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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);



DIVISION ONE  
FILED: 8/6/2013  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

RBW CONSULTANTS, INC., an Arizona ) No. 1 CA-CV 12-0286  
corporation; AMERICAN MODULAR )  
SERVICES, INC., an Arizona ) DEPARTMENT A  
corporation, )  
 ) **MEMORANDUM DECISION**  
Plaintiffs/Appellees, )  
 ) (Not for Publication -  
v. ) Rule 28, Arizona Rules of  
 ) Civil Appellate Procedure)  
ROY SOOMAN, a married man, )  
 )  
Defendant/Appellant. )  
 )

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Appeal from the Superior Court in Maricopa County

Cause No. LC2010-000878-001

The Honorable Crane McClennen, Judge

**AFFIRMED**

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By Brian A. Weinberger	
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By David Brnilovich	
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Registrar of Contractors	

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**T H O M P S O N, Presiding Judge**

¶1 Roy Sooman appeals the superior court's judgment reversing the decision of the Arizona Registrar of Contractors (ROC) to revoke the contractors' licenses held by RBW Consultants, Inc. (RBW) and American Modular Services, Inc. (AMS). For the reasons that follow, we affirm.

#### BACKGROUND

¶2 By written contract dated November 25, 2006, Sooman agreed to purchase from TM Development Group, LLC, (TM Development) an undeveloped lot (Property) in a residential subdivision. The purchase price of \$345,850.00 included costs for constructing a home on the lot (the Project). Neither TM Development nor its principal, Thomas Brown, were licensed contractors.

¶3 On July 27, 2007, TM Development and American Modular Services Corporation (AMS Corp.) executed a written agreement (Contractor Agreement) whereby AMS Corp. agreed to serve as the general contractor on the Project under the ROC license number 143165, which was held by AMS.<sup>1</sup> In the Contractor Agreement, TM Development held itself out to be the owner of the Property. The Project was completed on June 19, 2008.

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<sup>1</sup> The president of AMS testified regarding the reference to AMS Corp. in the Contractor Agreement: "It was an error. I have a hard time with corp., and Inc. My wife gets on me a bit about that, so . . . ."

¶14 On August 10, 2009, Sooman filed a complaint with the ROC alleging AMS (1) aided and abetted an unlicensed contractor, (2) acted as a contractor under an ROC license issued in a name other than as set forth on the license, and (3) engaged in contracting without a license.<sup>2</sup> In support of the ROC complaint, Sooman alleged the Contractor Agreement evidenced an "attempt to circumvent Arizona's contractor license laws." Specifically, Sooman asserted that Thomas Frederick, the president of AMS, sold all of AMS's assets before executing the Contractor Agreement, and AMS Corp. - an entity that did not exist - was not the lawful license holder of #143165. Thus, according to Sooman's complaint, AMS engaged in illegal unlicensed construction activity on the Project from July 27, 2007 until January 18, 2008, the date Frederick obtained a new ROC license (#241609) for RBW.<sup>3</sup> Moreover, between January 18, 2008 and June

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<sup>2</sup> On October 3, 2008, Sooman also filed CV2008-070503 in superior court against TM Development, Brown, AMS and Thomas Frederick alleging various civil claims arising from TM Development's and Brown's alleged unlicensed contracting. A trial was held on the matter, and by minute entry dated March 28, 2013, the superior court found in defendants' favor on all claims.

<sup>3</sup> After the City of Phoenix issued a permit in connection with the Project, Sooman signed a "Change of Record Affidavit" informing the city that RBW was the new contractor. Thus, according to Sooman, RBW "just took the place of [AMS]." In addition to being the qualifying party for AMS's ROC license, Frederick is also the president of RBW and the qualifying party for its ROC license. Frederick explained at the hearing that

2008, when a certificate of occupancy was issued upon the Project's conclusion, Sooman alleged Frederick illegally allowed TM Development to "use . . . license #241609 for the construction of the house." Sooman requested AMS's and RBW's licenses be revoked, and he sought "restitution of the purchase price of the home."<sup>4</sup>

¶15 In response to Sooman's complaint, the ROC informed Sooman and AMS on May 19, 2010 that an administrative hearing would be held. AMS and RBW moved to dismiss the complaint arguing Sooman did not have "standing" to make the complaint because Sooman did not have a contract with AMS or RBW, and he did not allege any material loss or injury resulting from construction of the Project. Further, AMS and RBW argued the ROC did not have authority to conduct a hearing and resolve Sooman's complaint because the ROC did not join in the complaint and had not issued any orders requiring AMS and RBW to take corrective action. The Administrative Law Judge (ALJ) summarily

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AMS changed its name to RBW, and he procured a different license.

<sup>4</sup> According to Sooman's argument at the hearing, the alleged violations of contractor licensing laws resulted in, among other things, an unmarketable home in addition to defects that delayed construction and caused Sooman to incur additional financial burdens.

denied the motion to dismiss and held a hearing on July 7, 2010.<sup>5</sup> The ROC did not appear at the hearing.

¶16 The ALJ found that the evidence produced at the hearing supported Sooman's allegations that AMS and RBW violated Arizona contractor licensing statutes, and the ALJ recommended the ROC revoke the licenses held by AMS and RBW.<sup>6</sup> The ROC adopted the ALJ's recommendations and revoked the licenses on October 14, 2010.

¶17 AMS and RBW (collectively, plaintiffs) sought judicial review in superior court, and the ROC filed its notice of appearance as a nominal party. The superior court determined Sooman did not have the right to file the complaint against AMS and RBW, and the court concluded the ROC acted outside its statutory authority by revoking Plaintiffs' licenses. Accordingly, the court vacated the ROC's revocation order and remanded the matter. Sooman appealed, and we have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) § 12-913 (2013).

#### **DISCUSSION**

¶18 When reviewing administrative decisions, our role is to determine whether the administrative agency "acted

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<sup>5</sup> The ALJ explained that, for efficiency purposes, he typically denies motions to dismiss and prefers to hold a hearing and address the merits of a case.

<sup>6</sup> The ALJ declined to award restitution.

arbitrarily, capriciously, or in abuse of its discretion.”<sup>7</sup> *Sanders v. Novick*, 151 Ariz. 606, 608, 729 P.2d 960, 962 (App. 1986) (citation omitted). That is, we search the record to determine whether substantial evidence supports the agency’s decision or whether the agency erred as a matter of law. See *Sundown Imps., Inc., v. Ariz. Dep’t of Transp., Motor Vehicle Div.*, 115 Ariz. 428, 431, 565 P.2d 1289, 1292 (App. 1977; see also *Arpaio v. Figueroa*, 229 Ariz. 444, 447, ¶ 7, 276 P.3d 513, 516 (App. 2012) (legal error constitutes an abuse of discretion). We are free to reach our own legal conclusion as to whether the agency correctly interpreted the law. *Carondelet Health Servs. v. Arizona Health Care Cost Containment Sys. Admin.*, 182 Ariz. 502, 504, 897 P.2d 1388, 1390 (App. 1995).

¶9 Similarly, as specifically applicable here, we review issues of statutory interpretation de novo. *State v. Peek*, 219 Ariz. 182, 183, ¶ 6, 195 P.3d 641, 642 (2008). When interpreting a statute, our goal is to give effect to the legislature’s intent. *Id.* at 184, ¶ 11, 195 P.3d at 643. We look first to the language of the statute because it is the best

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<sup>7</sup> We note that the ROC was a nominal party to the superior court suit and not a party to this appeal. At our discretion we allowed the ROC to file a late brief in support of Sooman’s claim and to argue that we should affirm the ALJ’s administrative decision to revoke the contractor’s license. RBW filed a “Response” to the ROC’s brief, disputing both the ROC’s claim to party status here and their statutory interpretation, which in our discretion we have considered.

indication of the legislature's intent. *Id.* If "the language is clear and unequivocal, it is determinative of the statute's construction." *State v. Hansen*, 215 Ariz. 287, 289, ¶ 7, 160 P.3d 166, 168 (2007) (quoting *Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293, 296, ¶ 8, 152 P.3d 490, 493 (2007)). We "must read the statute as a whole, and give meaningful operation to all of its provisions." *Wyatt v. Wehmueeller*, 167 Ariz. 281, 284, 806 P.2d 870, 873 (1991).

¶10 Our analysis therefore begins with the applicable statutes. Section 32-1154(A) enumerates various acts and omissions, that when committed by an ROC licensee, subject the licensee to disciplinary action by the ROC. For our purposes, it is not necessary to specify those prohibited acts or omissions other than to note that the ALJ and the ROC found Plaintiffs were in violation of subsections (A)(10), (A)(15), (A)(13) and (A)(20). Subsection (B) of that statute states, in relevant part:

B. The registrar may on the registrar's own motion, and shall on the written complaint of any owner or contractor that is a party to a construction contract or a person who suffers a material loss or injury as a result of a contractor's failure to perform work in a professional and workmanlike manner or in accordance with any applicable building codes and professional industry standards, investigate the acts of any contractor within this state and may temporarily suspend, with or without imposition of specific conditions in

addition to increased surety bond or cash deposit requirements, or permanently revoke any or all licenses issued under this chapter if the holder of the license issued pursuant to this chapter is guilty of or commits any of the acts or omissions set forth in subsection A of this section. For the purposes of this subsection:

1. "Construction contract" means a written or oral agreement relating to the construction, alteration, repair, maintenance, moving or demolition of any building, structure or improvement or relating to the contractor's excavation of or other development or improvement to land if the registrar investigates the contractor's actions under this subsection.

A.R.S. § 32-1154(B) (2013).

¶11 Thus, pursuant to A.R.S. § 32-1154(B), one of three pre-conditions must be satisfied before the ROC is authorized to investigate, and subsequently discipline, a contractor in this state: (1) the ROC may commence an investigation on its "own motion," and it must investigate allegations of misconduct made by either (2) "any owner or contractor that is a party to a construction contract[,]" or by (3) "a person who suffers a material loss or injury as a result of a contractor's failure to perform work in a professional and workmanlike manner . . . ."

¶12 Here, pre-conditions one and three are not applicable. The ROC did not proceed on its motion; it responded to a complaint filed by Sooman. Sooman did not allege in the complaint any material loss or injury that he suffered as a



result of plaintiffs' work performance on the Project. That leaves pre-condition two: whether Sooman was a party to a construction contract.

¶13 The record reflects that, at most, Sooman was a party to a contract with TM Development, which in turn contracted with plaintiffs. Thus, under A.R.S. § 32-1154(B), the ROC would have been obligated to investigate if Sooman filed a complaint alleging improper contracting activities by TM Development, or if TM Development made allegations regarding Plaintiffs' misconduct. Neither of those scenarios transpired. Instead, Sooman's complaint alleged misconduct by Plaintiffs, with whom he did not have a contractual relationship.<sup>8</sup>

¶14 Sooman appears to argue that the Change of Record Affidavit, *see supra*. fn. 3, is prima facie evidence of a construction contract between himself and Plaintiffs. In support of this assertion, he relies on A.R.S. § 32-1152. That provision, however, addresses contractors' obligations to procure surety bonds; it contains nothing that remotely supports Sooman's position. We therefore summarily reject this argument. *Cullum v. Cullum*, 215 Ariz. 352, 355, ¶ 14 n.5, 160 P.3d 231,

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<sup>8</sup> The court handling the civil action also found that Sooman was not entitled to rescission because he lacked privity of contract with AMS, RBW and Frederick. See Minute Entry Dated 12/07/10 in *Sooman, et al. v. Thomas B Brown, et al.*, CV 2008-070503.

234 n.5 (App. 2007) (holding appellate courts "will not consider argument posited without authority.").

¶15 Sooman also relies on A.R.S. § 32-1155 as a basis independent of A.R.S. § 32-1154(B) for the ROC's authority in this case to investigate plaintiffs and revoke their licenses. That provision states, in relevant part:

*A. Upon the filing of a written complaint with the registrar charging a licensee with the commission, within two years prior to the date of filing the complaint, of an act that is cause for suspension or revocation of a license, the registrar after investigation may issue a citation directing the licensee, within ten days after service of the citation upon the licensee, to appear by filing with the registrar the licensee's written answer to the citation and complaint showing cause, if any, why the licensee's license should not be suspended or revoked.*

A.R.S. § 32-1155(A) (emphasis added). Sooman asserts that under A.R.S. § 32-1155(A), the ROC's investigatory and disciplinary authority is triggered by the mere filing of a written complaint alleging misconduct. Sooman's interpretation of the phrase "[u]pon the filing of a written complaint" ignores, however, the legislature's clear intent in A.R.S. § 32-1154(B) to limit the pool of persons that may file complaints with the ROC. By construing A.R.S. § 32-1155(A) to allow anyone to file a complaint, the pre-conditions in A.R.S. § 32-1154(B) are rendered meaningless, a result that cardinal principles of statutory construction prohibit. *See Romero v. Stines*, 18 Ariz.

App. 455, 503 P.2d 413 (1972) ("Statutory construction requires that the provisions of a statute must be read and construed in context with the related provisions and in light of its place in the statutory scheme."); *Walker v. City of Scottsdale*, 163 Ariz. 206, 210, 786 P.2d 1057, 1061 (App. 1989) (noting we must give meaning to each word in a statute to avoid rendering any part of the statute void, redundant, or meaningless).

¶16 Because the ROC did not proceed on its own motion in this matter - indeed, it did not appear in any of the proceedings below - and Sooman did not allege a material loss or injury resulting from plaintiffs' work on the Project, Arizona law required Sooman to be a party to a construction contract with plaintiffs in order to file an ROC complaint against them. The record establishes Sooman did not have such a contractual relationship. Thus, the ROC was not authorized under A.R.S. § 32-1154(B) to commence disciplinary proceedings and revoke Plaintiffs' licenses. By proceeding to do so, and not granting plaintiffs' motion to dismiss on this basis, the ROC erred as a matter of law.

#### CONCLUSION

¶17 The superior court's judgment is affirmed. Both parties request their attorneys' fees incurred on appeal. Sooman's request is denied because he is not the prevailing party. Plaintiffs do not provide a basis for their request. We

therefore deny plaintiffs' fee request. *Ezell v. Quon*, 224 Ariz. 532, 539, ¶ 31, 233 P.3d 645, 652 (App. 2010) (request for attorneys' fees on appeal "must state the claimed basis for the award") (citing *Roubos v. Miller*, 214 Ariz. 416, 420, ¶ 21, 153 P.3d 1045, 1049 (2007)).

/s/

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JON W. THOMPSON, Presiding Judge

CONCURRING:

/s/

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PHILIP HALL, Judge\*

/s/

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KENT E. CATTANI, Judge

\*Judge Philip Hall was a sitting member of this court when the matter was assigned to this panel of the court. He retired effective May 31, 2013. In accordance with the authority granted by Article 6, Section 3, of the Arizona Constitution and pursuant to A.R.S. § 12-145, the Chief Justice of the Arizona Supreme Court has designated Judge Hall as a judge pro tempore in the Court of Appeals, Division One, for the purpose of participating in the resolution of cases assigned to this panel during his term in office.