

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
12th DIVISION

STATE OF ARKANSAS *ex rel.*
DUSTIN MCDANIEL, ATTORNEY GENERAL

PLAINTIFF

vs.

CASE NO. CV 08-4717

BIG R TOBACCO, INC.,
D/B/A FIRST UNION CASH ADVANCE,
ARKADELPHIA CASH ADVANCE, LLC,
D/B/A ARKADELPHIA CASH ADVANCE AND
GLENWOOD PAYDAY ADVANCE,
ASHDOWN CASH ADVANCE, LLC,
D/B/A ASHDOWN PAYDAY ADVANCE,
HOPE CASH ADVANCE, LLC,
D/B/A HOPE CASH ADVANCE AND
HOPE PAYDAY ADVANCE,
NASHVILLE CASH ADVANCE, LLC,
D/B/A NASHVILLE PAYDAY ADVANCE,
TEXARKANA CASH ADVANCE, LLC,
DAVID R. THOMPSON, AND
PATRICK PATTON

FILED 10/13/09 14:03:00
Pat O'Brien Pulaski Circuit Clerk
CR3 By PH

DEFENDANTS

CONSENT JUDGMENT
BETWEEN THE PLAINTIFF AND THE PATTON DEFENDANTS

The State of Arkansas *ex rel.* Dustin McDaniel, Attorney General, filed this action pursuant to the Arkansas Deceptive Trade Practices Act, ARK. CODE ANN. §§ 4-88-101, *et seq.*, and under the Arkansas Constitutional provisions for usury, as set forth in Ark. Const. Art. 19 § 13 and *State ex rel. Bryant v. R & A Inv. Co., Inc.*, 336 Ark. 289, 985 S.W.2d 299 (1999).

The Attorney General and the Patton Defendants wish to resolve this action. The "Patton Defendants" are Patrick Patton, Arkadelphia Cash Advance, Ashdown Cash Advance, Hope Cash Advance, Nashville Cash Advance, and Texarkana Cash Advance. The Attorney General and the Patton Defendants recognize that this Consent Judgment

has been negotiated in good faith, and that this Consent Judgment is fair, reasonable, and in the public interest. Based upon the facts and matters before this Court, and with the consent of the parties to this Judgment, it is hereby ORDERED, ADJUDGED, and DECREED:

I. Definitions

1. Unless otherwise indicated, the terms used herein shall carry those definitions provided by the Arkansas Deceptive Trade Practices Act, ARK. CODE ANN. §§ 4-88-101, *et seq.*

2. Unless otherwise indicated, any reference to "Patton Defendants" is limited to only Patrick Patton, Arkadelphia Cash Advance LLC, Ashdown Cash Advance LLC, Hope Cash Advance LLC, Nashville Cash Advance LLC, and Texarkana Cash Advance LLC.

II. Jurisdiction

3. The Attorney General brought this enforcement action pursuant to the Arkansas Deceptive Trade Practices Act. This Court has jurisdiction over this matter, and the parties hereto pursuant to Ark. Code Ann. § 4-88-104, the common law of the State of Arkansas, and under the Arkansas Constitutional provisions for usury, as set forth in Ark. Const. Art. 19 § 13 and *State ex rel. Bryant v. R & A Inv. Co., Inc.*, 336 Ark. 289, 985 S.W.2d 299 (1999). Venue is proper pursuant to Ark. Code Ann. § 4-88-104, § 4-88-112, and the common law of the State of Arkansas. The Patton Defendants have transacted business in the State of Arkansas.

4. For purposes of this Consent Judgment, the Attorney General and the Patton Defendants waive all objections and defenses that they may have to the

jurisdiction or venue of the Circuit Court of Pulaski County, Arkansas, and shall not challenge the Court's jurisdiction in any subsequent action to enforce the terms of this Consent Judgment.

III. Parties Bound

5. This Consent Judgment applies to and is binding upon the Attorney General and the Patton Defendants.

6. Any change in ownership or status of the Patton Defendants, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Patton Defendants' responsibilities under this Consent Judgment.

IV. The Attorney General's Position

7. The Patton Defendants have operated what are commonly known as "payday loan" businesses in Arkansas.

8. The Patton Defendants offered and made short term, high interest loans. Funds were advanced to Arkansas consumers secured by the consumers' personal checks. The amount of each advance was less than the face value of the check presented. The loans were structured as short term (usually 14 to 30 day) single payment transactions with principal and interest due in one payment, although the Defendants commonly allowed the borrowers to "roll over" the loan by paying only the interest due, or by executing a new loan immediately after the payoff on the previous loan. Such activities or transactions may hereafter be identified as a "Payday Lending Transaction(s)," or "Payday Loan(s)."

9. Patton Defendants have charged interest at annual percentage rates ranging from approximately 173% to 868%, depending on the terms of each Payday Lending Transaction.

10. Patton Defendants held licenses issued by the Arkansas State Board of Collections Agencies. The Arkansas State Board of Collections Agencies formerly issued licenses to payday lenders pursuant to the Arkansas Check Cashers Act, ARK. CODE ANN. § 23-52-100, *et seq.*, which was found unconstitutional. See *McGhee v. Arkansas Board of Collection Agencies and American Manufactures Mutual Insurance Company*, No. 08-164 (AR S. Ct. Nov. 6, 2008). At no time did the Check Cashers Act authorize or condone unconscionable lending transactions that violated the Arkansas Constitution and the Deceptive Trade Practices Act. See *Arkansas Board of Collection Agencies and Old Republic Surety Company v. McGhee, et al.*, 372 Ark. 136, __ S.W.3d __ (2008); *Staton v Arkansas Board of Collection Agencies and American Manufactures Mutual Insurance Company*, 372 Ark. 387, __ S.W.3d __, (2008).

11. The Payday Lending Transactions engaged in by the Patton Defendants constitute both usury prohibited by the Arkansas Constitution and statutes and deceptive and unconscionable trade practices prohibited by the Arkansas Deceptive Trade Practices Act. The prohibited Payday Lending Transactions engaged in by the Patton Defendants include, but likely are not limited to, violations of Arkansas Code Ann. §§ 4-88-107(a)(10). More specifically, the Patton Defendants have violated the Deceptive Trade Practices Act by charging and collecting unconscionable rates of interest on short term Payday Lending Transactions. The practice of charging ultra-high usurious rates of interest is unconscionable as a matter of law.

12. The Attorney General specifically denies the assertions of the Patton Defendants set forth in the Patton Defendants' position in this Consent Judgment.

V. The Patton Defendants' Position

13. The legislature passed the Arkansas Check Casher's Act (the "Act") in 1999, and from that date the Arkansas State Board of Collection Agencies regulated and approved the Patton Defendants' contracts, fees, signage and virtually every single aspect of the business operations. That Act has now been declared unconstitutional.

The Patton Defendants were participants in a highly regulated entity that Arkansas expressly authorized them to enter into the transactions and charge the fees now claimed unlawful. The Patton Defendants relied in good faith on the State's actions in continuing to do business pursuant to the requirements of the Act.

Common law, constitutional due process, equitable estoppel, res judicata, collateral estoppel, requirements of exhausting administrative remedies, lack of standing, and the basic precepts of fairness and justice require that the Plaintiff's claim(s) are barred, and the Patton Defendants are not liable for complying with a state statute and state regulations that were presumably valid and that the Patton Defendants were told were valid.

To violate Arkansas's usury law, there must be evidence that the lender intended to take or receive more than legal interest. The Patton Defendants did not have the requisite intent. Their strict compliance with the law, rules and regulations as a highly regulated entity licensed by the Arkansas State Board of Collection Agencies precludes a finding of usurious intent or of the applicability of the Arkansas Deceptive Trade Practices Act. Further, where there is no intentional and deliberate violation of the usury

provisions of the Arkansas Constitution, there can be no violation of the Arkansas Deceptive Trade Practices Act.

The Patton Defendants specifically deny the assertions of the Attorney General set forth in the Attorney General's position in this Consent Judgment.

VI. Relief

14. This Consent Judgment is intended to preclude the Patton Defendants from engaging in any type or form of Payday Lending Transactions in violation of the Arkansas Constitution and current Arkansas law. For the purposes of this injunction, the definition of a payday loan includes, but is not limited to, deferred presentment transactions where a consumer presents a personal check as collateral for the present payment of funds and the lender agrees to hold the check. Both the Attorney General and the Patton Defendants acknowledge that there are other methods and models of payday lending; accordingly, the Patton Defendants shall hereafter be permanently restrained and enjoined from engaging or entering into any type, shape or form of Payday Lending in the State of Arkansas. Specifically, the Patton Defendants are enjoined from charging or collecting any payments on any Payday Lending transactions, or variation of such transaction, in the State of Arkansas where the interest charged is in excess of that allowed by the Arkansas Constitution, Article 19, § 13 and the Arkansas Deceptive Trade Practices Act, ARK. CODE ANN. §§ 4-88-101, *et seq.*

15. More specifically, the Patton Defendants are permanently restrained and enjoined from using any plan, device, model, mechanism, or other sham, to avoid the terms of this Consent Judgment. Prohibited practices include, but are not limited to, internet based lending with residents of the State of Arkansas, regardless of the location

from which the Patton Defendants or their agents may claim they are operating. Nothing in this Consent Order shall be deemed to be an admission, knowledge, or other evidence under Ark. Code Ann. § 4-88-114(c).

16. All outstanding contracts for the Patton Defendants' Payday Lending Transactions which were entered into with residents of the State of Arkansas are hereafter cancelled. Furthermore, the Patton Defendants shall take no action, formal or informal, to attempt to enforce any such obligation to which any Arkansas resident may arguably be subject pursuant to any Payday Lending contracts. Specifically, the Patton Defendants shall take no action to enforce such contracts, nor to collect any sums which might arguably be due pursuant to such contracts. The Patton Defendants shall not contract with any third party debt collectors regarding these Payday Lending Transactions, nor sell any obligations arguably due from these transactions. The Patton Defendants shall make no negative reports to any credit bureau, check clearing house, or other related service with respect to any of these Payday Lending Transactions.

17. On or before November 1, 2009, the Patton Defendants shall pay the sum of \$50,000.00 to the Attorney General. All monies shall be delivered to the Chief Financial Officer of the Attorney General's office and shall be made payable to the Office of the Attorney General. A copy of all checks shall be delivered to Charles Saunders, Assistant Attorney General. All checks may be delivered to Carol Thompson, Chief Financial Officer, Office of the Attorney General, 323 Center Street, Suite 200, Little Rock, AR 72201. On or before February 1, 2010, the Patton Defendants shall pay an additional \$30,000.00 to the Attorney General. On or before November 1, 2010, the Patton Defendants shall pay an additional \$20,000.00 to the Attorney General. These

sums shall be held by the Attorney General and deposited in the Consumer Education and Enforcement Fund and shall be held in trust there to be used by the Attorney General in his discretion to further efforts to investigate and prosecute consumer protection, environmental, public utilities and antitrust matters, and to educate consumers regarding such matters. The sum to be paid by the Patton Defendants was negotiated by the parties based partly upon the Patton Defendants' denial of liability and partly upon the Patton Defendants asserted inability to pay a larger sum. Because the sum is small in comparison with the total potential consumer claims based upon the Constitutional prohibition of usury, the Attorney General has determined that it would be inefficient and futile to attempt to distribute these funds as restitution to affected Arkansas consumers. The cost of identifying and locating such consumers, and then evaluating claims and processing payments would likely consume most of the available funds.

18. In addition to the \$100,000.00 payment, the Patton Defendants agree to be contingently liable for the payment of an additional \$50,000.00. However, the imposition of the additional \$50,000.00 sum will be suspended for a period of five years. The payment of said additional sum shall be contingent upon the following conditions: 1) failure to make the November 1, 2009 payment, the February 1, 2010 payment, or the November 1, 2010 payment in a timely fashion shall result in the imposition of the additional \$50,000 liability; 2) upon a specific finding by this Court that any one of the Patton Defendants has materially breached a substantive term of this agreement within said five year period commencing on the date this Consent Judgment is entered. A violation of either provision shall cause the sum to be immediately due and payable. After the expiration of five years from the entry of this Judgment, this contingent liability

shall expire and the contingent payment of \$50,000.00 shall no longer be collectable by the Attorney General. However, neither the suspension of such payment nor the expiration of such contingency shall prevent the Attorney General from pursuing any and all actions and claims available to the Attorney General for any conduct occurring after the entry of this Consent Judgment, and the injunctive provisions of this Consent Judgment shall remain in effect unless and until modified by this Court upon the petition of either party.

19. This Consent Judgment constitutes the entire agreement of the Attorney General and the Patton Defendants. The undersigned acknowledge that there are no communications or oral understandings contrary, different, or which in any way restrict this Consent Judgment, and that any and all prior agreements or understandings within the subject matter of this Consent Judgment are, upon the effective date of the Consent Judgment, superseded, null and void.

20. This Consent Judgment resolves and releases all civil claims, causes of action, or proceedings which were or could have been asserted by the Attorney General against the Patton Defendants for those practices alleged within its Original Complaint. *This Consent Judgment does not resolve the Attorney General's ongoing claims against Big R Tobacco and David Thompson, the remaining Defendants in this matter.* Nothing within this Consent Judgment, however, precludes the Attorney General from instituting any cause of action against any party not a party to this Consent Judgment. Nor shall this release or in any way limit the authority of the Attorney General to conduct such investigations as he deems advisable or to bring any enforcement action regarding potential violations of law unrelated to its Original Complaint or those occurring after

the date of this Consent Judgment. The Attorney General is empowered to investigate potential violations of this consent judgment as well as to seek enforcement of any and all sections of this Consent Judgment by appropriate petition to this Court.

21. This Consent Judgment resolves the Attorney General's claims under the DTPA and under the Arkansas Constitutional provisions for usury, as set forth in Ark. Const. Art. 19 § 13 and *State ex rel. Bryant v. R & A Inv. Co., Inc.*, 336 Ark. 289, 985 S.W.2d 299 (1999). This Consent Judgment shall not be construed to deprive any person or entity not a signatory hereto of any private right of action of any kind whatsoever. This Consent Judgment does not create, nor shall it be construed as creating, any private right of action for any person or entity not a signatory hereto.

22. Nothing herein shall be construed as the endorsement of or acquiescence in, any trade practices of the Patton Defendants, past, current, or future; and, the Patton Defendants shall make no representations to the contrary.


23. This consent judgment is not an admission of liability on the part of the Patton Defendants, but rather represents the settlement of disputed issues.

24. This Consent Judgment will be construed and enforced under the laws of the State of Arkansas.


VII. Signatories

25. Each undersigned representative of a party certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Judgment and legally bind such parties to its terms.

26. This Consent Judgment is made and entered into by and between the parties hereto and on this 9th day of October, 2009.

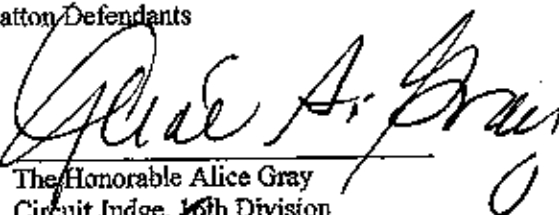

Charles Saunders
Assistant Attorney General


C. Brian Meadors
Attorney for the Patton Defendants


Patrick Patton, individually, and on behalf of all Patton Defendants

SO ORDERED:

Dated: 10/13/09 2009.


The Honorable Alice Gray
Circuit Judge, 10th Division
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PREPARED BY:

Charles Saunders, Ark. Bar No. 03117
Assistant Attorney General
Office of the Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201

Mr. C. Brian Meadors
Pryor, Robertson, Beasley & Smith, PLLC
PO Box 848
Fort Smith, AR 72902-0848