

***** NOT FOR PUBLICATION *****

NO. 22621

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

QUEEN VICTORIA CORP., a Hawai'i Corporation, Appellant-Appellant,

vs.

PETER T. YOUNG¹, in his capacity as Chairman, Department of Land and Natural Resources, State of Hawai'i; STEPHEN L. THOMPSON, in his capacity as O'ahu District Manager, the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, State of Hawai'i; ROBERT RUSHFORTH, Harbor Agent, Ala Wai Small Boat Harbor, State of Hawai'i; and KEITH TANAKA, in his capacity as Hearing Officer, Department of Land and Natural Resources, State of Hawai'i, Appellees-Appellees.

APPEAL FROM THE FIRST CIRCUIT COURT
(CIVIL NO. 95-2029)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ., and Circuit Judge Del Rosario, in place of Duffy, J., who is recused)

The appellant-appellant Queen Victoria Corp. (QVC) appeals from the judgement of the first circuit court, the Honorable B. Eden Weil presiding, filed on May 26, 1999, in favor of the appellees-appellees Peter T. Young, in his capacity as Chairman, Department of Land and Natural Resources, State of Hawai'i (DLNR), Stephen L. Thompson, in his capacity as Oahu District Manager, DLNR, Division of Boating and Ocean Recreation, Robert Rushforth, Harbor Agent, Ala Wai Small Boat Harbor (AWSBH), State of Hawai'i, and Keith Tanaka, in his capacity as Hearing Officer, DLNR, based on its findings of fact (FOFs), conclusions of law (COLs), and order, filed on May 5, 1999. Specifically, QVC contends that the circuit court erred in: (1)

¹ At the filing of the lawsuit, Michael Wilson was the chairperson of the Board of Land and Natural Resources (BLNR()). Timothy Johns succeeded Michael Wilson. Peter T. Young succeeded Timothy Johns. Thus, pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 43(c)(1), he has automatically been substituted as a party in the present matter.

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concluding that QVC was appealing the hearing officer's decision pursuant to HRS § 91-14 (1993) and not bringing an action pursuant to HRS §§ 91-7 or 91-8 (1993) (COL Nos. 3, 4, and 5); (2) (a) finding that "[t]he contention over the fees and costs of the impoundment were dealt with in the administrative hearing" (FOF No. 10), (b) concluding that "[t]he fees and costs in contention at the administrative hearing . . . were directly related to the impoundment" of the Queen Victoria (COL No. 3), and (c) finding that QVC "could have gotten the vessel back by tendering \$8,154.64 to the State and 24 hours notice" (FOF No. 11); and (3) affirming the hearing officer's decision "as not clearly erroneous, nor in violation of any law."

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we affirm the circuit court's judgment.

First, the circuit court did not err in concluding that QVC was appealing the decision of the hearing officer pursuant to HRS § 91-14, rather than seeking a "judicial declaration as to the validity of an agency rule," pursuant to HRS § 91-7, or appealing the hearing officer's "declaratory order as to the applicability of any statutory provision or of any rule or order of the of the agency," pursuant to HRS § 91-8. The record does not reflect that QVC ever petitioned the DLNR for "a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency," and QVC did not petition the circuit court for "a judicial declaration as to the validity of an agency rule."

Second, we disagree with QVC that "[t]he setting of a release fee should be part of the 'post seizure administrative

***** NOT FOR PUBLICATION *****

hearing process' afforded QVC" and that the DLNR should have promulgated rules pursuant to HRS § 200-16 (Supp. 1994) regarding the amount that the DLNR may spend to impound a vessel. HRS § 200-16(c) authorizes the DLNR to impound an unauthorized vessel "at the sole costs and risk of the owner of the vessel[.]" "Custody of an unauthorized vessel shall be returned to the person entitled to possession upon payment to the [DLNR] of all fees and costs due, and fines levied by the [DLNR] or a court." HRS § 200-16(d). The owner or operator of the vessel may request an administrative hearing "solely for the purpose of allowing the owner or operator of an impounded vessel to contest the basis given by the department for the impoundment of the vessel." Id. Thus, by its plain language, HRS § 200-16 does not authorize the hearing officer to consider the propriety of the DLNR's expenditures in the course of impounding a vessel. Therefore, the administrative rules mandated by HRS § 200-16 "to implement the requirement for this post-seizure administrative hearing process" do not include rules regarding the amounts that may be spent on impoundment.

Third, we disagree with QVC that, in the absence of a rule, the costs were "arbitrarily set" and, therefore, that HRS § 200-16 does not provide QVC with due process of law.

HRS § 200-16(c) . . . provides that "[a]n unauthorized vessel may be impounded by the department at the sole cost and risk of the owner of the vessel[.]"

. . . This court recognizes a well established rule of statutory construction that, where an administrative agency is charged with the responsibility of carrying out the mandate of a statute which contains words of broad and indefinite meaning, courts accord persuasive weight to administrative construction and follow the same, unless the construction is palpably erroneous.

Keliipuleole v. Wilson, 85 Hawai'i 217, 226, 941 P.2d 300, 309 (1997) (quoting Treloar v. Swinerton & Walberg Co., 65

***** NOT FOR PUBLICATION *****

Haw. 415, 424, 653 P.2d 420, 426 (1982)).

Brown v. Thompson, 91 Hawai'i 1, 18, 979 P.2d 586, 603 (1999).

Fourth, notwithstanding the singular purpose of the HRS § 200-16 hearing, the hearing officer permitted QVC to adduce extensive evidence regarding the cost of impounding the Queen Victoria that supports the circuit court's (1) finding that "[t]he contention over the fees and costs of the impoundment were dealt with in the administrative hearing" (FOF No. 10), (2) finding that QVC "could have gotten the vessel back by tendering \$8,154.64 to the State and 24 hours notice" (FOF No. 11), and (3) concluding that "[t]he fees and costs in contention at the administrative hearing . . . were directly related to the impoundment" (COL No. 9).

Moreover, QVC has had a full and fair opportunity to contest the amounts spent by the DLNR to impound the Queen Victoria, see Robinson v. Ariyoshi, 65 Haw. 641, 658-59, 658 P.2d 287, 300-01 (1982) (noting that due process mandates that persons allegedly wronged by unconstitutional state action be afforded one full and fair opportunity to judicial resolution of the issue), and QVC has "adduced no evidence to suggest that these charges were arbitrary or unfounded." Brown, 91 Hawai'i at 18, 979 P.2d at 603. Therefore,

IT IS HEREBY ORDERED that the circuit court's judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, September 11, 2003.

On the briefs:

Jack Schweigert,
for appellant-appellant

Dawn N.S. Chang,
Deputy Attorney General,
for appellees-appellees