STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC **SUPERIOR COURT**

(FILED: SEPTEMBER 12, 2012)

IANNOTTI BROS. SELECT CARS	:	
	:	
v.	:	**C.A. NO. PC-2010-7456**
	:	
RHODE ISLAND DEALER'S LICENSE AND REGULATIONS OFFICE	:	

DECISION

TAFT-CARTER, J. Before this Court is the appeal by Iannotti Bros. Select Cars ("Appellant") from a Decision of the Rhode Island Dealer's License and Hearing Board (the "Board"). Appellant asks this Court to reverse the decision of the Board. The Rhode Island Dealer's License and Regulation Office ("Appellee") objects. Jurisdiction is pursuant to G.L. 1956 §§ 42-35-15 and 31-5-2.1(d).

I
FACTS AND TRAVEL

This appeal arises from a decision by the Board, ordering that Appellant's dealer's license to sell motor vehicles be suspended for sixty days based upon Appellant's violation of R.I.G.L. § 31-5-1(10) unconscionable business practices and directing the Appellant to pay a fine of $100 for violating § 31-5-1(10).

An application for three additional dealer plates was submitted to the Board by the Appellant in February 2010. As a result of the application an investigation ensued. (Ex. 1: Decision of The Board v. Iannotti Bros. Select Cars, dated 12/09/10, Findings of Fact ¶¶ 1-2.) The investigation conducted by Investigator Kevin Rabbit ("Rabbit") included a review of the

employee authorization lists for auto auctions. Rabbitt examined the employee's auto auction authorization list in an attempt to confirm that the list was comprised of the names of employees registered with the Board. The Appellant's records revealed that five individuals, who were not included on Appellant's employer list filed with the Board, were included on the list. (Id. at ¶ 3.) These listed names were Frank Lyons, Linda St. Denis, Benjamin Essex, Joseph Capuano, and Charles Kadlec. Id.

As a result, Rabbitt informed Appellant that names on the list are exclusively limited to employees of the dealership. (Tr. at 5.) Rabbitt advised the Appellant by fax of the definition of an "Employee." (Ex. 1: Decision of The Board v. Iannotti Bros. Select Cars, dated 12/16/10, Findings of Fact ¶ 4.) The names of the unauthorized individuals were removed from the auction list by the Appellant on February 26, 2010. Documentation of the removal of the names was provided to the Board on February 26, 2010. (Ex. 19: Dealer Board Investigation Report # 100-292 at 3, 6-8.)

The Board approved the Appellant's application for additional dealer plates on March 11, 2010. During the hearing, Appellant acknowledged that he understood the definition of "employer" as it related to dealer plates and auction lists. He further confirmed that he understood that only those properly registered as employers could be included on the authorization list. (Tr. at 6; Ex. 1: Decision of The Board v. Iannotti Bros. Select Cars, dated 12/16/10, Findings of Fact ¶ 6; Ex. 19: Dealer Board Investigation Report # 100-292 at 9.

Two weeks later, Appellant again expanded the auction list to include two non-employees, Michael Allard ("Allard") and Frank Lyons ("Lyons"). (Tr. at 9.) (Ex. 21: Authorized Representatives List including Fax Cover Sheet from Ocean State Auction at 4.)

Neither Allard nor Lyons were listed as an employee with the Board at the time their names were included in the auto auctions list. (Tr. at 8-9.)

Since the March 11, 2010, Appellant was found to have violated the regulations on two (2) occasions. The first occurred on March 25, 2010 when the Appellant permitted a non-employee to conduct a transaction. This resulted in a thirty (30) day suspension of his dealer's license. The second occurred on September 18, 2010. In this instance, Appellant permitted Allard to sell a 1997 Ford Explorer to a customer and then allowed the customer to remove the vehicle from the lot without a valid inspection sticker. (Ex. 8: Letter from Ronald Iannotti dated 10/29/10; Ex. 4: Decision of the Board in Lepore v. Iannotti Bros.) As a result of the September 18, 2010 infraction, the Board held a hearing on December 9, 2010. The Board found that Appellant had violated § 31-5-11(10) by engaging in unconscionable business practices and continued violations of the Rules and Regulations. (Tr. at 14.) Specifically, the Board found that Appellant ignored its previous decision when he added non-employees to their auction list almost immediately after required to remove them. (Tr. at 14-15.) In addition, the Board also found Appellant used an improper inspection sticker in violation of R.I. Admin. Code 47-1-38:VII. (Tr. at 15.) As a result, a sixty-day suspension of Appellant's dealer license and a $100 fine were imposed. The enforcement of these sanctions was stayed pending the present timely appeal.

II

STANDARD OF REVIEW

Pursuant to §§ 31-5-2.1(d) and 42-35-15, all appeals from the Board are heard by the Superior Court. Section 42-35-15(g) provides as follows:

> "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."

The court reviews the decision "to determine if there is any legally competent evidence therein to support the agency's decision." Johnston Ambulatory Surgical Assocs., Ltd. V. Nolan, 755 A.2d 799, 805 (R.I. 2000). As such, it is a "well-recognized doctrine of administrative law that deference will be accorded to an administrative agency when it interprets a statute whose administration and enforcement have been entrusted to the agency . . . even when the agency's interpretation is not the only permissible interpretation that could be applied." Pawtucket Power Assocs. Ltd. P'ship v. City of Pawtucket, 622 A.2d 452, 465-57 (R.I. 1993). In accordance with this doctrine of deference, with respect to sanctions, "the Superior Court justice [i]s not permitted to decide whether the division chose the appropriate sanction but instead to determine whether the division's finding . . . was supported by any competent record evidence." Rocha v. State of Rhode Island Pub. Util. Comm'n, 694 A.2d 722, 726 (R.I. 1997).

III

ANALYSIS

On appeal, Appellant argues that the Board's determination that the Appellant engaged in unconscionable business practices under § 31-5-11(10) is erroneous and characterized by an abuse of discretion. Appellant further contends that the license suspension of sixty days is

arbitrary and capricious and therefore an abuse of discretion. Conversely, the Board argues that the sanctions were not an abuse of discretion because the Board is empowered to suspend licenses and therefore acted in accordance with the Rules and Regulations

A
Unconscionable Practices

Section 31-5.1 et seq. of the Rhode Island General Laws refers to the regulations imposed on the business practices of motor vehicle dealers. The Board is granted "the power to promulgate rules and regulations . . . to protect the public interest." Sec. 31-5-2. With respect to its rules, the Board can revoke or suspend a motor vehicle dealer's license if they engage in "any willful failure to comply . . . with any rule or regulation promulgated by the department . . . ." Sec. 31-5-11(3). One such rule is that employees are required to be registered even if they are hired only on a trial basis. R.I. Admin. Code 47-1-38:VI(L).

It is for the protection of consumers and other automobile dealers that the Rules and Regulations require that only licensed motor vehicle dealers are authorized to attend auctions. R.I. Admin. Code 47-1-38:V(L). The Rules and Regulations therefore have stringent requirements that all employees must be registered with the Board. R.I. Admin. Code 47-2-38:VI(L).

The Appellant maintains that he was unclear as to the Rules and Regulations. Appellant, however, was notified, warned and sanctioned on numerous occasions by the Board for his repeated disregard of the Rules and Regulations. In fact, fifty – seven days after being directed to remove Lyons from the Auction list Appellant again added him to the list without registering him as an employee. Shortly thereafter, Appellant included Allard to the auction list without registering him as an employee. (Tr. at 6; Ex. 21: Authorized Representatives List including Fax

Cover Sheet from Ocean State Auction at 4.) Although conceding that he understood that individuals could not be included on his auction list unless they are properly registered, Appellant now maintains that he was not added to the list because he was only employed on a trial basis. (Tr. at 8.) (Tr. at 6; Ex. 1: Decision of The Board v. Iannotti Bros. Select Cars, dated 12/16/10, Findings of Fact ¶ 6; Ex. 19: Dealer Board Investigation Report # 100-292 at 9.) The Rhode Island Rules and Regulations are clear however, a dealer must submit the names of salespersons to the Department immediately whether or not the sales person is a non-employee. R.I. Admin. Code 47-1-38:V(L).

Unconscionable business practices is not defined in either the Rules and Regulations or Article 5.1 of Title 31 of the General Laws. Our Supreme Court has however recognized that for an act to be considered an unconscionable business practices a degree of scienter or knowledge is required. See Concord Auto Auction, Inc. v. Rumford Property & Liability Ins. Co., 536 A.2d 525 (R.I. 1988) (holding that for an act to be unconscionable, there must be some showing of scienter possessed by violator, when the Court engaged in statutory construction of § 31-5-11 in determining when proof of scienter is required for a violations under § 31-5-11); see also Aldridge v. A.T. Corp., 284 F.3d 72, 82 (1st Cir. 2002) (citing Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976)) (defining scienter as "a mental state embracing intent to deceive" when interpreting Rhode Island law in a case involving a prospective securities fraud class action). Further, "unconscionable practices" is well-recognized as business conduct that falls short of outright fraud, but which nevertheless "shocks the conscience" of ordinary men and women. See 17 Am. Jur. 2d Consumer Protection § 273 (2006). Finally, Appellant is bound by

an obligation to act in good faith[1] and, pursuant to § 31-5-11(10), owes a duty to avoid any unconscionable business practices.

The record in this case clearly demonstrates that the Appellant engaged in a repeated pattern of violations. Prior to the 60 day suspension the Appellant had a specific conversation with the Investigator and the Board concerning the definition of employee as well as the requirements of registrations it relates to Auction lists.

The record reveals that on February 23, 2010, Appellant received a warning that individuals could not be placed on a dealer's auction list unless they were employees of the dealership and Appellant was provided with the definition of "employee." Again, on February 26, 2010, Appellant reviewed the definition of employee with the investigator and assured him that the non-employees were removed from the auction list. The Board confirmed the Appellant's understanding of the definition at the March 11, 2010 hearing. Appellant stated that he understood the definition of employee (Tr. at 6.)

There is an abundance of reliable, probative and substantial evidence on the record to justify and support the conclusions of the Board.

Even assuming arguendo Appellant acted in good faith when he added Allard to the list in May 2010, the record is clear that Appellant knew that Lyons, a friend, did not belong on the auction list. (Tr. at 9, 12.) In fact, the Appellant had removed Lyons from the list only a few months prior at the Board's direction because Lyons did not qualify as an employee. (Ex. 19: Dealer Board Investigation Report # 100-292 at 3.) Furthermore, in May 2010, Lyons was not employed by Appellant. Appellant received multiple warnings by the Board and was advised by the Board of the definition of employee. Appellant confirmed his understanding of "employee"

[1] Good faith is defined as "honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade. . . ." Sec. 31-5.1-1(7).

with the Investigator. See Concord Auto Auction, 536 A.2d at 525 (requiring some showing of scienter possessed by violator to find a practice unconscionable). The Appellant's arguments therefore hold no weight. Accordingly, there is sufficient evidence on the record for this Court to sustain the Board's findings that the Appellant engaged in unconscionable business practices and that the decision was not characterized as an abuse of discretion.

B
Sanctions

Appellant further argues that the sixty-day license suspension by the Board is characterized by abuse of discretion. Appellant argues that such a sanction is greatly disproportional to Appellant's actions. Appellant contends that his actions constitute a mere clerical error rather than a deliberate scamming of consumers. Therefore, the penalty is exceedingly harsh. Appellant explains that considering the current economic climate, a sixty-day license suspension is a "death sentence" for the business and thus runs counter to the state's interest in protecting jobs and that the suspension is not arbitrary. On the other hand, the Board agrees that it is appropriate particularly in light of the Appellant's prior infractions. The Board correctly notes that Appellant knew of the rules regarding employees and intentionally included Lyons on the auction list, without regarded to the same.

The Board is authorized to "suspend or revoke a license" for unconscionable business practices. Sec. 31-5-11. In addition, the Board may levy a fine of up to $1000 for such a violation upon review of a penalty. "The Superior Court justice [i]s not permitted to decide whether the division chose the appropriate sanction but instead to determine whether the division's finding . . . was supported by any competent record evidence." Rocha, 694 A.2d at 726 (R.I. 1997). Notwithstanding, the sanction imposed must be reasonably supported by any

evidence on the record. See id. Indeed, "even where the general rule mandates a result, the implementing decision maker [or agency] has some power to modify that result in a specific application if doing so will better carry out the general spirit of the program." Charles H. Koch, Jr., Administrative Law and Practice, § 10.6[2](f) at 48 (West Publishing Co. 1997). Thus, the "extent of review should be very limited and hence the reviewing court should tolerate a relatively high risk of error and curb its most critical attitudes." Administrative Law and Practice, § 10.6[2](f) at 48-49.

Here, the record is clear that the Appellant repeatedly violated the rules and regulations despite numerous warnings. In fact, the reoccurrence was such that the Chairman of the Board remarked that Appellant has "been a regular [before the Board] for some time." (Tr. at 9, 14) See Matter of Goldstein Motors v. Melton, 51 A.D.2d 384, 385 (N.Y.A.D. 1976) (upholding the revocation of a motor vehicle dealer license where dealer repeatedly altered odometers). Within the six months prior to the December 9, 2010 hearing, Appellant had been sanctioned by the Board no less than three occasions. (Ex. 2-4: 6/30/10 Decision, 7/7/10 Decision, 11/30/10 Decision.)

The Board's actions were not arbitrary. Quite to the contrary. The Board made every effort in March 2010, and after to review and clarify the regulations regarding employees with the Appellant. At all times, the Appellant assured the Board he understood that only registered employees could be on the list. (Tr. at 6; Ex. 1: Decision of The Board v. Iannotti Bros. Select Cars, dated 12/16/10, Findings of Fact ¶ 6.) At one point, the Appellant removed five unqualified individuals from the auction list, including Lyons, (Ex. 19: Dealer Board Investigation Report # 100-292, at 3, 6-9). It was understood that these individuals did not meet the standard to remain on the auction list. (Tr. at 9, 12.) Shortly thereafter, the Appellant again

broadened the list to add non-registered employees, including Lyons and Allard to the auction list. (Ex. 21: Authorized Representatives List including Fax Cover Sheet from Ocean State Auction at 4.) At the same time, Appellant was also found to have violated the Rhode Island Rules and Regulations, 47-1-38:VI(R), which governs the use of motor vehicle inspection stickers. (Tr. at 15.)

Correctly, the Board found that Appellant's actions, in view of the regulations and prior citations, constitute willful violations. This decision is supported by reliable, probative, and substantial evidence on the record. See Willingham Sports, Inc. v. Bureau of Alcohol, Tobacco, Firearms and Explosives, 415 F.3d 1274, 1277 (11th Cir. 2005) (holding a dealer's repeated violations after being informed of the regulations and receiving prior warnings to constitute willfulness). The Board considered the evidence of Appellant's repeated offenses and willful violations of its rules in rendering a sixty-day license suspension. See Melton, 51 A.D.2d at 385 (upholding license revocation where motor vehicle dealer engaged in repeated violations); see generally Willingham Sports, Inc., 415 F.3d at 1277 (upholding a firearm dealer's license revocation where licensee repeatedly engaged in violations despite multiple warnings and a personal review of the regulations by an agent with the licensee).

The Board members, as the hearing officer in Environmental Scientific Corp. v. Durfee, are "privileged personally to hear [and] witness the broad spectrum of information" at the hearing. 621 A.2d 200, 208 (R.I. 1993). As a result, the Board is in the best position to make determinations of credibility as to witnesses that come before it. This Court "cannot overlook the body of law that elevates the fact finder's role when credibility is in issue." Id. at 209.

To argue that the Board imposed a "death sentence" for his business is baseless and grounded on a fictitious pretense. The sixty-day suspension was a direct consequence of

Appellant's consistent and blatant disregard of the Rules and Regulations. (Decision of McCoy v. Iannotti Bros. Select Cars, dated 7/7/10 at 5.) The Board, composed of two licensed automobile dealers, § 31-5-2.1(d), is presumed to have expertise in relation to how such sanctions will affect the business. See Heritage Healthcare Services, Inc. v. Marques, 14 A.3d 932, 934 (R.I. 2011) (holding agency's expertise should be given deference upon review). Here, Appellant has failed to produce any evidence beyond idle statements that the suspension would destroy the business. As such, the Board's imposition of sanctions was not capricious or characterized by abuse of discretion.

IV

CONCLUSION

After review of the entire record, the Court finds that the Board's decision is not erroneous in view of the reliable, probative, and substantial evidence on the record, characterized by abuse of discretion, or arbitrary and capricious. The substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations are sustained. Counsel shall submit the appropriate Judgment for entry.