SUPREME COURT OF ARKANSAS

Booth v. Franks

2017 Ark. 193 (2017) · No. CV-15-898 · Decided May 25, 2017

SUMMARY

The Arkansas Supreme Court affirmed the dismissal of minority shareholders' challenge to a bank merger and the procedures used by the Arkansas State Banking Board. The court held that the shareholders failed to preserve their statutory and constitutional objections by not filing a timely written protest before the Board's hearing. It also concluded that newspaper notice of the merger hearing was constitutionally sufficient because the hearing did not specifically determine the value of the shareholders' stock, for which separate appraisal remedies were available.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Shawn A. Womack
JURISDICTION	Arkansas
DECIDED	May 25, 2017
DOCKET	CV-15-898
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Sebastian County Circuit Court's dismissal of a challenge to a bank merger and to the constitutionality of the procedures used by the Arkansas State Banking Board.
STANDARD OF REVIEW	Review of the administrative record under the Arkansas Administrative Procedure Act; issues not raised before the administrative agency are not preserved for judicial review.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Arkansas; precedential.
PARTIES	Clyde N. Booth, Frank W. Booth v. Candice A. Franks, Bank Commissioner of the State of Arkansas

TOPICS

mergers and acquisitions · corporate law · administrative law · procedural due process · appellate procedure

PRACTICE AREAS

corporate law · administrative law · constitutional law · appellate procedure

QUESTIONS PRESENTED

1. Whether newspaper notice of the Board's general merger hearing satisfied due process as to minority shareholders whose names and addresses were known.
2. Whether the Booths' constitutional and statutory objections to the merger and share valuation were preserved for judicial review when they failed to file a written protest or raise those objections at the administrative hearing.
3. Whether the Board's expanded findings of fact and conclusions of law were sufficient after the circuit court remanded for additional findings.

HOLDINGS

1. The Board's newspaper notice of the general merger hearing was constitutionally sufficient because the hearing concerned the merger's broader statutory and economic implications and did not implicate the Booths in a special way requiring individualized notice.
2. The Booths' failure to file a written protest within the statutory period and to present their objections at the Board's hearing prevented them from obtaining judicial review of those arguments.
3. The circuit court properly determined that the Board's updated findings of fact and conclusions of law were sufficient.

KEY QUOTATIONS

> *"Because we hold that the Board's notice of the merger hearing was not deficient, we agree with the circuit court's determination that the Booths' failure to file a written protest within the statutory window prevented them from making arguments before the Board."* (at 4)

FACTUAL BACKGROUND

Clyde and Frank Booth were minority shareholders in First Community Bank of Crawford County, each owning fifty shares. First Bank agreed to merge with First Community Bank, and the Arkansas State Banking Board published notice of the merger application and later approved the merger after a formal hearing. The Booths did not file a written protest within the statutory fifteen-day period before the Board's hearing, although they later objected to the merger's valuation of their shares and asserted constitutional challenges. They received information about dissenters' rights and attempted, at least conditionally, to pursue the statutory appraisal process.

PROCEDURAL HISTORY

The Booths sought circuit-court review of the Board's approval of the merger of First Bank and First Community Bank of Crawford County. The circuit court dismissed their constitutional and statutory claims as unpreserved because they had not raised them at the administrative hearing, remanded to the Board for more detailed findings, and later found the expanded findings sufficient while reaffirming that the Booths' objections were unpreserved. The Booths appealed, and the Supreme Court of Arkansas affirmed.

DISPOSITION

affirmed

CASES CITED

- Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 319 (1950)

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