

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Hulwe Moussa, t/d/b/a 695	:	
Auto Sales,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2565 C.D. 2010
	:	
Department of Transportation,	:	Submitted: August 26, 2011
	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: December 6, 2011

Hulwe Moussa, t/d/b/a 695 Auto Sales (Business), petitions for review of the Order filed by the Secretary of Transportation (Secretary) on November 15, 2010, denying her exceptions to the Department of Transportation's (Department) Hearing Officer's (Officer) Proposed Report (Report) and making final the Officer's proposed order denying Business' appeal of the termination of its Agent Services Agreement (Agreement) with the Department. On appeal, Business challenges the Secretary's Order, arguing there was not substantial evidence to support the Department's decision to terminate the Agreement for good cause shown.

Business entered into the Agreement to provide vehicle titling and registration services on behalf of the Department effective January 24, 2006.¹ Under the Agreement, the Department, through its Bureau of Motor Vehicle Services (Bureau), had the power to conduct unannounced audits of Business' files and records during regular business hours. The Department conducted an audit on July 23, 2009, found 12 instances in which invalid forms of identification were accepted, and 44 additional incomplete transaction records. The audit and subsequent investigation further revealed that Business' titling agents had not gone through the training required by the Agreement. On August 18, 2009, the Department terminated the Agreement and, after holding a hearing to allow Business to present mitigating facts, upheld the termination.

At a hearing held on April 28, 2010 before the Officer, three witnesses testified on behalf of the Bureau, and Business presented the testimony of its employee, Joseph Moussa. The Bureau's witnesses credibly testified that, in order to inform and update agents about the policies and procedures they are expected to follow, the Bureau makes use of training sessions, fact sheets, and update bulletins, which are publicly available online and are e-mailed to all agents. (Officer's Findings of Fact (FOF) ¶¶ 19a-b.) In January 2006, the training materials and bulletins began specifically listing all acceptable forms of identification, warning agents that accepting other forms of identification could result in termination of the Agreement. (FOF ¶ 19c.) The purposes of these requirements were to ensure all vehicles registered in Pennsylvania were registered to Pennsylvania residents, to

¹ Ms. Moussa signed the agreement on January 12, 2006, and it was approved by the Department's Chief Counsel on January 25, 2006. (Hr'g Tr. at 25-26, R.R. at 25a-26a.)

deter fraud, and address concerns arising from out-of-state residents registering vehicles in Pennsylvania. (FOF ¶ 19d.) In the June 2008 bulletin, the Bureau again advised agents that acceptance of non-government issued identification could result in termination of the agent services agreement. (FOF ¶ 19e.) Of the twelve transactions in which Business accepted unacceptable forms of identification, nine contained either a “non-government (fraudulent) issued” Pennsylvania identification card or a Spanish language document without a Pennsylvania address. (FOF ¶ 19g.) Eight of these nine transactions occurred after the June 2008 bulletin was issued. (FOF ¶ 19g.) Another transaction was documented with a New York State driver’s license, and two others contained only Spanish language documents with no address. (FOF ¶ 19h.)

Ms. Moussa, Business’ owner, did not testify at the hearing; however, her husband, Joseph Moussa, an employee of Business, did give testimony. Mr. Moussa testified that, with his wife’s permission, he processes title applications, having performed similar services while working as a car salesman at another dealer. (FOF ¶¶ 19i-j.) Mr. Moussa also testified that he had failed to examine the Pennsylvania IDs to determine their authenticity, and that he neither attended any training nor knew that proof of identification was limited to certain documents. (FOF ¶¶ 19k-l.) Because he is not computer literate, Mr. Moussa relies on his son to handle any e-mails coming into the Business. Mr. Moussa believed that his son had provided the Bureau with an e-mail address when Business renewed the Agreement in 2008, but neither he nor his son had ever seen any of the bulletins sent by e-mail. (FOF ¶¶ 19m-o.)

Based upon this testimony and the Department's exhibits, including the Agreement, the Officer determined that, while Business did not intend to deceive the Department by knowingly accepting invalid forms of identification and, thus, did not commit fraud. However, Business' conduct went far beyond "mere inadvertence or a few instances of improper documentation" and termination of the Agreement was appropriate. (Officer's Report at 7.)

Careless conduct by otherwise conscientious employees might be otherwise subject to sanctions short of termination, but the conduct here reflects Moussa's failure to perform the fundamental contractual duty to ensure that her employees were competent and properly trained and undermines the premise that Moussa 'is qualified to perform the necessary agent services.'

(Officer's Report at 7) (quoting Agreement at 1, R.R. at 111a). After the Officer filed his Report on August 17, 2010, Business filed exceptions to the Report on September 15, 2010, and the Bureau responded on October 6, 2010. On November 15, 2010, the Secretary entered the Order denying Business' exceptions, adopting, and making final the Report. Business now petitions this Court for review.²

On appeal to this Court, Business argues that the Department erred by terminating the Agreement. Business does not dispute that it accepted improper forms of identification, but argues that it never received the Bureau bulletins informing it of the policy regarding proper forms of identification. Accordingly,

² Our review is limited to determining whether constitutional rights were violated, whether errors of law were committed, or whether necessary findings of fact were supported by substantial evidence. Gutman v. Department of Transportation, 16 A.3d 566, 569 n.1 (Pa. Cmwlth. 2011).

Business argues, the decision upholding the Department's termination of the Agreement was not supported by substantial evidence. Business also argues that it did not act fraudulently and, because it did not act fraudulently, termination of the Agreement was too harsh of a sanction. However, the Officer's Report agreed that Business' conduct did not rise to the level of fraud, and the Department does not argue before this Court that it did. Therefore, the question becomes whether, in the absence of fraud, it was appropriate for the Department to terminate the Agreement. The specific issue is whether there is substantial evidence to support the Department's determination that it had good cause, as outlined in Paragraph 33 of the Agreement, to terminate the Agreement. Based on our review of the record, we hold that there is good cause for termination of the Agreement.

The Agreement between the parties establishes the requirements that Business was expected to meet in performing the duties of an agent, providing titling and registration services, as well as the sanctions for failure to perform those duties. The Agreement includes, in Paragraph 29, a schedule of sanctions for deviations from the standards of conduct expected from agents, and specifically provides, in Paragraphs 30, 31 and 33, for termination of the Agreement for certain types of conduct or for "good cause." (FOF ¶¶ 7-8.) Paragraph 33 of the Agreement provides a non-exhaustive list of examples of "good cause," including fraud; however, because the list is non-exhaustive, it does not limit what other conduct could be considered "good cause" for terminating the Agreement.³

³ The provision of the Agreement regarding good cause reads:

The Department may also terminate this Agreement at any time for good cause shown, including, but not limited to, misrepresentation or fraud in the

The conduct in this case is not specifically listed in Paragraph 33 of the Agreement; thus, this Court must address what constitutes good cause for the Department to terminate the Agreement. Faced with substantially similar facts, this Court answered an identical question in Moore v. Department of Transportation, 19 A.3d 1200 (Pa. Cmwlth. 2011). In Moore, the owner of an auto tag and license service (Moore) entered into an agreement with the Department identical to the Agreement here. Id. at 1202. During an on-site audit of Moore’s files, the Bureau discovered ten transactions in which invalid driver’s licenses had been accepted as proof of identification. Id. at 1203. The audit further revealed, as in the present case, that some of Moore’s employees had not attended the required agent training. Id. The Department initially terminated the agreement on the grounds of fraud, but, like here, the Officer found that while Moore’s conduct did not rise to the level of fraud, the Department had good cause to terminate. Id.

As here, the agreement in Moore did not define “good cause.” Because the Agreement does not define “good cause,” we must interpret the language of this contract by giving its undefined terms their ordinary meaning. Kripp v. Kripp, 578 Pa. 82, 90, 849 A.2d 1159, 1163 (2004). In Black’s Law Dictionary, “good cause” is defined as “[a] legally sufficient reason.” Black’s Law Dictionary 251 (9th ed.

Contractor’s application which formed the basis for this contract, or if the agent service is operated, managed, controlled or affiliated with a person who has been convicted of a felony involving dishonesty or breach of trust, who has had an agent, card agent, messenger service, or online messenger contract terminated by the Department in the past, or who would be ineligible to be authorized to engage in providing agent services.

(Agreement ¶ 33, R.R. at 128a.)

2009). The Department neither needs to show that Business' employees knowingly or intentionally accepted invalid identification, Moore, 19 A.3d at 1207, nor is there is any requirement for the cause to be "inimical," or "adverse often by reason of hostility or malevolence" to the Department. Id. at 1208 (citing Merriam-Webster's Collegiate Dictionary, 600 (10th ed. 2001)). In Moore, this Court found no error in the Secretary's application of the plain meaning of "good cause" to the facts of that case. Id. at 1207. The Secretary explained that "[d]etecting and rejecting fake licenses displayed in the process of vehicle registration is a basic responsibility that is inherent in that [sic] status of an agent and clearly something that the Department has a right to expect its agent will take seriously and discharge properly." Id. (alteration in original) (emphasis in original). This Court subsequently determined that the Secretary's findings regarding Moore's failure to detect and reject non-government forms of identification were adequately supported by the record and that those findings supported the Secretary's determination that the Department had good cause for terminating the agreement. Id.

Similarly here, the Secretary, by way of the Officer's Report, reasoned that "[e]xamining proof-of-identification documents displayed in the process of vehicle registration is a basic responsibility that is inherent in an agent's status and clearly something that the Department has a right to expect its agents will take seriously and discharge properly." (Officer's Report at 7.) After examining the Agreement, the Officer determined that Paragraph 12 of the Agreement required Business, at the time of hiring and annually thereafter, to acquire an affidavit from each of its employees stating that the employee had read and understood the provisions of the

Vehicle Code relating to certificate of title and security interests, 75 Pa. C.S. §§ 1101-1119, and registration of vehicles, 75 Pa. C.S. §§ 1301-1379. (FOF ¶ 2.) However, there is no evidence that any of Business’ employees had filed an affidavit showing understanding of the rules.⁴ Section 1103.1(a) of the Vehicle Code, 75 Pa. C.S. § 1103.1(a), requires a title application to contain the actual name and address of the vehicle owner, as well as any other information required by the Department to allow it to determine whether the owner is entitled to the title. (FOF ¶ 3.) Pursuant to Section 1306(3), 75 Pa. C.S. § 1306(3), the Department will refuse an application when it has “reasonable grounds to believe that the application contains false or fraudulent information.” (FOF ¶ 4.)

Paragraph 13 of the Agreement requires all new employees providing agent services to undergo Department authorized and approved training as soon as possible, but no more than one year after the employee has begun providing agent services. (FOF ¶ 5.) Per Paragraph 14, employees must complete refresher training at least every two years. (FOF ¶ 6.) However, there was no evidence that the employees of Business had attended training at all. The Secretary specifically pointed to Mr. Moussa’s conduct, noting that it should have been apparent to someone with Mr. Moussa’s experience that the forms of identification proffered were unacceptable. (Officer’s Report at 7.) “Further, given the contractual and legal obligations under which Moussa operated, Joseph’s failure to examine the ID cards cannot be described as anything less than cavalier.” (Officer’s Report at 7.) Because “the circumstances suggest far more than mere inadvertence or a few

⁴ The record is unclear whether Mr. Moussa was the only titling agent employed by Business.

instances of improper documentation,” any sanction less than termination, such as the concurrent suspensions suggested by Business, would be inappropriate. (Officer’s Report at 7.) These findings in the Officer’s Report are supported by substantial evidence.⁵

Business committed its most egregious violation of the terms of the Agreement by accepting at least twelve improper forms of identification. In all except one of those twelve cases, Business accepted either a non-government issued Pennsylvania ID, a foreign driver’s license, or both.⁶ (Various proof of identification documents, Hr’g Tr. Department Ex. 1, R.R. at 78a, 81a, 84a, 87a, 90a, 93a, 96a, 99a, 102a, 105a.) Neither non-government issued identification cards nor foreign driver’s licenses were acceptable forms of identification at the time Business entered into its Agreement. In January 2006, the month that Business entered into its Agreement with the Department, the Department sent out by postal mail a bulletin informing its titling agents of the acceptable forms of identification.⁷ (Hr’g Tr. at 37, R.R. at 37a.) In February 2006, May 2006, May 2007 and June 2008, the Department sent by e-mail additional bulletins that either

⁵ Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Purcell v. Department of Transportation, Bureau of Driver Licensing, 689 A.2d 1002, 1004 n. 3 (Pa. Cmwlth. 1997).

⁶ In one instance, Business accepted what appears to be a valid New York State driver’s license. (Copy of Driver’s License for Terrence Richards, R.R. at 72a.) Regardless of its validity, it is not a Pennsylvania-issued form of identification.

⁷ The acceptable forms of identification in January 2006 were a valid: (1) Pennsylvania Photo Driver’s License; (2) Pennsylvania Photo Identification Card; (3) Pennsylvania Photo Exempt Driver’s License; (4) Pennsylvania Photo Exempt Identification Card; (5) U.S. Passport with Pennsylvania address; or (6) U.S. Armed Forces Common Access Card. (Driver and Vehicle Services Updated Bulletin #06-02, January 2006, Department Ex. 3, R.R. at 137a.)

reminded agents of or clarified the identification requirements.⁸ The June 2008 bulletin included a fact sheet entitled “Updated Features to the Pennsylvania Driver’s License and Photo ID Card,” which included examples of valid Pennsylvania driver’s licenses and photo identification cards. (Driver and Vehicle Services Updated Bulletin #08-02, June 2008 at 2, Department Ex. 3, R.R. at 151a.) As noted in the Officer’s findings, eight of these transactions occurred after the Department issued the June 2008 bulletin, which noted that “acceptance of [non-government-issued] identification could result in termination of your agent services contract.” (Driver and Vehicle Services Updated Bulletin #08-02, June 2008 at 2, Department Ex. 3, R.R. at 151a.)

Business argues that it never received notification, whether by e-mail or postal mail, of what were acceptable forms of identification and that any violations of the Agreement were due to excusable ignorance. When Business renewed the Agreement on November 19, 2008, it was required to provide an e-mail address. (Hr’g Tr. Department Ex. 2, R.R. at 153a.)⁹ At the hearing, Sue Wilson, manager of the Department’s regulated client services section, testified that the Department

⁸ The July 2009 bulletin, sent out after the audit was conducted, notified agents that the Department would no longer accept U.S. Passports. (Driver and Vehicle Services Updated Bulletin #09-06, July 2009 at 1, Department Ex. 3, R.R. at 153a.)

⁹ It is unclear if Business complied with the Department’s requirement to provide a valid e-mail address when it renewed the Agreement in August 2008. The record indicates that Business supplied the Department with an e-mail address of “www.719@hotmail.com” on the Renewal Notification Form, which was completed and signed by Mr. Moussa and not the Moussas’ son. (Department Ex. 2 at Renewal Notification Form, R.R. at 133a.) Further, Mr. Moussa testified at the hearing that his e-mail address was “jmoussa@719hotmail,” which does not appear to be a valid e-mail address. (Hr’g Tr. at 61, R.R. at 61a.)

stopped sending out the updates by postal mail after January 2006, but all bulletins after January 2006 were sent out via e-mail. (Hr'g Tr. at 47-48, R.R. at 47a-48a.) However, Business claims that it never received the January 2006 bulletin by postal mail or any other bulletins thereafter by e-mail. (Hr'g Tr. at 58, R.R. at 58a.)

Even if we were to accept that Business was excusably ignorant of the changes in the Department's regulations because it never received the e-mail bulletins, Business would have received adequate notice of the Department's new regulations if it had sent its employees to the required training sessions. Business cannot claim ignorance of those mandatory sessions, as they are expressly required by Paragraphs 13 and 14 of the Agreement, which Ms. Moussa signed. When the auditors asked to see Mr. Moussa's training certificates, he told them he did not have them on the premises as required. (Hr'g Tr. at 53, R.R. at 53a.) One of the auditors, Jim Luther, testified that Mr. Moussa admitted not undergoing the required training. (Hr'g Tr. at 53, R.R. at 53a.) Upon direct examination by his own counsel at the hearing, Mr. Moussa admitted that he had not attended the required training. (Hr'g Tr. at 57, R.R. at 57a.) Ms. Wilson testified that the basic course teaches new agents about the different types of proof of ownership documents, proof of financial responsibility, and acceptable forms of proof of identification. (Hr'g Tr. at 43, R.R. at 43a.) All new titling agents are required to attend this basic training within one year of becoming an agent, which means Mr. Moussa would have been aware of the acceptable forms of proof of identification if Business had followed the terms of the Agreement and sent him to the mandatory training. (Hr'g Tr. at 42, R.R. at 42a.)

In addition, all of the information contained in the bulletins was available on the Department's website. (Hr'g Tr. at 51, R.R. at 51a.) While there was no express requirement that Business access the Department's website,¹⁰ Business was required by the Agreement to obtain signed affidavits each year from each of its titling agents acknowledging they understood the rules and regulations pertaining to the titling of vehicles. (Agreement ¶ 13, R.R. at 114a; Hr'g Tr. at 51, R.R. at 51a.) It logically follows that in order for Business' employees, specifically Mr. Moussa, to truthfully sign these affidavits as required, they would need to keep abreast of changes in the Department's regulations. The burden was squarely on Business and its employees to stay informed about any changes or updates to the Department's policies. Considering Business had a computer with an internet connection that was accessed by the Moussas' son regularly, accessing the Department's website would seem to have been the quickest and most efficient way to acquire this information if the bulletins were not available. (Hr'g Tr. at 62, R.R. at 62a.)

Moreover, in just the six month period between January 2009 and June 2009, Business failed to comply with Department regulations in regard to proper documentation of records on at least 44 other occasions. Specifically, titling agents are required to maintain a photocopy of the front and back of the certificates

¹⁰ Paragraph 7 of the Agreement states: “[T]he Department, at its discretion, may require the Contractor to also have onsite a connection through a personal computer to the Internet, and an active e-mail account accessible via the Internet, or may require other technology the Department may deem appropriate for the provision of agent services.” (Agreement ¶ 7, R.R. at 113a.)

of title in their records. The record, however, is replete with photocopies of just the front of certificates of title. (Various certificates of title documents, Hr’g Tr. Department Ex. 1, R.R. at 73a, 76a, 79a, 82a, 85a, 88a, 91a, 94a, 97a, 100a, 103a, 106a.) At the hearing, Mr. Moussa did not deny that, in these instances, copies had not been made of both sides of the title. (Hr’g Tr. at 56, R.R. at 56a.)

As in Moore, the Secretary here determined that the Department had shown good cause for terminating the Agreement, which “expressly provide[s] for termination in these circumstances.” Moore, 19 A.3d at 1208. While fraud was listed as a possible reason for a good cause termination, no finding of fraud is required. Based on the terms of Paragraph 33 of the Agreement, the Secretary has the authority to terminate the Agreement for any legally sufficient reason. After reviewing the record, we conclude there is substantial evidence to support the Secretary’s finding that the Department had good cause, or a legally sufficient reason, to terminate the Agreement between the Department and Business. Accordingly, we affirm the Order of the Secretary.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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v.	:	No. 2565 C.D. 2010
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Department of Transportation,	:	
	:	
Respondent	:	

ORDER

NOW, December 6, 2011, the Order of the Secretary of Transportation in the above-captioned matter is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge