

# SUPREME COURT OF ARKANSAS

No. CV-15-898

CLYDE N. BOOTH AND FRANK W.  
BOOTH

APPELLANTS

V.

CANDICE A. FRANKS, BANK  
COMMISSIONER OF THE STATE OF  
ARKANSAS

APPELLEE

Opinion Delivered: May 25, 2017

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT  
[NO. CV-14-0130-VI]

HONORABLE JAMES O. COX,  
JUDGE

AFFIRMED.

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**SHAWN A. WOMACK, Associate Justice**

Appellants Clyde and Frank Booth appeal from the decision of the Sebastian County Circuit Court dismissing their challenge to a bank merger and the constitutionality of the procedures followed in that merger by the Appellee, the commissioner of the Arkansas State Banking Board (“the Board”). For the reasons stated below, we affirm.

The Booths were minority stockholders in First Community Bank of Crawford County (“FCB”), each owning 50 shares of stock that they had purchased at a per-share price of \$100. First Bank reached an agreement on October 22, 2013, to merge with FCB; First Bank would be the surviving entity. As part of the required merger process, First Bank filed an application with the Board on November 15, 2013. In compliance with Bank Department Regulation 46.403.1, First Bank published notice of the application in the *Arkansas Democrat-Gazette* on three equally spaced days during a window ten days before

and after the actual filing of the application.<sup>1</sup> The November 15, 2013 application triggered the fifteen-day window under Arkansas Code Annotated section 23-46-406(a)(1) (Repl. 2015) during which any person wishing to appear in opposition to the application before the Board must file a written protest. It is uncontested that the Booths did not file a written protest during this period.

On December 6, 2013, FCB notified its stockholders, including the Booths, of the upcoming meeting to vote on the plan of merger. This notice contained the proposed \$.01 per-share valuation of their stock holdings and information about their rights as dissenting stockholders should they choose to oppose the merger. The shareholder meeting occurred on December 19, 2013; the merger plan was adopted despite the Booths' votes against it, and the Booths gave notice to FCB that they intended to exercise their dissenters' rights under Arkansas Code Annotated section 23-48-506. The Booths reaffirmed their intention to dissent several days later. On January 7, 2014, they notified First Bank that they intended to challenge the constitutionality of the merger procedure.

The Board conducted its formal hearing—the proceeding that had been announced via newspaper in November—on January 16, 2014. The Board approved the merger. The Booths were not present. On February 10, 2014, the Booths filed a complaint in the Sebastian County Circuit Court seeking review of the Board's decision under a variety of theories, but the claims can be simplified for our discussion here into two broad categories: (1) The Board did not adequately fulfill its duties under administrative law in reaching its decision and (2) the statutes and regulations followed by the Board unconstitutionally

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<sup>1</sup> The notice dates were November 6, 13, and 20, 2013.