

M A N I T O B A) Order No. 57/08
)
THE PUBLIC UTILITIES BOARD ACT) May 9, 2008

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

ASSISTIVE FINANCIAL CORP.:
APPLICATION FOR AN AWARD OF COSTS
PAYDAY LOAN HEARING

Summary

Assistive Financial Corp. (ASSISTIVE) participated as an intervener in the Board's 2007-08 hearing towards the establishment of maximum rates for payday loans for Manitoba. Subsequent to the hearing, ASSISTIVE applied to the Board for an award of costs.

By this Order, the Board denies the application as ASSISTIVE has not satisfied the Board's criteria for financial need.

Introduction

The Board conducted a public proceeding related to the setting of the maximum cost of credit for payday loans leading to Board Order 39/08. Pursuant to Section 164(10) of *The Consumer Protection Act* (CPA), the Board may award costs incidental to the payday loan 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; an intervener must have:

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.

ASSISTIVE was granted Intervener status by the Board and participated in the proceeding. In its application for intervention, ASSISTIVE indicated that it would not likely apply for costs, but reserved its right to seek costs. Following the hearing, ASSISTIVE applied to the Board for an award of costs:

Legal Fees	Dawson Law Chambers	\$32,174.66
Disbursements		\$ 4,583.07
Taxes		\$ 4,260.78
Total		\$41,018.51

ASSISTIVE's Application

ASSISTIVE acknowledged the Board's caution as contained in order 91/07:

"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."

"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."

ASSISTIVE asserted that through the proceeding it "did not advance a specific position with the intent of convincing the Board to make an order that would favour their own commercial interests".

ASSISTIVE stated that it "appeared before the Board solely to provide information that would likely not have otherwise come to the Board's attention." In addition, ASSISTIVE observed that it had participated "... in a careful review and test of the evidence that other parties put before the Board, thus bolstering the credibility of the Board's eventual decision".

ASSISTIVE opined that its unique contribution "was its explanation of the 'broker model'...(which) created a depth and further perspective ... (and) by reason of its intervention and the evidence that it put before the Board, the resulting Order was improved".

With respect to meeting the four criteria, the ASSISTIVE stated:

- a) It had made a significant contribution to the proceedings by providing the Board with relevant and unique evidence o the broker model.
- b) ASSISTIVE had participated in a responsible manner and attempted to avoid duplication and reduce costs by not submitting second-round information requests, and having counsel attend only when necessary.
- c) Because ASSISTIVE did not advance its own commercial interests, its participation was in the public interest and should be funded from public funds, not its own resources.
- d) ASSISTIVE has a substantial interest in the outcome of this proceeding.

Board Findings

The Board accepts that ASSISTIVE assisted the Board in confirming its understanding of the Broker Model as it applies to the Payday Loan Industry. As well, the Board appreciates ASSISTIVE's cooperative approach and avoidance of duplication.

However, despite ASSISTIVE capable and cooperative representation, the Board concludes that ASSISTIVE's intervention was based on its own commercial interest in the matters that came before the hearing and the outcome.

ASSISTIVE is in business to make a profit and, in the Board's view, is capable of supporting the costs of its participation in the proceeding.

Again, in denying an award of costs, the Board has no issue with the contributions of ASSISTIVE and its counsel through the proceedings.

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IT IS THEREFORE ORDERED THAT:

The Application of Assistive Financial Corp. 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. 57/08 issued by The Public
Utilities Board

Secretary