

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 CAROLINA, INC.)
_____)

PRE-HEARING ORDER

Pursuant to 4 NCAC 3B .0226, the undersigned Commissioner of Banks (hereinafter the “Commissioner”) conducted a Pre-Hearing Conference on Monday, June 13, 2005, at 2:00 p.m. in the Office of the Commissioner of Banks (“OCOB”) upon notice to all parties by written memorandum of June 1, 2005. Counsel for the parties voluntarily waived the earlier requirement that the pre-hearing conference be conducted at least 30 days prior to the hearing.

Present and appearing for the OCOB was L. McNeil Chestnut, Special Deputy Attorney General, and for the Office of the Attorney General, intervenor was Philip A. Lehman, Assistant Attorney General (hereinafter collectively referred to as the “Petitioners”).

Present and appearing for Advance America, Cash Advance Centers of North Carolina, Inc. (“Respondent”), were Donald C. Lampe and Christopher W. Jones of the law firm of Womble, Carlyle, Sandridge and Rice; and by teleconference, Saul M. Pilchen and Lesley B. Whitcomb of the law firm of Skadden, Arps, Slate, Meagher & Flom, L.L.P., Washington, D.C.

Counsel for the parties presented letters dated June 13, 2005, identifying prospective witnesses and indicating that additional stipulations had been agreed to and would be forthcoming. Counsel for the parties also indicated that they had agreed to (a) submit verified affidavits of proposed witnesses, (b) extend to opposing counsel the right to then depose the affiants, (c) submit stipulations and exhibits, (d) submit depositions into the record, and (e) submit legal briefs. Consistent with prior directives of the Commissioner, counsel also advised that they had agreed on a reasonable schedule for proceeding in this manner, and they jointly recommended that the Commissioner enter a pre-trial order reflecting the agreement between the parties.

Upon hearing from counsel and reviewing the matter on the record, the Commissioner accepts the procedure and schedule agreed by counsel and hereby orders the following:

1. **Service of Affidavits.** Petitioners and Respondent will serve verified affidavits of their fact witnesses on counsel for the opposing party not later than 4:00 p.m., Friday, June 24, 2005. Petitioners and Respondent will serve verified affidavits of their expert witnesses on counsel for the opposing party not later than Friday, July 1, 2005. Verified fact witness and expert witness affidavits served earlier than June 24 and July 1, respectively, would promote a timely and more efficient disposition of this matter, and the parties are encouraged to serve affidavits as soon as possible.

2. **Deposition of Affiants.** Affiant depositions shall be completed not later than Monday, July 25, 2005; and to this end, counsel for the parties shall cooperate to expedite such depositions and to ensure the timely and convenient presence of affiants for the purpose of being deposed. To the extent practicable, the parties shall expedite the

transcription of the depositions and either waive signing of the transcripts or provide for review and signature within 5 days of delivery thereof. Counsel for the parties agree that final acceptance of a verified affidavit into the record is contingent upon the party's witness being timely and conveniently made available for deposition upon the request of the opposing party.

3. **Motions.** Any further motions which either party intends to file in this matter shall be filed, together with memoranda of law, not later than 4:00 p.m., Wednesday, June 29, 2005; and any response to any such motion, together with memoranda of law, shall be filed by the opposing party not later than 4:00 p.m., Wednesday, July 6, 2005. Any motions filed under this paragraph and any motions now pending before the Commissioner shall be heard on Monday, July 11, 2005 at 10:00 a.m.

4. **Hearing.** The Commissioner will convene a hearing on Monday, July 11, 2005, at 10:00 a.m., in the second floor hearing room of the OCOB, 316 West Edenton Street, Raleigh, NC. At the July 11 hearing, the Commissioner will:

(a) receive all stipulations and exhibits agreed to between the parties, as well as other documentary evidence;

(b) accept oral argument on issues of relevance of evidence proffered by either party;

(c) accept oral argument on counsel's prior requests that certain evidence be kept confidential;

(d) hear oral argument on any other motions;

(e) receive the verified affidavits of all proposed witnesses of either party and any deposition testimony then available. The evidence designated in good faith by either party as confidential shall remain confidential until the conclusion of the evidence or a ruling by the Commissioner.

5. **Completion of the Record.** Not later than 4:00 p.m., Monday, July 25, 2005, counsel for the parties shall file any completed transcripts of affiant depositions they wish to be included in the record with the OCOB. After submission of these deposition transcripts, the evidentiary record shall be deemed to be complete and shall be closed.

6. **Submission of Legal Briefs.** Not later than 4:00 p.m., Friday, August 12, 2005, counsel for each party, and counsel for amicus-intervenor, may file a written legal brief setting forth legal argument in this matter. Briefs may not exceed 35 pages in length (nonproportional type, at least 12 point font; proportional, at least 14 point) excluding any title pages, indices, and lists of authorities. Thereafter, the Commissioner shall take this matter under advisement and may schedule such other proceedings as he deems appropriate.

Entered this 21st day of June, 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 Pre-Hearing 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 21st day of June, 2005.



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