

**Matter of Action Check Cashing Corp. v State of
New York**

2007 NY Slip Op 31109(U)

April 25, 2007

Supreme Court, New York County

Docket Number: 0117709/2006

Judge: William A. Wetzel

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Wetzel
Justice

PART Five

Action Check Cashing

INDEX NO.

117709/16

MOTION DATE

MOTION SEQ. NO.

02

MOTION CAL. NO.

- v -

State of NY Banking Dept

The following papers, numbered 1 to _____ were read on this motion to/for Agmt

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion is denied

See Dec. of 4/25/07

FILED

MAY 08 2007

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 4/25/07

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50E

_____x
In the Matter of the Application of ACTION CHECK
CASHING CORP., BISA CHECK CASHING CORP.,
and SMART PAY CHECK CASHING CORP.,

DECISION AND ORDER
Index No. 117709/06

Pctitioners,

-against-

THE STATE OF NEW YORK, BANKING
DEPARTMENT, and PAY-O-MATIC CHECK
CASHING CORP.,

Respondents.

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules.

_____x
WILLIAM A. WETZEL, J.:

FILED
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While the petition herein seeks various forms of relief, this court will treat it as an Article 78 proceeding seeking to set aside the denial by the Banking Department of petitioner's application to obtain a check cashing license at premises 3441A Baychester Avenue, Bronx, New York. It is noted and it will be addressed in this decision that the petitioner also seeks money damages and has made as a respondent Pay-O-Matic Check Cashing Corp. ("Pay-O-Matic") who received a license to operate a check cashing establishment at 3804 Boston Post Road, Bronx, New York.

While the moving papers contain extensive discussion by both the petitioner as well as the respondent, Pay-O-Matic, about matters preceding the application for a check cashing license this court deems it irrelevant to this proceeding.

Suffice to say that petitioner BISA Check Cashing Corp. ("BISA") operated a check cashing establishment at 3804 Boston Post Road as well as other locations. BISA ran into

difficulties with the respondent Banking Department and ultimately surrendered all of their licenses including their license for the Boston Post Road facility. Evidently, petitioner, Action Check Cashing Corp. (“Action Check”) entered into an agreement with BISA to purchase its assets with the understanding that it would then make applications to the Banking Department.

Petitioner, Action Check, argues that it acquired certain rights based upon that purchase and also that the Banking Department obligated itself to favor or to grant licenses to Action Check for the locations purchased from BISA. Petitioner argues that it was a third-party beneficiary of the stipulation under which BISA surrendered its licenses.

This court dismisses that contention out of hand. In the first instance, it is totally unsupported by the documentary evidence and furthermore it would be illegal and “ultra-vires” for the Banking Department to enter into such an agreement. The Banking Department is limited by statute to reviewing and granting applications as submitted and any contractual agreement that would circumvent this requirement would be unenforceable. For this reason, petitioners BISA and Smart Pay Check Cashing Corp. have no standing in this Article 78 proceeding and their claims are dismissed.

The sole issue for this court to consider is whether or not the granting of the license to Pay-O-Matic and/or the denial of the license to Action Check was arbitrary or capricious.

It is blackletter law that a court’s function in reviewing an administrative determination pursuant to Article 78 is to determine whether a rational basis exists to the action of the administrative body. Judicial review is therefore limited to whether an action is arbitrary, capricious, or affected by an error of law and this is said to occur only when the determination “is without sound basis in reason and generally taken without regard to the facts.” Pell v. Board of Education, 34 NY2d 222 (1974). It is not for a court to substitute its own opinion for that of

the administrative agency. Furthermore, courts are mandated to give deference to the governmental agency that is charged with interpreting and implementing specific regulations so long as that interpretation is not irrational or unreasonable. See Kurcis v. Merchant's Mutual Insurance, 49 NY2d 451 (1980).

A careful review of the record in this case reflects that upon surrender of its license by BISA, applications were submitted by both Action Check and Pay-O Matic. It also is apparent that the Banking Department processed both applications consistent with their rules and regulations. Both applications required numerous resubmissions based upon insufficient data or information that was not satisfactory to the Department. A review of each step of the process as to each applicant demonstrates a rational approach by the Department.

On November 17, 2006, a license for Pay-O-Matic to operate at the Boston Post Road premises was prepared, signed and dated by the Deputy Superintendent of the Banking Department. The granting of the application to Pay-O-Matic necessitated the denial of the application of Action Check because of the limitation on proximity of check cashing establishments.

The gravamen of the claim of Action Check is that the Department favored the respondent Pay-O-Matic. The arguments in support are in the most part conclusory and devoid of any documentary support. In the final analysis, this court must determine whether the action of the Department was reasonable and cannot put itself in the position to decide which one of these applications should have been granted first in time in the absence of some clear and convincing evidence of misconduct or abuse on the part of the respondent and this record fails to support such a contention.

[* 5]

Petitioner argues that it should have been granted a license because it made its initial application on December 19, 2005 whereas the respondent Pay-O-Matic applied on March 31, 2006. There is no authority to support the contention that the first to file has a preference. Indeed, it is the first to complete their application that gains the advantage.

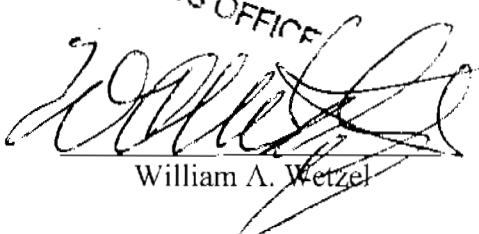
It is noteworthy that upon each submission the Banking Department promptly responded to Action Check and the issues were clearly substantive. An example would be that correspondence was exchanged during October of 2006 with regard to the fact that Action Check had proposed an individual with a criminal record to be the Compliance Officer and importantly, his criminal record related to activities on his part while engaged in the check cashing business. It wasn't until November 2, 2006, that Action Check proposed an alternative individual to be the Compliance Officer, who apparently would still have to "undergo an extensive review of training materials...."

For the reasons stated herein, the petition is in all respects denied.

This constitutes the Decision and Order of this court.

Dated: April 25, 2007
New York, New York

FILED
MAY 08 2007
NEW YORK
COUNTY CLERK'S OFFICE



William A. Wetzel