

STATE OF NORTH CAROLINA

WAKE COUNTY

IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO: 05:008:CF

IN RE:)
)
ADVANCE AMERICA, CASH)
ADVANCE CENTERS OF NORTH) CONFIDENTIALITY ORDER
CAROLINA, INC.)
_____)
)

FINDINGS

1. Because counsel for the parties were not able to reach final agreement by April 26, 2005, as to the stipulations proposed by the Office of the Attorney General (“OAG”) and Office of the Commissioner of Banks (“OCOB”), the Commissioner of Banks (the “Commissioner”), hearing officer in the case, directed that counsel continue their discussions in good faith; that they reach agreement to the extent possible on the proposed stipulations (hereinafter, “First Pre-Hearing Stipulations,” or “Stipulations”); and that counsel then submit them to the Commissioner by email or by fax (hard copy to follow) no later than Monday, May 2, 2005, at noon.
2. The final draft First Pre-Hearing Stipulations were delivered by counsel for OCOB on behalf of all counsel on Monday, May 2, 2005, but the Stipulations were not signed.
3. Counsel for the parties then convened with the Commissioner for an *in camera* telephone conference call on Monday, May 2, 2005, at 2:00 p.m., for the purpose of:
 - A. Receiving the Commissioner’s ruling on the offer by counsel for Advance America, Cash Advance Centers of North Carolina, Inc. (“AANC”), made at the hearing on April 26, 2005, that AANC submit to counsel for OAG and for OCOB its proposed stipulated facts and documents no later than Wednesday May 18, 2005;
 - B. Conducting such other discussion and rulings as may be appropriate on the scheduling of further discovery and presentation of additional evidence in this case.

4. The Stipulations settled on by counsel for all parties contain forty stipulations of fact, three of which are preceded by the label "***CONFIDENTIAL**;" these are numbered 33, 37, and 38.
5. The Stipulations settled on by counsel for all parties also contain twenty-nine separately enumerated and described documents, with some numbered items containing subparts. Of these, 13 are marked as "***CONFIDENTIAL**." These are numbered 1, 3, 4, 6, 9, 11, 12, 13, 25, 26, 27, 28, and 29.
6. In the letter of May 2, 2005 by which the Stipulations were submitted, counsel for OCOB stated that:

Because of confidentiality issues discussed at the April 26th hearing, counsel for AANC, without objection from counsel for the Petitioners, respectfully request that the stipulations not be published on the Commissioner's web site or otherwise publicly disseminated at this time.
7. The Commissioner interprets this letter to be a motion by AANC, acceded to by counsel for OCOB and OAG, that the materials so designated be regarded as "confidential," and hereafter be held and maintained as such under the authority, *inter alia*, of N.C. Gen. Stat. §§ 53-99(b) and 132-1.2(1), and consistent with such decisions as *Virmani v. Presbyterian Health Services Corp.*, 350 N.C. 449, 515 S.E. 2d 675 (1999).
8. The Commissioner as hearing officer has the authority to make such a ruling and to designate and hold as confidential certain materials put before him.
9. The designation of evidence as "confidential" and the holding of it as such are steps not to be taken lightly. Such designation requires a careful balancing of the interests of the public and the interests of the parties. In this case, AANC has a valid interest in the maintenance in confidence of non-public proprietary information, including information regarding its business methods. Further, it appears that AANC has previously produced documents and evidence under an expectation of confidential treatment. These considerations must be measured against the duty of the Commissioner to enforce the Consumer Finance Act.
10. The presentation of evidence in this case has not been completed and the issue of confidentiality of information included in such evidence has not yet been squarely and fully addressed. Until such events have occurred, it is premature either to publish evidentiary material labeled "***CONFIDENTIAL**" by counsel or to issue a final ruling regarding the confidential treatment of such evidence.

ORDER

It is therefore ordered that:

1. The First Pre-hearing Stipulations will be expurgated as to the items marked “**CONFIDENTIAL**” before they are posted on the Commissioner’s website or otherwise disseminated to the public;
2. No such posting on the website or dissemination will occur until the evidentiary record in this case is complete;
3. The items marked “**CONFIDENTIAL**” by agreement of counsel for OAG, OCOB and AANC will be held in confidence by the Commissioner for his use and for use by the parties only during the progress of this matter, until further argument and ruling on this issue;
4. This ruling will apply to the First Pre-Hearing Stipulations and to any similar confidential designations made in good faith in subsequent stipulations agreed to by counsel;
5. At the conclusion of the presentation of evidence in this case, counsel for AANC, OAG and OCOB shall submit to the Commissioner written statements in support of (or in opposition to) each such confidential designation, including affidavits if necessary from appropriate persons as to the significance of such information and the necessity of such protection now and hereafter, and also including citations to and copies of applicable legal authorities relied upon in such statement;
6. As part of the final order in this case, the Commissioner will rule on the confidential treatment of information, based on (i) the need for the Commissioner to use such information as a basis for such final order and (ii) the obligations imposed on the Commissioner by the Consumer Finance Act or other applicable law with regard to the treatment of information.

This the 11th day of May, 2005.



Joseph A. Smith, Jr.
Commissioner of Banks

CERTIFICATE OF SERVICE

THE UNDERSIGNED hereby certifies that he has this day served a copy of the foregoing Order by facsimile and by placing a copy of the same in the mail, at Raleigh, first class mail, postage prepaid and addressed to the persons listed below:

This the 11th day of May, 2005.



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