STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: SEPTEMBER 17, 2012)

GARCIA AUTO SALES, INC.	:	
	:	
v.	:	**No. PC-2009-4251**
	:	
SARA STRACHAN, ADMINISTRATOR and DIVISION OF MOTOR VEHICLES	:	

DECISION

GIBNEY, P. J. Before the Court is Appellant Garcia Auto Sales' (the "Dealership") appeal of a decision by the Motor Vehicle Dealers' License and Hearing Board (the "Board"), which ordered the Dealership to reimburse one of its customers, Paola Jordan ("Jordan"), for the costs she incurred to repair a vehicle purchased without a state inspection sticker. Jurisdiction is pursuant to G.L. 1956 § 31-5-2.1(d).[1]

I

Facts and Travel

On January 7, 2009, Jordan with the assistance of her friend, John Najarian, III ("Najarian"), purchased a used 2000 Mercury Cougar (the "Vehicle"), which they found posted on Craigslist by Onasis Martinez ("Martinez"). (Hr'g Tr. at 7:2-13, Dec. 7, 2011; Bill of Sale, Record Ex. 2(c).) Jordan and Najarian went to Martinez's home to view the Vehicle, and there they negotiated a purchase price of $1400. (Hr'g Tr. at 8:22-9:3.) After agreeing to the purchase price with Martinez at his home, Martinez led Jordan and Najarian to the Dealership, which was owned by Jose Perez ("Perez"). (Hr'g Tr. at 9:4-13.) At the Dealership, a bill of sale made out

[1] "The board shall constitute an agency and follow the Administrative Procedure Act, chapter 35 of title 42, and its decisions are appealable to the superior court." Sec. 31-5-2.1(d).

between Jordan and the Dealership was signed by Jordan and Perez. (Hr'g Tr. at 16:3-8; Tire Pros Invoice, Record Ex. 2(c).) The purchase money, however, was paid by Najarian to Martinez. (Hr'g Tr. at 16:9-11.) According to Perez, who sold the Vehicle to Martinez and testified at the December 7, 2011 hearing before the Board, the Vehicle was originally sold to Martinez, who decided subsequently that he wanted to return it. (Hr'g Tr. at 24:24-25:1, 32:5-12.) When Perez refused this request, the two agreed that if Martinez was able to re-sell the Vehicle, Perez would handle the paperwork at the Dealership. (Hr'g Tr. at 32:13-33:5.) During the Hearing, Perez acknowledged through counsel that the Vehicle was sold to Jordan by and through the Dealership and did not display a valid Rhode Island inspection sticker at the time of sale. (Hr'g Tr. at 13:4-18.)

Sometime after purchasing the Vehicle, Jordan and Najarian brought the Vehicle to a Tire Pros location to have two tires replaced. (Hr'g Tr. 11:10-14.) There they were told that the Vehicle required repairs in order to pass a state inspection. Id. Najarian contacted his father who paid for the replacement tires, as well as the necessary repairs, which totaled $2411.06. (Hr'g Tr. at 11:17-12:3; Tire Pros Invoice, Record Ex. 2(f).)[2] After the repairs, however, the Vehicle still did not pass a state inspection because of malfunctions in the catalytic converter, which, according to Najarian, would have required additional repairs totaling $2500. (Hr'g Tr. at 17:7-13.)

Upon hearing that the Vehicle required more repairs, Najarian's father contacted Perez, who initially offered to have the catalytic converter repaired and to subsequently have the car inspected. (Hr'g Tr. at 26:14-22.) When Najarian's father rejected this offer, Perez agreed to

[2] The Court notes that the Board in its decision found that the costs incurred to repair and improve the Vehicle totaled $2416.06. The Tire Pros invoice, Exhibit 2(f) in the administrative record, lists the total expenditure in repairs at Tire Pros to be $2411.06. The Court finds this to be a minor error and will adjust its decision to reflect the price substantiated in the record.

purchase the Vehicle back from Jordan and to reimburse Najarian's father for the repairs and improvements made to the car. (Hr'g Tr. at 26:23-27:13; 19:11-17.) Before this took place, however, Perez contacted Najarian's attorney, who asserted that Perez was only willing to re-purchase the vehicle for the original $1400. (Hr'g Tr. at 19:17-20:7.)

Seeking the re-purchase of the Vehicle and reimbursement for the repairs and improvements that had been made, Jordan filed the instant complaint with the Board on March 31, 2009 pursuant to G.L. 31-5-2.1(b).[3] At the December 7, 2011 hearing held by the Board, Perez admitted to selling the Vehicle without an inspection sticker, Hr'g Tr. at 13:15-18, and reiterated his offer to purchase the Vehicle back from Jordan for $1400. (Hr'g Tr. at 20:3-7.) Perez also stated that he was still willing to have the catalytic converter repaired and ensure the Vehicle passed inspection, but he asserted that it would be unfair to hold him liable for the repairs done by Tire Pros at Jordan's behest, which he suggests may have been unnecessary or that he may have been able to perform for less. (Hr'g Tr. at 20:7-15; 22:1-15.)

During the hearing, the Board remarked that had Perez ensured that the Vehicle passed inspection before selling it to Jordan, the instant dispute before the Board would not have occurred. (Hr'g Tr. at 21:12-20; 22:19-21.) The Board also noted that if Perez were only required to re-purchase the Vehicle at $1400, he would receive the unjust enrichment of the monies put into the Vehicle by Najarian's father. (Hr'g Tr. at 20:16-18.)

In its subsequent written decision issued on June 29, 2009, the Board found that, by his own admission, Perez had sold Jordan the Vehicle without a valid inspection sticker in violation of G.L. 1956 § 31-38-1(b), which requires dealers of used vehicles to have vehicles inspected before they are sold. Noting that the Vehicle was still unsafe to drive—and that if Perez had had

[3] "The board shall have supervision of the license with respect to all of the provisions of §§ 31-5-1 -- 31-5-39 . . . ." Sec. 31-5-2.1(b).

the Vehicle inspected before it was sold, Najarian's father would not have incurred the expense of repairing it—the Board, pursuant to its authority under R.I. Admin. Code 47-1-38:II(A)(4),[4] ordered the Dealership to pay Jordan $3816.00. This sum represented the purchase price of the Vehicle and the cost of repairs and improvements.

The Dealership filed the instant appeal on July 28, 2009, pursuant to G.L. 1956 § 42-35-15(a),[5] asserting that the Board's decision was clearly erroneous in light of the evidence concerning the repairs performed by Tire Pros. The Dealership claims that because the Board's findings of fact fail to identify the documents in the record on which the $2411.06 in repairs is based, the record is insufficient to support the Board's calculation. The Dealership also argues that it would be inequitable to hold it liable for the repairs done by Tire Pros because the Dealership was never afforded an opportunity to repair the vehicle itself. Lastly, the Dealership points to an inspector's report in which the inspector stated that he was unable to determine with certainty that the repairs on the Tire Pros invoice were necessary or were actually performed. Because of this, the Dealership asserts that the evidence in the record is conflicting and therefore does not support the Board's decision.[6] After a review of the record, this Decision follows.

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[4] The Board has authority to order "full restitution of any money and/or motor vehicle repairs and parts suffered by a purchaser as a result of an unconscionable practice or illegal transaction as may be determined by the Department of Revenue . . . ." R.I. Admin. Code 47-1-38:II(A)(4).

[5] "Any person, including any small business, who has exhausted all administrative remedies available to him or her within the agency, and who is aggrieved by a final order in a contested case is entitled to judicial review of this chapter." Sec. 42-35-15.

[6] The Court presumes that the Dealership's initial brief filed on Jan. 11, 2011 was replaced by a subsequent brief submitted on Jan. 3, 2012. Accordingly, to the extent the arguments made in the initial brief differ from those made in the subsequent one, the Court will only consider those in the last submitted brief.

II

Standard of Review

Decisions of the Board are considered those of an administrative agency and as such are appealable to the Superior Court in accord with Section 42-35-15 of the Administrative Procedures Act. See § 31-5-2.1(d). When reviewing an agency decision:

> "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:
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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;
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> (4) Affected by other error of law;
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> (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. Sec. 42-35-15(g).

A review of an agency's findings is "both limited and highly deferential." Culhane v. Denisewich, 689 A.2d 1062, 1064 (R.I. 1997). This Court is mindful of the "well-recognized doctrine of administrative law that deference will be accorded to an administrative agency when it interprets a statute whose administration and enforcement have been entrusted to the agency . . . even when the agency's interpretation is not the only permissible interpretation that could be applied." Pawtucket Power Assocs. Ltd. P'ship v. City of Pawtucket, 622 A.2d 452, 456-57 (R.I. 1993); see also Unistrut Corp. v. State Dep't of Labor and Training, 922 A.2d 93, 99 (R.I. 2007);

Parkway Towers Assocs. v. Godfrey, 688 A.2d 1289, 1293-94 (R.I. 1997) ("[A]dministrative interpretation is entitled to great deference . . . when . . . it is consistent with the overall purposes of the legislation."). Moreover, expert testimony and knowledge concerning the matters which are related to an effective administration of the agency's statutes and regulations is considered adequate to constitute legal evidence sufficient to support a decision. See Citizens Sav. Bank v. Bell, 605 F. Supp. 1033, 1041 (D.R.I. 1985); Parkway Towers, 688 A.2d at 1294.

The Court examines the record only to determine "whether any legally competent evidence exists within the record as a whole, or [] reasonable inferences may be drawn therefrom, to support the decision . . . or whether [the committee] committed error of law in reaching its decision. Elias-Clavet v. Bd. of Review, 15 A.3d 1008, 1013 (R.I. 2011). "In essence, if 'competent evidence exists in the record, the Superior Court is required to uphold the agency's conclusions.'" Auto Body Ass'n of Rhode Island v. State of Rhode Island Dep't of Bus. Reg'l, et al., 996 A.2d 91, 95 (R.I. 2010). Accordingly, this Court defers to the administrative agency's factual determinations provided that they are supported by legally competent evidence. Arnold v. Rhode Island Dep't of Labor and Training Bd. of Review, 822 A.2d 164, 167 (R.I. 2003). 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." Foster-Glocester Reg'l Sch. Comm. v. Bd. of Review, 854 A.2d 1008, 1012 (R.I. 2004). Additionally, when examining the certified record, this Court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. Interstate Navigation Co. v. Dis. of Pub. Utils. & Carriers of Rhode Island, 8724 A.2d 1282, 1286 (R.I. 2003) (citations omitted).

III

Analysis

The Dealership first asserts that the Board violated § 42-35-12 by not including in its findings of fact the specific documents upon which the calculation of $2411.06 in repairs was based. The Board, on the other hand, avers that its decision was made upon lawful procedure and based on facts contained in the record, and, therefore, the decision was neither in violation nor excess of any statutory provisions relating to the Board or its decision-making authority.

In pertinent part, § 42-35-12 states that "[a]ny 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." An agency's decision "'must encompass its fact findings, its interpretation of the pertinent law, and its application to the facts found.'" Sakonnet Rogers, Inc. v. Coastal Res. Mgmt. Council, 536 A.2d 893, 896 (R.I. 1988) (quoting Arrow Transp. Co. v. United States, 300 F. Supp. 813, 817 (D.R.I. 1969)). Without findings of fact, an appellate court is unable to determine the factual basis upon which the agency reached its decision. See East Greenwich Yacht Club v. Coastal Res. Mgmt. Council, 118 R.I. 559, 569, 376 A.2d 682, 687 (1977) (stating "[t]he absence of required findings makes judicial review impossible . . . .).

The Court discerns no requirement, however, that an agency in its findings of fact must cite to specific documents in the record upon which its factual findings are based. Rather, the Court merely determines "whether or not legally competent evidence exists in the record to support the agency's decisions." Town of Burrillville v. Rhode Island Labor Relations Bd., 921 A.2 113, 118 (R.I. 2007) (emphasis added). Obviously an agency's findings of fact must sufficiently address the relevant issues to be decided by the agency. See Sakonnet Rogers, Inc.,

536 A2d at 895-96 (agency decision reversed where findings of fact did not address underlying criteria necessary to reach the agency's ultimate decision). Provided this requirement is satisfied and the record supports those factual findings, the agency's stated findings of fact are sufficient. See Nickerson v. Reitsma, 853 A.2d 1202, 1205 (R.I. 2004) ("If competent evidence exists in the [certified] record . . . the court is required to uphold the agency's conclusions.") (internal citations omitted).

Here, the Board's findings of fact stated plainly that "[o]n January 24, 2009 Petitioner paid $2,416.06 in repairs to vehicle in order to make it safe for the road and to pass inspection." Board Decision at 2 ¶ 1. This factual statement is supported by "legally competent evidence," which is defined as "the presence of some or any evidence supporting the agency's findings." Auto Body Ass'n of Rhode Island v. State Dep't of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010). Specifically, the itemized invoice for the repairs and improvements performed on the Vehicle by Tire Pros is the competent evidence of repairs and improvements underlying the Board's decision. (Record Exhibit 2(c).) Accordingly, the Board's findings of fact comply with the requirements of § 42-35-12, and its decision is not in violation of statutory provisions.

The Dealership contends, however, that the itemized invoice is not conclusive proof that the repairs listed were necessary or even performed. In particular, the Dealership points to an August 20, 2010 report by Douglas J. Staradumsky ("Staradumsky"), an auto and emissions control inspector, who, according to the Dealership, stated that he was unable to conclude with certainty that the repairs listed on the Tire Pros invoice were necessary or even performed. Thus, the Dealership asserts that it is unfair to affirm the Board's calculation of amounts for repairs and improvements when there is evidence to suggest that that calculation may be incorrect.

The Court notes that the report by Staradumsky was not included in the certified record, but is currently before the Court for review. When reviewing an agency decision, the court's review "shall be confined to the record." Sec. 42-35-15(f). Accordingly, a court's review of an agency decision "is circumscribed and limited to 'an examination of the certified record to determine if there is any legally competent evidence therein to support the agency's decision'" Nickerson, 853 A.2d at 1205 (quoting Barrington Sch. Comm. v. Rhode Island State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992)). The Court is precluded from considering Staradumsky's report because it was not before the Board and is not present in the record before the Court. What is properly included in the certified record is the Tire Pros itemized invoice which does provide competent evidence to support the Board's calculation. See Arnold, 822 A.2d at 168 (noting courts "defer[] to a fact-finder's factual determinations that are made during an administrative proceeding and supported by legally competent evidence").

Here, for example, the itemized invoice lists rear struts and mounts, installation of those struts and mounts, four wheel alignment, and computerized wheel balance, and each of those services or items has a corresponding unit price, extension price, and service fee. This comprehensive invoice constitutes legally competent evidence, and the factual determinations made by the Board based on the invoice are adequately supported by this competent evidence. See Elias-Clavet, 15 A.3d at 1013 (explaining that the court's role in an administrative appeal is to review the record to determine if any legally competent evidence exists within the record as a whole).

Nonetheless, the Dealership asserts that it is still unfair to be required to pay for the Tire Pros repairs because had Jordan returned the Vehicle to the Dealership when she learned that it would not pass inspection, the Dealership may have been able to repair the Vehicle so that it

would pass inspection for less money. Because the Dealership was denied the opportunity to cure the Vehicle's defects, it argues that it is inequitable for it to be held liable for the repairs.

The Board's authority to order the Dealership to reimburse Jordan for the Tire Pros repairs is pursuant to R.I. Admin. Code 47-1-38:II(A), which states:

> "These Rules and Regulations are promulgated in order to protect the interest of the public when dealing with motor vehicle dealers in Rhode Island. Any violation of these provisions may result in:
> . . . .
>
> (4) full restitution of any money and/or motor vehicle repairs and parts suffered by a purchaser as a result of an unconscionable practice or illegal transaction as may be determined by the Department of Revenue . . . ." R.I. Admin. Code 47-1-38:II(A) (emphasis added).

The Dealership's failure to have the Vehicle inspected and to have a valid inspection sticker appearing in the windshield prior to selling it to Jordan was a violation of § 31-38-1, which prohibits a dealer from selling a used vehicle unless "a new inspection of the vehicle . . . has been conducted and the vehicle has a new certificate of inspection affixed to the windshield at the time of sale." Sec. 31-38-1(b). Thus the Board's decision to reimburse Jordan was not in excess of its statutory authority or in violation of statutory provisions.

In crafting a remedy pursuant to a statute or regulation an agency is charged with enforcing, the Board is afforded great deference. See Arnold, 822 A.2d at 169; see also Martin v. Occupational Safety and Health Review Comm'n, 499 U.S. 144, 150 (1991) ("[A]n agency's construction of its own regulations is entitled to substantial deference."). During the hearing, the Board noted that to allow the Dealership to repurchase the vehicle without requiring him to reimburse Jordan for the repairs and maintenance would result in an unfair enrichment. (Hr'g Tr. at 20:7-15; 22:1-5.) The Board also observed that had the Dealership simply followed the law and had the Vehicle inspected—which it should have known to do given that it has been in

business for many years—the repairs to the Vehicle would have been unnecessary. (Hr'g Tr. at 20:16-18; 27:21-28:10.); see, e.g., Unistrut Corp., 922 A.2d at 99; Parkway Towers, 688 A.2d at 1293-94. Based on a review of these considerations, the Court defers to the Board's judgment in choosing a remedy pursuant to its statutory and regulatory authority and finds that the Board's order to the Dealership to reimburse Jordan for the full amount of repairs is not an abuse of discretion.

IV

Conclusion

After reviewing the record and considering the parties' arguments, the Court finds the Board's decision is not clearly erroneous, is supported by competent evidence in the record, is not in violation of statutory provisions, and is not an abuse of discretion. Given the minor discrepancy between the amount calculated by the Board in its decision for the repairs and improvements to the vehicle ($2416.06) and the amount listed on the typeface of the Tire Pros invoice ($2411.06), the Court modifies the Board's decision. Pursuant to its authority under § 42-35-15(g), this Court modifies the Board's decision to reflect the amount of $2411.06—as shown on the invoice of record—as the amount that the Dealership must reimburse Jordan for the repairs and improvements to the Vehicle. Substantial rights of the Appellant, the Dealership, have not been prejudiced. Accordingly, the Board's decision is affirmed.

Counsel shall present the Court with the appropriate Order for entry.