STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

[Filed: August 31, 2018]

BONNET VIEW LLC, ANTHONY J. FIORE, and SHORE CLUB CONDOMINIUM, LLC, a/k/a SHORE CLUB CONDO.	:	
VS.	:	**C.A. No. WC-2017-0071**
STATE OF RHODE ISLAND COASTAL RESOURCES MANAGEMENT COUNCIL	:	

DECISION

LANPHEAR, J. Before this Court are the appeals of Bonnet View, LLC, Anthony J. Fiore and Shore Club Condominium, LLC, a/k/a Shore Club Condo. (hereinafter Appellants) to four Final Orders of Administrative Fines, issued by the Coastal Resources Management Council (CRMC) on January 31, 2017. [1] Jurisdiction is pursuant to G.L. 1956 §§ 42-35-1, *et seq.* of the Administrative Procedures Act (APA). The only issue before the Court is the amount of the fines which CRMC is authorized to impose, pursuant to statute.

Facts and Travel

The Appellants obtained a CRMC Assent for construction on one condominium development project on Algonquin Road in Narragansett, Rhode Island. On May 24, 2016, after construction

[1] Oddly, the four Final Orders of Administrative Fines were signed by the Deputy Director of CRMC after a hearing before one of the members of CRMC. The statute allowing for imposition and appeals of administrative fines require imposition of the fine by the chairperson or executive director and, if contested, a hearing and a final order issued by the council. G.L. 1956 § 46-23-7.1(3)(4). Nevertheless, neither party questions the procedure below, or this Court's jurisdiction.

commenced, CRMC visited the project and issued four separate violation notices for the following:

1. Failing to install/maintain appropriate soil erosion and sediment controls;
2. Clearing and placing fill in the buffer zone;
3. Clearing and filling the coastal wetlands complex; and
4. Violation of the recorded conservation easement.

Four separate Notices of Administrative Fines were issued on May 26, 2016 (Appellants' Mem. Exs. 2-5), and four different Cease and Desist Orders were issued on May 26, 2016. *Id.* at Exs. 6-9.

Following a site visit on June 8, 2016, four additional and separate Notices of Administrative Fines were issued. (Appellants' Mem. Exs. 11-14.) Each of these notices imposed assessed additional fines of $2500 and threatened additional fines for ongoing violations.

The parties entered into a Consent Agreement with CRMC on June 30, 2016 (Appellants' Ex. 16). The Appellants agreed that certain of the acts were violations, agreed to remediate the area, and agreed to pay four fines of $2500 for the violations of May 26, 2016. The Consent Agreement specifically did not address the June 9 and 14, 2016 fines. It appears that the June 9 and 14, 2016 assessed fines went to a hearing, though no transcript, findings of fact or conclusions of law were transmitted to the Court. After a hearing, the Appellants filed this timely appeal.

The parties agreed to the facts herein. (Stipulated Statement of Facts, July 13, 2018.) Essentially, the Appellants admitted liability and only question the amount of penalties which

CRMC may impose. After a hearing, four different Final Orders of Administrative Fines (one for each violation) were issued on January 31, 2017 (Appellants' Mem. Exs. 17-20).

The Statute

The statute allowing for the imposition of such fines is as follows:

> **"§ 46-23-7.1. Administrative penalties.** Any person who violates, or refuses or fails to obey, any notice or order issued pursuant to § 46-23-7(a); or any assent, order, or decision of the council, may be assessed an administrative penalty by the chairperson or executive director in accordance with the following:
>
> "(1) The chairperson or executive director is authorized to assess an administrative penalty of not more than two thousand five hundred dollars ($2,500) for each violation of this section, and is authorized to assess additional penalties of not more than five hundred dollars ($500) for each day during which this violation continues after receipt of a cease and desist order from the council pursuant to § 46-23-7(a), but in no event shall the penalties in an aggregate equal or exceed ten thousand dollars ($10,000). Prior to the assessment of a penalty under this subdivision, the property owner or person committing the violation shall be notified by certified mail or personal service that a penalty is being assessed. The notice shall include a reference to the section of the law, rule, regulation, assent, order, or permit condition violated; a concise statement of the facts alleged to constitute the violation; a statement of the amount of the administrative penalty assessed; and a statement of the party's right to an administrative hearing.
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> "(2) The party shall have twenty-one (21) days from receipt of the notice within which to deliver to the council a written request for a hearing. This request shall specify in detail the statements contested by the party. The executive director shall designate a person to act as hearing officer. If no hearing is requested, then after the expiration of the twenty-one (21) day period, the council shall issue a final order assessing the penalty specified in the notice. The penalty is due when the final order is issued. If the party shall request a hearing, any additional daily penalty shall not commence to accrue until the council issues a final order.
>
> "(3) If a violation is found to have occurred, the council may issue a final order assessing not more than the amount of the penalty

specified in the notice. The penalty is due when the final order is issued.

"(4) The party may within thirty (30) days appeal the final order, of fine assessed by the council to the superior court which shall hear the assessment of the fine de novo." Sec. 46-23-7.1.

Analysis

From the record, it is difficult to distinguish the first set of four violations (issued on May 26, 2016) from the second set (issued on June 9 and 14, 2016). The documents refer to the same "Violation Site," and reference the same four "Violation File Numbers." While not very specific, they simply state that after the new site visit, work was discovered to be undertaken in violation of the Cease and Desist Orders in each of the four violation files. Without findings of fact from the administrative level or even a transcript, the Court is left with a murky record and can only conclude that the violations are the same: for the same violations previously issued but not yet coming into compliance.

Appellants contend that they may only be assessed $500 for each day of violation of a Cease and Desist Order—this may not be multiplied by the four orders. They further contend that each fine was for the same conduct and violated the same June 2016 Assent; hence, the agency's fines are limited by statute. Finally, Appellants suggest that the four separate notices should have clarified that four separate fines could be assessed; hence, Appellants' due process rights were violated.

In construing a statute, this Court first turns to the plain language of the statute itself. As our high court has declared:

> '"It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings."' *Waterman v. Caprio*, 983 A.2d 841, 844 (R.I. 2009) (quoting *Iselin v. Ret. Bd. of the Emps.' Ret. System of R.I.*, 943

> A.2d 1045, 1049 (R.I. 2008)). As such, '"[t]he Legislature is presumed to have intended each word or provision of a statute to express a significant meaning, and the [C]ourt will give effect to every word, clause, or sentence, whenever possible."' *State v. Clark*, 974 A.2d 558, 571 (R.I. 2009) (quoting *State v. Bryant*, 670 A.2d 776, 779 (R.I. 1996)). However, '"[t]his [C]ourt will not construe a statute to reach an absurd result."' *Long v. Dell, Inc.*, 984 A.2d 1074, 1081 (R.I. 2009) (quoting *Shepard v. Harleysville Worcester Insurance Co., Inc.*, 944 A.2d 167, 170 (R.I. 2008)). Further, "[a] statute * * * may not be construed in a way that would * * * defeat the underlying purpose of the enactment." *Brennan v. Kirby*, 529 A.2d 633, 637 (R.I. 1987) (citing *City of Warwick v. Aptt*, 497 A.2d 721, 724 (R.I. 1985)). "[O]ur ultimate goal is to give effect to the purpose of the act as intended by the Legislature." *Webster v. Perrotta*, 774 A.2d 68, 75 (R.I. 2001) (citing *Falstaff Brewing Corp. Re: Narragansett Brewery Fire*, 637 A.2d 1047, 1050 (R.I. 1994); *Swain v. Estate of Tyre ex rel. Reilly*, 57 A.3d 283, 288-89 (R.I. 2012))).

Section 46-23-7.1 is clear on its face, and unambiguous. Subsection 46-23-7.1(1) is quite clear. This subsection clearly delineates the maximum amounts of penalties which CRMC may impose, setting forth all of the monetary caps in one sentence. There are no parts inconsistent with another—there are no portions which are unclear. The maximum amount of any one civil penalty is $2500 for each violation. The maximum amount of additional penalties for continuing violations is $500 per day. In no event may the total penalties [2] exceed $10,000.

At the outset, and perhaps because of the significance of the violation, CRMC immediately imposed the maximum: four violations of $2500 each for a total of $10,000. This deprived itself of penalizing the Appellants for any additional amount for an ongoing violation through CRMC's internal procedures. CRMC may have been wise to proceed to Court to ensure

[2] The statute clearly states, "but in no event shall the penalties in an aggregate equal or exceed ten thousand dollars ($10,000)." Sec. 46-23-7.1(1). This proviso ("but in no event") has priority over the remaining provisions of the sentence. The term "aggregate" is just as clear. Webster's Ninth New Collegiate Dictionary, Merriam-Webster, Inc. (1983) defines aggregate as "the whole sum or amount." Clearly, this is the cap which the General Assembly established for the administrative penalties which could be imposed by the administrative process.

further compliance, but it elected to use only its internal administrative procedure. It was prevented by imposing additional monetary penalties by the plain and clear language of the statute. The aggregate penalties already equaled $10,000.

Appellees assert that limiting CRMC's ability to impose additional penalties for ongoing violations would lead to an absurd result by preventing CRMC's ability to enforce its regulations. (Appellees' Mem. 8.) The result is not absurd; it is a limitation of power of an administrative agency acting without court intervention. CRMC could still seek to enforce, and pursue a stop work order. *See Interstate Navigation Co. v. Div. of Pub. Utils. and Carriers of R.I.*, 824 A.2d 1282, 1287 (R.I. 2003), wherein the high court refused to allow slight variations of the same question to justify exceeding the maximum statutory penalty. In the immediate case, the four notices of June 9 and 14, 2016 are simply to ensure compliance with prior orders, essentially seeking the same relief as ordered before. This is in excess of the statutory authority of CRMC.

Conclusion

For the reasons set forth herein, this administrative appeal is sustained. The Final Orders of Administrative Fines of CRMC dated January 31, 2017 imposing additional fines are overturned and vacated.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Bonnet View, LLC, et al. v. State of Rhode Island Coastal Resources Management Council
CASE NO:	WC-2017-0071
COURT:	Washington County Superior Court
DATE DECISION FILED:	August 31, 2018
JUSTICE/MAGISTRATE:	Lanphear, J.
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