

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: February 22, 2023)

J.M.Z. AUTO SALES, INC. d/b/a
KING PHILIP MOTORS,

Appellant,

v.

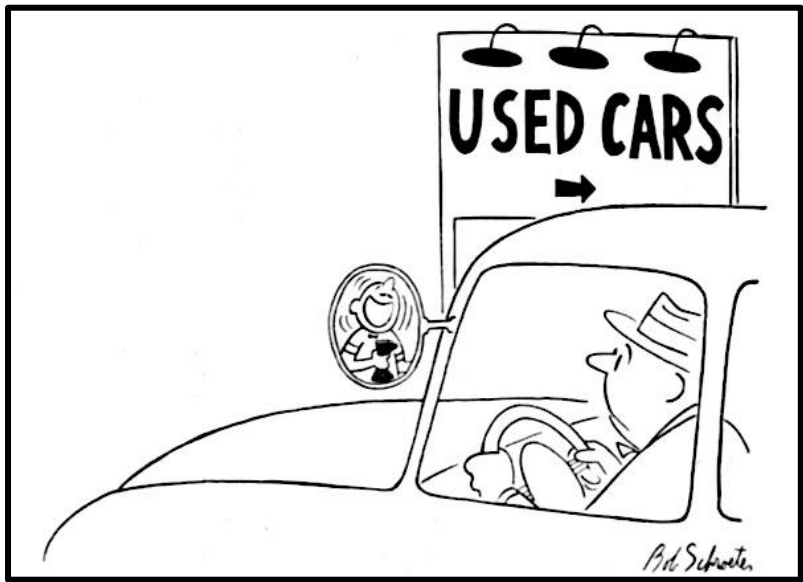
RHODE ISLAND MOTOR
VEHICLE DEALERS' LICENSE
AND HEARING BOARD,

Appellee.

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C.A. No. PC-2022-05454

DECISION



Bob Schroeter (Nov. 15, 1952)

STERN, J. Before the Court is Appellant J.M.Z. Auto Sales, Inc. d/b/a King Philip Motors' (King Philip) appeal from Appellee Rhode Island Motor Vehicle Dealers' License and Hearing Board's (the Board) August 15, 2022 decision ordering King Philip to make full restitution for the purchase price of an allegedly defective motor vehicle. King Philip timely appealed under the

Administrative Procedures Act. *See* Docket, PC-2022-05454. Jurisdiction is pursuant to G.L. 1956 §§ 42-35-15 and 31-5-2.1(d). The Court **AFFIRMS** the Board’s decision.

I

Facts and Travel

By way of background, King Philip is a Rhode Island motor vehicle dealership located in Bristol. (Appellant’s Br. 3.) Neil DeAlmeida (DeAlmeida) is the Vice President of King Philip and has been the primary representative of King Philip throughout these proceedings. (Appellee’s Br. 2.) The Board is an administrative agency that oversees automobile dealers’ licensing and operations pursuant to chapter 5 of title 31. (Appellant’s Br. 3.)

A

King Philip Sells the Acadia to the Mittons

On or about April 14, 2021, King Philip sold a 2010 GMC Acadia (the Acadia) to Mr. and Mrs. Mitton (the Mittons). (Appellee’s Br. 2; Administrative Record (R.) at 109.) The Mittons paid a deposit of \$495 and then an additional \$8,500 at the time of purchase. (R. at 109.) The Acadia was sold with a thirty-day, 1,200 mile “Dealer Warranty” covering the motor, transmission, and all mechanical and electrical components in the engine and transmission. *Id.* at 123. Under the warranty, King Philip agreed to pay 50 percent of parts and labor related to repairs.

The Acadia purportedly exhibited problems immediately after the Mittons took possession of it. (Appellee’s Br. 2.) The Mittons stated that approximately ten minutes into their drive home from King Philip, the Acadia’s check engine light began blinking. (R. at 109.) The Mittons also reported several additional mechanical issues with the vehicle the following day. *Id.* The Acadia apparently displayed numerous dashboard warning indicators, including the oil pressure light, the check engine light, and the tire pressure light. (Appellee’s Br. 2.)

The Acadia was towed back to King Philip on or about April 20, 2021. (R. at 109.) On or about April 23, 2021, DeAlmeida inspected the vehicle and advised the Mittons that the Acadia's issues were caused by a lack of fuel. *Id.* On or about May 5, 2021, the Mittons returned to King Philip to retrieve the Acadia. *Id.* Again, the Acadia purportedly displayed a check engine light after it was driven briefly. *Id.* When the Mittons again contacted King Philip, they were allegedly "met with a vulgar response followed by a refusal/failure to correspond with them." *Id.*

On or about May 10, 2021, the Mittons took the vehicle to Durand Buick/GMC/Cadillac (Durand) to diagnose the problems with the Acadia. *See* R. at 131-33. Durand indicated that (1) a used engine had been installed in the Acadia; (2) aftermarket timing chains and gears had been installed; (3) the timing chains and guides were covered in metal; and (4) the bank 1 timing chain had lots of play, and the bank 2 actuator was stuck in place. *Id.* at 131. Durand removed the engine from the vehicle, replaced the timing chains, guides, and bank 2 actuator with original equipment manufacturer (OEM) parts, and cleaned and resealed the engine. *Id.*; Appellee's Br. 2. After completing the repairs, Durand technicians test drove the vehicle. (Appellee's Br. 2.) Durand technicians found that the Acadia exhibited low oil pressure while at idle and stalled, and metal shavings were present in the oil. *See* R. at 131. Durand advised the Mittons that the Acadia's engine was failing and to contact King Philip for information on the used engine that was installed in the vehicle. *See id.* Durand invoiced the Mittons for \$3,578.47. (R. at 110, 133.) When the Mittons relayed this information to DeAlmeida, he refused to honor the warranty because the Mittons had taken the Acadia elsewhere for repairs. *Id.* at 110.

On or about May 17, 2021, the Mittons filed a complaint with the Rhode Island Division of Motor Vehicles Dealers' License and Regulations Office. (R. at 111-21.) King Philip averred that the Acadia failed to start and run properly because it was out of fuel and because the Acadia

had a defective starter. (R. at 110.) King Philip also denied installing a used engine in the Acadia or doing any repairs to the engine and claimed that the metal flakes in the oil were caused by a high-pressure pump that was not replaced. *Id.* King Philip refused to cooperate with state investigators and stated that the matter was a “total fraud.” *Id.*

On or about July 14, 2021, DeAlmeida brought the Acadia to Tasca GMC (Tasca) in Woonsocket, Rhode Island. *See* R. at 101-08. After inspecting the vehicle, Tasca determined that the Acadia had an internal engine timing problem and possible faulty cam actuators. *Id.* at 101. Tasca recommended replacing the Acadia’s timing chains, guides, tensioners, cam actuators, and necessary gaskets and seals. *Id.* Tasca also verified that the Acadia’s engine exhibited a “rapping/knocking” sound, indicative of worn bearings that would cause low oil pressure and the oil pressure light to turn on. *Id.* at 102. Tasca recommended a complete engine overhaul or replacement. *Id.* In total, Tasca invoiced King Philip for \$16,236.53 worth of repairs, all of which DeAlmeida declined. *Id.* at 108.

The Mittons’ complaint was brought before the Board on September 1, 2021, but before the Board rendered a decision, King Philip agreed to buy the Acadia back from the Mittons. (Appellee’s Br. 3.)

B

King Philip Sells the Acadia to Barr

On or about February 4, 2022, Ashley Barr (Barr) purchased the same Acadia from King Philip. *Id.* at 4; *see also* R. at 4-5. King Philip initially marketed the Acadia for \$8,999, which Barr negotiated down to \$8,000. (R. at 5, 36; Appellee’s Br. 4.) The Acadia was also purchased “as-is,” with no warranty. (R. at 5; Appellee’s Br. 4.) Barr picked up the Acadia on or about February 7, 2022, after the Acadia received a Rhode Island inspection sticker. (Appellee’s Br. 4.)

Barr purportedly experienced major problems with the Acadia soon after taking possession of it. (R. at 12.) Barr complained that there were numerous warning lights, including a tire pressure light, a “turn off engine” light, and a “low oil pressure” light. *Id.* Barr also averred that there was a knocking noise in the engine. *Id.* On or about February 17, 2022, Barr reported these issues to King Philip, but was told that King Philip could not look at the vehicle until the following week. *Id.* In the meantime, Barr brought the Acadia to a Valvoline service center in Seekonk, Massachusetts, for an oil change. *Id.* at 12, 80. Valvoline notified Barr that there was oil seepage, but the technician could not identify where in the vehicle it originated. *Id.* at 80.

On or about February 20, 2022, Barr contacted King Philip and informed them that the Acadia stalled while she was driving on the highway with her five children in the vehicle. *Id.* at 47. Barr also reported that the Acadia displayed multiple warning lights and that there was a smell coming from the hood of the vehicle. *Id.* On or about February 22, 2022, Barr brought the Acadia to King Philip. *Id.* at 12. DeAlmeida informed Barr that there was no oil in the engine, that the engine was “fried,” and that the engine needed to be replaced. *Id.* King Philip asked Barr to tow the Acadia from the premises because it could not be driven. (R. at 57-58.) When Barr asked for a refund, King Philip refused, pointing to the fact that Barr purchased the vehicle “as is” and stating that Barr would need to file a complaint with Valvoline. *Id.* at 59. King Philip blamed the Valvoline service center, telling Barr that the technicians must have not put oil into the Acadia. *Id.* at 12. However, Valvoline provided Barr with a video showing that the technicians filled the Acadia with oil. *Id.* at 12-13.

On or about February 24, 2022, Barr went to King Philip to retrieve the Acadia. *Id.* at 29. Against King Philip’s advice, Barr drove the vehicle off the premises. *Id.* King Philip averred that the vehicle was smoking as if it were on fire, and “pouring oil” as Barr drove away. *Id.*

C

Barr Files a Complaint and the Board Renders a Decision

On or about February 25, 2022, Barr filed a complaint with the Rhode Island Division of Motor Vehicles Dealers' License and Regulations Office seeking a refund for the Acadia as well as a refund for taxes and registration fees. *See id.* at 30-31. Investigator Patrick Sweeney (Sweeney) investigated the merits of Barr's complaint. *See id.* at 16-20. Sweeney noted that the Acadia's title history showed that the vehicle was the same Acadia owned by the Mittons. *Id.* at 16. On or about March 21, 2022, Sweeney contacted King Philip regarding the Acadia and Barr's complaint. *Id.* at 17. DeAlmeida stated that the Acadia was fixed after it was repurchased from the Mittons, and that the Acadia was in working order at the time that Barr purchased it. *Id.* DeAlmeida provided receipts showing that King Philip purchased timing sprockets, variable valve timing solenoids, an oil pump, a timing chain kit, and an oil filter. *Id.* at 21-23.

The parties appeared before the Board for a hearing on or about April 20, 2022. *Id.* at 13. DeAlmeida again denied any wrongdoing and averred that he had replaced the Acadia's timing chain and oil pump before selling it to Barr. *Id.* DeAlmeida blamed Valvoline, alleging that a defective oil filter was installed during the oil change and that the defective oil filter damaged the Acadia's engine. *Id.* The Board also heard testimony from Douglas Staradumsky (Staradumsky), Chief of Safety and Emissions for the Rhode Island Division of Motor Vehicles. *Id.* Staradumsky testified that even if DeAlmeida had replaced the parts in question, the Acadia's oil pressure issue would not have been resolved. *Id.* Staradumsky also stated that Valvoline could not have caused the oil pressure issue because the oil pressure light was on before Barr brought the Acadia to Valvoline. *Id.* At the hearing, the parties agreed that the Acadia would be towed to the Rhode Island Division of Motor Vehicles' inspection facility to determine the issues with the vehicle. *Id.*

On or about April 22, 2022, the Acadia was brought to the Safety and Emission Control Division for inspection. *Id.* at 91-92. Staradumsky and Inspector John Overy (Overy) performed the inspection. *Id.* at 92. They initially found that the oil level in the Acadia was too low to be measured on a dipstick, so four quarts of oil were added before starting the vehicle. *Id.* at 92, 94. The Acadia was then started but “could be run for only a few seconds due to a major oil leak coming from the vehicle.” *Id.* at 92. Staradumsky and Overy report that a puddle of oil approximately two feet in diameter was left underneath the Acadia. *Id.* at 92, 95. The Acadia was then raised on a lift to investigate the source of the oil leak, which Staradumsky and Overy determined came from behind the exhaust manifold in the area above the oil filter. *Id.* at 92, 96. The inspection was suspended so that Staradumsky and Overy could replace the oil filter and determine whether the oil leak would be resolved. *Id.* at 92.

On or about April 25, 2022, the inspection was resumed. *Id.* The Acadia’s oil filter was removed; upon examination, Staradumsky and Overy found a puncture in the oil filter approximately 1/8” in diameter. *Id.*; *see also* R. at 94-96. They further noted that “the metal around the puncture hole was pushed inward, indicating the oil filter did not burst from pressure pushing outward, but was punctured from outward force pushing inward.” *Id.* at 92. After installing a new oil filter, the Acadia was started again. *Id.* Staradumsky and Overy noted that the oil leak had stopped, but the engine was making loud clicking and knocking noises. *Id.*

On or about June 1, 2022, Staradumsky testified before the Board as to the results of the inspection. *Id.* at 13. He stated that the oil filter removed from the Acadia was a Valvoline brand filter, which was consistent with Barr’s claim that she took the Acadia to Valvoline for an oil change. *Id.* at 14. He stated that he had never seen a defect in an oil filter like the one he observed on the Acadia, and that it was “highly unlikely” that road debris would have caused the puncture

because the hole was facing upward. *Id.* He reiterated his position that the hole could not have been caused by any internal pressure within the oil filter. *Id.* Staradumsky further stated that the oil leak sprayed oil onto the exhaust manifold and catalytic converter, which could have caused a fire if the engine were run for a nonnegligible amount of time. *Id.*

On or about August 15, 2022, the Board rendered a decision. *Id.* at 14-15. After considering the evidence on the record, the Board determined that “all of the evidence points to the fact that [King Philip] knowingly sold a vehicle with a fatally defective engine to a young woman who was simply seeking a reliable car to transport her children.” *Id.* The Board relied on the Mittons’ invoices from Durand and Tasca, which both stated that the Acadia’s engine needed repair or replacement. *See id.* at 14-15. Accordingly, the Board found that King Philip understood the Acadia needed a new motor and sold the vehicle anyway. *Id.* The Board also found that King Philip never disclosed the Acadia’s engine problems to Barr. *Id.* at 14. The Board further chastised King Philip, stating that “[s]lapping the label ‘AS IS’ on the bill of sale does not absolve [King Philip] from what is simply an unconscionable business practice.” *Id.*

The Board declined to opine on who caused the damage to the oil filter but determined that the damage “clearly appear[ed] to be a man-made puncture hole in the unit.” *Id.* at 15. The Board found that the puncture rendered the Acadia virtually undriveable, because even starting the engine would cause nearly all the oil to be expelled through the puncture. *Id.* Ultimately, the Board ordered King Philip to make full restitution for the purchase price of the Acadia because it found that the sale of a vehicle with a known defective motor “constituted an unconscionable business practice in violation of R.I.G.L. § 31-5-11(10).” *Id.* On October 20, 2022, King Philip appealed the Board’s decision and filed a supporting brief. *See* Docket, PC-2022-05454. On November 23, 2022, the Board filed its own brief. *Id.*

II

Standard of Review

“When this Court reviews an administrative appeal brought under the Administrative Procedures Act, G.L. 1956 chapter 35 of title 42, our review is limited to questions of law.” *Blais v. Rhode Island Airport Corporation*, 212 A.3d 604, 611 (R.I. 2019). “This Court does not substitute its judgment for that of the agency concerning the credibility of witnesses or the weight of the evidence concerning questions of fact.” *Id.* (quoting *Beagan v. Rhode Island Department of Labor and Training*, 162 A.3d 619, 626 (R.I. 2017)). However, “questions of law—including statutory interpretation, are reviewed *de novo*.” *Iselin v. Retirement Board of Employees’ Retirement System of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008).

The Administrative Procedures Act outlines this Court’s appellate scope:

“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 of 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.” Section 42-35-15(g).

The Court will defer to an agency’s findings of fact if the agency’s determinations are supported by legally competent evidence. *Town of Burrillville v. Rhode Island State Labor Relations Board*, 921 A.2d 113, 118 (R.I. 2007) (citing *State, Department of Environmental*

Management v. State, Labor Relations Board, 799 A.2d 274, 277 (R.I. 2002); *Johnston Ambulatory Surgical Associates, Ltd. v. Nolan*, 755 A.2d 799, 804-05 (R.I. 2000)). Thus, the Court will “reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record.” *Milardo v. Coastal Resources Management Council of R.I.*, 434 A.2d 266, 272 (R.I. 1981). Legally competent 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.” *R.I. Temps, Inc. v. Department of Labor and Training, Board of Review*, 749 A.2d 1121, 1125 (R.I. 2000) (citations omitted).

III

Analysis

A

The Decision was Neither Clearly Erroneous nor an Abuse of Discretion

King Philip first argues that “[t]he Board’s determination that [King Philip] made a knowing sale of [Acadia] with a defective motor in need of replacement was an abuse of discretion and clearly erroneous in view of the reliable and probative evidence on the whole record.” (Appellant’s Br. 4.) The Court disagrees and holds that there was more than enough evidence to support the Board’s finding that King Philip knowingly sold a defective motor vehicle.

The record indicates that the Mittons immediately experienced problems with the Acadia. When the Mittons purchased the Acadia, they drove it for only ten minutes before the check engine light began blinking. (R. at 109.) King Philip attributed the check engine light to a lack of fuel and refused to conduct any further investigation or repairs. *Id.* When the Mittons went to Durand, it was discovered that a used and failing engine had been installed in the Acadia. *Id.* at 131. Durand also found that the Acadia exhibited low oil pressure at idle, which caused the vehicle to

stall, and that metal shavings were found in the oil. *Id.* Tasca’s report corroborated Durand’s and stated that the Acadia’s engine exhibited a “rapping/knocking” sound, indicative of worn bearings that would cause low oil pressure and the oil pressure light to turn on. *Id.* at 102. Accordingly, Tasca recommended a complete engine overhaul or replacement. *Id.*

However, DeAlmeida and King Philip did not follow Tasca’s recommendation. Instead, DeAlmeida replaced numerous parts that purportedly would not have fixed the Acadia’s engine problems. *Id.* at 13, 17, 21-23. It is therefore no surprise that when Barr purchased the Acadia, she also complained of numerous warning lights, including a tire pressure light, a “turn off engine” light, and a “low oil pressure” light, as well as a knocking noise in the engine. *Id.* at 12. Soon thereafter, the Acadia stalled while Barr was driving on the highway with her children in the vehicle. *Id.* at 47. At that time, the Acadia displayed multiple warning lights and emitted an odor from the hood. *Id.* When Barr brought the Acadia to King Philip, DeAlmeida informed Barr that the engine was “fried” and needed to be replaced. *Id.* at 12. At no point does it appear that King Philip informed Barr of the Acadia’s prior engine issues.

The Court finds that there was ample evidence on the record for the Board to conclude that the Acadia was sold with a defective engine, first to the Mittons and then to Barr. There was also evidence that King Philip did not properly repair the Acadia to remedy its engine problems, nor did it inform Barr of those problems. Accordingly, the Court determines that the Board’s decision was neither clearly erroneous nor an abuse of discretion.¹

¹ King Philip argues that the Board made erroneous findings of fact related to an oil filter installed on the Acadia by Valvoline technicians, but the Court finds that this argument is unavailing. The Board did not base its decision on the oil filter or any damage found on it. The Board expressly determined that the oil filter was a “collateral matter” and specifically declined to make a finding as to who caused the damage to the oil filter. (R. at 13.)

B

The Board Did Not Exceed its Statutory Authority

Next, King Philip argues that the Board exceeded its statutory authority by imposing restitution. (Appellant’s Br. 7.) King Philip avers that the Acadia was marketed for \$8,999 but sold for \$8,000 because Barr negotiated the dealer’s warranty out of the purchase price. *See id.* at 8. King Philip argues that the Board’s restitution order wrongfully imposes a warranty. *Id.* at 7.

The Court disagrees that the Board exceeded its authority. The Board is entitled to award full restitution for losses “suffered by a purchaser as a result of an unconscionable practice or illegal transaction[.]” 280 RICR 30-20-1.2(4). The Board found, supported by competent evidence in the record, that King Philip willfully and knowingly sold a defective vehicle to Barr, which constituted an unconscionable business practice. (R. at 15; *see* § 31-5-11(10).) Accordingly, the Court does not find that the Board exceeded its authority by awarding full restitution for the purchase price of the Acadia.

In actuality, the Court believes that the Board was relatively tame in only awarding full restitution. The Board found that (1) King Philip “sold a vehicle with a fatally defective engine to a young woman who was simply seeking a reliable car to transport her children[;]” (2) it was “glaringly obvious” that the Acadia needed a new engine; and (3) King Philip’s failure to disclose that the Acadia was in such a dangerous state was an unconscionable business practice that could not be alleviated by merely “[s]lapping the label ‘AS-IS’ on the bill of sale[.]” (R. at 14.) Given the Board’s scathing remarks, the Court would be surprised if the Board was not considering punitive remedies such as suspension or revocation. *See* 280 RICR 30-20-1.2.

The Court finds that King Philip’s actions were decidedly unfair and duplicitous. The words “shock the conscience” come to mind, considering the dangers to which Barr and her

children were subjected by being anywhere near the Acadia, let alone in it. The Court believes that additional proceedings may be warranted if the Board so chooses. Ultimately, the Court concludes that the Board's decision was overly generous, and that King Philip looks a gift-horse in the mouth even by filing this appeal.

C

The Board's Procedure Was Not Unlawful

Finally, King Philip argues that the Board's decision was made upon unlawful procedure because not all members of the Board were present for the April 20, 2022 hearing and the June 15, 2022 hearing. (Appellant's Br. 8-9.) The Court disagrees.

Pursuant to § 31-5-2.1(a), the Board must consist of five members. It is well-settled in Rhode Island that "a majority constitutes a quorum and if a quorum is present, the legislative, judicial or administrative body has authority to act in those matters coming within its jurisdiction." *Domestic Safe Deposit Co. v. Hawksley*, 111 R.I. 224, 232, 301 A.2d 342, 346 (1973). Accordingly, a quorum exists when three members of the Board are present. The parties agree that at least three members of the Board were present for both the April 20, 2022 and June 15, 2022 hearings. (Appellant's Br. 9; Appellee's Br. 13-14.) All members of the Board present at the June 15, 2022 hearing were either present at the April 20, 2022 hearing or had read the record. *See* Appellee's Br. at 13-14. Accordingly, the Court finds that a quorum existed on both hearing dates. *See* § 42-35-11(a).

IV

Conclusion

Based on the foregoing, the Court **AFFIRMS** the Board's decision. Counsel shall prepare and submit an order consistent with this Decision.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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COURT: **Providence County Superior Court**

DATE DECISION FILED: **February 22, 2023**

JUSTICE/MAGISTRATE: **Stern, J.**

ATTORNEYS:

For Plaintiff: **William C. Maaia, Esq.**

For Defendant: **Roger R. Demers, Esq.**