

SUPREME COURT OF ARKANSAS

No. 11-401

REBECCA CHANDLER
APPELLANT

V.

ARKANSAS APPRAISER LICENSING
AND CERTIFICATION BOARD AND
JIM MARTIN, EXECUTIVE DIRECTOR
OF THE ARKANSAS APPRAISER
LICENSING AND CERTIFICATION
BOARD

APPELLEES

Opinion Delivered December 8, 2011APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CV2009-3734]

HON. TIMOTHY DAVIS FOX, JUDGE

AFFIRMED.**COURTNEY HUDSON GOODSON, Associate Justice**

Appellant Rebecca Chandler appeals an order of the Pulaski County Circuit Court affirming a decision of appellee Arkansas Appraiser Licensing and Certification Board and Jim Martin, serving as executive director (collectively Board), finding that appellant violated four of the Uniform Standards of Professional Appraiser Practice imposed by Arkansas Code Annotated section 17-14-305(a)(1) (Repl. 2010). For reversal, appellant argues that the circuit court erred in determining that (1) the Board had jurisdiction after appellant surrendered her license; (2) the Board provided appellant sufficient notice of the hearing; (3) the Board made sufficient findings of fact and conclusions of law; and (4) appellant was not permitted to present additional evidence before the agency. We have jurisdiction, pursuant to Arkansas Supreme Court Rule 1-2(b)(5), because this appeal presents a significant issue needing clarification. We affirm.

Appellant is a former certified residential appraiser. In September 2008, the Board

received a complaint filed by Loretta Lever-House concerning a number of appraisals allegedly performed by appellant after her certification had been suspended. These appraisal reports were to be used for the division of properties in a divorce proceeding between Lever-House and Charles House. In January, the Board initially scheduled the hearing for March 17, 2009. In February 2009, the Board sent a letter acknowledging appellant's request for a continuance and another letter to appellant notifying appellant of the hearing scheduled for April 16, 2009. On April 1, 2009, appellant surrendered her license in lieu of appearing at the April 16 hearing. In a letter dated April 14, 2009, the Board informed appellant that its rules required the hearing to continue as scheduled. Appellant did not respond to the Board's April 14 letter.

Neither appellant nor her attorney appeared at the April 16 hearing. At the hearing, two witnesses testified, and counsel for the Board introduced approximately 300 pages of documentary evidence. Mary Lou Brainerd, an investigator with the Arkansas Appraiser Licensing Board, testified about numerous documents submitted by Lever-House substantiating her complaint. Brainerd testified about the correspondence between Lever-House and appellant on substantive matters in the appraisal process, emails regarding problems in the appraisals from appellant, discussions between appellant and the attorneys in Lever-House's divorce case, appellant's deposition regarding the appraisals, and documents relating to appellant's work. Brainerd testified that this documentary evidence demonstrated that appellant had participated in preparing appraisals while her license was suspended. Additionally, Lever-House testified that a Kansas court appointed appellant to conduct

appraisals in her divorce case, and appellant began work on the appraisals in February 2008. Lever-House testified that she later learned that appellant's license was suspended during her work on the appraisals.

Following the hearing, the Board found that appellant's certification was suspended from January 10, 2008, to July 10, 2008, and that appellant had performed the appraisals in Lever-House's divorce proceeding during her suspension. The Board entered an order containing the following findings of fact:

1. That [appellant] is licensed by this Board as a State Certified Residential Appraiser, CR-0208. [Appellant's] certification was suspended during a period of time from January 10, 2008 to July 10, 2008. By letter dated April 1, 2009, [appellant] surrendered her license to the Board while this hearing was pending. Under Section I – General (Q) Complaint Adjudication and Publication of Action of the Rules of this Board, the hearing proceeded as scheduled.
2. That [appellant] coordinated, supervised, reviewed, and delivered a series of 41 reports (hereinafter referred to as “the Chandler Valuation Reports”) to be used for the division of properties in a divorce proceeding between Loretta Lever-House and Charles House, during the time when [appellant's] certification was suspended.
3. That the Chandler Valuation Reports were ordered in July of 2007 but not initiated until January 15, 2008. [Appellant] did not notify her client, Judge Thomas Sutherland, Kansas District Court Division 3, or property owners Charles House and Loretta Lever-House, that her license had been suspended on January 10, 2008.
4. That [appellant] gave a deposition regarding the reports on July 8, 2008, while her certification was still suspended.
5. That [appellant's] client for the 41 appraisals was Judge Thomas Sutherland, Kansas District Court Division 3. The two parties, Mr. Charles House and Ms. Loretta Lever-House, could order an independent appraisal of any of the properties within 30 days of receiving the court-ordered appraisals if they were not satisfied with the value rendered. Loretta Lever-House hired an appraisal of two of the properties as a rebuttal to the Chandler Valuation Reports. Charles House then hired the [appellant] to complete a review of Ms. Lever-House's two reports for his use in rebuttal. [Appellant] had at her disposal the confidential results of the Chandler Valuation Reports made for the court and her results for Mr. House coincided directly with those values.

The Board concluded that appellant violated four of the Uniform Standards of Professional

Appraiser Practice, imposed by Arkansas Code Annotated section 17-14-305(a)(1), by performing appraisals while her license was suspended. As a consequence, the Board revoked appellant's license and assessed a civil penalty of \$4000.

Appellant filed a complaint for judicial review in Pulaski County Circuit Court, seeking review of the Board's administrative decision. The Board responded and prayed that appellant's petition be denied. On November 8, 2010, the circuit court held a hearing on the matter. At the hearing, appellant argued that the Board's findings of fact and conclusions of law were not supported by the evidence and requested that the circuit court remand the case to the Board for further hearings. On December 16, 2010, the circuit court entered an order affirming the Board's decision. From this order, appellant brings her appeal.

On appeal, appellant argues that the circuit court erred in determining (1) that the Board had jurisdiction after appellant surrendered her license; (2) that the Board provided appellant sufficient notice of the hearing; (3) that the Board's findings of fact and conclusions of law were sufficient; and (4) that appellant was not permitted to present additional evidence.

The Board responds that, despite receiving proper notice of the hearing, appellant did not appear at the hearing to make these arguments to the Board, and as a result, the Board had no opportunity to rule upon any issues raised by appellant. For these reasons, the Board contends that appellant is precluded from raising these arguments on appeal.

Review of administrative agency decisions, by both the circuit court and the appellate court, is limited in scope. *Mountain Pure, LLC v. Little Rock Wastewater Util.*, 2011 Ark. 258, ___ S.W.3d ___. The standard of review to be used by both the circuit court and the

appellate court is whether there is substantial evidence to support the agency's findings. *Id.* The appellate court's review is directed, not toward the circuit court, but toward the decision of the agency, because administrative agencies are better equipped by specialization, insight through experience, and more flexible procedures than courts, to determine and analyze legal issues affecting their agencies. *Staton v. Ark. State Bd. of Collection Agencies*, 372 Ark. 387, 277 S.W.3d 190 (2008).

This court has been resolute in requiring an objection to first be made at the administrative level, holding many times that it is an appellant's obligation to raise such matters first to the administrative agency and obtain a ruling. *Franklin v. Ark. Dep't of Human Servs.*, 319 Ark. 468, 892 S.W.2d 262 (1995) (declining to review appellant's arguments that she was denied due process and her right to a hearing where such arguments were not made to the administrative tribunal); *Alcoholic Bev. Control Div. v. Barnett*, 285 Ark. 189, 685 S.W.2d 511 (1985) (declining to reach a challenge to the timing of two local option elections because the argument was not raised before the Board). We have repeatedly held that we will not set aside an administrative determination upon a ground not presented to the agency because to do so would deprive the agency of the opportunity to consider the matter, make its ruling, and state the reasons for its action. *Riverways Home Care v. Ark. Health Servs. Comm'n*, 309 Ark. 452, 831 S.W.2d 611 (1992); *Ark. Cemetery Bd. v. Memorial Props., Inc.*, 272 Ark. 172, 616 S.W.2d 713 (1981).

Here, neither appellant nor her attorney appeared at the April 16, 2009 hearing before the Board. As a result, appellant's first three points on appeal were never raised before the

Board or ruled on by the Board. When appellant appeared before the circuit court in her appeal of the Board's decision, she argued only the substantial-evidence issue and requested that the case be remanded to the Board to make additional findings in further hearings. Nevertheless, our review involves the findings of the Board. Thus, appellant's failure to raise these arguments before the administrative agency precludes our consideration on appeal. *Wright v. Ark. State Plant Bd.*, 311 Ark. 125, 842 S.W.2d 42 (1992).

Further, appellant argues that the circuit court erred in determining that she was not permitted to present additional evidence before the agency, pursuant to Arkansas Code Annotated section 25-15-212(f) (2002). The Arkansas Administrative Procedure Act provides,

If before the date set for hearing, application is made to the court for leave to present additional evidence and the court finds that the evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon any conditions which may be just. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

Ark. Code Ann. § 25-15-212(f).

This court previously addressed this issue in *Mid-South Road Builders, Inc. v. Arkansas Contractors Licensing Board*, 328 Ark. 630, 946 S.W.2d 649 (1997), where the appellant argued that the circuit court should have called for an evidentiary hearing concerning procedural irregularities at the board hearing. We declined to allow the appellant in that case to raise the issue for the first time on appeal where the appellant had never requested an evidentiary hearing or moved to present additional evidence pursuant to section 25-15-212(f). *Id.*; *Brown*

v. Ark. State Heating, Ventilation, Air Conditioning & Refrigeration (HVACR), Licensing Bd., 336 Ark. 34, 984 S.W.2d 402 (1999).

Here, at the circuit court's hearing, appellant did request the court to remand to present additional evidence, pursuant to section 25-15-212(f), but appellant failed to obtain a ruling on this issue. In its order, the circuit court ruled that the Board's decision was supported by substantial evidence; that the Board's order did not violate the doctrine established by *Arkansas Appraiser Licensing & Certification Board v. Quast*, 2010 Ark. App. 511 (reversing on the basis that the Board's conclusions of law were without adequate, corresponding factual support); and that the Board was entitled to the cost of the preparation of the record. Thus, appellant's argument was not ruled on by the agency or the circuit court, and we are precluded from considering it on appeal. *Ark. Bd. of Exam'rs v. Carlson*, 334 Ark. 614, 976 S.W.2d 934 (1998). *Cf. Mountain Pure, supra* (holding that the circuit court's evidentiary decision to refuse to admit a chart, rather than a request to remand for additional evidence, does not present a justiciable issue and is moot). Accordingly, we affirm the Board's decision to revoke appellant's license and to impose a \$4000 penalty.

Affirmed.