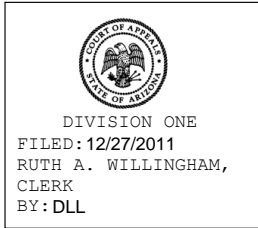


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



ASPEN CREEK BUILDERS, INC., an) No. 1 CA-CV 10-0903
Arizona corporation, ROC License)
No. 155004, Class B-,) DEPARTMENT B
)
Plaintiff/Appellant,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate
) Procedure)
WILLIAM MUNDELL, director,)
ex rel. THE ARIZONA REGISTRAR)
OF CONTRACTORS,)
)
Defendant/Appellee.)
_____)

Appeal from the Superior Court in Yavapai County

Cause No. P1300CV201000013

The Honorable Kenton D. Jones, Judge

VACATED IN PART

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D O W N I E, Judge

¶1 Aspen Creek Builders, Inc. ("ACB") appeals from the superior court's judgment affirming a license revocation order issued by the Arizona Registrar of Contractors ("ROC"). For the following reasons, we vacate the superior court's judgment in part, as well as the ROC's revocation order.¹

FACTS AND PROCEDURAL HISTORY

¶2 The ROC issued a residential contracting license to ACB, with Kenneth Scott Beinlich, ACB's president, serving as its qualifying party. In December 2001, Beinlich pled guilty to trespassing, a class 6 felony, and was placed on probation. When applying to renew ACB's contracting license in 2002, 2004, and 2006, and when seeking to reinstate the license in 2008, Beinlich did not disclose his conviction.

¶3 In 2004, ACB entered into a contract to serve as the general contractor for the construction of a residence in Prescott for Ronald Saper. Saper filed an ROC complaint against ACB in October 2007. Initially, Saper complained of workmanship and billing issues. He later alleged that Beinlich had failed to report his criminal conviction to the ROC. In March 2009, at Saper's request, the ROC issued a citation and complaint to ACB, alleging, *inter alia*, violations of Arizona Revised Statutes

¹ There has been no cross-appeal of the superior court's determination that ACB could not be disciplined pursuant to Arizona Revised Statutes section 32-1154(A)(7). As such, we have not reviewed that ruling and do not vacate that portion of the superior court's judgment.

("A.R.S.") section 32-1154, including subsections (A)(7) and (A)(8), which state that licensed contractors shall not commit fraudulent acts resulting in substantial injury to another and shall not be convicted of a felony.

¶14 A hearing was held before administrative law judge ("ALJ") Brian Smith. The ROC did not participate in the hearing. The ALJ received evidence that Beinlich had been convicted of a felony in 2001, after licensure; that upon renewing ACB's license in 2002, 2004, and 2006, he denied any felony convictions; and that in applying to reinstate ACB's inactive license in 2008, Beinlich again failed to disclose his conviction. Beinlich testified he did not believe he had been convicted of a felony. He stated the matter was a domestic disturbance, and he was released from probation early. He further testified that after completing probation, he assumed his attorney had completed necessary paperwork to designate the offense a misdemeanor. Beinlich admitted stating he had not been convicted of a felony on the ROC applications, but testified he did not intend to make false statements and believed he had not been convicted of a felony.

¶15 An administrative decision was rendered by ALJ M. Douglas, "after reviewing the recording of the hearing and all evidence." ALJ Douglas found insufficient evidence that ACB failed to complete the Sapers' construction project for the

stated price. The ALJ further found that Beinlich had been convicted of a felony, that he knowingly failed to disclose that conviction, and that he knowingly provided false information by answering "no" when asked if he had been convicted of a felony. The ALJ concluded that such conduct violated A.R.S. § 32-1154(A)(7) and (A)(8) and recommended that ACB's license be revoked. The ROC adopted the ALJ's recommendation and revoked ACB's license.²

¶16 ACB filed a complaint for judicial review in the superior court, challenging the revocation order. The ROC filed a "Notice of Appearance as a Nominal Party," stating:

The circumstances underlying [ACB's] appeal do not warrant active participation. In the underlying administrative hearing, the Registrar acted as an adjudicator of this dispute and perceives no significant or compelling reason to interject himself into the current litigation as an advocate. The Registrar believes his position under these circumstances to be analogous to a judge whose decision has been appealed to a higher court.

¶17 ACB contended in the superior court that A.R.S. § 32-1155(A) barred the ROC from disciplining it based on Saper's complaint, which alleged conduct occurring more than two years previously. It also argued that because no injury occurred as a result of the conviction, the ALJ erred by finding

² The license revocation was stayed by the superior court.

a violation of A.R.S. § 32-1154(A)(7), which prohibits fraudulent acts resulting in injury.

¶18 The superior court ruled that no injury resulted from Beinlich's conviction and vacated the ROC's finding of a violation under A.R.S. § 32-1154(A)(7). The court affirmed the remainder of the ROC's decision. It concluded that the limitations period in A.R.S. § 32-1155(A) governed complainants, but not the ROC, and that the ROC was not subject to a statute of limitations, citing A.R.S. § 12-510. The court concluded:

The registrar, in being able to investigate and cite on its own motion, is clearly not restricted in its investigations by the filing of a complaint by an owner or contractor. If not limited by the need for a filing by an owner or contractor, the registrar is not bound by the two year limitations period

The court remanded the matter to the ROC for reconsideration of whether license revocation remained appropriate in light of the court's ruling.

¶19 ACB filed a timely notice of appeal. ACB later settled with the Sapers, and this Court granted a motion to dismiss the Sapers as appellees. The ROC has not participated in this appeal. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

DISCUSSION

¶10 In reviewing an administrative decision, the superior court determines whether the decision was "illegal, arbitrary, capricious, or involved an abuse of discretion." *Berenter v. Gallinger*, 173 Ariz. 75, 77, 839 P.2d 1120, 1122 (App. 1992). In reviewing a superior court decision affirming an administrative action, we determine whether substantial evidence exists to support the decision. *Sunpower of Ariz. v. Ariz. State Registrar of Contractors*, 166 Ariz. 437, 439, 803 P.2d 430, 432 (App. 1990).

¶11 We consider *de novo* the interpretation of a statute, which is a question of law, though we give deference to an agency's interpretation of a statute that it implements.³ *Better Homes Constr., Inc. v. Goldwater*, 203 Ariz. 295, 299, ¶ 15, 53 P.3d 1139, 1143 (App. 2002) (citations omitted). Our goal in interpreting a statute is to give effect to legislative intent. *Mail Boxes, Etc. U.S.A. v. Indus. Comm'n*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995). Where the language of the statute is unambiguous, we give effect to that language. *Janson v. Christensen*, 167 Ariz. 470, 471, 808 P.2d 1222, 1223 (1991). We construe related statutes together and avoid interpretations that make provisions meaningless or duplicative. *Ariz. Dep't of*

³ Because it did not appear on the merits below or in this Court, the ROC has not offered its interpretation of the statutes at issue.

Revenue v. Action Marine, Inc., 218 Ariz. 141, 143, ¶ 10, 181 P.3d 188, 190 (2008) (citation omitted).

¶12 We assume, without deciding, that a homeowner may allege and prosecute alleged licensing violations, such as the failure to disclose a felony conviction, without the ROC's participation. Such a scenario raises due process concerns, but that issue has not been raised or briefed in this Court.

¶13 We agree with ACB that the superior court erred by relying on A.R.S. § 12-510. Section 12-510 states: "Except as provided in § 12-529, the state shall not be barred by the limitations of actions prescribed *in this chapter.*" (Emphasis added.) By its own terms, that statute applies to limitations periods set forth in Chapter 5 of Title 12, which are not at issue here.

¶14 ACB next argues that A.R.S. § 32-1155(A) precludes the ROC from imposing discipline based on a homeowner's complaint that alleges violations occurring more than two years previously. That statute reads:

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 . . . to appear by filing . . . the licensee's written answer . . . showing cause, if any, why the licensee's license should not be suspended or revoked.

Ariz. Rev. Stat. ("A.R.S.") § 32-1155(A) (emphasis added).

¶15 The superior court concluded that because A.R.S. § 32-1154(B) allows the ROC to investigate and cite contractors on its own motion, the two-year limitations period by which homeowners must bring claims is inapplicable in this case. ACB acknowledges that, pursuant to § 32-1154(B), the ROC is not precluded from itself investigating an alleged violation that occurred more than two years previously. ACB argues, though, that the superior court conflated the ROC's ability to independently investigate and homeowner complaints like Saper's that are time-barred under § 32-1155(A). We agree.

¶16 Administrative agencies have no common law or inherent powers. *Ayala v. Hill*, 136 Ariz. 88, 90, 664 P.2d 238, 240 (App. 1983) (citation omitted). Their powers and duties are limited to those granted by statute. *Id.*; see also *Rosen v. Hadden*, 81 Ariz. 194, 198, 302 P.2d 267, 269-70 (1956) (ROC authorized to suspend or revoke licenses only on grounds specified in statute). Section 32-1154(B) states in part:

The registrar may on the registrar's own motion, and shall on the written complaint of any owner or contractor . . . investigate the acts of any contractor within this state and may temporarily suspend . . . or permanently revoke any or all licenses issued under this chapter if the holder of the license . . . is guilty of or commits any of the acts or omissions set forth in subsection A of this section.

Subsection A lists the conduct or omissions for which a contracting license may be suspended or revoked. A.R.S. § 32-1154(A).

¶17 Pursuant to A.R.S. § 32-1154(B), the ROC may investigate a contractor on its own motion and must investigate upon the filing of a written complaint. The section thus distinguishes between investigations initiated by the ROC and those arising from a complaint. Under § 32-1155(A), homeowner complaints must be based on acts or omissions committed by the licensee within the past two years. Nothing in the statutory scheme suggests that the ROC may, based on its independent ability to investigate and discipline, take action based on a complaint made and prosecuted solely by a homeowner that alleges time-barred conduct. To construe § 32-1154(B) in such a manner would undermine the clear intent expressed in § 32-1155(A) to limit complainant actions. Under such an approach, time-barred complaints could be brought and prosecuted by homeowners, with no investigation or participation by the agency, as long as the ROC ultimately took disciplinary action.

¶18 In this case, the Sapers alone prosecuted the complaint against ACB, up through and including this appeal. Only the conduct associated with ACB's 2008 reinstatement application would fall within the two-year limitations period.

