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| DOCKET NO. HHB-CV23-6081708-S | | SUPERIOR COURT |
| LEGAL FUNDING, LLC D/B/A CRASH ADVANCE,<br>Plaintiff | : | JUDICIAL DISTRICT OF NEW BRITAIN |
| v. | : | AT NEW BRITAIN |
| DEPARTMENT OF BANKING,<br>Defendant | : | NOVEMBER 12, 2024 |

**MEMORANDUM OF DECISION**

The plaintiff, Legal Funding, LLC D/B/A Crash Advance, brings this administrative appeal from an August 8, 2023 order of the department of banking (the department) imposing sanctions for violation of the Small Loan and Related Activities Act, General Statutes § 36a-555 to § 36a-573.[1]

The department gave notice to the plaintiff of a possible violation of the Act and a hearing was held on April 26, 2023. After the hearing, on August 8, 2023, the department's commissioner entered the order that is the subject of this administrative appeal.

The order may be summarized as follows.

The facts were stipulated to by the parties. The plaintiff is a corporation registered with the Connecticut Secretary of the State. Its business is to advance funds to persons who are plaintiffs in personal injury lawsuits. The plaintiff has not registered with the department.

Two persons had received funds before the department had started its investigation. Each

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[1] Due to the entry of sanctions, the plaintiff is aggrieved for purposes of § 4-183 (a).



Electronic notice sent to all counsel of record:
1) M. Taylor (TT) and A. Rosario (A).
A. Jordanopoulos, ct office
11-12-24

had received funds under $15,000. The persons had signed an agreement with the plaintiff to repay the advances. The agreement required repayment with interest. It also stated that the persons recognized that the transaction was not a loan.

The plaintiff was not licensed with the department. The interest amount in the two agreements in evidence exceeded 12% APR.

Legislation to regulate the plaintiff's activities and those of other similar corporations had been introduced at two sessions of the General Assembly, but had not passed.

The commissioner concluded that the department had jurisdiction over the plaintiff's business under the Small Loan Act. He also concluded that notice and a hearing had been given to the plaintiff. The plaintiff was bound by the rule of substantial evidence. The burden of proof was on the department.

He concluded that the purpose of the Small Loan Act was to protect those receiving the advances from the plaintiff, especially from interest charges and repayment requirements. The transactions here by way of advances of funds, were practically and substantially close to that of a loan.

The charge of interest was the mark of a loan. The transactions were not assignments as the borrower still controlled the legal proceedings.

The commissioner made the following conclusions:

"a. The plain and unambiguous meaning of 'small loan' under Section 36a-555 (11) includes an advance of money on any future potential source of money, *including advances on a potential monetary judgment or settlement in connection with a*

*personal injury lawsuit or legal claim.*

b. The statutory definition of 'small loan' in Section 36a-555 (11), and definitions of 'potential,' 'advance' and 'advance payment,' directly support the conclusion that the legislature intended for litigation funding advances that include a *contingent* repayment obligation to fall within the Small Loan and Related Activities Act.

c. Based on the substance or 'economic reality' of the transactions, Respondent's advances fall under the umbrella of remedial statutes and within the definition of 'small loan' provided in Section 36a-555 (11) of the Act.

d. Respondent maintained an online presence including advertising and 'apply now' application forms. Respondent offered to provide advance funds for personal expenses to Connecticut consumers on future potential monetary judgments or settlements in connection with pending personal injury lawsuits. Respondent offered advances of $500 to $5,000, including a repayment obligation that increases over time. By offering and making two such advances to a Connecticut borrower, each in the sum of $5,000, while charging the borrower between 36.79% and 76% APR, Respondent engaged in transactions with Connecticut borrowers that fall within the meaning of 'small loan' without having first obtained a small loan license from the commissioner pursuant to Section 36a-565, in violation of Section 36a-556 (a) (1) of the Act.

e. Attempts to collect on small loans made by unlicensed persons are void and unenforceable pursuant to Section 36a-558 (c) of the Act. Respondent funded a

Connecticut borrower $5,000 on two occasions, in exchange for the proceeds of a pending personal injury action. Respondent later sued the borrower to collect on the Agreements. By attempting to collect and collecting on principal, interest, charge or other consideration on small loans, Respondent is subject to the provisions of Section 36a-570. Respondent violated Section 36a-558 (c) (1)."

The commissioner continued:

"As described more fully above, the parties agreed in the Stipulation of Facts that 'Respondent refused and failed to provide information requested by the Division during the investigation of this matter . . .' More specifically, although the Division attempted to investigate and examine the activities of Respondent to determine if it had violated, was violating or was about to violate the provisions of the Connecticut General Statutes or Regulations within the jurisdiction of the Commissioner, Respondent repeatedly failed to provide information and documents requested by the Division. . . . Rather, in response to the Department's repeated requests, Respondent reiterated its belief that its conduct and activities were not within the jurisdiction of the Commissioner. Id. . . ."

"During the course of the investigation by the Department, Respondent was obligated to make records available, including information lists and dates of transactions, accounting compilations and reports. More broadly, Respondent was legally obligated to cooperate with the Commissioner. Instead, Respondent intentionally refused to provide such records requested by the Department, reflected in multiple email records and the Stipulations of Fact. Respondent's failure to provide information requested during the investigation, constitutes a violation of

Section 36a-17 (e) of the Connecticut General Statutes."

The commissioner entered the following order:

"Having read the record, I hereby ORDER, pursuant to Sections 36a-17, 36a-50, and 36a-52 of the General Statutes of Connecticut, that:

1. Legal Funding, LLC d/b/a Crash Advance CEASE AND DESIST from violating Sections 36a-556 (a) (1), 36a-558 (c) (1) and 36a-17 (e) of the Connecticut General Statutes;

2. Legal Funding, LLC d/b/a Crash Advance PRODUCE to Carmine Costa, Director, Consumer Credit Division, Department of Banking, 260 Constitution Plaza, Hartford, Connecticut 06103-1800, or carmine.costa@ct.gov, a list of all Connecticut residents who, on or after October 1, 2016, have: (1) applied for a small loan or any advanced funding agreement from Legal Funding, LLC d/b/a Crash Advance, or (2) entered into any advanced funding agreement with Legal Funding, LLC d/b/a Crash Advance in which the interest paid on the agreement is at a rate in excess of 12%. For each small loan, and/or other agreement included within the statutory definition of a small loan, consummated by a Connecticut borrower, such submission shall include: (a) a copy of each loan agreement specifying the amount, annual interest rate of the loan and/or the scheduled repayment amounts as attached any agreement, and (b) a list of each Connecticut borrower's name and address and full itemization of payments made pursuant to the loan agreement, specifying the dates and amounts of such payments;

3. Legal Funding, LLC d/b/a Crash Advance MAKE RESTITUTION of any sums obtained as a result of violating subsection (1) of Section 36a-556 (a) of the Connecticut General Statutes, plus interest at the legal rate set forth in Section 37-1 of the Connecticut General Statutes;

   Specifically, the Commissioner ORDERS that: Not later than thirty (30) days from the date this Order is mailed, Legal Funding, LLC d/b/a Crash Advance shall:

   a. Repay any amounts received by Legal Funding, LLC d/b/a Crash Advance from Connecticut borrowers in connection with a loan, plus interest. Payments shall be made by cashier's check, certified check or money order; and

b. Provide to Carmine Costa, Director, Consumer Credit Department, Department of Banking, 260 Constitution Plaza, Hartford, Connecticut 06103-1800, or carmine.costa@ct.gov, evidence of such repayments.

4. A CIVIL PENALTY of Twenty-Five Thousand and 00/100 Dollars ($25,000) be imposed upon Legal Funding, LLC d/b/a Crash Advance, to be remitted to the Department of Banking by wire transfer, cashier's check, certified check or money order, made payable to "Treasurer, State of Connecticut," no later than forty-five (45) days after the date this Order is mailed;

5. The Order shall become effective when mailed."

This appeal followed. The major issue in this case is whether the department had jurisdiction over the plaintiff's activities under the Small Loan Act, General Statutes, Chapter 668. This raises a matter of law for a decision by the court. See *Meriden* v. *Freedom of Information Commission*, 338 Conn. 310, 318-219 (2021):

"[Thus] [c]onclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts."

The plaintiff argues that the proceedings of their "loan" do not meet the definition of a "small loan" under General Statutes § 36a-555 (11). The definition of "loan" in the statute reads in part as follows:

"(11) 'Small loan' (A) means any loan of money or extension of credit, or the purchase of, or an advance of money on, a borrower's future potential source of money, including, but not limited to, future pay, salary, pension income or a tax refund, if (i) the amount or value is fifty thousand dollars or less, and (ii) the APR is greater than twelve percent, and

(B) does not include (i) a retail installment contract made in accordance with section 36a-772."

The plaintiff focuses on the word "loan" in the definition. According to the plaintiff, there cannot be a "loan" here as the funding agreement does not require a specific and exact repayment. The department replies that the definition also separately includes "an advance of money."

A definition must be logically interpreted to meet the purposes of the statute, and cannot interfere with legislative purpose. *Solomon* v. *Gilmore*, 248 Conn. 769, 774 (1999); *GenConn Energy, LLC* v. *Public Utilities Regulatory Authority*, Superior Court, judicial district of New Britain, Docket No. HHB-CV21-6064030 (2022) ("To interpret the statute any other way . . . would undermine the very purpose of the statute and the very essence of . . . regulation. . . .").

The Small Loan Act was passed in the public interest to further public policy in lending. *Westville & Hamden Loan Co., Inc.* v. *Pasqual*, 109 Conn. 110 (1929); *G. Nicotera Loan Corp.* v. *Gallagher*, 115 Conn. 102, 106-107 (1932). See *Nicotera*:

"The purpose of our Small Loan Act was to furnish an opportunity for borrowing to persons of small means who might be in need of money and unable to obtain it to relieve their necessities, at ordinary commercial rates, and the provisions of the act indicate care and foresight on the part of the Legislature[2]. *Westville & Hamden Loan Co.* v. *Pasqual*, 109 Conn. 110, 114,

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[2] The court notes that our Supreme Court found in *Nicotera* that the Small Loan Act promotes more borrowing, while the plaintiff argues that allowing the department's enforcement would restrict borrowing.

145 A. 758, 760. We may fairly assume recognition of the fact that the privilege of loaning money at a rate of interest greatly in excess of the legal rate permitted in ordinary business transactions naturally called for strict limitations upon the lender and for measures of protection to the borrower who was forced to make such agreements by the necessities of his situation."

The court concludes based on public policy reasons that the broad definition of "loan" as advanced by the department is correct and that the department has the legal jurisdiction over the plaintiff's operation under the Small Loan Act.[3]

Four out-of-state cases, cited by the parties, still leave the scope available for the department's regulation. In *Odell* v. *Legal Bucks, LLC*, 192 N.C. App. 298, 665 S.E. 2d 767 (2008), the court upheld the legal funding agreement. The *Odell* plaintiff's claims that the agreement violated champerty and usury laws were rejected. But the case was remanded to have a further investigation for violations of the state's Consumer Finance Act.

In *Oasis Legal Finance Group* v. *Coffman*, 361 P.3d 400 (Colo. 2015), the court concluded that the borrower had entered into a "debt" arrangement. This was true even if there was no duty to repay. The agreement was subject to state regulation.

In *Maslowski* v. *Prospect Funding*, 994 N.W. 2d 293 (Minn. 2023) the Minnesota Supreme Court rejected the plaintiff's challenge to a legal funding agreement. The court did not find the agreement violative of champerty or usury. However, the court remanded the matter to

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[3] The court in this conclusion does not consider recent legislative history of the Small Loan Act's definitional section, as provided by the plaintiff. Subsection 11 is "plain and unambiguous." See § 1-22; *City of Meriden* v. *Freedom of Information Commission*, 338 Conn. 310, 321 (2021).

the lower court to decide whether the level of interest was illegal. A concurring judge called for the state legislature to consider regulation of the legal financing industry.

A most recent case also concludes similarly. In *Ivaliotis* v. *Covered Bridge Capital*, 2024 W.L. 4471485 (New Jersey Appellate, 2024), the plaintiff alleged that the defendant legal fund had violated the state consumer financing law. The court upheld the validity of the legal funding of $9,600 that plaintiff had received. It concluded that the funds constituted a "loan" even though the plaintiff's agreement with the defendant funder was non-recourse. The fact that funds were accepted by the plaintiff meant that a "loan" had occurred.

These cases support the department's and the court's conclusion that the department had jurisdiction to regulate the legal funding process. While the "loans" or "advances" are legitimate, they are also subject to state regulation through the department.

The plaintiff makes three additional arguments. First it argues that the department's order is ambiguous and burdensome. The court, however, does not find the order ambiguous, but it is clear on its face. *Leaf CT, LLC* v. *Social Equity Council*, Superior Court, judicial district of New Britain, Docket No. HHB-CV22-6074406 (2023); *Commission on Human Rights and Opportunities*, 342 Conn. 25, 34 (2022).

The plaintiff also claims that the order's refund provisions are burdensome. The court has held that the department has statutory authority over the plaintiff's lending activities. The implementation of this ruling leaves the department with the initial duty of deciding whether the statutes that apply through the Small Loan Act have been violated. The plaintiff has, and will have, the opportunity to demonstrate to the department that its lending functions are correct.

With regard to the claimed burden of compliance, this too may be presented to the department. The plaintiff will have the option of appealing the department's conclusions and orders to the Superior Court under § 4-183 and following.

The plaintiff secondly claims that the department's regulation will interfere with the regulations of attorneys reserved to the judicial department. The case of *Persels and Associates, LLC* v. *Banking Commissioner*, 318 Conn. 652 (2015) resolves the issue.

In *Persels*, the department sought to regulate a law firm that engaged in debt negotiations. The Supreme Court held that the department's regulation would violate the Connecticut Constitution's provisions on separation of powers.

The plaintiff's activities are distinguishable, however. The plaintiff LLC does not consist of attorneys acting in a legal function. The plaintiff arranges for the lending of funds to litigants. Therefore, *Persels* does not apply.

The plaintiff's final contention is that the department may not proceed with regulation because a jury trial must first be held on its charges. The plaintiff relies for its position upon two recent decisions of the Supreme Court under the Seventh Amendment.

As the plaintiff concedes at page 8 of its brief, the Seventh Amendment does not apply to the right to a jury trial in state civil cases. In Connecticut, the right to a civil jury trial is whether a similar case would require a jury trial in 1818 when that constitution was adopted. *Skinner* v. *Angliker*, 211 Conn. 370 (1989).

While the plaintiff is correct that usury cases might be tried then by jury, the regulation by an administrative agency of a lender would not have resulted in a jury trial in 1818.

Based on the above analysis, the administrative appeal is dismissed.

So Ordered.

Henry S. Cohn, JTR