

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA08-543

LANDMARK NOVELTIES, INC.
APPELLANT

V.

ARKANSAS STATE BOARD OF
PHARMACY
APPELLEE

Opinion Delivered March 11, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CV-04-8762/2]

HONORABLE CHRISTOPHER
CHARLES PIAZZA, JUDGE

CORRECTION OF THE RECORD
ORDERED; REBRIEFING ORDERED

JOHN MAUZY PITTMAN, Judge

Appellant, a novelty wholesale distributor, appeals the imposition of a fine and other sanctions imposed by the State Board of Pharmacy based on the Board's finding that appellant failed to comply with state law requiring reporting of suspicious sales of products containing pseudoephedrine and ephedrine. Appellant argues that the statute imposing the reporting duty and the Board's proceedings violated due process, and that the Board's action in assessing the fine was arbitrary and capricious. We order that the record be corrected and that appellant submit a substituted abstract, brief, and addendum that conforms to the dictates of Ark. Sup. Ct. R. 4-2(a)(8).

The record in this case is grossly out of sequence. For example, the page of the record stamped "000122" is page 83 of the court reporter's transcript, but the following page,



000123, skips to page 135 of the court reporter’s transcript. Likewise, transcript page 146 is followed in the record by page 153, which in turn is followed by 150, 151, and 88. Other such examples are present throughout the record. Because the singular degree of disorganization of the record on appeal impedes our review, pursuant to Ark. R. App. P.–Civ. 6(e) we order the circuit clerk to correct the record within thirty days of the date of this opinion.

The constitutional objections at the administrative hearing appear in the record beginning on the page stamped “000050,” which is page 11 of the court reporter’s transcript. These pages have not been abstracted by appellant. Because of this deficiency, we are unable to reach the merits of the case. We are no longer permitted by rule to affirm because of such a flagrant omission without first affording the appellant an opportunity to cure this and any other deficiency in the abstract pursuant to Ark. Sup. Ct. R. 4-2(b)(3) (2008). Therefore, we allow appellant this opportunity.

A corrected record is to be submitted within thirty days of the date of this opinion, with a conforming abstract, brief, and addendum to be filed within fifteen days thereafter. Upon the filing of this substituted brief by appellant, appellee will be afforded an opportunity to revise its own brief, if it deems it necessary, at appellant’s expense.

Correction of the record and rebriefing ordered.

GLADWIN and HENRY, JJ., agree.