STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(DATED: June 11, 2013)

JOHN RIBEIRO	:	
	:	
v.	:	**PC No. 2009-4704**
	:	
STATE OF RHODE ISLAND	:	

DECISION

LANPHEAR, J. John Ribeiro appeals the June 23, 2009 Final Order of the Rhode Island Contractor's Licensing and Registration Board[1] (CLRB), finding that Mr. Ribeiro breached a contract with Richard P. Oliveri and imposing $3000 in fines. Mr. Ribeiro raises numerous statutory and constitutional challenges to the Final Order and the CLRB's administrative procedures.[2] Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

Mr. Ribeiro entered into a written contract with Mr. Oliveri to install hardwood flooring and staircase and railing materials in Mr. Oliveri's home on September 5, 2008. See Hr'g Tr. at 4 ¶¶ 23-24; Final Order at 3; Contract at 1. This work was to occur in the living room, dining room, adjoining hallway, and front staircase. See Hr'g Tr. at 4 ¶¶ 23-24, 5 ¶¶ 1-14. Mr. Ribeiro

[1] The CLRB is an administrative agency whose purpose is to "iron out disputes between contractors and homeowners, allowing homeowners to file claims, to utilize dispute resolution, and to seek fines against contractors for alleged violations of applicable laws and regulations, when appropriate." Butera v. Boucher, 798 A.2d 340, 354 (R.I. 2002).

[2] Mr. Ribeiro brings these challenges as a self-represented litigant. See Docket Sheet, PC-2009-4704 at 1.

represented that he would complete the project in approximately three weeks. See id. at 5 ¶¶ 18-24. With applicable taxes, the total contract price was $10,969.64.[3] See Contract at 1.

Mr. Oliveri paid Mr. Ribeiro $8356.16[4] by personal check upon signing the contract, and Mr. Ribeiro began working thereafter. See Hr'g Tr. at 5 ¶¶ 18-24; 6 ¶ 1; Contract at 1. By early November 2008, however, Mr. Ribeiro had not completed the project and refused to continue without receiving more funds from Mr. Oliveri. See Hr'g Tr. at 8 ¶¶ 22-24, 9 ¶¶ 17-19, 10 ¶¶ 4-5. Mr. Oliveri also discovered at that time that Mr. Ribeiro had been working without a license for nearly two years.[5] See id. at 8 ¶¶ 3-7; Investigator's Report at 1.

In response, Mr. Oliveri filed a claim, # 6860, with the CLRB on November 5, 2008, alleging that Mr. Ribeiro had engaged in improper and negligent work in his home. See Claim Statement Form at 1. The CLRB sent Senior State Building Code Official Michael H. Scallon to investigate Mr. Oliveri's claim on December 4, 2008. See CLRB Face Sheet at 1; Final Order at 1. Upon inspecting the job site, Mr. Scallon determined that the hardwood flooring had not yet been installed in the living room, the flooring installed in the hallway was "lifting" and did not comport with industry standards,[6] and the staircase railings and balusters had not yet been

[3] The contract also contained an addendum clause obligating Mr. Oliveri to pay for any additional molding and sub-floor work that might arise during the course of the job. See Contract at 1.

[4] This payment represents the sum of the materials purchased for the project and one half of the total labor cost, or $6460.16 + $1896.00. See Contract at 1.

[5] Section 5-65-3(a) of the Rhode Island General Laws mandates that "[a] person shall not undertake, offer to undertake, or submit a bid to do work as a contractor on a structure or arrange to have work done unless that person has a current, valid certificate of registration for all construction work issued by the [B]oard."

[6] Pursuant to G.L. 1956 § 5-65-17, the CLRB is authorized to "promulgate rules . . . to carry out the provisions of this chapter in accordance with the Administrative Procedures Act, chapter 35 of title 42." Among other rules, the CLRB has issued a comprehensive set of regulations governing "Construction Standards" that must be followed by all contractors in this state. See CLRB Regulations, § 6 at 35-69. Such standards include guidelines for the proper installation of "Finished Wood Flooring." See id. at 52-54.

installed. See Investigator's Report at 1. Mr. Scallon confirmed that Mr. Ribeiro's contractor's license had been suspended since July 28, 2006. See id. On December 8, 2008, Mr. Scallon contacted Mr. Ribeiro and informed him that Mr. Oliveri would rescind his claim if Mr. Ribeiro refunded Mr. Oliveri $2200, but Mr. Ribeiro refused. See CLRB Face Sheet at 1. When further settlement talks broke down, the CLRB scheduled a formal hearing (the Hearing) before a CLRB hearing officer on December 29, 2008 to adjudicate Mr. Oliveri's claim. See CLRB Face Sheet at 1; Notice of Hearing, March 2, 2009 at 1.

The Hearing was held before Hearing Officer Robert A. Ricci on March 11, 2009. See Proposed Order at 1. Both Mr. Oliveri and Mr. Ribeiro were present at the Hearing. See Claim Attendance Sheet at 1; Hr'g Tr. at 2 ¶¶ 10-12. Before taking evidence and testimony from the parties, Mr. Ricci informed them that if they wished to avoid civil litigation and empower Mr. Ricci to order payment of monetary damages in addition to possible fines, they could jointly sign a "Waiver of Right to Jury Trial" form. See Hr'g Tr. at 2 ¶¶ 13-24, 3 ¶¶ 8-10. Mr. Oliveri signed the form, but Mr. Ribeiro did not. See id. at 3 ¶¶ 12-21; Waiver of Right to Jury Trial Form at 1.

Mr. Ricci then directed Mr. Oliveri to testify regarding the particular details of his claim. See Hr'g Tr. at 4 ¶¶ 11-21. Mr. Oliveri testified that Mr. Ribeiro began working on September 5, 2008, as agreed upon in the contract, but continued working only sporadically thereafter. See id. at 6. For example, Mr. Oliveri testified that after working on September 8, Mr. Ribeiro did not return until "September 11 . . . [and] [h]e stayed for [only] three hours . . . . He didn't come back until [September 15]." See id. at 6 ¶¶ 1-6. Mr. Oliveri testified that during the following two weeks, Mr. Ribeiro returned to work only five more times and did not complete any portion of

the project.[7] See id. at 6 ¶¶ 7-22. According to Mr. Oliveri, this pattern continued throughout October 2008, culminating with Mr. Ribeiro's refusal to finish the project in early November 2008. See id. at 7-8.

Mr. Oliveri testified that in addition to the $8356.16 he paid to Mr. Ribeiro by check upon signing the contract, he paid Mr. Ribeiro approximately $1250 in extra fees and costs during the course of the project.[8] See id. at 12 ¶¶ 4-24; 13 ¶¶ 1-14. Mr. Oliveri represented that he believed Mr. Ribeiro discontinued working in early November because he refused to pay Mr. Ribeiro an additional $700. See id. at 13 ¶¶ 18-24, 14 ¶¶ 1-12. Mr. Oliveri further represented that although another contractor estimated a price of $6500 to complete the project, he sought only $2200 from Mr. Ribeiro to finish the work himself.[9] See id. at 22 ¶¶ 2-19. In support of his testimony, Mr. Oliveri introduced copies of the parties' contract, cancelled checks paid to Mr. Ribeiro, and the Investigator's Report as exhibits. See id. at 15 ¶¶ 18-20, 16 ¶¶ 5-7; 11-23.

Mr. Ribeiro disputed Mr. Oliveri's recitation of events. See id. at 25 ¶¶ 3-7. While he agreed that the parties had entered into a binding contract on September 5, Mr. Ribeiro testified that the job took longer than anticipated because he had to wait for specially-ordered materials and could not work every day. See id. at 27 ¶¶ 14-17. Mr. Ribeiro testified that Mr. Oliveri

[7] Mr. Oliveri testified that, in fact, he aided Mr. Ribeiro in installing a new subfloor in the hallway space to speed the project along. See Hr'g Tr. at 7 ¶¶ 4-21.

[8] The $1250 in extra fees included a $900 check for unspecified extra work, a $176 check for new molding, and $250 in cash for labor associated with installing the new subfloor. See Hr'g Tr. at 12 ¶¶ 15-24; 13 ¶¶ 1-12.

[9] Mr. Oliveri admitted that part of the reason that he sought only $2200 from Mr. Ribeiro was because Mr. Ribeiro had referred the remaining staircase work to another contractor in mid-November 2008. See Hr'g Tr. at 20 ¶¶ 14-24; 21 ¶¶ 2-24; 22 ¶¶ 1-19. The new contractor completed the staircase work in one, six-hour session. See id. at 11 ¶¶ 6-12. Thus, only the flooring portion of the project remained unfinished at the time of the Hearing. See id. at 17 ¶¶ 21-24; 18 ¶¶ 1-6.

knew that the specially-ordered materials would take extra time to arrive and was otherwise satisfied with the pace and quality of Mr. Ribeiro's work. See id. at 27 ¶¶ 13-14, 17-18.

Mr. Ribeiro further testified that he did not refuse to finish the project but was fired by Mr. Oliveri without explanation. See id. at 33 ¶¶ 20-24. He asserted that, in fact, Mr. Oliveri and his sister had "threatened his life" in the course of firing him. See id.

Mr. Ribeiro did not dispute Mr. Oliveri's testimony regarding the additional money paid to him during the pendency of the project. See id. at 32 ¶ 1. He maintained, however, that the contract contained language clearly stating that the final price did not include charges for new molding and subfloor work, and Mr. Oliveri knew that such work needed to be done.[10] See id. at 32 ¶¶ 2-5.

Nonetheless, Mr. Ribeiro represented that he would settle Mr. Oliveri's claim for the requested $2200, but only if Mr. Oliveri and Mr. Ricci agreed to accept an installment-based payment plan and not seek to impose any fines. See id. at 38 ¶¶ 19-21; 39; 44 ¶¶ 17-22. Mr. Ribeiro did not present any exhibits in support of his testimony.

Mr. Ricci issued his Proposed Order on May 1, 2009. See Proposed Order at 6. After reciting the procedural history of the claim, listing the documentary evidence presented, and summarizing the parties' testimony, Mr. Ricci found that Mr. Ribeiro "is a [c]ontractor who is registered or required to be registered with the CLRB pursuant to § 5-65-3." Id. He determined that the parties "had entered into an Agreement dated [September 5, 2008,] whereby [Mr. Ribeiro] had agreed to . . . [s]upply and install hardwood flooring." Id. Mr. Ricci found that the

[10] Mr. Ribeiro also disputed Mr. Scallon's finding that the hardwood floor installed in the hallway did not conform to industry standards because the floor was "lifting." Mr. Ribeiro testified that he installed the floor correctly. See Hr'g Tr. at 30 ¶¶ 10-12. He contended that if the floor was, in fact, "lifting," it was the fault of Mr. Oliveri, who helped install the underlying subfloor. See id. at 31 ¶¶ 6-19.

"Agreement was a written contract" which obligated Mr. Oliveri "to pay [Mr. Ribeiro] the sum of $10,970 inclusive of extras, if any." Id. Mr. Ricci determined that Mr. Oliveri, in fact, "paid [Mr. Ribeiro a total] sum of $9682 as of [March 19, 2009]." Id. As such, Mr. Ricci found that Mr. Ribeiro had "performed work for [Mr. Oliveri] as a non-registered contractor" and, based on the record, "breached [the] contract." Id.

Based on these findings, Mr. Ricci concluded that Mr. Ribeiro violated G.L. 1956 § 5-65-10(a)(11).[11] See id. at 4. He imposed a $500 fine, and an additional fine of $2500, pursuant to G.L. 1956 § 5-65-10(c)(1).[12] See id.

Mr. Ribeiro appealed the Proposed Order to the full CLRB on May 26, 2009. See Appeal to CLRB at 1. The CLRB held a hearing on June 10, 2009, to consider Mr. Ribeiro's appeal. See Notice of CLRB Hearing, June 3, 2009 at 1. Mr. Oliveri attended the June 10 hearing, but Mr. Ribeiro did not. See CLRB Face Sheet at 2; Final Order at 5. Because Mr. Ribeiro did not appear to challenge the Proposed Order, the CLRB adopted Mr. Ricci's findings as its Final Order. See Final Order at 5. On July 15, 2009,[13] Mr. Ribeiro was personally served with the Final Order. See Proof of Service Form, July 15, 2009 at 1.

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[11] A contractor violates § 5-65-10(a)(11) when the contractor "breache[s] a contract."

[12] Section 5-65-10(c)(1) provides in pertinent part that:

> "For each first violation of a particular section of this chapter or any rule or regulation promulgated by the [B]oard, a fine not to exceed five thousand dollars ($5,000) may be imposed after a hearing by the [B]oard. Provided, further, that the [B]oard 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."

[13] The CLRB originally mailed the Final Order to Mr. Ribeiro's last known address on June 23, 2009. See Final Order at 6. However, it was returned unclaimed on June 25, 2009. See Return Envelope, June 25, 2009. The CLRB then attempted to personally serve Mr. Ribeiro with the Final Order several times, without success, until finally locating him on July 15, 2009. See Proof of Service Form, July 15, 2009 at 1.

Mr. Ribeiro timely appealed the CLRB's Final Order to this Court on August 17, 2009. See Docket Sheet, PC-2009-4704 at 1. Mr. Ribeiro raises three challenges to the Final Order. First, he argues that the Final Order contains facts which are untrue and unduly prejudice him. Second, Mr. Ribeiro contends that the fines levied by the CLRB are excessive—in that they are not "proportional to the offense"—and, thus, violate article I, § 8 of the Rhode Island Constitution.[14] Third, Mr. Ribeiro attacks the CLRB's reference to G.L. 1956 § 5-65-19(a)[15] in the Final Order, arguing that this penalty provision violates article I, § 2 of the Rhode Island Constitution[16] because it impermissibly imprisons persons who fail to pay their fines within the allotted time.

Mr. Ribeiro also challenges the CLRB's use of the "Waiver of Right to Jury Trial" form at its administrative proceedings. Mr. Ribeiro argues that the CLRB, as an administrative

[14] Article I, § 8 of the Rhode Island Constitution provides that: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted; and all punishments ought to be proportioned to the offense."

[15] Section 5-65-19(a) provides that:

> "Any person who violates a final order of the [B]oard, or fails to register as a contractor as stipulated, and upon proper written notification, is deemed guilty of a misdemeanor, and, upon conviction, shall be imprisoned for a term not exceeding one year, or fined not more than five thousand dollars ($5,000) for a first offense and not more than ten thousand dollars ($10,000) for a second and/or subsequent offense(s) each."

[16] Article I, § 2 of the Rhode Island Constitution provides in pertinent part that:

> "All free governments are instituted for the protection, safety, and happiness of the people. All laws, therefore, should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws. No otherwise qualified person shall, solely by reason of race, gender or handicap be subject to discrimination by the state, its agents or any person or entity doing business with the state."

agency, lacks the authority to deprive a party of his or her right to pursue a civil action in this Court and impermissibly impinges on a party's rights as secured by the Rhode Island Constitution.

The CLRB contends that none of Mr. Ribeiro's claims has merit. It argues that Mr. Ribeiro's assertion that the Final Order contains factual errors is devoid of any evidentiary basis or citation. The CLRB asserts that the fines imposed on Mr. Ribeiro do not violate article I, § 8 of the Rhode Island Constitution because they are well within the statutory limits prescribed by § 5-65-10. The CLRB contends that Mr. Ribeiro's challenge to the constitutionality of § 5-65-19(a) is not ripe for judicial review because his underlying justification—that he could face imprisonment if he fails to pay the fines imposed by the Final Order—is wholly speculative at this time. Finally, the CLRB argues that Mr. Ribeiro's attack on the constitutionality of the "Waiver of Right to Jury Trial" form and attendant procedures is moot because Mr. Ribeiro never signed the form and thus never relinquished his jury rights in the first instance.

II

Standard of Review

When appealed to the Superior Court, Final Orders of the CLRB are reviewed pursuant to the Rhode Island Administrative Procedures Act (the Act), § 42-35-1 et seq. See CLRB Regulation § 4.9(6). Section 42-35-15(g) provides the applicable standard of review:

> "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, inference, 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."

Under the Act, this Court is limited to an examination of the certified record in determining whether the agency's decision is supported by substantial evidence. Johnston Ambulatory Surgical Associates v. Nolan, 755 A.2d 799, 804-05 (R.I. 2000) (citing Barrington School Committee v. R.I. State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994)). Substantial 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 CLRB, 921 A.2d 113, 118 (R.I. 2007). When this Court finds that substantial evidence exists in the record, it "is required to uphold the agency's conclusions." Auto Body Association of R.I. v. State of R.I. Dep't of Business Regulation, 996 A.2d 91, 95 (R.I. 2010) (quoting Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)) (internal quotation marks omitted). This rule applies even when the reviewing court is inclined to arrive at different conclusions and inferences from the evidence presented. Nolan, 755 A.2d at 805 (citing R.I. Public Telecomm. Authority v. R.I. State Labor Relations CLRB, 650 A.2d 479, 485 (R.I. 1994)); see Barrington School Committee, 608 A.2d at 1138.

By contrast, all agency determinations of law are reviewed de novo. Iselin v. Retirement CLRB of Employee's Retirement System of R.I., 943 A.2d 1045, 1049 (R.I. 2008). This Court accords great "weight and deference" to an administrative agency's interpretations of a statute it is empowered to enforce, however, "so long as that construction is not clearly erroneous or unauthorized." Labor Ready Northeast, Inc. v. McConaghy, 849 A.2d 340, 344 (R.I. 2004). This holds true "even when other reasonable constructions of the statute are possible." Id. at 345; see Town of Burrillville v. Pascoag Apartment Associates, LLC, 950 A.2d 435, 445-46 (R.I. 2008).

The reviewing court will also defer to an agency's "reasonable" interpretation of the regulations it promulgates pursuant to a statute it is authorized to enforce. See State v. Swindell, 895 A.2d 100, 104 (R.I. 2006); State v. Cluley, 808 A.2d 1098, 1104-06 (R.I. 2002); Pawtucket Power Associates Limited Partnership v. City of Pawtucket, 622 A.2d 452, 456-57 (R.I. 1993).

III

Discussion

A

Findings of Fact in the Final Order

Mr. Ribeiro contends that the Final Order contains untrue facts and errors which prejudice him. The CLRB responds that this argument is meritless because Mr. Ribeiro fails to cite any supporting evidence from the record. It maintains that, in fact, the findings of fact enumerated in the Final Order accurately reflect the testimonial and documentary evidence developed at the Hearing and adopted by the CLRB.

It is axiomatic that when reviewing the final decision of an administrative agency, a trial court "shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Sec. 42-35-15(g); see Restivo v. Lynch, 707 A.2d 663, 665-66 (R.I. 1998) (quoting Lett v. Caromile, 510 A.2d 958, 960 (R.I. 1986) and finding that a trial court "'lacks [the] authority to weigh the evidence, to pass upon the credibility of witnesses, or to substitute [its] findings of fact for those made by the administrative agency'"). Instead, a court may only "'reverse [the] factual conclusions of administrative agencies . . . when they are totally devoid of competent evidence in the record.'" Baker v. Department of Employment and Training Bd. of Review, 637 A.2d 360, 363 (R.I. 1994) (quoting Milardo v. Coastal Resources Management Council, 434 A.2d 266, 272 (R.I. 1981)); see 2 Am. Jur. 2d Administrative Law § 510 at 428-29.

Here, the CLRB found in the Final Order that Mr. Ribeiro "is a [c]ontractor who is registered or required to be registered with the CLRB pursuant to [G.L. 1956 §] 5-65-3." Final Order at 3. The CLRB found that the parties "had entered into an Agreement dated [September 5, 2008,] whereby [Mr. Ribeiro] had agreed to . . . [s]upply and install hardwood flooring." Id. It determined that the "Agreement was a written contract" which obligated Mr. Oliveri "to pay [Mr. Ribeiro] the sum of $10970 inclusive of extras, if any." Id. The CLRB found that Mr. Oliveri, in fact, "paid [Mr. Ribeiro] [a total] sum of $9682 as of [March 19, 2009]." Id. As such, the CLRB found that Mr. Ribeiro had "performed work for [Mr. Oliveri] as a non-registered contractor" and "breached [the] contract." Id.

These factual findings are supported in the record by Mr. Oliveri's testimony as developed before Mr. Ricci at the Hearing. See Nolan, 755 A.2d at 817 (noting that "[i]n § 42-35-15(g), the Legislature intended for the reviewing court to defer to the expertise of the administrative agency on questions of fact because the [agency is] in a better position than the trial justice to know and understand the [issues presented before the agency] and, thus, to judge the credibility, weight, and materiality of [the] evidence presented . . ."). For example, Mr. Oliveri testified that Mr. Ribeiro began working on the project on September 5 after the parties had signed the contract and Mr. Oliveri paid Mr. Ribeiro $8356.16 by personal check. See Hr'g Tr. at 5 ¶¶ 17-24; 6 ¶ 1. He testified that Mr. Ribeiro continued working on the project only sporadically thereafter, however. See id. at 6. In furtherance, Mr. Oliveri testified that after working on September 8, Mr. Ribeiro did not return until "September 11 . . . [and] [h]e stayed for [only] three hours . . . . He didn't come back until [September 15]." See id. at 6 ¶¶ 1-6. Mr. Oliveri testified that this pattern continued for several more weeks, during which time Mr. Oliveri paid Mr. Ribeiro an additional $1250 in extra costs. See id. at 6 ¶¶ 7-24; 7 ¶¶ 1-24; 8

¶¶ 1-24; 9 ¶¶ 1-24; 12 ¶¶ 4-24; 13 ¶¶ 1-14. Mr. Oliveri represented that he believed that Mr. Ribeiro refused to finish the project in early November 2008 because he refused to pay Mr. Ribeiro an additional $700. See id. at 13 ¶¶ 18-24, 14 ¶¶ 1-12.

The CLRB's findings are also supported in the record by the documentary evidence attached to Mr. Ricci's Proposed Order. See Environmental Scientific Corp., 621 A.2d at 207-208 (recognizing that when the agency "hears testimonial and documentary evidence from all affected parties . . . [,] analyzes the evidence, opinions, and concerns of which he or she has been made aware . . . [,]" and issues a decision based upon that evidence, the reviewing court must defer to the agency's findings of fact). This evidence includes copies of the parties' contract, cancelled checks showing payments made to Mr. Ribeiro, and Mr. Scallon's Investigator's Report. See Final Order at 4. The plain language of the contract shows that Mr. Ribeiro agreed to install hardwood flooring and do staircase work in Mr. Oliveri's home. See Contract at 1. The final contract price is listed as $10,969.64, and an addendum clause provides that Mr. Oliveri is liable for any extra costs associated with new moldings and subfloor work. See id. The contract also contains an entry showing that Mr. Oliveri paid Mr. Ribeiro $8356.16 by check upon signing the contract. See id. Mr. Oliveri's cancelled checks show several additional payments made to Mr. Ribeiro in connection with the project. See Cancelled Check Copies at 1.

Furthermore, the Investigator's Report demonstrates that Mr. Ribeiro left the project in Mr. Oliveri's home unfinished. See Environmental Scientific Corp., 621 A.2d at 207-208. In particular, Mr. Scallon observed at the job site that the hardwood flooring in the living room, and the railings and balusters on the staircase, had not yet been installed. See Investigator's Report at 1. Mr. Scallon also found that the hardwood flooring installed in the hallway did not comport

with industry standards because it was "lifting." See id. Mr. Scallon confirmed that Mr. Ribeiro's license had been suspended since July 28, 2006.[17] See id.

Mr. Ribeiro has failed to highlight any particular factual inconsistencies in the record or cite any evidence supporting his claim. It is well settled that when "examin[ing] . . . administrative proceedings, 'the presumption favors the administrators, and the burden is upon the party challenging the action to produce evidence sufficient to rebut this presumption.'" Larue v. Registrar of Motor Vehicles, Department of Transportation, Office of Operator Control, 568 A.2d 755, 758 (R.I. 1990) (quoting Gorman v. University of Rhode Island, 837 F.2d 7, 15 (1st Cir. 1988)). Thus, this Court finds that the CLRB's factual findings in the Final Order are supported in the record by substantial evidence, and Mr. Ribeiro's substantial rights have not been prejudiced. See Town of Burrillville, 921 A.2d at 118; Center For Behavioral Health, Rhode Island, Inc. v. Barros, 710 A.2d 680, 685-86 (R.I. 1998).

B

Excessiveness of the Fines Imposed

Mr. Ribeiro argues that the $3000 in fines imposed by the CLRB are excessive and, thus, violate article I, § 8 of the Rhode Island Constitution because they are not "proportional to the offense." The CLRB disagrees, contending that the fines are neither excessive nor improper because they fall within the penalty range provided in § 5-65-10(c)(1) and are supported by substantial evidence in the record.

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 Street Food Market, Inc. v. U.S., 720 F.2d 217, 220 (1st

[17] CLRB registration records confirm that Mr. Ribeiro's license was suspended on July 28, 2006 and ultimately revoked on May 29, 2007. See CLRB Registration Sheet at 1.

Cir. 1983) (quoting Kulkin v. Bergland, 626 F.2d 181, 184 (1st Cir. 1980)); see 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 in the record by substantial evidence. See Rocha v. State Public Utilities Commission, 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 § 45-35-15(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).

Article I, § 8 of the Rhode Island Constitution provides in pertinent part that "excessive fines [shall not be] imposed . . . and all punishments ought to be proportioned to the offense." In interpreting the substantially-similar language of the Eighth Amendment to the United States Constitution, the United States Supreme Court has found that "the touchstone [of "excessiveness"] is [the] value of the fine in relation to the offense." Austin v. U.S., 509 U.S. 602, 627 (1993); see U.S. v. Emerson, 107 F.3d 77, 80 (1st Cir. 1997). Courts reviewing the constitutionality of fines must "compare the amount of the forfeiture to the gravity of the defendant's offense. If the amount of the forfeiture is grossly disproportional to the gravity of the defendant's offense, it is unconstitutional." U.S. v. Bajakajian, 524 U.S. 321, 336-37 (1998).

In the Final Order, the CLRB determined that Mr. Ribeiro breached the September 5, 2008 contract with Mr. Oliveri and violated § 5-65-10(a)(11). See Final Order at 3. This finding is supported by substantial evidence in the record.[18] See Hr'g Tr. at 4-11; Investigator's Report at 1-2; Contract at 1. The CLRB levied a $500 fine for this violation—along with an additional $2500 fine—pursuant to § 5-65-10(c)(1). See Final Order at 4-5.

Section 5-65-10(c)(1) authorizes the CLRB to hand down a fine "not to exceed five thousand dollars ($5,000)" in connection with any first-time violation of any provision of § 5-65-10. See F. Ronci Co., Inc. v. Narragansett Bay Water Quality Management District Commission, 561 A.2d 874, 880-81 (R.I. 1989) (finding that an administrative agency may only impose civil fines when authorized by statute). Moreover,

> "the [B]oard 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. Where the claim is for actual damages the [B]oard shall require proof satisfactory to the [B]oard indicating said damages. Where corrective work is completed as ordered by the [B]oard, the fine assessed may be reduced as determined by the [B]oard. Fines and decisions on claims or violations inclusive of monetary awards can be imposed against registered as well as contractors required to be registered by the [B]oard."

Sec. 5-65-10(c)(1) (emphasis added). Thus, the CLRB, in its discretion, could have fined Mr. Ribeiro a total of $15,969.64[19] in connection with his violation of § 5-65-10(a)(11). See Rocha, 694 A.2d at 725-27; DiPrete, 635 A.2d at 1164. Here, Mr. Ribeiro's $3000 fine falls at the low end of the penalty range provided in § 5-65-10(c)(1) and represents merely one-fifth of the statutory maximum penalty available to the CLRB. See U.S. v. Pilgrim Market Corp., 944 F.2d

[18] The record shows, in fact, that the CLRB also determined that Mr. Ribeiro performed work as an unregistered contractor in violation of G.L. 1956 § 5-65-10(a)(1). See Final Order at 3. However, the CLRB chose not to assess a fine for this violation. See id. at 4-5.

[19] This sum is the total of the statutory maximum penalty for a first-time violation of § 5-65-10(a)(11)—$5000—and the total contract price, $10,969.64. See § 5-65-10(c)(1).

14, 21-22 (1st Cir. 1991) (determining that the $200,000 fine imposed on the defendant was not excessive because "[i]t is less than half of the statutory maximum . . . and one half of the government's recommendation"); State, By and Through the Utah Air Quality CLRB v. The Truman Mortensen Family Trust, 8 P.3d 266, 274 (Utah 2000) (finding that "since the applicable rules recommend a punishment of up to $41,000, a fine of $23,000 is not excessive). In light of the substantial evidence in the record supporting the CLRB's determination that Mr. Ribeiro violated § 5-65-10(a)(11), this Court finds that the $3000 fine is "proportional to the offense" and not excessive. See Roche v. Evans, 249 F. Supp. 2d 47, 59 (D. Ma. 2003) (determining that the $20,000 fine imposed on the defendant was not excessive because "[a] penalty of up to $100,000 may be imposed").

C

The Constitutionality of § 5-65-19(a)

Mr. Ribeiro challenges the constitutionality of § 5-65-19(a). He argues that this statute violates article I, § 2 of the Rhode Island Constitution because it provides for the imprisonment of any contractor who fails to pay a fine levied by the CLRB within the allotted time period and, thus, impermissibly "criminalizes a person[']s inability to pay a debt." The CLRB contends that Mr. Ribeiro's constitutional challenge is not ripe for judicial review because it is contingent upon speculative future events that may not occur. In particular, the CLRB asserts that Mr. Ribeiro has not been charged under § 5-65-19(a) and, if he pays his fines on time, will not be so charged.

Our Supreme Court has recognized that "[u]nlike the United States Constitution, there is no express language in the Rhode Island Constitution which confines the exercise of the Rhode Island Court's judicial power to actual 'cases and controversies.'" State v. Lead Industries Association, Inc., 898 A.2d 1234, 1237 (R.I. 2006) (quoting Vose v. Rhode Island Brotherhood

of Correctional Officers, 587 A.2d 913, 915 n.2 (R.I. 1991)). However, courts in Rhode Island may not "entertain an abstract question or render an advisory opinion." State v. Gaylor, 971 A.2d 611, 613 (R.I. 2009); see Providence Teachers Union v. Napolitano, 690 A.2d 855, 856 (R.I. 1997) (recognizing that courts in our state cannot consider claims when they are "not faced with an actual controversy but with only a potential dispute"). Thus, "a necessary predicate to a court's exercise of its jurisdiction is an actual justiciable controversy." Gaylor, 971 A.2d at 613.

A controversy is not justiciable when, among other reasons, it is not ripe for judicial review. See Lynch v. Rhode Island Dep't. of Environmental Management, 994 A.2d 64, 70-71 (R.I. 2010); Sasso v. State, 686 A.2d 88, 91 (R.I. 1996). "[A] claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'"[20] Gaylor, 971 A.2d at 614 (quoting Thomas v. Union Carbide Agricultural Products Co., 473 U.S. 568, 580-81 (1985)).

Here, Mr. Ribeiro's constitutional challenge is based upon several layers of speculation and is not ripe for judicial review. As the CLRB notes, Mr. Ribeiro has not yet been charged under § 5-65-19(a). No such charges will attach to Mr. Ribeiro if he pays the $3000 in fines levied by the CLRB within the allotted time. See § 5-65-19(a) (stating that criminal penalties apply only to those "person[s] who violat[e] a final order of the [B]oard . . ."). Thus, the application of § 5-65-19(a) is contingent upon factors which may not come to pass. See Sasso, 686 A.2d at 91 (recognizing that a court must not address "speculative and as yet unrealized concerns about what could or might happen" in the future). This Court finds, therefore, that Mr.

[20] In the context of constitutional challenges, our Supreme Court has found that "[r]elated to the requirements of justiciability . . . is the 'deeply rooted commitment not to pass on questions of constitutionality' unless adjudication of the constitutional issue is necessary.'" Lead Industries Association, 898 A.2d at 1238 (quoting Elk Grove Unified School District v. Newdow, 542 U.S. 1, 11 (2004)) (internal quotation marks omitted).

Ribeiro's constitutional challenge to § 5-65-19(a) is not ripe for juridical review. See City of Fall River, MA v. Federal Energy Regulatory Commission, 507 F.3d 1, 6-7 (1st Cir. 2007); Gaylor, 971 A.2d at 615.

D

The Constitutionality of the "Waiver of Right to Jury Trial" Form

Mr. Ribeiro attacks the constitutionality of the CLRB's use of the "Waiver of Right to Jury Trial" form at its administrative proceedings. He argues that the CLRB, as an administrative agency, lacks the authority to deprive a party of his or her right to a jury trial. He contends that such procedures violate has rights as secured by the Rhode Island Constitution.

The CLRB asserts that Mr. Ribeiro's challenge to the waiver procedure is moot because he never signed the waiver form and, thus, never relinquished his right to pursue a private civil action in the first instance. Notwithstanding its mootness argument, the CLRB argues further that article I, § 15 of the Rhode Island Constitution requires it to obtain the jury trial waiver from both parties to a CLRB claim in order to award monetary damages in addition to fines.[21]

This Court finds that Mr. Ribeiro's argument is moot. "A question is moot if a court's 'judgment would fail to have a practical effect on the existing controversy.'" Lynch, 994 A.2d at 71 (quoting Cranston v. Rhode Island Laborers' District Council, Local 1033, 960 A.2d 529, 533 (R.I. 2008)). Our Supreme Court has "long recognized that the nature of judicial power warrants [a] general policy against answering 'moot, abstract, academic, or hypothetical questions.'" United Service & Allied Workers of Rhode Island v. R.I. State Labor Relations Bd., 969 A.2d

[21] Article I, § 15 of the Rhode Island Constitution provides in pertinent part that "[t]he right of trial by jury shall remain inviolate." Our Supreme Court has interpreted this language to mean that the right to a jury trial "must remain available to litigants in any type of legal action which was triable before a jury in 1843, the year when Rhode Island's first constitution became effective." FUD's, Inc. v. State, 727 A.2d 692, 695 (R.I. 1999).

42, 44 (R.I. 2009) (quoting Morris v. D'Amario, 416 A.2d 137, 139 (R.I. 1980); H.V. Collins Co. v. Williams, 990 A.2d 845, 847 (R.I. 2010). "Indeed[,] because 'our [state's] whole concept of judicial power' is entailed within the concept of courts applying laws to cases and controversies within their jurisdiction[,] a court's judicial power is at its 'weakest ebb' when acting upon a moot question." United Service & Allied Workers of Rhode Island, 969 A.2d at 44 (quoting Sullivan v. Chafee, 703 A.2d 748, 752 (R.I. 1997)) (internal quotation marks omitted).

Here, Mr. Ribeiro asserts that in asking him to sign the waiver form, the CLRB impermissibly infringed on his right to a jury trial as secured by the Rhode Island Constitution. However, it is undisputed that Mr. Ribeiro did not sign the "Waiver of Right to Jury Trial" form when prompted by Mr. Ricci at the Hearing. See Hr'g Tr. at 3 ¶¶ 15-21; Final Order at 2. He therefore retained his right to pursue a private civil action in this case, notwithstanding the outcome of the administrative proceedings. See FUD's, Inc., 727 A.2d at 695-98. Consequently, Mr. Ribeiro has no current stake in adjudicating this issue. See H.V. Collins Co., 990 A.2d at 848 (determining that Rhode Island courts should "not review a case in which the parties no longer have an articulable stake in the outcome"); Unistrut Corp. v. State Dep't. of Labor and Training, 922 A.2d 93, 99 (R.I. 2007) (finding that the controversy between the parties was moot because "neither party has a current stake in the outcome"). Even if this Court were to find the wavier procedure unconstitutional, such an exercise would neither affect the CLRB's Final Order nor alter the outcome of the instant appeal. See Lynch, 994 A.2d at 71. Thus, Mr. Ribeiro's constitutional challenge to the CLRB's waiver procedure is moot, and this Court will not address it further. See H.V. Collins Co., 990 A.2d at 847-48; United Service & Allied Workers of Rhode Island, 969 A.2d at 44-45.

IV

Conclusion

Based on the foregoing, this Court finds that the CLRB's Final Order is supported in the record by reliable, probative, and substantial evidence and is not affected by error of law. The Final Order is not arbitrary or capricious and does not constitute an abuse of discretion. Mr. Ribeiro's substantial rights have not been prejudiced. Therefore, this Court affirms the CLRB's Final Order and dismisses Mr. Ribeiro's appeal.

Counsel for the CLRB shall submit an appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: Ribeiro v. State of Rhode Island

CASE NO: PC No. 2009-4704

COURT: Providence County Superior Court

DATE DECISION FILED: June 11, 2013

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

For Plaintiff: John Ribeiro, Jr., Pro Se

For Defendant: Christy Hetherington, Esq.