

STATE OF NORTH CAROLINA
WAKE COUNTY

IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO. 06:035:RAL

IN RE:)
)
APPEAL OF PEARL McCAULEY d/b/a)
ACE ACCOUNTING TAX &)
FINANCIAL SERVICES)
REGISTRATION NUMBER 125591

DECISION AND ORDER

THIS MATTER came on for hearing before the Commissioner of Banks (hereinafter the "Commissioner"), on May 18, 2006, pursuant to N.C. Gen. Stat. § 150B-38(b) and 4 NCAC 3B .0200, et seq., upon Notice of Hearing mailed on April 24, 2006.

Appearing at the hearing for the Office of the Commissioner of Banks ("OCOB") was L. McNeil Chestnut, Special Deputy Attorney General, Raleigh, North Carolina. Pearl McCauley ("Respondent") appeared *pro-se*. 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 a witness for the OCOB was Rodney Oldham, Bank Examiner II with the Consumer Finance Division of the Office of the Commissioner of Banks. The Respondent testified on her own behalf.

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

It is alleged that:

1. On or about January 1, 1992, Respondent was registered as a facilitator of refund anticipation loans pursuant to Article 20 of Chapter 53 of the North Carolina General Statutes, the Refund Anticipation Loan Act ("RAL Act") and has been so registered since that date.
2. On or about December 2, 2005, Respondent's registration was renewed for calendar year 2006. At that time, the OCOB notified Respondent that she was required under the RAL Act to file a schedule of refund anticipation loan fees by January 2, 2006.

3. On February 10, 2006, OCOB staff once again notified Respondent that it had not received the 2006 fee schedule and requested that same be provided by February 20, 2006.
4. On March 23, 2006, the OCOB, for a third time, notified Respondent that the fee schedule had not been filed.
5. As of this date, the required fee schedule has not been filed by Respondent nor has she responded to any of the OCOB's correspondence.
6. N.C. Gen. Stat. § 53-249(a) requires all registrants under the RAL Act to file a fee schedule with the OCOB by January 2nd of each year.
7. Due to the failure of the Respondent to respond to numerous requests made by OCOB staff for her to submit the schedule of refund anticipation loan fees as required by N.C. Gen. Stat. 53-249(a), the Respondent was mailed via certified mail a Notice of Hearing (the "Notice") on April 24, 2006. The Notice stated that a hearing would be held on May 18, 2006, at 9:00 a.m. or as soon after that hour as the same may be heard, to determine whether or not the registration of the Respondent, as a facilitator of refund anticipation loans should be temporarily or permanently revoked.
8. At the hearing, L. McNeil Chestnut, counsel for OCOB submitted the following documents into evidence in support of OCOB staff's preliminary denial of licensure:
 - Exhibit 1: Copy of the letter from W. Reitzel Deaton, Director, Consumer Industries for the OCOB, dated December 2, 2005;
 - Exhibit 2: Copy of the letter from Rodney E. Oldham, Bank Examiner II, dated February 10, 2006;
 - Exhibit 3: Copy of the letter from Rodney E. Oldham, Bank Examiner II, dated March 23, 2006; and
 - Exhibit 4: Copy of the Refund Anticipation Loan Facilitator Application for 2006 Renewal Registration form for the Respondent.
9. Mr. Oldham testified that on December 2, 2005, the Respondent was notified by letter, signed by W. Reitzel Deaton, that her registration under the Refund Anticipation Loan Act, N.C. Gen. Stat. § 53-245 had been received and that a new registration certificate was enclosed with the letter. The letter also reminded the Respondent that a registrant under the RAL Act must file with the Commissioner of Banks on or before January 2, 2006, a schedule of refund anticipation loan fees of loans that it would facilitate. Staff included as an enclosure the NCRAL-2 form used to report loan fees charged for the refund anticipation loans.

10. Mr. Oldham testified that on February 10, 2006, he mailed the Respondent a letter stating that the OCOB had not received her Refund Anticipation Loan Facilitator Schedule of 2006 Loan Fees (the NCRAL-2 form previously sent in the December 2, 2005 letter from W. Reitzel Deaton.) A second NCRAL-2 form was enclosed with this letter.
11. Mr. Oldham further testified that on March 23, 2006, a third letter was mailed to the Respondent stating that the OCOB had not received her Refund Anticipation Loan Facilitator Schedule of 2006 Loan Fees. The Respondent was given until March 31, 2006, to file the NCRAL-2 form or the matter would be referred to legal staff to schedule an administrative hearing. The Respondent was reminded that N.C. Gen. Stat. § 53-251(a) provides the Commissioner of Banks with authority to suspend or permanently revoke the RAL registration and to impose civil money penalties up to \$1,000 for each violation of the RAL Act.
12. During the hearing the Respondent testified that her failure to send the fee schedule was due to oversight on her part. The Respondent testified that she had begun full time employment with a real estate company in November 2005 and also had been involved in a divorce during the time that the letters concerning the fee schedules had been mailed.
13. The Respondent testified that she had not done a refund anticipation loan herself in the past three years. She further stated that she had completed between 250 and 300 tax returns during this same period of time. The Respondent testified that she had referred between 75 and 80 clients to a third party for completion of refund anticipation loans.
14. The Respondent testified that her IRS electronic filer identification number (EFIN) was currently inactive with the IRS. The Respondent further testified that she had filed her 2005 tax returns as required by the IRS.

II. CONCLUSIONS OF LAW

1. The Commissioner of Banks has jurisdiction over all the parties hereto and over the subject matter of the hearing. Any defects in notice are deemed waived by Respondent's appearance without objection.
2. Inasmuch as Respondent has previously been registered as a Refund Anticipation Lender under Article 20 the Refund Anticipation Loan Act by the Office of the Commissioner of Banks, the burden of proof is upon the state to show that Respondent's registration should either be temporarily or permanently revoked. Based on the evidence entered into the record, a *prima facie* case for revocation was made.

3. The Refund Anticipation Loan Act contemplates that the Commissioner and his staff will consider a licensee's suitability for continued registration under N.C. Gen. Stat. § 53-248. The Commissioner is required to make an affirmative finding under the statute that an applicant is entitled to continued registration; in a revocation case, a showing must be made that the standards have been breached and that the registration is no longer justified under the statute.
4. The standards under the Refund Anticipation Loan Act for a person to obtain a new registration certificate apply continuously to the person thereafter. A failure to follow the statutory standards may result in license revocation.
5. North Carolina General Statute § 53-249(a) states that: "On or before January 2 of each year, each registrant shall file with the Commissioner a schedule of the refund anticipation loan fees for refund anticipation loans to be facilitated by the registrant during the succeeding year." The Respondent clearly was notified on multiple occasions that the OCOB had not received her fee schedule as required by this statute.
6. Under North Carolina General Statute § 53-251(b) after notice and hearing, and upon the finding that a registrant has engaged in a course of conduct that is in violation of this Article 20 the Commissioner may revoke the registration of the registrant temporarily or permanently in the discretion of the Commissioner.
7. The Respondent's failure to file a schedule of the refund anticipation loan fees by January 2, 2006, as required under N.C. Gen. Stat. § 53-249(a) is a clear violation of the Refund Anticipation Loan Act and would justify a revocation in this case.

III. ORDER

1. The Commissioner in his discretion orders that, rather than permanently revoking the Respondent's registration as a refund anticipation lender, her registration be suspended for a period of 90 days from the date shown on the Certificate of Service of this Order. Thereafter, Respondent's retention of her registration is conditioned upon the Respondent's satisfying all of the conditions stated in paragraph 2 below.
2. The Respondent's registration will be reinstated automatically after the 90 day suspension if the following conditions are met in full:
 - A. Prior to August 30, 2006, the Respondent will submit a check in the amount of \$500.00 made payable to the "Department of Commerce/Banking Commission" as reimbursement of the OCOB investigative costs and expenses relating to this matter;

- B. The Respondent will have her IRS electronic filer identification number (EFIN) [REDACTED] reactivated and supply the OCOB with documented proof of such activation; and
 - C. The Respondent will file the NCRAL-2 form used to report loan fees charged for the refund anticipation loans with the OCOB as required by N.C. Gen. Stat. § 53-249(a).
3. In the event that the conditions stated in paragraph 2A, 2B & 2C above have not been met by the end of the 90-day suspension, the suspension will become a permanent revocation of registration for the Respondent as a refund anticipation lender.
4. This decision and order may be appealed by submitting written notice within 20 days to the State Banking Commission pursuant to N.C. Gen. Stat. § 53-92(d), to which reference is hereby made. 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 6th day of June, 2006.

[REDACTED]

Joseph ~~A~~ Smith, Jr.
Commissioner of Banks

CERTIFICATE OF SERVICE

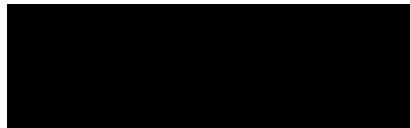
THE UNDERSIGNED hereby certifies that he has this day served a copy of the foregoing Final Decision and Order by personal delivery or by faxing a copy to the persons and fax numbers shown below or by placing a copy of the same in the mail, at Raleigh, first class mail, postage prepaid and addressed to the persons below:

Pearl McCauley
Ace Accounting Tax & Financial Services



L. McNeil Chestnut, Special Deputy Attorney General
North Carolina Department of Justice
Office of the Attorney General
9001 Mail Service Center
Raleigh, North Carolina 27699-9001
Phone: (919) 716-6800
Fax: (919) 716-6755

This the 6th day of June, 2006.



— Daniel E. Garner
Executive Legal Specialist
Office of the Commissioner of Banks
4309 Mail Service Center
Raleigh, North Carolina 27699-4309
Phone: (919) 733-4662
Fax: (919) 733-6918

September 18, 2006

Ms. Pearl McCauley
Ace Accounting Tax & Financial Services
Post Office Box 33214
Charlotte, North Carolina 28233

RE: Permanent Revocation of Registration as a Refund Anticipation Lender

Dear Ms. McCauley:

This matter came on for hearing before the Commissioner of Banks (hereinafter the "Commissioner"), on May 18, 2006, pursuant to N.C. Gen. Stat. § 150B-38(b) and 4 NCAC 3B .0200, et seq., upon Notice of Hearing mailed on April 24, 2006.

On June 6, 2006, the Commissioner issued a Decision and Order (the "Order") concerning the above referenced hearing. The Commissioner in his discretion ordered that, rather than permanently revoking your registration as a refund anticipation lender, your registration would be suspended for a period of 90-days beginning on June 6, 2006, the date shown on the Certificate of Service. Thereafter, the retention of your registration would be conditioned upon satisfying all of the following conditions:

- A. Prior to August 30, 2006, you would submit a check in the amount of \$500.00 made payable to the "Department of Commerce/Banking Commission" as reimbursement of the OCOB investigative costs and expenses relating to this matter;
- B. You would have your IRS electronic filer identification number (EFIN) [REDACTED] reactivated and supply the OCOB with documented proof of such activation; and
- C. You would file the NCRAL-2 form used to report loan fees charged for the refund anticipation loans with the OCOB as required by N.C. Gen. Stat. § 53-249(a).

The Order further stated that in the event that the conditions stated above were not all met by the end of the 90-day suspension, the suspension would become a permanent revocation of your registration as a refund anticipation lender.

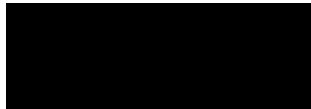
The Order could have been appealed by submitting written notice to the State Banking Commission within 20 days of the Order pursuant to N.C. Gen. Stat. § 53-92(d). The Order was mailed by Certified U.S. Mail, return receipt requested, on June 6, 2006. On June 27, 2006, the OCOB received the return receipt from the U.S. Post Office indicating that the Order had been served on June 23, 2006.

As of September 18, 2006, you have failed to comply with the Commissioner's Order in that:

- A. You failed to reimburse the OCOB the \$500.00 for investigative costs and expenses relating to this matter prior to August 30, 2006;
- B. You failed to have your IRS electronic filer identification number (EFIN) 561478 reactivated and supply the OCOB with documented proof of such activation;
- C. You failed to file the NCRAL-2 form used to report loan fees charged for the refund anticipation loans with the OCOB as required by N.C. Gen. Stat. § 53-249(a); and
- D. You did not appeal the June 6, 2006, Order within 20 days of the date of the Order to the State Banking Commission pursuant to N.C. Gen. Stat. § 53-92(d).

This letter is to inform you that your registration as a refund anticipation lender has now been permanently revoked for the reasons stated above. You may no longer act as a refund anticipation lender as those terms are defined by Article 20 of Chapter 53 of the North Carolina General Statutes, the Refund Anticipation Loan Act. Any activity as a refund anticipation lender by you or Ace Accounting Tax & Financial Services will be a violation of law and punishable accordingly.

Sincerely,

A solid black rectangular redaction box covering the signature of Joseph A. Smith, Jr.

Joseph A. Smith, Jr.
Commissioner of Banks