

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 6th day of July, 2017.

Center for Public Integrity, Appellant,

against Record No. 161108
S.C.C. Case Nos. BFI-2015-00059 through
BFI-2015-00061

TitleMax of Virginia, Inc., et al., Appellees.

Upon an appeal of right from an order entered by the State Corporation Commission.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that the Center for Public Integrity's assignments of error do not comply with Rule 5:21(a)(7). Accordingly, we will not consider them as grounds for reversal of the decision below.

In 2010, the General Assembly enacted the Motor Vehicle Title Loan Act, Code § 6.2-2200, et seq. Among other things, this Act requires licensed motor vehicle title lenders to file annual written reports with the Commission's Bureau of Financial Institutions "containing such information as the Commissioner may require concerning his business and operations during the preceding calendar year as to each licensed place of business." Code § 6.2-2210; *see also* 10 VAC § 5-210-60 (identifying the information that must be included in a lender's annual report). Each year, the Commission publishes the cumulative data of all motor vehicle title lenders in an aggregated form, but it has historically treated each lender's report as confidential due to the potentially sensitive information contained therein.

On November 12, 2015, the Bureau received a "media" request from the Center for Public Integrity seeking the 2014 reports filed by TitleMax of Virginia, Inc., Anderson Financial Services, LLC, and Fast Auto Loans, Inc. (collectively "Lenders"). By letter, the Bureau notified Lenders that it intended to release the reports because it was unable to identify any legal basis

that would prohibit it from treating them as public records.

Lenders filed separate petitions with the Commission arguing, in relevant part, that the reports could not be released under Code § 6.2-101(A). This statute prohibits the Commission from disclosing certain information to the public, including “any personal financial information furnished to, or obtained by the Bureau.” Code § 6.2-101(A). While the phrase “personal financial information” is not defined by the Code, Lenders observed that the definition of “person” for the purposes of Title 6.2 includes “corporation[s]” and “limited liability compan[ies].” Code § 6.2-100. Lenders reasoned that because they are “person[s]” for the purposes of Title 6.2, the information contained in their reports constitutes “personal financial information” that cannot be disclosed under Code § 6.2-101(A). The Center responded that the word “personal” typically refers to individuals, not corporations.

After considering the above arguments, the Commission concluded that “the term ‘personal financial information’ is ambiguous since it can be understood in more than one way for the purpose of this statute.” However, it did not resolve this ambiguity. Rather, it noted that “[t]he Bureau’s historical practice has been to treat the specific annual reports as confidential, and there has been no statutory change that would *require* a change in that practice.” (Emphasis added). Accordingly, it found “that the Bureau’s historical practice of providing cumulative data of all motor vehicle title lender licensees to the public on an *aggregated* basis should continue pending further clarification through the legislative or regulatory process.” (Emphasis in original).

On appeal, the Center presents two assignments of error. However, we agree with Lenders’ contention that they do not comply with Rule 5:21(a)(7). Assignments of error in appeals from the Commission must “clearly and concisely and without extraneous argument identify the specific errors in the rulings below upon which the party intends to rely.” Rule 5:21(a)(7). “Only errors so assigned will be noticed by this Court and no error not so assigned will be considered as grounds for reversal of the decision below.” *Id.*

The Center’s first assignment of error alleges that “[t]he Commission erred as a matter of law by finding that [Code] § 6.2-101 prohibits the Commission from disclosing the un-redacted and noncumulative [Code] § 6.2-2210 Annual Reports of [Lenders] to the public.” Similarly, its second assignment of error asserts that “[t]he Commission erred as a matter of law by finding

that the term ‘personal financial information’ contained within [Code] § 6.2-101 is ambiguous *and thus encompasses* [Lenders’] financial information.” (Emphasis added).

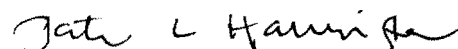
Both of these assignments of error are premised on the Commission’s purported application of Code § 6.2-101(A) to withhold the reports. But as noted, the Commission’s analysis of this statute ended with its determination that the phrase “personal financial information” is ambiguous. It did not resolve this ambiguity or otherwise determine that it “encompasses” Lenders’ reports because it did not need to do so to resolve the case before it. Thus, even if the Commission ultimately had concluded that the Center’s interpretation of Code § 6.2-101(A) was correct, that would only mean that the statute does not *prohibit* the Commission from releasing the reports. It would not mean that the Commission is *required* to release them. As the Commission found, there is no statute “that would require a change in [its historic] practice” of only releasing the cumulative data from the reports in an aggregated form.¹

In short, the assignments of error fail to identify the ruling made by the Commission and thus fail to identify any specific error in that ruling. Therefore, they do not comply with Rule 5:21(a)(7).²

This order shall be certified to the State Corporation Commission.

A Copy,

Teste:



Clerk

¹ Code § 12.1-19(C)(1) states that “[t]he Commission shall make available for public inspection records related to the administrative activities of the Commission.” However, as the Center conceded before the Commission, Lenders’ reports are records related to the Commission’s regulatory activities, not its administrative activities, and therefore need not be made available for public inspection under this statute. Code § 12.1-19(C)(5) (“‘Administrative activities’ shall not include the Commission’s formal or informal regulatory or legal proceedings or activities.”).

² TitleMax also presents an assignment of cross error in its brief. However, unlike Rule 5:18, Rule 5:21(a) does not permit assignments of cross error in appeals from the Commission. Consequently, we have not considered it.