

STATE OF NORTH CAROLINA
WAKE COUNTY

IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO. 2005:008:CF

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

**NOTICE OF APPEAL OF ORDER ALLOWING
LIMITED INTERVENTION BY CIVIL PLAINTIFFS**

Advance America, Cash Advance Centers of North Carolina, Inc. ("Advance America-NC"), respectfully submits this Notice of Appeal of the Order of Commissioner of Banks Joseph A. Smith, Jr. allowing "limited intervention" by civil plaintiffs. *See* Exhibit 1 (Order Allowing Limited Intervention by Civil Plaintiffs, dated March 21, 2005). Advance America-NC submits to the Chairman this Notice of Appeal of the Commissioner's decision on the motion to intervene pursuant to 4 NCAC 3B .0301, N.C. GEN. STAT. § 1-277(a) (an appeal may be taken of a determination "which affects a substantial right claimed in any action or proceeding"), N.C. GEN. STAT. § 150B-51, and N.C. GEN. STAT. § 150B-43 ("Nothing in this Chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this Article.").

On February 24, 2005, a motion to intervene was filed pursuant to North Carolina Rule of Civil Procedure 24(b)(2) by counsel for John R. Kucan, Welsie Torrence, and Terry Coates ("civil plaintiffs"). *See* Exhibit 2. These individuals are civil plaintiffs in the case of *Kucan, et al. v. Advance America, Cash Advance Centers of North Carolina, Inc., et al.*, Case No. 04-CVS-2860 (New Hanover County, July 27, 2004). On March 11, 2005, Advance America-

NC filed its opposition, which included the arguments that the putative intervenors were prevented by binding arbitration agreements from litigating against Advance America-NC before the Commissioner. See Exhibit 3. On March 21, 2005, the Commissioner issued his ruling allowing the civil plaintiffs to intervene "ON A LIMITED BASIS, to wit: Civil Plaintiffs may file a brief as an *amicus curiae* citing appropriate authorities and making any argument they deem helpful." Exhibit 1. By so ruling, the Commissioner did not address any of the arguments advanced by Advance America-NC, including whether such "limited" participation by the civil plaintiffs was consistent with the contractual rights expressed in the binding arbitration agreement. Instead, the Commissioner explained his decision as coming only after "having received and considered the written filings and arguments contained therein." *Id.* For the following reasons, Advance America-NC argues that the ruling allowing plaintiffs to intervene is arbitrary and capricious, and should be reversed.

First, the civil plaintiffs do not meet the standard under N.C. GEN. STAT. § 1A-1, Rule 24(b)(2) (2004), to merit permitting their intervention. The civil plaintiffs are customers who obtained numerous cash advances from Republic Bank & Trust Company ("Republic"), a federally-insured state-chartered bank. Advance America-NC operates as the processing, marketing and servicing agent for Republic in this State. Each of the civil plaintiffs' transactions is governed by a binding arbitration agreement, and the civil plaintiffs do not deny the existence of these agreements. Due to the existence of binding arbitration agreements restricting the forums in which the civil plaintiffs may litigate with Advance America-NC,¹ the *Kucan* case is

¹ The civil plaintiffs' arbitration agreements provide, in bold capital letters, as follows:

(A) YOU ARE WAIVING YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD

not a "main action" presenting common questions of law or fact within the meaning of Rule 24(b)(2), and the arbitration agreements prevent intervention. In permitting intervention, the Commissioner erred by failing to make any findings of fact or conclusions of law concerning the scope of the arbitration agreements at issue or whether, as a matter of law, they preclude intervention. *See, e.g., Deep River Citizens' Coalition v. N. Carolina Dep't of Env't & Natural Resources*, 165 N.C. App. 206, 598 S.E.2d 565 (2004) (agency must make findings supported by "substantial competent evidence"). To the extent the Commissioner deemed intervention appropriate, such findings were required to facilitate appellate review, and in order to meet the strictures of this State's strong public policy in favor of arbitration. *See, e.g., Sholar Bus. Assocs. v. Davis*, 138 N.C. App. 298, 301, 531 S.E.2d 236, 239 (2000); *Barnhouse v. American Express Fin. Advisors, Inc.*, 151 N.C. App. 507, 508, 566 S.E.2d 130, 131 (2002). The ruling was, as such, arbitrary and capricious.

The intervention of the civil plaintiffs violates their binding arbitration agreements and Advance America-NC's rights because it allows them to litigate in a forum other than the arbitral forum to which they contractually agreed. These civil plaintiffs knowingly and voluntarily executed binding arbitration agreements which preclude litigation before the Commissioner. *See* Exhibit 4. The civil plaintiffs never have advanced a claim to the contrary.

PARTIES; (B) YOU ARE WAIVING YOUR RIGHT TO HAVE A COURT, OTHER THAN A SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE AGAINST US OR RELATED THIRD PARTIES; and (C) YOU ARE WAIVING YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED PARTIES.

(Exh. 4).

To permit the civil plaintiffs to litigate against Advance America-NC in a forum other than the arbitral or small claims forums agreed to between the parties would deny Advance America-NC's contractual rights and inject inappropriately into this proceeding the question of the enforcement of the arbitration agreements, an issue which is currently pending before the *Kucan* court. Prior to that court's ruling, permitting intervention was premature.²

Second, the Commissioner neglected to enter any findings regarding Advance America-NC's contention that granting the civil plaintiffs' motion to intervene "will unduly delay or prejudice the adjudication of the rights of the original parties." N.C. GEN. STAT. § 1A-1, Rule 24(b)(2) (2004). To permit the civil plaintiffs, in violation of their arbitration agreements and in derogation of Advance America-NC's contractual rights, to participate in a State-sponsored contested case against Advance America-NC would "unduly delay or prejudice the adjudication of the rights of the original parties" to the instant proceeding for the reasons set forth in our opposition. *See Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 460, 515 S.E.2d 675, 683 (1999) (finding that third party's interest was indirect, contingent, and caused only undue delay to the adjudication of the rights of the original parties); *see also* N.C. GEN. STAT. § 1-277(a) (an appeal may be taken of a determination "which affects a substantial right claimed in any action or proceeding"). Permitting intervention, the Commissioner entered no findings on this

² An appeal of the Commissioner's ruling, permitting intervention, is necessary at this juncture in order to preserve Advance America-NC's contractual rights pursuant to the binding arbitration agreements. By statute, North Carolina has identified the enforcement of arbitration agreements as immediately appealable, as involving a substantial right. *See* N.C. GEN. STAT. § 1-569.28; *Oestreicher v. Am. Nat'l Stores, Inc.*, 290 N.C. 118, 130-31, 225 S.E.2d 797, 805 (1976) (reversing appellate court's ruling that an order allowing intervention did not deprive petitioner of a substantial right); *Wood v. City of Fayetteville*, 35 N.C. App. 738, 740, 242 S.E.2d 640, 641 (1978) (an appeal may lie from an order permitting intervention where "the order adversely affects a substantial right").

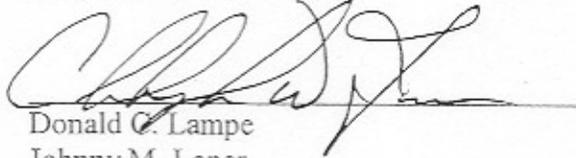
issue, even though the arguments of Advance America-NC are undisputed on this record. The ruling was, as such, arbitrary and capricious, and intervention pursuant to Rule 24(b)(2) should not have been granted.

Finally, as a general matter, the Commissioner's ruling provided no factual or legal basis for his decision to allow the civil plaintiffs to intervene. The failure to articulate reasoning for his decision, which we note is the final action on this motion and as to intervenors and their counsel, constitutes arbitrary and capricious decisionmaking. In accordance with N.C. GEN. STAT. § 150B-51(b), this decision to allow civil plaintiffs' intervention should be reversed. *Cf. Woodburn v. North Carolina State Univ.*, 156 N.C. App. 549, 551, 577 S.E.2d 154, 156, *review denied*, 357 N.C. 470, 584 S.E.2d 296 (2003).

WHEREFORE, the instant appeal should be granted. In order to preserve Advance America-NC's rights, the contested case proceeding before the Commissioner should be stayed pending resolution of this matter.

Dated: March 28, 2005

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **NOTICE OF APPEAL OF ORDER ALLOWING LIMITED INTERVENTION BY CIVIL PLAINTIFFS** on all parties to this action by sending a copy by electronic mail and by United States mail, postage prepaid, addressed as follows:

L. McNeil Chestnut, Esq.
Special Deputy Attorney General
North Carolina Department of Justice
114 West Edenton Street
Raleigh, North Carolina 27602

Philip A. Lehman, Esq.
Assistant Attorney General
Consumer Protection Division
North Carolina Department of Justice
114 West Edenton Street
Raleigh, North Carolina 27602

This the 28th day of March, 2005.


Donald C. Lampe *by [Handwritten Signature]*

STATE OF NORTH CAROLINA
WAKE COUNTY

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

IN RE:)	
)	
ADVANCE AMERICA, CASH)	ORDER ALLOWING
ADVANCE CENTERS OF NORTH)	LIMITED INTERVENTION
CAROLINA, INC. ("AANC" OR)	BY CIVIL PLAINTIFFS
"RESPONDENT"))	
)	

1. This matter is a contested case set on for hearing pursuant to Article 3A of Chapter 150B of the N.C. General Statutes.
2. The subject matter of the hearing is the operation in North Carolina of a cash advance business involving Respondent, and whether such conduct complies with the N.C. Consumer Finance Act and the N.C. Check Casher Act.
3. Notice of Hearing was previously issued and served on Respondent on February 1, 2005.
4. "Civil Plaintiffs" are John R. Kucan, Jr., Welsie Torrence and Terry Coates, named plaintiffs in a state superior court civil suit, New Hanover County case no. 04-CVS-2860.
5. The Civil Plaintiffs by and through Counsel, moved to intervene pursuant to Rule 24 of the N.C. Rules of Civil Procedure and N.C. Gen. Stat. § 150B-38(f).
6. AANC as Respondent filed a written opposition to Motion to Intervene, and the Civil Plaintiffs then filed a written response to that opposition.
7. The Motion to Intervene and subsequent filings were all timely made.

NOW, THEREFORE, the undersigned, having received and considered the written filings and arguments contained therein, hereby orders that:

The Motion of the Civil Plaintiffs to Intervene is ALLOWED ON A LIMITED BASIS, to wit: Civil Plaintiffs may file a brief as an *amicus curiae* citing appropriate authorities and making any argument they deem helpful. Preparation and filing of any such brief should be guided by Rule 28 of the N.C. Rules of Appellate Procedure and Appendix E thereto.

This the 21st day of March, 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 personal delivery or 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 March, 2005.



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11/20/2004 10:00:00 AM

STATE OF NORTH CAROLINA

COUNTY OF WAKE

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

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

MOTION TO INTERVENE

Now come John R. Kucan, Welsie Torrence and Terry Coates and move, pursuant to G.S. 150B-38(f) and Rule 24, N.C. Rules Civ. Proc., that they be permitted to intervene in this contested case. In support hereof, Movants respectfully show as follows:

1. G.S. 150B-38(f) provides that “[a]ny person may petition to become a party by filing with the agency or hearing officer a motion to intervene in the manner provided by G.S. 1A-1, Rule 24.”

2. Rule 24(b)(2) authorizes permissive intervention “[w]hen an applicant’s claim . . . and the main action have a question of law or fact in common.”

3. Movants are the named plaintiffs in New Hanover case no. 04-CVS-2860, titled *John R. Kucan, Welsie Torrence and Terry Coates v. Advance America, Cash Advance Centers Of North Carolina, Inc., Advance America, Cash Advance Centers, Inc. and William M. Webster, IV* (the “Kucan case” or “Kucan”). A copy of the complaint in *Kucan* is attached hereto as Exhibit A.

4. The *Kucan* case has been specially assigned by the Chief Justice to Hon. D. Jack Hooks, Superior Court Judge, and proceedings in the *Kucan* case are pending before Judge Hooks.

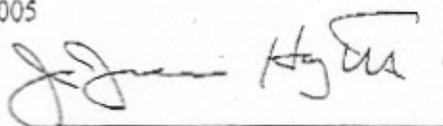
5. The *Kucan* case raises certain issues of law and fact that are the same as issues of law and fact raised in this contested case proceeding: The *Kucan* complaint asserts that Advance America, Cash Advance centers of North Carolina, Inc., together with its parent company, Advance America, Cash Advance Centers, Inc. and the companies' chief executive officer and chairman of the boards of directors William M. Webster IV, have violated the North Carolina Consumer Finance Act and the North Carolina statutes governing the business of check cashing. See *Kucan* complaint, ¶¶ 67-82, 83-95. Similarly, this contested case proceeding concerns these same issues. As stated at page 3 of the Notice of Hearing:

"The purpose of this hearing is to determine whether . . . there is a basis to conclude that [Advance America, Cash Advance Centers of North Carolina, Inc.], in the operation of its cash Advance business in North Carolina, is engaged in the business of lending in violation of G.S. § 53-166(a); is attempting to evade the application of the Consumer Finance Act in violation of G.S. § 53-166(b); is engaged in the business of check cashing in violation of G.S. § 53-276"

6. In light of the common issues involved in this contested case and the *Kucan* case, it is respectfully submitted that intervention is proper under Rule 24(b)(2) and under G.S. 150B-38(f).

WHEREFORE, Movants pray that they be permitted to intervene in this contested case.

This, the 24th day of February, 2005



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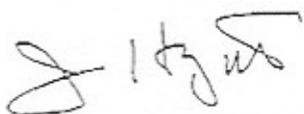
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the attached "Motion to Intervene" was served upon all parties by U.S. mail, addressed to:

L. McNeil Chestnut, Esq.
Special Deputy Attorney General
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Raleigh, NC 27699-9001

Advance America, Cash Advance Centers
of North Carolina, Inc.
William M. Webster, IV
c/o Saul M. Pilchen, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
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Washington, D.C. 20005

This 24th day of February, 2005.



J. Jerome Hartzell

STATE OF NORTH CAROLINA
WAKE COUNTY

IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO. 2005:008:CF

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

OPPOSITION TO MOTION TO INTERVENE BY CIVIL PLAINTIFFS

Advance America, Cash Advance Centers of North Carolina, Inc. ("Advance America-NC"), respectfully submits its opposition to the motion for permissive intervention filed pursuant to North Carolina Rule of Civil Procedure 24(b)(2) by counsel for John R. Kucan, Welsie Torrence, and Terry Coates ("plaintiffs"). These individuals are civil plaintiffs in the self-styled class action case of *Kucan, et al. v. Advance America, Cash Advance Centers of North Carolina, Inc., et al.*, Case No. 04-CVS-2860. Counsel who filed the motion to intervene represents plaintiffs in that case.

No claim for intervention as of right is made by plaintiffs – customers who obtained numerous cash advances from Republic Bank & Trust Co. ("Republic"), a federally-insured state bank. Advance America-NC operates as the marketing, servicing, and processing agent for Republic in this State. Plaintiffs' permissive motion to intervene should be denied because:

- Permitting intervention in this instance would threaten to distract the Commissioner from the key issues presented in this proceeding; that is, the business conducted in this State by Republic and Advance America-NC, and whether such business is permissible under applicable law. Permitting plaintiffs to conduct discovery, call and examine witnesses,

and present briefs and legal arguments on issues that might seem relevant to them would, as already illustrated by the omnibus discovery they seek to obtain in the *Kucan* case, threaten to hijack and grossly prolong these proceedings to everyone's detriment. Plaintiffs are individual consumers of so-called "payday loans" whose interests will be fully represented by the Commissioner of Banks. Intervention, therefore, is unnecessary for "a full and fair adjudication of the case." 4 N.C.A.C. § 3B.0227(e) (Jan. 2005).

- Due to the existence of binding arbitration agreements voluntarily executed by plaintiffs, *Kucan* is not currently a "main action" that presents "a question of law or fact in common" with the instant administrative proceeding within the meaning of N.C. GEN. STAT. § 1A-1, Rule 24(b)(2) (2004). While enforcement of the arbitration agreements is still pending in *Kucan*, plaintiffs do not deny the existence of the agreements or that they voluntarily signed them. The arbitration agreements plainly forego litigation by plaintiffs in this forum. Permitting intervention in this instance – including permitting plaintiffs to seek and obtain discovery, call and examine witnesses, and present legal and factual briefs and argument to the Commissioner which by contract plaintiffs are not entitled to do – would therefore raise an issue in this proceeding concerning enforcement of the arbitration agreements. To do so would prejudice the contractual arbitration rights of the parties, and also serve to distract the Commissioner from the issues of fact and law presented by the Notice of Hearing filed on February 1, 2005.

For these reasons, the Commissioner should conclude that granting plaintiffs' motion to intervene "will unduly delay or prejudice the adjudication of the rights of the original parties" and therefore deny the motion. N.C. GEN. STAT. § 1A-1, Rule 24(b)(2) (2004).

FACTUAL BACKGROUND

Plaintiffs are customers of Republic, for which Advance America-NC operates as the marketing, servicing, and processing agent in this State. They are named plaintiffs in *Kucan, et al. v. Advance America, Cash Advance Centers of North Carolina, Inc., et al.*, Case No. 04-CVS-2860. In that action, which Supreme Court Chief Justice I. Beverly Lake, Jr. assigned to Special Superior Court Judge D. Jack Hooks, Jr. in December 2004, plaintiffs are represented by private counsel and a number of special interest group lawyers for whom the payday cash

advance industry has become a *cause célèbre* nationwide.¹ Private counsel in that litigation, on behalf of plaintiffs, seek to use the Commissioner's proceeding as an additional front against Advance America-NC and the payday cash advance industry for their own pecuniary ends, and in so doing threaten to hijack and certainly delay resolution of this case.

In connection with each of their several consumer cash advances at issue in the *Kucan* case, plaintiffs knowingly and voluntarily executed binding arbitration agreements, which preclude litigation against Republic and its agents, including Advance America-NC.² Plaintiffs do not address the existence or effect of these agreements in their motion to intervene. Due to the binding nature of these agreements, plaintiffs' contention that the instant administrative proceeding currently presents issues "in common" to those presented in *Kucan* is incorrect.

¹ Plaintiffs are represented by Carlene McNulty of the North Carolina Justice Center, J. Jerome Hartzell of Hartzell & Whiteman LLP, Mona Lisa Wallace and John Hughes of Wallace & Graham, Mallam J. Maynard of the Financial Protection Law Center, F. Paul Bland of Trial Lawyers for Public Justice, Stephen Gardner of the Law Office of Stephen Gardner PC, and Richard Fisher. In varying degrees, these individuals and their organizations have been publicly affiliated with payday advance industry cases and related legislative action nationwide for years.

² Plaintiffs' arbitration agreements provide, in bold capital letters, as follows:

(A) YOU ARE WAIVING YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; (B) YOU ARE WAIVING YOUR RIGHT TO HAVE A COURT, OTHER THAN A SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE AGAINST US OR RELATED THIRD PARTIES; and (C) YOU ARE WAIVING YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED PARTIES.

(Exh. A).

While enforcement of the arbitration agreements has not yet been briefed and presented to the *Kucan* Court in connection with the defendants' pending motion to compel arbitration, the agreements if enforced would fully preclude plaintiffs from litigating the merits of Republic's and Advance America-NC's business practices in this State. To permit intervention, therefore, would squarely inject into this proceeding an issue that currently has no place: the enforcement of plaintiffs' arbitration agreements.³

In *Kucan*, despite the existence of their arbitration agreements plaintiffs have already propounded 25 interrogatories and 39 omnibus requests for the production of documents. Motions for protective orders have been filed by defendants, voluminous oppositions to those motions have been filed, and replies have been served. The paperwork has become so extensive, in fact, that counsel for plaintiffs has offered to visit Judge Hooks on a regular basis to maintain special three-ring binders of the voluminous pleadings and attachments – so as to assist the Court in keeping everything organized. To replay this discovery-related litigation in the context of the Commissioner's proceeding, not to mention the litigation over enforcement of the arbitration agreements which is still to come before Judge Hooks, cannot help but unduly prolong the instant proceeding, inject irrelevant issues into the matter, and prejudice the contractual arbitration rights of Advance America-NC.

³ We note that, under North Carolina law, rulings denying the enforcement of arbitration agreements are immediately appealable. See N.C. GEN. STAT. § 1-569.28(a)(1) (2004).

ARGUMENT

I. INTERVENTION WOULD THREATEN TO PERMIT PRIVATE LITIGANTS TO TWIST THIS PROCEEDING TO THEIR OWN ENDS, AND THEREBY DISTRACT THE COMMISSIONER FROM THE ISSUES OF FACT AND LAW PRESENTED IN THE NOTICE OF HEARING.

Plaintiffs are private litigants who are not content to rest their fortunes on the outcome of the *Kucan* case. Given the binding arbitration agreements they voluntarily signed precluding such litigation, their discomfort may be understandable. It is plain that plaintiffs now seek to abuse the instant administrative proceeding as an alternate forum to obtain discovery to which they are not entitled, and in which to litigate their claims against Advance America-NC. But the law is settled that this is improper, as intervention must not be twisted to afford "an intervenor the power effectively to convert [an] agency challenge[] into litigation between the private parties to the agency proceeding." *Dankman v. District of Columbia Bd. of Elections and Ethics*, 443 A.2d 507, 517 (D.C. 1982).⁴

Despite the fact that *Kucan* was specially assigned only last December, the case already has been aggressively litigated on a number of fronts. Defendants' motion to compel arbitration has yet to be briefed and argued, but already there has been a flurry of omnibus discovery requests served by plaintiffs. These requests, in turn, have become the focus of

⁴ See also *United States v. Loew's Inc.*, 20 F.R.D. 423, 424 (S.D.N.Y. 1957) (denying leave to intervene to applicant whose motive was to give "aid and comfort" to its position in a private antitrust suit); *Pierce v. Int'l Tel. & Tel. Corp.*, 147 F. Supp. 934 (D.N.J. 1957) (denying intervention when it appeared that the applicant was seeking simply to obtain a change of venue from a court having earlier jurisdiction over it to a court now having no jurisdiction over it); *Illinois v. Bristol-Myers Co.*, 470 F.2d 1276 (D.C. Cir. 1972) (finding no abuse of discretion in refusing permissive intervention by retail druggist in action brought by Attorney General against drug manufacturer where druggist had alternate remedy).

motions to stay discovery and for protective orders – based essentially on defendants' contractual rights set forth in the arbitration agreements. Argument over these requests, and other preliminary arbitration-related arguments, have already consumed many hours before the *Kucan* Court. To permit plaintiffs to replay this litigation in the instant proceeding, and permit them in violation of their arbitration agreements to conduct discovery, call and examine witnesses, and present legal and factual briefs and argument to the Commissioner in derogation of Advance America-NC's contractual rights would certainly "unduly delay or prejudice the adjudication of the rights of the original parties" to the instant proceeding. *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 460, 515 S.E.2d 675, 683 (1999) (finding that third party's interest was indirect, contingent, and caused only undue delay to the adjudication of the rights of the original parties). This should not be permitted.

Intervention in Banking Commission hearings is controlled by the North Carolina Rules of Civil Procedure and, specifically, Rule 24. *See* 4 N.C.A.C. § 3B.0227(d)-(e) (Jan. 2005); *see also* N.C.G.S. § 150B-38(f). Even if a petitioner meets the criteria of Rule 24, the hearing officer maintains discretion to limit the intervention to that extent "necessary for a full and fair adjudication of the case." 4 N.C.A.C. § 3B.0227(e) (Jan. 2005). N.C.G.S. § 150B-38(f) also contemplates that intervention may be limited "to the extent deemed appropriate by the [Commissioner]." The involvement of plaintiffs is unnecessary to achieve this end, given the role of the Commissioner and the Commission in this type of proceeding. *See State ex rel. Utilities Comm'n v. Carolina Utility Customers Ass'n*, 163 N.C. App. 1, 592 S.E.2d 277 (2004) (finding that intervention on the part of rate-paying utility customers was improper where their interests were otherwise represented before Utilities Commission). Plaintiffs, who are merely a

few individual consumers of payday cash advances, have offered no argument that their intervention in this administrative proceeding is in any way necessary, authorized in contravention of their binding arbitration agreements, or of any value to the Commissioner's determination of the issues of fact and law presented in the Notice of Hearing.⁵ Their motion should be denied.

II. PLAINTIFFS' CIVIL CASE IS NOT A "MAIN ACTION" PRESENTING A QUESTION OF LAW OR FACT "IN COMMON" WITH THE INSTANT PROCEEDING.

Plaintiffs purport to seek intervention pursuant to N.C. GEN. STAT. § 150B-38(f) and Rule 24(b)(2) of the North Carolina Rules of Civil Procedure. Rule 24 "contains specific requirements which control and limit intervention." *State ex rel. Comm'r of Ins. v. N.C. Rate Bureau*, 300 N.C. 460, 468, 269 S.E.2d 538, 543 (1980) (finding that intervention was appropriate in ratemaking hearing only where there was no suggestion of prejudice). A private third party may seek to intervene under Rule 24(b)(2), but only "[w]hen an applicant's claim or defense and the main action have a question of law or fact in common." N.C. GEN. STAT. § 1A-1, Rule 24(b)(2) (2004). *See also* N.C. GEN. STAT. § 150B-38(f) (2004) (providing for motion "in the manner provided by G.S. § 1A-1, Rule 24").

⁵ Perhaps demonstrating that their role in any administrative proceeding only would serve to hinder an efficient resolution of this matter, plaintiffs have failed to follow regulatory requirements for filing a motion to intervene. Specifically, plaintiffs failed to provide a summary of the arguments or evidence they seek to present to the Commissioner. *See* 4 N.C.A.C. § 3B.0215(c)(6) (Jan. 2005). Their motion can and should be denied on this basis alone.

Plaintiffs cite the Notice of Hearing to assert such commonality, but any comparison is merely beguiling. Due to the existence of binding arbitration agreements covering their dispute with Advance America-NC, *Kucan* is not a "main action" presenting common questions of law or fact within the meaning of Rule 24(b)(2). Indeed, we can represent that plaintiffs have conceded in *Kucan* that enforcement of their arbitration agreements is a threshold issue that must be confronted by the Court prior to any consideration of the merits, and that if the arbitration agreements are enforced there will be nothing left to litigate before Judge Hooks. This is a wise concession. In accordance with North Carolina's strong public policy in favor of arbitration, a clear line of authority, including from the U.S. Supreme Court, indicates that the question regarding enforcement of an arbitration agreement must be considered as the "first task" to afford the contracting parties the benefit of the bargain they have reached contractually. See *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985); see also *Sholar Bus. Assocs. v. Davis*, 138 N.C. App. 298, 301, 531 S.E.2d 236, 239 (2000); *Barnhouse v. American Express Fin. Advisors, Inc.*, 151 N.C. App. 507, 508, 566 S.E.2d 130, 131 (2002). The *Kucan* Court's ruling on the arbitration question will doubtless be appealed by the non-prevailing party on an interlocutory basis. See N.C. GEN. STAT. § 1-569.28(a)(1) (2004).

To permit intervention in the face of the arbitration agreements, whether intervention involves seeking and obtaining discovery, calling and examining witnesses, or presenting briefs and argument to the Commissioner – in short, to permit plaintiffs to litigate against Advance America-NC in a forum other than the arbitral or small claims forums agreed to between the parties – would operate to the detriment of Advance America-NC's contractual rights and inject inappropriately into this proceeding the question of the enforcement of the

arbitration agreements. As shown above, such distraction and prejudice to the rights of Advance America-NC would not be appropriate, is not authorized by statute or case law, and is completely unnecessary.

CONCLUSION

For the reasons set forth above, Advance America-NC respectfully requests that the plaintiffs' permissive motion to intervene be denied.

Dated: March 11, 2005

Respectfully submitted,



Donald C. Lampe

Johnny M. Loper

Christopher W. Jones

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **OPPOSITION TO MOTION TO INTERVENE BY CIVIL PLAINTIFFS** on all parties to this action by sending a copy by electronic mail and by United States mail, postage prepaid, addressed as follows:

L. McNeil Chestnut, Esq.
Special Deputy Attorney General
North Carolina Department of Justice
114 West Edenton Street
Raleigh, North Carolina 27602

This the 11th day of March, 2005.


Donald C. Lampe
by Ch. Jones

Exhibit A

No: 1060074794

CUSTOMER AGREEMENT

Date: 08/15/2003

REPUBLIC BANK AND TRUST COMPANY
601 West Market Street
Louisville, KY 40202

Welda Mae Torrence

REDACTED

In this Customer Agreement, the words "you" and "your" mean the customer who has signed it. The words "we", "us" and "our" mean Republic Bank and Trust Company (the "Bank"), an FDIC insured Kentucky State Bank, which engages in deferred deposit services. You hereby deliver to us at the office of our marketer and servicer, Advance America, Cash Advance Centers of North Carolina, Inc. ("Advance America"), your check no. 7219 drawn on Central Carolina Bank And Trust Co in the amount of \$ 178.25 (the "Check"). In consideration of your payment of a service fee in the amount of \$ 25.25, and delivery of the Check to us, we will cash the Check, hold it and defer our right to deposit or present it for payment until 10/03/2003 (the "Presentment Date"). On the Presentment Date or thereafter, we may negotiate the Check. If the Check is dishonored for any reason and is returned to us from your financial institution, you agree to pay us \$ 2.00.

TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost to you for credit. Renewed 10/16/03	The dollar amount the credit will cost you	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
65.486%	\$26.25	\$150.00	\$178.25
Payment Schedule: One payment in the amount of \$ 178.25 due on Friday (day of week), October (month) 3 (day), 2003 (year).			
Security: You are giving a security interest in the Check.			
Prepayment: If you pay off early, you may be entitled to a refund of the finance charge.			
See the terms below and on the other side of this Customer Agreement for any additional information about nonpayment, default and prepayment refunds.			
Identification of Amount Financed: Amount given to you directly: \$ 150.00.			

Prepayment. In connection with CFPB's Best Practices, we will rebate and refund the finance charge we have earned if at any time prior to the close of business on the second business day immediately following the date of this Customer Agreement, you prepay to us at the office of Advance America the Amount Financed in cash in full satisfaction of your obligations under this Customer Agreement. Thereafter, you may prepay in full at any time the amount due under this Customer Agreement and will not incur any additional charge or fee. However, because the finance charge is earned by us upon your execution of this Customer Agreement, you will not be entitled to a rebate and refund of any part of the finance charge.

Default and Assignment. You will be in default under this Customer Agreement if you do not pay us something you owe us under this Customer Agreement or you cause the Check not to be honored on or after the Presentment Date. We may assign or transfer this Customer Agreement or any of our rights hereunder.

Method of Payment. The Check is payment for your obligations under this Customer Agreement. We may negotiate the Check on the Presentment Date or thereafter. However, we will negotiate or transfer the Check to you if you pay us at the office of Advance America the Total of Payments in cash or other immediately available funds on the Presentment Date.

Security. The Federal Reserve Board, acting under federal Truth-in-Lending law, has expanded the provisions of Regulation Z to cover our deferred deposit transaction with you. Both federal and Kentucky law do not clearly address whether our interest in the Check is a "security interest." Therefore, pursuant to Comment 2(a)(2)(b) of the Federal Reserve Board Official Staff Commentary to Regulation Z §226.2, we have disclosed to you that our interest in the Check is a security interest for Truth-in-Lending purposes only. However, the federal Truth-in-Lending disclosures are not intended to create a security interest under Kentucky law and shall not be evidence of or an admission by us that this transaction is anything other than a deferred deposit transaction.

Governing law. This Customer Agreement is made not only under the federal laws applicable to state banks engaging in deferred deposit transactions with out of state customers, but also Kentucky state law. To the extent such federal laws do not preempt state law, then this Customer Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. To the broadest extent possible, any state law claims you may assert against us relating to this Customer Agreement, and any state law claims we may assert against you relating to this Customer Agreement will be governed by the laws of the Commonwealth of Kentucky. The Waiver of Jury Trial and Arbitration Agreement shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-10.

Warning: This deferred deposit transaction is intended to address short-term, NOT long-term, credit needs. Repeated or frequent use can create serious financial hardships. You should evaluate the costs and benefits of all alternatives before entering into this Customer Agreement. Other forms of short-term credit that may be less expensive include a loan from another institution or from family or friends, a credit card cash advance, an account with overdraft protection, or a salary advance.

Please note that this Customer Agreement contains a binding arbitration provision. By signing this Customer Agreement you acknowledge that it was filed in before you did so and that you have received a completed copy of it. You agree that the information you provided to us prior to entering into this Customer Agreement is accurate. You also warrant that you are not a debtor under any proceeding in bankruptcy, and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code. You further acknowledge that the account on which the Check is drawn is a legitimate, open and active account. You further acknowledge that you have read, understand, and agree to all of the terms on both sides of this Customer Agreement, including the provision on the other side entitled, "Waiver Of Jury Trial And Arbitration Agreement"

Customer's Signature Welda Mae Torrence Date: 08/15/2003

Republic Bank and Trust Company
Kim Siggs, EVP and CFO

Any comments or questions may be directed to the Customer Comment Line at the following toll-free number: 1-888-310-4238.

WAIVER OF JURY TRIAL AND ARBITRATION AGREEMENT

Advance America is the marketer/servicer in connection with your deferred deposit transaction with the Bank, which is evidenced by the Customer Agreement on the other side of this Waiver of Jury Trial and Arbitration Agreement ("Arbitration Provision"). In consideration of the services Advance America provides to you as the agent of the Bank in connection with this Customer Agreement, and in consideration of the Bank entering into a deferred deposit transaction with you, and in consideration of your promises made under this Customer Agreement, and for other good and valuable consideration, the receipt of which is acknowledged, you, the Bank and Advance America agree to this Waiver of Jury Trial and Arbitration Provision ("Arbitration Provision") as set forth below. Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their dispute; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator") for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. THEREFORE, YOU AND WE ACKNOWLEDGE AND AGREE AS FOLLOWS:

1. For purposes of this Arbitration Provision, the words "we," "us" and "our" mean the Bank and/or Advance America. Furthermore, the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Customer Agreement (including the Arbitration Provision), the information you gave us before entering into this Customer Agreement, including the Applicant/Personal Information Form, and/or any past agreement or agreements between you and us; (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (j) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

2. You acknowledge and agree that by entering into this Arbitration Provision: (a) YOU ARE WAIVING YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; (b) YOU ARE WAIVING YOUR RIGHT TO HAVE A COURT, OTHER THAN A SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and (c) YOU ARE WAIVING YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.

3. Except as provided in Paragraph 8 below, all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.

4. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Regardless of who demands arbitration, you shall have the right to select any of the following arbitration organizations to administer the arbitration: the American Arbitration Association (1-800-778-7879) <http://www.adr.org> or National Arbitration Forum (1-800-474-2371) <http://www.naf-forum.com>. However, the parties may agree to select a local arbitrator who is an attorney, retired judge, or arbitrator registered and in good standing with an arbitration association and arbitrate pursuant to such arbitrator's rules. The party receiving notice of arbitration shall respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization or your desire to select a local arbitrator. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Customer Agreement or the Arbitration Provision, including the limitations on the arbitrator below. You may obtain a copy of the rules and procedures by contacting the arbitration organization listed above.

5. Regardless of who demands arbitration, we will advance your portion of the expenses associated with the arbitration, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the FAA, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitration hearing will be conducted in the county of your residence, or within 30 miles from such county, or in the county in which the transaction under this Customer Agreement occurred, or in such other place as shall be ordered by the arbitrator. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence, if allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, then you will not be responsible for reimbursing us for your portion of the Arbitration Fees, and we will reimburse you for any Arbitration Fees you have previously paid. If the arbitrator does not render a decision or an award in your favor resolving the dispute, then the arbitrator shall require you to reimburse us for the Arbitration Fees we have advanced, not to exceed the amount which would have been assessed as court costs if the dispute had been resolved by a state court with jurisdiction, less any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award may be filed with any court having jurisdiction.

6. All parties, including related third parties, shall retain the right to seek adjudication in a small claims tribunal for disputes within the scope of such tribunal's jurisdiction. Any dispute, which cannot be adjudicated within the jurisdiction of a small claims tribunal, shall be resolved by binding arbitration. Any appeal of a judgment from a small claims tribunal shall be resolved by binding arbitration.

7. This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA. If a final non-appealable judgment of a court having jurisdiction over this transaction finds, for any reason, that the FAA does not apply to this transaction, then our agreement to arbitrate shall be governed by the arbitration law of the Commonwealth of Kentucky.

8. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. The Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. The Arbitration Provision continues in full force and effect, even if your obligations have been paid or discharged through bankruptcy. The Arbitration Provision survives any termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing.

Advance America, Cash Advance Centers of North Carolina, Inc.

Republic Bank and Trust Company

Walter M. ...
Customer's Signature

By: *Walter M. ...*

By: *Ken ...*

No: 1060074794

CUSTOMER AGREEMENT

Date: 09/15/2003

REPUBLIC BANK AND TRUST COMPANY
601 West Market Street
Louisville, KY 40202

Welsie Mae Torrence

REDACTED

In this Customer Agreement, the words "you" and "your" mean the customer who has signed it. The words "we", "us" and "our" mean Republic Bank and Trust Company (the "Bank"), an FDIC insured Kentucky State Bank, which engages in deferred deposit services. You hereby deliver to us at the office of our marketer and servicer, Advance America, Cash Advance Centers of North Carolina, Inc. ("Advance America"), your check no. 7219 drawn on Central Carolina Bank and Trust Co. in the amount of \$ 178.25 (the "Check"). In consideration of your payment of a service fee in the amount of \$ 26.25, and delivery of the Check to us, we will cash the Check, hold it and defer our right to deposit or present it for payment until 10/15/2003 (the "Presentment Date"). On the Presentment Date or thereafter, we may negotiate the Check. If the Check is dishonored for any reason and is returned to us from your financial institution, you agree to pay us \$ 2.00.

TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a percent of the amount you borrow.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
8.54886%	\$26.25	\$150.00	\$178.25

Payment Schedule: One payment in the amount of \$ 178.25 due on Friday (day of week), October (month) 3 (day), 2003 (year).

Security: You are giving a security interest in the Check.

Prepayment: If you pay off early, you may be entitled to a refund of the finance charge.

See the terms below and on the other side of this Customer Agreement for any additional information about nonpayment, default and prepayment refunds.

Itemization of Amount Financed: Amount given to you directly: \$ 150.00.

Prepayment. In connection with CFSA's Best Practices, we will rebate and refund the finance charge we have earned if at any time prior to the close of business on the second business day immediately following the date of this Customer Agreement, you prepay to us at the office of Advance America the Amount Financed in cash in full satisfaction of your obligations under this Customer Agreement. Thereafter, you may prepay in full at any time the amount due under this Customer Agreement and will not incur any additional charge or fee. However, because the finance charge is earned by us upon your execution of this Customer Agreement, you will not be entitled to a rebate and refund of any part of the finance charge.

Default and Assignment. You will be in default under this Customer Agreement if you do not pay us something you owe us under this Customer Agreement or you cause the Check not to be honored on or after the Presentment Date. We may assign or transfer this Customer Agreement or any of our rights hereunder.

Method of Payment. The Check is payment for your obligations under this Customer Agreement. We may negotiate the Check on the Presentment Date or thereafter. However, we will negotiate or transfer the Check to you if you pay us at the office of Advance America the Total of Payments in cash or other immediately available funds on the Presentment Date.

Security. The Federal Reserve Board, acting under federal Truth-in-Lending law, has expanded the provisions of Regulation Z to cover our deferred deposit transaction with you. Both federal and Kentucky law do not clearly address whether our interest in the Check is a "security interest." Therefore, pursuant to Comment 2(a)(25) of the Federal Reserve Board Official Staff Commentary to Regulation Z §226.2, we have disclosed to you that our interest in the Check is a security interest for Truth-in-Lending purposes only. However, the federal Truth-in-Lending disclosures are not intended to create a security interest under Kentucky law and shall not be evidence of or an admission by us that this transaction is anything other than a deferred deposit transaction.

Governing law. This Customer Agreement is made not only under the federal laws applicable to state banks engaging in deferred deposit transactions with out of state customers, but also Kentucky state law. To the extent such federal laws do not preempt state law, then this Customer Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. To the broadest extent possible, any state law claims you may assert against us relating to this Customer Agreement, and any state law claims we may assert against you relating to this Customer Agreement will be governed by the laws of the Commonwealth of Kentucky. The Waiver of Jury Trial and Arbitration Agreement shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16.

Warning: This deferred deposit transaction is intended to address short-term, NOT long-term, credit needs. Repeated or frequent use can create serious financial hardships. You should evaluate the costs and benefits of all alternatives before entering into this Customer Agreement. Other forms of short-term credit that may be less expensive include a loan from another institution or from family or friends, a credit card cash advance, an account with overdraft protection, or a salary advance.

Please note that this Customer Agreement contains a binding arbitration provision. By signing this Customer Agreement you acknowledge that it was filed in before you did so and that you have received a completed copy of it. You agree that the information you provided to us prior to entering into this Customer Agreement is accurate. You also warrant that you are not a debtor under any proceeding in bankruptcy, and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code. You further acknowledge that the account on which the Check is drawn is a legitimate, open and active account. You further acknowledge that you have read, understand, and agree to all of the terms on both sides of this Customer Agreement, including the provision on the other side entitled, "Waiver Of Jury Trial And Arbitration Agreement."

Republic Bank and Trust Company

Customer's Signature Welsie Mae Torrence Date: 09/15/2003Kim Siggs, EVP and CFO

Any comments or questions may be directed to the Customer Comment Line at the following toll-free number: 1-888-310-4239.

WAIVER OF JURY TRIAL AND ARBITRATION AGREEMENT

Advance America is the merchant/service in connection with your deferred deposit transaction with the Bank, which is evidenced by the Customer Agreement on the other side of this Waiver of Jury Trial and Arbitration Agreement ("Arbitration Provision"). In consideration of the services Advance America provides to you as the agent of the Bank in connection with this Customer Agreement, and in consideration of the Bank entering into a deferred deposit transaction with you, and in consideration of your promise made under this Customer Agreement, and for other good and valuable consideration, the receipt of which is acknowledged, you, the Bank and Advance America agree to this Waiver of Jury Trial and Arbitration Provision ("Arbitration Provision") as set forth below.

Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator") for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. THEREFORE, YOU AND WE ACKNOWLEDGE AND AGREE AS FOLLOWS:

1. For purposes of this Arbitration Provision, the words "we", "us" and "our" mean the Bank and/or Advance America. Furthermore, the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims; disputes or controversies, arising from or relating directly or indirectly to this Customer Agreement (including the Arbitration Provision), the information you gave us before entering into this Customer Agreement, including the Applicant/Personal Information Form, and/or any past agreement or agreements between you and us; (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (j) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

2. You acknowledge and agree that by entering into this Arbitration Provision:

- (a) YOU ARE WAIVING YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;
(b) YOU ARE WAIVING YOUR RIGHT TO HAVE A COURT, OTHER THAN A SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and
(c) YOU ARE WAIVING YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.

3. Except as provided in Paragraph 6 below, all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.

4. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Regardless of who demands arbitration, you shall have the right to select any of the following arbitration organizations to administer the arbitration: the American Arbitration Association (1-800-778-7878) http://www.adr.org or National Arbitration Forum (1-800-474-2371) http://www.naf-forum.com. However, the parties may agree to select a local arbitrator who is an attorney, retired judge, or arbitrator registered and in good standing with an arbitration association and arbitrate pursuant to such arbitrator's rules. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization or your desire to select a local arbitrator. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Customer Agreement or the Arbitration Provision, including the limitations on the arbitrator below. You may obtain a copy of the rules and procedures by contacting the arbitration organization listed above.

5. Regardless of who demands arbitration, we will advance your portion of the expenses associated with the arbitration, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the FAA, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitration hearing will be conducted in the county of your residence, or within 30 miles from such county, or in the county in which the transaction under this Customer Agreement occurred, or in such other place as shall be ordered by the arbitrator. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, then you will not be responsible for reimbursing us for your portion of the Arbitration Fees, and we will reimburse you for any Arbitration Fees you have previously paid. If the arbitrator does not render a decision or an award in your favor resolving the dispute, then the arbitrator shall require you to reimburse us for the Arbitration Fees we have advanced, not to exceed the amount which would have been assessed as court costs if the dispute had been resolved by a state court with jurisdiction, less any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award may be filed with any court having jurisdiction.

6. All parties, including related third parties, shall retain the right to seek adjudication in a small claims tribunal for disputes within the scope of such tribunal's jurisdiction. Any dispute, which cannot be adjudicated within the jurisdiction of a small claims tribunal, shall be resolved by binding arbitration. Any appeal of a judgment from a small claims tribunal shall be resolved by binding arbitration.

7. This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA. If a final non-appealable judgment of a court having jurisdiction over this transaction finds, for any reason, that the FAA does not apply to this transaction, then our agreement to arbitrate shall be governed by the arbitration law of the Commonwealth of Kentucky.

8. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. The Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. The Arbitration Provision continues in full force and effect, even if your obligations have been paid or discharged through bankruptcy. The Arbitration Provision survives any termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing.

Advance America, Cash Advance Centers of North Carolina, LLC

Republic Bank and Trust Company

[Handwritten Signature]

[Handwritten Signature]

[Handwritten Signature]

Customer's Signature
AA4035-North Carolina

Rev. 06/06/03