

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jill A. Foerster, d/b/a TAG-R-UP,	:	
Petitioner	:	
	:	
v.	:	
	:	
Department of Transportation,	:	
Bureau of Motor Vehicles,	:	No. 105 C.D. 2011
Respondent	:	Submitted: July 22, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: August 31, 2011

Jill A. Foerster, d/b/a TAG-R-UP, (Foerster) appeals from the January 14, 2011 order of the Secretary of Transportation (Secretary) denying the Exceptions filed by Foerster and adopting the Department of Transportation’s (Department) Proposed Report.<sup>1</sup> There are three issues before the Court: (1) whether there is a basis in law for requiring Foerster to accept only government issued identification (I.D.) cards as proof of identity; (2) whether the Bureau of Motor Vehicles (Bureau) erred in affirming the termination of a services agreement on the basis of good cause when the termination letter was predicated solely on fraud; and (3) whether the Bureau erred in affirming the termination because less severe sanctions were available under that agreement. For the reasons that follow, the Secretary’s order is affirmed.

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<sup>1</sup> The Secretary’s order is dated January 14, 2010. However, this is clearly a typographical error as established by the chronology of events, as well as the date stamp on the order.

On July 27, 2007, Foerster entered into an Agreement with the Department for agent services for the issuance and processing of vehicle registration documents and fees. The Agreement provides that the contractor will, at the time of hiring, and annually thereafter, secure an affidavit from each person involved in providing the agent service that he or she has read and understood Chapters 11 and 13 of the Vehicle Code. The Agreement further provides that the contractor will direct all employees involved in providing agent services to complete a Department-authorized and approved training course at the earliest time available, but no later than one year after allowing them to provide services to customers, as well as a refresher course every two years thereafter. The Agreement provides sanctions for deviating from certain standards of conduct ranging from written warnings to suspensions. The Agreement further provides for termination of the agent service for certain types of conduct and for good cause shown.

On October 13, 2009, the Bureau conducted an audit of Foerster's business. Auditors found and confiscated approximately 25 transaction files containing copies of unacceptable identification cards that Foerster recorded and submitted to the Department as documentation of proof of identification. On October 16, 2009, the Bureau terminated Foerster's agreement for fraudulent record keeping. Foerster appealed to the Court of Common Pleas of Delaware County (trial court). The trial court remanded the matter to the Department for a hearing and adjudication. A hearing was held before a Hearing Officer on June 30, 2010, and on November 10, 2010, the Department issued a proposed order affirming the Bureau's termination of Foerster's Agreement. Foerster filed Exceptions to the proposed order. On January

14, 2011, the Secretary denied Foerster's Exceptions, and adopted and made final the Department's Proposed Report. Foerster appealed to this Court.<sup>2</sup>

Foerster first argues that the Department erred in affirming the Bureau's termination of her Agreement because there was no basis in law for requiring her to accept only government-issued I.D. cards as proof of identity. We disagree.

Section 1103.1(a) of the Vehicle Code, 75 Pa.C.S. § 1103.1(a), provides in pertinent part:

Application for a certificate of title shall be made upon a form prescribed and furnished by the department and shall contain a full description of the vehicle, the vehicle identification number, odometer reading, date of purchase, the actual or bona fide name and address of the owner, a statement of the title of applicant, together with *any other information or documents the department requires to identify the vehicle and to enable the department to determine whether the owner is entitled to a certificate of title*, and the description of any security interests in the vehicle.

(Emphasis added). Clearly, the Department has the authority under Section 1103.1(a) to require service agents to accept only government-issued I.D. cards. In addition, Section 1306(3) of the Vehicle Code, 75 Pa.C.S. § 1306(3), provides in pertinent part: "The department *shall refuse* registration, renewal or transfer of registration when . . . [t]he department has reasonable grounds to believe that the application contains false or fraudulent information . . . ." (Emphasis added). As the agents are required to refuse services when reasonable grounds exist to believe that the application contains false or fraudulent information, the Department has the authority to require agents to

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<sup>2</sup> "This Court's review on an appeal from an administrative agency decision is whether necessary findings of fact are supported by substantial evidence, whether an error of law has been committed, or whether constitutional rights were violated." *Adams Outdoor Adver., Ltd. v. Dep't of Transp.*, 860 A.2d 600, 604 n.3 (Pa. Cmwlth. 2004).

accept specific forms of identification to prevent registration, renewal or transfer of registration based on false or fraudulent information. Accordingly, Vehicle Code Sections 1103.1(a) and 1306(3) provide a basis in law for requiring Foerster to accept only government-issued I.D. cards as proof of identity. Thus, the Department did not err in affirming the Bureau's termination of Foerster's Agreement.

Foerster next argues that the Department erred in affirming the Bureau's termination of her Agreement on the basis of good cause because the termination letter based the termination solely on fraud. Specifically, Foerster contends that because the Department affirmed the termination on the basis of good cause and not fraud, Foerster was denied due process. We disagree.

It is commonly understood that, unlike some legal rules, due process is not an inflexible, technical conception with a fixed meaning unrelated to the particular circumstances of the case. [D]ue process is afforded when [an individual] is informed with reasonable certainty of the charges against the [individual] so that he or she may prepare an adequate defense.

*Turk v. Dep't of Transp., Bureau of Driver Licensing*, 983 A.2d 805, 819 (Pa. Cmwlth. 2009) (citation omitted) (quoting *Dunn v. Dep't of Transp., Bureau of Driver Licensing*, 819 A.2d 189, 192 (Pa. Cmwlth. 2003)). Although the termination letter did not state good cause in general as a reason for termination, it did list specific occurrences wherein Foerster accepted improper identification (the alleged fraudulent record keeping) as the specified basis for termination. Since the basis of the good cause determination was the acceptance of the bad I.D. cards as stated in the confirmation letter, Foerster was adequately notified of the reason for termination. Further, “[i]n assessing an alleged denial of procedural due process, demonstrable prejudice is a key factor.” *Moore v. Dep't of Transp., Bureau of Motor Vehicles*, 19 A.3d 1200, 1204 (Pa. Cmwlth. 2011). Here, absent in Foerster's brief is reference to

any evidence that would have been presented had she been advised of the allegation of good cause for termination. As Foerster did not specify any prejudice resulting from the lack of a general allegation of good cause in the termination letter, Foerster cannot claim a due process violation.

Lastly, Foerster argues that the Department erred in affirming the Bureau's termination of her Agreement because less severe sanctions were available under the Agreement. We disagree.

The Agreement specifically provides that “[t]he Department may also terminate this Agreement at any time for good cause shown . . . .” Reproduced Record at 63a. Here, during an audit, the Department discovered that Foerster was accepting non-valid identification cards where either the signatures were typed, or that were specifically labeled non-government I.D. In a random sampling of a four or five-month period, the auditor found 25 transactions wherein the identification cards had either a typed signature or were non-government I.D. cards.<sup>3</sup> In addition, at the hearing in this matter, the record established that Foerster did not attend the mandatory training session within one year of servicing customers.<sup>4</sup> Finally, the record established that the Department sends emails to all agents updating them on document requirements. Had Foerster received her mandatory training and/or reviewed said updates she would have known that the I.D. cards she was accepting were not valid. Clearly, accepting invalid I.D. cards, not attending mandatory training, and not reviewing Department emails is good cause to terminate the Agreement. Accordingly, the Department did not err in affirming the Bureau's termination of Foerster's Agreement.

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<sup>3</sup> The Department also discovered that most of the clientele traveled great distances to get to Foerster.

<sup>4</sup> In fact, she had not attended a training session until two years after she began her contract.

For all of the above reasons, the Secretary's order is affirmed.

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JOHNNY J. BUTLER, Judge

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Bureau of Motor Vehicles,	:	No. 105 C.D. 2011
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ORDER

AND NOW, this 31<sup>st</sup> day of August, 2011, the January 14, 2011 order of the Secretary of Transportation is affirmed.<sup>1</sup>

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JOHNNY J. BUTLER, Judge

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