STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. SUPERIOR COURT

[Filed: May 16, 2019]

CARLO MORETTI	:	
	:	
v.	:	**C.A. No. PC-2012-2918**
	:	
MOTOR VEHICLE DEALERS LICENSE AND HEARING BOARD AND TOROS JOHARJIAN d/b/a J & T AUTO SALES	:	

DECISION

McGUIRL, J. Before the Court is an appeal of the May 17, 2012 decision (decision) by the Motor Vehicle Dealers' License and Hearing Board (Board), dismissing Carlo Moretti's (Appellant) complaint against J & T Auto Sales (Dealership). Appellant seeks reimbursement for a vehicle purchased from Dealership, which he contends violated sections of the Rhode Island General Laws or the Rules and Regulations Regarding Dealers, Manufacturers and Rental Licenses (Rules and Regulations). Jurisdiction is pursuant to G.L. 1956 § 31-5-2.1(d).[1]

I

Facts and Travel

On December 2, 2010, Appellant purchased a used, 2002 GMC Sierra from Dealership at a purchase price of $10,000. The eight-year-old vehicle was sold with 27,060 miles, and it

[1] "The board shall constitute an agency and follow the Administrative Procedure Act, Chapter 35 of Title 42, and its decisions are appealable to the superior court." Sec. 31-5-2.1(d).

contained a state inspection sticker issued by New England Tire, indicating that it had passed inspection on November 30, 2010.

Appellant maintained that in July of 2011, an illuminated "check engine" light alerted him to make inquiry from his mechanic at Peter-John's Automotive in West Warwick, Rhode Island. Appellant's mechanic ascertained that the vehicle emission system caused the illumination of the "check engine" light and asserted that the vehicle's overall driving performance would not be affected.

In September of 2011, Appellant lost pressure in the vehicle's brakes and promptly returned to Peter-John's Automotive for further inspection. During this visit, Appellant's mechanic informed him that the vehicle contained extensive rot to many areas of the frame, including the rails, crossmembers, and supportive brackets located underneath the vehicle. Appellant claimed that the emission canister had also detached from the vehicle's frame, causing the "check engine" light to illuminate. Additionally, directly following the repairs to the vehicle's brakes, the spare tire detached from the frame due to the extensive rot. With respect to the rot, Appellant alleged that the Dealership had undercoated the frame of the vehicle to conceal the rot, which has since been exposed.

On November 16, 2011, Appellant's vehicle was inspected at a state garage. Upon completing its assessment, the Chief of the state garage (Chief) concluded that the vehicle was in "pretty severe condition at the time" of its inspection. (Tr. at 19.) The Chief further testified that there was no way to determine the time period over which the rot progressively had become worse. He added, however, that "[i]t looked like it may have been put on approximately a year prior to [Dealership's inspection] . . . ." (Hr'g Tr. at 21, July 23, 2012 (Tr.)) Moreover, the Chief asserted that the rust may not have been noticeable at the time of its initial inspection "because it was

masked by the undercoating." *Id.* If the vehicle was "heavily undercoated," the inspector explained, "it could have expedited the progression of the rot . . . if you undercoat over rot or rust, you're going to speed up the deterioration, because you're . . . sealing any kind of moisture . . . it's like cancer." *Id.* The Chief concluded, testifying, "[i]t's unlikely that [the vehicle] went from being a hundred percent structurally sound to this condition, very unlikely in a year . . . ." (Tr. at 22.) He also explained, however, that no factual basis existed underlying his reasoning apart from his professional opinion. As such, the Chief explained that he did not pursue any further action against the Dealership due to the lack of substantiated evidence.

The Dealership's owner, Toros Joharjian (Mr. Joharjian), also testified before the Board. In response to whether or not it was common practice to undercoat its vehicles, Mr. Joharjian explained that while he did not undercoat, the Dealership would seal a spot of rust with spray. *See* Tr. at 22. The owner further explained that in his experience, "[u]ndercoating does not cover rust. . . ." (Tr. at 23.)

Contending that the Dealership thus did not perform a valid safety inspection of the vehicle prior to his purchase, Appellant sought a full refund, maintaining that the vehicle was sold to him under false pretenses. Specifically, Appellant testified that at the time he purchased the vehicle, "there was no possible way . . . to even identify that there was any damage because there was so much undercoating under the vehicle . . . ." (Tr. at 16.) Appellant further explained that "over time as you drove the vehicle, of course, the undercoating doesn't bond to rust and that's how [the mechanic] was able to identify [the damage] later." *Id.* at 17.

After examining the extensive testimony regarding the vehicle and after reviewing the record, the Board found in the Dealership's favor, determining that it had not performed a faulty safety inspection prior to selling the vehicle to Appellant. Although the Board determined no error

on the part of Dealership in its inspection, upon reviewing the bill of sale, the Board discovered Rules and Regulations violations. Specifically, the Board found that the bills of sale were not numbered and did not include the required state inspection language pursuant to Section VII(E) of the Rules and Regulations.[2] As such, the Board ordered Dealership to pay fines totaling $200 to the Dealers' License and Regulations Office of the Division of Motor Vehicles.

On June 7, 2012, Appellant timely filed an appeal to this Court pursuant to § 31-5-2.1(d) and G.L. 1956 § 42-35-15, contesting the Board's decision. In his appeal, Moretti first argues that "the Board committed an error of law in repeatedly considering and referring to inadmissible evidence." Appellant also contends that the Board had no legally competent evidence upon which it could base its decision. *See* § 42-35-15(g); *id.*[3]

II

Standard of Review

The review of the Board's decision by this Court is controlled by § 42-35-15(g), which provides for review of a contested agency decision:

---

[2] Section 47-1-38, Section VII(E) of the Rules and Regulations Regarding Dealers, Manufacturers and Rental Licenses, provides in pertinent part:

> "**(E) BILLS OF SALE**: Every dealer must give a bill of sale with each vehicle purchased, and must maintain a copy of the bill of sale as part of the records required above in Section VII, subsection (D). The bill of sale must be numbered and contain the dealer license number, odometer reading, and must state what warranties are being given. If no warranty is given, this must also be stated on the bill of sale. The bill of sale for all used vehicles must also contain a notice to the buyer which clearly and conspicuously states as follows: 'Attention purchaser: Rhode Island law requires that all motor vehicles sold at retail must be in such condition as to pass a State safety inspection at the time of sale so as to protect consumers.'" R.I. Admin. Code 47-1-38:VII.

[3] Appellant does not contest the Board's decision to impose fines on the Dealership in violation of Section VII(E) of the Rules and Regulations.

> "(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> "(1) In violation of constitutional or statutory provisions;
> "(2) In excess of the statutory authority of the agency;
> "(3) Made upon unlawful procedure;
> "(4) Affected by other error of law;
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Sec. 42-35-15.

A review of an agency's findings is "both limited and highly deferential." *Culhane v. Denisewich,* 689 A.2d 1062, 1064 (R.I. 1997). This Court is mindful of the "well-recognized doctrine of administrative law that deference will be accorded to an administrative agency when it interprets a statute whose administration and enforcement have been entrusted to the agency . . . even when the agency's interpretation is not the only permissible interpretation that could be applied." *Pawtucket Power Assocs. Ltd. P'ship v. City of Pawtucket,* 622 A.2d 452, 456-57 (R.I. 1993); *see also Unistrut Corp. v. State Dep't of Labor and Training,* 922 A.2d 93, 99 (R.I. 2007); *Parkway Towers Assocs. v. Godfrey*, 688 A.2d 1289, 1293 (R.I. 1997) ("administrative interpretation is entitled to great deference . . . when . . . it is consistent with the overall purposes of the legislation").

The Court examines the record only to determine "whether any legally competent evidence exists within the record as a whole, or [ ] reasonable inferences may be drawn therefrom, to support the decision . . . or whether [the Board] committed error of law in reaching its decision." *Elias-Clavet v. Bd. of Review*, 15 A.3d 1008, 1013 (R.I. 2011). "In essence, if 'competent evidence exists in the record, the Superior Court is required to uphold the agency's conclusions.'" *Auto*

Body Ass'n of Rhode Island v. State Dep't of Bus. Reg., 996 A.2d 91, 95 (R.I. 2010). Accordingly, this Court defers to the administrative agency's factual determinations provided they are supported by legally competent evidence. *Arnold v. Rhode Island Dep't of Labor and Training Bd. of Review*, 822 A.2d 164, 167 (R.I. 2003). Legally competent evidence is "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance." *Foster-Glocester Reg'l Sch. Comm. v. Bd. of Review*, 854 A.2d 1008, 1012 (R.I. 2004). Additionally, when examining the certified record, this Court may not "substitute [its] judgment for that of the agency as to the weight of the evidence on questions of fact." *Interstate Navigation Co. v. Div. of Pub. Utils. & Carriers of Rhode Island,* 824 A.2d 1282, 1286 (R.I. 2003) (citations omitted).

III

Analysis

A

Admissibility of Testimony

As a threshold matter, Appellant maintains that the Board committed an error of law when it repeatedly considered and referred to inadmissible evidence during the administrative proceeding. Specifically, Appellant argues that the Board did not admit into evidence information about the vehicle's condition with respect to its prior owner, Ms. Elizabeth Czubinski. *See* Tr. at 10. In addition, Appellant claims that the Board refused to admit into evidence a letter containing information from Mr. Stephen McKennon, an individual who was formerly interested in purchasing the vehicle prior to Appellant.[4]

---

[4] With respect to why Mr. McKennon did not purchase the vehicle, the Dealership maintains that he "couldn't come to terms with [the Dealership] on the price of the [vehicle.]" (Tr. at 11.)

Upon Appellant's objections to relevance of the proffered evidence, Appellant contends that the Board refused to consider the documents relating to prior dealings with those individuals in reaching its decision. Despite Appellant's objections, on which the Board did not rule, Appellant asserts that the Dealership's owner continued to reference the excluded documents during his testimony. (Tr. at 18.) In response to a Board member's inquiry about the vehicle's prior owner, for example, Mr. Joharjian replied by referencing evidence excluded, responding, "[i]t says that right there, not even a thousand miles and right after the thousand miles . . . I sold it to [Appellant]." *Id.* at 18-19. Moreover, Appellant argues, however, that the the Board permitted Mr. Joharjian to refer to these documents during his testimony despite their exclusion. (Tr. at 18-19.) As such, Appellant maintains that the repeated reference to the inadmissible or legally incompetent evidence and the Board's failure to rule on objections or strike testimony from the record constitute an error at law requiring this Court to vacate the Board's decision.

Moreover, Appellant contends that the rules of evidence for an administrative hearing precluded the Board from allowing references made to already excluded evidence. *See* § 42-35-10. In his argument, Appellant heavily relies on § 42-35-10, which states in pertinent part that

> "(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the superior courts of this state shall be followed; but, when necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under those rules may be submitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form . . ."[5] Sec. 42-35-10(1).

[5] *See also* R.I. Admin. Code 2-1-4:14.

Thus, Appellant argues that based on the Board's reliance on and consideration of inadmissible evidence, it rendered a decision applying legally incompetent evidence.

The Board disagrees. It maintains that while there was an attempt to submit evidence that the vehicle had undergone a complete refurbishment prior to Appellant's purchase, that argument was not considered in the Board's final determination. Similarly, the Board claims, evidence purporting that an additional interested buyer existed at the time of the sale was likewise not considered by the Board. *See id.*

In Rhode Island, hearsay testimony is admissible in administrative hearings. *DePasquale v. Harrington*, 599 A.2d 314, 316 (R.I. 1991). "The admission of hearsay evidence in an administrative forum is reflective of the traditional division of function between judge and jury." *Id.* at 316. Consequently, "[m]any of the rules surrounding the exclusion of hearsay in jury trials are meant to prevent juries, uninitiated in the evaluation of evidence, from hearing unreliable or confusing testimony and rendering a verdict based on such evidence." *Id.* (quoting Edward W. Cleary et al., *McCormick on Evidence*, §§ 351-352 at 1006-12 (3d ed. 1984)). Furthermore, "[s]uch protection is far less necessary when evidence is presented to a judge sitting without a jury or, as in this case, a hearing officer with substantial expertise in the matters falling within his or her agency's jurisdiction." *DePasquale*, 599 A.2d at 316.

Furthermore, "[a]dministrative hearings are not held to the same evidentiary standards as criminal or even judicial civil proceedings." *See In re Cross*, 617 A.2d 97, 102 (R.I. 1992) (citing *Craig v. Pare*, 497 A.2d 316, 320 (R.I. 1985)). For example, § 42-35-10 specifically provides for circumstances in which a hearing officer in an administrative proceeding can admit evidence that includes hearsay. It provides in relevant part:

> "[i]rrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the superior courts of this

> state shall be followed; **but, when necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under those rules may be submitted** (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs . . . ." (Emphasis added.) Sec. 42-35-10(1).

Section 42-35-10(1) therefore permits hearsay evidence in an administrative setting "if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." *DePasquale*, 599 A.2d at 316. The Rhode Island Supreme Court has recognized that "a hearing officer with 'substantial expertise in matters falling within his or her agency's jurisdiction' should be able to judge whether the evidence offered is trustworthy, credible, and probative, regardless of whether it is hearsay." *Foster-Glocester Reg'l Sch. Comm.*, 854 A.2d at 1018 (quoting *DePasquale*, 599 A.2d at 316). Thus, a hearing officer possesses the "ability to exercise prudence in considering evidence and the reliability that must condition its admissibility." *DePasquale,* 599 A.2d at 317.

In the instant matter, this Court finds that the less stringent rules regarding hearsay in an administrative proceeding do not bar the admission of the testimony of the Dealership's owner, Mr. Joharjian. The hearing officer, acting with reasonable prudence and within his expertise, considered Mr. Joharjian's testimony necessary to ascertain facts about the complaint, such as the consistency and the circumstances surrounding the matter. For example, Appellant objected to Mr. Joharjian's testimony about the vehicle's prior and potential owners before selling it to Appellant. *See* Tr. at 15, 19. The Dealership referenced the excluded evidence, conceding that "it's not before the Board . . . ." *See* Tr. at 19. "This Court does not substitute its judgment for that of the agency concerning the credibility of witnesses or the weight of the evidence concerning questions of fact." *Tierney v. Dep't of Human Servs.*, 793 A.2d 210, 213 (R.I. 2002) (citing *Technic, Inc. v. Rhode Island Dep't of Emp't and Training*, 669 A.2d 1156, 1158 (R.I. 1996)). As

our Supreme Court has stated, we are "not privileged to assess the credibility of witnesses and may not substitute [our] judgment for that of the [trial examiner] concerning the weight of the evidence on questions of fact." *Liberty Mut. Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991).

Moreover, nothing in the Board's decision demonstrates that Appellant was substantially prejudiced by the Board's referencing excluded evidence or by allowing testimony referring to said evidence. Rather, the Board's decision was primarily based upon the lack of evidentiary support needed to prove that the Dealership mishandled the transaction with Appellant by not performing a proper safety inspection prior to selling the vehicle. In its decision, the Board was "not convinced that [the Dealership] did anything wrong in handling this transaction as the vehicle was properly inspected at the time of the sale." *See* Decision at 3.

In reaching its final determination, the Board emphasized testimony from the Chief of the state garage who confirmed that he was unable to state with any certainty whether the vehicle was in a similar condition at the time of the initial inspection. Although the Board considered the Chief's testimony acknowledging extensive rot on the underbody of the vehicle existed, the Board did not find there existed sufficient evidence to verify whether the rot was present prior to selling the vehicle to Appellant. *See Johnston Ambulatory Surgical Assocs., Ltd. v. Nolan*, 755 A.2d 799, 804-05 (R.I. 2000) (citing *Rhode Island Pub. Telecomms. Auth. v. Rhode Island State Labor Relations Bd.*, 650 A.2d 479, 485 (R.I. 1994) (noting that "'the Superior Court may not, on questions of fact, substitute its judgment for that of the agency whose action is under review,' even in a case in which the court 'might be inclined to view the evidence differently and draw inferences different from those of the agency[ ]'")); *see also Barrington Sch. Comm. v. Rhode Island State Labor Relations Bd.,* 608 A.2d 1126, 1138 (R.I. 1992) (similarly stating that the Superior Court is limited to "an examination of the certified record to determine if there is any legally competent

evidence therein to support the agency's decision . . . . If competent evidence exists in the record considered as a whole, [this Court] is required to uphold the agency's conclusions"). Specifically, the Board stated that "[t]he Chief of the state garage confirmed that he was unable to say with any certainty that the vehicle was in a similar condition at the time of the state inspection." *See* Decision at 3; Tr. at 22. Thus, the Board did not abuse its discretion by admitting the testimony, and the references to facts surrounding the incident did not result in a decision affected by error of law.

B

The Appellant next argues that the Board made an arbitrary or clearly erroneous decision based on allegedly incorrect findings of fact. According to Appellant, the Board had no legally competent evidence upon which to base its decision. The Board found that the Dealership did not mishandle the transaction, determining that the vehicle was properly inspected at the time it was sold to Appellant.

Appellant states that the testimony "overwhelmingly" supports his argument that the Dealership "took affirmative steps to hide the condition of the rotted undercarriage." The record reflects otherwise. Specifically, Appellant views Mr. Joharjian's testimony about sealing a spot of rust with spray as a direct admission, rather than an industry standard or the Dealership's common practice. *See* Tr. at 22. In response to whether or not it was common practice to undercoat its vehicles, Mr. Joharjian stated, "I don't undercoat . . . but if I see a spot of rust, we paint them sometimes with a spray can and just seal over it." *See* Tr. at 22. It is well-settled that Courts may not substitute their judgment for that of an agency with respect to the credibility of a witness. *Tierney*, 793 A.2d at 213. Here, the Board did not find that the Dealership performed a faulty safety inspection or sold Appellant the vehicle under false pretenses.

In addition, Appellant seeks support from testimony by the Chief as to the condition of the vehicle at the time of its inspection. Appellant refers to the Chief's statement that the vehicle was in "pretty severe condition." *See* Tr. at 19. Appellant further acknowledges the Chief's failure to make an exact determination. Alternatively, the Board emphasizes that it based its final determination largely upon the lack of evidence to support any conclusions of the Dealership's wrongdoing.

The record reflects that the Board considered the evidence before it in reaching its ultimate determination. While the Chief does testify that "[i]t's unlikely that [the vehicle] went from being a hundred percent structurally sound to this condition," he also explained, however, that he could not identify any factual basis underlying his reasoning. (Tr. at 22.) The Chief testified that the vehicle was in "pretty severe condition" at that time of the state garage inspection. Moreover, the Chief noted that he could not make an exact determination as to the rot's presence or progression. Our Supreme Court has consistently relied on a hearing officer's "ability to exercise prudence in considering evidence and the reliability that must condition its admissibility." *See DePasquale*, 599 A.2d at 317. The testimony the Board considered simply did not rise to a level that "overwhelmingly" supports Appellant's claims.

In the instant matter, upon its review of the entire record, the Board concluded that there simply did not exist substantial evidence indicating that the Dealership committed any action that could be construed as rising to the level of "unconscionable practice or illegal transaction" prescribed by the Rules and Regulations.[6] *See* R.I. Admin. Code 47-1-38:II(A)(4); *see also* § 31-

[6] "General Laws 1956 (2002 Reenactment) § 31-5.1-3(c) bestowed upon the Department of Administration the power to make rules and regulations interpreting the prohibition on unfair methods of competition and unfair or deceptive acts or practices. That power formerly resided in the Rhode Island Department of Transportation." *See Park v. Rizzo Ford, Inc.*, 893 A.2d 216, 222 n.4 (R.I. 2006). Section 31-5.1-4(a) provides: "It shall be deemed a violation of this chapter for

5.1-1(7) (defining "good faith" as "honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade[ ]"); G.L. 1956 § 6-13.1-1(6)(ii) (defining "unfair trade practices" as those "[c]ausing likelihood of confusion or of misunderstanding[ ]"). "Generally, courts and legislatures define 'unconscionable practices' as business conduct which falls short of outright fraud, but which nevertheless shocks the conscience of ordinary business men and women. . . ." *Simon Chevrolet-Buick, Ltd. v. Rhode Island Dep't of Admin.*, Nos. PC 2005-5913, PC 2005-6375, 2013 WL 140347 (Trial Order) (R.I. Super. Jan 7, 2013) (internal citations omitted). Here, the Board found there was not sufficient evidence to conclude that the Dealership purposefully concealed the rot in the vehicle, or that the Dealership engaged in any wrongful transaction when it sold the vehicle to Appellant. This Court will "not assess credibility of the witnesses or substitute [its] own judgment for that of the trier of fact concerning the weight of the evidence on questions of fact." *See* § 42-35-15(g); *Strafach v. Durfee*, 635 A.2d 277, 280 (R.I. 1993) (citing *Easton's Point Ass'n v. Coastal Res. Mgmt. Council*, 522 A.2d 199, 202 (R.I. 1987)). This Court also will not substitute its judgment for that of an agency as to the weight of the evidence on questions of fact, even if this Court '"might be inclined to view the evidence differently and draw inferences different from those of the agency."' *Johnston Ambulatory Surgical Assocs., Ltd.*, 755 A.2d at 805 (quoting *Rhode Island Pub. Telecomms. Auth.*, 650 A.2d at 485). Accordingly, this Court does not find the Board's decision was clearly erroneous.

---

any manufacturer or motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and that causes damage to any of the parties involved or to the public"). *See also* §§ 31-5.1-4(a) and 31-5-11(10) (referring to the regulations imposed on the business practices of motor vehicle dealers, including the obligation to act in good faith and to avoid any unconscionable business practices).

IV

Conclusion

Upon review of the entire record, this Court finds that the Board's decision was supported by the reliable, probative, and substantial evidence and that its findings were not affected by error of law or clearly erroneous. The Board's decision was not arbitrary or capricious or characterized by an abuse of discretion. Thus, the substantial rights of the Appellant have not been prejudiced. Counsel shall prepare an appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Carlo Moretti v. Motor Vehicle Dealers License and Hearing Board, et al.
CASE NO:	PC-2012-2918
COURT:	Providence County Superior Court
DATE DECISION FILED:	May 16, 2019
JUSTICE/MAGISTRATE:	McGuirl, J.

ATTORNEYS:

For Plaintiff:	Frank J. Manni, Esq.
For Defendant:	Marcy E. Coleman, Esq.; Michael Goldberg, Esq.