

BitLicense Challenge Dead in the Water

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On December 21, 2017, well in advance of the anticipated January 11th, 2018 court date, the New York Supreme Court handed down a ruling in [Chino v New York Dept. of Fin. Servs.](#), dismissing the Theo Chino’s lawsuit against the New York State Department of Financial Services (DFS) due to a lack of standing, effectively ending the multi-year litigation. Chino’s lawsuit alleged that DFS had acted illegally and arbitrarily in enacting the State’s [Virtual Currency Business Activity](#) regulatory framework and accompanying licensure requirement (commonly known as the “BitLicense”) in an effort to regulate the rapidly expanding cryptocurrency space.

While the dismissal of Chino’s case may facially appear to be a strike against the cryptocurrency community, it is important to note that the case was dismissed without the Court analyzing the substance and merits of the claim. Specifically, the case was dismissed because the Court found that Chino lacked standing to bring the Article 78 action because Chino abandoned his BitLicense application midway through the process (without receiving an official rejection from the state), and, as such, had not exhausted all of his potential administrative remedies prior to bringing suit in court. As DFS had not reached a final decision with respect to his application, there was “nothing for [the] Court to review”. With respect to Chino’s challenge to the constitutionality of the BitLicense, the Court similarly ruled that Chino lacked standing because he failed to show injury as “personal disagreement and speculative financial loss are insufficient to confer standing.” Specifically, the Court found that as Chino’s company never turned a profit, he could not show harm.

While it appears that Chino plans on appealing the Court’s decision, it would seem that any appeal is a long shot as, based on our reading of the decision, the Court did not find Chino’s fact pattern to be particularly compelling. However, in handing down its decision, the Court did indicate that the decision was not dispositive or a bar for any and all challenges to the BitLicense regulations—as it specifically noted certain fact patterns strong enough to survive a motion to dismiss would be heard on their merits. In attempting to determine which parties could advance a valid challenge to the BitLicense regulations, the first place to look may be parties who have already applied for, and been denied, a BitLicense. As of March of 2017, NYDFS references [five \(5\) rejected applications](#) from Disruptor Labs, LLC, ChangeCoin Inc., Ovo Cosmico Inc., Snapcard Inc. and OKLink PTE. LTD. One or more of those applicants could advance a challenge to the regulations based on having an active revenue positive business in New York, applying for the BitLicense, being denied and subsequently ordered to cease operations in New York State.

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