

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Consumer
Affairs,

Petitioner,

v.

Robert D. Clemons, d/b/a Goodies & Gifts
Pawn,

Respondent.

DOCKET NO. 17-ALJ-30-0257-CC

FINAL ORDER

APPEARANCES: For Petitioner: James C. Copeland, Esquire
Laura B. Dover, Esquire
For Respondent: Michael P. Horger, Esquire

STATEMENT OF THE CASE

The above-captioned matter is before the Administrative Law Court (“ALC” or “Court”) pursuant to S.C. Code Ann. § 40-39-155 (Supp. 2016). Robert D. Clemons d/b/a Goodies & Gifts Pawn (“Goodies”) filed a Request for Contested Case Hearing on July 27, 2017, challenging Petitioner South Carolina Department of Consumer Affairs’ (“Department”) June 29, 2017 Order (“Order”). Pursuant to its Order, the Department, *inter alia*: (1) revoked Goodies’ Pawnbroker Certificate of Authority based on its violations of the South Carolina Pawnbroker Act (“Act”), S.C. Code Ann. § 40-39-10 *et seq.*; (2) ordered Goodies to cease and desist from operating as a pawnbroker, engaging in pawn transactions, or otherwise operating a pawnshop as defined by the Act; and (3) imposed a fine. Following timely notice to the parties, a hearing on the matter was held on April 24, 2018, at the South Carolina Administrative Law Court in Columbia, South Carolina. After carefully weighing all of the evidence, the Court finds that Goodies’ Pawnbroker Certificate of Authority should be revoked and a penalty imposed.¹

¹ Goodies argued that the Department should have formally notified Goodies that its pending 2017 renewal application was denied. This Court agrees. However, Goodies’ argument is immaterial. While the Department should have made clear in its Order that the renewal was denied as a result of the revocation, the Department’s Order issued on June 29, 2017, effectively provided notice to Goodies that its license would not be renewed by revoking the active Certificate of Authority which was set to expire June 30, 2017. The Department’s denial would have been based on the same facts as the revocation, and either action provides Goodies the same right to appeal the agency’s final determination. Therefore, language specifically denying the renewal application would place Goodies in the same procedural position it is currently in before this Court.

FILED

June 6, 2018
SC ADMIN. LAW COURT

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and considering the credibility and accuracy of the evidence, the Court makes the following Findings of Fact by a preponderance of the evidence:

1. From 2003 until June 29, 2017, Goodies & Gifts Pawn (“Goodies”) operated continuously at 1069 Broughton Street, Orangeburg, South Carolina 29115. In 2003, Richard D. Clemons, Sr. first obtained a Pawnbroker Certificate of Authority from the Department to operate Goodies at this location. In 2005, Richard Clemons’ son, Robert D. Clemons, became employed at Goodies. Beginning in 2006, Robert Clemons’ wife, Tonya Clemons, began managing the day-to-day operations of the pawnshop.

2. On June 5, 2014, Richard Clemons sold all fixtures, furniture, equipment, inventory, pawn inventory, goodwill, the exclusive use of the name “Goodies & Gifts Pawn,” and all other assets of the business to his son Robert Clemons for five dollars (\$5.00). Thereafter, Robert and Tonya Clemons continued operating Goodies. Richard Clemons passed away in December 2014. Robert Clemons, however, did not notify the Department of his acquisition of Goodies until April 2015. As such, Robert Clemons operated under the existing Certificate of authority for ten months after he obtained ownership of the business and for more than three months after his father died.

3. In April of 2015, Robert D. Clemons submitted an application to the Department indicating he was the new owner of Goodies. The Department renewed Goodies’ Pawnbroker Certificate of Authority with the same license number re-issued annually since 2003 (License #PB-0611872-0611881). The Department renewed this license again on May 12, 2016.

4. On September 15, 2016, the Department received a complaint from Susan Avinger (“Complaint”), who formerly owned Avinger Jewelers and Carolina Consignment, alleging Goodies had purchased a substantial amount of stolen goods from her employee, Tammy Mann, between 2008 and 2014.

5. On December 9, 2015, an Orangeburg police officer was dispatched to Goodies because Ms. Avinger reported having found more than twenty pieces of her jewelry in Goodies’ display case for sale. During this visit, Tonya Clemons returned twenty-two pieces of jewelry to Susan Avinger immediately upon Ms. Avinger’s identification of the pieces in Goodies’ display

cabinet. Mrs. Clemons did this without any question and without discussing it with any other employee at Goodies.²

6. Tammy Mann pled guilty in July 2016 to breach of trust over \$10,000.00 as a result of Orangeburg's investigation revealing Ms. Mann stole approximately 740 pieces of jewelry from Ms. Avinger and subsequently sold the items to Goodies between 2008 and 2014. The court ordered Ms. Mann to pay \$65,000.00 in restitution to Ms. Avinger.

7. The Department was not aware of the impropriety of the transactions between Goodies and Tammy Mann at the time it renewed Goodies' Certificate of Authority in July 2015 or in May 2016. The Department did not learn of the allegations or Tammy Mann's July 2016 guilty plea related to the transactions until September 2016. Upon learning this information, the Department began a special investigation to determine whether Goodies had violated the Pawnbroker Act.

8. The only three pawnbrokers employed by Goodies—Richard, Robert, and Tonya Clemons—all engaged in transactions with Tammy Mann. Twelve of the transactions occurred after Robert Clemons acquired ownership of the pawnshop. Goodies engaged in transactions up until the point Ms. Mann's employment was terminated by Susan Avinger in 2014.

9. The circumstances surrounding the transactions entered into between Goodies and Ms. Mann were suspicious. Of the 400 to 500 Goodies transactions reviewed by the Department, 124, or approximately 25%–31%, were with Tammy Mann. The transactions with Ms. Mann averaged more than once a week for the two-year timeframe reviewed, some on the same day.³ Sixty-one of the transactions between Goodies and Tammy Mann occurred outside normal business hours. The 124 transactions all involved pieces of jewelry and items used to repair jewelry, with the exception of one gun and one wrench. There were more than 350 individual pieces of jewelry involved in the transactions, of many different types and styles, for which Goodies paid Ms. Mann more than \$21,000.00 over a two-year period. Of those, there were at least 241 rings or ring sets with sizes ranging from 5 to 11.5, 43 pairs of earrings, 36 necklaces or chains, and 12 bracelets. An example of the oddity of the transactions include the seven wedding ring sets and one wedding band Goodies purchased from Ms. Mann in a one-year timeframe.

² Orangeburg investigators concluded that Goodies had scrapped most of the jewelry purchased from Ms. Mann.

³ E.g., August 13, 2012; September 10, 2012; June 24, 2014

10. Robert and Tonya Clemons knew Tammy Mann socially. Ms. Mann and the Clemonses began attending wrestling matches together in 2008. Tonya Clemons, who was in charge of Goodies' day-to-day operations, was aware Ms. Mann worked at Susan Avinger's jewelry store throughout the course of her dealings at Goodies. Indeed, Ms. Mann introduced Tonya Clemons to Ms. Avinger when Tonya visited her store in 2010 or 2011.

11. Tonya Clemons testified she entered into numerous transactions with Tammy Mann between 2012 and 2014, but never called Susan Avinger to inquire about the large amounts of jewelry, and never asked Ms. Mann where such large amounts of jewelry were obtained.

12. Robert Clemons testified he never reached out to Ms. Avinger to ask whether she was aware that an employee of her jewelry store was in the pawnshop selling large amounts of jewelry. In fact, Mr. Clemons testified he never even asked Ms. Mann where she obtained the large amounts of jewelry she routinely sold to Goodies.

13. Tammy Mann testified she did not sell jewelry to any other pawnshop.

14. The Department revoked Goodies' Certificate of Authority based on its investigation. As Chief Investigator Ken Middlebrooks testified, the transactions with Tammy Mann would have been suspicious to any pawnbroker fairly early-on during the timeline of dealings with her because the pawnbrokers: (a) knew where Ms. Mann worked; (b) often conducted business with her outside of regular business hours; and (c) sometimes conducted multiple transactions with her in a single day.

15. The volume and circumstances of the jewelry purchases Goodies made from Mann constitutes evidence of third party ownership of the jewelry. Nevertheless, Goodies regularly purchased jewelry from Mann and neither Robert Clemons nor Tonya Clemons took any steps whatsoever to ascertain the true ownership of the property.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court concludes the following as a matter of law:

1. Jurisdiction over this case is vested with the ALC pursuant to S.C. Code Ann. § 1-23-310 et seq. (Supp. 2017), § 1-23-600(B) (Supp. 2017), and § 40-39-155 (Supp. 2017). In presiding over this case, the ALC serves as the finder of fact and makes a de novo determination regarding whether Goodies and its employees violated the South Carolina Pawnbroker Act. See S.C. Code Ann. § 1-23-600(B); Marlboro Park Hosp. v. S.C. Dept. of Health & Env'tl. Control, 358 S.C. 573,

577-79, 595 S.E.2d 851, 853-54 (Ct. App. 2004); Brown v. S.C. Dept. of Health & Env'tl. Control, 348 S.C. 507, 512, 560 S.E.2d 410, 413 (2002).

2. The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). A trial judge who observes a witness is in the best position to judge the witness's demeanor and veracity and to evaluate the credibility of his testimony. See e.g., Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990). The standard of proof in administrative proceedings is a preponderance of the evidence unless otherwise specified. Anonymous v. State Bd. of Med. Exam'rs, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1988).

3. Section 40-39-10 of the South Carolina Code defines "pawnbroker" as "any person engaged in the business of lending money on the security of pledged goods, or engaged in the business of purchasing tangible personal property on a condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time." S.C. Code Ann. § 40-39-10(2) (2011) (emphasis added).

4. Pursuant to Section 40-39-20, the Administrator should not issue a certificate of authority unless the Administrator concludes that the experience of the applicant and its employees command the confidence of the community and warrants the belief that the business may be operated honestly, fairly, and efficiently according to the purposes of the Pawnbroker Act and in accordance with applicable state and federal laws. S.C. Code Ann. § 40-39-20(D)(1) (Supp. 2016).

5. Pursuant to Section 40-39-150, the Administrator may issue an administrative order requiring the pawnbroker to cease and desist from unlawful actions and may suspend, revoke, or refuse to issue a certificate of authority by order. S.C. Code § 40-39-150(A) (Supp. 2016). Pursuant to Section 40-39-120, the Administrator may revoke any certificate of authority if the pawnbroker has violated the Pawnbroker Act or any regulation or order lawfully made pursuant to the Act, or if facts or conditions exist which would clearly have justified the Administrator in refusing to grant a certificate of authority had these facts or conditions been known to exist at the time the application for certificate of authority was made. S.C. Code Ann. § 40-39-120 (2011). The Administrator may also impose administrative penalties of up to

\$750.00 for each offense upon persons violating any of the provisions of the Pawnbroker Act up to a maximum of \$15,000.00 for the same set of transactions or occurrences, and each violation constitutes a separate offense. S.C. Code Ann. § 40-39-150(B) (Supp. 2016).

6. Section 40-39-140 prohibits any pawnbroker from accepting property upon which there is evidence of third party ownership without first taking reasonable steps to ascertain its true ownership. S.C. Code Ann. § 40-39-140 (2011).

7. Robert Clemons initially argued that the ALC lacked jurisdiction to hear this matter because the Department issued its Order against the wrong licensee. The crux of his argument is that the transactions between Goodies and Tammy Mann occurred under his father's license. This Court finds this argument without merit. Goodies has held the same Pawnbroker Certificate of Authority since first being issued one in 2003. The same three employees, who are immediate family members, have operated as pawnbrokers from the licensed location doing business as Goodies & Gifts Pawn since 2006. After Richard Clemons sold Robert Clemons the business, Robert and Tonya continued operating Goodies as it had been operated in the past. Furthermore, the transactions with Tammy Mann continued for another two months after Robert Clemons obtained ownership of his father's business and only ceased when Ms. Avinger terminated Ms. Mann from employment. Once Robert Clemons notified the Department in writing of his ownership of Goodies in April 2015, a full ten months after actually obtaining ownership, the Department processed his application and issued Goodies' Pawnbroker Certificate of Authority renewal to Robert Clemons instead of Richard Clemons. This Court finds that, regardless of who owned Goodies, both Robert and Tonya Clemons were operating as "pawnbrokers" as defined by Section 40-39-10(2) of the South Carolina Code of Laws under Goodies' Certificate of Authority between July 12, 2012, and August 12, 2014, and were conducting transactions with Tammy Mann on a regular basis throughout that time. Furthermore, Goodies entered into twelve transactions with Tammy Mann after Robert Clemons obtained ownership and likely would have continued to do so if Ms. Mann had remained employed by Ms. Avinger.

8. This Court finds there was evidence of third party ownership based on the circumstances surrounding the 124 transactions Goodies entered into with Tammy Mann from 2012 until 2014. Knowing that Ms. Mann worked at Susan Avinger's jewelry store, Goodies continued purchasing jewelry from Ms. Mann in large quantities on a regular basis and often outside of normal business hours. There were weeks when Ms. Mann and Goodies conducted

multiple transactions during the week, and there were at least four days when Ms. Mann sold jewelry to Goodies twice in one day. Furthermore, there were at least 241 individual rings or ring sets that were different sizes and styles, and many different styles of bracelets and earrings. Based on the volume of jewelry, the range in sizes and styles, and the frequency of the transactions, there was significant evidence of third-party ownership. Neither Goodies nor its pawnbrokers took any steps to ascertain the true ownership of the jewelry they purchased from Tammy Mann. Any reasonable person, not to mention pawnbrokers who have been in the business for more than eight years, would have questioned the source of such an unusually high volume of jewelry being sold by a single individual over an extended period of time. In fact, the transactions with Ms. Mann comprised at least 25% of Goodies' transactions reviewed by the Department for the period from July 2012 to August 2014. Despite this and the knowledge that Tammy Mann worked at Avinger's jewelry store, Robert and Tonya Clemons never questioned Ms. Mann about the items, or called Ms. Avinger to inquire as to whether she knew an employee of hers was in their pawnshop selling large amounts of jewelry. Thus, this Court finds that, through the acts of all three of its pawnbrokers—Richard, Robert, and Tonya Clemons, Goodies violated the Pawnbroker Act 124 times by not taking reasonable steps to ascertain the true ownership of the hundreds of pieces of jewelry they purchased from Tammy Mann.

9. The Court finds that based on the Department's investigation of the transactions going back to July 12, 2012, facts existed which would clearly have justified the Administrator in refusing to grant a certificate of authority in 2015 and 2016 had these facts been known to the Department when it issued these certificates. See S.C. Code Ann. § 40-39-120 (2011 & Supp. 2016).

ORDER

Based upon the foregoing,

IT IS HEREBY ORDERED that, pursuant to S.C. Code Ann. § 40-39-150(A) (Supp. 2016), the Pawnbroker Certificate of Authority, License # PB-0611872-0611881, issued to Goodies & Gifts Pawn **SHALL BE REVOKED**.

IT IS FURTHER ORDERED that, pursuant to S.C. Code Ann. § 40-39-150(A) (Supp. 2016), Goodies & Gifts Pawn **SHALL CEASE AND DESIST** from operating as a pawnbroker engaging in pawn transactions or otherwise operating a pawnshop as defined by the Act.

IT IS FURTHER ORDERED that, pursuant to S.C. Code Ann. § 40-39-150(B) (Supp. 2016), Goodies & Gifts Pawn **SHALL PAY** an administrative fine in the amount of nine thousand dollars (\$9,000.00) for the violations of the Act as set forth in this Order within thirty (30) days of the date of this Order.

AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

June 6, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman

Judicial Aide to Deborah Brooks Durden

June 6, 2018

Columbia, South Carolina

FILED

June 6, 2018

SC ADMIN. LAW COURT