

**STATE OF NEW HAMPSHIRE
BANKING DEPARTMENT**

In the Matter of: CashCall, Inc., John Paul Reddam, President and
CEO of CashCall, Inc., and WS Funding, LLC

Case No. 12-308

FINAL ORDER ON MOTION FOR REHEARING

The Proposed Order on Motion for Rehearing issued on September 19, 2016 by
Reviewing Officer Rosemary Wiant is hereby ACCEPTED in its entirety as the FINAL ORDER
of the New Hampshire Banking Department.

SO ORDERED.

09/21/16
Date

/s/
Gerald H. Little, Commissioner

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Procedural Background

On June 4, 2013, the New Hampshire Banking Department (“Department”) issued an order to cease and desist against CashCall, Inc., John Paul Reddam and WS Funding, LLC (collectively, “Respondents”). The order alleged that Respondents engaged in the business of making payday loans or small loans with New Hampshire consumers without a license, in violation of RSA 399-A. The Department alleged that although the loan agreements with consumers identified Western Sky Financial, LLC, a non-party that is owned by a member of the Cheyenne River Sioux Tribe (CRST), as the lender, CashCall was the “true” or “defacto” lender. CashCall, a California corporation, is wholly owned by John Paul Reddam. WS Funding is a wholly owned subsidiary of CashCall.

Respondents filed two motions to dismiss. One motion asserted that the Department’s examination of CashCall, which was licensed by the Department as a mortgage banker under RSA 397-A, was an unreasonable warrantless examination. Respondents’ second motion to dismiss asserted several theories, including: 1) according to the loan agreements, the loans at issue are governed solely by the laws of the CRST and, therefore, the Department lacks subject matter jurisdiction; 2) the loans were consummated on the CRST reservation by Western Sky and the Department’s attempt to regulate the transactions violates the dormant Commerce Clause; 3) the Department does not have personal jurisdiction over John Paul Reddam; and 4)

the arbitration provision in the loan agreements controls any order for restitution. An evidentiary hearing was held on February 9-10, 2016 regarding the motion to dismiss based on unreasonable warrantless examination. On February 10, 2016, oral argument was taken on the second motion to dismiss. On April 29, 2016, the presiding officer issued individual orders denying the motions to dismiss. Subsequently, on May 31, 2016, Respondents filed a motion for rehearing solely as to the finding that the Department has personal jurisdiction over John Paul Reddam. The Department objected and, on July 12, 2016, Respondents filed a reply to the objection.

Standard of Review

“A motion for rehearing in a case subject to appeal by petition for writ of certiorari shall be granted if it demonstrates that the agency’s decision is illegal in respect to jurisdiction, authority or observance of law, an abuse of discretion or arbitrary, unreasonable or capricious.” *N.H. Admin. R. Jus 813.04(b)*.

Legal Discussion

The purpose of a rehearing “is to direct attention to matters said to have been overlooked or mistakenly conceived in the original decision, and thus invites reconsideration upon the record upon which that decision rested.” *Dumais v. N.H. Personnel Comm’n*, 119 N.H. 309, 311-12 (1978) (quotations and citation omitted). In considering the motion for rehearing, the undersigned reviewing officer conducted a careful review of all pleadings and evidence, including all motions, memoranda, exhibits and the recording of the two days of hearings and oral arguments. Any evidence submitted with post-decision filings was not considered as it was not part of the record before the presiding officer. Based on the evidence, the presiding officer could have found that the Department properly exercised personal jurisdiction over John Paul Reddam. Respondents have not demonstrated that the decision was illegal in respect to

jurisdiction, authority or observance of law, an abuse of discretion or arbitrary, unreasonable or capricious.

Respondents argue in their motion that the presiding officer failed to follow the principles set forth in *Northern Laminate Sales, Inc. v. Matthews*, 249 F. Supp. 2d 130 (D.N.H. 2003) and improperly attributed CashCall's contacts with New Hampshire to John Paul Reddam to find that the Department may exercise jurisdiction over Mr. Reddam. Respondents rely on the general rule that jurisdiction over a corporation does not extend to the individual officers of the corporation. *Id.* at 139. As *N. Laminate Sales* instructs and as "is often repeated in New Hampshire cases," however, "New Hampshire courts do not hesitate to disregard the fiction of the corporation when circumstances would lead to an inequitable result." *Id.* at 141 (quoting *Terren v. Butler*, 134 N.H. 635, 639 (1991) (quotations omitted)). An adjudicative tribunal "may pierce the corporate veil if a shareholder . . . uses the corporate entity to promote injustice or fraud." *Id.* (quoting *Druding v. Allen*, 122 N.H. 823, 827 (1982)); see *Capital Telephone Co., Inc. v. FCC*, 498 F.2d 734, 738 (D.C. Cir. 1974) ("The courts have consistently recognized that a corporate entity may be disregarded in the interest of public convenience, fairness and equity"). The order's conclusion is consistent with these principles.

Moreover, *N. Laminate Sales*' applicability here is limited inasmuch as *N. Laminate Sales* is a civil litigation action between private contracting parties. Different interests are implicated between private civil suits and matters involving regulated industries. See *Capital Telephone Co.*, 498 F.2d at 738; *Terren*, 134 N.H. at 640 (discussing that the corporate veil doctrine is an equitable remedy) (citation omitted). Unlike parties to a private civil action, a regulatory agency is statutorily mandated to administer particular laws designed to accomplish a public purpose. As the court in *Capital Telephone* explained:

[W]e need not pause to consider whether Capital would be [the owner's] alter ego under strict standards of the common law alter ego doctrine which would apply in a tort or contract action. The contest in this case is over a license in a regulated industry and the applicable standard appears in the statute, not in court decisions involving civil suits.

Id. (citations omitted). Thus, the corporate veil doctrine does not prescribe the circumstances under which a regulatory agency may exercise jurisdiction over an individual owner or director of a corporation. *H.P. Lambert Co. v. Sec. of the Treasury*, 354 F.2d 819, 822 (1st Cir. 1965) (noting for the purpose of public protection that “[h]owever important it may be in other respects, the fiction of the corporate entity cannot stand athwart sound regulatory procedure”) (citations omitted); *Capital Telephone Co.*, 498 F.2d at 738 (“Such doctrines lose much of their sacrosanctity when urged in the context of regulated industries”) (quoting *Central & Southern Motor Freight Tariff Ass’n v. United States*, 273 F. Supp. 823, 831-32 (D. Del. 1967)). Instead, in regulatory matters, the purpose of the regulatory statute dictates whether the administering agency should look beyond the corporate form. *See Town of Brookline v. Gorsuch*, 667 F.2d 215, 221 (1st Cir. 1981) (noting in an appeal of an Environmental Protection Agency decision that federal courts look closely at the purpose of the statute to “determine whether the statute places importance on the corporate form” and the inquiry “usually gives less respect to the corporate form than does the strict common law alter ego doctrine”) (citations omitted); *Capital Telephone Co.*, 498 F.2d at 738.

The statutory scheme governing small loan lending confers the Department with authority to look beyond the walls of the corporation to the owners or principals of the corporation. The overarching purpose is one of consumer protection. *See* RSA 399-a:16, VI (2006)¹ (providing, “All actions taken by the commissioner pursuant to this chapter shall be

¹ RSA 399-A was repealed and reenacted by 2015, 73:1 (eff. Jan. 1, 2016) to accommodate a general reorganization of the law. Citations herein to substantive provisions of RSA 399-A are to the prior law.

taken only when the commissioner finds such action necessary or appropriate to the public interest or for the protection of consumers and consistent with the purposes fairly intended by the policy and provisions of this chapter”). To enable the Department to realize its objective, the statute authorizes the Department to conduct in-depth review of corporations and, in so doing, to look beyond the corporation to the individuals who direct or control the corporation. *See* RSA 399-A:3, I(a) (Supp. 2010) (requiring applicants to provide the names and social security numbers of the corporation’s principals and requiring principals to furnish a complete set of fingerprints); RSA 399-A:3, I(b) (requiring criminal background checks of the corporation’s principals); RSA 399-A:10, IV (Supp. 2008) (authorizing the Department to conduct investigations of persons, including individuals and principals, “whether or not such person shall claim to be within the authority or beyond the scope of this chapter”); RSA 399-A:18, VI (Supp. 2008) (authorizing the imposition of sanctions, including monetary penalties against persons who directly or indirectly control an entity subject to the Department’s authority). The statute authorizes the Department to act even where the entity is designed in manner that might, on its face, appear to not be within the Department’s authority. *See* RSA 399-A:2, VI (Supp. 2008) (providing that the statute applies, *inter alia*, “to any person who seeks to evade its application by any device, subterfuge, or pretense, including, without limitation . . . [h]aving any affiliation or other business arrangement with an entity that is exempt from the provisions of this chapter”). Thus, an owner of a corporation that engages in small loan lending activities regulated by the Department is subject to the Department’s jurisdiction by virtue of his or her status as owner, regardless of the degree of control that he or she chooses to exert over the corporation’s day-to-day operations.

The text and purposes of RSA 399-A also establish that it authorizes the Department to exercise personal jurisdiction over nonresidents. *See Bulldog Investors General Partnership v. Sec. of the Commonwealth*, 929 N.E.2d 293, 298-99 (Mass. 2010). The statute prohibits “any person” from engaging in the business of a small loan lender “in this state *or with consumers located in this state*” without a license, thus encompassing non-New Hampshire persons directing lending activities to New Hampshire consumers. RSA 399-A:2, I (emphasis added). The statute is designed to enable the Department to capture individuals and entities that might otherwise avoid scrutiny due simply to the manner in which the organization is structured. *See* RSA 399-A:2, VI. Finally, the statute authorizes the Department to investigate violations of RSA 399-A beyond New Hampshire’s borders. *See* RSA 399-A:10, IV (authorizing investigations of “any person,” including persons “participating in such business as principal, agent, broker or otherwise,” that the commissioner believes is engaging in the business of a small loan lender); *see also* RSA 399-A:1, XII (defining “principal” to include owners with ten percent or more ownership interest). These provisions are intended to enable the Department to protect consumers from unchecked small loan, payday loan and title loan lenders. The Department’s authority to regulate and investigate persons outside of New Hampshire would be meaningless without the coextensive authority to subject nonresidents to enforcement proceedings. *See Bulldog Investors*, 929 N.E.2d at 299.

The presiding officer’s finding that the Department has personal jurisdiction over John Paul Reddam is supported by the evidence. Without reiterating the detailed factual findings as set out in the order relative to CashCall’s lending activities, the evidence demonstrates that CashCall created and manned the electronic platform through which loans were solicited or offered to New Hampshire consumers and through which New Hampshire consumers applied for

loans. In addition to the website, CashCall staffed a 1-800 telephone for taking applications. CashCall also interacted with New Hampshire consumers via telephone and email to gather information and to communicate with applicants throughout the loan application and underwriting process. Mr. Reddam purposefully availed himself of the protections and privileges of New Hampshire law by controlling an entity licensed and doing business as a mortgage banker under RSA 397-A and by controlling an entity unlicensed but nevertheless doing business with New Hampshire consumers as a small loan lender within the meaning of RSA 399-A. RSA 397-A puts licensees on notice that they must comply with state lending laws and RSA 399-A puts persons on notice that a license is required to engage in small loan lending with New Hampshire residents. Mr. Reddam's affidavit verifies that he is the "sole owner and director" of CashCall. RSA 399-A:18, VI subjects owners and principals to the same obligations and potential for sanctions as the entities that they control. It is the owner's burden to demonstrate that he or she should not be held liable for the actions of the entity. *Id.* Mr. Reddam did not present evidence to "sustain the burden of proof that [he] did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist." *Id.*

Conclusion

Based on the foregoing, the reviewing officer finds that Respondents failed to demonstrate that the presiding officer's decision was illegal in respect to jurisdiction, authority or observance of law, an abuse of discretion or arbitrary, unreasonable or capricious. Accordingly, it is recommended that Respondents' motion for rehearing be denied.

Dated: 09/20/16

/s/
Rosemary Wiant, Reviewing Officer

CERTIFICATE OF SERVICE

I, Lisa A. Kaim, hereby certify that on September 22, 2016, a copy of the attached Final Order on Motion for Rehearing, Docket 12-308, was sent to the following parties:

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