



1956 § 42-35-15(g). For the reasons set forth below, the Court affirms the decision and denies the appeal.

### **FACTS AND TRAVEL**

This matter arises out of two administrative complaints brought against Appellant by DBR. Appellant holds a license to operate as an automobile body repair shop pursuant to sec. 5-38-4. (Tr. 2/13/03, vol. 2 at 10, 20.) Additionally Appellant's principal, Pasco Raimondo, holds an automobile dealership license, a salvage rebuilder license and an automobile towing license. (Id.) However, neither Mr. Raimondo nor Appellant has a license to run an automobile wrecking and salvage yard under sec. 42-14.2-3. (Id. at 4, 7-9, 28-29; DBR's Exhibit 2.) In the first complaint, DBR No. 01-L-218, DBR charges Appellant with operating an unlicensed auto wrecking and salvage yard in violation of sec. 42-14.2-3. In the second complaint, DBR No. 01-L-219, DBR alleges that Appellant wrongfully refused to allow Jeanne McCarthy, DBR's Chief of Auto Body and Salvage Operations, the opportunity to inspect its premises and that Appellant failed to maintain adequate records for each of the vehicles serviced in its automobile body repair shop as required by sec. 5-38-18.

On April 29, 2002 and February 13, 2003, DBR convened a consolidated hearing on both complaints before a DBR Hearing Officer.<sup>3</sup> Ms. McCarthy testified that she had attempted to inspect Appellant's property and to examine its records in September 2001 in response to a complaint from the Town of Coventry alleging that Appellant was operating an unlicensed automobile salvage yard. (Id. at 4, 7.) Ms. McCarthy found that Appellant's property had the characteristics of a salvage yard as described in sec. 42-

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<sup>3</sup> Nearly the entire record of the April 29, 2002 hearing is unavailable due to inaudible tape recordings of the proceedings.

14.2-1(b). (Id. at 14.) She testified that the premises were filled with junked and “cannibalized” cars and miscellaneous auto parts used to provide parts for other vehicles. (Id. at 13.)

On October 10, 2001, Ms. McCarthy scheduled a subsequent meeting with Mr. Raimondo. (Id. at 24.) When she arrived nearly one hour late to this meeting, Mr. Raimondo became upset. (Id.) He refused to allow her access to the premises or to the business records. (Id. at 4.) Ms. McCarthy informed Mr. Raimondo that, as a licensee, Appellant was required by law to allow inspections by DBR agents. (Id.) She claims that Mr. Raimondo responded by barring her from the premises. (Id.) Appellant, however, disputes this contention and denies refusing Ms. McCarthy access to the premises or to its records. (Id. at 24.)

During discovery in preparation for the DBR hearing, Appellant provided DBR with four boxes of records kept in no discernible order. (Tr. 2/13/03, vol. 2 at 15.) Ms. McCarthy testified that she and at least three other people spent more than three hours organizing the records to correspond with the particular vehicle to which each record pertained. (Tr. 2/13/03, vol. 1 at 9.) Although the Hearing Officer found that Ms. McCarthy received assistance solely from three DBR employees (DBR Decision at 4), she testified that both Pasco Raimondo and his nephew, Paulie Raimondo, were among the individuals who assisted in attempting to sort the files (Tr. 2/13/03, vol. 1 at 9). Ultimately, DBR was able to identify files for only sixty-nine vehicles from the boxes of documents provided by Appellant. (Tr. 2/13/03, vol. 2 at 15.) In fact, Ms. McCarthy asserted that she could not organize the contents of two and a half boxes of paperwork into any discernible order. (Id. at 28.) Furthermore, the majority of the sixty-nine files

that she was able to assemble did not contain records for auto parts as required by statute. (Id. at 15.)

During both the April and February hearings, DBR submitted photographs of Appellant's premises taken over a number of years. (DBR's Exhibits 3-11, 14.) According to Ms. McCarthy, these exhibits demonstrated that Appellant's premises looked like a salvage yard. (Tr. 2/13/03, vol. 1 at 32.) Additionally, the photographs showed that some of the partially dismantled cars have remained on Appellant's property for years. (Id. at 33-35.) At the hearing, DBR introduced into evidence a random sampling of seven of the sixty-nine assembled files. (DBR's Exhibits 13A – 13G.)

In response, Pasco Raimondo testified that Appellant intended either to repair the cars located on its property or to use parts of these cars to repair other cars. (Tr. 2/13/03, vol. 2 at 26, 28.) Mr. Raimondo made an unsubstantiated contention that Appellant never sold automobile parts, but rather gave the unused parts to junkyards. (Id. at 29.) Mr. Raimondo also stated that some vehicles were on Appellant's premises temporarily as a result of his licensed towing business. (Tr. 2/13/03, vol. 2 at 25.) Again, Mr. Raimondo did not produce any paperwork to support these assertions. (Id. at 29.) Mr. Raimondo acknowledged receiving complaints pertaining not only to the condition of Appellant's premises, but also to the storing of wrecked cars and dismantled parts in the yard and the failure to maintain organized records. (Id. at 27, 28 39, 40).

In his decision and recommendation, the Hearing Officer found that Appellant was operating an unlicensed salvage yard in violation of sec. 42-14.2-3. The Hearing Officer also found that Appellant had failed to keep adequate records as required by sec. 5-38-18. In light of these findings, the Hearing Officer ordered Appellant to cease

operations as an auto wrecking and salvage yard, and he assessed administrative penalties of \$100.00 for failing to allow Ms. McCarthy to inspect its files and \$2000.00 for failing to maintain adequate records. The Hearing Officer also ordered Appellant to remove all vehicles and parts lacking proper documentation from the premises. DBR issued a Decision and Order on July 8, 2004, adopting the Hearing Officer's findings. From this Decision and Order, Appellant took a timely appeal. On January 11, 2005, a Superior Court judge granted Appellant's motion to stay the Decision and Order, pending the appeal.

The Court notes that it was impossible to decipher a portion of the audio record of the administrative hearing. This would have prevented the court from determining whether certain documents were actually admitted into evidence, but the parties have entered into a signed agreement stipulating that the subject documents were accepted as full exhibits at the hearing. (Stipulation on Admission of Evidence, 2/13/07.)

### **STANDARD OF REVIEW**

The Court reviews contested agency decisions pursuant to the provisions of the Rhode Island Administrative Procedures Act, G.L. 1956 § 42-35-15(g). Section 42-35-15(g) provides that:

[t]he court shall not substitute its judgment for that of the agency as to the weight of the evidence on the questions of fact. The court may affirm a decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;

- (4) Affected by other error of law;
- (5) Clearly erroneous in light of reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In reviewing an agency decision, the Court will not weigh the evidence upon which findings of fact are based, but will limit itself to an examination of the certified record in deciding whether the agency had substantial evidence to support its decision. Ctr. for Behavioral Health, Rhode Island, Inc. v. Barros, 710 A.2d 680, 684 (R.I. 1998). The Rhode Island Supreme Court has defined “substantial evidence” as “such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance.” Newport Shipyard, Inc. v. R.I. Comm’n for Human Rights, 673 A.2d 457, 459 (R.I. 1996). Moreover, the Court will not substitute its judgment for that of an administrative agency as to the weight of the evidence on questions of fact, even if the Court “might be inclined to view the evidence differently and draw inferences different from those of the agency.” Johnston Ambulatory Surgical Assocs., Ltd. v. Nolan, 755 A.2d 799, 805 (R.I. 2000) (quoting Rhode Island Pub. Telecomm. Auth. v. Rhode Island State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994)). Therefore, the Court may reverse findings of fact only where an agency’s factual conclusions are “totally devoid of competent evidentiary support in the record,” Baker v. Dep’t of Employment and Training Bd. Of Review, 637 A.2d 360, 363 (R.I. 1994) (quoting Milardo v. Coastal Res. Mgmt. Council, 434 A.2d 266, 272 (R.I. 1981)). Although the Court may freely conduct de novo review of an agency’s determinations of law, Arnold v. R.I. DOL & Training Bd. of Review, 822 A.2d

164, 167 (R.I. 2003) (citing Johnston Ambulatory Surgical Assocs., 755 A.2d at 805), “the law in Rhode Island is well settled that an administrative agency will be accorded great deference in interpreting a statute whose administration and enforcement have been entrusted to the agency.” In re Lallo, 768 A.2d 921, 926 (R.I. 2001) (citing In re Advisory Opinion to the Governor, 732 A.2d 55, 76 (R.I. 1999); Pawtucket Power Assocs. Ltd. Partnership v. City of Pawtucket, 622 A.2d 452, 456 (R.I. 1993); Defenders of Animals, Inc. v. Dept. of Envntl. Mgmt., 553 A.2d 541, 543 (R.I. 1989) (attributing great weight to an agency's construction of a regulatory statute when the provisions of the statute were unclear)).

## **DISCUSSION**

### **I**

#### **The Inspection of Records**

DBR derives its right to inspect Appellant’s business records from sec. 5-38-18, which provides in relevant part that:

[e]very licensee shall maintain up-to-date records in the form prescribed by the department of business regulation: (1) with reference to every vehicle for which it has made a charge for parts or services; and (2) of all original orders for repairs to those vehicles. Those records shall be preserved for a period of two (2) years from the date thereof and shall be open for inspection by any authorized representative of [DBR] during regular business hours . . . .

Appellant argues that the Hearing Officer misinterpreted sec. 5-38-15, because the statute does not specifically provide for DBR inspections without giving a licensee prior notice. Appellant asserts that this statute implicitly affords licensees a “fundamental right” to advance notice of any inspection pursuant to sec. 5-38-18. DBR disagrees and contends that the statute permits unannounced inspections as long as they occur during regular

business hours, because inspections are only effective if DBR can conduct them without giving prior notice to regulated businesses.

Appellant cites two cases on statutory construction: Gilbane Co. v. Poulas, 576 A.2d 1195, 1196 (R.I. 1990) (holding that when “the language is clear on its face, then the plain meaning of a statute must be given effect”) and Dunne Leases Cars & Trucks, Inc. v. Kenworth Truck Co., 466 A.2d 1153, 1156 (R.I. 1983) (noting that the Court’s “paramount task in construing a statute is to ascertain the intent behind its enactment”). However, this applicable law favors DBR’s argument over that of Appellant. Although sec. 5-38-18 does not explicitly state that the inspections can occur “without notice,” the statute does provide that the records remain “open for inspection . . . during normal business hours.” The Court finds that the plain meaning of this language contemplates unannounced inspections during normal business hours without notice. Appellant might have a stronger argument if the statute provided that the licensee was merely required to produce the records upon request, rather than to keep them “open for inspection.” The Court finds that Ms. McCarthy, as an authorized representative of DBR, had the legal right to enter Appellant’s premises and inspect business records maintained in compliance with this statute.

Additionally, Appellant appears to argue for the first time on appeal that unannounced inspections violate its “fundamental right” to notice. There is no evidence to suggest that Appellant raised this argument at the administrative hearing. Nonetheless, the Court will consider the issue because the “raise-or-waive” doctrine does not extend to administrative proceedings. Id. at 1153. See Randall v. Norberg, 403 A.2d 240, 244 (R.I.

1979) (holding that the appellant of a tax administrator's decision could have alleged a due process issue for the first time while on appeal to the Superior Court).

The United States Supreme Court has held that any expectation of privacy in commercial premises is less than a similar expectation in an individual's home. New York v. Burger, 482 U.S. 691, 700 (1987) (citing Donovan v. Dewey, 452 U.S. 594, 598-599 (1981)). Furthermore, certain "closely regulated" industries have such a history of government oversight that no reasonable expectation of privacy could exist for a proprietor. See id. (citing Katz v. United States, 389 U.S. 347, 351-352 (1967) and Marshall v. Barlow's, Inc., 436 U.S. 307, 313 (1978)). Essentially, administrative inspections without court orders are often necessary to further an important state regulatory scheme. Id. at 710. "If an inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential." Id. (quoting United States v. Biswell, 406 U.S. 311, 316 (1972)). Courts have consistently held that automobile body repair shops constitute a closely regulated industry subject to inspections without a court order. See, e.g., People v. Calvert, 23 Cal. Rptr. 2d 644, 653 (Cal. Ct. App. 1993); State v. Bromell, 596 A.2d 1105, 1110 (N.J. Super. Ct. Law Div. 1991).

Although Appellant operates within a closely regulated industry subject to unannounced inspections, sec. 5-38-15 must meet the following three criteria to allow searches without a court order:

- (1) "there must be a "substantial" government interest that informs the regulatory scheme pursuant to which the inspection is made';

- (2) ‘the warrantless inspections must be “necessary to further [the] regulatory scheme”’; and
- (3) ‘the statute's inspection program, in terms of the certainty and regularity of its application, [must] provide a constitutionally adequate substitute for a warrant.’”

Keeney v. Vinagro, 656 A.2d 973, 975 (R.I. 1995) (quoting Burger, 482 U.S. at 702-703) (upholding property inspections without a search warrant under the Rhode Island Clean Air Act, G.L. 1956 § 23-23-5(7)). By enacting sec. 5-38-15, the state legislature has responded to a “substantial government interest” in advancing repair shop honesty and helping to eliminate fraud. Unannounced records inspections of the vehicle and parts records at an automobile body repair shop are necessary to reduce the dishonest and fraudulent use of stolen automobile parts to repair cars or prevent the use of the shop’s premises for unlicensed purposes. See Burger, 482 U.S. at 708-710 (applying analogous reasoning to inspections of automobile junkyards).

To fulfill the third criterion, the regulatory statute allowing unannounced inspections must still perform the two basic functions of a search warrant. Id. at 703. First, the statute “must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope.” Id. (citing Marshall, 436 U.S. at 323). The statute must be “sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes.” Id. (quoting Donovan, 452 U.S. at 600). Here, Appellant had full knowledge that its business records would be subject to inspection under sec. 5-38-18 as soon as it obtained an automobile body repair shop license. See G.L. 1956 § 5-38-18 (“Every licensee shall maintain up-to-date records . . .

[that] shall be open for inspection by any authorized representative of the department during regular business hours.”). Second, the statute “must limit the discretion of the inspecting officers carefully in time, place, and scope.” *Id.* (citing *Biswell*, 406 U.S. at 315). Section 5-38-18 limits department agents to inspecting the business records that Appellant must keep under statute and make available only during normal business hours. Thus, the inspections allowed under sec. 5-38-18 are constitutional and do not impinge on Appellant’s alleged “fundamental rights.” The Hearing Officer’s finding that Appellant violated sec. 5-38-18 by refusing to allow a representative of DBR to access its records was not affected by error of law and did not violate any constitutional provisions.

## **II The Maintenance of Records**

Appellant further argues on two grounds that the DBR Hearing Officer erred in concluding that Appellant violated sec. 5-38-18 by not maintaining business records for the two years required by statute. First, Appellant asserts that because sec. 5-38-18 requires that licensees maintain records in a form prescribed by DBR, Appellant could not have violated the statute in light of the fact that DBR never established specific guidelines for maintaining the records. Second, Appellant contends that the Hearing Officer had insufficient evidence to conclude that Appellant violated sec. 5-38-18. Appellant claims that DBR did not prove through evidence and testimony that Appellant failed to maintain the necessary business records for the two years required by statute.

The clear language of sec. 5-38-18 requires automobile body repair shops to maintain transaction records in a form prescribed by DBR. Section 5-38-18 requires that licensees must “maintain up-to-date records . . . (1) with reference to every vehicle for which it has made a charge for parts or services; and (2) of all original orders for repairs

to those vehicles.” Nonetheless, Appellant argues that the statutory language does not include a description of the records Appellant was required to maintain. DBR disagrees and asserts that it is not required to promulgate a specific form of recordkeeping, because the plain language of the statute provides sufficient detail for Appellant to understand which records Appellant should have retained. (DBR Mem. of Law in Supp. of Admin. Agency Decision at 8.)

Essentially, Appellant raises a procedural due process issue by claiming that the provisions of sec. 5-38-18 are unconstitutionally vague on their face. State ex rel. Town of Westerly v. Bradley, 877 A.2d 601, 605 (R.I. 2005). To prevail on such an argument, Appellant must demonstrate that the law is “impermissibly vague in all of its applications” and therefore “incapable of any valid application.” Id. (quoting Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 495 n. 5 (1982)). The “degree of vagueness” tolerated under constitutional standards varies with the type of statute under analysis. Hoffman Estates, 455 U.S. at 498. For example, a state legislature may draw a business regulation less precisely than a criminal statute or one affecting First Amendment freedoms, because state legislatures and government agencies may expect businesses to plan more carefully to conform their actions to the law than individuals. Id.; see City of Warwick v. Apts, 497 A.2d 721, 724 (R.I. 1985). Within this framework, the Court will consider a regulation unconstitutionally vague only when it forces “a person of average intelligence to guess and to resort to conjecture as to its meaning and/or as to its supposedly mandated application.” Trembley v. City of Central Falls, 480 A.2d 1359, 1365 (R.I. 1984).

Here, the Court finds that Appellant has not demonstrated that sec. 5-38-18 is so vague as to violate Appellant's due process rights. Section 5-38-18 by itself provides sufficient guidance with respect to keeping records of transactions involving the purchase of used vehicle parts. Under the clear language of sec. 5-38-18, licensees must keep records that include a "reference to every vehicle for which it has made a charge for parts and services" and records "of all original orders for repairs of those vehicles." Based on this language, the Court concludes that a licensed auto body repair shop owner could identify the subject records without resorting to conjecture as to the meaning and application of the statute. See, e.g., State v. Picillo, 252 A.2d 191, 194 (R.I. 1969) (holding that terms like "games of chance" and "other valuable consideration" in the "common gambling statute," G.L. 1956 § 11-19-18, were not impermissibly vague, even though the New York state legislature saw the need to provide specific definitions for these terms in its gambling statute). The four boxes of disorganized paperwork provided by Appellant are indicative of poor recordkeeping, and not the result of vagueness in the statute inviting conjecture on the part of Appellant as to its meaning. Thus, the Hearing Officer's application of the statute was not affected by error of law or in violation of statutory provisions.

Regarding Appellant's second contention, Appellant argues that in light of the evidence presented, the Hearing Officer made an erroneous, arbitrary, and capricious decision when he found that Appellant violated sec. 5-38-18 for failing to maintain the records required by statute. In support of this argument, Appellant contends that the evidence introduced by DBR, including Ms. McCarthy's testimony, fails to show that Appellant violated the statute. In particular, Appellant focuses on the fact that although

DBR possessed records relating to sixty-nine vehicles, it chose to introduce records from only seven automobiles. (Exhibits 13A – 13G). Furthermore, Appellant suggests that at least two of the seven records, Exhibits 13B and 13D, actually complied with sec. 5-38-18. Additionally, Appellant asserts that Ms. McCarthy did not directly testify as to whether the seven records introduced into evidence fell within the two-year retention period required by statute.

The Rhode Island Supreme Court consistently has upheld the limited scope of the “arbitrary and capricious” standard of review and affords great deference to agency decisions. Goncalves v. NMU Pension Trust, 818 A.2d 678, 682-683 (R.I. 2003). “Use of the arbitrary and capricious standard means that reviewing courts will uphold administrative decisions . . . as long as the administrative interpreters have acted within their authority to make such decisions and their decisions were rational, logical, and supported by substantial evidence.” Id. (citing Doyle v. Paul Revere Life Insurance Co., 144 F.3d 181, 184 (1st Cir. 1998)).

In this case, the Hearing Officer found that Appellant failed to conform to the statutory requirement that “every licensee shall maintain” the records required by statute. By definition, the term “maintain” means “to keep in an existing state; preserve or retain,” and “to keep in a condition of good repair or efficiency.” The American Heritage Dictionary of the English Language (4th ed. 2000). In other words, Appellant had an obligation to keep its records sufficiently organized to enable Ms. McCarthy and her authorized colleagues to ascertain whether Appellant was complying with the terms of its license. Neither party disputes the Hearing Officer’s finding that Appellant’s “only filing system was to place every receipt, invoice, or estimate ever received or issued into

[boxes].” (DBR Decision at 5). According to Ms. McCarthy’s testimony, these boxes contained not only records pertaining to automobile repairs, but also a hodgepodge of gas sales receipts from the gas station, towing receipts, auto sales transactions, personal bills, lunch receipts, raffle tickets, and other miscellaneous paperwork. (Tr. 2/13/03, vol. 1 at 30.) Thus, the Hearing Officer’s finding that Appellant made only minimal effort to maintain the necessary documents in any form readily accessible to DBR agents like Ms. McCarthy is not clearly erroneous.

Moreover, when DBR staff attempted to organize by vehicle the four boxes of miscellaneous documents provided by Appellant, they found that the vast majority of vehicles on Appellant’s premises lacked the required documentation. (Tr. 2/13/03, vol. 2 at 15.) The Hearing Officer found that DBR could assemble records for just sixty-nine vehicles. (Id.) Furthermore, most of these records remained incomplete, as only a few contained the required estimates, invoices, and orders for parts. (Id.) The documents were dated and spoke for themselves. The evidence included not merely testimony, but also exhibits, and the Hearing Officer was justified in relying on the exhibits as to the dates. Appellant has not questioned the authenticity of the exhibits nor their admissibility. Finally, even if Exhibits 13B and 13D do not violate the statute, that fact, in and of itself, would not negate a finding that Appellant violated sec. 8-38-18. The Hearing Officer had reliable, probative, and substantial evidence from the remaining five exhibits and all other facts and circumstances presented at the hearing to find that Appellant violated the statute.

After its review of the record, the Court finds that the Hearing Officer's decision finding that Appellant violated sec. 8-38-18 as to its recordkeeping requirements is

supported by the reliable, probative, and substantial evidence in the record. Furthermore, as noted above, DBR did not violate any so-called “fundamental right” claimed by Appellant. Consequently, the Court finds that the Hearing Officer's decision was not arbitrary or capricious and therefore upholds his finding that Appellant violated sec. 5-38-18.

### **III The Unlicensed Automobile Wrecking and Salvage Yard**

DBR alleges that Appellant violated sec. 42-14.2-3 by operating an unlicensed automobile wrecking and salvage yard. Appellant argues that the Court should overturn the agency decision because the Hearing Officer did not give enough weight to Appellant's assertions that it intended to repair and/or sell the vehicles on its premise (Tr. 2/13/03, vol. 2 at 26) and that the cars were on the premises temporarily as part of Mr. Raimondo's towing operation (*Id.* at 25). Moreover, Appellant argues that the Hearing Officer unduly shifted the burden to Appellant to prove that it intended to repair or resell the vehicles instead of using them for salvage. In the alternative, Appellant requests that the Court vacate and remand the agency decision for further proceedings and presentation of evidence.

Section 42-14.2-1(b) defines an “auto salvage yard” as land upon which a person “destroys, junks, dismantles, or stores for later dismantling or destruction of motor vehicles,” the parts and scraps of which may then be sold. Additionally, sec. 42-14.2-3 requires that a licensee must use the salvage yard “substantially for that operation, and not as a subordinate of a related business.”

The Court notes that it must afford great deference to agency decisions when an agency interprets its governing statute. Goncalves, 818 A.2d at 682-683. Here, Appellant

had to show that the Hearing Officer exceeded the bounds of his authority in deciding the case or that his decision was irrational, illogical, and unsupported by substantial evidence. Id. In the instant matter, the Hearing Officer relied on the substantial evidence before him — including testimony from Ms. McCarthy that Appellant’s premises had the characteristics of a salvage yard (Tr. 2/13/03, vol. 1 at 32) and photographs of junked and dismantled automobiles (DBR’s Exhibits 3 – 11, 14) — to conclude that Appellant violated sec. 42-14.2-3. The Hearing Officer determined that Appellant “failed to present a scintilla of evidence that the vehicles depicted in the photographs were the subject of a tow, on the premises to be resold or repaired.” (DBR Decision at 7.) The record indicates that Appellant offered no documentation that would refute the Hearing Officer’s finding. Therefore, the Court finds that the Hearing Officer’s conclusion that Appellant was operating an automobile salvage yard as defined in sec. 42-14.2-1(b) and in violation of sec. 42-14.2-3 was supported by reliable, probative, and substantial evidence and was not clearly erroneous.

Furthermore, the record indicates that Appellant had ample time — more than nine months between the two hearings — to produce documentation in support of its contention that the vehicles and parts of vehicles were on the premises for a licensed purpose and not as part of an unlicensed auto salvage operation. It is well settled that a “remand for further proceedings should be based upon a genuine defect in the proceedings in the first instance, which defect was not the fault of the parties seeking the remand.” Roger Williams Coll. v. Gallison, 572 A.2d 61, 63 (R.I. 1990). The Court holds that Appellant had a fair hearing that did not violate its substantial due process rights.

## **CONCLUSION**

After review of the entire available record, the Court holds that the Hearing Officer based his decisions on reliable, probative, and substantial evidence and his findings were not affected by error of law. The agency decisions were not arbitrary or capricious, and they did not result from any abuse of discretion by the Hearing Officer. Thus, Appellant's substantial rights have not been prejudiced. For the reasons stated above, the Court affirms the Hearing Officer's decisions finding that Appellant violated both sec. 5-38-18 and sec. 42-14.2-3.

Counsel shall prepare an appropriate judgment for entry.