

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC.

SUPERIOR COURT

(FILED: April 4, 2014)

RONALD KAPUSCINSKI and FOUR :
ALL SEASONS CONSTRUCTION, :
LLC :

V. :

C.A. No. WC-2012-0784

STATE OF RHODE ISLAND :
CONTRACTORS' REGISTRATION :
AND LICENSING BOARD and :
GEORGE W. WHALEN, in his capacity :
as Executive Director of the :
CONTRACTORS' REGISTRATION :
AND LICENSING BOARD :

DECISION

K. RODGERS, J. Ronald Kapuscinski (Kapuscinski) and Four All Seasons Construction, LLC¹ (Four All Seasons and collectively, Appellants) appeal from a Final Order of the State of Rhode Island Contractors' Registration and Licensing Board (the CRLB or the Board) directing them to pay fines for violations of G.L. 1956 §§ 5-65-10(a)(11), (12) and (14).² Kapuscinski contends that the fines imposed for each of these violations were excessive and clearly erroneous because the alleged violations were the result of unanticipated, extenuating circumstances, and the CRLB overlooked the Appellants' good faith efforts to resolve the issues with the homeowner.

¹ This entity has been referred to in the proceedings below and in filings in this Court as Four Seasons Construction, All Four Seasons Construction, and Four All Seasons Construction. This Court relies upon the Complaint filed by Appellants' counsel for the proper name of this construction business.

² The Board's Final Order also included a fine for violating § 5-65-10(a)(13); however, Appellants do not contest this fine on appeal.

Jurisdiction is pursuant to G.L. 1956 § 42-35-15. For the reasons set forth herein, the Board's Final Order is affirmed.

I

Facts and Travel

On or about September 2, 2010, Lydia Wilson (Wilson) and Kapuscinski, the proprietor of Four All Seasons, entered into a written contract in which Appellants were to perform a variety of work at Wilson's father's home at 8 Wilson Drive in Narragansett, Rhode Island (the Property). This work included checking the electrical and running new wires and fixtures if needed; installing plumbing for all sinks, toilets, washers/dryers, and plumbing for baseboard heat; installing two boilers with hot water tanks; insulating walls; removing a chimney; bringing framing up to code; installing new doors and windows; installing new kitchen cabinets; building three decks; installing vinyl siding on the house; and installing new interior baseboard molding and trim around windows and doors. The contract price for all work under this agreement was \$91,500.³ Wilson paid \$30,500 as an initial down payment and, as work progressed, paid another \$30,500 on March 1, 2011.

In the late summer of 2011, a dispute developed between Wilson and Kapuscinski over completion of the project. Running low on capital, Kapuscinski refused to complete the job unless Wilson advanced the final payment for the project.

³ The evidence presented to the CRLB hearing officer also reveals two additional written contracts between the parties: one dated April 27, 2011, in the amount of \$3000 for shingle work, which was paid in full; and the other dated May 1, 2011, in the amount of \$9800 for remodeling a small house down the street from the Property. The latter contract was also paid in full.

On October 14, 2011, Wilson filed a claim against Appellants with the Board. In her claim, Wilson alleged Appellants breached the contract they had entered into with Wilson for the work at the Property. She further alleged that work had virtually stopped at the Property for the past three months; that Kapuscinski orally promised that the job would be completed by December 2010, then promised completion by Spring of 2011; that work promised has not been performed; and that Kapuscinski is unable to complete the job.

CRLB investigator Michael Lanni (Lanni) visited the Property on November 17, 2011, and determined that Kapuscinski had ceased working on the project before a large portion of the work had been completed. In particular, Lanni noted that only rough plumbing, electrical, and HVAC were in place, that drywall installed by compound needed sanding, and that cabinets had been delivered but not installed. Lanni also concluded that Kapuscinski was unwilling to return to the Property to complete the job for the agreed upon price.

A CRLB hearing officer heard the matter on June 6, 2012. Both Kapuscinski and Wilson were present and represented by counsel. The evidence presented before the hearing officer included the testimony of Wilson and Kapuscinski; the contract; floor plans of the Property; copies of the checks paid by Wilson to Kapuscinski; e-mail communications between Kapuscinski and Wilson; the claim form filed by Wilson; insurance reconstruction estimates and photographs; completion proposals; communications between Wilson's attorney and Kapuscinski to resolve the matter; communications between both parties' attorneys regarding completing the work;

communications with the Building Inspector; communications with Lanni; final costs to complete the work; and Lanni's investigative report.⁴

After receiving the relevant testimony and evidence, the hearing officer issued Findings of Fact, Conclusions of Law and a Proposed Order on July 17, 2012. He found that the parties had entered into a written contract dated September 2, 2010, whereby Appellants agreed to perform certain work at the Property; namely, to install all new interior baseboard molding and trim around windows and doors. He further found that the written contract included all labor, materials and permits to complete this job, that Wilson agreed to pay Appellants the sum of \$104,330 exclusive of extras, if any, and that she had in fact paid \$73,830.⁵ The hearing officer concluded that Appellants performed negligent and/or improper work on the Property, breached the contract with the homeowner, and failed to complete a project for construction or willfully failed to comply with the terms of a contract. The hearing officer thus issued the following Conclusions of Law: Appellants breached the contract in violation of § 5-65-11(1)(iii); Appellants have been negligent in violation of § 5-65-11(1)(i); work performed by

⁴ The record before the CRLB, as presented to this Court on appeal, includes all Wilson's exhibits submitted to the Board, some but not all of which appear in duplicate. The record also includes various correspondence and/or copies of pleadings filed in this action arranged in no particular order, which documents this Court does not rely upon in rendering its decision.

⁵ It appears the hearing office included the two additional contract sums and payments thereon in calculating the total contract price and payments made. See supra, n.3. On appeal to this Court, Appellants do not claim the inclusion of these contracts was error, nor is it consequential to the issues before this Court.

Appellants was improper in violation of § 5-65-11(1)(ii); and Appellants substantially violated the Rhode Island building code in violation of § 5-65-10(a)(7).⁶

Based upon his Findings of Fact and Conclusions of Law, the hearing officer issued a Proposed Order imposing a total fine in the amount of \$17,500, which included: (1) \$2500 fine for violating § 5-65-10(a)(13) by advertising with a license number instead of a registration number; (2) \$5000 fine for violating § 5-65-10(a)(11) by breaching the contract; (3) \$5000 fine for violating § 5-65-10(a)(12) by performing negligent and/or improper work; and (4) \$5000 fine for violation of § 5-65-10(a)(14) by failing to complete a project for construction or willfully failing to comply with the terms of the contract.

In accordance with § 5-65-20, Appellants timely appealed the Proposed Order to the entire Board on August 5, 2012. On November 27, 2012, the Board issued a Final Order which essentially echoed the hearing officer's Findings of Fact and Conclusions of Law. The Board imposed the same fines as were proposed by the hearing officer, with the exception of reducing the \$2500 fine for violating § 5-65-10(a)(13) to \$500.⁷

Appellants timely appealed the Board's Final Order to this Court on December 26, 2012. In sum, Appellants argue the fines levied in the Final Order are excessive, arbitrary, or capricious, or otherwise clearly erroneous because Appellants demonstrated extenuating circumstances that made it difficult for them to complete the work; namely, the belligerent behavior of Wilson's father, who suffered from dementia and resided at the Property, and Kapuscinski's financial difficulties. Additionally, Appellants contend

⁶ No fine was specifically imposed upon Appellants for this violation; however, arguably, this violation also supports the \$5000 fine imposed for violating § 5-65-10(a)(12) by performing negligent and/or improper work.

⁷ It is this \$500 fine that Appellants do not challenge on appeal. See supra n.2.

their good faith attempt to complete the project weighs against the imposition of such fines.

II

Standard of Review

This Court's review of a CRLB decision is governed by § 42-35-15(g), which provides for judicial review of a contested agency decision:

“(g) 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.”

Id.

When reviewing an order of an agency, this Court may not assess witness credibility or substitute its judgment for that of the agency concerning the weight of the evidence on questions of fact. Costa v. Registrar of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988). This Court's review is limited to determining whether substantial evidence exists in the record to support the Board's decision. See Newport Shipyard v. Rhode Island Comm'n for Human Rights, 484 A.2d 893, 897 (R.I. 1984). Rhode Island

law defines “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.” Id. (quoting Caswell v. George Sherman Sand & Gravel Co., 424 A.2d 646, 647 (R.I. 1981)). This Court will “reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record.” Milardo v. Coastal Res. Mgmt. Council, 434 A.2d 266, 272 (R.I. 1981).

III

Analysis

Appellants challenge the fines assessed against them under §§ 5-65-10(a)(11), (12), and (14) as excessive. It is widely acknowledged that when a legislative body “entrusts enforcement [of statutory provisions] to an administrative agency, the choice of a sanction is ‘peculiarly a matter for administrative competence.’” Broad St. Food Mkt., Inc. v. U.S., 720 F.2d 217, 220 (1st Cir. 1983) (quoting Kulkin v. Bergland, 626 F.2d 181, 184 (1st Cir. 1980)); see also 2 Am. Jur. 2d Administrative Law § 58 at 83 (noting that an agency’s “decision whether or not to impose a sanction is discretionary”). Courts in our state afford great weight and deference to the choice of sanction levied by an administrative agency, so long as such choice is supported by substantial evidence in the record. See Rocha v. State Pub. Utils. Comm’n, 694 A.2d 722, 725-27 (R.I. 1997); DiPrete v. Morsilli, 635 A.2d 1155, 1164 (R.I. 1994). However, in exercising its discretion in imposing sanctions, an administrative agency may not exceed the strictures of applicable statutory and constitutional provisions. See § 42-35-15(g)(1) (empowering a reviewing court to reverse or modify an agency’s decision when that decision is made

“[i]n violation of statutory or constitutional provisions”); 2 Am. Jur. 2d Administrative Law § 453 at 388 (recognizing that “an administrative agency’s discretion as to what penalty to impose is not completely unfettered, and the matter of choice of remedies is open to a limited review to the extent of providing safeguards against statutory or constitutional excesses”); see also Cadillac Lounge, LLC v. City of Providence, 913 A.2d 1039, 1042-43 (R.I. 2007).

Accordingly, this Court must determine whether the CRLB’s fines exceeded “the strictures of the applicable statutory authority” and, if not, whether they were supported by substantial evidence in the record.

A

The CRLB’s Statutory Authority

Rhode Island General Laws § 5-65-10 provides the authority and grounds which govern the CRLB’s disciplinary actions against contractors. Section 5-65-10(a) reads in pertinent part:

“The board or commission may revoke, suspend, or refuse to issue, reinstate, or reissue a certificate of registration if the board or commission determines after notice and opportunity for a hearing (11) [t]hat the registrant breached a contract[;] (12) [t]hat the registrant performed negligent and/or improper work[;] . . . (14) [t]hat the registrant has failed to complete a project(s) for construction or a willful failure to comply with the terms of a contract or written warranty.” Id.

Section 5-65-10 also provides the schedule of fines that the CRLB may utilize in disciplinary actions and provides as follows:

“(c)(1) For each first violation of a particular section of this chapter or any rule or regulation promulgated by the board, a fine not to exceed five thousand dollars (\$5,000) may be imposed after a hearing by the board. Provided,

further, that the board at its discretion may, after a hearing, impose an additional fine up to but not to exceed the face value of the contract or the actual damages caused by the contractor, whichever shall be greater.” § 5-65-10(c)(1).

Here, the Board imposed a \$5000 fine for Appellant’s violation of § 5-65-10(a)(11), another \$5000 fine for their violation of § 5-65-10(a)(12), and a third \$5000 fine for their violation of § 5-65-10(a)(14). Such fines are within the statutory authority of the Board when there is a violation of a particular section of chapter 65 of title 5. Sec. 5-65-10(c)(1). There is no support for Appellants’ assertion that maximum fines are only warranted for willful, wanton or reckless violation of the statute, and that lesser fines are warranted in cases involving lesser extenuating circumstances or where a contractor attempts in good faith to resolve issues with the homeowner. The Board is granted discretion to impose fines, and those imposed here were within the Board’s statutory authority.

Moreover, it is important to note that the Board could have imposed higher fines, up to face value of the contract or actual damages caused by the contractor, whichever is greater. The Board elected not to impose significantly higher fines commensurate with the estimates for corrective work ranging from \$56,750 to \$130,950. It certainly was within the Board’s authority to do so. See § 5-65-10(c)(1).

This Court cannot substitute its judgment for that of the Board’s unless it is against the substantial evidence in the record, an examination of which this Court will now undertake.

B

Whether the Fines Are Supported by Substantial Evidence

1

§ 5-65-10(a)(11): Breach of Contract

The Board found that the parties entered into a written contract for construction services to be performed at the Property. Based on the testimony of Wilson and Kapuscinski and based on Lanni's investigative report, the hearing officer, and thereafter the Board, found that Appellants breached the contract. Whether or not a breach has occurred is a question of fact, see Lamoureux v. Burrillville Racing Ass'n, 91 R.I. 94, 98, 161 A.2d 213, 215 (1960), and, therefore, this Court may only reverse if the determination was clearly erroneous in light of the reliable, probative, and substantial evidence of the whole record. Such is not the case here.

At the hearing on June 6, 2012, Wilson testified that Kapuscinski failed to perform any work after August 2011. Evidence was also presented that efforts were made to have Kapuscinski complete the job, but that he failed to do so. Wilson's attorney placed e-mail exchanges into evidence, which exchanges demonstrated that the parties attempted to resolve the matter and had arranged a meeting with Kapuscinski and John Anderson (Anderson), from Insurance Reconstructions Services, who had been engaged by Wilson to prepare an estimate to complete the project and correct work that had been performed, but that Kapuscinski failed to attend that meeting and resolve the matter, and a significant amount of work was left incomplete.

Kapuscinski presented scant evidence that his breach of contract was justifiable. On appeal, Kapuscinski argues the reason he stopped working on the property was

because Wilson's father suffered from dementia, which manifested itself in belligerent and violent behavior towards Kapuscinski and other workers at the site. He also contends that the situation required him to call the Narragansett Police Department. However, Kapuscinski presented no evidence to the hearing officer concerning this call to the police in the form of a police report or otherwise, he did not have any police officer testify, nor did he himself offer such testimony during the hearing. During his testimony, Kapuscinski only stated that Wilson's father had changed the locks, threw Kapuscinski's crews off the job, and threw tools out of windows. Notably, the evidence presented by Wilson demonstrated that her father was moved to an out-of-state assisted-living facility in April 2011, well before Appellants ceased doing work on the Property in August 2011.

Kapuscinski's assertion that there were other extenuating circumstances beyond the control of the parties, i.e., Kapuscinski's financial difficulties, which made it difficult for him to complete the contract did not justify Appellant's breach of contract. Moreover, this argument is belied by the evidence of record which demonstrated that Kapuscinski was ready to continue work if he received an advance of the final payment. In rendering Findings of Fact, the hearing officer, and ultimately the Board, determined that Kapuscinski's subjective inability to perform was not an extenuating circumstance that warranted a breach of contract.

Finally, any suggestion by Appellants that the hearing officer and the Board failed to consider Appellants' good faith effort to resolve the issues with the homeowner is wholly without merit. The substantial evidence of record supports a finding that the homeowner, her counsel and her expert, Anderson, made efforts to resolve the matter and that it was Kapuscinski who failed to participate.

The Board's conclusion that Appellants breached the contract with Wilson was supported by substantial evidence in the record. Appellants' alleged reasons for breaching the contract were not supported in the record, and the Board did not err in rejecting these reasons. Accordingly, the Board's decision as it relates to § 5-65-10(a)(11) is affirmed.

2

§ 5-65-10(a)(12): Negligent/Improper Work

The Board also determined that Appellants performed negligent and/or improper work. Anderson testified before the hearing officer that he attended a meeting at the Property with Town building officials in which it was determined there were substantial code violations and that work that was completed was done improperly. Wilson also presented numerous photographs demonstrating the state of the work conducted by Kapuscinski. The Board's decision to impose a fine for violating § 5-65-10(a)(12) is clearly supported by this evidence, which constitutes substantial evidence in the record. Therefore, the Board's decision as it relates to § 5-65-10(a)(12) is affirmed.

3

§ 5-65-10(a)(14): Failure to Complete a Project

Finally, the Board determined that Appellants failed to complete the project for Wilson and violated § 5-65-10(a)(14). To the extent Appellants rely on Wilson's father's dementia and Kapuscinski's financial condition as bases for not having completed the project, this Court concludes, as discussed supra, Section III(B)(1), such alleged reasons for not completing the work were not supported in the record and the Board did not err in rejecting these reasons.

Additionally, when Appellants left the Property incomplete, Anderson and others viewed the Property and estimated the cost for completing the work that was left unfinished and to remedy the improper work. Seven separate proposals/estimates were presented to the hearing officer, ranging from \$56,750 to \$130,950. Furthermore, the hearing officer considered various photographs that demonstrated the state of the Property and the work that remained to be completed.

The Board's decision to impose a fine for violating § 5-65-10(a)(14) by failing to complete the project was supported by substantial evidence. Accordingly, the Board's imposition of this \$5000 fine is affirmed.

IV

Conclusion

For all these reasons, this Court finds that fines levied by the CRLB totaling \$15,000 did not exceed the Board's statutory authority and were supported by substantial evidence in the record. Accordingly, this Court affirms the Board's decision in its entirety.

Counsel for Appellees shall prepare an order consistent with this Decision.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: **Ronald Kapuscinski, et al. v. State of Rhode Island Contractors' Registration and Licensing Board, et al.**

CASE NO: **WC-2012-0784**

COURT: **Washington County Superior Court**

DATE DECISION FILED: **April 4, 2014**

JUSTICE/MAGISTRATE: **Kristin E. Rodgers**

ATTORNEYS:

For Plaintiff: **Lewis J. Paras, Esq.**

For Defendant: **Ariele Yaffee, Esq.**