

M A N I T O B A) Order No. 75/08
)
THE PUBLIC UTILITIES BOARD ACT) June 3, 2008

BEFORE: Graham Lane, C.A., Chairman
 Monica Girouard, CGA, Member
 Susan Proven, P.H.Ec., Member

CASH STORE FINANCIAL SERVICES INC.
APPLICATION FOR AN AWARD OF COSTS
PAYDAY LOAN HEARINGS

Summary

Cash Store Financial Services Inc. (CSFS or Rentcash) participated as an intervener in the Public Utilities Board's Board) 2007-08 hearing on the establishment of maximum rates for payday loans for Manitoba. Subsequent to the hearing, CSFS applied to the Board for an award of costs, and requested that the Board amend its criteria for the determination of cost awards.

By this Order, the Board denies CSFS's application for an award of costs, and confirms its process and criteria for the awarding of costs.

Introduction

The Board conducted a public hearing leading to Order 39/08, which set maximum rates and charges for payday loans. Pursuant to Section 164(10) of *The Consumer Protection Act* (CPA), the Board has jurisdiction to award costs to participants in the proceeding.

In the public notice in advance of the hearing, the Board advised that the proceeding would be conducted in accordance with the Board's Rules of Practice and Procedure (Rules). The Rules indicate the four main criteria by which the Board determines whether costs are to be awarded to an Intervener:

1. made a significant contribution relevant to the proceeding, and contributed to a better understanding by all parties of the issues before the Board;
2. participated in the hearing in a responsible manner and cooperated with other Interveners with common objectives to avoid duplication of intervention;
3. had insufficient financial resources to present the case

- adequately without an award of costs; and
4. had a substantial interest in the outcome of the proceeding, and represented the interests of a substantial number of customers.

CSFS was granted Intervener status by the Board following a pre-Hearing conference. Although in its application for intervener status, CSFS had indicated that it would not be applying for a cost award, following the hearing, CSFS applied for an award and requested that the Board amend its criteria for the awarding of costs.

CSFS's Application

CSFS submitted that the Board is not bound to strictly apply the four guidelines in making its determination, and noted that Section 56 of *The Public Utilities Board Act* does not apply to the costs of an intervener in the proceedings under part XVIII of the CPA.

CSFS's view was that the intent of section 164(10) is for costs of the proceeding to be paid by the Province's Consolidated Fund, and not by the participants:

"If costs are paid out of the Consolidated Fund, they are borne by taxpayers in general. If costs are paid by payday lenders and then passed on to payday loan consumers, the regulatory intervention is causing payday loan consumers to incur additional costs."

CSFS suggested guidelines similar to those used by the Board under its Rules, but replacing the financial need criteria to one of assessing the reasonableness of costs requested.

With respect to meeting the four criteria, CSFS stated:

- a) "Rentcash made a significant contribution relevant to the proceeding and by its evidence contributed to a better understanding of the rate issues before the Board";
- b) "Rentcash participated in the hearing in a responsible manner and cooperated, from the outset with other Interveners to avoid duplication";
- c) CSFS viewed the Board's criteria for a finding of financial need as being unjust in the circumstances, and opined that because of the Board's decision "Rentcash is projected to have negative returns with respect to its Manitoba operations", and stated that on this basis, "there is a lack of financial resources as regards Rentcash"; and
- d) "The focus of Rentcash's evidence was the commercial interest of everyone who might be affected by the Board decision." CSFS then went on to define "commercial interest" to include the interest of all payday loan consumers.

CSFS suggested that the cost of the hearing be borne by all Manitobans, and that by requiring the payday loan participants to fund their own costs of intervention, the Board was in essence conferring the associated costs on payday loan borrowers, the consumers that the Board was trying to protect.

Board Findings

By procedural Order 91/07, the Board advised:

"With respect to the potential for awards of costs, the Board does not make pre-determinations of eligibility or of award quantum ahead of a proceeding. The Board will wait until after the proceeding and the filing of specific applications for cost awards before making a determination on these matters. The Board has full discretion in this matter."

With respect to the consideration of application for cost awards, Order 91/07 stated:

"the Board is obliged to advise interveners considering applying for costs to carefully review sections 43 and 44 of the Board's Rules of Practice and Procedure. The Board has rarely provided a cost award to an intervener with a commercial interest in the outcome of a proceeding, and, as well, has generally awarded costs to interveners lacking the financial means to participate when the Board has found that the organization's participation was responsible, cooperative and of value to the Board's proceeding and the public interest."

Not only was this advice specifically iterated in the Board's procedural order granting intervener status for the payday loan hearing, it has been reinforced by subsequent orders wherein similar claims for cost awards have been denied, and to which CSFS referred to in its submission. The Board remains satisfied with its criteria and confirms them to remain operative.

CSFS makes a case for adopting different criteria for costs awards, suggesting that the intent of the CPA amendments was that all costs related to the proceeding would be paid from the Consolidated Fund.

164(10)-The board may determine whether an intervener is entitled to costs for participating in a hearing under this section, and may fix the amount of those costs. Costs are payable out of the Consolidated Fund with money authorized by an Act of the Legislature to be so paid and applied.

However, the Board interprets the legislative provision differently, and to provide the Board with the latitude to determine which costs, not all costs, should be paid from the Consolidated Fund. Again, the Board notes that the criteria had been made clear to all participants before the hearing began.

As to whether intervener costs are ultimately borne by payday loan borrowers, the Board notes that it has set maximum rates for payday loans. Payday loan companies make the decision as to their cost and rate structures and will determine, within the maximums allowed, whether their costs of participation will be passed on to their customers.

CSFS is a payday lender, and the representations made by the CSFS were primarily directed to advancing its commercial interests. The Board does not accept CSFS's definition of commercial interest to include those of borrowers in general. Commercial is and has been interpreted by the Board in its ordinary sense, being business related.

The Board takes no issue with the contribution of CSFS to the recently concluded proceeding. The Board acknowledges and appreciates the co-operation displayed by CSFS's counsel and its witnesses throughout the proceeding.

However, the Board concludes that CSFS has not met the criteria for financial need. The Board will not make a cost award in favour of CSFS.

IT IS THEREFORE ORDERED THAT:

The Application of Cash Store Financial Services Inc. for an award of costs in making its intervention at the hearing to establish maximum rates for payday loans BE AND IS HEREBY DENIED.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, C.A."

Chairman

"G. GAUDREAU, C.M.A."

Secretary

Certified a true copy of Order
No. 75/08 issued by The Public
Utilities Board

Secretary