

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
NINTH DIVISION

STATE OF ARKANSAS, *ex rel.*
LESLIE RUTLEDGE, ATTORNEY GENERAL

PLAINTIFF

v.

CASE NO. 60CV-19-5368

DENNIS BAILEY, BAILEY'S
SUPERSTORE, INC., D/B/A BAILEY'S
BOTTLESHOPPE, BROOKS BAILEY
ENTERPRISES, INC., D/B/A BAILEY'S
ON MAIN, D/B/A BAILEY'S PAWN
AND GUN, AND D/B/A NEWSMART
LIQUOR, AND JOHN DOES 1-5

DEFENDANTS

CONSENT JUDGMENT

The State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General ("the State"), initiated this action to redress and restrain alleged violations of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §§ 4-88-101, *et seq* and the Arkansas Constitution, Art. 19 sec. 13.

The Attorney General and Dennis Bailey ("Bailey"), Bailey's Superstore, Inc., and Brooks Bailey's Enterprises, Inc. ("Business Defendants") wish to resolve this action. The parties recognize that this Consent Judgment has been negotiated in good faith and that this 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 (“ADTPA”), § 4-88-101 *et seq.* the Arkansas Hot Check law, §5-37-301, *et seq.*, §16-13-701 *et seq.* (Enforcement of Fines) §16-90-1401 *et seq.* (Comprehensive Criminal Record Sealing Act 1460 of 2013), the Arkansas Constitution, Art. 19 §13, § 17-56-101 *et seq.*, and the Arkansas Rules of Civil and Criminal Procedure.

2. Definitions:

- a. “ACIC” means the Arkansas Crime Information Center repository and database of criminal records. See Ark. Code Ann. §§ 12-12-202, 12-12-908, 12-12-1001, and 1212-1201.
- b. “Affected Consumer” means any consumer whose transaction of \$100 or more represented security for a loan that Defendants submitted to law enforcement for collection or prosecution during the Statute of Limitations.
- c. “Bailey,” unless specifically stated otherwise, means Dennis Bailey.
- d. “Business Defendants” means Bailey’s Superstore, Inc., d/b/a Bailey’s Bottleshoppe, Brooks Bailey Enterprises, Inc., d/b/a Bailey’s On Main, and d/b/a Bailey’s Pawn and Gun, and d/b/a Newsmart Liquor.
- e. “Conspicuously State” means that regardless of the medium in which it is made, it is readily understandable and presented in such size, color, contrast, and duration, as compared to the other information with

which it is presented, that it is readily apparent to the person to whom it is disclosed.

- f. "Eligible Affected Consumer" means any consumer whose transaction of \$100 or more represented security for a loan that Defendants submitted to law enforcement for collection or prosecution during the Statute of Limitations and who can be identified as the person who executed the check to the reasonable certainty of the Arkansas Attorney General.
- g. "Hot Check Criminal Conviction" means an Affected Consumer's guilty plea, no contest, conditional guilty plea, suspended sentence, or conviction.
- h. "Hot Check Fees" means fees paid by an Affected Consumer to the prosecuting attorney's office based upon the Arkansas Hot Check law, §5-37-301.
- i. "Hot Check Warrants" means any outstanding warrant issued for an Affected Consumer in violation of the Arkansas Hot Check law, §5-37-301, or for any outstanding fines or fees related thereto.
- j. "License Suspension or Revocation" means any Affected Consumer's Arkansas driver's license suspended or revoked based on an unpaid court or probation fine or fee for the Arkansas Hot Check law, §5-37-301.

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- k. "Paid Merchant Fees" means fees paid by an Affected Consumer to the prosecuting attorney in connection with the Arkansas Hot Check law, §§ 5-37-301, 21-6-411.
- l. "Paid Criminal Fines and Fees" means any fees or fines charged paid by an Affected Consumer upon a guilty plea, no contest, conditional guilty plea, suspended sentence or, a conviction for violation of the Arkansas Hot Check law, §§ 5-37-301 21-6-411.
- m. "Prosecuting Attorney" or "Prosecuting Attorney's Office" means the 13th Judicial District Prosecuting Attorney.
- n. "Statute of Limitations" means the period set out in Ark. Code Ann. § 4-88-115.

II. Jurisdiction

3. The Attorney General brought this enforcement action pursuant to her authority found in Ark. Code Ann. § 25-16-701 *et seq.*, §§ 4-88-105, 4-88-111, and the Arkansas Constitution. 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.

4. Venue is proper pursuant to Ark. Code Ann. §§ 4-88-104, 4-88-112, 16-60-104, and the common law of the State of Arkansas.

5. For purposes of this Consent Judgment, the 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 by the parties hereto to enforce the terms of this Consent Judgment. Defendants reserve the right to object to jurisdiction or venue in any other subsequent action filed against them by the Attorney General or in any other matter filed by any third party.

III. Parties

6. This Consent Judgment applies to, and is binding upon, the Attorney General and the Defendants.

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

8. All parties enter into this Consent Judgment for the purpose of compromising and resolving disputed claims within the meaning of Rule 408 of the Federal and Arkansas Rules of Evidence. It is expressly understood that nothing contained in this Consent Judgment shall be construed as an admission by Defendants of any liability, wrongdoing, or factual or legal issue and this Consent Judgment may not be used as evidence of liability. Defendants do not waive any defenses that they may raise elsewhere in other litigation.

IV. The Attorney General's Position

9. Defendants engaged in violations of the Arkansas Deceptive Trade Practices Act by providing usurious loans to consumers in exchange for signed post-dated checks. When the loan was due, the check was deposited into one of the Defendants' bank accounts. If a bank returned a check for insufficient funds in a

consumer's account or a closed account, Defendants then presented the check and a Hot Check affidavit to the prosecuting attorney for enforcement in contravention of the statute. Once submitted, the prosecuting attorney's office mailed a courtesy notice of refusal of payment to the consumer and demands payment within ten (10) days. All consumers whose loan checks were submitted to the prosecuting attorney paid prosecuting attorney's fees of \$30 to \$90 and bank fees to avoid prosecution. If consumers did not pay the prosecutor attorney within the time allotted, the prosecuting attorney's office issued a warrant for the consumer's arrest. Consumers who were charged, arrested, and convicted paid additional court fines, fees, and other costs. In some instances, consumers' driver's licenses were suspended for nonpayment of fines or other court or probation fees. Upon investigation by the Attorney General, it appears that Defendants have abused the courts and law enforcement as a means to collect on debts that are void as to principal and interest under Arkansas's Constitutional usury cap. Over the last five years, Defendants have turned over approximately 464 checks for round dollar amounts of \$100 or more that the State suspects were security for usurious loans or check-cashing. The Arkansas Attorney General's Office's investigation included a review of the Hot Check Coordinator records of the Thirteenth Judicial District and the court records of Dallas County Circuit and District Court. Defendants' conduct was unlawful and relief must be provided to all Affected Consumers whose checks were wrongfully submitted to law enforcement for collection and prosecution for misdemeanor and felony criminal charges.

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V. The Defendants' Position

10. Defendants deny the legal and factual assertions contained in Section IV above, entitled "The Attorney General's Position."

11. This Consent Judgment does not constitute an admission by the Defendants of any fact or the existence or application of any law, regulation, or legal principle.

12. Defendants disclaim any liability or wrongdoing.

VI. Relief

A. Injunctive Provisions

13. Defendants are permanently restrained and enjoined from:

- a. In lieu of civil penalties, Defendants are barred from using the Prosecuting Attorney's Office or any law enforcement official to collect on any transaction covered by the Hot Check law for five years after the date this Consent Judgment is signed.
- b. Holding any check, debit or credit card, or EBT card as a promissory note or security for the payment of any money, loan, or debt.
- c. Submitting any transaction to any prosecuting attorney's office for collection or law enforcement action that violates Arkansas law.
- d. Holding any state-issued driver's license or identification card as security for any debt.
- e. Allowing any person employed by or affiliated with Defendants to violate these provisions.

- f. Retaliating against any person who reports that their debt to Defendants was wrongfully submitted to law enforcement for collection or any person who provided information or cooperated with the State in its investigation and prosecution of this Complaint.
- g. Threatening consumers with taking any of the above actions.
- h. Dennis Bailey must personally sign all future Hot Check affidavits and have each notarized by a notary not affiliated with him or Business Defendants.
- i. Defendants shall not represent in any manner that this Consent Judgment endorses any of Defendants' check-cashing business practices.
- j. Defendants shall only use legal means and civil processes to collect upon any debt.

14. Defendants shall cooperate and assist the State to resolve all wrongful arrests or convictions of Affected Consumers, reinstatement of their licenses, refunds of fees and fines, and expungement of any criminal records.

B. Monetary Provisions

15. **Restitution.** Within thirty days of the entry of this Consent Judgment, Defendants shall make a payment of an amount of \$50,000 to be provided as restitution to Eligible Affected Consumers for Prosecuting Attorney Fees, Merchant Fees, and Criminal Fines and Fees. The Attorney General's Office shall provide restitution to the Eligible Affected Consumers directly, through the

Prosecuting Attorney, or 13th Judicial District Public Defender's Office or other appropriate entity. The persons identified as Eligible Affected Consumers, as well as any sums determine to be paid to each Eligible Affected Consumer, shall be within the discretion of the Arkansas Attorney General and based upon credible evidence. Any sums payable to an Eligible Affected Consumer but not delivered within 365 days shall go to the State Auditor as unclaimed property.

16. Defendants shall withdraw all outstanding Hot Check Affidavits submitted to the Hot Check Coordinator for \$100 or more during the Statute of Limitation, which is estimated to be valued at approximately \$125,000.

17. Any restitution amount not payable to an Eligible Affected Consumer shall be poured over to the Consumer Education and Enforcement Fund to be used in accordance with Act 763 of the 2013 Arkansas General Assembly.

18. Suspended Penalty. Defendants are assessed civil penalties under Ark. Code Ann. § 4-88-113(a)(3) in the amount of \$250,000.00. Violations of the ADTPA are punishable by up to a \$10,000 fine per violation. This Civil Penalty is SUSPENDED. Should Defendants violate any portion of this Consent Judgment, the suspended penalty shall become immediately due and payable. The payment shall be delivered to Chief Fiscal Officer, Arkansas Attorney General's Office, 323 Center Street, Suite 200, Little Rock, Arkansas 72201, and shall bear the name of the Defendants upon the face of the check. A copy of the payment shall be contemporaneously delivered to the Attorney General's counsel of record in this matter.

VII. Miscellaneous Provisions

19. This Consent Judgment constitutes the entire agreement of the Attorney General and the Defendants. The undersigned acknowledges that there are no communications or oral understandings contrary, different, or which in any way restrict this Consent Judgment and that 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 State of Arkansas against Defendants relating to those practices alleged within its Complaint. This release shall not in any way limit the authority of the Attorney General to conduct such investigations as she deems advisable or to bring any enforcement action regarding alleged violations of law unrelated to her Complaint or occurring after the date of this Consent Judgment. Also, the Attorney General is empowered to seek enforcement of all sections of this Consent Judgment by appropriate petition to this Court.

21. 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. This Consent Judgment does not constitute an admission by the Defendants of any fact or the existence or application of any law, regulation, or legal principle.

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

23. Nothing herein shall be construed as the admission by the Defendants of any fact or the existence or application of any law, regulation, or legal principle applicable to the Defendants; and, the Attorney General shall make no representations to the contrary.

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

VIII. SIGNATORIES

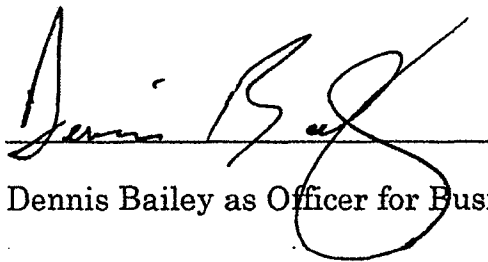
25. Each undersigned representative of a party certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Judgment and legally bind such parties to its terms.

26. This Consent Judgment is made and entered into by and between the parties hereto on this 8th day of July 2020.

FOR THE ATTORNEY GENERAL:

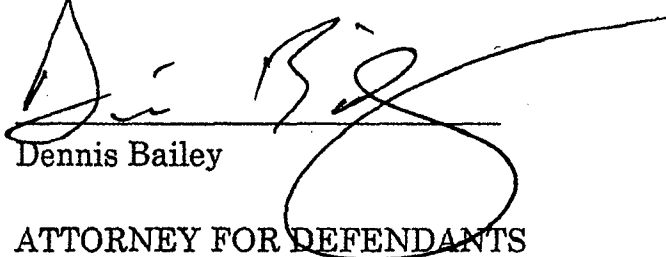

Kate Donovan
Senior Assistant Attorney General

FOR THE BUSINESS DEFENDANTS:



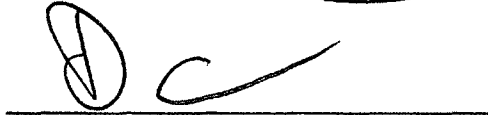
Dennis Bailey as Officer for Business Defendants

FOR DENNIS BAILEY



Dennis Bailey

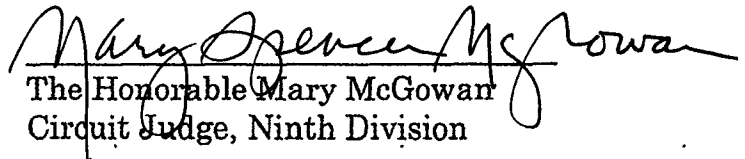
ATTORNEY FOR DEFENDANTS



Danny Crabtree

IT IS SO ORDERED:

Dated: July 8, 2020


The Honorable Mary McGowan
Circuit Judge, Ninth Division

Prepared By:

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Judge McGowan
Date 7/8/20 Div 9th
Jury Trial
Bench Trial
Non-Trial