



Markets

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Ark. Court Rules Against Payday Lenders

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LITTLE ROCK — For the second time in two months, Arkansas' highest court has ruled a customer can collect the surety bond from a payday lender accused of violating the state Constitution by charging more than 17 percent a year to borrow money.

An attorney who has challenged the state's Check Cashers Act says the ruling makes it virtually impossible for payday lenders to continue operating in Arkansas.

Justices on Thursday reversed and dismissed a Pulaski County Circuit Court's ruling that Emma Staton was not entitled to \$200,000 in surety bonds issued by American Manufacturers Mutual Insurance Company. The bonds were issued to Kentucky Cash Connection, which operated the Americash payday lending firms in Arkansas.

Staton sued the payday lenders in 2001 and accused the company of violating state law by charging more than 17 percent interest. A judge ruled in her favor and awarded Staton \$834,000 and \$50,000 for attorneys' fees.

Unable to collect the judgment, Staton sued American, which had posted four \$50,000 surety bonds for the payday lenders, but a Pulaski County judge ruled that Staton's loss was not covered by the bonds. She appealed to the Supreme Court, but justices said she did not exhaust her administrative remedies by appealing to the state Board of Collection Agencies.

The board in 2005 found that Staton did not find any evidence that Americash violated the Check Casher Act, so she was not entitled to the bond money. A Pulaski County judge upheld the board's ruling in 2006.

In a unanimous ruling, justices said that the 2001 ruling showed that Americash violated the board's own regulations barring deceptive trade practices in addition to the state Constitution prohibiting charging high interest rates.

"To require the consent judgment to state such a specific finding is untenable, particularly when the board is presumed to be aware of its own regulations, including Regulation XXI that prohibits check cashers from engaging in deceptive trade practices," Justice Donald L. Corbin wrote in the court's ruling. "Accordingly, the board's ruling that it could not make demand on the bonds because Staton presented no evidence of a violation of the act or a board rule or regulation was arbitrary, capricious and an abuse of discretion."

The decision was nearly identical to a Supreme Court ruling last month affirming a lower court's order that a Russellville check casher forfeit a \$50,000 surety bond it had with Old Republic Surety Company Inc. to operate in the state. The high court also ordered the state Board of Collection Agencies to rule in accordance with its opinion.

Arkadelphia attorney Todd Turner, who represented customers in both cases, said the decision makes it impossible for the state to justify allowing payday lenders to operate.

"I am curious to see how the state agency is going to continue to license companies when it's

clear the check cashers' conduct is unfair and violates the (board's) own rules," Turner said.

Peggy Matson, executive director of the state Board of Collection Agencies, said the board considers each case on its merits.

"The board considers each case as they come in and the board applies its rules and regulations," Matson said. "What they truly believe to be the appropriate manner is all they can do is continue to do that in applying the Check Cashers Act."

American Manufacturers Mutual Insurance Company is a unit of Kemper Insurance Companies. Linda Kingman, a spokeswoman for Kemper, declined to comment on the ruling.

Turner is handling another case, also in Pulaski County, that the rulings could affect. Pulaski County Judge Barry Sims has ruled the 1999 Check Cashers Act was constitutional, but the Supreme Court sent the case back to Sims without making a ruling on its merits.

Sims last year again ruled the law constitutional, and Turner has appealed that decision to the Supreme Court.

The Arkansas Check Cashers Act says a fee paid for holding a check written before the date it is to be cashed "shall not be deemed interest." Typically, someone wanting a payday loan goes to a check-cashing company and writes a check for a certain amount, and the company agrees not to cash the check for a specified time _ often waiting until the check-writer's payday, when money can be deposited to cover the amount of the check.

Through a payday loan in Arkansas, a customer writing a check for \$400, for example, typically would receive \$350. The lender would keep the check for about two weeks without cashing it and, thereby, allowing the customer time to buy back the check.

The \$50 charge on the \$350 loan for 14 days equates to 371 percent interest, well above Arkansas' usury limit of 17 percent.

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