

**IN THE CIRCUIT COURT OF BAXTER COUNTY, ARKANSAS  
CIVIL DIVISION**

**EQUITY EVALUATIONS, INC.**

**PLAINTIFF**

**VS.**

**NO. CV-2005-354-1**

**ASSESSMENT COORDINATION DEPARTMENT  
A DIVISION OF THE STATE OF ARKANSAS**

**DEFENDANT**

**ORDER**

Now on this 2<sup>nd</sup> day of August, 2006, this matter came on for hearing with the Plaintiff appearing by counsel and the Defendant appearing by counsel as well, and after argument and considering the record and the briefs in this case the Court finds and rules as follows:

This case is one where there was a determination made by the Director of the Arkansas Assessment Coordination Department on November 18, 2005, which has been appealed for review to this court under the Arkansas Administrative Procedure Act ACA 25-15-201 et seq. This Court has jurisdiction over the parties and subject matter hereof.

At the hearing, Mr. Cooper stated that the Petitioner's only contention is made under ACA 26-26-1907. He said that the difference in the interpretation of that statute is what brings us here.<sup>1</sup>

It was argued that Equity Evaluations, Inc., had the contract for assessing real property in Baxter County for the years 2003, 2004, and 2005 and some previous one also. On October 11, 2005, a letter was sent to Mr. Ed Riffle, who is said to be president and sole stock holder of the Petitioner. The letter from the Defendant, in effect terminates, the contract between Baxter County and Plaintiff.

---

<sup>1</sup> The petition filed herein alleges that the Plaintiff's contract to do the assessment of Baxter County was wrongfully terminated by Defendant who is, it is asserted, not in privity with the other party, Baxter County. However, the Plaintiff has not made Baxter County, Arkansas a party to this case. The statute, ACA 26-26-1907(a)(2)(b), gives the Director of Defendant the right to terminate contracts such as those involved herein.

A previous September 15, 2005, letter had raised some issues about failure to meet assessment standards. Mr. Cooper argued that, under the statute subsection 2(a)1 and (2)(a)(2), upon a finding by the department that the proper appraisal procedures are not being followed a notice must be given in writing that Plaintiff has 30 days within which to bring the re-appraisal into compliance. The letter contains no 30 days to cure language. A decision was made to require corrective work to be done by a new contractor. A hearing was held before the Director of the Assessment Coordination Department and the termination was upheld.

Plaintiff claimed that ACA 26-26-1907 (2)(a)(1) and (2) have been ignored. The Defendant responded that the director had the authority under subsection b and ACD Rule 3.31 to terminate. Plaintiff also argued that the action of the Defendant was arbitrary, capricious and that it discriminated against Equity Valuations, failing to comply with statute. Plaintiff asked for a reversal of the decision of the Assessment Coordination Division.

Ms. Pryor argued that the Administrative Procedures Act limits arguments to that which is in the record from the administrative agency, which includes among other things, the transcript of the hearing of October 31, 2005. Plaintiff appeared and participated in the hearing. The record was left open for more evidence, but no more evidence was presented. The argument which was asserted at the hearing before this court as a basis of reversing what was done is based upon the 30 days to cure provision referred to above. But, Defendant's counsel said that argument was not made before the director or within the time allowed after the hearing for submission of more evidence. Counsel claimed that it, therefore, is not a part of the record here. The law is clear that matters not raised in the hearing can not be raised later.<sup>2</sup> It was argued that the statute, ACA 26-26-

---

<sup>2</sup> The Court in the case of Holloway v. Arkansas State Board, 79 Ark. App. 200, 86 S.W.3d 391 (2002) held: "In Arkansas Health Services Agency v. Desiderata, Inc., 331 Ark. 144, 958 S.W.2d 7 (1998), the supreme court adopted the Hamilton rule. The Hamilton rule

1907(c)(2), regarding the 30 days to cure period has specific application only to distribution of funds under the property reappraisal fund. Mr. Cooper responded arguing that the statute was raised earlier. He read from the decision of the Director which included the following:

"1. Contrary to the contention of Equity, the Assessment Coordination Department (ACD) has the power and authority to terminate the contract for the reappraisal of property in Baxter County (Baxter) between Equity and Baxter. Arkansas Code Annotated 26-26-1907 (2) (b)." *[this reference apparently omits the prefix "(a)" from (a)(2)(b) or if the reference was to (c)(2)(B) then it was in error in two aspects: one being the omission of "(c)" and the other being use of "(b)" when intending to use "(B)" which letters in this subsection refer to two entirely different paragraphs.]*

He argued that the apparent reference (taken here to be more consistent with (a)(2)(b)) is effective to raise section (c)(2)(a)(i) & (ii). However, the Court finds no reference to the 30 days to cure argument under (c)(2)(a)(i) & (ii) having been raised before the Director at the hearing and the apparent reference to subsection [(a)] (2)(b), which seems to be clearly independent of subsection (c)(2)(a), does not in the Court's understanding fairly say that the Plaintiff has raised (c)(2)(a)(i) & (ii) as a basis for relief at the hearing.

As noted, Mr. Riffel appeared at the hearing, pro se, and, when asked what his position was, he listed a number of points<sup>3</sup>. Among them was his claim that he was entitled to more time to cure

---

requires even constitutional issues to be raised at the Administrative Law Judge or Commission level because such issues often require an exhaustive analysis that is best accomplished by an adversary proceeding, which can only be done at the hearing level. *Hamilton v. Jeffrey Stone Co.*, 6 Ark. App. 333, 641 S.W.2d 723 (1982)."

<sup>3</sup> Those points included: (1) ACA 26-26-304(f); (2) Rule 4.07-10, paragraph 10 to the effect that if the director determines that the private appraisal firm has failed significantly to abide by the standards and does not immediately agree to correct the problems, then the ACD shall not approve any future plans and so on. Mr. Riffel said he had told them he wanted to get to work to correct these problems pursuant to Rule 4.07-10; (3) that ACD cancelled a contract in which it was not a party or in privity with any party in violation of law; (4) that due process was violated by having the appeal heard by the officer who had already determined the matter [However, the hearing held was not an appeal, but, by the terms of the statute, a hearing]; (5) the Ratio Study was objected to as flawed by being based upon invalid or un-validated sales. (6) that

under Rule 4.07-10, paragraph 10. That paragraph and the one preceding it speak of a hearing and corrective action being required before future plans involving the company will be approved. Mr. Riffel also said he had told ACD he wanted to get to work to correct these problems pursuant to Rule 4.07-10 and that Plaintiff was not offered sufficient time to go over the sales between the original letter and the final letter to try to go back and validate these sales. No reference to the statute, ACA 26-26-1907 (c) (2)(a)(I), was made. ACA 26-26-1907(a)(2)(b) says:

“For cause and after an opportunity for hearing, the Director of the Assessment Coordination Department may suspend or terminate the contract of any appraisal firm or county.” *[The first paragraph of ACD Rule 3.31 is similar.]*

Under this section of the statute, when cause is found, there is no requirement of a 30 day period to remedy, but a plain grant of power to terminate. The Court in the case of Chandler v. Perry-Casa Public Schools, 286 Ark. 170, 690 S.W.2d 349 (1985) said:

“The first rule to be applied in statutory construction is to give the words in the statute their usual and ordinary meaning. If there is no ambiguity we give a statute effect just as it reads. Mourot, Freeman and Bailey v. Arkansas Board of Dispensing Opticians, 285 Ark. 128, 685 S.W.2d 502 (1985).”

When the statute is viewed as a whole, it is apparent that the unqualified grant of power set out in subsection (b) is not conditioned upon those things authorized to be done under subsection (c) regarding distribution of funds, having previously been carried out nor it is dependent upon the provisions of the provisions of Rule 4.07-10. Subsection (c) says:

“(c)(1) The fund proceeds shall be distributed monthly, except when there is a determination of the assessment Coordination Department that proper reappraisal procedures established by the department are not being followed.

(2)(A)(i) Upon a finding by the department that proper reappraisal procedures are not being followed, the county assessor or contractor shall be notified that the reappraisal is out of compliance with accepted guidelines as established in section 26-26-1901 et seq. And rules enacted pursuant thereto.

---

Plaintiff was not offered sufficient time to go over the sales between the original letter of September and the final letter of September 15 to try to go back and validate these sales.

(ii) The Department shall notify the county assessor or contractor in writing that the assessor or contractor has thirty (30) days in which to bring the reappraisal into compliance.

(B) If there is a further finding that proper reappraisal procedures are not being followed, the contract shall be promptly terminated and the department shall negotiate another contract and management plan for the completion of the reappraisal project.”

If the department chose to proceed under statutory subsection (c) “[u]pon a finding by the department that proper appraisal procedures are not being followed, ...” then the notice to cure is to be given and Rule 4.07-10 may have application. However, the Courts sees a difference between that and the termination that the statute authorizes for cause without reservation, except for a hearing, in the other section. In either event, the hearing was held. Nowhere does the act affirmatively state that the contract may not be terminated under (a)(2)(b) unless the 30 day notice to cure was given. The Plaintiff’s suggested interpretation of subsection (c) would render the language contained in subsection (b) meaningless and unnecessary. The Court is to interpret statutes in such a way as to give meaning to all its parts.<sup>4</sup>

In Plaintiff’s brief it was argued that his substantial rights have been violated and that the decision violates all 6 of the grounds stated in ACA 25-15-212(h).<sup>5</sup> While any of these arguments not made at the hearing in October of 2005, appear to have been waived, still, such arguments, in any event, at least partly because of the statute, do not appear to be supported by the facts in the

---

<sup>4</sup> The Court in Hegler v. State, 286 Ark. 215, 691 S.W.2d 129 (1985) said: “Another rule of construction is that courts must construe a statute in such a manner, if possible, that all parts of it will be effective. Town of Wrightsville v. Walton, 255 Ark. 523, 501 S.W.2d 241 (1973). A statute should be construed just as it reads. City of North Little Rock v. Montgomery, 261 Ark. 16, 546 S.W.2d 154 (1977).”

<sup>5</sup> Claiming the decision was (1) in violation of constitutional or statutory provisions; (2) in excess of the agency’s statutory authority; (3) made upon unlawful procedure; (4) affected by other error or law; (5) not supported by substantial evidence of record; or (6) arbitrary, capricious, or characterized by abuse of discretion.

record.<sup>6</sup> At the hearing, before this court, it was conceded that the issue was the construction of ACA 26-26-1907 and that has been resolved above. If that statute had been found to mean what the Plaintiff argued it does, then, perhaps, some of the other points would have merit, but it was not and on this record they do not.

The Court in the case of Arkansas Department of Human Services v. Thompson, 331 Ark. 181, 959 S.W.2d 46 (1998) said that under the Administrative Procedure Act, the courts are to review the case to ascertain whether the record contains substantial evidence to support the agency decision or whether the agency decision runs afoul of one of the other criteria set out in Ark. Code Ann. § 25-15-212(h). The Court in the case of Pine Bluff for Safe Disposal v. Arkansas Pollution Control, 02-885 (Ark. 10-30-2003), 127 S.W.3d 509 said:

“In determining whether a decision is supported by substantial evidence, we review the record to ascertain if the decision is supported by relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* In doing so, we give the evidence its strongest probative force in favor of the administrative agency. *Id.* The question is not whether the testimony would have supported a contrary finding, but whether it supports the finding that was made. Arkansas Bd. of Exam'rs v. Carlson, 334 Ark. 614, 976 S.W.2d 934 (1998).”

In a criminal case Mills v. State, 322 Ark. 647, 910 S.W.2d 682 (1995) the Court held that evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. The evidence here meets that test and provides adequate support for the decision which was made.

The Court has found no demonstrated violations of any argued constitutional or statutory law, or action in excess of authority, tainting the agency's procedure or decision in this case. Given the

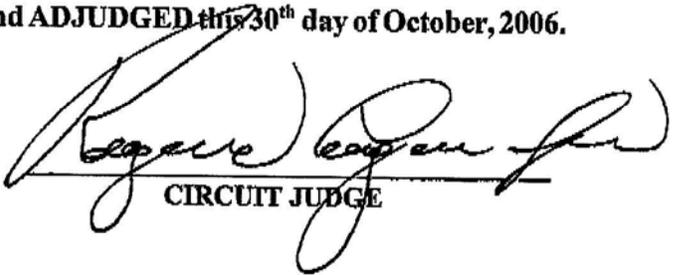
---

<sup>6</sup> Requests for injunctive relief were mentioned in the Petition, but the Court has found no mention of them made during either the hearing before the director or the hearing before this Court. Plaintiff claimed that the contract which it formerly had covered through 2005 and that it had been awarded to another party. At the end of its brief, Plaintiff asked that the Court award it \$61,254.00 under the contract for October, November and December of 2005.

statutory right to proceed as was done here, the action does not appear to have been arbitrary or capricious.

The Court has found no demonstrated basis for reversal of the decision of the Director of the Assessment Coordination Division or to grant the relief which has been sought by the Plaintiff and therefore denies the . Costs are assessed against the Plaintiff including the cost of the transcript.

**IT IS SO CONSIDERED, ORDERED, and ADJUDGED this 30<sup>th</sup> day of October, 2006.**

  
CIRCUIT JUDGE