Twin City Auto Ctr., Inc. v. Vermont Dept. of Motor Vehicles, No. 643-10-14 Wncv (Teachout, J., Oct. 5, 2015).
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STATE OF VERMONT

SUPERIOR COURT	**CIVIL DIVISION**
Washington Unit	**Docket No. 643-10-14 Wncv**

TWIN CITY AUTO CENTER, INC.
Appellant

v.

VERMONT DEPARTMENT OF MOTOR VEHICLES
Appellee

DECISION ON APPEAL

Appellant Twin City Auto Center, Inc., is a certified motor vehicle inspection station. A consumer complained to the Vermont Department of Motor Vehicles that Twin City sold a car to him for which it had issued an inspection certificate but which should have failed the inspection. The Vermont Department of Motor Vehicles inspected the vehicle, determined that Twin City had issued the certificate in violation of the law, and cited Twin City with a category 2(e) violation of the Vermont Periodic Inspection Manual. Because it was a third violation, Twin City was fined $300 and its status as an inspection station was suspended for 30 days. See 23 V.S.A. § 1231 (administrative penalties); Schedule of Penalties and Suspension, Vt. Admin. Code § 22-1-5:1.3.

Twin City sought a hearing before an Agency of Transportation hearing officer. 23 V.S.A. § 1231(e), (f). At the hearing, Twin City protested that it properly issued the inspection certificate but that, after it did so, the buyer drove the car "hard" and that hard driving caused the conditions that the DMV wrongly assumed were present at the time of inspection. Twin City also suggested that the buyer may have intentionally caused on the problems, holes in the floor pan. The hearing officer did not make any findings on whether several of the alleged problems pre-existed the inspection. Instead, he found that one problem in particular—two substantial holes in the floor pan, one partially patched—did pre-exist the inspection and should have caused the vehicle to fail. On that basis, he affirmed the penalty and suspension. Twin City then appealed to this court. 23 V.S.A. §§ 105, 1231(f).

"Courts presume that the actions of administrative agencies are correct, valid and reasonable, absent a clear and convincing showing to the contrary. . . . [J]udicial review of agency findings is ordinarily limited to whether, on the record developed before the agency, there is any reasonable basis for the finding." *State Dep't of Taxes v. Tri-State Ind. Laundries*, 138 Vt. 292, 294 (1980).

On appeal, Twin City argues that the hearing officer's finding that the floor pan holes pre-existed the inspection is incorrect. Instead, it argues that the buyer of the vehicle vindictively put the holes, or one of them, in the floor pan to support his claim to the DMV about Twin City. Twin City also argues that the holes were caused by the buyer's driving after the

vehicle was purchased. Twin City suggests that the hearing officer's finding makes no sense because it would not have patched one hole and left another right beside it unpatched. Finally, Twin City argues that the holes do not violate the inspection manual anyway because they are not, in the words of the manual, sufficient "to cause a hazard to an occupant, or so that exhaust gases could enter either the occupant compartment or trunk." Pleasure Car and Light Truck Section, Vt. Admin. Code § 22-1-5:1.4.

The hearing officer's finding that the holes pre-existed the inspection does not lack a reasonable basis in the record. The DMV's inspection of the vehicle occurred shortly after the consumer bought the car from Twin City. The photograph in the record of the holes shows that they are substantial. The hearing officer had a reasonable basis to infer that such substantial holes take a considerable time to develop and thus must have pre-existed Twin City's inspection. The hearing officer was free to *not* be persuaded that the buyer intentionally created the holes or caused them with two weeks of hard driving. On review, the court does not substitute its own assessment of the evidence for the hearing officer's. It merely evaluates whether the hearing officer's finding has some reasonable basis in the record. It does.

For similar reasons, the court rejects Twin City's argument that the holes are not sufficiently hazardous to warrant a violation. In support of this argument, Twin City cites to the picture of the holes that is in the record. However, the court cannot look at that picture and know whether the holes are hazardous. That issue is within the expertise of the DMV and the hearing officer. The picture clearly shows two substantial holes in the floor pan. The hearing officer's determination that they are sufficiently hazardous to warrant a violation is reasonably supported by the record.

Twin City also argues that it should not have received the suspension because it has been in business a long time, has had very few problems of this nature, and one of its previous violations was caused by an employee who was immediately terminated as a result. Commendable as Twin City's business record may be, this is its third violation and the suspension is clearly mandated by the DMV rule. Neither the hearing officer nor the court has discretion to rescind the suspension for equitable reasons.

ORDER

For the foregoing reasons, the decision of the hearing officer is affirmed.

Dated this ____ day of September 2015.

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Mary Miles Teachout
Superior Judge