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 NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2007-CA-002502-MR

COMMONWEALTH OF KENTUCKY,  
KENTUCKY LICENSING BOARD FOR  
SPECIALISTS IN HEARING INSTRUMENTS

APPELLANT

APPEAL FROM MCCRACKEN CIRCUIT COURT  
v. HONORABLE R. JEFFREY HINES, JUDGE  
ACTION NO. 07-CI-00069

ARTHUR L. AZAR

APPELLEE

OPINION  
AFIRMING

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BEFORE: FORMTEXT COMBS, CHIEF JUDGE; TAYLOR AND LAMBERT,  
JUDGES. TAYLOR, JUDGE: Commonwealth of Kentucky, Kentucky Licensing  
Board for Specialists in Hearing Instruments (Board) brings this appeal from a  
November 14, 2007, order of the McCracken Circuit Court reversing the Board's  
Final Order of discipline against Arthur L. Azar. We affirm.

Azar operates Paducah Hearing Aids, Inc., d/b/a Beltone, and was a licensed hearing instrument specialist in Kentucky. The relevant facts of this case were succinctly set forth by the Hearing Panel of the Board as follows:<sup>1</sup>

1. This case involves a former patient of the Princeton Health Care Manor, Charlene Faughn. At the time, her daughter, Shirley Pidcock, acted as her attorney-in-fact pursuant to a Power of Attorney she received from her mother in 1994.

2. While at the nursing home, on May 3, 2004, Ms. Pidcock ordered two Beltone hearing aids for her mother. Ms. Pidcock signed for the hearing aid order writing, "Shirley Pidcock P.O.A." Ted Bauer was the Paducah Hearing Aid Center salesman who took the order and ultimately fitted Ms. Faughn with two Beltone hearing aids.

3. While in the nursing home, Ms. Faughn received Social Security payments, which were deposited in an account from which Ms. Pidcock could write checks on her mother's behalf. Ms. Faughn's Social Security payments were her only source of income. Ms. Pidcock intended to use her mother's Social Security payments to pay for the hearing aids.

4. On October 22, 2004, salesman Bauer fitted Ms. Faughn at the nursing home with the two hearing aids. Ms. Pidcock acknowledged receipt of the hearing aids signing "Charlene Faughn By: Shirley Pidcock P.O.A."

5. In early 2005, Charlene Faughn was released from the nursing home, and she went to live with her daughter, Shirley Pidcock. Because she was no longer eligible for the Social Security payments she had received while in the nursing home, Ms. Faughn no

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<sup>1</sup> The Hearing Panel of the Kentucky Licensing Board for Specialists in Hearing Instruments (Board) rendered Findings of Fact, Conclusions of Law and Recommended Order, which was subsequently adopted by the Board, subject to minor modifications for clerical errors. The Hearing Panel's findings of fact are set forth on pp. 1-6 thereof.

longer had sufficient income to pay the installment payments due for the two hearing aids. As a result, Ms. Pidcock contacted the Paducah Hearing Aid Center offices to inquire about reducing the payments her mother owed for the hearing aids.

6. Because of back surgery in early 2005, Ted Bauer was not working for the Paducah Hearing Aid Center when Ms. Pidcock called the office. Arthur Azar, owner of the Paducah Hearing Aid Center, returned Ms. Pidcock's call. He told Ms. Pidcock that the hearing aids could not be returned, but he would inquire about whether a loan could be obtained that would reduce the payments due on the hearing aids.

7. On April 2, 2005, on behalf of Ms. Pidcock, Mr. Azar submitted a loan application to a local bank. The bank arranged a loan for Ms. Pidcock through CIT Bank for the outstanding balance on the hearing aids, which was \$2,720.00.

8. On April 4, 2005, Mr. Azar traveled to Ms. Pidcock's home to have her sign the loan agreement. Ms. Pidcock's name, not her mother's, appeared on the loan agreement, and what purports to be Ms. Pidcock's signature also appears at the bottom of the document with the date 4-4-05.

9. Mr. Azar says Ms. Pidcock didn't ask questions about the loan documents, which were written in her name alone, not in her mother's name. Mr. Azar says it was not unusual for children to pay for their parent's hearing aids, and thus, he did not think the transaction was unusual. Mr. Azar testified that Ms. Pidcock signed the loan documents in her own name without inquiring whether she could sign for her mother as attorney-in-fact.

10. Ms. Pidcock says when Ms. Azar came to her home on April 4, 2005, she was surprised to find the loan documents were written in her name, not her mother's. Ms. Pidcock testified she asked Mr. Azar whether she could return the hearing aids and that he said

the hearing aids could not be returned. She also says she asked Mr. Azar whether she could sign the loan documents on her mother's behalf with her power of attorney. She says Mr. Azar told her she had to sign for the loan in her own name. Ms. Pidcock claims Mr. Azar intimidated her into signing the loan agreement.

11. Eight days later, on April 12, Ms. Faughn passed away.

12. Almost immediately, Ms. Pidcock complained to the Paducah Hearing Aid Center and to the Board that Mr. Azar obtained her signature on the loan agreement by intimidating her and misinforming her about her obligation under the original agreement to obtain the hearing aids for her mother. (Citations omitted.)

Eventually, Pidcock initiated a complaint against Azar with the Board. After an investigation, the Board filed charges against Azar and specifically alleged:

9. Based upon the allegations set forth above, to be supplemented by evidence to be introduced before the Board, the Board has reason to believe that [Azar] has violated:

- A) KRS 334.120(4)(e) by committing an unfair, false, misleading, or deceptive act or practice, and;
- B) KRS 334.120(4)(g) by violating 201 KAR 7:090 §1(2) by obtaining a fee or making a sale by fraud or misrepresentation.

These violations involved [Azar's] misrepresentation to [Pidcock] in order to induce [Pidcock] to pay for the hearing instruments of [Faughn] when [Pidcock] was not otherwise obligated to pay.

**Wherefore**, based upon the allegations above, the Board has sufficient reason to take disciplinary action under KRS 334.120(4) against [Azar].

A hearing was conducted before a Hearing Panel of the Board. Kentucky Revised Statutes (KRS) 13B.080. Thereafter, the panel rendered its Findings of Fact, Conclusions of Law and Recommended Order (recommended order). KRS 13B.090 & 13B.110. The panel found that Azar violated KRS 334.120(4)(e) and KRS 334.120(4)(g). Azar filed exceptions to the recommended order. Except for correcting apparent clerical errors in the recommended order, the Board adopted the order and rendered its Final Order disciplining Azar. The Board reprimanded Azar, fined him a total of \$1000, and placed his license on probation for one year.

Thereafter, Azar appealed the Board's Final Order to the McCracken Circuit Court. KRS 13B.140. The circuit court concluded that the Board's disciplinary action against Azar was "arbitrary, capricious, or characterized by abuse of discretion and without support of substantial evidence on the whole record." The circuit court reversed the Board's Final Order and remanded to the Board for entry of an order of dismissal. Our review follows. KRS 13B.160.

The Board contends that the circuit court erroneously reversed its Final Order disciplining Azar. Specifically, the Board asserts that the circuit court erred by concluding that the Board's findings of fact were not supported by substantial evidence of a probative value and that the circuit court erred by concluding that Azar "was not sufficiently personally involved in the misconduct of question to be held accountable." For the reasons hereinafter stated, we hold the circuit court properly reversed the Board's Final Order of discipline.

As an appellate court, we review an administrative agency's decision for arbitrariness. *Am. Beauty Homes Corp. v. Louisville and Jefferson Co. Planning and Zoning Comm'n*, 379 S.W.2d 450 (Ky. 1964). Arbitrariness has many aspects; relevant to this appeal is whether the Board's Final Order was supported by substantial evidence of a probative value. *See id.*

The Board charged Azar with violating KRS 334.120(4)(e) "by committing unfair, false, misleading, or deceptive act or practice" and with violating KRS 334.120(4)(g) "by obtaining a fee or making a sale by fraud or misrepresentation" in contravention of 201 Kentucky Administrative Regulations (KAR) 7:090 § 1(2). Particularly, in its Final Order, the Board found that Azar violated KRS 334.120(4)(e) "when he failed to explain to Ms. Pidcock that she was not obligated to sign the loan agreement in her own name to pay for her mother's hearing instruments." And, the Board found that Azar violated KRS 334.120(4)(g) "when he intimidated Ms. Pidcock into signing the loan agreement that she was not obligated to sign."

Azar's apparent failure to inform Pidcock that she was not required to sign the loan agreement simply does not constitute an unfair, false, misleading, or deceptive act. KRS 334.120(4)(e). Indeed, Pidcock testified that she knew there was no legal obligation upon her to sign the loan agreement. Pidcock also testified that she understood it was her mother's debt. Additionally, the record reveals that Pidcock voluntarily gave Azar her personal information to secure the loan, and the Board particularly found that Azar "initially assumed Ms. Pidcock was going to

obtain the loan herself for her mother's indebtedness on the hearing aids, and that he applied for the loan in her name thinking that is what she wanted." Thus, the loan documents presented to Pidcock were in her name alone and not in her mother's. The facts were undisputed that Pidcock read the loan agreement, understood its terms, and signed the loan agreement in her name alone. What is most puzzling to this Court is that the record before the Board reflected no evidence whatsoever as concerns CIT Bank and its role in refinancing the repayment of Faughn's hearing aids. If CIT Bank would not extend a loan to Faughn, which is plausible under the facts of this case, it is hard to conceive how Azar could have committed some type of fraud, in his capacity as an agent for the bank, in procuring Pidcock's signature on the loan documents. The Board's Order assumes that the bank would give credit to Faughn, which is simply unsubstantiated by the record in this case. Thus, we conclude that there does not exist substantial evidence of a probative value to support the Board's finding that Azar committed an unfair, false, misleading or deceptive act under KRS 334.120(4)(e).

As to the Board's finding that Azar engaged in fraud or misrepresentation by intimidating Pidcock into signing the loan agreement, we believe this finding was also not supported by substantial evidence of a probative value. During the hearing, Pidcock testified that she signed the loan agreement out of concern for her mother. In particular, when specifically asked "[w]hy did you sign those loan documents," she answered:

I was concerned for my mother. I was worried about getting out and doing the things I needed to do in order to bring her home, and I wanted him out of my house so I could do what I needed to do.

Pidcock's own testimony demonstrated that she signed the loan document for her own reasons and not because of intimidation by Azar.

In sum, we hold that the Board's Final Order was arbitrary as lacking substantive evidence of a probative value. *See Am. Beauty Homes*, 379 S.W.2d 450. We, thus, determine that the circuit court properly reversed the Board's Final Order and remanded to the Board for entry of an order of dismissal.

For the foregoing reasons, the order of the McCracken Circuit Court is affirmed.

ALL CONCUR.

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