BEFORE THE GEORGIA DEPARTMENT OF BANKING AND FINANCE
STATE OF GEORGIA

RANA FINANCIAL, LLC, RONILDO FREITAS, and VILMA PORTES,	*	
NMLS: 1057422 DBF: 24072 NMLS: 1047008 NMLS: 1632751	*	
Petitioners,	*	Docket No. DBF-MSB-18-004-328
v.	*	
GEORGIA DEPARTMENT OF BANKING AND FINANCE,	*	
Respondent.	*	

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GEORGIA DEPARTMENT OF BANKING AND FINANCE

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FINAL ORDER

A. BACKGROUND

On September 19, 2018, a hearing was held before the undersigned Commissioner of the Georgia Department of Banking and Finance ("Department") to contest the following administrative actions ("Actions") issued by the Department against Rana Financial, LLC ("Rana"), Ronildo Freitas ("Mr. Freitas"), and Vilma Portes ("Ms. Portes") (Rana, Mr. Freitas, and Ms. Portes collectively referred to as "Petitioners"):

1. Notice of Intent to Revoke Annual License issued against Rana on May 9, 2018 ("Notice of Intent to Revoke Annual License");
2. Order to Cease and Desist issued against Mr. Freitas on May 9, 2018 and re-issued on May 31, 2018 (collectively "Mr. Freitas' Order to Cease and Desist"); and
3. Order to Cease and Desist issued against Ms. Portes on May 9, 2018 and re-issued on May 31, 2018 (collectively, "Ms. Portes' Order to Cease and Desist").

The Actions provided that Rana's license was subject to revocation and that Mr. Freitas and Ms. Portes should be ordered to cease and desist as the Petitioners: 1) made false statements or misrepresentations to the Department in violation of O.C.G.A. § 7-1-692(a)(6); 2) failed to comply with federal requirements set forth in the Bank Secrecy Act and its related regulations in violation of 31 CFR § 1022.320(a) and (b) and Ga. Comp. R. & Regs. R. 80-1-3-.03(3); and 3) demonstrated incompetency or untrustworthiness to engage in money transmission in violation of O.C.G.A. §7-1-692(a)(4). The Actions against Rana and Mr. Freitas asserted the additional grounds that Rana and Mr. Freitas: 1) failed to perform Georgia Crime Information Center ("GCIC") background checks on covered employees in violation of O.C.G.A. § 7-1-684(e); and 2) purposely withheld information requested by the Department in violation of O.C.G.A. §§ 7-1-689(f)(4) and 7-1-692(a)(6).

In response to the Actions, Petitioners timely[1] requested a hearing pursuant to O.C.G.A. §§ 7-1-692(e) and 7-1-694(a)(1). Pursuant to the Notice of Hearing and subsequent Order Continuing Hearing, a hearing was scheduled for and held on September 19, 2018 at or around 9:00 a.m. at the Department. At the hearing, Petitioners were represented by Oscar A. Herasme, Esq. and Gordon C. Tomlinson, Esq. The Department was represented by Lilia Kim, Esq.

The Department presented three of its employees as witnesses: Supervisory Examiner Fernando Ornelas ("Mr. Ornelas"), Financial Examiner Ana Contreras ("Ms. Contreras"), and Financial Examiner Byron Larios ("Mr. Larios"). (Transcript of Record (hereinafter, "T.") 15, 142, 165). After the Department rested its case, Ms. Portes, the compliance officer for Rana, testified on behalf of Petitioners. (T. 184).

At the conclusion of the hearing, the parties were directed to file: 1) proposed findings of fact and conclusions of law; and 2) post-hearing briefs addressing the notice requirements in O.C.G.A. §§ 7-1-680 *et seq*. and 50-13-18 as Petitioners contended at the hearing the Department did not provide the required notice (collectively, the "post-hearing pleadings"). The parties were directed to file these post-hearing pleadings 30 days after the filing of the hearing transcript. The transcript was filed on October 23, 2018. After the filing of the transcript, the parties filed a Joint Stipulation for Extension seeking an extension until December 7, 2018 to file the post-hearing pleadings. By Order

[1] There was initially a question between the parties about whether Ms. Portes' hearing request was timely, but this issue was resolved by the parties prior to the hearing. (Joint Statement and Stipulation; Order of Consolidation and Rescheduling Hearing).

dated November 16, 2018, the requested extension was granted and the parties were directed to file the post-hearing pleadings no later than 5:00 p.m. on December 7, 2018. The Department's post-hearing pleadings were timely filed on December 7, 2018; however, Petitioners failed to file their post-hearing pleadings in a timely manner and, instead, waited until December 10, 2018. Petitioners did not request an extension of time from this Tribunal to file the post-hearing pleadings nor have Petitioners sought to explain to this Tribunal in any way the late filing of the post-hearing pleadings. Notwithstanding this deficiency, this Tribunal has taken the Petitioners' untimely post-hearing pleadings into consideration in issuing this Order.

B. FINDINGS OF FACT

1.

Mr. Freitas is the chief executive officer, chief operating officer, sole owner, and sole director of Rana. (T. 201; Ex. R-9, p. 4-4). Mr. Freitas has been the sole owner, sole director, and an officer of Rana since at least 2013. (Ex. R-1, p 1-2).

2.

Ms. Portes is the chief compliance officer for Rana and is the only other officer of the company. (T. 188, 201; Ex. R-9, p. 4-4). Ms. Portes has been the chief compliance officer at Rana since May 1, 2016. (T. 188; Ex. P-7).

3.

Rana is licensed by the Department as a money transmitter and has been licensed since 2009.[2] (T. 47).

4.

The Department conducted an examination of Rana starting on or about April 30, 2013 and issued a report of examination setting forth its conclusions. (T. 17-18; Ex. R-1, p. 1-1). Relevantly, the 2013 report of examination concluded that Rana had failed to conduct and maintain Georgia Crime Information Center ("GCIC") criminal background checks. (T. 19; Ex. R-1). Specifically, the 2013 report of examination noted:

> When asked about criminal background checks, [Rana's representative] stated that none had been obtained. … No GCIC background checks were provided … on employees.
>
> During the examination much discussion was held regarding officers of the

[2] The Department issues money transmitter licenses pursuant to O.C.G.A. § 7-1-681.

> company. [Rana's representative] stated that Mr. Freitas is the only officer and director and that none of the other employees are officers. He stated that Mr. Freitas is emphatic about this. This being the case, Mr. Freitas should have ensured that all employees' background checks were obtained and maintained.

(Ex. R-1, p. 2-1). The 2013 report of examination stated that "[i]n order to avoid potential fines or license revocation; management should obtain a GCIC Employment (E code) background check for all employees and agents." (Ex. R-1, p. 3-4). The 2013 report of examination indicated that Rana was subject to a fine of $7,000.00 for failure to obtain and maintain criminal background checks and Rana paid the fine. (T. 19; Ex. R-1, p. 2-1).

5.

The Department conducts compliance and risk-based examinations of its licensees. (T. 16). The Department conducts risk-based examinations for, among other reasons, if a licensee has previously been found to have violated the law. (T. 16).

6.

Starting on or about March 2, 2017, the Department initiated a full-scale examination of Rana with a focus on the violations set forth in the 2013 report of examination. (T. 20; Ex. R-2, p. 1-1).

7.

As part of the examination, the Department requested that Petitioners provide the GCIC criminal background checks on the following six employees:[3] 1) Ms. Portes; 2) Fabricia Matheus ("Ms. Matheus"); 3) Patricia Leite ("Ms. Leite"); 4) Lucimara Melo ("Ms. Melo"); 5) Carolina Souza Martins ("Ms. Martins"); and 6) Barbara Aires Ferreira ("Ms. Ferreira") (collectively "the six GCIC criminal background checks"). (T.22; Ex. P-5; Ex. R-2, p. 2-1). The six GCIC criminal background checks were not provided to the Department during the examination as the Petitioners had not run the GCIC required background checks on these individuals prior to hire. (T. 269, l. 6-9, Ex. P-5 ("unfortunately, we do not have the GCIC background checks")). In fact, as of the date of the hearing, the Department did not have the six GCIC criminal background checks as the Petitioners had still not run the checks on these individuals.[4] (T. 267, l. 17-24; T. 22, 104,

[3] As is consistent with its general practice, the Department did not request the GCIC criminal background checks on all of Rana's employees. (T. 144; Ex. R-9, p. 4-10).

[4] Ms. Portes did provide apparently conflicting testimony on whether the six GCIC background checks had been run by Petitioners and provided to the Department. (T. 242). However, it is readily apparent to this Tribunal that Ms. Portes was confusing matters and referring to either: 1) receiving criminal background checks run by a third-party (T. 292-93); or 2) obtaining GCIC authorization forms to *conduct* a GCIC

108-09, 146-47).

8.

Ms. Portes' job responsibilities include transaction monitoring, reviewing suspicious activities, releasing money transmission transactions, filing suspicious activity reports ("SARs"), and ensuring that the compliance assistant files currency transaction reports ("CTRs") in a timely manner. (T. 191-92).

9.

Ms. Matheus was the compliance officer at Rana prior to Ms. Portes. (T. 216). Ms. Matheus job responsibilities were the same as Mr. Portes when she was in that position. (T. 261). Petitioners have acknowledged that a GCIC background check should have been run on Ms. Matheus. (Ex. R-4, p. 5 ("[i]t does appear that Rana never performed a GCIC background check for its previous compliance officer, Fabricia Matheus. As such, we agree with a fine of $1,000 for this one (1) occurrence.")).

10.

Ms. Leite is the compliance assistant at Rana. (T. 192, 213). Her job duties include releasing money transmission transactions, assisting the compliance officer in preparing SARs, and training and on-boarding of Rana's agents.[5] (T. 213-14, 266).

11.

Ms. Melo was the compliance assistant at Rana prior to Ms. Leite and worked with Ms. Matheus. (T. 261). Ms. Melo's job responsibilities were the same as Ms. Leite when she was in that position. (T.261).

12.

Ms. Martins is a customer service representative at Rana. (T. 212). Her job duties include dealing with customers if funds are not received in the beneficiary account in order for the recipient to obtain the funds. (T. 212-13, 262).

13.

Ms. Ferreira is a customer service representative at Rana. (T. 216). Ms.

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background check. (T. 207, 268-69). These items are not GCIC criminal background checks.

[5] An authorized agent of a money transmitter is authorized to carry on the business of money transmitting on behalf of a licensee. O.C.G.A. §7-1-683.1. Rana had two authorized agent locations in Georgia at the time of the 2017 examination. (T. 209-10, Ex. R-2, p. 1-3).

Ferreira's job duties are the same as Ms. Martins. (T. 216, 261-62).

14.

As part of the examination, the Department reviewed Rana's compliance with the SAR filing requirements. (Ex. R-2).

15.

Rana did not file a SAR related to two cancelled transactions initiated by Customer 1 until after the error was identified by the Department's examiners. (T. 27-28, 220-221, Ex. R-4, p. 6, fn.1 ("[w]e agree with the Department's findings that the transaction pattern of Customer 1 should have been detected and it was not")). One transaction was cancelled on July 18, 2016 while the other transaction was cancelled on July 19, 2016. (Ex. P-10). Rana filed a SAR related to the transactions on June 26, 2017. (Ex. P-10). After the error was identified by the Department's examiners, Petitioners made changes to Rana's policies in order to reduce the likelihood of a similar error occurring again. (T. 221-222; Ex. R-4, pp. 6-7).

16.

A money transmission transaction initiated by Customer 2 was cancelled on or about May 6, 2016 and Rana filed a SAR related to the transaction on June 27, 2016. (Ex. R-4, p. 5, Ex. P-6, Ex. P-10). Ms. Leita, the compliance assistance at Rana, received supporting documentation related to Customer 2's proof of income on May 12, 2016. (T. 232). By e-mail dated May 12, 2016, Ms. Leita informed Ms. Portes that this appeared to be a suspicious transaction. (T. 232, 274, Ex. R-5, Ex. R-5-1). Ms. Leita provided the documentation related to proof of income to Ms. Portes. (T. 232, 234-35, Ex. P-11). Ms. Portes reviewed the information provided by Ms. Leita and identified the transaction as suspicious on May 31, 2016. (T. 232, 275, 278; Ex. P-10).

17.

A money transmission transaction initiated by Customer 3 was cancelled on July 16, 2016 and Rana filed a SAR related to the transaction on October 17, 2016. (T. 228, Ex. P-10). At a minimum, Rana "looks back" at cancelled transactions on a monthly basis to determine if the transaction is suspicious and a SAR should be filed. (T. 224). Although not identified during the August monthly look back review,[6] Customer 3's transaction was identified by Ms. Portes as suspicious on September 22, 2016 during her September monthly look back review. (T. 228-29).

[6] Nothing in the record indicates why the transaction was not identified in the August of 2016 look back review or if a review even took place in August.

18.

On September 15, 2017, the Department issued a report of examination ("2017 report of examination"). (Ex. R-2). The 2017 report of examination found, among other items, that Petitioners failed to obtain GCIC criminal background checks on covered employees as well as failed to timely file certain SARs. (Ex. R-2, pp. 2-1, 2-2). The Department assessed fines of $9,000 consisting, in part, of a fine of $6,000 for failure to run the six GCIC criminal background checks and a fine of $2,000 for failure to timely file SARs. (Ex. R-2, pp. 1-5, 2-1, 2-2). Rana paid the fine.[7] (T. 245)

19.

By letter dated October 15, 2017, Mr. Freitas responded to the 2017 report of examination. (Ex. R-4). Generally speaking, the response disputes the Department's conclusions but indicates that Petitioners will undertake a number of corrective actions. (Ex. R-4). Relevantly, the response disputes the conclusion that GCIC background checks should have been run on the identified employees except for Ms. Matheus and disputes that SARs were not filed in a timely manner except for the cancelled transactions of Customer 1. (Ex. R-4, pp. 4-7). The response expressly provides that Rana has "prepared GCIC background checks for all of our employees merely to support our position that Rana hires efficient and reliable employees." (Ex. R-4, p. 5).

20.

By e-mail to Petitioners' counsel dated March 20, 2018, Mr. Ornelas requested the production of the following documents from Petitioner: 1) a list and background information on all individuals employed by Rana in 2016; 2) a revised succession plan; 3) a policy regarding agent review; 4) the GCIC background checks conducted after the examination; 5) the look back analysis performed on certain identified customers; and 6) correspondence that mentions "SAR" or "suspicious activity." (T. 42-3; Ex. R-7). A number of items requested by the Department relate to actions Rana represented that it had taken in response to the examination (GCIC background checks conducted after the examination, a revised succession plan, a policy on agent review) or seek documentation to support Rana's dispute of the violations found in the 2017 report of examination. (Ex. R-7; Ex. R-4, pp. 2, 3, 5, 6). The requested documents were not provided to the Department within the timeframe set forth in the e-mail nor were the documents produced in response to subsequent requests. (T. 43-44; Ex. R-7, Ex. P-12). Ms. Portes did provide some[8] of the documents to Petitioners' counsel, but counsel elected to not

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[7] This Tribunal does not view the payment of the fine as an admission of liability by the Petitioners. Ms. Portes indicated that Rana paid the fine in order to renew its money transmitter license for 2018. (T. 245).

[8] As previously found, Ms. Portes could not have provided the GCIC background checks to Petitioners' counsel as GCIC background checks were not run. (See Finding of Fact, ¶ 7, and fn. 4). This is consistent with the fact GCIC criminal background checks

produce the documents to the Department. (T. 239-42, 305-06, Ex. P-12). The requested documents have not been provided to the Department. (T. 305).

C. CONCLUSIONS OF LAW

I. PRE-HEARING PROCESS

1.

As a threshold procedural matter, Petitioners contend that the Department failed to provide the notice required by O.C.G.A. § 50-13-18(c) prior to seeking to revoke Rana's license. (T. 14, 307-08; Petitioners' Proposed Findings of Fact and Conclusions of Law, pp. 20-21). O.C.G.A. 50-13-18(c) provides in pertinent part that:

> No revocation … of any license is lawful unless, prior to the institution of agency proceedings, the agency has sent notice, by certified mail or statutory overnight delivery to the licensee, of individual facts or conduct which warrant the intended action and the licensee has been given an opportunity to show compliance with all lawful requirements for the retention of the license.

Petitioners appear to construe this statute as requiring an administrative agency to put a licensee on notice that the agency is internally deliberating pursuing revocation of the license prior to issuing a notice of the intent to pursue an administrative action.[9] (Petitioners' Proposed Findings of Fact and Conclusions of Law, p. 20). However, this construction has been considered and rejected by the Court of Appeals. Hinson v. Georgia State Board of Dental Examiners, 135 Ga. App. 488, 489 (1975) ("the intent of this statute is to give a licensee a hearing, and an opportunity to be heard where he can demonstrate that at the time of the alleged violation he was in full compliance with the law"). The Department issued a Notice of Intent to Revoke Annual License to Rana and a hearing was held. The Department satisfied the procedural requirements of O.C.G.A. § 50-13-18(c) as Rana was afforded an opportunity to show compliance with the law at a hearing.

2.

Further, even if O.C.G.A. § 50-13-18(c) did require the Department to provide a

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are not contained on the list of documents produced by Ms. Portes to Petitioners' counsel. (Ex. P-12).

[9] Petitioners believe that the "plain language of the statute" demands this construction. (Petitioners' Proposed Findings of Fact and Conclusions of Law, p. 21). However, it is more likely that the plain meaning of "proceedings" in O.C.G.A. § 50-13-18(c) is to the dispositive hearing or determination on the merits of the disputed administrative matter.

notice of possible action to Rana[10] before it issued the Notice of Intent to Revoke Annual License, it is irrelevant as the provisions of O.C.G.A. § 7-1-692(e) set forth the process to be utilized by the Department prior to revoking the license of a money transmitter. O.C.G.A. § 50-13-18(c) – as construed by Petitioners - and O.C.G.A. § 7-1-692(e) contain conflicting provisions regarding the notices required to be issued prior to revoking an administrative license. Based on the applicable rules of statutory interpretation, O.C.G.A. § 7-1-692(e) controls.[11] A fundamental precept of statutory construction is that specific statutes govern over more general statutes when the statutes are in conflict. Glinton v. And R, Inc., 271 Ga. 864, 866-67 (1999); First National Bank of Atlanta v. Sinkler, 170 Ga. App. 668, 670 (1984). O.C.G.A. § 7-1-692(e) is more specific than O.C.G.A. § 50-13-18(c). O.C.G.A. § 50-13-18(c) addresses pre-revocation notices in all cases under the Georgia Administrative Procedure Act while O.C.G.A. § 7-1-692(e) is expressly limited to pre-revocation notices issued in cases involving money transmitters, like Rana, or sellers of payment instruments. The provisions of O.C.G.A. § 50-13-18(c) – as interpreted by Petitioners - do not apply to this matter.

II. UNTIMELY SARS

3.

The Department seeks to take the Actions against Petitioners due, in part, to the Petitioners failure to timely file SARs related to four cancelled money transmission transactions. The Department asserts that the failure to timely file these transactions violated the Bank Secrecy Act. The Department also takes the position that the untimely filing of the SARs is evidence that Petitioners are incompetent or untrustworthy to engage in the money transmission business. Finally, the Department contends that Petitioners made false statements or material misrepresentations to the Department in explaining the "late" filing of the SARs.

4.

Pursuant to the Bank Secrecy Act, all money service businesses, which includes money transmitters like Rana, are required to report "any transactions relevant to a possible violation of law or regulation." 31 CFR §1022.320(a)(1). Such information is relayed by a SAR which is required to be filed "no later than 30 calendar days after the date of *the initial detection* by the money service business of facts that may constitute a basis for filing a SAR." 31 CFR § 1022.320(b)(3) (emphasis added). The rules of the

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[10] Although nothing in the record indicates that it was sent by certified mail or statutory overnight delivery, the 2017 Report of Examination issued by the Department on September 15, 2017, expressly states that "the violations were repeat violations of the previous examination and, thus, Administrative Action may be forthcoming under separate cover." (Ex. R-2, p. 1-6; see also p. 1).

[11] Petitioners have not argued that the Department failed to satisfy the notice requirements in O.C.G.A. § 7-1-692(e). (T. 14, 309; see Petitioners' Proposed Findings of Fact and Conclusions of Law).

Department provide that money transmitters "must comply with the recordkeeping requirements, currency transaction reporting, and suspicious activity reporting set forth in the Bank Secrecy Act." Ga. Comp. R. & Regs. R. 80-3-1-.03(3).

5.

The Financial Crimes Enforcement Network ("FinCEN") is responsible for receiving SARs and enforcing provisions of the Bank Secrecy Act. FinCEN is a member of the Federal Financial Institutions Examination Council ("FFIEC") along with the Board of Governors of the Federal Reserve System, the FDIC, the OCC, the NCUA, and the Office of Foreign Assets Control. The FFIEC has published the "Bank Secrecy Act Anti-Money Laundering Exam Manual" (the "FFIEC manual").[12] Relevantly, the FFIEC manual provides:

> The phrase "initial decision" should not be interpreted as meaning the moment a transaction is highlighted for review. … The 30-day … period does not begin until an appropriate review is conducted and a determination is made that the transaction under review is "suspicious" within the meaning of the SAR regulation.
>
> Whenever possible, an expeditious review of the transaction or account is recommended. … In any event, the review should be completed within a reasonable period of time. What constitutes a "reasonable period of time" will vary according to the facts and circumstances of the particular matter being reviewed.

6.

Applying the definition of "initial detection" set forth in the FFIEC manual, the SARs for Customer 2 and Customer 3 were filed within the 30-day timeframe required by 31 CFR § 1022.320(b)(3).[13] Ms. Portes determined that the transaction initiated by Customer 2 was suspicious on May 31, 2016 and the Petitioners filed a SAR on June 27, 2016. (Findings of Fact, ¶ 16). Similarly, Ms. Portes determined that the transaction

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[12] The FFIEC's manual can be located at https://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_015.htm.

[13] This Tribunal notes that there are apparent deficiencies in Rana's policies and procedures related to SAR filings. It appears that Petitioners had the necessary information in its possession to deem the transaction initiated by Customer 2 suspicious on May 12, 2016 but such determination was not made until May 31, 2016. Further, given that Customer 3's transaction was cancelled on July 16, 2016, it would seem that the monthly look back in August of 2016 would have identified the transaction as suspicious instead of the look back the following month. Apparently, Rana agrees with this Tribunal's observation as it has indicated that it "may take as a recommendation that procedures may be improved to detect suspicious patterns more expeditiously." (Ex. R-4, p. 6).

initiated by Customer 3 was suspicious on September 22, 2016 and Petitioners filed a SAR on October 17, 2016. (Findings of Fact, ¶ 17).

7.

Conversely, the SARs related to the two transactions initiated by Customer 1 were not filed in a timely manner as required by 31 CFR § 1022.320(b)(3). (Finding of Fact, ¶ 15). As the review occurred almost a year after the transactions were cancelled, there can be little question that the review was not completed in a reasonable period of time. Petitioners have agreed that the delay in filing a SAR on these two transactions was not in compliance with federal requirements and have revised Rana's procedures in an effort to eliminate the possibility of such failure in the future. Given the corrective action taken by Petitioners, the failure of Petitioners to comply with the Bank Secrecy Act for these two transactions does not support the proposed Actions of the Department.

8.

In light of the determination that the Customer 2 and Customer 3 transactions were timely reported and that corrective action has been taken related to the Customer 1 transactions, Petitioners have not demonstrated incompetency or untrustworthiness to engage in money transmission in violation of O.C.G.A. § 7-1-692(a)(4) related to these identified SAR transactions.[14] Further, based on the same determination, Petitioners have not made false statements or misrepresentations to the Department in violation of O.C.G.A. § 7-1-692(a)(6) related to these identified SAR transactions.[15]

III. GCIC CRIMINAL BACKGROUND CHECKS

9.

The Department's Actions against Rana and Mr. Freitas are also based on their failure to conduct the required GCIC criminal background checks on covered employees. The Department also takes the position that the failure to conduct the required GCIC criminal background checks on covered employees demonstrates that Rana and Mr.

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[14] There remains the question of whether Rana and Mr. Freitas demonstrated incompetence or untrustworthiness in violation of O.C.G.A. § 7-1-692(a)(4) by failing to conduct GCIC background checks on covered employees. (Notice of Hearing, Exhibit A).

[15] The purported grounds for the Department's position that Petitioners made false statements or material misrepresentations is that Ms. Portes apparently had all of the information in her possession to determine that the cancelled transaction of Customer 2 was suspicious on May 12, 2016 but that she did not review the minimal documents and determine the transaction was suspicious until May 31, 2016. Although the Tribunal agrees that this seemingly straight-forward review should have taken place more expeditiously, the fact that Ms. Portes waited approximately 20 days to engage in the cursory review is entirely plausible.

Freitas are incompetent or untrustworthy.

10.

Georgia law precludes a convicted felon from being a director, officer, partner, covered employee, or ultimate equitable owner of a licensed money transmitter. O.C.G.A. § 7-1-684(b). In order to eliminate the possibility of felons working for a money transmitter, all licensees are required to run GCIC criminal background checks on covered employees prior to hire. O.C.G.A. § 7-1-684(e). This Code section provides in pertinent part that:

> Every applicant and licensee shall be authorized and *required to obtain and maintain* the results of background checks on covered employees. Such background checks *shall be handled by the Georgia Crime Information Center* pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information Center. … An applicant or licensee may only employ a person whose background data has been checked and has been found to be in compliance with all lawful requirements prior to the initial date of hire. This provision does not apply to directors, officers, partners, or ultimate equitable owners of applicants or licensees or to persons who direct the affairs of or control or establish policy for applicants or licensees, whose background shall have been investigated through the department before taking office, beginning employment, or securing ownership.[16]

Id. (emphasis added).[17] In order to avoid any confusion regarding the requirement for conducting background checks, the General Assembly reiterated that "licensees shall

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[16] Prior to an individual acting as an executive officer for a licensee, the individual must submit an application and receive "written approval" from the Department. O.C.G.A. § 7-1-688(a) (2014). As part of its review of a proposed executive officer, the Department reviews the GCIC criminal background check on the applicant. O.C.G.A. § 7-1-684(e) (2014). Pursuant to O.C.G.A. § 7-1-688(a) (2014), Ms. Portes was required to submit an application and receive written approval from the Department prior to acting as the chief compliance officer. However, the Department did not receive the required application. (T. 146-47). Although Ms. Portes testified she mailed fingerprints to the required address, Ms. Portes testified that she did not receive the results from the GCIC criminal background check or a written approval to act as a compliance officer from the Department. (T. 254-256, 259). As no application to act as a compliance officer was received from Ms. Portes, the Department would not have investigated her background prior to her accepting the compliance officer position.

[17] Although Petitioners' cite to O.C.G.A. § 7-1-684(e) in their Proposed Findings of Fact and Conclusions of Law, Petitioners actually quote the language from O.C.G.A. § 7-1-684(c) which authorizes the Department to obtain GCIC criminal background checks. (Petitioners' Proposed Findings of Fact and Conclusions of Law, p. 5). Significantly, this provision authorizes the Department to conduct background checks but, unlike licensees, *does not require* that the Department conduct background checks.

have the primary responsibility for obtaining background checks on covered employees." O.C.G.A. § 7-1-684(g). Further, the Department is "entitled to review the files of any applicant or licensee to determine whether the required background checks have been run and whether all covered employees are qualified." Id. Quite simply, a licensee must "obtain and maintain" GCIC criminal background checks[18] on all covered employees and the Department is "entitled" to review the licensee's files containing the GCIC criminal background check on covered employees.

11.

As previously found, Rana and Mr. Frietas did not run the six GCIC criminal background checks for the identified employees. (Findings of Fact, ¶ 7). The remaining question is whether or not these six employees are "covered employees" and, thus, whether Rana and Mr. Freitas were required to run GCIC criminal background checks on the identified individuals. A covered employee is defined as "any employee of a licensee or an authorized agent engaged in *any function related* to the selling of payment instruments or *money transmission*." O.C.G.A. § 7-1-680(6) (emphasis added). Money transmission is "engaging in the business of receiving money or monetary value for transmission or transmitting money or monetary value within the United States or to locations abroad by any and all means." O.C.G.A. § 7-1-680(13). Quite simply, any employee of a licensee engaged in any function related to the business of receiving money for transmission or transmitting money with the United State or abroad satisfies the definition of a covered employee. Given the breadth of the covered employee definition, the job duties of the six employees in question satisfy the definition. (Findings of Facts, ¶¶ 8-13).[19]

12.

Rana was required to obtain and maintain GCIC criminal background checks for these six employees, but it did not do so. Further, Mr. Freitas as the sole owner, sole director, chief executive officer and chief operating officers exercised control over Rana. O.C.G.A. § 7-1-680(5) (Findings of Facts, ¶ 1). As the ultimate control person, Mr.

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[18] Ga. Comp. R. & Regs. R. 140-2-.04(2) details the mechanism that private employers, such as Rana, must utilize to obtain criminal background checks from GCIC.

[19] The Tribunal notes that Petitioners have acknowledged that a GCIC criminal background check should have been conducted on Ms. Matheus, Rana's former compliance officer, and presumably would not contest that Ms. Portes was also subject to the GCIC criminal background check requirement. (Findings of Fact, ¶ 9). Further, Ms. Portes acknowledged that releasing a money transmission transaction (i.e. causing funds held by Rana on behalf of a customer to be transmitted to a third-party) was a function of money transmission. (T. 266-67). Four of the six employees, Ms. Portes, Ms. Matheus, Ms. Leite, and Ms. Melo, were involved in releasing money transmission transactions. (Findings of Fact, ¶¶ 8-11).

Freitas was responsible for ensuring Rana's compliance with the law.[20] O.C.G.A. § 7-1-691(4). Rana and Mr. Freitas violated the criminal background check requirement in O.C.G.A. § 7-1-684(e).

13.

Petitioners suggest that the definition of "covered employee" cannot be as expansive as the plain language in the statute as it would require certain large licensees to conduct thousands of GCIC criminal background checks and the Department does not require this from these licensees. (Petitioners' Proposed Findings of Fact and Conclusions of Law, p. 8 n.2). However, no evidence was introduced indicating that the Department does not enforce the GCIC criminal background check requirement as it relates to all licensees. On the contrary, the evidence indicates that as part of an examination the Department obtains a list of employees from licensees and requests the GCIC criminal background check on some of the covered employees. (T. 144). Petitioners also believe that as part of the examination the Department should have more thoroughly determined the job duties and responsibilities of the six employees in question prior to concluding that they were covered employees. (Petitioners' Proposed Findings of Fact and Conclusions of Law, pp. 8-9). The fact that the Department could have been more thorough in determining the specific job duties is irrelevant as the evidence at the hearing established that the job duties of these six individuals satisfied the definition of covered employees. (Findings of Fact, ¶¶ 8-13). Finally, Petitioners devote a tremendous amount of time to the fact that the Department's examiners had slightly varying interpretations of what constitutes a covered employee. (Petitioners' Proposed Findings of Fact and Conclusions of Law, pp. 6-8). This distinction is of no consequence because under any of the interpretations advanced by the Department's examiners, GCIC criminal background checks would have to be obtained and maintained for all six employees in question. Further, regardless of the differences between the examiners in conceptualizing a covered employee, the Code very clearly defines a covered employee and it includes the vast majority of employees of a licensee as most will be engaged in a function related to the transmission of money.[21] (Conclusions of Law, ¶ 11).

14.

In addition to violating O.C.G.A. § 7-1-684(e), Rana and Mr. Freitas demonstrated incompetence or untrustworthiness by failing to conduct the six GCIC

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[20] Although not dispositive, the Department's 2013 report of examination specifically placed Mr. Freitas on notice that the Department believed he was responsible for obtaining and maintaining GCIC criminal background checks due to his control over Rana. (Findings of Fact, ¶ 4).

[21] It would appear to this Tribunal that the covered employee distinction could significantly reduce the number of background checks for certain authorized agents of a licensee. For example, an authorized agent could be a large retailer, such as a grocery store, where only a small portion of its business is devoted to money transmission activity.

criminal background checks. O.C.G.A. § 7-1-692(a)(4). In 2013, the Department issued a report of examination which concluded that Rana had not run the necessary GCIC criminal background checks. (Findings of Fact, ¶ 4). The 2013 report of examination stated that Mr. Freitas was responsible for having the GCIC criminal background checks obtained and maintained. (Id.). The report expressly stated that "[i]n order to avoid potential fines or license revocation; management should obtain" GCIC criminal background checks on employees. (Id.). Notwithstanding the fact that the requirement to conduct GCIC criminal background checks was identified in the 2013 report of examination, Rana and Mr. Freitas continued to fail to comply with the criminal background check requirements in O.C.G.A. § 7-1-684(e). Quite simply, Rana and Mr. Freitas willfully disregarded the law and elected to not revise Rana's practices to comply with the law even after those violations had been identified in the 2013 report of examination. It is hard for this Tribunal to envision a clearer example of incompetence or untrustworthiness by a licensee.

15.

Rana's violation of O.C.G.A. § 7-1-684(e) supports the revocation of Rana's money transmitter license. O.C.G.A. § 7-1-692(a)(2) ("The department may … revoke an original or renewal license … if it finds that the licensee … has … violated any provisions of this article.") Additionally, it is prohibited for any person engaged in money transmission to "engage in any activity that would subject a licensee to suspension or revocation of its license." O.C.G.A. § 7-1-691(4). Due to Mr. Freitas' violation of O.C.G.A. § 7-1-1-684(e), the Department's order requiring Mr. Freitas to cease and desist from violating the law is valid. O.C.G.A. § 7-1-694(a)(1) ("The department may issue an order requiring a person to cease and desist immediately from unauthorized activities whenever it shall appear to the department that … a person has violated any law of this state.")

16.

Given the findings from the 2013 report of examination, Rana's continued failure to conduct GCIC criminal background checks also supports revocation of Rana's money transmitter license. O.C.G.A. § 7-1-692(a)(2) ("The department may … revoke an original or renewal license … if it finds that the licensee … has … demonstrated incompetency or untrustworthiness to act as a licensee.") Similarly, the cease and desist order issued to Mr. Freitas is supported as he failed to ensure that the GCIC criminal background check requirements were complied with after the issuance of the 2013 report of examination. O.C.G.A §§ 7-1-691(4), 7-1-694(a)(1).

IV. WITHHOLDING OF INFORMATION

17.

The final basis for the Actions against Rana and Mr. Freitas is that they failed to provide documents requested by the Department.

18.

Georgia law provides that a license is subject to revocation if the Department finds that a licensee has "purposely withheld, deleted, destroyed, or altered information requested by an examiner of the department or made false statements or misrepresentations to the department." O.C.G.A. § 7-1-692(a)(6); see also Ga. Comp. R. & Regs. R. 80-3-1-.01(10)(b).

19.

After the issuance of the 2017 report of examination, the Department's receipt of Mr. Freitas response to the report of examination, and the payment by Rana of fines related to the examination, the Department's examiner requested additional documentation from Rana. (Findings of Fact, ¶¶ 18-20). The Department's document request seeks documentation of the corrective actions Mr. Freitas represented had been taken by Rana as a result of the 2017 report of examination. (Findings of Fact, ¶ 20). In addition, the document request sought information related to Mr. Freitas' disagreements with the findings in the 2017 report of examination (i.e., none of the employees at Rana other than Ms. Portes were covered employees). (Findings of Fact, ¶ 20; Ex. R-4, pp. 4-5). The requested documents have not been provided to the Department. (Findings of Fact, ¶ 20).

20.

Rana and Mr. Freitas contend that the requested documentation was provided to the Department during the 2017 examination. (Petitioners' Proposed Findings of Fact and Conclusions of Law, p. 4). However, this is not possible. A number of the requested items dealt with actions taken by Mr. Freitas and Rana in response to the examination. (Findings of Fact, ¶ 20). Further, this Tribunal has previously determined that the six GCIC criminal background checks were not obtained and maintained by Rana or Mr. Freitas so they could not have provided the documentation to the Department during the exam. (Conclusions of Law, ¶¶ 10, 11). Further, Petitioners have criticized the Department for not determining the job duties of the employees during the exam. (Petitioners' Proposed Findings of Fact and Conclusions of Law, pp. 8-9). Rana and Mr. Freitas cannot now contend that documentation related to the job duties of these employees was provided to the Department during the course of the examination.

21.

Rana and Mr. Freitas also contend that they did not withhold production from the Department as they provided the documents to their counsel who determined as part of a litigation strategy to not provide the documents to the Department. (T. 306, l. 19-25; Petitioners' Proposed Findings of Fact and Conclusions of Law, pp. 17-19). The fact that

Rana and Mr. Freitas may have provided their counsel with some[22] of the documents requested by the Department's examiner is irrelevant because none of the requested documents were provided to the Department. (Findings of Fact, ¶ 20). Further, the argument advanced by Rana and Mr. Freitas, if accepted, could undermine the entire supervisory process of the Department and, potentially, the authority of all regulatory agencies. One of the underlying objectives of the Financial Institutions Code of Georgia, which includes the laws governing money transmitters, is to supervise and examine the business affairs of money transmitters "to ensure that they operate in a manner consistent with state law." O.C.G.A. § 7-1-3(a)(10)(A). In order to ensure appropriate supervision, a licensee is subject to revocation for the withholding of information requested by an examiner of the Department. However, if a licensee can avoid production by simply providing responsive information to its counsel because the matter is adversarial (all examinations by their very nature have an adversarial component), then the Department will no longer be able to supervise the entities it regulates. It cannot be stressed enough that Rana is a regulated entity and, as such, received its license subject to the law and rules of the State of Georgia, including the requirement that requested information be provided to the Department. Hughes v. State Bd. of Med. Examiners, 162 Ga. 246, 256 (1926); see also State Bd. of Educ. v. Drury, 263 Ga. 429, 431 (1993). By secreting the responsive documents with their counsel, Rana and Mr. Freitas hindered the ability of the Department to supervise Rana and ensure their compliance with state law. Finally, as a matter of logic, this Tribunal cannot comprehend why counsel would fail to produce compliant documentation that would seemingly address the grounds for administrative action if counsel had the documentation in his possession. However, the documentation was never provided to the Department.

22.

Rana and Mr. Freitas contend that during the course of the examination, the Department determined it was going to take administrative action against Petitioners and, therefore, the request for documentation was improper. (Petitioners' Proposed Findings of Fact and Conclusions of Law, p. 18). This argument is based on the fact that the administrative action background facts form prepared by one of the Department's examiners is dated April 17, 2017. (Ex. P-1). However, this document is a continuously evolving document. (T. 179). This is evident by the fact the administrative action background facts form contains references to documents received in May and June of 2017 but also includes as an exhibit a portion of the 2017 report of examination that was issued on September 15, 2017. (Ex. P-1, pp 3-4). Ultimately, it is irrelevant as to when the Department's examiner determined that he was going to recommend Rana's license be revoked because examiners do not make the determination on whether the Department issues administrative actions. (T. 89, 180). Instead, the decision to issue an

[22] The six GCIC criminal background checks could not have been provided to Petitioner's counsel as these checks were not run. (Findings of Fact, ¶ 7). Although GCIC checks were not maintained or obtain, it is very possible that Rana and Mr. Freitas had obtained non-compliant criminal background checks (i.e. background checks obtained from a party other than GCIC). (T. 292-93).

administrative action is made by the director of the money service business division and the deputy commissioner. (T. 89, 180). Further, any documents the Department received in response to its request for documentation would have been considered in evaluating whether to issue an administrative action. (T. 117). The Actions were issued on May 9, 2018, well over a month after the documents were required to be produced to the Department. (R. 7). It is worth emphasizing that the Department's request for documentation came after it received Mr. Freitas' response to the examination and the request related to corrective actions or rebuttals asserted by Mr. Freitas. (Findings of Fact, ¶ 20). Only after Petitioners failed to produce responsive documents in response to repeated requests were the Actions issued. (Findings of Fact, ¶ 20).

23.

Rana and Mr. Freitas withheld documents requested by the Department's examiner in violation of O.C.G.A. § 7-1-692(a)(6). The revocation of Rana's license is supported by the express provisions of O.C.G.A. § 7-1-692(a)(6). Additionally, it is prohibited for any person engaged in money transmission to "engage in any activity that would subject a licensee to suspension or revocation of its license." O.C.G.A. § 7-1-691(4). Due to Mr. Freitas' violation of O.C.G.A. § 7-1-692(a)(6), the Department's order requiring Mr. Freitas to cease and desist from violating the law is valid. O.C.G.A. § 7-1-694(a)(1).

24.

Either the failure to conduct GCIC background checks on covered employees, the demonstration of incompetence or untrustworthiness, or the withholding of documentation requested by the Department's examiner is adequate to support the revocation of Rana's license and to uphold the Order to Cease and Desist issued to Mr. Freitas. Collectively, these violations more than substantiate the enforcement of the Order to Cease and Desist to Mr. Freitas and the revocation of Rana's license.

D. DETERMINATION

After thoughtful consideration and taking into account the foregoing Findings of Fact and Conclusions of Law, pleadings filed in this matter, documents entered into evidence, and the testimony and credibility of the witnesses, this Tribunal has determined that Rana and Mr. Freitas withheld documents requested by the Department, failed to conduct GCIC criminal background checks on covered employees, and demonstrated incompetence or untrustworthiness as they failed to conduct the required criminal background checks after having been previously cited for the violation. This Tribunal has also determined that Rana, Ms. Portes, and Mr. Freitas' did not make false statements or demonstrate incompetence or untrustworthiness as it relates to the SAR transactions in dispute. Further, although this Tribunal has concluded that Rana, Ms. Protes, and Mr. Freitas did not comply with federal reporting requirements as it relates to the transactions involving Customer 1, those isolated errors combined with the corrective action

implemented by Petitioners does not, by itself, support the Department's administrative actions.

ORDER

Based on the forgoing Findings of Fact and Conclusions of Law set forth herein, it is the FINAL ORDER of the Department that:

1) **the Annual License of Rana Financial, LLC is REVOKED;**
2) **Mr. Freitas is ORDERED to Cease and Desist; and**
3) **the Cease and Desist Order issued to Ms. Portes is RESCINDED.**

SO ORDERED this 9th day of January, 2019.

KEVIN B. HAGLER
Commissioner
Department of Banking and Finance