

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: March 14, 2016]

RENE THEROUX, RST
MECHANICAL, LLC

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V.

C.A. No. PC 15-0477

RHODE ISLAND DEPARTMENT
OF LABOR & TRAINING

DECISION

PROCACCINI, J. Rene Theroux (Mr. Theroux) and RST Mechanical, LLC (RST) (collectively Appellants) appeal a decision (Decision) from the Director of the Department of Labor and Training (DLT or Department) affirming a recommendation issued by DLT’s Division of Professional Regulation, Mechanical Board (Mechanical Board). The Decision held that Appellants violated G.L. 1956 § 28-27-28 and § 28-27-50 by installing a heating unit without the required licenses and permits. Jurisdiction is pursuant to G.L. 1956 § 42-35-15. For the reasons set forth herein, the case is remanded for additional findings of fact.

I

Facts and Travel

RST is a Rhode Island limited liability corporation that provides residential and commercial heating, ventilation, and air-conditioning services. In October 2012, August Louis (Mr. Louis) purchased a heating system from RST for \$4000. RST delivered the system to Mr. Louis’ home in North Kingstown, Rhode Island.¹

¹ Mr. Louis is also Mr. Theroux’s neighbor.

On August 12, 2004, Mr. Louis filed a complaint with the Attorney General's office. Mr. Louis alleged, inter alia, that the heating system was installed on October 15, 2002 and stopped working properly two days later. He claimed that electrical wires were taped with duct tape; the air and heat were wired opposite; and the unit continuously ran. On August 26, 2014, Appellants were issued a Notice of Violation/Request for the Imposition of Penalty(ies) (the Notice of Violation)² by Nicholas Ranone (Mr. Ranone), Chief Mechanical Investigator of the DLT, Division of Workforce Regulation & Safety, Professional Regulation Unit. The Notice of Violation indicated that Mr. Theroux's son was not licensed to install heating and air-conditioning units, as required by § 28-27-28, and that the installation was performed without a

² The Notice of Violation states:

“Location of Violation: August Louis, 6101 Post Rd, Lot 32, North Kingstown, RI. 02852.

Violation: On 8-18-2014, I, Nicholas Ranone, Chief Mechanical Investigator, received a complaint from Mr. August Louis against Mr. Rene S. Theroux, about a packaged, self contained heat pump that was installed at his home at the above mentioned location. On 8-19-2014, Mr. Robert Fratus, Chief Electrical Investigator and I visited Mr. Louis at his home to view the work that was done, to get a copy of his cancelled check that was cashed by Mr. Theroux, and to get a written witness statement stating that he contracted with Mr. Theroux, RST Mechanical, and his son and ‘another man’ were the only three (3) people he witnessed at his home engaging in the installation.

Mr. Theroux is properly licensed in the State of RI and currently holds a Pipefitter Master 2, Refrigeration Master 2 and Sheet Metal Master 1 license (#7468).

Mr. Theroux's son is not licensed in the State of RI to do this type of work. This is one (1) violation of RIGL 28-27-28 Practices for which a license is required.

Also, no permit was issued with the Town of North Kingstown. This is one (1) violation of RIGL 28-27-20State [sic] and municipal inspections and installation permits.

Two (2) violations at \$1500.00 each. Total \$3000.00.” Pls.’ Mem., Ex. 2.

permit, as required by § 28-27-20. Penalties were assessed at a total of \$3000, \$1500 for each violation.

Appellants timely appealed the Notice of Violation and requested a hearing before the Mechanical Board. The matter was heard on December 3, 2014. The parties heavily disputed whether RST, Mr. Theroux, and his son actually installed the system, or whether they merely delivered the system to Mr. Louis' home. On December 10, 2014, the Mechanical Board issued a written recommendation (the Recommendation), finding that the alleged violations occurred and the fine assessed should be upheld.³ The Recommendation was subsequently forwarded to the Director of DLT for consideration. On December 31, 2014, the Director issued a written

³ The Recommendation made the following "Findings of Fact":

"1) Location of Violation: August Louis, 6101 Post Rd, Lot 32, North Kingstown, RI 02852, the violation was issued on August 26, 2014.

"2) On 8-18-2014, Nicholas Ranone, Chief Mechanical Investigator, received a complaint from Mr. August Louis against Mr. Rene S. Theroux, about a packaged, self contained heat pump that was installed at his home above at the above mentioned location. On 8-19-2014, Mr. Robert Fratus, Chief Electrical Investigator and Nick Ranone visited Mr. Louis at his home to view the work that was done, to get a copy of his cancelled check that was cashed by Mr. Theroux, and to get a written witness statement stating that he contracted with Mr. Theroux, RST Mechanical & A/C, and his son and 'another man' were the only three (3) people he witnessed at his home engaging in the installation.

"3) Mr. Theroux is properly licensed in the State of RI and currently holds a Pipefitter Master 2, Refrigeration Master 2 and Sheet Metal Master 1 license (#7468).

"4) Mr. Theroux's son is not licensed in the State of RI to do this type of work. This is one (1) violation of RIGL 28-27-28 Practices for which a license is required.

"5) There was no permit issued with the Town of North Kingstown. This is one (1) violation of RIGL 28-27-20 State and municipal inspections and installation permits.

"6) There are two (2) violations at \$1500.00 each, totaling \$3000.00." Pls.' Mem., Ex. 1.

Decision, cursorily finding that “a violation of RIGL 28-27-28 – ‘Practices for which a license is required’ – and RIGL 28-27-20 ‘State and municipal inspections and installation permits’ did occur and the requested fine of \$3,000.00 is hereby upheld.” DLT Decision, Dec. 10, 2014. The Decision was mailed to Appellants on January 8, 2015.

On February 5, 2015, Appellants appealed the DLT’s Decision to this Court. First, Appellants argue that both the Decision and Recommendation lack sufficient findings of fact that are separate from the stated legal conclusions. They posit that it is irrelevant whether the Decision is supported by substantial evidence on the record because such evidence never made it into the ultimate Decision, as required by G.L. 1956 § 45-35-12. In addition, Appellants claim that the Recommendation submitted by the Mechanical Board is a mirror image of the Notice of Violation that was sent to Appellants prior to the hearing. In essence, Appellants contend that the Mechanical Board failed to articulate specific facts but merely copied the previously sent Notice of Violation. Second, Appellants claim that their due process rights have been violated because they never received a copy of the Recommendation, as required by § 28-27-24(a). As a result, they argue, they were unable to take an administrative appeal and be heard by the Director of the DLT.

In opposition, DLT claims that the Recommendation and Decision are supported by substantial evidence on the record. Specifically, the Department contends that the factual issue of whether Appellants installed the unit was considered by the Mechanical Board and Director, and both chose to believe Mr. Louis. DLT argues that this Court is unable to assess the credibility of a witness and substitute its judgment for that of the agency. DLT also claims that Appellants received a full hearing and opportunity to be heard.

II

Standard of Review

The Administrative Procedures Act (the Act) provides this Court with appellate review jurisdiction over DLT orders. Sec. 42-35-15(g). The Act states:

“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, interferences, 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 a decision under the Act, “the [C]ourt is limited to an examination of the certified record to determine if there is any legally competent evidence therein to support the agency’s decision.” Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992). Furthermore, “[l]egally competent evidence is indicated by the presence of ‘some’ or ‘any’ evidence supporting the agency’s findings.” R.I. Pub. Telecommunications Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994) (quoting Strafach v. Durfee, 635 A.2d 277, 280 (R.I. 1993)).

An agency’s decision “can be vacated if it is clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record.” Costa v. Registrar of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988). Courts should uphold the decision as long as the administrators have acted within their authority to make such decisions. See, e.g., Goncalves v. NMU Pension Trust, 818 A.2d 678, 683 (R.I. 2003) (citing Doyle v. Paul Revere Life Ins. Co.,

144 F.3d 181, 184 (1st Cir. 1998)); Coleman v. Metro. Life Ins. Co., 919 F. Supp. 575, 580 (D.R.I. 1996).

III

Analysis

A

Findings of Fact

Appellants contend that the Mechanical Board and Director violated § 42-35-12 by failing to make separate findings of fact and conclusions of law. Section 42-35-12 provides, in pertinent part:

“Any final order adverse to a party in a contested case shall be in writing or stated in the record. Any final order shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.”

Our Supreme Court has stated that “a municipal board, when acting in a quasi-judicial capacity, must set forth in its decision findings of fact and reasons for the action taken.” Sciacca v. Caruso, 769 A.2d 578, 585 (R.I. 2001) (quoting Irish P’ship v. Rommel, 518 A.2d 356, 358 (R.I. 1986)) (internal quotation marks omitted). These findings are essential so that the decisions “may be susceptible of judicial review.” Bernuth v. Zoning Bd. of Review of Town of New Shoreham, 770 A.2d 396, 401 (R.I. 2001) (quoting Cranston Print Works Co. v. City of Cranston, 684 A.2d 689, 691 (R.I. 1996)) (internal quotation marks omitted). It is well settled that “[a] satisfactory factual record is not an empty requirement. Detailed and informed findings of fact are a precondition to meaningful administrative or judicial review.” JCM, LLC v. Town of Cumberland Zoning Bd. of Review, 889 A.2d 169, 176 (R.I. 2005) (citing Kaveny v. Town of Cumberland Zoning Bd. of Review, 875 A.2d 1, 8 (R.I. 2005)). “Those findings must, of course,

be factual rather than conclusional, and the application of the legal principles must be something more than the recital of a litany.” Kaveny, 875 A.2d at 8 (quoting Irish P’ship, 518 A.2d at 358-59) (internal quotation marks omitted). If the board fails to make such findings, “the [C]ourt will not search the record for supporting evidence or decide for itself what is proper in the circumstances.” Bernuth, 770 A.2d at 401 (quoting Irish P’ship, 518 A.2d at 359) (internal quotation marks omitted).

In the Mechanical Board’s Recommendation, the “Findings of Facts” pronounced are essentially copied verbatim from the Notice of Violation that was sent to Appellants. Compare supra n.2, with n.3. The Notice of Violation was sent prior to any hearing. Furthermore, the only statement that even touches on whether RST installed the heating unit—the main issue in dispute—merely recites the steps that Mr. Ranone took in investigating Mr. Louis’ complaint. This statement maintains that (1) Mr. Louis complained about a unit installed at his home; and (2) Mr. Ranone visited the home to review the work performed and obtain a witness statement from Mr. Louis as to who performed the work. The Mechanical Board fails to discuss why Mr. Louis’ rendition of events is believed to be more accurate than Mr. Theroux’s version.

Additionally, the Director’s Decision does not state any findings of fact as mandated in § 42-35-12, cursorily stating:

“Upon review of the testimony and evidence recorded, the findings of fact by the Board, the recommendation of the Board . . . , and upon due consideration thereof, I find that violation of RIGL 28-27-28 . . . and RIGL 28-27-20 . . . did occur and the requested fine of \$3000.00 is hereby upheld.” Decision, Dec. 10, 2014.

This Court finds that the factual findings and conclusions in this case are legally insufficient and do not enable this Court to conduct an adequate review. See JCM, LLC, 889 A.2d at 176. As a result, the case is remanded for further proceedings consistent with this Decision.

B

Due Process

Appellants additionally assert that their due process rights have been violated as they were not afforded an opportunity to appeal the Mechanical Board's Recommendation to the Director, as permitted under § 28-27-24(a). Section 28-27-24(a) provides, in pertinent part:

“A copy of the order shall be immediately served upon the licensee and/or violator personally or by registered or certified mail. The order of the board is final unless the licensee and /or violator so charged or complainant within twenty (20) days after receipt of the order files an appeal with director. The appeal will be determined by the administrator of the division or his or her designee. The director may accept or reject, in whole or in part, the recommended order of the board. The order of the director shall be final, and a copy of it shall be immediately served upon the person, firm, or corporation assessed.”

Appellants claim that they never received a copy of the Mechanical Board's Recommendation. The DLT does not appear to contest this fact; rather, it argues that it is irrelevant because the Director did in fact review the Recommendation even without a formal appeal. This Court refuses to render the requirements of § 28-27-24(a) without meaning. Even more compelling, this Court notes that, while the Decision was not signed until December 31, 2014, the date on the Decision itself reads December 10, 2014—the same date that the Mechanical Board rendered its Recommendation. According to § 28-27-24(a), an aggrieved party has twenty days to file an appeal; therefore, a decision cannot be rendered prior to expiration of this period. The Decision makes clear that it was written on December 10th. This Court declines to join the DLT in post-dating the Decision to ensure compliance with § 28-27-24(a). Appellants were denied their due process rights. However, this denial did not substantially prejudice the rights of Appellants, because Appellants will have the opportunity to appeal to the Director once the Mechanical Board issues its factually detailed recommendation.

IV

Conclusion

Upon review, the Court finds that it is unable to conduct an adequate review as both the Mechanical Board's Recommendation and the Director's Decision lack sufficient findings of fact. The Court also notes that Appellants were not provided with a copy of the Mechanical Board Recommendation and an opportunity to properly appeal to the Director. As a result, the case is hereby remanded for additional findings of fact. On remand:

“[T]he board should take care that its findings of fact are clearly set forth in its decision, referring to the evidence presented, and that its conclusions of law are properly supported by the findings of fact. The board shall confine its review to the existing facts and applicable law at the time of its initial decision. The board shall render its decision as expeditiously as possible and, in no event, beyond ninety days after the entry of this [decision].” Kaveny, 875 A.2d at 9.

DLT should also be sure to comply with the requirements of § 28-27-24(a). Counsel shall submit an appropriate order and judgment for entry consistent with this Decision.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Rene Theroux, RST Mechanical, LLC v. Rhode Island
Department of Labor & Training

CASE NO: PC 15-0477

COURT: Providence County Superior Court

DATE DECISION FILED: March 14, 2016

JUSTICE/MAGISTRATE: Procaccini, J.

ATTORNEYS:

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