STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Department of Insurance and Financial Services

Petitioner

v

Comdata Network Inc., d/b/a Comdata Corporation

Respondent.
_____/

Enforcement Case No. 13-11695
Agency Case No. 16-981-MT
Docket No. 17-003313

Issued and entered
on June 1, 2020
by Anita G. Fox
Director

ORDER AFTER APPEAL AND REMAND

1. On August 7, 2019, the Department of Insurance and Financial Services (DIFS) issued a Final Decision that found that Comdata Network, Inc. d/b/a Comdata Corporation (Comdata) was conducting unlicensed credit card arrangement activity under the Credit Card Arrangement Act (CCAA), MCL 493.101 *et seq.,* and ordered Comdata to cease and desist from conducting such activity in violation of the CCAA.

2. On October 4, 2019, Comdata appealed the Final Decision to the Ingham County Circuit Court.

3. On April 2, 2020, PA 76 of 2020 became effective, which amended the definition of "credit card arrangement" in the CCAA.

4. On May 19, 2020, the Ingham County Circuit Court issued an Opinion and Order. The Opinion affirmed the Final Decision as to the period during which Comdata made credit card arrangements prior to April 2, 2020, and revoked the order to cease and desist against Comdata for credit card arrangements made after April 2, 2020. Finally, the Opinion remanded the case to DIFS to undertake any further proceedings it deems necessary with regard to the period during which Comdata was in violation of the CCAA. *See* Exhibit A.

Therefore, it is ORDERED that:

1. The Final Decision is AFFIRMED as to the period during which Comdata made credit card arrangements prior to April 2, 2020; and

2. The order to cease and desist against Comdata for credit card arrangements made after April 2, 2020 is REVOKED.

Anita G. Fox
Director

Exhibit A

Opinion & Order

30th Judicial Circuit Court for Ingham County

Case No. 19-747-AV

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT COURT FOR INGHAM COUNTY

COMDATA NETWORK, INC, d/b/a COMDATA CORPORATION,

Appellant,

v

MICHIGAN DEPARTMENT OF INSURANCE & FINANCIAL SERVICES,

Appellee.

OPINION & ORDER

CASE NO. 19-747-AV

HON. WANDA M. STOKES

At a session of this Court held in
the City of Mason, County of Ingham,
on May 19, 2020.

PRESENT: HON. WANDA M. STOKES

This matter comes before the Court on appeal from a decision of Appellee the Michigan Department of Insurance and Financial Services ("DIFS" or "Appellee"), which found that Appellant Comdata ("Appellant" or "Comdata") had violated the Credit Card Arrangements Act, and required Appellant to cease and desist from servicing its MasterCard Program. The Court acknowledges that this matter is an agency appeal, despite use of the AV case type code, which designates civil appeals from the lower courts.

Oral argument is requested, however, the Court finds that the briefs and record adequately present the facts and legal arguments, and the court's deliberation would not be significantly aided by oral argument, in accordance with MCR 7.114(A).

FACTS

Appellant is a corporation which provides credit card services through its MasterCard

Program to trucking organizations across the United States. As part of its business, Comdata partners with Regions Bank, an Alabama bank, to issue credit and debit cards to customers. DIFS issued a complaint against Comdata, arguing that it had been issuing credit cards without a license in violation of Michigan law. Comdata responded that Regions Bank issued the cards, not Comdata, and further that the cards it issued were not used for consumer purposes. After an approximately two-year long administrative process, DIFS entered a final decision on August 7, 2019, finding that Comdata had issued credit cards without a license, and ordering Comdata to cease and desist from doing so.

In its appeal to this Court, Appellant argues that 1) the ALJ improperly made factual findings without notice; 2) the ALJ's decision does not meet the applicable standard of review, and 3) the ALJ misinterpreted applicable law.

STANDARD

"The review [of an agency decision] shall include. . . the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases which a hearing is required, whether the same are supported by *competent, material and substantial evidence on the whole record.*" Const 1963, art 6, § 28 (emphasis added); *see* Union Bank & *Trust Co v First Michigan Bank & Trust Co*, 44 Mich App 83; 205 NW2d 54 (1972). The appellate court must reverse the decision below

> if substantial rights of the petitioner have been prejudiced because the decision or order is . . . [m]ade upon unlawful procedure resulting in material prejudice to a party. [n]ot supported by competent, material and substantial evidence on the whole record, [a]rbitrary, capricious or clearly an abuse or unwarranted exercise of discretion, [a]ffected by other substantial and material error of law.

MCL 24.306(1). Further,

> [t]h[e] standard [with respect to agency interpretations] requires 'respectful consideration' and 'cogent reasons' for overruling an agency's interpretation. Furthermore, when the law is 'doubtful or obscure,' the agency's interpretation is an aid for discerning the Legislature's intent. However, the agency's interpretation is not binding on the courts, and it cannot conflict with the Legislature's intent as expressed in the language of the statute at issue.

In re Complaint of Rovas Against SBC Michigan, 482 Mich 90, 103; 754 NW2d 259, 267 (2008).

A court should not superimpose its judgment on that of the administrative agency, view questions of fact and weigh evidence, or determine whether the probabilities preponderate one way or the other, but should determine whether the evidence justifies the findings of the agency. *Regents of Univ of Michigan v Michigan Employment Relations Comm*, 389 Mich 96, 103; 204 NW2d 218, 221 (1973). A reviewing Court must not substitute its opinion even if it would have reached a different decision had it been in the position of the agency. *Knowles v Civil Service Comm*, 126 Mich App 112, 118; 337 NW2d 247 (1983).

ANALYSIS

The Credit Card Arrangements Act ("CCAA" or "the Act"), MCL 493.101, *et seq*, requires that any organization wishing to offer credit and debit card services must be licensed through the Act. MCL 493.102. There is an exemption, however, permitting banks to offer credit card arrangements without holding a license under the CCAA. MCL 493.114(1).

Appellant is not licensed under the Act, but argues that it has not involved itself in credit card arrangements in violation of the Act, because all cards were issued by Regions Bank, not Appellant. The Administrative Law Judge ("ALJ") below was not persuaded, and found that

despite language in credit agreements between Appellant and its customers indicating that Regions Bank was the "issuer," Appellant was in fact the issuer for purposes of the Act, and had violated the Act by offering credit arrangements without a license.

The parties raise several issues here: 1) whether the ALJ's decision was supported by competent, material and substantial evidence; 2) whether the ALJ properly interpreted the meaning of the CCAA; and 3) whether the ALJ erred by making findings of fact below, without notice to Appellant.

I. NOTICE; FINDINGS OF FACT

The parties stipulated to forgo oral argument below, relying instead on their briefs. Appellant argues that since oral argument was forgone, no facts were in dispute, and the ALJ's ruling that Appellant was the actual issuer of the credit cards was a factual finding without notice.

The Administrative Procedures Act ("APA"), MCL 24.201 *et seq*. provides that parties have an opportunity to present evidence and argument on issues of fact. MCL 24.285. Further, the Administrative Code permits a "hearing" to occur by simply submitting briefs, when it appears to the ALJ "that a material issue of fact does not exist." Mich Admin Code R 792.10123.

However, it does not appear that the ALJ made such a finding here. Instead, the parties stipulated to present their arguments through briefs, without reference to stipulation to facts. Stipulations are permitted and may bind. Mich Admin Code R 792.10116. Thus, it does not appear that there was any binding rule or agreement indicating all facts had been stipulated.

Further, it appears DIFS argued that Appellant was the issuer of the credit cards in question, providing notice to Appellant that this fact was in question.

Nothing here indicates that the ALJ was prohibited from resolving a factual dispute under

these circumstances, and DIFS' brief put Comdata on notice that it could be found to be the issuer of the credit cards. The procedure below was lawful, and no error inheres.

II. INTERPRETATION OF THE CREDIT CARD ARRANGEMENTS ACT

Under the Act,

> [c]redit card arrangement'" means a loan or extension of credit that . . . [i] s unsecured[, i]s made for a personal, family, or household purpose[, i]s made to the holder of a credit card or charge card who is an individual[, and] . . . [r]equires use of a credit card or charge card authorized under this act to access the proceeds of the loan or extension of credit.

MCL 493.101(d). In turn, "credit card" means "any card or device that is issued by a licensee under a credit card arrangement that allows the cardholder to obtain credit from the card issuer or any other person to purchase or lease property or services, obtain a loan or credit, or for any other purpose." MCL 493.101(e).

"Except for a person licensed under the consumer financial services act, a person shall not make or negotiate, or offer to make or negotiate, a credit card arrangement unless that person is licensed as provided in this act." MCL 493.102(1).

As stated supra, the CCAA specifically exempts state banks from the Act. MCL 493.114(1).

There is no dispute that Comdata is not licensed under the Act. The central question below, as well as here on appeal, is whether the Act applies to require Comdata to hold a license in order to operate its MasterCard Program, or if it is sufficient for it to operate through its relationship with Regions Bank, a state bank.

The ALJ found that "there is no warrant for Comdata to conclude that a credit card arrangement is exempt merely because a bank is one of the parties to the arrangement," and that

the critical inquiry was "whether Comdata is making or negotiating a credit card arrangement," for purposes of MCL 493.102(1). Looking to the contracts between Comdata and other parties regarding the MasterCard Program, the ALJ further found that it was irrelevant that the contracts identified Regions Bank as the "issuer," and that Comdata was the party responsible for transmitting contract terms to customers, providing customer service, developing the program, and doing the accounting. Further, Comdata maintained the financial records of the Program, and secured it up to a minimum of $5 billion. In essence, the ALJ found that Comdata was the "issuer" of the cards for purposes of the Act, because interpreting the statute so as not to reach a party who made and negotiated the agreements and controlled a program issuing credit cards would nullify it.

This Court renders the agency's interpretation respectful consideration, under *Rovas*, supra. On respectful consideration, the Court finds no error in the ALJ's final decision (incorporating the earlier Proposal for Decision).

However, on April 2, 2020, the Legislature enacted changes to the CCAA, in Public Act 76 of 2020. These changes alter the definition of "credit card arrangement" to pertain only to personal, family, or household purposes. While this means Comdata's commercial credit activities no longer meet the definition of "credit card arrangement" in MCL 493.101(d) after April 2, 2020, it does not change the fact that Comdata operated in violation of the Act in the past.

THEREFORE IT IS ORDERED that the Director's August 7, 2019 Final Decision is **AFFIRMED** as to the period during which Appellant made credit card arrangements prior to April 2, 2020. As to the period after April 2, 2020, the Director's order to cease and desist is revoked.

IT IS FURTHER ORDERED that this matter is **REMANDED** to the Department of Insurance and Financial Services. On remand, the Department may undertake any further proceedings the Director deems necessary with regard to the period during which Appellant was in violation of the Act.

In accordance with MCR 2.602(A)(3), the Court finds that this Order disposes of the last pending claim, and closes this case.

5-19-2020
Date

Wanda M. Stokes
Hon. Wanda M. Stokes
Circuit Court Judge

PROOF OF SERVICE

I hereby certify that I provided a copy of the above ORDER to each attorney of record, or to the parties, by hand delivery, or by placing a true copy in a sealed envelope, addressed to each, with full postage prepaid and placing said envelope in the United States mail, on May 19, 2020.

Tyler A Smith, Esq (P82780)
Law Clerk/Court Officer