

STATE OF NORTH CAROLINA
WAKE COUNTY

IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO. 09:029:CC

IN RE:)
)
LEARSI ANN SOLUNA, INC.)
)
License No. 143152)
)
)

DECISION AND ORDER

THIS MATTER came on for hearing before the Commissioner of Banks (hereinafter the "Commissioner"), on April 23, 2009, pursuant to N.C. Gen. Stat. § 150B-38(b) and 4 NCAC 3B .0200, *et seq.*, upon Notice of Hearing mailed on March 19, 2009.

Appearing at the hearing for the Office of the Commissioner of Banks ("OCOB") was Phillip Woods, Assistant Attorney General Raleigh, North Carolina. Learsy Ann Soluna, Inc. (the "Respondent") failed to appear for the hearing, did not request a continuance, and was not represented by counsel. The hearing was conducted by Daniel E. Garner, Executive Legal Specialist, who was designated by the Commissioner as hearing officer to gather evidence and recommend a decision. Appearing as witnesses for the Office of the Commissioner of Banks were Branton T. Grimes, Financial Program Manager for the Non-Depository Entities Division of the OCOB ("Grimes") and Rodney E. Oldham, Financial Program Manager of the Consumer Industries Division of the OCOB ("Oldham").

Based upon the exhibits admitted into evidence, the testimony of witnesses, and arguments of the parties and counsel, the Commissioner makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. On or about January 23, 2008, Respondent filed a sworn application for licensure as a check casher pursuant to Article 22 of Chapter 53 of the North Carolina General Statutes and has been so licensed since that date.
2. At the hearing, Phillip Woods, counsel for OCOB, submitted the following documents into evidence in support of OCOB staff's preliminary denial of licensure:
 - A. Copy of a January 23, 2008 letter to Learsy Ann Soluna, Inc. from W. Reitzel Deaton, Director, Consumer Industries;

- B. Copy of a September 26, 2008 letter to Ms. Maryann E. Robleto, President of Lears Ann Soluna, Inc. from Branton T. Grimes, Field Supervisor, Consumer Industries;
- C. Copy of a October 30, 2008 letter to Ms. Maryann E. Robleto, Lears Ann Soluna, Inc. from Branton T. Grimes, Financial Program Manager Non-Depository Institutions Division;
- D. Copy of a November 19, 2008 letter to Ms. Maryann E. Robleto, Lears Ann Soluna, Inc. from Branton T. Grimes, Financial Program Manager Consumer Industries;
- E. Copy of 2 faxes including documents dated December 1, 2008 and December 2, 2008 as follows:
 - December 1, 2008 documents:
 - 1) A fax cover sheet;
 - 2) A faxed letter;
 - 3) A copy of a receipt; and
 - 4) The Respondent's rate fee schedule.
 - December 2, 2008 documents:
 - 1) Copy of a policy "Guide To Money Laundering Red Flags For Agents," Intermex;
 - 2) Copy of a policy "Currency Transaction Reports Compliance Program," by Intermex;
 - 3) Copy of a policy "Currency Transaction Reports (CRT) Agency Filing Procedures," by Intermex;
 - 4) Copy of "Intermex Training Program;" and
 - 5) Copy of a "Bank Secrecy Act Record Retention," by Intermex.
- F. Copy of a December 29, 2008 letter to Ms. Maryann E. Robleto, Lears Ann Soluna, Inc. from L. McNeill Chestnut, Special Deputy Attorney General;
- G. Copy of a September 20, 2008 letter to Ms. Maryann E. Robleto, Lears Ann Soluna, Inc. from Rodney E. Oldham, Financial Program Manager Consumer Industries;
- H. Copy of a October 6, 2008 letter to Ms. Maryann E. Robleto, Lears Ann Soluna, Inc. from Rodney E. Oldham, Financial Program Manager Consumer Industries;
- I. Copy of the Notice of Check-Cashing Fees Dated April 02, 2009 from Maryann E. Robleto for Lears Ann Soluna, Inc. and the fee schedule for the Respondent; and

- J. Copy of the "Affidavit of Service of and Process by Certified Mail," signed by Phillip K. Woods along with the green card from the U.S. Postal Service for the certified mail sent to the Respondent.
3. Branton Grimes, Financial Program Manager for the Non-Depository Entities Division testified that the Respondent was examined on July 9, 2008, by the OCOB.
4. Grimes testified that during the July 9, 2008 examination the following violations were discovered:
 - A. The OCOB was unable to verify liquid assets in the amount of \$50,000 as required by N.C. Gen. Stat. § 52-279(a);
 - B. Respondent had failed to provide receipts to its customers showing the name or trade name of the licensee, the transaction date, amount of the check, and the fee charged as required by N.C. Gen. Stat. § 53-282(b); and
 - C. Respondent had not developed, implemented, and maintained an effective anti-money laundering program as required by 31 CFR 103.125.
5. Grimes further testified that a copy of the Report of Examination (the "REO") was provided to the Respondent on September 26, 2008. The OCOB requested at that time that the Respondent pay the OCOB examination fees and that the Respondent also provide a written response to the violations found during the July 9, 2008 examination. The response deadline was Monday, October 27, 2008.
6. Grimes testified that the OCOB did not receive a written response from the Respondent as to the violations, but OCOB did receive payment for the examination fees on October 30, 2008.
7. Grimes testified that the OCOB sent the Respondent a second request for the written response concerning violations on October 30, 2008, requesting a response by November 10, 2008. The Respondent did not respond to this request.
8. Grimes testified that a third letter requesting a written response to the examination was mailed to the Respondent on November 19, 2008 along with another copy of the examination report. The OCOB requested that the Respondent respond by December 1, 2008.
9. Grimes testified that the OCOB did receive a response on December 1, 2008 from the Respondent containing a letter, a copy of a specimen customer receipt, and a rate fee schedule. Grimes further testified that the Respondent sent an additional fax to the OCOB on December 2, 2008 containing copied documents: "Guide To Money Laundering Red Flags For Agents," by Intermex; "Currency Transaction Reports Compliance Program," by Intermex; "Currency Transaction Reports (CRT) Agency Filing Procedures," by Intermex; "Intermex Training Program;" and "Bank Secrecy Act Record Retention," by Intermex.

10. Rodney E. Oldham, Financial Program Manager of the Consumer Industries Division testified that he had sent the Respondent a letter dated September 20, 2008, requesting the company's 2008 Notice of Check-Cashing Fee Schedule with a copy of its posted fees by November 3, 2008. No response was received.
11. Oldham testified that the Respondent's check cashing license was renewed on October 6, 2008.
12. At the request of Oldham, L. McNeill Chestnut, Special Attorney General for the N.C. Department of Justice, sent the Respondent a letter dated December 2, 2008, in which Chestnut:
 - A. Requested that the Respondent complete the OCOB Form NCCC-2, which was included with the letter;
 - B. Provide documentation showing that the company meets the requirement of N.C. Gen. Stat. § 53-279(a) by having a net worth of \$50,000; and
 - C. Submit a copy of the Respondent's Anti-Money Laundering Program per 31 CFR 103.125 of the Bank Secrecy Act.
13. No response was received until the OCOB received the faxed response from the Respondent on December 1, 2008. The Respondent did not file OCOB Form NCCC-2 as required.
14. Oldham testified that the respondent had been given ample opportunity to supply the OCOB with all of the requested documentation, but that Respondent had not submitted all requested documentation. Oldham further testified that the Respondent did not command the public confidence required to operate a check cashing business in North Carolina.

II. CONCLUSIONS OF LAW

1. The Commissioner of Banks has jurisdiction over all the parties hereto and over the subject matter of the hearing.
2. During the July 9, 2008 examination by the OCOB the Respondent could not provide evidence that it met the requirements of N.C. Gen. Stat. § 53-279(a) that it maintained liquid assets of at least \$50,000.00. OCOB mailed to the Respondent numerous letters requesting documentation satisfying this requirement, but Respondent never demonstrated that it in fact met this requirement. The Respondent was also required to notify the OCOB when it no longer met this requirement pursuant to 04 NCAC 03L .0603, but the OCOB did not receive any such notification.
3. On numerous occasions OCOB staff mailed letters requesting a response from the Respondent with regard to the July 9, 2008, REO and to supply the OCOB with

documentation relating to fee schedule, liquid assets, and the Respondent's policy concerning anti-money laundering program Respondent made no response, other than the two faxes received by the OCOB on December 1st and 2nd, 2008. These faxes included copied documents from Intermex. Learsi Ann Soluna, Inc is operated as an independent check cashing business, separate and apart from Intermex.

4. During the July 9th examination it was found that the Respondent had failed to provide receipts to its customers showing the name or trade name of the licensee, the transaction date, amount of the check, and the fee charged. This failure was a violation of N.C. Gen. Stat. § 53-282(b).
5. At the time of the July 9th examination the Respondent had not developed, implemented, and maintained an effective anti-money laundering program as required by 31 CFR 103.125. The documents copied from Intermex and faxed to the OCOB on December 1st and 2nd, 2008 did not satisfy this requirement.
6. At the time of annual renewal, every check casher licensee is required to complete Form NCCC-2, attach a copy of its fee schedules, and certify that the information provided is correct. Licensees are also required to notify the OCOB of any changes in fees that occur during the year. *See*, G.S. §§ 53-280(c), 53-288, 53-284(a)(1), 04 NCAC 03L .0403(b) and .0502(b). Respondent never submitted this form to the OCOB.
7. The Respondent no longer meets the statutory requirement of G.S. § 53-279(a) insofar as Respondent does not have nor maintain \$50,000 in liquid assets.
8. N.C. Gen. Stat. 53-279(b) requires the Commissioner find "...that the financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, officers, directors, and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with the law..." This is not the case with the Respondent.
9. N.C. Gen. Stat. 53-284 (a)(1) and (5) provides that the Commissioner may suspend or revoke any license issued if he finds that the licensee has:
 - (1) Violated this Article or applicable State or federal law or rules . . .
 - (5) Demonstrated incompetency or untrustworthiness to engage in the business of check cashing.
10. The Respondent's actions show disregard for state supervision and regulation insofar as Respondent failed to provide a completed Form NCCC-2 and its fee schedule, failed to respond to the OCOB's multiple requests to do so, failed to respond to the Report of Examination and failed to implement an Anti-Money Laundering Program as required by federal law.

11. It is in the public interest for the Commissioner to remove from the check cashing business in this state those who fail to comply with Article 22 “Check-Cashing Businesses” of Chapter 53 of the North Carolina General Statutes.
12. N.C. Gen. Stat. § 53-286 states that, “The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties shall not exceed one thousand dollars (\$1,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers.”
13. A civil money penalty is warranted in this case for failure to comply with repeated requests from the OCOB.

III. ORDER

1. The check casher license of Learsi Ann Soluna, Inc., license number 143152 is hereby permanently revoked.
2. Respondent is also hereby barred operating a check cashing business in the State of North Carolina effective immediately.
3. Respondent shall pay a civil money penalty in the amount of one thousand dollars (\$1,000.00) for willfully and knowingly failing:
 - A. To maintain liquid assets of \$50,000 as required by N.C. Gen. Stat. § 53-279(a);
 - B. To notify the OCOB of its failure to maintain the requisite liquid assets as required by N.C. Gen. Stat. § 53-288 and 04 NCAC 03L .063;
 - C. To develop, implement, and maintain an anti-money laundering program as required by N.C. Gen. Stat. §§ 53-279(b) and 53-284(a)(1), and the Bank Secrecy Act, 31 CFR 103.125;
 - D. To file in a timely manner its Notice of Check Cashing Fee Schedule, Form NCCC-2, despite repeated requests from the OCOB to do so, until after a notice of hearing in this litigation was served on Respondent; and
 - E. To respond to repeated requests from the OCOB to address concerns addressed during in the REO, which reflects incompetency and untrustworthiness to engage in the business of check cashing efficiently and fairly, in the public interest, and in accordance with the law.
4. Within 90 days of this Order, Respondent shall submit a check in the amount of \$1,000.00 made payable to the “Office of State Budget and Management - Civil

Penalty and Forfeiture Fund” as a civil money penalty levied pursuant to N.C. Gen. Stat. § 53-243.12(c).

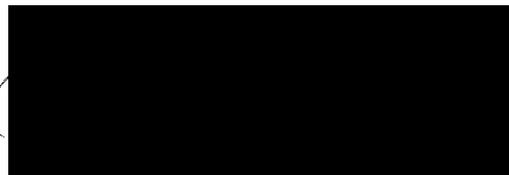
5. The check or money order ordered in paragraphs 3 above is to be marked “Confidential” and mailed or hand delivered to:

Lonnie Christopher, NCCP
Office of the Commissioner of Banks
316 W. Edenton Street
4309 Mail Service Center
Raleigh, North Carolina 27699-4309

6. This Decision and Order may be appealed to the State Banking Commission by submitting written notice to the Commissioner within 20 days pursuant to N.C. Gen. Stat. § 53-92(d). Any appeal of the Commissioner’s Decision and Order should be addressed to:

Daniel E. Garner, Executive Legal Specialist
Office of the Commissioner of Banks
4309 Mail Service Center
Raleigh, North Carolina 27699-4309

This the 1st day of May, 2009.



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 personal delivery or by faxing a copy to the persons and fax numbers shown below or by placing a copy of the same in the mail, at Raleigh, first class mail, postage prepaid and addressed to the persons below:

Learsi Ann Soluna, Inc.
5500 Executive Center Dr., Suite 221
Charlotte, North Carolina 28212

Phillip Woods
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629

This the 1st day of May, 2009.



Daniel E. Garner
Executive Legal Specialist
Office of the Commissioner of Banks
4309 Mail Service Center
Raleigh, North Carolina 27699-4309
Phone: (919) 733-3016
Fax: (919) 733-6918