, 1996, the Department of Banking

and Finance, Division of Banking (Respondent) notified BT Professional Services, Inc. (Petitioner), among other things, of its intent to deny Petitioner's application to register as a check casher pursuant to Chapter 560, Florida Statutes, and the grounds for the denial. By letter dated December 13, 1996, Petitioner, through its counsel, requested a formal hearing regarding Respondent's notice of intent to deny. On December 30, 1996, this matter was referred to the Division of Administrative Hearings.

At the request of the parties, the hearing in this matter was continued and this matter was held in abeyance. Having been held in abeyance for several months, this matter was not resolved and was scheduled for hearing sua sponte.

On August 13, 1998, a motion hearing was held regarding, among other things, a motion to amend the denial letter by the Respondent and a motion to close the hearing and make the documents related to the hearing confidential. Both motions were granted. The denial letter was amended to add Subsections 560.114(1)(f) and (2)(c), Florida Statutes, as additional grounds for denial of the application in that Omar Toledo was found guilty of violating Title 31 U.S.C. Sections 5313(a) and 5322(a), Title 18 U.S.C. Section 2, and 31 C.F.R. Section 103.22 (Counts VIII through X of the Superseding Indictment in the case styled United States of America v. Omar Lazaro Toledo and Beatriz Toledo, Case No. 96-599-Cr-UUB(s), Southern District of Florida);

and that the statutory provisions permit Respondent to deny an application for registration if a person has been found guilty of a crime involving fraud or dishonest dealing.

At hearing, Petitioner presented the testimony of two witnesses and entered no exhibits into evidence. Respondent presented the testimony of one witness and entered twenty-seven (27) exhibits into evidence. Also, the parties filed a joint stipulation in which numerous facts were agreed to and did not require proof at hearing.

A transcript of the proceeding was ordered. Respondent was permitted to late-file an exhibit. Even though Petitioner was provided an opportunity to respond to the exhibit, Petitioner did not respond. Only Respondent filed a post-hearing submission, and that submission has been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Department of Banking and Finance (Respondent) is the state agency responsible for administering Chapter 560, Florida Statutes (1995). The said statute is referred to as the Money Transmitters' Code and in material part governs the registration of check cashers in the State of Florida.

2. BT Professional Services, Inc. (Petitioner), is a registered Florida corporation. Petitioner's principal place of business is 4410 West 16th Avenue, Bay 8, Hialeah, Florida 33012.

3. By application dated April 8, 1996, Petitioner made application to register as a money transmitter, i.e., check casher, pursuant to Chapter 560, Florida Statutes. The

application was signed by Omar Toledo, as Petitioner's president. The application indicated, among other things, that Beatriz Toledo was Petitioner's vice-president; that she was the person from whom additional details, regarding the application, could be obtained; and that her contact address was 4410 West 16th Avenue, Bay 8, Hialeah, Florida 33012, the same as Petitioner's address.

4. Omar Toledo and Beatriz Toledo are husband and wife.

5. Respondent received the application on April 12, 1996, together with a biographical report of Omar Toledo, as one of Petitioner's directors. Upon review, Respondent determined that the application was incomplete.

6. In addition to errors and omissions, the biographical report for Beatriz Toledo, as one of Petitioner's directors, was not submitted with the application.

7. By letter dated May 7, 1996, and addressed to Mrs. Toledo, Respondent requested additional information and the correction of errors and omissions. Among other things, the letter requested Mrs. Toledo's biographical report.

8. Moreover, the letter dated May 7, 1996, notified Petitioner, among other things, that it had sixty (60) days to provide the requested information; and that failure to comply with the letter may be grounds for denial of the application.

9. On May 30, 1996, Respondent received Petitioner's response, through Mrs. Toledo, to the letter dated May 7, 1996. Petitioner complied with almost all of the letter's requests.

However, instead of submitting a biographical report for Mrs. Toledo, Petitioner submitted a biographical form for Mr. Toledo.

10. The biographical form is an addendum to the application. Respondent provides the form to an applicant.

11. By letter dated June 6, 1996, and addressed to Mrs. Toledo, Respondent, among other things, acknowledged receipt of the submitted information and again requested Mrs. Toledo to complete and submit the biographical report on her. Further, Respondent advised Petitioner that it had until July 8, 1996, to provide the requested information. Moreover, Respondent again notified Petitioner that failure to comply with the request may be grounds for denial of the application.

12. On June 24, 1996, Respondent received Petitioner's response to the letter dated June 6, 1996. Responding to the letter dated June 6, 1996, Petitioner submitted a biographical form on Mrs. Toledo. However, the biographical form was incomplete in that questions 6A, C, and D of the biographical form were not answered.

13. By letter dated July 11, 1996, and addressed to Mrs. Toledo, Respondent, among other things, acknowledged receipt of Mrs. Toledo's biographical form, 1/ but again notified her that the biographical form was incomplete in that questions 6A, C, and D were not answered. The letter also notified Petitioner that it had until July 22, 1996, to provide the requested information and that failure to comply with the request may be grounds for denial of the application.

14. Respondent did not receive a reply to the letter dated

July 11, 1996. The letter was not returned by the U.S. Postal Service. An inference is drawn that Petitioner received the letter. Petitioner did not provide Respondent with a completed biographical form or report on Mrs. Toledo.

15. Respondent performed a background investigation upon Omar Toledo and Beatriz Toledo. The investigation revealed that both Mr. and Mrs. Toledo were under indictment for numerous criminal offenses involving money laundering.

16. By letter dated November 22, 1996, Respondent notified Petitioner of its intent to deny Petitioner's application to register as a check casher. Respondent cited several grounds for the denial.

17. As a ground for the denial, Respondent cited that both Mr. and Mrs. Toledo were subjects of pending criminal prosecution. Mr. and Mrs. Toledo were charged in a superceding indictment and were being prosecuted regarding money laundering in the case styled United States of America v. Omar Lazaro Toledo and Beatriz Toledo, Case No. 96-599-Cr-UUB(s), U.S. Southern District of Florida.

18. At the time of the formal hearing in the case sub judice, criminal charges remained pending against Mrs. Toledo. 2/

19. Prior to the formal hearing in the case sub judice, Respondent was granted leave to amend the denial letter to include, as a ground for denial, Mr. Toledo being convicted of some of the criminal charges in the federal money laundering

case. Mr. Toledo had been found guilty of three of the counts of criminal conduct. The three counts (Counts VIII, IX, and X) involved the knowing and willful failure to file a report

required by federal law regarding currency transactions. He did not appeal his convictions. 3/

20. As an additional ground for the denial, Respondent cited that Petitioner failed to correct the omission of a completed biographical report for Mrs. Toledo. An incomplete biographical form for Mrs. Toledo was submitted to Respondent in that Mrs. Toledo failed to respond to questions 6A, C, and D. Mrs. Toledo failed to respond to the said questions even after being requested to do so more than once by Respondent.

21. Also, as a ground for the denial, Respondent cited that Petitioner knowingly failed to comply with the advertising prohibition for a non-registered check casher, pursuant to Chapter 560, Florida Statutes. On or about April 4, 1996, Petitioner, through Mrs. Toledo, was notified by one of Respondent's representatives, an inspector, that registration with Respondent was required for Petitioner to advertise check cashing services. Even after the notification, Petitioner continued to advertise check cashing services by way of a sign, promotional display, on the outside of Petitioner's facility indicating check cashing services. The advertising of check cashing services on the outside of Petitioner's facility continued beyond the date of the denial letter through February 1997.

22. Moreover, after receiving the denial letter dated of November 22, 1996, Petitioner advertised check cashing services

from March 1997, through July 7, 1997, by way of a sign,

promotional display, on the inside of Petitioner's facility indicating check cashing services.

23. Further, as a ground for the denial, Respondent cited that Petitioner had made a material misrepresentation regarding Mr. Toledo's prior arrests. Petitioner submitted a biographical report on Mr. Toledo, which, among other things, requested information regarding Mr. Toledo's arrests, charges and/or convictions of a criminal offense, to which Mr. Toledo responded. Also, Petitioner submitted a biographical form on Mr. Toledo, which, among other things, requested information regarding his prior arrests in question 6A, to which Mr. Toledo did not respond. But, Mr. Toledo, as Petitioner's president, did respond to a question on the application, question 6 of Section 1, as to his "criminal convictions, pleas of nolo contendere, and cases of adjudication withheld." 4/ Furthermore, pursuant to a request from Respondent, Mr. Toledo provided to Respondent related documents pertaining to the criminal court cases by way of a docket printout from the Criminal Justice Information System. 5/ However, at no time did Mr. Toledo disclose that on May 18, 1995, he was arrested and charged with criminal assault. 6/

24. At no time did Petitioner seek to amend its application dated April 8, 1996.

25. On June 1, 1996, Mr. Toledo resigned as Petitioner's president and assigned all of his stock to Mrs. Toledo who became the president and who had all of the stock. At no time after the

resignation and assignment did Petitioner seek to amend its application of April 8, 1996.

26. On or about July 14, 1997, Petitioner made Respondent aware of Mr. Toledo's resignation and assignment through Petitioner's response to interrogatories.

CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes.

28. Petitioner, as the applicant, has the ultimate burden of proof to establish by a preponderance of the evidence that it is entitled to the registration as a check casher. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981); Subsection 120.57(1)(j), Florida Statutes.

29. Chapter 560, Florida Statutes, provides the statutory provisions for the "Money Transmitters' Code."

30. Section 560.303, Florida Statutes, provides in pertinent part:

(1) No person shall engage in, or any manner advertise engagement in, the business of cashing payment instruments or the exchanging of foreign currency without first registering under the provisions of this part.

31. Section 560.306, Florida Statutes, provides in pertinent part:

(2) The department [Florida Department of Banking and Finance] may deny an initial application for registration if the applicant or money transmitter-affiliated party of the applicant is the subject of a pending criminal prosecution or governmental enforcement action, in any jurisdiction,

until the conclusion of such criminal prosecution or enforcement action.

32. Section 560.103, Florida Statutes, provides in pertinent part:

(3) "Check casher" means a person who, for compensation, sells currency in exchange for payment instruments received, except travelers checks and foreign-drawn payment instruments.

* * *

(10) "Money transmitter" means any person located in or doing business in this state who acts as a payment instrument seller, foreign currency exchanger, check casher, or funds transmitter.

(11) "Money transmitter-affiliated party" means any director, officer, responsible person, employee . . . or a person who . . . is found to control a money transmitter pursuant to s. 560.127

33. There is no disagreement that Petitioner is applying for initial registration as a money transmitter, a check casher, as defined by Subsections 560.103(3) and (10), Florida Statutes.

34. Mrs. Toledo is a money transmitter-affiliated party, as defined by Subsection 560.103(11), Florida Statutes. She is the subject of a pending criminal prosecution by the federal government in a money laundering case. At this time, the denial of Petitioner's application for registration as a check casher is warranted.

35. In the criminal prosecution of Mr. Toledo by the federal government in the money laundering case, Mr. Toledo was convicted of several counts of knowingly and willfully failing to

comply with reporting requirements for currency transactions. The evasion of the federal reporting requirements for currency transactions is a crime involving fraud or dishonest dealing. The convictions of Mr. Toledo warrant the denial of Petitioner's application for registration as a check casher.

36. Section 560.114, Florida Statutes, provides in pertinent part:

(1) The following actions by a money transmitter or money transmitter-affiliated party are violations of the code [Money Transmitters' Code] and constitute grounds for the . . . denial of a registration application . . .:

(a) Knowing failure to comply with any provision of the code, any rule or order adopted pursuant thereto

* * *

(2) In addition to the acts specified in subsection (1), the following acts are grounds for denial of registration . . .:

(a) A material misstatement of fact in an initial or renewal application for registration.

* * *

(d) Having been convicted of or found guilty of, or having pled guilty or nolo contendere to, a crime involving fraud or dishonest dealing.

37. Petitioner failed to disclose on the application, Mr. Toledo's biographical report, and his biographical form that Mr. Toledo had been arrested for criminal assault. Petitioner made a material misstatement of fact on its application, which

warrants the denial of Petitioner's application for registration as a check casher.

38. Petitioner knowingly advertised check cashing services without being registered by placing signs for check cashing services within and outside of its facility. Registration with Respondent for check cashing services is required before advertising can take place. Subsection 560.303(1), Florida Statutes. The undersigned is persuaded by Respondent that "knowing" or "knowingly" requires that the person committing the act need only have knowledge of the facts; knowledge of the law itself is not required nor is it an element of the offense. See United States v. International Minerals and Chemical Corporation, 402 U.S. 558, 91 S.Ct. 1697, 29 L.Ed.2d 178 (1971); Boyce Motor Lines v. United States, 342 U.S. 337, 72 S.Ct. 329, 96 L.Ed. 367 (1952); United States v. Illinois Central Railroad Company, 303 U.S. 239, 58 S.Ct. 533, 82 L.Ed. 773 (1938). Moreover, even after Petitioner was notified by Respondent that registration was required, Petitioner continued to advertise check cashing services. Petitioner knowingly failed to comply with the advertising prohibition, which warrants the denial of Petitioner's application for registration as a check casher.

39. Petitioner failed to provide Respondent with a complete biographical form or report for Mrs. Toledo. Respondent notified Petitioner more than once of the omissions from Mrs. Toledo's biographical form, but Petitioner failed to provide the omitted

information. Section 120.60, Florida Statutes (1996), provides in pertinent part:

(1) Upon receipt of an application for a license, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. An agency shall not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within this 30-day period. An application shall be considered complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired. . . .

Rule 3C-560.122, Florida Administrative Code, effective August 18, 1996, through September 23, 1997, provides in pertinent part:

(2) Request for Additional Information. Any request for additional information will be made by the Department within thirty (30) days after receipt of the application by the Department. The additional information must be received by the Department within forty-five (45) days from the date of the request. Failure to respond to the request within forty-five (45) days from the date of request shall be construed by the Department as grounds for denial for failure to complete the application, and the application shall be denied pursuant to s. 120.60(2) [sic], F.S.

Petitioner's failure to provide Respondent with a complete biographical form warrants a denial of Petitioner's application for registration as a check casher.

40. At no time did Petitioner amend or seek to amend its application for registration as a check casher. Mr. Toledo's

resignation as Petitioner's president did not amend Petitioner's application. Rule 3C-560.122(3), Florida Administrative Code, effective August 18, 1996, through September 23, 1997, provides in pertinent part:

(a) An applicant may amend the application as to those factors generally within the control or selection of the applicant once, as a matter of course, at any time within thirty (30) days from the Department's receipt for filing. Otherwise, the

application may be amended only with prior written permission from the Department. . . .

Rule 3C-560.102, Florida Administrative Code, effective September 24, 1997, provides in pertinent part:

(7)(a) Amendment of Application. A request to amend an application must be in writing . . .

(b) Provided the department has not already docketed a Notice of Intent to Deny the Application, an applicant may amend the application after receiving written permission from the department

Petitioner did not amend its application within 30 days after Respondent's receipt of the application. Furthermore, subsequent to the 30-days, at no time did Petitioner make a written request to Respondent to amend its application.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Banking and Finance enter a final order denying BT Professional Services, Inc.'s application for registration as a check casher.

DONE AND ENTERED this ____ day of December, 1998, in Tallahassee, Leon County, Florida.

ERROL H. POWELL
Administrative Law Judge
Division of Administrative Hearings
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Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675

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Filed with the Clerk of the
Division of Administrative Hearings
this _____ day of December, 1998.

ENDNOTES

^{1/} Respondent indicated in its letter dated July 11, 1996, that it received the biographical form that was requested by Respondent in its letter of June 6, 1996. An inference is drawn that instead of a biographical report, as indicated in the letter dated June 6, 1996, Respondent requested a biographical form to be completed by Mrs. Toledo.

^{2/} Mrs. Toledo was found not guilty of several of the criminal counts, but some counts remained pending.

^{3/} Mr. Toledo did appeal the federal judge's denial of his motion to bar retrial on double jeopardy grounds and denial of his objections to retrial. Mr. Toledo was successful on the appeals.

^{4/} Section 1 of the application provides in pertinent part:

Section 1 - Applicant's History of
Operations.

* * *

6. If applicant is a corporation, partnership or association, indicate any material litigation, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld for each individual having a controlling ownership interest in applicant and each responsible person who will be in charge of applicant's registered activities in this state.

^{5/} There is no evidence as to whether a printout was requested regarding information on all of Mr. Toledo's arrests or only on specific arrests. Such evidence would affect the omission of the disclosure of the arrest as a ground for denial of Petitioner's application.

^{6/} The assault was a misdemeanor, and the case was dismissed.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.