IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
FIRST DIVISION

DENNIS BAILEY,
GARLAND COUNTY CASH ADVANCE, INC.
BEEBE FAST CASH, INC.,
BRYANT FAST CASH, INC.,
HARRISON FAST CASH, INC.
LITTLE ROCK FAST CASH, INC.,
MOUNTAIN HOME FAST CASH, INC.,
SEARCY FAST CASH, INC.,
SHERIDAN FAST CASH, INC.,
WALNUT RIDGE FAST CASH, INC.,
BAILEY'S FAST CASH, INC.,
FAST CASH CHECK CASHERS, INC., AND
CENTRAL ARKANSAS CHECK CASHING, INC. **PLAINTIFFS**

VS. **CASE NUMBER: CV 2006-7387**

ARKANSAS STATE BOARD OF
COLLECTION AGENCIES **DEFENDANT**

ORDER

Before the Court are the Plaintiffs, by and through their attorney, Paul Johnson, and for their Petition for Judicial Review Motion to Stay Enforcement of Agency Decisions, pursuant to Ark. Code Ann § 25-15-212, seeking the Court's review of the Arkansas State Board of Collection Agencies' ("the Board") decision finding that Plaintiffs had willfully engaged in the check cashing business in violation of the Arkansas Check-Cashers Act, codified under Ark. Code Ann. § 23-52-101, *et seq.*, and assessing monetary penalties. Based upon a review of the petition, case file, and all other matters and things pertaining thereto, this Court doth find, order, and adjudge:

1. On June 28, 2006, the Arkansas State Board of Collection Agencies held an administrative hearing to determine whether Plaintiffs were operating their businesses in violation of the Arkansas Check-Cashers Act. Following the hearing, the Board

determined that Plaintiffs had violated the Arkansas Check-Cashers Act and ordered the Plaintiffs to immediately cease all operations. The Board also assessed fines against Plaintiffs in the amounts of $562,000.00, $1,000.00 for each check cashing transaction; $725,250.00, $250.00 for each deferred presentation transaction; $20,200.00 for the illegal operation of the Pine Bluff store; and $10,000 in attorney's fees.

2. On July 10, 2006, Plaintiffs filed a Petition for Judicial Review Motion to Stay Enforcement of Agency Decisions arguing that the actions of the Board were in violation of the constitutional and statutory provisions; were in excess of the Board's statutory authority; made upon unlawful procedure; were affected by other error for law; were not supported by substantial evidence of record; and were arbitrary, capricious, or characterized by abuse of discretion.

3. The Arkansas Administrative Procedures Act provides that any person who considers himself injured by a final agency action is entitled to judicial review of that action. Ark. Code Ann. § 25-15-212(a). However, a court does not conduct a *de novo* review of the record, rather the scope of a court's review is limited to ascertaining whether the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are in violation of the constitutional and statutory provisions; are in excess of the Board's statutory authority; made upon unlawful procedure; are affected by other error for law; are not supported by substantial evidence of record; and are arbitrary, capricious, or characterized by abuse of discretion. Ark. Code Ann. § 25-15-212(h). A court must rely on the findings of an administrative agency because the agency is better equipped by specialization, insight and experience in matters referred to them. *Arkansas State Highway & Transp. Dep't v.*

Kidder, 326 Ark. 595, 933 S.W.2d 794 (1996). A court will not set aside an administrative agency's decision unless it cannot conscientiously find from a review of the entire record that the evidence supporting the decision is substantial. *Id.*

4. One of the Plaintiffs' major contentions with the Board's decision is that there was not sworn testimony taken at the hearing and that the Board's findings of fact and conclusions of law were based solely on the argument of Peggy Matson, the executive director of the Arkansas State Board of Collection Agencies.

5. The record reflects that at the hearing, the Board accepted, as part of the evidence, the written testimony of Peggy Matson as Exhibit S2. Matson stated at the hearing that Exhibit S2 was a narrative of what her testimony would be had she gone through her first exhibit, a four or five inch stack of documents, page by page, and that she was "going to hit the high points just to make sure [the Board understood] what happened in each case." Further, the record reflects that in addition to Matson's written testimony, additional oral testimony was taken from Matson concerning the allegations against Plaintiffs.

6. The supreme court has held that adherence to the formal rules of evidence is not required in hearings before administrative bodies. Hearsay testimony is admissible and hearsay alone can constitute substantial evidence. *See Smith v. Everett, Director*, 276 Ark. 430, 637 S.W.2d 537 (1982); *See also, Farmer v. Everett, Director*, 8 Ark. App. 23, 648 S.W.2d 513 (1983). In *Smith v. Everett*, the petitioner argued that the Board of Review's denial of benefits was not supported by substantial evidence because the only direct evidence proving that petitioner was dishonest was by affidavit. 276 Ark. 430, 637 S.W.2d 537 (1982). The Arkansas Supreme Court stated in *Smith v. Everett*, relying on

its holding in *Bockman v. Arkansas State Medical Board*, 229 Ark. 143, 313 S.W.2d 826 (1958) and referencing the U.S. Supreme Court case, *Richardson v. Perales*, 402 U.S. 389 (1971), that in *Bockman* it had held that although the evidence consisted of affidavits and certified copies of other decisions, it was nevertheless competent and constituted substantial evidence to support the State Medical Board's findings. *Id.* Ark. at 431, S.W.2d at 538.

7. In addition, Arkansas Code Annotated Section 25-13-213(4) provides in part that:

> Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted of record. When a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.

Therefore, contrary to Plaintiff's argument, sworn testimony is not required in an administrative hearing to support an agency's findings.

8. Accordingly, based upon a review of the record, the Court finds that the hearing before the Board was conducted in conformity with the Administrative Procedure Act, and that the Board's decision was supported by substantial evidence and not arbitrary, capricious, or characterized by abuse of discretion.

9. The Board's decision is affirmed.

IT IS SO ORDERED this 13th of April, 2007.

Marion A. Humphrey

MARION A. HUMPHREY
CIRCUIT JUDGE