Hartley Auto Sales & Serv., No. 298-5-16 Wncv (Teachout, J., Dec. 29, 2016).
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STATE OF VERMONT

SUPERIOR COURT	**CIVIL DIVISION**
Washington Unit	**Docket No. 298-5-16 Wncv**

Hartley Auto Sales & Service
Appellant

v.

State of Vermont
Appellee

DECISION ON APPEAL

This case arises out of numerous investigations by the Department of Motor Vehicles into the auto inspection and sales practices Appellant Mr. Glenn Hartley and Hartley Auto Sales-Service, LLC, prompted by customer complaints. Investigations into the issuance of inspection stickers for two vehicles, and their ensuing sales to, respectively, Michael Royer and Shawn West, led to the penalties at issue in this case: two $500 penalties for selling vehicles with known defects, and one $220 penalty for a faulty inspection.[1]

Mr. Hartley sought an evidentiary hearing before an Agency of Transportation hearing examiner. See 23 V.S.A. § 1231(f) and § 105 (a). Following the hearing, the hearing examiner issued a written decision finding in the DMV's favor and affirming the penalties. Mr. Hartley then sought Rule 74 review here. 23 V.S.A. § 105(b) ("A person aggrieved . . . may have such decision reviewed by the Superior Court pursuant to Rule 74 of the Vermont Rules of Civil Procedure.").

Standard of Review

The Vermont Supreme Court has described the standard of review in a case such as this as follows:

> Courts presume that the actions of administrative agencies are correct, valid and reasonable, absent a clear and convincing showing to the contrary. Therefore, judicial 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 Indus. Laundries, Inc., 138 Vt. 292, 294 (1980) (citations omitted).

[1] The DMV also suspended Mr. Hartley's and his business's ability to perform inspections. The hearing officer affirmed those suspensions. They are no longer at issue, however, as Mr. Hartley has forfeited both designations.

Analysis

Three issues are discernible from Mr. Hartley's appellate brief: (1) the hearing officer incorrectly found that the Royer vehicle was given a faulty inspection because the problems with the vehicle occurred after it was inspected; (2) the hearing officer incorrectly found Mr. Hartley liable for a faulty inspection of the West vehicle because he made numerous repairs after the inspection and sale free of charge and bought the vehicle back from Mr. West; and (3) the hearing officer did not permit him to present evidence at the hearing.

The condition of the subject vehicles at the time of their disputed inspections in relation to when they were examined for purposes of the DMV's investigations was at issue during those investigations and before the hearing officer. Mr. Hartley raises it on appeal at least regarding the Royer vehicle. The issue is a matter of fact: whether the vehicles degraded so precipitously *after* inspection that it is likely that they were capable of passing inspection several months earlier. The hearing officer clearly found that, though it was not possible to determine the vehicles' state with certainty at the time of inspection, he was convinced that the deterioration was so severe in total, for both vehicles, that it could not possibly have all occurred after the inspections.

While Mr. Hartley disagrees with those findings, he fails to explain how they lack any reasonable basis in the evidence presented at the hearing. With respect to the Royer vehicle, there was evidence that significant documented degradation that existed prior to the inspection continued to exist at the time of investigation. Regarding the West vehicle, the DMV's expert, George Maglaris explicitly explained in his interview, under oath, that the degradation was so severe that nearly all of it must have existed at the time of inspection. The hearing officer's findings thus have evidentiary support, even though Mr. Hartley continues to disagree with them.

Mr. Hartley also argues that, in effect, he made any needed repairs, after the inspection and sale to Mr. West, and eventually bought the vehicle back from him. The thrust of this argument appears to be that, regardless of the circumstances of the inspection and sale of the vehicle, which was the basis for the penalty, Mr. Hartley went out of his way to take good care of his customer afterwards. While this may be so, it is no defense to the charge of selling a vehicle with known problems. The deceptive act at issue with both sales was selling the vehicle with a recent inspection sticker, which implies that the vehicle is in good, running condition, when it is not. Making amends with the customer later does not demonstrate that the misrepresentation did not occur.

Mr. Hartley asserts that he attempted to present evidence and the hearing officer would not permit it, implying that something unfair happened at his hearing. He writes, "This truck travels on a class 4 road and [carries] a lot of weight the truck has been left at my ship since December of 2015 the frame rails are full of brine, salt + dirt. I tried to present this at my hearing on April 19th 2016. I was told I could not present evidence because it was not presented before the hearing." It is unclear from this what evidence Mr. Hartley claims he was not permitted to present at what stage in the proceeding. The State has not responded to this argument, and Mr. Hartley did not file a reply brief, as he was authorized to do by Judge Tomasi at the status conference held on July 7, 2016.

No recording of the hearing or transcript of it is in the record on appeal. Rule 74(b) provides that, "[a]ny party desiring a transcript of any portion of the [administrative] proceedings to be included in the record on appeal shall notify all other parties thereof, shall procure such portion at that party's own expense, and shall cause it to be filed with the clerk of the superior court within 30 days after the filing of the notice of the appeal." Mr. Hartley did not submit any portion of any transcription into the record. In addition, he has not described the claimed error in enough detail for the court to understand it. Without some record of the exchange to which Mr. Hartley refers, and a clear explanation of the claim of error in procedure, the court cannot review it. Since neither have been provided, the court considers that Mr. Hartley has not met his responsibility as appellant to pursue this basis for appeal.

The decision of the hearing officer is affirmed.

Dated at Montpelier, Vermont this 29th day of December 2016.

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Mary Miles Teachout
Superior Judge