STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: August 25, 2014]

DANIEL FERGUSON	:	
	:	
VS.	:	**C.A. No. PC-2013-3376**
	:	
THE RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT AND JANET COIT IN HER CAPACITY AS DIRECTOR OF THE RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT	:	

DECISION

NUGENT, J. This matter is before this Court on an appeal from an administrative decision of the Department of Environmental Management (DEM) that denied Appellant Daniel Ferguson's (Appellant) application for renewal of Summer Flounder Exemption #126. Appellant also seeks declaratory relief. Jurisdiction is pursuant to G.L. 1956 §§ 42-35-15 and 42-35-7. For the reasons set forth in this Decision, this Court affirms the decision below.

I

Facts & Travel

Appellant, a resident of Massachusetts, owned a fishing vessel named the Dan Mullins III MA #MS7443AS (vessel). Compl. Facts ¶ 2. On March 20, 2009, Appellant entered into a Purchase and Sale Agreement with the Cape Cod Commercial Hook Fisherman's Association (Association) to transfer ownership of the vessel. Id. ¶ 1. In addition to the vessel, the Purchase and Sale contemplated the transfer of two Northeast Federal Fishery Permits: Permit A, Northeast Federal Fishery Permit No. 150573, a Limited Access General Category IFQ scallop permit from the vessel; and Permit B, Northeast Federal Fishery Permit No. 150573, a limited

access fishing rights and fishing permit history in the Northeast Multi-species, Summer Flounder, Black Sea Bass, Lobster, and Scup (collectively, federal permits). Id. ¶¶ 3-4. Also on March 20, 2009, Appellant signed a Bill of Sale conveying the vessel to the Association with "ALL fishery permits, licenses, and fishing catch history by federal or state governments." Id. ¶ 6; Ferguson Mot. Summ. J. Ex. B, Bill of Sale at 3.

The U.S. Department of Commerce, National Marine Fisheries Service, was notified of the sale in a letter dated March 20, 2009. Compl. Facts ¶ 8. On May 18, 2012, the DEM sent Appellant a letter notifying him of its determination that Appellant divested his interest in his Summer Flounder Exemption #126 (State Permit) through the March 20, 2009 sale. The DEM concluded, based on the language of the notification it received of the sale, that the State Permit was transferred to the Association with Appellant's federal permits. Id. ¶ 9.

Appellant appealed the DEM's determination to the DEM Administrative Adjudication Division (Division) on June 13, 2012, along with a document submitted by the Association on June 6, 2012, stating that the Association did not intend to receive the State Permit in the sale of the vessel and the federal permits. Id. ¶¶ 10-12. In lieu of a hearing, the parties agreed to submit cross-motions for summary judgment to the Division Hearing Officer, in accordance with §§ 42-17.1-1 et seq. and §§ 42-35-1 et seq.

The Division issued a Decision and Order (Order), authored by the Hearing Officer, on June 10, 2013, concluding that there was no genuine dispute of material facts and that the Division reasonably relied on the Bill of Sale dated March 20, 2009 in concluding that Appellant had transferred his State Permit to the Association. Order at 4. The Hearing Officer declined to consider Appellant's constitutional challenges, noting that his tribunal did not have jurisdiction over such constitutional issues. Id. at 3.

Appellant filed a timely appeal of the Division's decision on July 9, 2013. Appellant also brings a claim for declaratory judgment seeking invalidation of Rhode Island Marine Fisheries Statutes and Regulations § 7.7.10(b)(2) on constitutional grounds.

II

Standard of Review

A

Administrative Appeal

This Court's review of the decisions of administrative agencies such as the DEM is governed by the Rhode Island Administrative Procedures Act, as set forth in §§ 42-35-1 et seq. See Rossi v. Emps.' Ret. Sys. of R.I., 895 A.2d 106, 109 (R.I. 2006). The relevant standard of review as set forth in § 42-35-15(g) provides:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> "(1) In violation of constitutional or statutory provisions;
>
> "(2) In excess of the statutory authority of the agency;
>
> "(3) Made upon unlawful procedure;
>
> "(4) Affected by other error or law;
>
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

This Court's review 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 v. Reitsma, 853 A.2d 1202, 1205 (R.I. 2004) (quoting Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992)). This Court defers to an agency's factual determinations and decision if they are supported by legally competent evidence. R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994); Town of Burrillville v. R.I. State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007) ("The Superior Court must defer to the agency's determinations regarding questions of fact"). "Legally competent evidence is indicated by the presence of 'some' or 'any' evidence supporting the agency's findings." Envtl. Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993) (citing Sartor v. CRMC, 542 A.2d 1077, 1082-83 (R.I. 1988)); see also Arnold v. R.I. Dep't of Labor and Training Bd. of Review, 822 A.2d 164, 167 (R.I. 2003) (defining legally competent evidence as "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") (quotation omitted).

This Court may not "substitute its judgment for that of the agency in regard to the credibility of the witnesses or the weight of the evidence concerning questions of fact." Costa v. Registrar of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988). In contrast to its review of factual determinations, "'[t]his Court reviews questions of statutory construction and interpretation de novo.'" Miller v. Saunders, 80 A.3d 44, 50 (R.I. 2013) (quoting Morel v. Napolitano, 64 A.3d 1176, 1179 (R.I. 2013)).

B

Declaratory Judgment

"[I]f the adoption or application of an agency rule or practice interferes with or threatens to impair the rights or privileges of a party, a declaratory judgment is available pursuant to § 42-35-7." Town of Richmond v. R.I. Dep't of Envtl. Mgmt., 941 A.2d 151, 156 (R.I. 2008) (citing

Newbay Corp. v. Annarummo, 587 A.2d 63, 65-66 (R.I. 1991)). Moreover, the "declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question." Sec. 42-35-7. With respect to declaratory judgments, G.L. 1956 § 9-30-1 provides in relevant part that this Court

> "shall have [the] power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree."

This Court's grant or denial of declaratory relief is purely discretionary. Woonsocket Teachers' Guild Local Union 951, AFT v. Woonsocket School Comm., 694 A.2d 727, 729 (R.I. 1997). This Court has "broad discretion to deny declaratory relief where it would not have the effect of terminating a controversy or relieving an uncertainty that gave rise to the proceeding." Fireman's Fund Ins. Co. v. E.W. Burman, Inc., 120 R.I. 841, 846, 391 A.2d 99, 101 (1978); see also § 9-30-6.

III

Analysis

On appeal, Appellant challenges the Hearing Officer's conclusion that he did not retain an interest in the State Permit on the grounds that such determination was an error of law, against the weight of the evidence, and arbitrary and capricious. Appellant contends that federal law preempts the state regulation prohibiting the splitting of state and federal fishing permits, and thus, his State Permit should have been allowed to have been split from his federal permits. Appellant also argues that the Hearing Officer, in his analysis of the contract, failed to consider that both parties to the March 20, 2009 Bill of Sale did not intend to transfer the State Permit.

Appellant additionally contends that the intent of the parties to the Bill of Sale should override and modify the terms of the contract to exclude his State Permit from the sale. Finally, Appellant requests that this Court declare the state regulation, which he contends the Division relied upon, to be unconstitutional.

In response, DEM argues that the Hearing Officer's Decision was properly based upon the clear and unambiguous language of the Bill of Sale, rather than upon the state regulations. In addition, DEM contends that the state regulation would not have been preempted by federal law, and that the parties' intent regarding the Bill of Sale is immaterial because it is clear and unambiguous.

A

Administrative Appeal

1

Error of Law: Preemption

Appellant's first argument on appeal is that the Division incorrectly relied on a state regulation, which Appellant contends is preempted by federal law, in determining that he no longer retained an interest in the State Permit. Specifically, Appellant contends that 12-080-012 R.I. Code R. § 7.7.10 (CRIR § 7.7.10) conflicts with and thus is preempted by 50 C.F.R. § 648.4, because both regulations address permit splitting. DEM argues that the Hearing Officer did not rely on this state regulation in his Order, and alternatively that these two regulations are not in conflict with each other and thus, the state regulation is not preempted.

As an initial matter, this Court notes that the Hearing Officer relied on the Bill of Sale in his Order, concluding that that document "is the most relevant document for purposes of these Motions [for Summary Judgment]." Order at 4. Although the Hearing Officer acknowledged

that the Division argued that CRIR § 7.7.10(a) should govern the dispute, the Hearing Officer did not cite to the state regulation in his Findings of Fact or Conclusions of Law, instead relying exclusively on the Bill of Sale. See id. at 3, 5. Moreover, the Hearing Officer stated that "the issue before [him] is not the ability to transfer federal permits and exemptions but rather the undisputed fact that the Appellant conveyed, in a notarized Bill of Sale, [his State Permit]." Id. at 4. The Hearing Officer concluded that the language in the Bill of Sale was "clear, unambiguous, and undisputed by the parties," and thus based his determination on that document alone. Id. Therefore, the question of whether CRIR § 7.7.10 is preempted by federal regulations is irrelevant to this administrative appeal. Costa, 543 A.2d at 1309 (the Court may not substitute its judgment for that of the agency on questions of credibility and weight of evidence).

Nevertheless, even if this question was pertinent to the resolution of this case, it is clear that the state regulation is not preempted by federal law. "The Supremacy Clause of the United States Constitution, Article VI, clause 2, preempts or invalidates state law that interferes or conflicts with any federal law." Verizon New England Inc. v. R.I. Pub. Utils. Comm'n, 822 A.2d 187, 192 (R.I. 2003). Appellant contends that conflict preemption—"when 'compliance with both federal and state regulations is a physical impossibility'"—applies here because it is impossible to comply with the state regulation prohibiting permit splitting and the federal regulation allowing permit splitting. See id. at 193 (quoting Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963)). To determine whether the state regulation is preempted by the federal regulation, this Court "must examine both [the] federal law and [the state law]." Id. at 192.

Section 7.7.10 of the CRIR permits the seller of a vessel to transfer his or her Certificates of Exemption to a new vessel upon application to the Division; nevertheless, "[v]essel permits

(state and federal), Certificates of Exemption, and fishing history cannot be split." 12-080-012 R.I. Code R. § 7.7.10(b)(2). Appellant contends that this regulation conflicts with federal regulations found in 50 C.F.R. § 648.4. However, a careful review of the federal regulation reveals no explicit grant of permission to split state and federal fishing permits. Rather, 50 C.F.R. § 648.4(a)(1)(i)(D), entitled Change in ownership, is similar to the state regulation in that it allows for the fishing and permit history of a vessel to be split from the vessel when sold, as long as the split is evinced by a written agreement signed by both parties. That section does not explicitly or implicitly allow for state and federal fishing permits to be split. The only other reference to permit splitting is a restriction on the practice wherein "[a] limited access permit issued pursuant to this section may not be issued to a vessel or its replacement or remain valid, if the vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery." 50 C.F.R. § 648.4(a)(1)(i)(L). The federal regulations simply do not address the splitting of state permits from federal permits, and therefore, the two cited regulations are not in conflict with each other. See Verizon New England Inc., 822 A.2d at 193 (finding no conflict preemption between a state law regulating the sale of voice messaging systems and a federal law that did not regulate voice messaging systems).[1]

[1] Moreover, this Court notes that even if the state regulation was in conflict with the federal regulation, Appellant's argument that the two regulations do not serve the same purpose would fail. With respect to "Relation to other laws," 50 C.F.R. § 648.3(b) states that "[n]othing in these regulations supersedes more restrictive state management measures." Regulations prohibiting permit splitting have been interpreted as "prevent[ing] an increase in fishing effort and capitalization," and thus are in furtherance of the expressed federal goal of the conservation of this nation's fisheries. See Western Sea Fishing Co. v. Locke, 722 F. Supp. 2d 126, 137 (1st Cir. 2010).

2

Weight of the Evidence

Appellant next argues that the Hearing Officer's Order was made against the weight of substantial evidence on the whole record because the Hearing Officer did not acknowledge the Purchase and Sale Agreement, which did not contemplate transfer of the State Permit, nor did he consider the intent of the parties in his determination. DEM, in turn, contends that the Hearing Officer relied on the Bill of Sale, which suffices as "legally competent evidence." See Arnold, 822 A.2d at 167.

As noted previously, this Court must defer to DEM's findings of fact which are supported by "substantial evidence." Supra. In this case, the Hearing Officer published a written Decision and Order (Order), analyzing the facts of the case and putting forth findings of fact and conclusions of law relating to his grant of the Division's Cross Motion for Summary Judgment. Specifically, the Hearing Officer found that "[t]here are no genuine issues of material fact that the [Appellant] conveyed his interest in Summer Flounder Exemption Certificate #126 in the Bill of Sale dated March 20, 2009." Order at 5. Thus, the Hearing Officer determined that the Division's reliance on the Bill of Sale was reasonable. Id.

In particular, the Hearing Officer noted that it was undisputed that the Bill of Sale entered into between Appellant and the Association on March 20, 2009 stated that the vessel "is sold and conveyed with ALL fishery permits, licenses and fishing catch history issued by Federal or State governments." The Hearing Officer concluded that there was substantial evidence to uphold the Division's reliance on this clear and unambiguous language in concluding that Appellant had transferred his State Permit to the Association. See Nickerson, 853 A.2d at 1205.

Moreover, Appellant has not provided any support for his contention that the Hearing Officer should have considered the Purchase and Sale Agreement rather than the Bill of Sale. See Wilkinson v. State Crime Lab. Comm'n, 788 A.2d 1129, 1131 n.1 (R.I. 2002) (noting that "[s]imply stating an issue for appellate review, without a meaningful discussion thereof or legal briefing of the issues, does not assist the Court in focusing on the legal questions raised . . ."). Appellant does not deny that he signed the Bill of Sale, and that at the time he signed it, the relevant language transferring all federal and state permits was included.

This Court will not disturb the findings of the Division on this factual issue. See Costa, 543 A.2d at 1309. There was substantial evidence on the record to support the Division's conclusion that Appellant transferred his State Permit via the Bill of Sale signed March 20, 2009. The Bill of Sale clearly stated that "ALL" permits, state and federal, would be conveyed to the Association. Its conclusion that the State Permit had been transferred was therefore supported by legally competent evidence. See Arnold, 822 A.2d at 167; Auto Body Ass'n of R.I. v. State Dep't of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010). The Hearing Officer considered the evidence in the record, made credibility determinations, and drew the conclusion that the Bill of Sale was the most relevant document, and that it clearly stated that Appellant had transferred his State Permit to the Association. R.I. Pub. Telecomms. Auth., 650 A.2d at 485; Envtl. Scientific Corp., 621 A.2d at 208. This Court "must defer to the agency's determinations regarding questions of fact." Town of Burrillville, 921 A.2d at 118.

3

Modification of Contract

Appellant's final argument in his administrative appeal is that the intent of the parties, rather than the language within the four corners of the contract, should prevail in the Division's

interpretation of the terms of the agreement with the Association. Appellant also contends that the parties to the contract were free to modify the language of the contract, and thus the contract should be interpreted to reflect their intent. The Division argues that the Purchase and Sale Agreement could not have been found persuasive by the Hearing Officer because it was written in contravention of CRIR § 7.7.10. The Division further argues that even if the Hearing Officer found the Purchase and Sale Agreement persuasive, it would have denied Appellant an interest in the State Permit under that state regulation.

Appellant essentially asks this Court to reject the terms of the Bill of Sale in favor of the parties' subjective intent. However, the language of the Bill of Sale is not ambiguous, and thus the Court cannot look beyond the four corners of that document in its review. See Young v. Warwick Rollermagic Skating Center, Inc., 973 A.2d 553, 560 (R.I. 2009) ("When . . . [this Court is] confronted with unambiguous contractual words, what is claimed to have been the subjective intent of the parties is of no moment."); accord Clark-Fitzpatrick, Inc./Franki Foundation Co. v. Gill, 652 A.2d 440, 443 (R.I. 1994) ("In situations in which the language of a contractual agreement is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids."). Reformation of the contract may not be granted in this case, because the terms of the Bill of Sale are clear and unambiguous, and therefore "judicial construction is at an end[,] for the terms will be applied as written." See Rivera v. Gagnon, 847 A.2d 280, 284-85 (R.I. 2004). This Court may not consider the extrinsic evidence presented by Appellant of the parties' alleged intent. See id. "[I]t is well established that 'a party who signs an instrument manifests his assent to it and cannot later complain that he did not read the instrument or that he did not understand its contents.'" Id. at 285 (quoting Kottis v. Cerilli, 612 A.2d 661, 668 (R.I. 1992)). Therefore, the Hearing Officer's refusal to consider the parties'

intent was not arbitrary and capricious. Arnold, 822 A.2d at 167; Auto Body Ass'n of R.I., 996 A.2d at 95.

B

Declaratory Relief

Appellant asks this Court to declare CRIR § 7.7.10 unconstitutional on the grounds that it violates the protection of the Equal Protection Clause. In light of this Court's finding that the Division properly relied on the Bill of Sale in its Order, denying Appellant an interest in the State Permit, and not the state regulation challenged by Appellant, the requested declaratory relief is unnecessary. See 26 C.J.S. Declaratory Judgments § 13 (2012) (stating that declaratory judgment is only proper when useful and necessary); see also Berberian v. Travisono, 114 R.I. 269, 273, 332 A.2d 121, 123 (1975) (noting that the Court should consider the availability of other adequate remedies before granting declaratory relief). Thus, this Court shall exercise its discretion and decline to consider Appellant's request for declaratory relief. See Fireman's Fund Ins. Co., 120 R.I. at 846, 391 A.2d at 101-102 (noting that courts have "broad discretion to deny declaratory relief where it would not have the effect of terminating a controversy or relieving an uncertainty that gave rise to the proceeding").

IV

Conclusion

Upon review of the entire record, this Court finds that the Division's Order contains reliable, probative, and substantial evidence to support its findings. Further, this Court concludes that the Division's Order was not in violation of constitutional or statutory provisions; in excess of its statutory authority; affected by error or law; or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Substantial rights of the Appellant have

not been prejudiced. Accordingly, the Division's Order is affirmed. Counsel shall submit the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Daniel Ferguson v. The Rhode Island Department of Environmental Management, et al.
CASE NO:	PC 2013-3376
COURT:	Providence County Superior Court
DATE DECISION FILED:	August 25, 2014
JUSTICE/MAGISTRATE:	Nugent, J.
ATTORNEYS:	
For Plaintiff:	Robert J. Caron, Esq.
For Defendant:	Gary E. Powers, Esq.

RHODE ISLAND SUPERIOR COURT

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