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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CAPITAL CITY CHECK CASHING,

Petitioner,

vs.

Case No. 14-1291RU

OFFICE OF FINANCIAL REGULATION,

Respondent.

_____ /

MOTION FOR CLARIFICATION

The Office of Financial Regulation (“Office”) moves for clarification of the Order on Motion to Dismiss issued in this case and states as grounds:

1. On April 22, 2014, in consolidated Case Nos. 13-4484 and 14-1291RU, the Office filed its Motion to Dismiss Capital City’s Amended Petition to Determine Agency Statements are Unadopted Rules (“Motion”).

2. A hearing on the consolidated cases commenced on April 23, 2014, and in a subsequent order of this tribunal dated April 24, 2014, the consolidated Case Nos. 13-4484 and 14-1291RU were severed.

3. On April 25, 2014, in Case No. 14-1291RU, the Administrative Law Judge (“ALJ”) issued the Order on Motion to Dismiss (“Order”).

4. On page 3 of the Order, the ALJ rejected the Office's allegation that Capital City Check Cashing ("Capital City") has "not identified with particularity the statements alleged to be unadopted rules such that the Amended Petition should be dismissed," and gleaned as one alleged statement at issue that "[c]heck cashers must keep payment instrument logs in the form of a spreadsheet."

5. On page 4 of the Order at paragraph 2, the ALJ ordered that "[p]aragraph 10 of Respondent's Motion to Dismiss Capital City's Amended Petition to Determine Agency Statements are Unadopted Rules is treated as a Motion in Limine, and is GRANTED."

6. Paragraph 10 of the Motion reads as follows:

10. Capital City represents in its Amended Petition that allegations (c), (e), and (f), described in paragraph 4 above, as unpromulgated rules, are "new", i.e., that these alleged policy statements were made by OFR employees in the course of discovery conducted in the case *sub judice*. In fact, on its face, these same matters were previously litigated by the parties before the Division in Case No. 13-4739RX, on January 27, 2014, as invalid rules, and currently appear to be the subject of a pending Final Order. Capital City's attempt to re-litigate these same matters should be disallowed.

7. As listed on pages 1-2 in the Amended Petition to Determine Agency Statements are Unadopted Rules ("Amended Petition") filed by Capital City on April 18, 2014, the allegations disallowed from the final hearing in this case are as follows:

(c) – *the agency statement regarding a required format for a "log" as authorized by sec. 560.310(1)(d);*

(e) – the agency statement that a third party record keeper can't be a government agency;

(f) – the agency statement requiring Capital City and other check cashing licensees to copy and maintain records received from the government data base.

[Emphasis added]

8. The Office seeks clarification that:

a. The allegation from the Amended Petition identified as “(c)” and re-stated above in paragraph 7 is not an issue in this case because it has already been litigated in Case No. 13-4739RX.

b. The statement on Page 3 of the Order, that “[c]heck cashers must keep payment instrument logs in the form of a spreadsheet,” is simply a reiteration by the ALJ of one of the Petitioner’s alleged agency statements in this case, and is only to be viewed as an illustration by the ALJ that the Petitioner has “identified with particularity the statements alleged to be unadopted rules.”

9. The Office conferred with counsel for Capital City, but he did not state whether he objected to the instant motion.

THEREFORE, the Office requests an order from this tribunal that clarifies the Order on Motion to Dismiss in the manner stated in paragraph 8 above.

Respectfully submitted this 20th day of May, 2014

_____/S/_____
C. Michael Marschall
Assistant General Counsel
Fla. Bar No. 10211
Office of Financial Regulation
200 E. Gaines Street
Fletcher Building, Suite 550
Tallahassee, FL 32399-0379
(850) 410-9516
Mike.Marschall@flofr.com
Melinda.Butler@flofr.com
Miriam.Wilkinson@flofr.com

Counsel for Respondent,
Office of Financial Regulation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to John O. Williams, Williams & Holz, P.A., Counsel for Petitioner, at jwilli7012@aol.com, this 20th day of May, 2014.

/S/
C. Michael Marschall
Assistant General Counsel

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