STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: March 19, 2014)

JOHN RIBEIRO	:	
	:	
v.	:	**C.A. No. PC 2010-7433**
	:	
RHODE ISLAND CONTRACTORS' REGISTRATION AND LICENSING BOARD	:	

DECISION

STERN, J. John Ribeiro (Ribeiro or Appellant) appeals four Final Orders of the Rhode Island Contractors' Registration and Licensing Board (CRLB or the Board). Ribeiro argues that the Final Orders contain erroneous conclusions and violate his constitutional rights as secured by the Rhode Island Constitution. The Board contends that its conclusions are supported by the record, Ribeiro's constitutional claims are moot, and that the appeal is not properly before this Court. For the reasons set forth below, this Court finds that it lacks jurisdiction over the above-entitled matters.

I

Facts and Travel

At issue in the instant matter is a Claim (Claim #7050) made against Ribeiro by homeowner Michael D. Sepe (Sepe) and three violations[1] issued against Ribeiro by the Board. It is worth noting at the outset that claims and violations are considered separate cases before the Board. In addition, it is not uncommon for a violation to derive from testimony or evidence adduced at a hearing for a claim.

[1] The violations issued by the Board include #3309(6), #3309(7), and #3309(8).

On January 5, 2010, the Board issued its Final Order for Claim #7050. Thereafter, a completely unrelated Final Order was issued for violation #3309(6) on April 28, 2010. Subsequently, on November 16, 2010, the Board issued another unrelated Final Order for violation #3309(7). Based on evidence derived from the hearing for Claim #7050, the Board issued its Final Order for violation #3309(8) on May 7, 2010.

In Claim #7050, Sepe alleged that Ribeiro performed negligent and improper work while installing hardwood flooring at his property located at 238 Shady Valley Road in the Town of Coventry, Rhode Island (Property). See Def.'s Ex. 1. In addition, Sepe averred that Ribeiro had misrepresented himself as being a registered contractor, despite the fact that his registration had been revoked. See id. After timely notice, both Ribeiro and Sepe attended a hearing for Claim #7050 on September 16, 2009. The Hearing Officer, Robert Ricci (Hearing Officer), heard testimony and received evidence prior to making his decision. Specifically, the Hearing Officer considered the contract between Ribeiro and Sepe, the investigative report, and the quote and proposal from Warwick Floor Surfacing, Co. for the cost of repair. See Def.'s Ex. 4 at 2.

During the hearing on September 16, 2009, Ribeiro testified that he had been operating as a non-registered contractor. See id. Moreover, Ribeiro testified that he had hired a non-registered subcontractor to perform work with him. See Def.'s Ex. 5 at 2. Thereafter, Ribeiro was present for a hearing that was held on the same date for violation #3309(8). The Hearing Officer imposed a $5000 fine against Ribeiro for working as a non-registered contractor on Sepe's Property in contravention of G.L. 1956 § 5-65-3(a). See Def.'s Ex. 8.

Previously, on June 24, 2009, a hearing was held in connection with violation #3309(6). See Def.'s Ex. 10 at 2. The charged violation was for working as a non-registered contractor in violation of § 5-65-3(a). See id. The charged violation was sustained, and Ribeiro was fined

$5000. See id. at 3. Thereafter, Ribeiro invoked his right to a hearing before the full, fifteen-member Board. See Def.'s Ex. 11. He received proper notice of the next full meeting of the Board on December 9, 2009 at 1:00 p.m. See Def.'s Ex. 12. Ribeiro failed to appear before the Board on December 9, 2009, and the Board entered a default order affirming imposition of the $5000 fine levied by the Hearing Officer. See Def.'s Ex. 13 at 3.

In addition, Ribeiro appeared before the Hearing Officer for violation #3309(7) on June 24, 2009. Ribeiro had been ticketed for arranging to perform work as a non-registered contractor during a Board sting operation in December of 2008. See Def.'s Ex. 14. The ticket fined Ribeiro $10,000 because he had multiple non-registered contractor violations. See id. After taking testimony and receiving evidence, the Hearing Officer sustained the charged violation. See Def.'s Ex. 17 at 3.

Aggrieved by the various Final Orders of the board, Ribeiro filed the instant appeal. The appeal consists of one filing. See Appeal/Complaint. The Appeal/Complaint includes no file, claim, or violation number. See id. The Civil Case Cover Sheet lists the Board and the State of Rhode Island as Defendants; however, it is also devoid of any indication as to what Final Orders are being appealed by Ribeiro.

II

Standard of Review

The Superior Court reviews appeals of Final Orders of the Board pursuant to the Rhode Island Administrative Procedures Act (the Act), G.L. 1956 §§ 42-35-1, et seq. See CRLB Regulation § 4.9(6). Section 42-35-15(g) provides the applicable standard of review:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the 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 or law;
> "(5) Clearly erroneous in view of the 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."

Under the Act, this Court is limited to an examination of the certified record in determining whether the agency's decision is supported by substantial evidence. Johnston Ambulatory Surgical Assocs. v. Nolan, 755 A.2d 799, 804-05 (R.I. 2000) (citing Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992)). Substantial evidence is 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." Town of Burrillville v. R.I. State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007) (citing Johnston Ambulatory Surgical Assocs., 755 A.2d at 804-05. When this Court finds that substantial evidence exists in the record, it "is required to uphold the agency's conclusions." Auto Body Ass'n of R.I. v. State of R.I. Dep't of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010) (quoting R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994)) (quotation marks omitted); see Nickerson v. Reitsma, 853 A.2d 1202, 1205 (R.I. 2004). This rule applies even when the reviewing court is inclined to arrive at different conclusions and inferences from the evidence presented. Johnston Ambulatory Surgical Assocs., 755 A.2d at 805 (citing R.I. Pub. Telecomms. Auth., 650 A.2d at 485; see Barrington Sch. Comm., 608 A.2d at 1138.

By contrast, all agency determinations of law are reviewed de novo. Iselin v. Ret. Bd. of Emps.' Ret. Sys. of R.I., 943 A.2d 1045, 1049 (R.I. 2008). This Court accords great "weight and deference" to an administrative agency's interpretations of a statute it is empowered to enforce, "as long as that construction is not clearly erroneous or unauthorized." Labor Ready Northeast, Inc. v. McConaghy, 849 A.2d 340, 344 (R.I. 2004). This holds true "even when other reasonable constructions of the statute are possible." Id. at 345; see Town of Burrillville v. Pascoag Apartment Assocs., 950 A.2d 435, 445-46 (R.I. 2008). This Court will also defer to an agency's "reasonable" interpretation of the regulations it promulgates pursuant to a statute it is authorized to enforce. See State v. Swindell, 895 A.2d 100, 105 (R.I. 2006); State v. Cluley, 808 A.2d 1098, 1105-06 (R.I. 2002); Pawtucket Power Assocs. Ltd. P'ship v. City of Pawtucket, 622 A.2d 452, 456-57 (R.I. 1993).

III

Analysis

The CRLB is an administrative agency with an objective of "iron[ing] out disputes between contractors and homeowners, [by] allowing homeowners to file claims, to utilize dispute resolution, and to seek fines against contractors for alleged violations of applicable laws and regulations, when appropriate." Butera v. Boucher, 798 A.2d 340, 354 (R.I. 2002). Section 42-35-15(a), in pertinent part, provides that "[a]ny person, including any small business, who has exhausted all administrative remedies available to him or her within the agency, and who is aggrieved by a final order in a contested case is entitled to judicial review under this chapter." (Emphasis added.) Moreover, § 42-35-15(b), in relevant part, provides that "[p]roceedings for review are instituted by filing a complaint in the superior court of Providence County or in the superior court in the county in which the cause of action arose . . . ." (Emphasis added.)

It is well settled that a civil action in the Superior Court is commenced by filing a complaint with the court together with payment of the entry fee prescribed by law or by depositing the complaint with the entry fee in the mail addressed to the clerk. Super. R. Civ. P. 3.[2] However, an appeal from a zoning board or other similar agency, such as those referenced in § 42-35-1—while not a civil action, is a civil procedure as contemplated in Rule 1 of the Superior Court Rules of Civil Procedure—is subject to Super. R. Civ. P. 80 dealing with review of administrative agency decisions and orders. See Carbone v. Planning Bd. of Appeal of S. Kingstown, 702 A.2d 386, 388 (R.I. 1997) (finding that an appeal from an agency is a civil procedure subject to Super. R. Civ. P. 80, which deals with review of administrative agency decisions and orders, and that it is, therefore, also governed by other rules of civil procedure as far as they are applicable). In Carbone, our Supreme Court held that Rules 11, 15, and 21 of the Superior Court Rules of Civil Procedure applied to administrative appeals. 702 A.2d at 389. In addition, the Court noted that other rules, such as Super. R. Civ. P. 24, may also apply. Id. Recently, in McAninch v. State of R.I. Dep't of Labor & Training, our Supreme Court held, with respect to the counting of time for the filing of an administrative appeal, that the Superior Court would follow the rules of civil rather than administrative procedure. 64 A.3d 84, 90 (R.I. 2013). Our Supreme Court interpreted Super. R. Civ. P. 80(b), which governs the time provision for review of administrative actions, to follow Super. R. Civ. P. 6 instead of § 42-35-15(b). Id.

In Mauricio v. Zoning Bd. of Review of Pawtucket, our Supreme Court held that Rule 3 of the Superior Court Rules of Civil Procedure was inapplicable to administrative appeals insofar as it allowed a plaintiff to initiate a civil action by depositing a complaint in the mailbox. 590 A.2d 879, 880 (R.I. 1991). However, the Court also stated that:

[2] The required filing fee is $160.00 for entry for every civil action or petition. See G.L. 1956 § 9-29-18

> "the filing of a notice of appeal is a *sine qua non* in order to invoke the jurisdiction of the Supreme Court for appellate purposes, the filing of a notice of appeal with the clerk of the Superior Court for the appropriate county is an essential condition precedent to the invoking of jurisdiction of the Superior Court to review a decision of a zoning board. In both instances the necessary act is the filing, not the mailing or sending notice to an adversary. Only the filing sustains the validity of the appeal if made within the required period." Id.

Moreover, the Superior Court has appellate jurisdiction over appeals of Board decisions pursuant to § 42-35-15. The plain wording of the statute governing administrative appeals requires that there be a corresponding complaint for each decision of the Board that is being appealed. See § 42-35-15. When a question is a matter of statutory construction, the reviewing court first must look to the plain and ordinary meaning of the statutory language. Miller v. Saunders, 80 A.3d 44, 50 (R.I. 2013). "If the [statutory] language is clear on its face, then the plain meaning of the statute must be given effect and this Court should not look elsewhere to discern the legislative intent." Chambers v. Ormiston, 935 A.2d 956, 970 (R.I. 2007) (internal citation and quotation omitted). The clear and unambiguous meaning of § 42-35-15 requires that there be a corresponding complaint for each final order of the Board that is being appealed. See id. Therefore, this Court finds that filing a complaint with the clerk of the Superior Court for the appropriate county is an essential condition precedent to the invoking of jurisdiction of the Superior Court to review a decision of the Board. See id.

This requirement enforces the legislative intent of the APA: "to provide one uniform method . . . for the purpose of taking an administrative appeal in a contested case . . . ." Considine v. R.I. Dep't of Transp., 564 A.2d 1343, 1344 (R.I. 1989) (citing Herald Press, Inc. v. Norberg, 122 R.I. 264, 270-71, 405 A.2d 1171, 1175-76 (1979)); see also Great Am. Nursing Ctrs., Inc. v. Norberg, 439 A.2d 249, 252 (R.I. 1981) (finding that when the APA was

promulgated, a need existed for a uniform and consistent approach to the problems created by the rising number and growing jurisdictions of state administrative agencies). The requirements of a separate complaint and separate filing fee for each decision being appealed was discussed in Martin v. Lilly, 505 A.2d 1156, 1159 (R.I. 1986) (finding, in the context of consolidated cases, that the cases continue to be separate and distinct actions and, as a result, each requires a separate notice of appeal); see also State of R.I. Water Res. Bd. v. Howard, 729 A.2d 712, 714 (R.I. 1999) (in the context of separate eviction actions, holding that the appeal was not properly before the court because the two requirements of separate notices being filed and separate filing fees being paid had not been satisfied); see also Illas v. Przybyla, 850 A.2d 937, 943 (R.I. 2004) (concluding that appellant's wife and children failed to perfect their appeal because only one notice of appeal had been filed and only one filing fee was paid and further indicating that, although their claims were derivative of appellant's claim, they constituted separately appealable issues); Wolf v. Nat'l R.R. Passenger Corp., 697 A.2d 1082, 1085 n.1 (R.I. 1997) (concluding that, simply because an appeal was prosecuted by one attorney on behalf of multiple parties does not dictate the number of filing fees that must be paid or the number of notices of appeal that must be filed).[3]

Here, the Appellant filed one Appeal/Complaint and made one Motion to Proceed in Forma Pauperis.[4] However, the Board issued four separate Final Orders. On January 5, 2010, the Board issued its Final Order for Claim #7050. Thereafter, a completely unrelated Final Order was issued for violation #3309(6) on April 28, 2010. Subsequently, on November 16,

[3] The Superior Court has previously recognized that Martin, 505 A.2d at 1159, and Howard, 729 A.2d at 714 involved appeals to the Supreme Court, yet "deem[ed] the holdings equally pertinent, persuasive, and applicable to the Superior Court." See, e.g., Landry v. Gannon, No. PC-2002-1728, 2003 WL 1880124 (R.I. Super. Mar. 24, 2003).

[4] Appellant's Motion to Proceed in Forma Pauperis was granted on December 20, 2010.

2010, the Board issued another unrelated Final Order for violation #3309(7). Based on evidence derived from the hearing for Claim #7050, the Board issued its Final Order for violation #3309(8) on May 7, 2010. With respect to the application of the rules of procedure, the filing of a complaint "is an essential condition precedent to the invoking of the jurisdiction of the Superior Court to review a decision. . . ." See Mauricio, 590 A.2d at 880. The filing of a complaint for each appeal as prescribed by Rule 3 of the Superior Court Rules of Civil Procedure is mandatory and jurisdictional. See Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984) (citing Smith v. Smith, 119 R.I. 642, 645 n.1, 382 A.2d 182, 183-84 n.1 (1978)). Failure to comply with this jurisdictional prerequisite deprives the court of the power to decide the issues presented to it. Id. (citing D'Agostino v. Yellow Cab Co. of Providence, 104 R.I. 168, 169, 243 A.2d 98, 99 (1968)). The aforementioned claim and violations have never been consolidated. But see Howard, 729 A.2d at 714 (causes of action were consolidated but still required the filing of a separate complaint for each cause of action on appeal). It was incumbent on the Appellant to satisfy the filing requirements. Accordingly, each of the Board's Final Orders must be appealed separately, which means filing a separate complaint for each. Howard, 729 A.2d at 714; Martin, 505 A.2d at 1159-60. This requirement is a jurisdictional prerequisite. See Super. R. Civ. P. 3; Hood, 478 A.2d at 184.

Moreover, it is well settled that an additional jurisdictional prerequisite to the Superior Court's review of an administrative action is the payment of the entry fee prescribed by law. See Super. R. Civ. P. 3. The required filing fee is $160 for every civil petition. See § 9-27-17. In the instant matter, the Appellant made only one Motion to Proceed in Forma Pauperis. This Court need not decide whether Appellant's filing one Motion to Proceed in Forma Pauperis obviated the need to make separate motions to fulfill the filing fee requirement because the

Appellant clearly filed only one Appeal/Complaint. See D'Agostino, 104 R.I. at 169, 243 A.2d at 99.

In addition, it is unclear from the Appeal/Complaint or Civil Case Cover Sheet which of the four Final Orders was meant to be included in the appeal. See Kent, Simpson, Flanders, Wollin, Rhode Island Civil Procedure § 80:2 ("[a] complaint seeking review of administrative action must contain a statement of the grounds upon which the plaintiff contends he is entitled to relief and a demand for the relief to which he deems himself entitled. This requirement is not different from that generally prescribed by Rule 8(a)"); 141 A.L.R. Fed. 445 (originally published in 1997) (a notice of appeal must designate the order or judgment appealed from); 5 Am. Jur. 2d Appellate Review § 302 (2007) (the general rule is that a notice of appeal must sufficiently describe or specify the judgment or order appealed from so as to leave no doubt as to its identity). Here, this Court cannot choose which appeal to accept as properly filed.

In dismissing the Appellant's Appeal/Complaint, this Court recognizes that "[e]ven if a litigant is acting pro se, he or she is expected to familiarize himself or herself with the law as well as the rules of procedure." In re Kyla C., 79 A.3d 846, 848 (R.I. 2013) (citing Sentas v. Sentas, 911 A.2d 266, 271 (R.I. 2006) (internal quotation omitted). In Sentas, our Supreme Court gave the opinion that "the reasonably prudent person would ensure that he or she [had] . . . perfect[ed] the appeal." 911 A.2d at 271. Furthermore, the Sentas Court found that defendant's election to proceed pro se in the appeal did not excuse the defendant from "compliance with court processes." Id.

IV

Conclusion

The Appellant had to satisfy the statutorily required jurisdictional prerequisite of filing a complaint for each Final Order. The failure to do so in this case has deprived this Court of its appellate jurisdiction conferred by § 42-35-15. Accordingly, this Court dismisses the appeal for lack of jurisdiction.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Ribeiro v. Rhode Island Contractors' Registration and Licensing Board**
CASE NO:	**PC 2010-7433**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**March 19, 2014**
JUSTICE/MAGISTRATE:	**Stern, J.**
ATTORNEYS:	
For Plaintiff:	**John Ribeiro, pro se**
For Defendant:	**Ariele Yaffee, Esq.**