STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: NOVEMBER 15, 2013]

PARK ROW PROPERTIES, LTD./METROPARK	:	
	:	
V.	:	**C.A. No. PC 2011-5077**
	:	
RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING, LABOR STANDARDS DIVISION, through its Director, CHARLES J. FOGARTY; GEORGE KLANIAN; and CARLO ACQUISTO	:	

SUPPLEMENTAL DECISION

CARNES, J. Park Row Properties, Ltd./Metropark (Appellant or Park Row) challenges a decision by the Rhode Island Department of Labor and Training (DLT or Department), after remand, finding Park Row liable for back wages to George Klanian (Mr. Klanian or Claimant) and Carlo Acquisto (Mr. Acquisto or Claimant) (collectively Claimants). Jurisdiction is pursuant to G.L. 1956 §§ 25-3-5 and 42-35-15.

I

Facts and Travel

The Court originally issued a Decision on November 8, 2012 (hereinafter Superior Court Decision of November 8, 2012[1]) on Park Row's administrative appeal of a decision of DLT (hereinafter Original Decision), in which DLT found Park Row liable for back wages to Mr. Klanian and Mr. Acquisto. In that Original Decision, DLT determined that Park Row was responsible for payment of time and one-half pay to Mr. Klanian and Mr. Acquisto for work

[1] Park Row Properties, Ltd. v. Rhode Island Dept. of Labor and Training, 2012 WL 5510657 (R.I. Super. Ct. 2012).

performed on Sundays by each claimant during the course of their employment, pursuant to §§ 25-3-1 to -11 (hereinafter Statute). DLT also imposed on Park Row an administrative fine for violating the Statute.

Park Row argues that two letters issued by DLT demonstrate that DLT interprets §§ 25-3-2 and 25-3-3 of the Statute, as well as certain regulations promulgated by DLT pursuant to the Statute,[2] as exempting employers like Park Row from paying time and one-half for Sunday work (hereinafter Premium Pay Requirement). The letters, authored by a DLT employee (hereinafter Official), were written in response to separate inquiries by parties not before the Court. The letters were attached as exhibits to Park Row's original memorandum in support of its position on appeal. The letters, dated September 9, 2005 and April 30, 2007, are discussed in this Court's Decision of November 8, 2012.[3] In that Decision, this Court remanded the matter to DLT with instructions to provide a clear explanation as to whether or not DLT was repudiating its own previous interpretation of the Statute in the present litigation. Specifically, this Court asked DLT to describe what effect certain legislative amendments enacted in 1998 (hereinafter 1998 Amendments) had on the validity of regulations promulgated under the pre-1998 version of the Statute (hereinafter Old Regulations)[4] and whether this interpretation changed between the

[2] The Superior Court Decision of November 8, 2012 discusses the history of what is referred to as the "Old Regulations" in light of DLT's enactment of "New Regulations" effective in 2008. Of particular note is the fact that the "New Regulations" did not expressly repeal the "Old Regulations."

[3] While the Superior Court Decision of November 8, 2012 need not be reprinted in its entirety, it is important to note that the two letters in question were directed to two individuals who are not parties to the present litigation.

[4] Subsequent to the 1998 legislative amendments to §§ 25-3-2 and 25-3-3, DLT promulgated new regulations ("New Regulations"), entitled "Rules and Regulations Relating to Exemptions for Work on Holidays and Sundays," pursuant to its authority under § 25-3-7 to grant exemptions to classes of employers. The New Regulations, proposed in 2007 and effective in 2008, provide a procedure whereby an employer may petition DLT for an exemption from paying time and one-half for Sunday work by submitting a written statement containing, among other things, "a

dates of the Official's letters and the time of the Superior Court Decision of November 8, 2012. The Court stated that if DLT was, in fact, repudiating its previous interpretation of the Statute and the Old Regulations, DLT was to provide a reasoned analysis for this change in position.

In light of the Court's instructions, DLT issued a written "Decision on Remand" dated November 26, 2012. In the Decision on Remand, DLT repudiated "the legal interpretation" contained in the 2005 and 2007 letters from the Official[5] and repudiated "the policy annunciated by" the Official in that correspondence.[6] DLT ruled that the Official's interpretation of the law had been based on "a mistaken legal interpretation of R.I.G.L. § 25-3-1 et seq. [sic]."[7] DLT found that the statements contained in the Official's letters were made "mistakenly and without legal authority"[8] because the Official mistakenly used an inapplicable regulatory definition to reach a legal conclusion about exemptions to the Premium Pay Requirement.[9] DLT ruled that as a department, DLT is unable to "lawfully perpetuate an erroneous legal interpretation,"[10] and so it determined that the Old Regulations were "valid" but "no longer [had] applicability."[11] DLT compared the Old Regulations to what DLT referred to as the "orphaned" section of the same regulations from another case in this jurisdiction.[12] Moreover, citing United States Supreme

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statement of the economic necessity, as defined by § 25-3-1, justifying the exemption." R.I. Admin. Code 42-5-6:1 ¶ 2. The New Regulations did not expressly repeal the Permit Law Regulations. See R.I. Admin. Code 42-5-6:1. See Super. Ct. Decision at 6-9, Nov. 8, 2012.

[5] DLT Decision on Remand, 3.

[6] Id.

[7] Id. at 2.

[8] Id.

[9] Id.

[10] Id. at 3.

[11] Id. at 2.

[12] Id., citing RILFG Genco v. State Department of Labor and Training, C.A. No. PC 2011-2786 (R.I. Super. Ct. 2012).

Court case law,[13] DLT asserted that it was permitted to change its views when its past position had been "grounded on mistaken legal interpretation."[14]

In a February 11, 2013 "Supplemental Memorandum of Law," Park Row submitted a response to DLT's Decision on Remand. Park Row argues that DLT changed its position from its own Original Decision by ruling, in the DLT Decision on Remand, that the Old Regulations were "valid."[15] Park Row contends that this position contradicts DLT's position from the Original Decision—that the Old Regulations had been "impliedly repealed." Park Row claims that DLT repudiated the Old Regulations only, for the first time, through the DLT Decision on Remand, issued on November 26, 2012.[16] Park Row claims that DLT's failure to apply the heretofore "valid" Old Regulations to Park Row's circumstances, and instead apply its application of the "new" policy announced in the Decision on Remand, is a "manifest injustice" that requires this Court to reverse.[17] Park Row contends that DLT is retroactively imposing this "new" policy against Park Row without any authority to do so. Park Row also argues that the administrative penalty imposed against Park Row violates Park Row's right to due process and is therefore unconstitutional.[18] Park Row maintains that it reasonably relied on DLT's prior interpretations—including, specifically, the Official's letters from 2005 and 2007—in choosing to not abide by the Premium Pay Requirement, and therefore, even if DLT had adequately explained the reason for changing its policy in its Decision on Remand, DLT's "retroactive" application of the "new" policy and the attendant administrative penalty would be unlawful.[19]

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[13] Good Samaritan Hosp. v. Shalala, 508 U.S. 417 (1993).
[14] DLT Decision on Remand at 3.
[15] Appellant's Memo at 2.
[16] Id. at 2.
[17] Id. at 7-10.
[18] Id. at 10-12.
[19] Id. at 7-9.

II

Standard of Review

This Court's review on appeal from a decision of an administrative agency is governed by the Rhode Island Administrative Procedures Act, §§ 42-35-1 to -18. See Rossi v. Employees' Retirement Sys. of R.I., 895 A.2d 106, 109 (R.I. 2006). This Court may reverse or modify an agency's decision if:

> "substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (1) In violation of constitutional or statutory provisions;
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> (2) In excess of the statutory authority of the agency;
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> (3) Made upon unlawful procedure;
>
> (4) Affected by other error or law;
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> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
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> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Sec. 42-35-15(g).

This Court's review of an agency decision is, in essence, "an extension of the administrative process." R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 484 (R.I. 1994).

In reviewing an agency decision, this 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). This Court will defer to an agency's factual determinations so long as they are supported by legally competent evidence. Town of Burrillville v. R.I. State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007). Our Supreme Court has defined legally competent evidence as "some or any evidence supporting the agency's findings." Auto Body Ass'n of R.I. v. State of R.I. Dep't of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010) (citation omitted). "[I]f 'competent evidence exists

in the record, [this] Court is required to uphold the agency's conclusions.'" Auto Body Ass'n, 996 A.2d at 95 (quoting R.I. Pub. Telecomms. Auth., 650 A.2d at 485).

In contrast to its review of findings of facts, this Court reviews agency determinations of law de novo. Arnold v. R.I. Dep't of Labor & Training Bd. of Review, 822 A.2d 164, 167 (R.I. 2003). In general, this Court will accord deference to an agency's interpretation of '"a statute whose administration and enforcement have been entrusted to the agency."' Town of Richmond v. R.I. Dep't of Envtl. Mgmt., 941 A.2d 151, 157 (R.I. 2008) (quoting Murray v. McWalters, 868 A.2d 659, 662 (R.I. 2008)). However, "an agency interpretation of a relevant provision which conflicts with the agency's earlier interpretation is 'entitled to considerably less deference' than a consistently held agency view." I.N.S. v. Cardoza-Fonseca, 480 U.S. 421, 446 n.30 (1987) (quoting Watt v. Alaska, 451 U.S. 259, 273 (1981)); accord R.I. Hosp. v. Sebelius, 670 F. Supp. 2d 148, 155 (D.R.I. 2009). When an agency departs from its prior interpretations without providing a reasoned explanation, the reviewing court may find the agency's action to be arbitrary and capricious. Harrington v. Chao, 280 F.3d 50, 58-59 (1st Cir. 2002) (citations omitted).

III

Analysis

Park Row advances three arguments through its supplemental memorandum of law. This Court will first analyze the impact of the 1998 Amendments on the Statute and the Old Regulations, and then it will address Park Row's arguments.

A

Statutory Construction

First, this Court clarifies the impact that the 1998 Amendments had on the validity of the Old Regulations. As a matter of statutory construction, this Court must give a statute's terms "their plain and ordinary meaning unless a contrary intent is clearly shown on the face of the statute." Little v. Conflict of Interest Comm'n, 121 R.I. 232, 237, 397 A.2d 884, 887 (1979) (citing Andreozzi v. D'Antuono, 113 R.I. 155, 158, 319 A.2d 16, 18 (1974)). By amending, in 1998, §§ 25-3-2 and 25-3-3 so as to remove all reference to the Sunday work permit requirement (hereinafter Work Permit Requirement), the Legislature plainly and clearly intended to abolish the Work Permit Requirement altogether.[20] By the "plain and ordinary meaning" of the terms of the Statute, therefore, this Court finds that DLT's authority to promulgate regulations pursuant to that Statute was different post-1998 than it was before the amendments were passed—i.e., the nature of the regulations that DLT could promulgate changed as a result of the 1998 Amendments.

The word "void" is a term that describes "[a]n instrument or transaction which is wholly ineffective, inoperative, and incapable of ratification and which thus has no force or effect so that nothing can cure it." Black's Law Dictionary 1573 (6th ed. 1991). Thus, a regulation is "void" if it has "no legal force or binding effect," id., or if it is "unable, in law, to support the purpose for which it was intended." Id.; see Sowter v. Seekonk Lace Co., 83 A. 437 (R.I. 1912). When DLT refiled the Rules and Regulations Relating to the Work Permit Law (i.e., the Old Regulations) in 2002 and again in 2007—four and nine years later, respectively, after the Legislature abolished

[20] The Court points out that the title of the Statute clearly describes the Legislature's intent: before the 1998 Amendments, the Statute was called "Work Permits on Holidays and Sundays"; post-1998 Amendments, this chapter was called "Work on Holidays and Sundays."

the Work Permit Requirement through the 1998 Amendments—DLT merely caused to be printed in the Rhode Island Administrative Code words that had absolutely "no legal force or binding effect." Black's Law Dictionary 1573 (6th ed. 1991).

It is well established in Rhode Island that "administrative agencies possess no ability to promulge regulations absent a specific or implied grant of statutory authority." F. Ronci Co., Inc. v. Narragansett Bay Water Quality Mgmt. Dist. Comm'n, 561 A.2d 874, 881 (R.I. 1989) (citing Berkshire Cablevision of Rhode Island, Inc. v. Burke, 488 A.2d 676, 679 (R.I. 1985)). Agency actions are valid only when they fall within the parameters of the statutes that define the agency's powers in the first place. Iselin v. Ret. Bd. of Employees' Ret. Sys. of Rhode Island, 943 A.2d 1045, 1050 (R.I. 2008) (citing In re Advisory Opinion to the Governor, 627 A.2d 1246, 1248 (R.I. 1993)) (internal quotations omitted). Administrative agencies, like DLT, are creatures of statute and possess no inherent common-law powers of their own. Little, 121 R.I. 232, 235, 397 A.2d at 886-887. Through the 1998 Amendments, the Legislature stripped DLT of the statutory authority to pass regulations having the scope and nature of the Old Regulations—regulations related to the now abolished Work Permit Requirement. F. Ronci Co., Inc., 561 A.2d at 881. DLT did not, after 1998, possess the ability to promulge a rule or regulation relating to the Work Permit Requirement because the Work Permit Requirement itself had been abolished by the Legislature.[21] Therefore, even though DLT may have physically refiled with the

[21] This Court declines to treat the Old Regulations as "intact as originally written but orphaned." RILFG Genco v. State Dept. of Labor and Training, C.A. No. PC 2011-2786, Mar. 16, 2012. The Court agrees that the Old Regulations are "intact as originally written"—the Court has before it the Rhode Island Administrative Code in which the words describing the Old Regulations clearly appear. The Court, for the reasons stated above, feels the word "nullity" is a more accurate descriptor. A "nullity" is "nothing." Black's Law Dictionary 1067 (6th ed. 1991). It is "an act or proceeding in a cause in which the opposite party may treat as though it had not taken place, or which has absolutely no legal force or effect." Id. This definition more

Secretary of State pieces of paper containing the words of the Old Regulations, DLT was wholly incapable of actually promulgating them or attaching to them any binding legal effect.[22] The refiled Old Regulations were void. See also State v. Pascale, 86 R.I. 182, 134 A.2d 149 (1957) (in a criminal law context, holding that a provision of an ordinance that conflicts with an underlying statutory provision is void and unenforceable).

B

DLT's Supposed Change of Course

Park Row argues that DLT, after stating in its Original Decision that the Old Regulations had been "impliedly repealed" by the 1998 Amendments, now maintains that the Old Regulations are valid but have no applicability. Park Row complains that DLT has not offered a sufficient explanation for this change of interpretation, and that on this basis, Park Row is entitled to a reversal of DLT's Original Decision.

In its November 8, 2012 Decision, this Court stated that it "cannot decide, based on the record, whether [DLT] is repudiating a previous interpretation" of the Old Regulations. (Superior Court Decision of Nov. 8, 2012, at 22-23.) The Court sought clarification on the issue of

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accurately describes the status of the Old Regulations at the time the Official commented on them in 2005 and 2007.

[22] In fact, this Court is of the opinion that the instant the 1998 Amendments to the Statute went into effect, the Old Regulations were stripped of "all effectiveness." See Hadson Gas Sys., Inc. v. F.E.R.C., 75 F.3d 680 (D.C. Cir. 1996) (holding that deleting a regulation from the federal register after Congress repeals the regulation's enabling statute is "simply a ministerial task," and regardless of whether or not the agency physically deletes the regulation, the regulation has lost "all effectiveness" the moment Congress "pulled the rug out from under" it; see also Beverly Health and Rehabilitation Services v. Tommy Thompson, 223 F. Supp. 2d 73 (2002) (holding that an agency is not required to undertake the "useless" exercise of repealing a regulation by notice and comment when Congress passes a statute that renders the regulation obsolete). Although the 1998 Amendments did not expressly repeal the Old Regulations, the Old Regulations, in losing "all effectiveness," were thus "impliedly repealed" by the 1998 Amendments. It is true that the 1998 Amendments "contain[] provisions so contrary to or irreconcilable with" the Old Regulations "that only one of the two . . . can stand in force." Black's Law Dictionary 1299 (6th ed. 1991).

whether DLT was "changing its interpretation," and, if so, to "provide a reasoned analysis of any change." Id. at 24. After considering DLT's Decision on Remand and Park Row's Supplemental Memorandum of Law, this Court is now satisfied that DLT did not repudiate its previous interpretation of the Old Regulations, and therefore, DLT is not required to provide a "reasoned analysis" because it has not changed its position.

The language DLT uses in the Decision on Remand is clear: "the Department repudiates the legal interpretation contained in the subject letters and repudiates the policy annunciated by [the Official]."[23] (Emphasis supplied.) Repudiating a "policy annunciated by" the Official is not the same thing as repudiating the Old Regulations. In fact, it would have been impossible for DLT to repudiate the Old Regulations even if it wanted to. The Old Regulations, refiled, as they were, in 2002 and 2007, were absolute nullities. See Little, 121 R.I. 232, 235, 397 A.2d at 886-887. There was no valid regulation for DLT to repudiate. The most that DLT could have done is repudiate the Official's representation—in fact, her misrepresentation—of the validity of the Old Regulations. Therefore, Park Row's argument—that DLT changed course in its policy—is without merit.

C

Retroactive Application

Park Row also argues that DLT is retroactively applying a new interpretation of the Premium Pay Requirement and that this retroactive application is prohibited by law because of Park Row's reliance on statements contained in the Official's correspondence; the fact that the

[23] DLT Decision on Remand at 3. Note that the actual text of the Decision on Remand refers, here, specifically to the Official by name, not generally to an employee of the Department. This Court redacts the Official's name, but remains cognizant that DLT characterized the "annunciated policy" as a statement by an individual, not as an employee or representative of DLT.

new interpretation is an abrupt departure from well-established custom; the substantial burden imposed on Park Row as a result of the new interpretation; and the lack of statutory authority for retroactively applying the new interpretation against Park Row. This Court construes Park Row's argument to be that DLT should be equitably estopped from enforcing the Premium Pay Requirement against Park Row because DLT's previous interpretation of the Statute, supposedly demonstrated in the Official's letters, was that the Old Regulations were still in effect and, under those regulations, Park Row was exempt from the Premium Pay Requirement. This argument fails.

First, this Court has already established that DLT did not change course in its policy with respect to the Premium Pay Requirement. The Official's conclusion, based on the Old Regulations, was made without authority because the Old Regulations were void. It was impossible for DLT to enact, in the first instance, a policy that exceeded the scope of the relevant enabling statute.

Second, even if this Court accepts that the Official represented a valid legal interpretation of the Premium Pay Requirement—notwithstanding the invalidity of the Old Regulations upon which such an interpretation would be based—DLT is not bound to an interpretation grounded on a mistake, and it is not estopped from changing its mind. Good Samaritan v. Shalala, 508 U.S. 402 (1993). When an agency changes course in how it interprets a law or regulation, it must provide, at minimum, a "reasoned analysis" for such a change in position. R.I. Hospital v. Sebelius, 670 F. Supp. 2d 148 (2009). When an agency changes its position, a court must be satisfied that the agency understands that it is, in fact, changing its position, and that the agency has articulated why it is changing it. R.I. Hosp., 670 F. Supp. 2d at 156. A reviewing court must also be satisfied that the new position "is consistent with the law." Id. Here, DLT is repudiating

the Official's representations in letters directed in response—and exclusively—to third parties not before the Court. DLT has, to this Court's satisfaction, provided a "reasoned analysis" for any change in its "interpretation" or its "position" of the Premium Pay Requirement, to whatever extent the Official's letters announced a departmental interpretation or position on this issue in the first place. The R.I. Hosp. test is satisfied: DLT understands that it is, in fact, repudiating the Official's representations that the Old Regulations were valid and enforceable.[24] DLT has clearly articulated the permissible reasons for repudiating the Official's statements: they were grounded on "a mistaken legal interpretation of R.I.G.L. 25-3-1 et seq."[25] This Court has already articulated, supra, why it finds that DLT's "new" position is consistent with the law. Therefore, even if DLT did change its position on the Premium Pay Requirement, the Department satisfied the requirements of the law in undertaking such a change.

Inasmuch as Park Row advances an argument of improper retroactive application of a regulation on estoppel grounds, it is well established in Rhode Island that the doctrine of equitable estoppel "should not be applied against a governmental entity" when "the alleged representations or conduct relied upon were *ultra vires* or in conflict with the applicable law." Romano v. Ret. Bd. of Employees' Ret. Sys. of R.I., 767 A.2d 35, 36 (R.I. 2001). Because the 1998 Amendments immediately rendered the Old Regulations void, and since DLT's refiling of those same Regulations in 2002 and 2007 had no legally binding effect, the Official, as a representative of DLT, did not have any implied or actual authority to assert, through her letters or otherwise, that the Old Regulations were somehow still valid, or to even offer an interpretation of them. Id. at 39-40. The Official's "renegade legal interpretations . . . can[not] override a state law that plainly provides otherwise." Id. at 40 (citing State v. Rhode Island

[24] DLT Decision on Remand at 2.
[25] DLT Decision on Remand at 3.

Alliance of Soc. Servs. Employees, Local 580, SEIU, 747 A.2d 465, 470 (R.I. 2000)). Accordingly, the Official's purported legal interpretations were, in fact, mere ultra vires acts, had no legally binding effect on DLT, and do not provide Park Row with any grounds for relief under a theory of estoppel. See Potter v. Crawford, 797 A.2d 489, 493 (R.I. 2002) (holding that the mere fact that a plaintiff assumed that a representative of a government actually had the authority to enter into an agreement with the plaintiff will not provide the grounds for relief under an estoppel theory); see also Martel Inv. Grp., LLC v. Town of Richmond, 982 A.2d 595 (R.I. 2009) (holding that a building official's ultra vires and unlawful issuance of a building permit to the plaintiff did not entitle the plaintiff to an equitable estoppel defense). Therefore, even if the Court were to assume that Park Row did, in fact, rely to its detriment on the Official's 2005 and 2007 letters to third parties not before the Court, such reliance cannot form the basis for the relief that Park Row now seeks.[26]

Finally, that Park Row has managed, since 1984, to avoid paying its employees according to the Premium Pay Requirement might well be a "well-established custom" in the sense that Park Row may have become "accustomed" to not abiding by the requirements of the Statute. Similarly, the burden that Park Row now faces as a result of having to pay Mr. Klanian and Mr. Acquisto back wages might, indeed, be substantial. However, a change in how Park Row has to operate as a result of complying with the law does not provide this Court grounds to reverse or modify DLT's Original Decision. See § 42-35-15. This Court will defer to DLT's factual determination that Park Row violated the Statute's Premium Pay Requirement as long as the

[26] The Court is not persuaded that Park Row even detrimentally relied on the Official's letters. The letters were addressed to third parties; were composed in direct response to inquiries made by these third parties; and Park Row has presented no evidence that it was even aware of the existence of these letters prior to the commencement of the present litigation. These facts further vitiate Park Row's theory that it is entitled to equitable relief from this Court on estoppel grounds.

decision was supported by legally competent evidence. Town of Burrillville, 921 A.2d at 118. Since competent evidence does exist in the record, this Court will not disturb DLT's Original Decision in this regard. Auto Body Ass'n, 996 A.2d at 95.

D

The Administrative Penalty

Park Row argues that the administrative penalty that DLT imposed against it for violating the Premium Pay Requirement violates Park Row's due process rights under the Constitution because the penalty was imposed without fair notice. When an agency is fashioning "policies, remedies and sanctions," its "discretion is at its zenith." Pub. Utilities Comm'n of State of Cal. v. F.E.R.C., 462 F.3d 1027, 1053 (9th Cir. 2006). A court will uphold an agency's choice of sanctions unless the remedy is "unwarranted in law or without justification in fact." Butz v. Glover Livestock Comm'n Co., Inc., 411 U.S. 182, 185 (1973) (internal quotations omitted); see also Broad Street Market, Inc. v. U.S., 720 F.2d 217 (1st Cir. 1983); Colazzo v. U.S., 668 F.2d 60 (1st Cir. 1981). As long as a sanction is reasonably related to the unlawful conduct, a court, generally, will uphold the agency's selection of a remedy. Excel Corp. v. U.S. Department of Agric., 397 F.3d 1285, 1298 (10th Cir. 2005); see also Monieson v. Commodity Fixtures Trading Comm'n, 996 F.2d 852 (7th Cir. 1993). A court's review of an agency's selection of an appropriate penalty is limited in light of the agency's institutional competence. Newell Recycling Co., Inc. v. U.S. E.P.A., 231 F.3d 204, 208 (5th Cir. 2000). The appropriate standard of review of an agency's imposition of sanctions is "abuse of discretion." Butz, 411 U.S. at 189; see also R&W Technical Services, Ltd. v. Commodity Futures Trading Comm'n, 205 F.3d 165, 177 (5th Cir. 2000), cert. denied, 531 U.S. 817 (2000); Kenrich Petrochemicals, Inc. v. N.L.R.B., 907 F.2d 400, 405 (3rd Cir. 1990), cert. denied, 498 U.S. 981 (1990).

Section 25-3-6 of the Statute empowers the director of DLT "to enforce and administer the provisions of this chapter and to prosecute violations of any of the provisions of this chapter." Sec. 25-3-6. The fact that the Statute does not specify the pecuniary parameters of an administered penalty evidences the Legislature's intent that DLT have considerable latitude in fashioning remedies for violations of the provisions of the Statute. See Butz, 411 U.S. at 185. DLT's imposition, against Park Row, of a 25% administrative penalty was in accordance with DLT's enabling authority and was not an abuse of discretion. Id. at 189. The imposition and amount of the penalty is reasonably related to Park Row's unlawful conduct—the failure to abide by the Premium Pay Requirement. Excel Corp., 397 F.3d at 1298. Because DLT's imposition of the administrative penalty was not "unwarranted in law" or "without justification in fact," Butz, 411 U.S. at 182, this Court will not disturb DLT's decision.

IV

Conclusion

After reviewing the entire record including DLT's Decision on Remand and the parties' supplemental memoranda of law, this Court affirms DLT's Original Decision. That original decision was not in violation of constitutional or statutory provisions, affected by error of law, or an abuse of discretion. Substantial rights of the Appellant have not been prejudiced. Counsel shall submit the appropriate order and judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Park Row Properties, Ltd./Metropark v. Rhode Island Department of Labor and Training, et al.
CASE NO:	PC 11-5077
COURT:	Providence County Superior Court
DATE DECISION FILED:	November 15, 2013
JUSTICE/MAGISTRATE:	Carnes, J.
ATTORNEYS:	
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