

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
3rd DIVISION

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

PLAINTIFF

vs.

CASE NO. 09-4537-3

DAN HUGHES
D/B/A CASH ADVANCE OF HOPE,
D/B/A HOPE CASH ADVANCE
D/B/A R.R.L.C.

FILED 03/29/2010 16:27:59
Pat O'Brien Pulaski County Clerk
D11

DEFENDANTS

CONSENT JUDGMENT

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.* The Attorney General and the Defendant wish to resolve this action. The parties assert 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, 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 "Defendant" refers to Dan Hughes.

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, and the common law of the State of Arkansas. Venue is proper pursuant to Ark. Code Ann. § 4-88-104, § 4-88-112, and the common law of the State of Arkansas. The Defendant has transacted business in the State of Arkansas.

4. For purposes of this Consent Judgment, the Attorney General and the Defendant 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 Dan Hughes.

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

IV. The Attorney General's Position

7. Defendant has operated what is commonly known as a "payday loan" business in Arkansas and with Arkansas consumers under the names Cash Advance of Hope and R.R.L.C.

8. Defendant offered and made short term, high interest loans. Funds were advanced to Arkansas consumers secured by the consumers' personal check. 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 Defendant 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. Defendant charged interest at annual percentage rates ranging from approximately 173% to 868%, depending on the terms of each Payday Lending Transaction.

10. Prior to March 18, 2008, Dan Hughes held a license issued by the Arkansas State Board of Collections Agencies under the name Hope Cash Advance. 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.* The Arkansas Supreme Court found the Check Cashers act to be unconstitutional. *Mcghee v Arkansas Board of Collection Agencies and American Manufactures Mutual Insurance Company*, No. 08-164 (AR S. Ct. Nov. 6, 2008). In accordance with that and previous rulings, at no time did the Check Cashers Act authorize or condone violations of the Arkansas Constitution or the Deceptive Trade Practices Act.

11. After March 18, 2008, Dan Hughes surrendered the license issued by the Arkansas Board of Collection Agencies, but continued to engage in payday lending transactions with numerous Arkansas consumers. From April of 2008 through the present, Defendant attempted to disguise Arkansas loans as Texas loans under a scheme adopted only after the Arkansas Attorney General sent a cease and desist letter to Dan Hughes on March 18, 2008. Defendant created a scheme whereby Arkansas consumers were directed from Defendant's location in Hope Arkansas to a location in Texarkana, TX. While initial loan proceeds were distributed in Texarkana, TX, loan payments for numerous Arkansas consumers were collected in Hope, AR. Also, expiring loans were routinely renewed in Hope, AR by the collection of "roll-over" fees. A "roll-over" fee is equal to the interest amount of the loan, and does not reduce the principle balance of the loan. The payment of a "roll-over" effectively creates a new lending transaction, extending the life of the loan for another 14 to 30 day period. These renewed loans in Hope, AR are governed by Arkansas law.

12. The Payday Lending Transactions engaged in by the Defendant constitute deceptive and unconscionable trade practices prohibited by the Arkansas Deceptive Trade Practices Act. The prohibited Payday Lending Transactions engaged in by the Defendant include, but likely are not limited to, violations of Arkansas Code Ann. §§ 4-88-107(a)(1), 4-88-107(a)(8), and 4-88-107(a)(10). More specifically, the Defendant has 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.

13. The Attorney General specifically denies the assertions of the Defendant set forth in the Defendant's position in this Consent Judgment.

V. THE DEFENDANTS' POSITION

14. Dan Huhges denies that he has violated any laws of the State of Arkansas as stated in the Attorney General's position. Specifically, Mr. Hughes was licensed and regulated pursuant to the Arkansas Check Cashers Act, Ark. Code Ann. §23-52-100, *et seq.* At all times during his operation he complied with the rules and regulations of the Arkansas Check Cashers Act, and the fact that this act was subsequently found unconstitutional on November 6, 2008 in no way affects his actions prior to that date. During the period of his operation, he charged only those fees specifically authorized by the Arkansas State Board of Collection Agencies. By entering into this Consent Judgment, all Mr. Hughes denies any and all responsibility and liability to the State of Arkansas for any acts which he committed under the Arkansas Check Cashers Act. The fact that Mr. Hughes is entering into this Consent Judgment is not to be considered any admission of liability but rather an agreement on his part to resolve this litigation.

VI. Relief

15. This Consent Judgment is intended to preclude the Defendant from engaging in any type or form of Payday Lending Transactions in violation of Arkansas law. Accordingly, Dan Huhges shall hereafter be permanently restrained and enjoined from engaging or entering into any type, shape or form of Payday Lending with any Arkansas consumer. Specifically, he is enjoined from charging or collecting any payments on any Payday Lending transactions, or variation of such transaction, with any Arkansas consumer 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.*

16. Defendant is 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, loans with Arkansas consumers originating from Texas or internet based lending with residents of the State of Arkansas, regardless of the location from which the Defendant or his agents may claim they are operating.

17. All outstanding contracts for Defendant's Payday Lending Transactions, which were entered into with residents of the State of Arkansas are hereafter cancelled. Any checks held by the Defendant are hereinafter cancelled and Defendant will undertake no efforts to collect on these instruments. Furthermore, the Defendant shall take no action, formal or informal, to attempt to enforce any such obligation against any Arkansas consumer pursuant to any Payday Lending contracts or the check itself. Specifically, the Defendant shall take no action to enforce such contracts, nor to collect any sums which might arguably be due pursuant to such contracts. Defendant shall not contract with any third party debt collectors regarding these Payday Lending Transactions, nor sell, or transfer, any obligations arguably due based upon these transactions.

Defendant 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.

18. Dan Hughes shall, collectively, pay the sum of \$5,000.00 to the Attorney General. Defendant will pay this sum at the rate of \$500.00 per month with the first payment of \$500.00 being due upon the execution of this agreement, and all remaining payments to be paid by the 10th day of each subsequent month, until paid. Upon payment of the full sum of \$5,000.00 by the Defendant, the Attorney General will execute a Satisfaction of Judgment as to the \$5,000.00. Any Satisfaction of Judgment shall not affect the suspended penalty outlined in paragraph 19. 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 Office of the Attorney General, 323 Center Street, Suite 200, Little Rock, AR 72201. 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.

19. In addition to the \$5,000.00 payment, Dan Hughes agrees to be contingently liable for the payment of an additional \$20,000.00. However, the imposition of the \$20,000.00 sum will be suspended. The payment of said additional sum shall be contingent upon, and shall be due and payable only upon the following conditions: if the Defendant fails to pay the full sum of \$5,000.00 or a specific finding by this Court that Dan Hughes has materially breached a substantive term of this agreement. However, the suspension of such payment shall not 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.

20. If the Defendant fails to pay any of the \$500.00 payments due by the 10th day of each month or if the Defendant files for Bankruptcy protection prior to the full payment of \$5,000.00, then the full amount of \$25,000.00 will immediately become due and payable.

21. This Consent Judgment constitutes the entire agreement of the parties. 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.

22. 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 Dan Hughes for those practices alleged within its Original Complaint. Nothing within this Consent Judgment, however, precludes the Attorney General from instituting any cause of action against any party not a signatory 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 alleged violations of law unrelated to its Original Complaint or occurring after the date of this Consent Judgment. Also, the Attorney General is empowered to seek enforcement of any and all sections of this Consent Judgment by appropriate action with this Court.

23. Nothing in this Consent Judgment shall be construed to deprive any person or entity not a signatory hereto of any private right of action of any kind whatsoever, nor shall this

Consent Judgment be construed to create any private right of action for any person or entity not a signatory hereto.

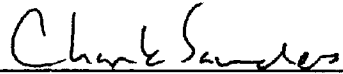
24. Nothing herein shall be construed as the endorsement of, or acquiescence in, any trade practices of the Defendant, past, current, or future; and, the Defendant shall make no representations to the contrary.

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

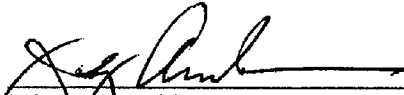
VII. Signatories

26. 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.

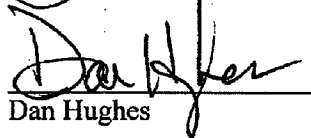
27. This Consent Judgment is made and entered into by and between the parties hereto and on this 10 day of March, 2010.



Charles Saunders
Assistant Attorney General



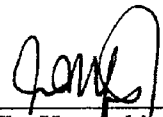
Johnny Arnold
Attorney for the Defendant



Dan Hughes

SO ORDERED:

Dated: 3-29, 2010.



The Honorable Jay Moody
Circuit Judge, 3rd Division

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. Johnny Arnold
Attorney-at-law
2410 Briar Rose, Ste B
Texarkana, AR 71854**