STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: January 16, 2020)

AMBER PRESTON	:	
	:	
v.	:	**C.A. No. WC-2017-0470**
	:	
TOWN OF HOPKINTON; ZONING BOARD OF REVIEW OF THE TOWN OF HOPKINTON; AND BRIAN ROSSO, IN HIS CAPACITY AS FINANCE DIRECTOR OF THE TOWN OF HOPKINTON	:	

DECISION

TAFT-CARTER, J. Before this Court for decision is a Motion for Summary Judgment filed by the Town of Hopkinton (the Town), the Zoning Board of Review of the Town of Hopkinton (the Zoning Board), and Brian Rosso, in his capacity as Finance Director of the Town of Hopkinton (collectively, Defendants); and a Cross-Motion for Summary Judgment filed by Amber Preston (Plaintiff). Both motions require this Court to interpret the Equal Access to Justice for Small Businesses and Individuals Act (EAJA or Act), G.L. 1956 §§ 42-92-1 *et seq.* Jurisdiction is pursuant to Super. R. Civ. P. 56.

I

Facts and Travel

This dispute over attorney's fees stems from a neighbors' quarrel about the keeping of alpacas on residential property. The dispute began when Plaintiff, a resident of the Town, complained to the Town's Zoning and Building Official about her neighbors, Todd and Tina

Sposato (collectively, the Sposatos).[1] Pl.'s Mem. Supp. Mot. Summ. J. at 1. Specifically, Plaintiff was troubled that the Sposatos housed alpacas on their property. Plaintiff and the Sposatos resided in an R-1 zoning district. Defs.' Mem. Supp. Mot. Summ. J. at 1. Plaintiff was the northerly neighbor of the Sposatos and a direct abutter. *Id.* at Ex. B at 2.

On May 23, 2011, Brad Ward, the Town's Zoning and Building Official, issued a Notice of Violation to the Sposatos. Compl. ¶ 5. The Notice of Violation advised the Sposatos that the housing of alpacas in a residential zone violated the Town's Zoning Ordinances. Defs.' Mem. Supp. Mot. Summ. J., Ex. A at 1; Compl. ¶ 5. On June 17, 2011, the Sposatos filed a Notice of Intent to Appeal the Notice of Violation to the Town's Zoning Board. Compl. ¶ 6.

The Zoning Board conducted four public hearings regarding the Sposatos' appeal. Defs.' Mem. Supp. Mot. Summ. J., Ex. B at 1. During those proceedings, the Zoning Board heard testimony from lay witnesses and expert witnesses and reviewed the relevant records and documents pertaining to the Sposatos' property located on AP 10 Lot 30-H. *Id.* The Sposatos presented testimony from Todd Sposato; Fred Launer, an instructor of Animal Sciences at the University of Rhode Island; Jay Hannah, the owner of a local alpaca farm in Ashaway, Rhode Island; Dr. Scott Marshall, Chief Animal Health Official to the State of Rhode Island; and Elizabeth Peterman, Senior Environmental Planner for the Department of Environmental Management, Division of Agriculture. *Id.* at 1-3. Plaintiff, an abutter, testified before the Zoning Board in opposition to the Sposatos' appeal to the Zoning Board. *Id.* at 2

On March 7, 2012, the Zoning Board issued a nine-page decision regarding the Sposatos' appeal. Defs.' Mem. Supp. Mot. Summ. J., Ex. B. The Zoning Board summarized the issue before

[1] Plaintiff also complained to the Department of Environmental Management and filed police reports regarding the Sposatos' alpacas. *Preston v. The Zoning Board of Review of the Town of Hopkinton, Todd Sposato, and Tina Sposato*, No. WC-2012-0151, at *2 (Lanphear, J.).

it as whether alpacas were domestic animals or farm animals according to the Town's Zoning Ordinances. Defs.' Mem. Supp. Mot. Summ. J., Ex. B at 1. By a three-to-two vote, the Zoning Board reversed the Notice of Violation, thereby allowing the Sposatos to keep the four alpacas on their property. *Id.* at 9. The Zoning Board, however, imposed the following conditions in its decision: "(1) The dimensional setbacks for an R-1 zone shall apply to the fencing and enclosures; (2) The alpacas are to be kept one hundred (100) feet from wells; (3) The number of alpaca shall not exceed four (4); (4) The right to keep alpaca on this property does not run with the land; that is, if the Sposato's [sic] sell this property the next owners are not permitted to keep alpaca." *Id.* Members Harrington, Bjorkland, and Bynum voted in favor of the special conditions, and Members Scalise and Ure abstained from voting. *Id.*

On March 7, 2012, Plaintiff filed an appeal in Washington County Superior Court in accordance with G.L. 1956 § 45-24-69. Compl. ¶ 8. The trial court justice reviewed the Zoning Board's decision in accordance with the deferential standard of review provided in § 45-24-69(d) and, after careful consideration, affirmed the decision of the Zoning Board.

On April 17, 2015, Plaintiff filed a petition for issuance of a writ of certiorari with the Rhode Island Supreme Court. Compl. ¶ 10. The Rhode Island Supreme Court granted the petition, quashed the judgment of the Superior Court, and remanded the case with direction to remand to the Zoning Board. *Preston v. Zoning Board of Review of Town of Hopkinton*, 154 A.3d 465, 465 (R.I. 2017).

On July 20, 2017, the matter was before the Zoning Board. Compl. ¶ 12. The Zoning Board voted to vacate its March 7, 2012 decision reversing the Notice of Violation against the Sposatos. *Id.* On July 12, 2017 and August 4, 2017, Plaintiff requested that the Zoning Board

reimburse her for reasonable litigation expenses pursuant to § 42-92-1. Compl. ¶¶ 15-17. The Zoning Board did not respond to Plaintiff's requests. *Id.* ¶ 18.

Plaintiff filed the instant action on September 27, 2017 seeking an award of attorney's fees from the Zoning Board with respect to the reasonable litigation expenses she incurred by contesting its decision. *Id.* ¶ 22. Defendants filed a Motion for Summary Judgment on September 20, 2018. The Court deferred decision on Defendants' Motion until such time as the parties engaged in limited discovery on the issue of Plaintiff's net worth. *See* Consent Order (Jan. 8, 2019). Plaintiff filed a Cross-Motion for Summary Judgment on April 9, 2019.

II

Standard of Review

"Summary judgment is appropriate when no genuine issue of material fact is evident from 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' and the motion justice finds that the moving party is entitled to prevail as a matter of law." *Swain v. Estate of Tyre ex rel. Reilly*, 57 A.3d 283, 288 (R.I. 2012) (quoting *Beacon Mutual Insurance Co. v. Spino Brothers, Inc.*, 11 A.3d 645, 648 (R.I. 2011) (internal quotation omitted)). The moving party "bears the initial burden of establishing the absence of a genuine issue of fact." *McGovern v. Bank of America, N.A.*, 91 A.3d 853, 858 (R.I. 2014) (citation omitted). The Court "views the evidence in the light most favorable to the nonmoving party[,]" *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 532 (R.I. 2013), and "does not pass upon the weight or the credibility of the evidence[,]" *Palmisciano v. Burrillville Racing Association*, 603 A.2d 317, 320 (R.I. 1992). Thereafter, "'the nonmoving party bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions.'" *Mruk*, 82 A.3d at 532 (quoting *Daniels v. Fluette*, 64 A.3d 302, 304 (R.I. 2013)).

III

Analysis

A

Equal Access to Justice for Small Businesses and Individuals Act

The parties dispute whether Plaintiff can obtain relief under the EAJA. According to Defendants, the party seeking an award of attorney's fees must be the subject of the adjudicatory proceedings before the agency. Defs.' Mem. Supp. Mot. Summ. J. at 4. Defendants argue that Plaintiff was not a party to the proceedings before the Zoning Board; therefore, Plaintiff cannot obtain the benefits afforded under § 42-92-3. *Id.* Moreover, Defendants argue that Plaintiff's status as an aggrieved party under § 45-24-69 is irrelevant to her request for attorney's fees under the EAJA. *Id.* Lastly, Defendants posit that Plaintiff is not entitled to attorney's fees for the appeals that she filed in Washington County Superior Court and the Rhode Island Supreme Court because such proceedings are not adjudicatory proceedings as defined by the EAJA. *Id.*

Plaintiff, on the other hand, interprets the EAJA to only require that an adjudicatory proceeding take place. Pl.'s Mem. Supp. Mot. Summ. J. at 5. Thus, Plaintiff disputes Defendants' position that Plaintiff had to be the subject of the adjudicatory proceeding in order to recoup attorney's fees. Plaintiff argues that her status as an "aggrieved party" under § 45-24-69 demonstrates that she was an "interested and affected party" with respect to the Zoning Board's decision. *Id.* at 6. Furthermore, it is her position that she is entitled to attorney's fees for disputing the Zoning Board's decision because she meets the federal courts' definition of "prevailing party." *Id.* at 8-9. Plaintiff relies on the Superior Court's decision in *MacDougall v. Town of Charlestown Zoning Board of Review*, No. WC-2004-0564, WC-2007-0474 (Savage, J.) to support her position. Pl.'s Obj. Mot. Summ. J. at 6-7.

1

Adjudicatory Proceedings

The overarching issue is whether Plaintiff is entitled to attorney's fees under the EAJA despite the fact that she was not a party to the proceedings before the Zoning Board. Section 42-92-3 of the EAJA entitled "[a]ward of reasonable litigation expenses" outlines when an individual or small business can recoup attorney's fees under the Act. According to § 42-92-3,

> "(a) Whenever the agency conducts an adjudicatory proceeding subject to this chapter, the adjudicative officer shall award to a prevailing party reasonable litigation expenses incurred by the party in connection with that proceeding. The adjudicative officer will not award fees or expenses if he or she finds that the agency was substantially justified in actions leading to the proceedings and in the proceeding itself. The adjudicative officer may, at his or her discretion, deny fees or expenses if special circumstances make an award unjust. The award shall be made at the conclusion of any adjudicatory proceeding, including, but not limited to, conclusions by a decision, an informal disposition, or termination of the proceeding by the agency. The decision of the adjudicatory officer under this chapter shall be made a part of the record and shall include written findings and conclusions. No other agency official may review the award.
>
> "(b) If a court reviews the underlying decision of the adversary adjudication, an award for fees and other expenses shall be made by that court in accordance with the provisions of this chapter."

A plaintiff seeking an award under § 42-92-3 must therefore establish the following elements: (1) an adjudicatory proceeding; (2) conducted by an agency; (3) wherein the plaintiff was a prevailing party; (4) who incurred reasonable litigation expenses; (5) in connection with the adjudicatory proceeding and; (6) where the agency's initial position and position throughout the proceedings was not substantially justified.

Here, the parties do not dispute that an adjudicatory proceeding took place or that the Zoning Board is an "agency" under the EAJA. The disputed issues include whether Plaintiff is a

prevailing party who incurred reasonable litigation expenses in connection with the adjudicatory proceeding; and whether the Zoning Board's initial position and position throughout the proceedings was substantially justified.

(a)

Non-Parties

Defendants argue that the adjudicatory proceeding that took place—the hearings before the Zoning Board—was directed at Plaintiff's neighbors, not Plaintiff. Defs.' Mem. Supp. Mot. Summ. J. at 4. Defendants recognize that Plaintiff became involved in this matter by exercising her right to appeal the Zoning Board's decision under § 45-24-69 as a neighbor with standing to appeal. *Id.* Defendants argue, however, that Plaintiff's standing under § 45-24-69 does not overcome the fact that Plaintiff was never a party to the adjudicatory proceeding. In other words, the Town did not institute any action against Plaintiff; therefore, Plaintiff is not entitled to an award under the EAJA.

Conversely, Plaintiff suggests that § 42-92-3 does not require the party seeking attorney's fees to be the subject of the adjudicatory proceeding. Pl.'s Mem. Supp. Mot. Summ. J. at 5. According to Plaintiff, the EAJA merely requires that an adjudicatory proceeding take place. *Id.* Further, Plaintiff argues that the standing afforded her by § 45-24-69 demonstrates that she was a party interested in and affected by the Zoning Board's decision. *Id.* at 6. Plaintiff offers that the issue boils down to whether Plaintiff is a "party" as defined by § 42-92-2(5), not whether the Town initiated proceedings against Plaintiff. *Id.*

Issues of statutory interpretation are questions of law. *See Iselin v. Retirement Board of Employees' Retirement System of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008). When interpreting a statute, courts first determine whether the statute is ambiguous. *Bucci v. Lehman*

Brothers Bank, FSB, 68 A.3d 1069, 1078 (R.I. 2013). "[W]hen the language of a statute is clear and unambiguous, [the court] must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996) (alteration omitted); *see also Dart Industries, Inc. v. Clark*, 696 A.2d 306, 310 (R.I. 1997) (citation omitted). The court will not interpret the statute literally, however, "when to do so would produce a result at odds with its legislative intent . . . Rather, [the court] will give the enactment 'what appears to be the meaning that is most consistent with its policy or obvious purpose.'" *Kirby v. Planning Board of Review of Town of Middletown*, 634 A.2d 285, 290 (R.I. 1993) (quoting *Zannelli v. DiSandro*, 84 R.I. 76, 81, 121 A.2d 652, 655 (1956)).

On the other hand, "'when a statute is susceptible of more than one meaning, [the court] employ[s] [its] well-established maxims of statutory construction in an effort to glean the intent of the Legislature.'" *Town of Burrillville v. Pascoag Apartment Associates, LLC*, 950 A.2d 435, 445 (R.I. 2008) (quoting *Unistrut Corp. v. State Department of Labor and Training*, 922 A.2d 93, 98–99 (R.I. 2007)). The court begins with the "plain language of the statute to determine the legislative intent." *Matter of Falstaff Brewing Corp. re: Narragansett Brewery Fire*, 637 A.2d 1047, 1050 (R.I. 1994). When "interpreting a legislative enactment, [it is incumbent upon the court] to determine and effectuate the Legislature's intent and to attribute to the enactment the meaning most consistent with its policies or obvious purposes." *Brennan v. Kirby*, 529 A.2d 633, 637 (R.I. 1987). The court then determines how the legislative act serves its purpose and considers what practical results would follow if the court were to adopt an alternative interpretation. *Matter of Falstaff Brewing Corp.*, 637 A.2d at 1050.

The EAJA is unambiguous. The statute clearly provides that an award of reasonable litigation expenses shall be made by the agency to the party who prevailed in the adjudicatory proceeding. Section 42-92-3(a).

Applying this plain and ordinary meaning effectuates the legislative intent of the enactment. *Contra Kirby*, 634 A.2d at 290. The purpose of the Act is set forth in § 42-92-1. It states that

> "(a) It is declared that both the state and its municipalities and their respective various agencies possess a tremendous power in their ability to affect the individuals and businesses they regulate or otherwise affect directly. The legislature further finds that the abilities of agencies to determine benefits, impose fines, suspend or revoke licenses, or to compel or restrict activities imposes a great, and to a certain extent, unfair, burden upon individuals and small businesses in particular. The legislature further finds that this situation often tempts state agencies to proceed against individuals or small businesses which are least able to contest the agency's actions, and that often results in actions other than those which are in the best interest of the public.
>
> "(b) The legislature further finds that by contesting an unjust agency action and prevailing, the individual or small business often performs an important service to the public because it compels the agency to enforce the laws of this state and respective municipalities as they were written by the elected representatives of this state or the respective municipalities. Therefore, in order to encourage individuals and small businesses to contest unjust actions by the state and/or municipal agencies, the legislature hereby declares that the financial burden borne by these individuals and small businesses should be, in all fairness, subject to state and/or municipal reimbursement of reasonable litigation expenses when the individual or small business prevails in contesting an agency action, which was without substantial justification."

The Rhode Island Supreme Court has affirmed that the purpose of the EAJA is to "mitigate the burden placed upon individuals and small businesses by the arbitrary and capricious decisions of administrative agencies made during adjudicatory proceedings, as defined in the act." *Taft v. Pare*, 536 A.2d 888, 892 (R.I. 1988). The Court has also concluded that "[t]he EAJA is a remedial

statute which [the court is] bound to read expansively to effectuate its stated purpose of reimbursing reasonable litigation expenses when contesting 'unjust actions by the state.'" *See Rollingwood Acres, Inc. v. Rhode Island Department of Environmental Management*, 212 A.3d 1198, 1204 (R.I. 2019) (quoting § 42-92-1(b)). In reaching its conclusions, the Rhode Island Supreme Court has turned to the Federal Equal Access to Justice Act codified at 28 U.S.C. § 2412 when interpreting the EAJA. *See Rollingwood Acres, Inc.*, 212 A.3d at 1205 n.5. The Federal EAJA, like the state EAJA, was enacted to "eliminate financial disincentives for those who would defend against unjustified governmental action and thereby to deter unreasonable exercise of governmental authority." 1 West's *Fed. Admin. Prac.* § 952 (2019) (*citing Ibrahim v. U.S. Department of Homeland Security*, 912 F.3d 1147, 1166 (9th Cir. 2019)).

It is clear from the stated purpose of the EAJA that the central concern of this State's Legislature when enacting the EAJA was the imbalance of power between state and municipal agencies and the individuals and small businesses served by those agencies. Section 42-92-1(a). Section 42-92-1(a) begins by stating that the Legislature "declare[s] that both the state and its municipalities and their respective various agencies *possess a tremendous power in their ability to affect the individuals and businesses they regulate or otherwise affect directly*." (Emphasis added.) The Legislature then acknowledges that those state and municipal agencies have the power to determine the rights of individuals and small businesses by "determin[ing] benefits, impos[ing] fines, suspend[ing] or revok[ing] licenses, or [ ] compel[ling] or restrict[ing] activities." Section 42-92-1(a).

In addition to the existing power imbalance, the Legislature was concerned with state and municipal agencies using that power against those who are economically vulnerable. Sections 42-92-1(a), 42-92-1(b). Such concern is demonstrated by the Legislature's finding that "this situation

[the power imbalance] often tempts state agencies to proceed against individuals or small businesses which are least able to contest the agency's actions, and that often results in actions other than those which are in the best interest of the public." Section 42-92-1(a).

Here, the Town, through its Zoning Board, holds the power to "compel or restrict" residents' activities with respect to their property. The EAJA, however, protects those against whom the Zoning Board may "proceed against." *See* § 42-92-1(a). Thus, the EAJA protects those individuals and small businesses required to defend themselves against state and municipal agency action. *See Ibrahim*, 912 F.3d at 1166. In other words, the EAJA allows for the repayment of fees to those individuals and small businesses who challenge unfair burdens placed upon them from excessive government regulation.

To apply Plaintiff's interpretation of the EAJA would lead to consequences not intended by the Legislature. Plaintiff takes the position that an adjudicatory proceeding merely needs to take place for reimbursement. Plaintiff argues that so long as an adjudicatory proceeding takes place, an individual or small business affected by an agency decision may contest the agency's decision—and potentially recoup attorney's fees.

This interpretation disregards the impetus for enacting the EAJA—economic vulnerability. The Legislature was concerned with state and municipal agencies using their power to intimidate economically vulnerable individuals and small businesses from defending their rights. *See* § 42-92-1(a) ("The legislature further finds that this situation often tempts state agencies to proceed against individuals or small businesses which are least able to contest the agency's [decision] . . ."). The situation that Plaintiff envisions is quite different. Here, rather than the agency proceeding against the Plaintiff, it is the Plaintiff that becomes involved in the action. Therefore, Plaintiff was not required to defend her interest; rather, she voluntarily initiated an action and

entered the arena as an opponent. This is not the scenario with which the Legislature was concerned when it enacted the EAJA.

This Court is not persuaded by Plaintiff's argument that § 42-92-3 requires only that an adjudicatory proceeding take place. The plain and ordinary meaning of § 42-92-3 requires the party moving for an award of attorney's fees be the object of the adjudicatory agency's ridicule. The purpose of the EAJA supports this interpretation.

Moreover, Plaintiff's argument that she is an "interested and affected party" in accordance with § 45-24-69 is of no moment. Section 45-24-69 entitled "Appeals—Appeals to superior court" provides an "aggrieved party" with a vehicle to appeal a zoning board of review decision to superior court. According to § 45-24-31(4), an "aggrieved party" is

> "(i) Any person, or persons, or entity, or entities, who or that can demonstrate that his, her, or its property will be injured by a decision of any officer or agency responsible for administering the zoning ordinance of a city or town; or
>
> "(ii) Anyone requiring notice pursuant to this chapter."

Plaintiff's standing under § 45-24-69 is irrelevant to the issue of whether she is entitled to attorney's fees under the EAJA. Plaintiff's ability to appeal pursuant to § 45-24-69 does not adjust Plaintiff's status to a "party" to the adjudicatory proceeding.

(b)

"Prevailing Party" and the Federal EAJA

Plaintiff argues that the Court should apply the "degree of success" test utilized by the federal courts to determine whether Plaintiff is a prevailing party under the EAJA. Pl.'s Mem. Supp. Mot. Summ. J. at 8. Specifically, Plaintiff argues that she is a prevailing party because the Rhode Island Supreme Court disposed of her appeal of the Zoning Board's decision by remanding the case to the Zoning Board. *Id.* at 9. According to Plaintiff, her actions secured an enforceable

judgment on the merits when she appealed the Superior Court decision and secured remand from the Rhode Island Supreme Court requiring further agency proceedings. Pl.'s Reply Mem. at 4. Moreover, Plaintiff argues that she meets the burden of establishing prevailing party status because there is a clear and causal relationship between her litigation efforts and the practical outcome realized—the Zoning Board's vacation of its initial decision allowing the Sposatos to keep their alpacas on their residential property. *Id.* at 2.

Conversely, Defendants argue that Plaintiff is not a prevailing party. Defs.' Mem. Supp. Obj. to Mot. Summ. J. at 3. Defendants posit that the Sposatos, not Plaintiff, were the only parties who may have qualified as prevailing parties under the EAJA, and reason that the Sposatos were the only targets of any adversary action taken by the Town acting through its Zoning Officer who issued the Notice of Violation regarding the alpacas. *Id.* at 2. Furthermore, Defendants argue that the Rhode Island Supreme Court's remand of the Zoning Board's decision does not establish that Plaintiff was a prevailing party under the EAJA. *Id.* at 5.

Under the "American Rule," parties are responsible for their own attorney's fees. *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*, 532 U.S. 598, 602 (2001). However, the American Rule does not apply in situations where Congress has authorized the award of attorney's fees to a "prevailing party." *Id.* at 603. The term "prevailing party," as used in the EAJA and other fee-shifting statutes, is a "legal term of art." *Id*. As defined, a "prevailing party" is "[a] party in whose favor a judgment is rendered, regardless of the amount of damages awarded <in certain cases, the court will award attorney's fees to the prevailing party>.—Also termed *successful party*." *Id.* (quoting *Black's Law Dictionary* 1145 (7th ed. 1999)).

The United States Supreme Court has determined which parties constitute prevailing parties in the context of fee-shifting statutes. *See Castaneda-Castillo v. Holder*, 723 F.3d 48, 57 n.5 (1st Cir. 2013). In *Buckhannon*, the Supreme Court addressed whether the term prevailing party included a party who failed to secure a judgment on the merits or a court-ordered consent decree, but who nonetheless achieved their desired result. *Buckhannon* 532 U.S. at 599. Ultimately, the Court rejected the "catalyst theory," a test whereby a party was deemed a prevailing party if the party "achieves the desired result because the lawsuit brought about a voluntary change in the defendant's conduct." *Id.* at 598. Instead, the Court opted for a test that turns on a "judicially sanctioned change in the legal relationship of the parties." *Id.* at 605. Specifically, the Court explained that:

> "In *Hanrahan v. Hampton*, 446 U.S. 754, 758, 100 S.Ct. 1987, 64 L.E.2d 670 (1980) (*per curiam*), we reviewed the legislative history of § 1988 and found that 'Congress intended to permit the interim award of counsel fees only when a party has prevailed on the merits of at least some of his claims.' Our '[r]espect for ordinary language requires that a plaintiff receive at least some relief on the merits of his claim before he can be said to prevail.'. . . In addition to judgments on the merits, we have held that settlement agreements enforced through a consent decree may serve as the basis for an award of attorney's fees. See *Maher v. Gagne*, 448 U.S. 122, 100 S.Ct. 2570, 65 L.Ed.2d 653 (1980) . . . These decisions, taken together, establish that enforceable judgments on the merits and court-ordered consent decrees create the 'material alteration of the legal relationship of the parties' necessary to permit an award of attorney's fees."

Id. at 603-04 (internal quotations omitted). Therefore, securing an alteration of the legal relationship between the parties is a prerequisite to qualifying as a prevailing party. *See id.* at 605. ("Our precedents thus counsel against holding that the term 'prevailing party' authorizes an award of attorney's fees *without* a corresponding alteration in the legal relationship of the parties."); *see*

also id. at 606 ("[n]ever have we awarded attorney's fees for a nonjudicial 'alteration of actual circumstances'") (internal quotations omitted).

Plaintiff argues that there was a judicially sanctioned change in the parties' legal relationship because the Rhode Island Supreme Court remanded the case to the Zoning Board. The United States Court of Appeals for the Federal Circuit has addressed the issue of whether remand to an administrative agency confers prevailing party status. In *Thompson v. Shinseki*, the Court explained that

> "[r]emand to an administrative agency may confer prevailing party status because securing a remand to an agency can constitute the requisite success on the merits. Where the plaintiff secures a remand requiring further agency proceedings because of alleged error by the agency, the plaintiff qualifies as a prevailing party . . . without regard to the outcomes of the agency proceedings where there has been no retention of jurisdiction by the court."

682 F.3d 1377, 1380 (Fed. Cir. 2012) (internal quotations omitted).

There are instances, however, when a party will not qualify as a prevailing party despite the fact that the case was remanded to an administrative agency. A remand order that does not guarantee a legal change in the parties' relationship will not confer prevailing party status. *See Hanrahan*, 446 U.S. at 758 (holding that plaintiffs were not prevailing parties because the remand order did not guarantee that there would be any legal change in the relationship between the parties). Additionally, a remand order that does not result in a direct benefit to the party does not make the party a prevailing party. *See Hewitt v. Helms*, 482 U.S. 755, 761-62 (1987) (explaining that plaintiff "obtained nothing from the defendants" except "the moral satisfaction of knowing that a federal court concluded that his rights had been violated").

On Plaintiff's writ of certiorari, the Rhode Island Supreme Court reviewed the "legal propriety of a decision allowing [the Sposatos] to keep four alpacas on their residential property

in Hopkinton . . . as pets." *Preston*, 154 A.3d at 466. Plaintiff argued that the trial court justice who affirmed the Zoning Board's decision did so in error and the Zoning Board exceeded its authority and abused its discretion by making its decision personal to the Sposatos. *Id.* The Court proceeded to review the record to determine whether "one or more errors of law have so infected the validity of the proceedings. . . ." *Id.* at 467-68. The Court concluded that the fourth condition of the Zoning Board's decision, which made the decision personal to the Sposatos, was a "fatal flaw" in the Zoning Board's decision. *Id.* at 468. The Court held that the Zoning Board's decision could not stand because "the fourth condition imposed by the Zoning Board is completely inconsistent with principles articulated by this Court and so many others to the effect that a condition must run with the land and must not be limited to specific individuals." *Id.* at 469.

Although the Rhode Island Supreme Court found that the Zoning Board erred, the instant case is very much distinguishable from those finding that a remand order conveys prevailing party status to the party moving for attorney's fees under the federal EAJA. A remand order will only convey such status upon a party who was the subject of a proceeding whereby an agency deprived the party of some right or benefit. In *Former Employees of Motorola Ceramic Products v. United States*, the case upon which Plaintiff relies, the parties moving for attorney's fees were individuals who were denied workers assistance benefits by the Department of Labor. 336 F.3d 1360, 1360 (Fed. Cir. 2003). Additionally, *Shalala v. Schaefer*, 509 U.S. 292 (1993) involved a request for attorney's fees by an individual who was denied social security benefits by the Social Security Administration. Moreover, *Castaneda-Castillo*, 723 F.3d 48, a case decided by the United States Court of Appeals for the First Circuit, involved a request for attorney's fees under the federal EAJA by an individual whose request for political asylum was denied by the Immigration and Naturalization Services. Unlike the moving parties in those cases, Plaintiff was not deprived of a

right or benefit by an administrative agency. In other words, the proceedings before the Zoning Board did not pertain to Plaintiff or any benefit supposedly owed to Plaintiff. The proceedings related to the Sposatos and whether or not they had a right to house alpacas on their residential property. The effect of the Zoning Board's decision on Plaintiff was derivative of the impact on the Sposatos.

Moreover, the Decision of the Rhode Island Supreme Court did not guarantee that Plaintiff would eventually obtain the result that she sought. The Decision focused on the fact that the Zoning Board made its decision personal to the Sposatos. The Rhode Island Supreme Court's disposition quashing the trial court justice's decision and remanding the case to the Superior Court with instructions to remand to the Zoning Board was for the purpose of addressing this legal misstep. The Decision did not secure a favorable decision at the Zoning Board for Plaintiff. *See Hanrahan*, 446 U.S. at 758. Even if this Court mimicked the approach of the federal courts in determining whether a party is a prevailing party for purposes of the EAJA, Plaintiff would not qualify as a prevailing party. Neither the Rhode Island Supreme Court Decision nor the Zoning Board's vacation of its original decision demonstrate that Plaintiff is entitled to prevailing party status.

(c)

Appeal Proceedings

The parties also dispute whether Plaintiff can use the EAJA as a vehicle to recoup attorney's fees for her appeals to Washington County Superior Court and the Rhode Island Supreme Court. Defendants posit that Plaintiff was not a party to the adjudicatory proceedings before the Zoning Board; therefore, Plaintiff is not entitled to relief under the EAJA. Defendants rely upon the Rhode Island Supreme Court's Decision in *Campbell v. Tiverton Zoning Board*, 15

A.3d 1015, 1025 (R.I. 2011), to support its position that an adjudicatory proceeding is one that occurs at the agency level. Plaintiff, on the other hand, relies upon *MacDougall*, No. WC-2007-0474, WC-2004-0564 (Savage, J.) to establish that she may recoup attorney's fees for her subsequent appeals to Superior Court and the Rhode Island Supreme Court.

An adjudicatory proceeding that occurs at the agency level precipitates a claim for attorney's fees under the EAJA. *See Campbell*, 15 A.3d at 1025. Section 42-92-3(a) of the EAJA provides that "[w]henever the agency conducts an adjudicatory proceeding subject to this chapter, the adjudicative officer shall award to a prevailing party reasonable litigation expenses incurred by the party in connection with that proceeding." Moreover, "[i]f a court reviews the underlying decision of the adversary adjudication" the reviewing court may award attorney's fees "in accordance with the provisions of [the EAJA]." Section 42-92-3(b). According to the Rhode Island Supreme Court, the EAJA "clearly provides that the contemplated 'adjudicatory proceeding' is one that occurs at the agency level either administratively or quasi-judicially, not an adjudicatory proceeding in Superior Court." *Campbell*, 15 A.3d at 1025. The Court has also explained that "a request for reasonable litigation expenses cannot be divorced from the underlying agency action," *Tarbox v. Zoning Board of Review of Town of Jamestown*, 142 A.3d 191, 198 (R.I. 2016) (*citing Campbell*, 15 A.3d at 1025)), and "any attempt to separate a request for reasonable litigation expenses under the act from review of the underlying agency decision is wholly artificial," *id*.

Here, Plaintiff is not entitled to an award of attorney's fees for the proceedings that she instituted in Superior Court and the Rhode Island Supreme Court. As discussed *supra*, Plaintiff is not entitled to the emoluments of the EAJA because the Town did not initiate an action against her—the Town, acting through its Zoning Official, took adverse action against the Sposatos by

issuing a Notice of Violation regarding their alpacas. Even assuming *arguendo* that Plaintiff was entitled to attorney's fees under the EAJA, she would only be entitled to "reasonable litigation expenses incurred . . . in connection with" the adjudicatory proceeding. *See* § 42-92-3(a). Although the proceedings that Plaintiff instituted may stem from or relate to the Zoning Board hearings regarding the Sposatos' alpacas, Plaintiff's request for attorney's fees is not "in connection with" the adjudicatory proceeding. Plaintiff cites *MacDougall*, No. WC-2007-0474, WC-2004-0564 to support her argument that she may recoup attorney's fees for the Superior Court and Supreme Court proceedings. That trial court case, however, is inapplicable to the instant case. *MacDougall* is inapposite; it addresses the issue of whether the plaintiff in that case was entitled to an award of pre-judgment interest on a prior award of attorney's fees under the EAJA—not whether the plaintiff was entitled to attorney's fees under the EAJA for subsequent proceedings. Therefore, Plaintiff is not entitled to an award of attorney's fees under the EAJA for the proceedings that she instituted regarding the Zoning Board's decision.

2

Substantial Justification

Lastly, the parties dispute whether the Zoning Board was substantially justified in its initial position and its position throughout the proceedings. According to Defendants, the Zoning Board's determination that the Sposatos' alpacas were domesticated animals versus livestock was "well founded in law and fact." Defs.' Mem. Supp. Mot. Summ. J. at 7. Defendants suggest that this conclusion is correct because: (1) the Zoning Board relied upon G.L. 1956 § 4-13-1.2, defining domesticated animals to determine whether or not the alpacas were domesticated animals or livestock; and (2) the Zoning Board considered lay and expert testimony from various witnesses to determine the status of the Sposatos' alpacas. *Id.* at 6-7. Defendants also argue that the trial

court justice's affirmance of the Zoning Board's decision demonstrates that the Zoning Board's position was substantially justified. Defendants specifically argue that "[t]he fact that the Supreme Court disagreed with the Superior Court's Decision does nothing to establish [Plaintiff's] status as a 'prevailing party' entitled to reasonable litigation expenses under the EAJA, nor does it establish the conclusion that *as a matter of law*, the Zoning Board's reversal of the Notice of Violation was not substantially justified, as Plaintiff hopes." Defs.' Reply Mem. at 5.

Conversely, Plaintiff argues that the Rhode Island Supreme Court's admonishment of the Zoning Board's decision demonstrates that the Zoning Board's positions were not substantially justified. Pl.'s Mem. Supp. Mot. Summ. J. at 9. Plaintiff suggests that the Zoning Board's initial position and position throughout the proceedings lack reasonable bases in law. According to Plaintiff, the Zoning Board's determination was not substantially justified because it was "plainly inconsistent with venerable and settled principles in the law of land use." *Id.* at 10.

A finding that an agency's positions were not substantially justified is a prerequisite to an award of attorney's fees. Section 42-92-3(a) of the EAJA provides that "[t]he adjudicative officer will not award fees or expenses if he or she finds that the agency was substantially justified in actions leading to the proceedings and in the proceeding itself." "Substantial justification" means that "the initial position of the agency, as well as the agency's position in the proceedings, has a reasonable basis in law and fact." Section 42-92-2(7). An agency's initial position and position during the proceedings is substantially justified if "'the Government [shows] not merely that its position was marginally reasonable; its position must be clearly reasonable, well founded in law and fact, solid though not necessarily correct.'" *Taft*, 536 A.2d at 893 (quoting *United States v. 1,378.65 Acres of Land*, 794 F.2d 1313, 1318 (8th Cir. 1986)). An agency's positions are deemed

substantially justified *per se* when the agency is charged by statute with investigating complaints. *See* § 42-92-2(2); *see also Rollingwood Acres, Inc.*, 212 A.3d at 1208.

Here, there is no need to discuss the factual and legal considerations of the Zoning Board because the Zoning Board is charged by statute with investigating complaints. Section 45-24-54 entitled "Administration—Administration and enforcement of zoning ordinance[ ]" authorizes the Town to appoint a zoning enforcement officer who carries out the Town's Zoning Ordinances. In addition, § 45-24-64 permits appeals of a zoning enforcement officer's decision to the zoning board of review.[2]

Moreover, Section 20 of the Town of Hopkinton Zoning Regulations empowers the Zoning Board to "hear and decide appeals . . . where it is alleged there is error in any order, requirement, decision, or determination made by the zoning enforcement officer in the enforcement or interpretation of this ordinance, or of any ordinance adopted pursuant hereto[.]" It is evident that the Zoning Board is charged by statute with reviewing notices of violation issued by the zoning enforcement officer. Thus, the Zoning Board's initial position—its acceptance of the Sposatos'

[2] Specifically, § 45-24-64 provides that

> "An appeal to the zoning board of review from a decision of any other zoning enforcement agency or officer may be taken by an aggrieved party. The appeal shall be taken within a reasonable time of the date of the recording of the decision by the zoning enforcement officer or agency by filing with the officer or agency from whom the appeal is taken and with the zoning board of review a notice of appeal specifying the ground of the appeal. The officer or agency from whom the appeal is taken shall immediately transmit to the zoning board of review all the papers constituting the record upon which the action appealed from was taken. Notice of the appeal shall also be transmitted to the planning board or commission."

appeal of the notice of violation—and its position throughout the proceedings were *per se* substantially justified.

3

Net Worth

Finally, the parties raise the issue of Plaintiff's net worth. Plaintiff suggests that she had a net worth of less than $500,000 in accordance with § 42-92-2(5); Defendants, however, argue that Plaintiff did not properly plead her net worth in her Complaint. Because Plaintiff is not entitled to an award of attorney's fees under the EAJA for the reasons previously discussed, the Court declines to address this issue.

IV

Conclusion

Plaintiff is not entitled to an award of attorney's fees under the EAJA. As such, the Court grants Defendants' Motion for Summary Judgment and denies Plaintiff's Cross-Motion for Summary Judgment. Counsel shall submit the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Amber Preston v. Town of Hopkinton; Zoning Board of Review of the Town of Hopkinton; and Brian Rosso, in his Capacity as Finance Director of the Town of Hopkinton**
CASE NO:	**WC-2017-0470**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**January 16, 2020**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiff:	**Gregory Massad, Esq.** **Kathleen Flynn, Esq.**
For Defendant:	**Kevin McAllister, Esq.**