STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: January 21, 2014)

JAMES P. TAVARES CONSTRUCTION, INC.	:	
v.	:	**C.A. No. PC 08-6101**
STATE OF RHODE ISLAND CONTRACTORS' REGISTRATION BOARD	:	

DECISION

VAN COUYGHEN, J. The matter before this Court is an appeal from a final order of the Rhode Island Contractors' Registration and Licensing Board (CRLB) directing James P. Tavares Construction, Inc. (Appellant) to pay monetary restitution to Mario F. Cirillo (Claimant). Appellant seeks reversal of the CRLB's decision. Jurisdiction is pursuant to G.L. 1956 § 42-35-15. For the reasons set forth below, this Court affirms the CRLB's final order.

I

Facts and Travel

On January 16, 2006, James P. Tavares (Mr. Tavares) drafted and entered into a contract with Claimant stating that Appellant would perform renovation work at Claimant's home. The parties agreed that Claimant would pay Appellant the actual cost plus twenty percent for materials and subcontractor work. The contract also contained an arbitration clause stating that "[a]ny and all claims or disputes between [Claimant] and [Appellant] arising out of or related to the interpretation or performance of the work as described in [the] contract . . . shall be resolved and decided by arbitration in accordance with the Construction Industry Rules of the American Arbitration Association." Any award rendered by an arbitrator, according to the terms of the

contract, would be final and binding on the parties. The contract did not specify a time for commencing arbitration should the parties decide to arbitrate a dispute.

Initially, the contract work was estimated at $140,000 but was subsequently revised to $180,000. On April 11, 2007, Claimant filed a complaint with the CRLB alleging breach of contract by Appellant. Claimant contended that he had been overbilled for work performed by Appellant, and that he had ultimately paid a total of $230,000 for the renovation. At some point prior to the first hearing, the CRLB mailed the parties a Waiver of Arbitration form. Claimant signed the form on April 30, 2007, but Appellant did not sign or return the form to the CRLB. (Hr'g Ex. 9.)

Based on the complexity of the matter and the voluminous evidence, the CRLB hearing officer held four administrative hearings occurring on September 7, 2007; October 1, 2007; December 20, 2007; and February 19, 2008. The evidence was conflicting. Claimant alleged that he was overbilled for plumbing, painting, and labor. As for plumbing, he presented invoices that Appellant overbilled him in the amount of $5947.21. (Hr'g Ex. 2.) Mr. Tavares, speaking on behalf of Appellant, admitted that Claimant had been overbilled for plumbing work, but presented evidence that he had credited Claimant $4094.42. (Hr'g Exs. A, L.)

During the course of the proceedings, Claimant also argued that he had paid $24,244.27 for painting, which he described as "exorbitant," given that the contractor allegedly painted three rooms and glazed windows. (Hr'g Tr. 27:12-28:25, Sept. 7, 2007.) Specifically, he claimed that he had been overbilled in the amount of $4202.52 and submitted invoices for painting charges and a handwritten summary in support of this claim. Id. at 32:3-20; Hr'g Ex. 3. Claimant also submitted a summary of interest charges that included a bill for $617.40 for work that allegedly occurred after the claim had been filed with the CRLB. (Hr'g Ex. 13.)

In addition, Claimant contested expenses pertaining to supervision alleged to have been done by Paul Tavares, Mr. Tavares' brother. Claimant testified that he overpaid for Paul Tavares' work and submitted a handwritten statement summarizing alleged overbilling charges totaling $1527.50. (Hr'g Tr. 54:23-55:22, Sept. 7, 2007; Hr'g Ex. 5.) The statement included specific dates, hours worked, type of job, and amounts paid for Paul Tavares' work. He also asserted that Mr. Tavares and his brother billed him for supervising the job at the same time. (Hr'g Tr. 48:4-23, Sept. 7, 2007.) In response, Mr. Tavares claimed that if he or his brother "was going on vacation and somebody needed to be caught up to speed, [he thought that charging for two supervisors] was worth the price." (Hr'g Tr. 63:16-64:20, Sept. 7, 2007.) With regard to Mr. Tavares' supervision work, Claimant submitted a handwritten summary of overbilling charges for meetings, research, ordering, and communications summarizing invoice numbers, hours worked, type of work, and amount paid, totaling approximately $3200. (Hr'g Ex. 14.) In response, Appellant entered into evidence spreadsheets and invoices showing dates, hours worked, and type of work performed by Appellant and his brother. (Hr'g Ex. I.) Finally, Claimant presented evidence that he paid $16,250 for work performed on the kitchen and dining room floors, including tile work. (Hr'g Ex. 12.) The Appellant did not present any evidence to contest these allegations other than to testify that he felt that the billing was reasonable. (Hr'g Tr. 279:8-289:18, Feb. 19, 2008.)

Based on the testimony and evidence presented, the hearing officer concluded that Appellant breached the contract and issued a proposed order directing Appellant to pay Claimant $12,219.95[1] pursuant to G.L 1956 § 5-65-12(a).[2] This amount included $4094.42 double billing

[1] After adding the amounts awarded, this Court calculated a total of $12,219.82. The $12,219.95 appears to be a clerical error.
[2] Section 5-65-12(a) states:

for plumbing expenses; $3478.80 double billing for painting expenses; $617.40 for invalid interest charges; and $5416.12 for overcharges pertaining to work performed on the kitchen and dining room floors, including tile work. Cirillo, CRLB No. 6177 (Apr. 1, 2008) (proposed order). This amount also included $1527.50 for supervision overcharges pertaining to Paul Tavares' time at the site, $1600.00 for overcharges pertaining to Mr. Tavares' time at the site, $1916.00 in attorney's fees pursuant to § 5-65-12(e), and a $25.00 claim filing fee. The hearing officer then deducted $6455.42 for the mechanic's lien that Appellant placed on Claimant's property. Finally, in addition to the $12,219.95, the hearing officer assessed fines against Appellant in the amount of $2000.00 for violation of §§ 5-65-18, 5-65-22, 5-65-3(p), and 5-65-10(a)(11).

In support of his conclusions, the hearing officer made the following findings of fact:

> "(A) The [parties] were properly notified of the hearing on 2/19/2008. Notice was sent to Contractors at last known address on the Board's record, in accordance to RIGL Section 5-65-6.
>
> "(B) The [Appellant] is a Contractor who is registered or required to be registered with the CRLB pursuant to RIGL Section 5-65-3.
>
> "(C) The [Claimant] is the owner of property at : 895 Hope Street, Bristol.
>
> "(D) The [parties] had entered into an agreement dated 02/03/2006 whereby the [Appellant] had agreed to perform certain work on the above property, namely: Interior renovations of the existing house with limited exterior renovations.

> "Any person having a claim against a contractor of the type referred to in § 5-65-11, may file with the board a statement of the claim in any form and with any fee that the board prescribes. The filing fee may be reimbursed to the claimant by the respondent, if the respondent is found to be at fault. Claims resolved prior to issuance of an order may be removed from the contractor's registration board record pursuant to administrative regulations."

> "(E) Agreement was a written contract.
>
> "(F) Pursuant to the terms of the Agreement, the [Claimant] agreed to pay the [Appellant] the sum of $180,000, exclusive of any extras, if any.
>
> "(G) [Claimant] paid [Appellant] the sum of $220,000 as of 09/07/07." Cirillo, CRLB No. 6177 (Apr. 1, 2008) (proposed order).

Following the hearing officer's proposed order, Appellant filed an appeal to CRLB's full Board (Board) claiming that the evidence in the record did not support the findings in the proposed order; the evidence at the hearing was misconstrued; and the hearing officer precluded Appellant from providing explanations or clarifications. The Board held hearings on June 11 and August 13, 2008. For the first time, at the June 11, 2008 hearing, Appellant raised the issue that the claim should have gone to arbitration rather than to the CRLB. (Hr'g Tr. 3:9-18, June 11, 2008.) The Board decided that it could properly hear the claim despite the arbitration clause, and that the hearing officer's proposed order should be upheld.

The Board issued a final order on August 25, 2008, upholding the hearing officer's findings and conclusions. Specifically, the final order stated:

> "The Proposed Order issued by the Board's Hearing Officer was reviewed and the information provided reviewed, exceptions were heard and all parties were present with their legal representatives. At the initial appeal heard in June, the Board listened to exceptions filed and concerns of double billing as well as the allegation that the hearing officer failed to have the claimant sign the arbitration waiver as required by the Boards [sic] rules and regulations. After further discussion and review the [B]oard voted to have staff and legal counsel review the file regarding the arbitration waiver and continued the claim until next meeting; however the cost issues and financial concerns would not be modified. The Board unanimously agreed to this action. Upon reviewing the file, staff found that the record reflected that the arbitration waiver was signed by the Claimant and at the 8/13/2008 meeting a motion was made to uphold the decision of the hearing office[r], which passed 7 to 1. Therefore; based on testimony and evidence presented by

> both parties at the Administrative hearing, the [Appellant] . . . is [ordered], to pay the [Claimant], Mario F. Cirillo, the amount of $12,219.95 . . . ." Cirillo, CRLB No. 6177 (Aug. 25, 2008) (final order).

Following the Board's decision, Appellant filed a complaint asking this Court to reverse the final order of the CRLB.

II

Standard of Review

The Superior Court's review of an administrative agency decision is governed by § 42-35-15(g). This section 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, 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 reviewing court is limited to examining the record to determine whether the agency's decision is supported by legally competent evidence. See Johnston Ambulatory Surgical Assocs., Ltd. 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)). 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.'" Town of

Burrillville v. R.I. State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007) (quoting Ctr. for Behavioral Health, R.I., Inc. v. Barros, 710 A.2d 680, 684 (R.I. 1998)).

The reviewing court may not "substitute its judgment for that of the agency in regard to the credibility of witnesses or the weight of the evidence concerning questions of fact." Costa v. Registrar of Motor Vehicles, 543 A.2d 1307, 1309 (R.I 1988); Carmody v. R.I. Conflict of Interest Comm'n, 509 A.2d 453, 458 (R.I. 1986). An administrative decision will be reversed only if it is clearly erroneous in view of the reliable, probative and substantial evidence contained in the record. Costa, 543 A.2d at 1309. If there is competent evidentiary support for the agency's determination, the determination cannot be disturbed. See Bunch v. Bd. of Review, R.I. Dep't of Emp't & Training, 690 A.2d 335, 337 (R.I. 1997).

III

Analysis

A

Grounds for Appeal

On appeal, Appellant first argues that the Board's final order is devoid of findings of fact, in violation of § 42-35-12.[3] Appellant also contends that, when issuing the final decision, the Board ignored the terms of the contract and based its conclusions on irrelevant factors. Next, Appellant claims that the Board's refusal to analyze the hearing officer's decision was arbitrary and capricious because the Board allegedly declined to consider whether the proposed order contained findings of fact. According to Appellant, members of the Board suggested that they would not question the hearing officer's decision, an attitude which allegedly "renders an

[3] Section 42-35-12 states in pertinent part: "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."

'appeal' meaningless." Third, Appellant asserts that the Board's final order denied it its contractual right to arbitration under the contract. Finally, Appellant contends that the Board's final order exceeded its power under the applicable enabling statute because that statute is allegedly an unconstitutional delegation of power.

B

Constitutionality of the Enabling Act

As an initial matter, this Court will first address Appellant's contention regarding the constitutionality of the agency's enabling statute. Appellant argues that the enabling statute is an unconstitutional delegation of power because it contains no limits on that delegation. Appellant further states that "[t]he delegation includes jurisdiction over contract claims and negligence claims that the legislature did not even possess at the time of delegation." In opposition, the CRLB contends that Appellant failed to preserve this issue at the hearing. The CRLB also claims that authority given to the CRLB is narrowly and clearly defined, and therefore, the enabling act is constitutional.

When considering the constitutionality of a statute, courts presume that the statute is constitutional. State ex rel. Town of Westerly v. Bradley, 877 A.2d 601, 605 (R.I. 2005) (citing Gem Plumbing & Heating Co. v. Rossi, 867 A.2d 796, 808 (R.I. 2005)). "The challenger bears the burden of proving beyond a reasonable doubt that the challenged enactment is unconstitutional." Id. In addition, courts have routinely stated that parties have a duty "'to spell out [their] arguments squarely and distinctly . . . .'" McCoy v. Mass. Inst. of Tech., 950 F.2d 13, 22 (1st Cir. 1991) (quoting Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co., 840 F.2d 985, 990 (1st Cir. 1988)). Judges will not entertain arguments raised in a perfunctory and underdeveloped manner. See id.; Kensington Rock Island Ltd. P'ship v. Am. Eagle Historic

Partners, 921 F.2d 122, 124-25 (7th Cir. 1990). Presenting a claim that is "the merest of skeletons," without providing the appropriate level of analysis, deems that argument waived. See McCoy, 950 F.2d at 22.

Here, Appellant simply cites case law regarding the delegation of power, without applying it to the enabling statute which it challenges as unconstitutional. Appellant then devotes just two sentences arguing that the enabling statute is unconstitutional. Specifically, its brief states: "In the present case, the enabling statute contains no limits on the delegation of power given to the Board. The delegation includes jurisdiction over contract claims and negligence claims that the legislature did not even possess at the time of delegation." No detail was provided to support Appellant's assertions regarding the constitutionality of the statute. No attempt was put forth to formulate a cogent legal argument to support Appellant's position. Appellant's bare assertions constitute the "merest of skeletons" as they relate to the constitutionality of the statute and fail to satisfy the requisite level of analysis necessary for this Court to decide the issue. See id.

Furthermore, a party that acquires a right before an administrative agency cannot, in the same proceeding, challenge the constitutionality of that agency's enabling statute. Bellevue Shopping Ctr. Assocs. v. Chase, 574 A.2d 760, 764 (R.I. 1990); Wellington Hotel Assocs. v. Miner, 543 A.2d 656, 659 (R.I. 1988). "[T]he term 'within the same proceeding' includes judicial review of the administrative action out of which the controversy arises." Easton's Point Ass'n v. Coastal Res. Mgmt. Council, 522 A.2d 199, 201 (R.I. 1987).

In this case, Appellant is a contracting company that applied for and received a license from the CRLB, thereby acquiring a right under the administrative agency. See Bellevue Shopping Ctr. Assocs., 574 A.2d at 764. It appealed the proposed order of the hearing officer

pursuant to § 5-65-20(b), which gives the Board jurisdiction to hear appeals from decisions of the hearing officer, and CRLB Reg. § 4.9(1)-(2), which allows a contractor to file written exceptions with the Board. (Appellant's Ex. 10.) Furthermore, CRLB Reg. § 4.9(6) subjects final orders to judicial review as allowed by the Administrative Procedures Act and enabled Appellant to file this appeal. Because Appellant acquired rights under the CRLB—namely, that it received a license, participated in the hearings, and relied on the enabling act in instituting the appeal—it cannot now challenge the constitutionality of that statute. See Easton's Point Ass'n, 522 A.2d at 201.

This Court finds that Appellant's argument that the enabling statute is unconstitutional was inadequately presented and perfunctory in nature. Thus, this Court will deem Appellant's argument regarding the constitutionality of the statute waived. See McCoy, 950 F.2d at 22. In addition, even if Appellant's constitutional argument was sufficiently presented, Appellant may not contest the constitutionality of the enabling act in this proceeding because it acquired various rights as a result of the legislation in question. See Bellevue Shopping Ctr. Assocs., 574 A.2d at 764. Consequently, this Court will not address the constitutionality of the enabling act. See State v. Lead Indus. Ass'n, Inc., 898 A.2d 1234, 1239 (R.I. 2006).

C

Waiver of Arbitration

Appellant further argues that the Board denied it its right to arbitrate the claim as specified in the contract. Although it admits to receiving the arbitration waiver form prior to the September 7, 2007 hearing, Mr. Tavares stated that he did not sign or return it to the CRLB. Appellant also contends that the Board erroneously claimed that Mr. Tavares signed and executed an arbitration waiver. In opposition, the CRLB argues that although Appellant did not

sign a waiver, it let the thirty-day period for signing a waiver expire without commencing arbitration. The CRLB also asserts that Appellant submitted to the jurisdiction of the CRLB by attending the hearings and did not preserve the issue of arbitration at those hearings.

CRLB Reg. § 4.6(1)(a)-(c) states:

> "(1) If a claim is received which is based upon a contract that contains an agreement by the parties to arbitrate disputes arising out of the contract, the specific terms of the arbitration agreement supersede Commission regulations. The Commission will take the following action:
>
> "(a) Inform the claimant that the Commission will accept the claim for processing only if both parties agree to waive arbitration. The necessary waiver must be written, signed, and received by the Commission within 30 days (or within the time period specified in the contract for the commencement of arbitration, whichever is later) of the date the commission notifies the parties that a waiver is required. Such notice shall be made by mail.
> "(b) If the Commission receives no waiver from the claimant, the claim will be closed and will not be reopened.
> "(c) If the contractor does not waive arbitration as set forth in the contract, the Commission will allow the contractor the remaining time to commence arbitration. If the contractor fails to submit evidence to the Commission that arbitration has been commenced within the 30 days or the time period specified by the contract (which ever is later), the Commission will resume processing the claim."

In this case, Appellant admits that the Board mailed it a form entitled "Arbitration Waiver." (Appellant's Br. 5.) A Board member at the June 11, 2008 hearing also stated that the CRLB mailed both parties copies of the arbitration waiver on April 25, 2007, and that the normal practice of the agency is to mail parties the waiver form if a disputed contract contains an arbitration claim. (Hr'g Tr. at 12:8-13:2, June 11, 2008.) No evidence has been presented that Appellant commenced arbitration upon receiving the letter. See CRLB Reg. § 4.6(1)(c).

Moreover, the contract does not specify the time in which arbitration should commence in the event of a contractual dispute. See id. The Board determined that because the contract did

not contain a time limit for commencing arbitration, arbitration had to be commenced within thirty days of receiving the notice. Specifically, one Board member stated that by the agency's "rules and regulations . . . if [a party does not] enter into arbitration within 30 days or whatever the term is in the contract, then the Board can proceed as if there's no arbitration." (Hr'g Tr. 12:15-21, Aug. 13, 2008.) By implication, the Board interpreted its own regulations to mean that if the contract does not contain a term specifying when arbitration should be commenced, then arbitration must be commenced within the thirty-day period. See id.

Because courts will generally defer to an agency's interpretation of its own regulations, this Court will also interpret that CRLB Reg. § 4.6 only applies to contracts with explicit time limits for commencing arbitration. See generally Unistrut Corp. v. State Dep't of Labor & Training, 922 A.2d 93, 99 (R.I. 2007) (citing Arnold v. R.I. Dep't of Labor & Training Bd. of Review, 822 A.2d 164, 169 (R.I. 2003)) (explaining that deference is due to an agency's interpretation of an ambiguous statute unless the interpretation is "clearly erroneous or unauthorized"). Therefore, if the contract contains no time limit, then a party must commence arbitration within thirty days. See CRLB Reg. § 4.6(1)(c). To hold otherwise would allow parties who entered into contracts with no time limit by which to initiate arbitration the power to derail hearings that had already been commenced, waste judicial resources, and inconvenience the opposing party. See generally Soprano v. Am. Hardware Mut. Ins. Co., 491 A.2d 1008, 1010 (R.I. 1985) (stating that the plaintiff did not request arbitration with reasonable diligence and that initiating arbitration after court proceedings had already been commenced only served to waste judicial resources and prejudice the opposing party). This is especially problematic in cases such as this one in which there were numerous hearings that spanned more than one year. The result would clearly be inconsistent with the obvious intent of the statute, which is to expedite

resolution of claims between contractors and the public. See id. For these reasons, this Court concludes that, pursuant to CRLB Reg. § 4.6(1)(c), the CRLB properly processed the claim because the contractor did not commence arbitration within thirty days of receiving the arbitration waiver form. See id.

Furthermore, courts have repeatedly held that, by engaging in litigation, a party may implicitly waive its contractual right to arbitrate. Creative Solutions Grp., Inc. v. Pentzer Corp., 252 F.3d 28, 32 (1st Cir. 2001); Navieros Inter-Americanos, S.A. v. M/V Vasilia Express, 120 F.3d 304, 316 (1st Cir. 1997). In order to prevail on a claim of waiver, the party opposing arbitration must show prejudice. Sevinor v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 807 F.2d 16, 19 (1st Cir. 1986). Factors that courts have considered in determining whether a party waived its arbitration right include: (1) whether a party participated in a lawsuit or had taken other actions inconsistent with its rights; (2) whether the parties were well into preparation by the time the intent to arbitrate was communicated; (3) whether the enforcement to arbitrate was brought up close to the trial date; and (4) whether the other party was affected, misled, or prejudiced by the delay. Creative Solutions Grp. Inc., 252 F.3d at 32; Jones Motor Co., Inc. v. Chauffeurs, Teamsters & Helpers Local Union No. 633, 671 F.2d 38, 44 (1st Cir. 1982). This rule prevents courts and other quasi-judicial bodies from wasting precious resources and from prejudicing the other party. Soprano, 491 A.2d at 1011.

In this case, Mr. Tavares admitted that he drafted the contract, and therefore, was clearly aware of the arbitration clause. (Hr'g Tr. at 11:9-10, Sept. 7, 2007.) Nevertheless, Appellant proceeded with hearings before the hearing officer, which spanned nearly six months. Not once did it object to the proceedings or raise the issue of arbitration before the hearing officer. See Navieros Inter-Americanos S.A., 120 F.3d at 316; see also, Stein, Construction Law § 12.06[1]

(2013) (stating that "waiver should not be inferred unless the party requesting arbitration has acted inconsistently with its right to arbitration and has taken unfair advantage of the other party or such party has been prejudiced"). Appellant also failed to mention the arbitration clause on the appeal form that he filed with the CRLB. The first time that it introduced the issue was at the June 11, 2008 hearing, after more than one year had passed since the case had been initiated. See generally, Stein, Construction Law § 12.06[1] (explaining that "[w]aiver may arise from the failure to demand arbitration within the time limits of the contract or within a reasonable time if the contract has no time limits"). By that time, Claimant had spent significant funds litigating the case, and the CRLB had dedicated significant resources to its adjudication. (Hr'g Exs. 15, F.)

It is clear that Appellant waived its right to arbitration. See Navieros Inter-Americanos, S.A., 120 F.3d at 316. It failed to provide notice that arbitration had been commenced within thirty days as required by CRLB Reg. § 4.6(1)(c). In addition, Appellant did not raise the arbitrability of the claim until almost a year after the claim had been initiated. See Creative Solutions Grp. Inc., 252 F.3d at 32. At that point, testimony had concluded, and the matter was before the CRLB on appeal. Therefore, Appellant waived its right to arbitration, and the CRLB properly adjudicated the claim. See Soprano, 491 A.2d at 1011. Accordingly, the claim was properly before the CRLB and not in violation of its statutory authority. See § 42-35-15(g); Bunch, 690 A.2d at 337.

D

Factual Findings

Next, Appellant argues that the Board's order is devoid of factual findings in violation of § 42-35-12, which requires a final order to include findings of fact and a concise and explicit

statement of facts supporting the findings. In opposition, the CRLB argues that the hearing officer rendered a thorough, six-page written decision, which included a "Record of the Case," "Contentions of the Parties," "Findings of Fact," "Conclusions of Law," and "Final Order" section as well as a breakdown of submitted exhibits. According to the CRLB, the hearing officer provided a reasoned and supported decision based on adequate findings.

As a general rule, "the rationality of an agency's decision must encompass its fact findings, its interpretation of the pertinent law, and its application of the law to the facts as found." Arrow Transp. Co. v. United States, 300 F. Supp. 813, 817 (D.R.I. 1969). "The absence of required findings makes judicial review impossible . . . ." E. Greenwich Yacht Club v. Coastal Res. Mgmt. Council, 118 R.I. 559, 568, 376 A.2d 682, 687 (1977). "These requirements exist . . . because the parties as well as the court are entitled to know and should not be required to speculate on the basis for [an administrative] decision." Hooper v. Goldstein, 104 R.I. 32, 45, 241 A.2d 809, 816 (1968) (citing Coderre v. Zoning Bd. of Review of Pawtucket, 102 R.I. 327, 230 A.2d 247 (1967); Hopf v. Bd. of Review of Newport, 102 R.I. 275, 230 A.2d 420 (1967)).

Nevertheless, each decision does not need to "set out the basic findings in precise or specific language . . . ." Hooper, 104 R.I. at 45, 241 A.2d at 816. Our Supreme Court has consistently stated that it is concerned with the content rather than the form of the decision. Cullen v. Town Council of Lincoln, 850 A.2d 900, 904 (R.I. 2004); May-Day Realty Corp. v. Bd. of Appeals of Pawtucket, 107 R.I. 235, 239, 267 A.2d 400, 403 (1970). The administrative decision must make "findings of fact and [apply] legal principles in such a manner that a judicial body might review a decision with a reasonable understanding of the manner in which evidentiary conflicts have been resolved and the provisions of the . . . [law] applied." Thorpe v. Zoning Bd. of Review of North Kingstown, 492 A.2d 1236, 1237 (R.I. 1985).

In E. Greenwich Yacht Club, the Rhode Island Supreme Court remanded the case to the Coastal Resource Management Council for further consideration because the agency did not include any fact findings in its written decision. In that case, the agency merely issued the following two sentence conclusion: "As the evidence shows the impact upon various ecological systems involved will be minimal, it is hereby the decision of this Council to grant the petition . . . ." E. Greenwich Yacht Club, 118 R.I. at 568, 376 A.2d at 687.

Unlike the agency in E. Greenwich Yacht Club, the hearing officer in this case made specific findings of fact in support of his conclusion, which the Board adopted. Those findings included the nature of the agreement and the price of the work to be performed. See Hooper, 104 R.I. at 45, 241 A.2d at 816. The final order also included specific findings regarding the amount owed by Appellant to Claimant. Although the Board listed those amounts in the "Final Order" section rather than the "Findings of Fact" section, this Court is more concerned with the content of the decision rather than its form. See Cullen, 850 A.2d at 904. Therefore, this Court concludes that the final order was not devoid of findings of fact. See May-Day Realty Corp., 107 R.I. at 239, 267 A.2d at 403.

E

Weight and Sufficiency of the Evidence

Appellant also argues that the Board "ignored consideration of the most relevant factors, the terms of the contract, [and] based its conclusions on irrelevant factors." Appellant contends that the Board's alleged refusal to consider whether there were sufficient facts in the record to support the hearing officer's decision was arbitrary and capricious. In actuality, Appellant is arguing that the Board failed to give sufficient weight to Appellant's evidence and that the Board's decision is not supported by reliable, probative, and substantial evidence on the whole

record. In opposition, the CRLB claims that the Board allowed both parties to speak regarding Appellant's exceptions to the proposed order. The CRLB also asserts that the Board spent considerable time discussing the arbitration issues before making a decision and that the decision is adequately supported by the facts presented.

An initial problem with Appellant's argument is that he does not explain which evidence the hearing officer allegedly discounted or ignored nor does he point to specific evidence in the record. As this Court has already explained, parties must clearly spell out their arguments. See McCoy, 950 F.2d at 22. Courts will generally refuse to entertain perfunctory and underdeveloped arguments. See id.

Nevertheless, even if the Appellant had fully developed this argument, it is proper for both the Board and this Court to defer to the hearing officer regarding determinations associated with the weight of the evidence presented. See R.I. Higher Educ. Assistance Auth. v. Sec'y, U.S. Dep't of Educ., 929 F.2d 844, 857 (1st Cir. 1991). Agencies are presumed to have specialized knowledge in their respective fields, and they have wide discretion to determine the weight given to any evidence. Champlin's Realty Assocs. v. Tikoian, 989 A.2d 427, 448 (R.I. 2010) (asserting that administrative agencies possess unique expertise); Envtl. Scientific Corp. v. Durfee, 621 A.2d 200, 203 (R.I. 1993) (stating that "[t]he weight to be given to any evidence rests with the sound discretion of the hearing officer"); Stein, Administrative Law § 28.03 (2012) (explaining that "most agencies are presumed to have knowledge and expertise in their respective fields"). Courts have stated that agency decisions should be given "considerable deference when that decision involves a technical question within the field of the agency's expertise." R.I. Higher Educ. Assistance Auth., 929 F.2d at 857; Constance v. Sec'y of Health and Human Servs., 672 F.2d 990, 995-96 (1st Cir. 1982).

Moreover, the Rhode Island Supreme Court has described the two-tiered review utilized by administrative agencies as a "funnel-like system." See Envtl. Scientific Corp. v. Durfee, 621 A.2d 200, 209 (R.I. 1993). "Sitting as if at the mouth of the funnel, a hearing officer hears testimonial and documentary evidence from all affected parties [and] . . . analyzes the evidence, opinions, and concerns of which he or she has been made aware and issues a decision." Id. at 207. The reviewing board, which sits at the end of the funnel, does not personally hear or witness the testimony before the hearing officer. "Therefore, the further away from the mouth of the funnel that an administrative official is when he or she evaluates the adjudicative process, the more deference should be owed to the factfinder." Id. at 208.

Here, it was proper for the Board to defer to the hearing officer regarding the weight given to the evidence presented. See R.I. Higher Educ. Assistance Auth., 929 F.2d at 857. The Board members did not have first-hand knowledge of the testimony presented at the initial hearings. See Rotelli v. Catanzaro, 754 A.2d 104, 105 (R.I. 2000) (quoting Penhallow v. Penhallow, 725 A.2d 896, 897 (R.I. 1998) (stating that "'. . . it is the [adjudicator] who has the opportunity to observe the witnesses as they testify and therefore is in a better position to weigh the evidence and to pass upon the credibility of the witnesses than is this court.'") As such, they properly afforded the hearing officer deference as to his findings of fact and conclusions. See Envtl. Scientific Corp., 621 A.2d at 206 (stating that "when credibility evaluations are implicated, [the Supreme Court has] imposed a standard of review upon the appellate division that requires it to defer to the evidentiary findings of the trial judge"). For these reasons, this Court will also defer to the hearing officer's assessment of the weight he assigned to the evidence. See R.I. Higher Educ. Assistance Auth., 929 F.2d at 857.

In reaching his conclusion, the hearing officer implicitly gave more credit to the Claimant's evidence than the Appellant's, though the hearing officer did not credit all of the Claimant's evidence. Appellant argues that the Board did not mention evidence presented by it before the hearing officer. It is well established, however, that an agency's decision does not need to address every document presented into evidence. See Magee v. Astrue, 2010 WL 2483803 (D.R.I. May 28, 2010) (stating that an adjudicator does not need to address every piece of evidence or testimony); Koch, Administrative Law and Practice § 5:62(3) (3d ed. 2010) (explaining that an "agency need not comment on every piece of evidence presented"). "'An [adjudicator's] failure to cite specific evidence does not mean that such evidence was not considered.'" Magee, 2010 WL 2483803, at *9 (quoting Black v. Apfel, 143 F.3d 383, 386 (8th Cir. 1998)). Here, just because the hearing officer did not address every piece of evidence presented by the parties does not mean he did not consider it. See id. The hearing officer considered conflicting evidence and assigned the weight to that evidence that he deemed appropriate. See id. This Court will not disturb that finding. See Bunch, 690 A.2d at 337 (explaining that "[a] judicial officer may not substitute his or her judgment for that of the [hearing officer]").

It is clear from the record that there is substantial evidence to support the hearing officer's decision. See Johnston Ambulatory Surgical Assocs., Ltd., 755 A.2d at 804-05. This Court cannot substitute its judgment for that of the agency and will review the record only to determine whether the final order is supported by substantial evidence. Barrington Sch. Comm., 608 A.2d at 1138. In this case, there is substantial evidence in the record to support the Board's findings. As for plumbing, the Board upheld the hearing officer's conclusion that Claimant had been overcharged $4094.42. Appellant admitted that Claimant had been overbilled but presented

evidence that he had credited Claimant $4094.42. (Hr'g Ex. L.) Implicit in the hearing officer's award, which the Board adopted, is that he did not find Appellant's testimony and evidence credible, and this Court will not disturb these findings. See Narragansett Elec. Co. v. Carbone, 898 A.2d 87, 102 (R.I. 2006) (stating that the hearing justice could "discredit [the] testimony as lacking in credibility[,] . . . and he did not need to categorically accept or reject each piece of evidence in his decision . . . because implicit in the hearing justice's decision are sufficient findings of fact to support his rulings").

With regard to the painting expenses, the hearing officer found that Claimant had been double billed $3478.80. Although Claimant alleged that he had been overbilled in the amount of $4202.52 and submitted invoices of painting charges and a handwritten summary in support of this claim, it is clear that the hearing officer did not accept all of the Claimant's evidence as credible. See Carbone, 898 A.2d at 102; Hr'g Tr. 32:3-20, Sept. 7, 2007; Hr'g Ex. 3. Additionally, Claimant presented evidence of a $617.40 interest charge, which the hearing officer credited. (Hr'g Ex. 13.) Based on the record, this Court finds that the Board's final ruling regarding overbilling for painting and interest charges is supported by substantial evidence in the record. See Town of Burrillville, 921 A.2d at 118.

The hearing officer also awarded $1527.50 for overcharges pertaining to Paul Tavares and $1600 for overcharges pertaining to Mr. Tavares. As for the charges for Paul Tavares, Claimant submitted a handwritten statement summarizing alleged overbilling charges totaling $1527.50, which the hearing officer credited. See Carbone, 898 A.2d at 102; Hr'g Ex. 5. Claimant also presented a handwritten summary of alleged overbilling charges regarding Mr. Tavares. (Hr'g Ex. 14.) These charges regarding meetings, research, ordering, and communications totaled approximately $3200. The hearing officer credited about fifty percent

of that $3200 amount. Cirillo, CRLB No. 6177 (Apr. 1, 2008) (proposed order). Given that agencies are presumed to have specialized knowledge in their respective fields and that courts should give deference when an agency's decision involves technical questions within a particular field, this Court will not disturb this finding. See R.I. Higher Educ. Assistance Auth., 929 F.2d at 857; Stein, Administrative Law § 28.03.

As for labor charges regarding tile work in the kitchen and dining room, the Board upheld the $5416.12 refund, which was thirty-three percent of the $16,250 contested charges. Claimant presented evidence that he paid $16,250 for tile work in the kitchen and dining room. (Hr'g Tr. 133:22-25, Dec. 20, 2007.) It is presumed that the hearing officer has knowledge of the industry standards regarding matters within the agency's jurisdiction and defers to the hearings officer's determination that the value of the work was $10,834. See Robert E. Derecktor of Rhode Island, Inc. v. United States, 762 F. Supp. 1019, 1022 (D.R.I. 1991) (explaining that judicial deference is necessary when agency decisions involve technical or specialized knowledge).

For these reasons, this Court concludes that the hearing officer's award was based on competent evidence in the record. See R.I. Higher Educ. Assistance Auth., 929 F.2d at 857; see also Mattera v. Mattera, 669 A.2d 538, 541 (R.I. 1996) (explaining that in the absence of express articulated findings of fact, the reviewing court will, nevertheless, "accord the decision the persuasive force usually accorded such decisions on review, for the reason that implicit in a decision are such findings of fact necessary to support it"). Therefore, based on a review of the entire record, this Court concludes that the final order was not arbitrary or capricious or clearly erroneous in light of the evidence in the record. See Johnston Ambulatory Surgical Assocs., Ltd., 755 A.2d at 804-05.

IV

Conclusion

After reviewing the entire record, this Court finds that the CRLB possessed jurisdiction to hear the breach of contract claim. This Court also concludes that the Board's decision was not made upon unlawful procedure, in excess of its statutory authority, or arbitrary and capricious. The decision was not in violation of constitutional, statutory, or ordinance provisions and was not clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record. Substantial rights of Appellant have not been prejudiced. Accordingly, this Court affirms the CRLB's final order. Counsel for the prevailing party shall submit the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**James P. Tavares Construction, Inc. v. State of Rhode Island Contractors' Registration Board**
CASE NO:	**PC 08-6101**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**January 21, 2014**
JUSTICE/MAGISTRATE:	**Van Couyghen, J.**
ATTORNEYS:	
For Plaintiff:	**Michael A. Kelly, Esq.** **Joseph P. Pemantell, Jr., Esq.**
For Defendant:	**Timothy J. Dodd, Esq.** **Ariele Yaffee**