
Cash Services, Inc. v. Dep't of Banking
Cite as 5 *N.J.A.R.* 103

CASH SERVICES, INC.
Petitioner,
v.
THE DEPARTMENT OF BANKING
Respondent.

Decided April 16, 1981

Initial Decision

SYNOPSIS

Cash Services, Inc. sought approval of its application for a check cashing license pursuant to *N.J.S.A.* 17:15A-1 *et seq.* The Department of Banking rejected the application based on the failure of Robert Santoro, the corporation president, to disclose his arrest and indictment for narcotics and bookmaking offenses. The Department maintained that this failure to disclose reflected adversely upon the character of one of the corporation officers.

The administrative law judge found that although Santoro had failed to disclose the information, the failure was unintentional and not motivated to deceive the Department of Banking. The judge found that credible evidence established that Santoro had made arrangements with an attorney (including the payment of a fee) for the expungement of his record. Although Santoro was unaware of it, the attorney became ill and never completed the expungement. While the judge observed that the failure to verify the expungement was less than prudent, he found that Santoro made a good faith assumption that the expungement had been completed.

The administrative law judge concluded that Santoro was not statutorily disqualified by his failure to disclose and had established his qualifications and fitness by affirmative character evidence. Accordingly, the judge ordered that Cash Service, Inc. be licensed.

This decision was remanded to the Office of Administrative Law by the Commissioner of Banking with directions to expand the record based on information it had concerning the alleged criminal involvement of the husband of the corporations's secretary-treasurer who had, at one time, acted as an officer for the corporation. On remand, the administrative law judge found that the Department of Banking was aware of this knowledge at the time of the original hearing. Based on *N.J.A.C.* 1:1-16.5 which prohibits an agency party from remanding

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a case of the Office of Administrative Law to develop proof that, in the exercise of reasonable diligence, could have been presented by the agency at the original hearing, the administrative law judge concluded that the remand was improper since the Department had had ample opportunity to develop proofs at the prior hearing. Accordingly, the judge rejected the remand.

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Salvatore T. Alfano, Esq., for petitioner

Mark S. Rattner, Deputy Attorney General, for respondent (James R. Zazzali, Attorney General of New Jersey, attorney)

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PERSICILLI, ALJ:

Petitioner appeals the denial of the Commissioner of the Department of Banking to issue Cash Services, Inc. a check cashing license, pursuant to the Check Cashing Law, *N.J.S.A.* 17:15A-1 *et seq.* The matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to the provisions of *N.J.S.A.* 52:14F-1 *et seq.*

The operative facts in this matter are uncontested. I accept and **FIND** the following facts as true and accurate:

1. Cash Services, Inc., 1033 Communipaw Avenue, Jersey City, New Jersey, was denied a check cashing license by Angelo R. Bianchi, Commissioner of Banking, State of New Jersey, by Decision and Order dated July 14, 1980.
2. Cash Services, Inc. seeks to locate a check cashing license at a location on Routes 1 and 9, also known as the Colony Diner, where it currently operates a Western Union telegraph-money order franchise and a freight brokerage operation.
3. Robert Santoro is a director and the president of Cash Services, Inc.
4. Robert Santoro replied, "No", to question No. 13 of the check cashing license application which inquired, "Has the corporation or any of its officers, employees or substantial stockholders ever been arrested or indicted for any felony or of any other crime or offense of any kind in any jurisdiction?"
5. The only fact which was revealed by the investigation conducted on behalf of the Department of Banking which could, in the Department's opinion, justify its denial of Cash Services, Inc.'s application for a check cashing license was the non-disclosure of a criminal history by Robert Santoro on the application submitted by Cash Services, Inc.

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6. On April 25, 1973, an indictment was issued by a grand jury, sitting in Bergen County, against Robert Santoro for narcotics and bookmaking. The indictment was dismissed on or about October 2, 1973.
7. The State has stipulated that Cash Services, Inc. satisfies all requirements in the statute governing check cashing licenses, with the exception of the singular issue raised herein.

The Department of Banking maintains that the applicant's failure to reveal information relating to the arrest and indictment reflects adversely upon the "character and general fitness" of one of its officers. It therefore denied the application.

N.J.S.A. 17:15A-7 provides that if the Commissioner:

shall find that this financial responsibility, experience, character, and general fitness of the applicant, . . . and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant the belief that such business will be operated honestly, fairly and efficiently within the purposes of this act; . . . he shall thereupon issue a license. . . .

The petitioner contends that the failure to disclose was not intentional and that the character of Robert Santoro is such as to "command the confidence of the community and to warrant the belief that such business will be operated honestly, fairly and efficiently," within the meaning and intent of *N.J.S.A.* 17:15A-7.

Since the Commissioner's denial rests solely upon the petitioner's failure to disclose an arrest and indictment, which failure was found to "reflect adversely" upon the petitioner's "character and general fitness," it is imperative to evaluate closely the reasons and circumstances which allegedly prompted the negative reply to question number 13 of the application. Although the petitioner sought to advance reasons or clarifications informally before the Commissioner, he was not afforded this opportunity prior to the subject hearing.

The testimony of attorney James Deer revealed that he represented Robert Santoro in the criminal indictment that was dismissed in 1973. Subsequently, Mr. Santoro inquired if his arrest record could be expunged and, if so, whether Mr. Deer could handle the case. Because of his own busy schedule, Mr. Deer informed the petitioner that he could not handle the matter and he referred Mr. Santoro to Edward Ligori, an attorney who shared his office space. Mr. Ligori was called in and, in the presence of Mr. Deer, was retained by the petitioner. Attorney Deer recalled witnessing Mr. Santoro's payment of a re-

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tainer, in cash, although he could not recall the amount. Thereafter, he recalled seeing Mr. Santoro in the office, presumably on matters relating to the expungement. Mr. Ligori subsequently suffered a stroke and, in Mr. Deer's opinion, "wasn't quite competent to practice law." The witness believed that Mr. Ligori currently resides in Italy.

Robert Santoro testified that he attempted to secure the services of Mr. Deer to expunge his record, but was referred to Mr. Ligori because of Mr. Deer's heavy case load. Mr. Santoro paid Mr. Ligori \$250 and, after "another month or two," Mr. Ligori called him in to sign some papers. He signed the documents and paid "the balance of what he said I owed him. I think it was another \$250 and that was that." When he signed the papers, the petitioner was advised that his record would be expunged. With this representation, the petitioner felt there was no reason to visit Mr. Ligori again.

Mr. Santoro testified that he was not trying to hide anything from the State. When he answered "no" to the subject question, he believed he was answering it correctly.

At first impression, the extenuating circumstances appear questionable. However, on cross-examination, the State's attorney posed a question which elicited a reply which convinces me of the truthfulness of Mr. Santoro's testimony.

MR. RATTNER: "Now, you say you paid Mr. Ligori the \$250 as a retainer. Did you have any receipt, bill, check, anything to evidence that payment?"

MR. SANTORO: "I paid him \$500, \$250 both times."

The witness further testified that he did not remember what he signed, nor did he have any receipt, record or documentary evidence in support of these events. He nevertheless testified that attorney Deer was present. Unfortunately, Mr. Santoro made no personal effort to verify whether his record had, in fact, been expunged.

I find Mr. Santoro's reply to the deputy attorney general's question to be the touchstone of credibility. Mr. Santoro was less concerned with the import of the question or his reply than to correct the actual dollar amount tendered to Mr. Ligori. His response was without hesitation; it was instantaneous. It was not the product of a thought-out reply. It was nothing more than a correction—the correction of a *fait accompli*—the payment of \$500. His answer was sincere and persuasive. It unknowingly supported his relationship with Mr. Ligori and the professional services that he believed were performed.

The petitioner's explanation presented certain improbabilities, not

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impossibilities, but human conduct occasionally presents the improbable circumstance, or series of circumstances. In this case, if one were to assess the testimony in its most negative light, one would have to assume that both attorney Deer and Mr. Santoro conspired to fabricate events from start to finish. Carrying this unwarranted negative assumption further, one would also have to inquire into the improbable facts which gave birth to the exculpatory version of events, *i.e.*, that the attorney who represented the petitioner conveniently shared office facilities with an attorney who subsequently suffered a stroke, conveniently left the practice and conveniently left the country. However, I think it more improbable that an attorney would perjure himself. To view his testimony in a less than candid fashion is unwarranted. Mr. Deer appeared as a disinterested witness and his testimony was credible and without extraneous motivation.

Mr. Santoro, though obviously interested in the outcome, was entirely credible. He told his story, regardless of impressions and probabilities. He was relaxed, composed, and his replies to the questions posed were direct and unsophisticated. In fact, his testimony revealed that he was not aware of Mr. Ligori's departure from the practice (or this country) until recently, when fruitless efforts were made to secure some documentation in support of his claims. He had little reason to verify the attorney's actions. He paid \$500 for a service that was not performed. He was assured by a professional that his record would be expunged. His failure to verify lacked prudence, but was perhaps tempered by youthfulness and a sense of security. After all, Mr. Ligori was referred by Mr. Deer, an attorney who had previously represented petitioner, and one who shared the same office facilities.

Having had the opportunity to observe Mr. Santoro's demeanor and to listen to the tone of his responses, I found him to be a candid and credible witness.

Based upon the testimony of Mr. Deer and Mr. Santoro, I **FIND** as fact that Robert Santoro was referred to Edward Ligori, Esq., by attorney Deer to have his record expunged; that attorney Ligori was paid \$500 by Mr. Santoro to have his record expunged; that attorney Ligori assured Mr. Santoro that his record would be expunged, and that Mr. Santoro replied in the negative to question no. 13 of the check cashing license application under the belief that his record had been expunged; that such a reply, though incorrect, was not the product of intent or design, nor motivated to deceive the Department of Banking.

The licensee had no reason to question his record between 1973

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and the date of the Department of Banking's denial. Thus the question next presented is whether the petitioner's carelessness or negligence in failing to verify whether his record was expunged (in effect, verifying his attorney's actions), may be considered an adverse reflection upon character and fitness for licensure. I find that the testimony offered in support of Mr. Santoro's personal and professional character strongly support a conclusion that his character will command the confidence of the community and will warrant the belief that the check cashing business will be conducted honestly, fairly and efficiently.

Mr. Santoro, an agent for Western Union, has an unblemished performance record during the five years of his agency's operation. Currently, he is entrusted with up to \$200,000 in telegraph money order drafts. The district manager of Western Union, Frank Mc Enteer, described Mr. Santoro as one of the best of 103 area agents. Mr. Santoro handles a monthly volume that ranges between \$75,000 and \$100,000. During his agency period, Western Union audited and reconciled his books of account monthly, and the petitioner's accounts were accurate and without shortages. This testimony establishes a record of financial responsibility and general fitness.

Without exception, the testimony of the remaining witnesses reflected Mr. Santoro's personal and professional integrity and good character, not only in his private circle, but also in the community at large. The cross-section of the community that testified on his behalf was diverse and afforded a significant spectrum of favorable viewpoints.

Anthony Ballessa, a major road contractor and director of a savings and loan association, has known Mr. Santoro for approximately 12 years. As a friend and business mentor, he has guided the petitioner. He testified to his good character and reputation in the community in the highest terms. Mr. Ballessa's testimony was direct, factual and unpretentious.

Ralph De Vine, a supervisor with the Department of Community Affairs, offered insight into Mr. Santoro's character from the perspective of a former business partner. While the partnership project failed to materialize, the witness found Mr. Santoro to be honest, sincere and upstanding.

Michael Turino, a certified life insurance underwriter, insures many members of the Santoro family. He watched Robert Santoro mature. He commended his respect to the petitioner for supporting his parents' household during times when Mr. Santoro, Sr. was disabled. He described the licensee's character in the highest terms and had no doubt concerning his ability to conduct an efficient and honestly run

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business. Mr. Turino's relationship with Robert Santoro was professional, not personal.

Thomas A. Sember, the petitioner's brother-in-law, is the president of St. Francis Hospital in Jersey City. Mr. Sember was the only "interested" witness who testified on Mr. Santoro's behalf. He advanced money to Mr. Santoro to help operate the check cashing business if the license is granted. He had no doubts concerning his brother-in-law's honesty and integrity. Mr. Sember defined his interest rather pointedly—"I only put my money where I believe." Thus his business interest appeared to be divorced from the potential bias of personal interest.

Officers Jennings, Mc Cabe and Heatherly of the Jersey City Police Department, each socially acquainted with the petitioner, offered testimony from the perspective of friends. As in the preceeding, their individual and collective testimony supports the petitioner's good character.

The assessment of character testimony is delicate. At times, this type of testimony can approach laudatory language indigenious to testimonials or introductory comments offered of candidates seeking public office. Almost without exception, that "tone" was singularly lacking in the testimony of each witness. And, of equal significance, the witnesses were sequestered. Therefore, the possibility of parroting the testimony of a prior witness or the perpetuation of a "tone" was minimized. True, each witness appeared with knowledge and purpose, but a genuine feeling of sincerity was collectively conveyed.

A series of 17 letters in support of the petitioner, introduced into evidence, is corroborative of the live testimony offered. The authors range from the Chief of Police (an exceptional letter), a landlord, a dentist, and a university professor to various community businessmen. The input is overwhelming. It is overwhelmingly positive. It suggests that Mr. Santoro possesses that character required by statute of a check cashing licensee. Furthermore, in light of the State's stipulation it is apparent that the Commissioner was not afforded the wealth of community confidence in the petitioner and indicia of his good character as provided herein. This fact serves to explain the Commissioner's denial of petitioner's application. The applicant and the commissioner were not afforded the benefits of an evidential hearing. Having had this opportunity, I **FIND** that this record is factually supportive of licensing.

I **CONCLUDE** that the petitioner is not statutorily disqualified by virtue of his actions and that he has established, by a preponderance

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of affirmative credible evidence, his qualifications and fitness pursuant to the requirements of licensure.

Accordingly, it is **ORDERED** that the decision denying Cash Services, Inc. a check cashing license, pursuant to *N.J.S.A. 17:15A-1 et seq.*, be **REVERSED** and that a check cashing license be issued to the petitioner herein.

After reviewing this Initial Decision the Department of Banking on September 30, 1981, issued the following Final Decision:

On August 6, 1981, the administrative law judge resubmitted to me his recommended decision of April 16, 1981, in this matter, notwithstanding that the matter had been remanded to the Office of Administrative Law with specific instructions for an expansion of the record. The purpose of the remand directed, as more fully described in the Order for Remand of June 2, 1981, was to provide closer scrutiny of the questions of good faith and reasonable conduct. In particular, Robert Santoro's failure to disclose his own indictment as well as previous convictions of a corporate officer as required by *N.J.S.A. 17:15A-1 et seq.* alone merit an expansion of the record. But further, the applicant's defense to the nondisclosure, that he believed his record to have been expunged warrants further explanatory testimony. The administrative law judge's action, declining to accept the remand, was based upon his interpretation of an Office of Administrative Law rule governing remand of a contested case by an agency head, *N.J.S.A. 1:1-16.5*. Under the terms of this rule, a hearing on remand will apparently not be conducted by the Office of Administrative Law where the questions to be explored entail "proof that, in the exercise of reasonable diligence, could have been presented by the agency at the original hearing." Administrative Law Judge Persichilli was of the opinion that the instructions of remand presented such questions.

It is a long-standing principle of administrative law that an agency charged with the responsibility for final decision upon a record after hearing may at its own discretion reopen the record to allow for further exploration of issues material to its decision. *See, Mackler v. Bd. of Ed. of City of Camden*, 16 *N.J.* 362 (1954); *In Re Plainfield-Union Water Co.*, 14 *N.J.* 296 (1954); *Farley v. Ocean Twp. Bd. of Ed.*, 174 *N.J. Super.* 449 (App. Div. 1980), certif. den. 85 *N.J.* 140 (1980). The legislation creating the Office of Administrative Law and providing for conduct of hearings in contested cases before administrative law judges does not displace the responsibility of an agency head to make a final decision required of the agency by statute after

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a hearing. Moreover, that legislation provides that the agency head may reserve to himself both hearing and decision in such cases. *N.J.S.A.* 52:14B-8(b). *Unemployed-Employed Council of N.J., Inc. v. Horn*, 85 *N.J.* 646 (1981); *In re Orange Savings Bank* 172 *N.J. Super.* 275 (App. Div. 1980), mot. for lv. to appeal dismissed 84 *N.J.* 433 (1980). It is therefore incongruous that *N.J.A.C.* 1:1-15(c) should operate so as to foreclose the agency head from expanding the record upon which *he* must decide the matter and require him to decide upon a record which in his judgment fails to develop fully issues he considers material.

This difficulty can, however, be resolved without directly bringing into issue the Office of Administrative Law's administration of its own procedures. The solution is for the hearing to be reopened with the agency head personally conducting the proceeding. I therefore reject the recommended decision of the administrative law judge as not based upon an adequate record for the reasons stated in the order of remand and direct the applicant to appear before me for further proceedings as described in that order. The proceedings will commence on October 16, 1981, at 10:00 a.m. in the Commissioner's Conference Room, Department of Banking, 36 West State Street, Trenton, New Jersey.