

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

April 11, 2008

Leroy Morris
P.O. Box 934
Millsboro, DE 19961

Barbara J. Gadbois, Esquire
Deputy Attorney General
Department of Justice
820 N. French Street, Sixth Floor
Wilmington, DE 19801

RE: Leroy Morris v. Real Estate Commission
C.A. No. 07A-08-001 ESB
Letter Opinion

Date Submitted: January 29, 2008

Dear Ms. Gadbois and Mr. Morris:

This is my decision on Leroy Morris' ("Morris") appeal of the Real Estate Commission's decision to revoke his real estate license. I have reversed the Commission's decision because the Commission did not give Morris the required notice of the date of the hearing on his license revocation.

STATEMENT OF THE CASE

The State of Delaware filed a complaint with the Commission alleging that Morris had violated 24 Del.C. § 2912 and certain rules and regulations regarding the handling of deposits in his escrow account. The hearing before the Commission was originally scheduled for October 12, 2006. However, that hearing was rescheduled at the request of Morris' attorney to January 11, 2007. The hearing was continued again at Morris' attorney's request to February 8, 2007. The hearing did not go forward on February 8, 2007, because the Commission did not have a quorum. The Commission finally held a hearing on March 8, 2007. At the start of the hearing, Morris asked the Commission

for a continuance because his attorney was no longer be representing him. Morris also stated that he only received notice of the hearing on March 6, 2007, two days prior to the hearing, and thus did not have enough time to retain another attorney. The Commission denied Morris' request for another continuance. After hearing testimony from a number of witnesses, the Commission voted unanimously to revoke Morris' real estate license.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The function of the Superior Court on appeal from a decision of an administrative agency is to determine whether the agency's decision is supported by substantial evidence and whether the agency made any errors of law.¹ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.² The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.³ It merely determines if the evidence is legally adequate to support the agency's factual findings.⁴ Absent an error of law, the Commission's decision will not be disturbed where there is substantial evidence to support its conclusions.⁵

¹ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965).

² *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del.1986), *app. disp.*, 515 A.2d 397 (Del. 1986).

³ *Johnson*, 312 A.2d at 66 (Del. 1965).

⁴ 29 Del.C. § 10142(d).

⁵ *Dellachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

DISCUSSION

Morris argues that he did not receive proper notice of the hearing before the Commission. The hearing was held on March 8, 2007. Morris argues that he only had two days' notice of the hearing. The State argues that "[w]hile there was no direct evidence that Mr. Morris had notice of the March 8, 2007 hearing, he certainly had notice of the October and January hearings as they were rescheduled at his or his counsel's request. Mr. Morris should have been prepared to go forward at the February hearing with his new attorney but apparently he had still not retained counsel when the hearing proceeded one month later."⁶

The Commission's proceedings are governed by both the requirements of due process and the Administrative Procedures Act.⁷ "In the exercise of quasi-judicial or adjudicatory administrative power, administrative hearings, like judicial proceedings, are governed by fundamental requirements of fairness which are the essence of due process, including fair notice of the scope of the proceedings and adherence of the agency to the stated scope of the proceedings."⁸ Further, "due process requires that the notice inform the party of the time, place, and date of the hearing and the subject matter of the proceedings."⁹ 29 Del.C. § 10131(d) provides a licensee that "notice of a hearing shall be given at least 20 days before the day it is to be held."

There were four hearings scheduled. The first and second hearings were continued at Morris'

⁶ The State's Answering Brief at 14.

⁷ 29 Del.C. § 10161(a)(4).

⁸ *Carousel Studio v. Unemployment Ins. Appeal Bd.*, 1990 WL 91108 at *1 (Del. Super. June 26, 1990).

⁹ *J.L.B. Corp. v. Delaware A.B.C.C.*, 1985 WL 189008, at *2 (Del. Super. June 7, 1985).

request. The third hearing was continued because the Board did not have a quorum. There is no evidence in the record that Morris received proper notice of the fourth hearing. The State admits this in its brief, stating that “there was no direct evidence that Mr. Morris had notice of the March 8, 2007 hearing...”¹⁰ Morris was entitled to 20 days’ notice of the date of the hearing on his license revocation. The Commission’s failure to give him proper notice leaves the Court with no choice but to reverse the Commission’s decision.

CONCLUSION

The Commission’s decision to revoke Morris’ license is reversed.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

¹⁰ The State’s Answering Brief at 14.