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SUPERIOR COURT
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JUDICIAL DISTRICT OF
NEW BRITAIN

DOCKET NO.: HHB-CV-23-6078600-S

WOJCIECH MAZUR	:	SUPREIOR COURT
	:	JUDICIAL DISTRICT OF NEW BRITAIN
v.	:	
	:	TAX AND ADMINISTRATIVE APPEALS SESSION
STATE OF CONNECTICUT, DEPARTMENT OF CONSUMER PROTECTION	:	MAY 17, 2024

MEMORANDUM OF DECISION

The plaintiff, Wojciech Mazur, appeals the decision of the Heating, Piping, Cooling, and Sheet Metal Work Examining Board of the State of Connecticut, Department of Consumer Protection (the department) finding that Mr. Mazur hired an unlicensed subcontractor to install a solar heating, ventilation, and air conditioning (HVAC) system in a Connecticut home. After a hearing on the merits, the department found that Mr. Mazur violated Connecticut law eight times and imposed a $20,500 civil penalty. In his defense Mr. Mazur raises several issues: (1) that he did not receive proper notice of the administrative hearing; (2) that aspects of the hearing were fundamentally unfair because the hearing was held virtually; (3) the record lacks substantial evidence that Mr. Mazur willfully hired an unlicensed subcontractor; and (4) the department improperly calculated Mr. Mazur's penalty amount. As set forth below, the court rejects each of these claims and, therefore, dismisses this appeal.

FACTS

The court finds that there is substantial evidence in the administrative record to demonstrate the following facts.

Electronic notice sent to all counsel of record: 1) Pl. Atty G. Williams and 2) D Attys. Gasser + Hagmann. A. Jordanopoulos, Ct officer 5/17/24
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Wojciech Mazur is the owner of Mazur Mechanical, LLC, a domestic limited liability company registered at 30 Phaiban Lane in Stamford, Connecticut. Return of Record (ROR), at 54. Mr. Mazur holds a license to perform heating, ventilation, and air conditioning (HVAC) work, ROR, at 53. HVAC contractors are subject to licensure and regulation by the department. See General Statutes § 20-330 et seq.

On August 26, 2012, Mr. Mazur signed a contract (the subject contract) with Melina Brown to install a solar powered HVAC system at Ms. Brown's family farm in Stamford, Connecticut. ROR, at 62-66. The cost of the subject contract to Ms. Brown was $160,000. ROR, at 66. Mr. Mazure hired Adam Boguski as a subcontractor to perform installation of the solar powered HVAC system for Ms. Brown under the subject contract.[1] ROR, at 75-76. Both Mr. Mazur and Mr. Boguski signed the subcontract agreement. ROR, at 76. Mr. Boguski does not hold any occupational licenses with the department. ROR, at 23.

In October of 2015, Ms. Brown filed a complaint against Mazur Mechanical, LLC with the Office of the Attorney General (OAG). ROR, at 57-61. OAG forwarded Ms. Brown's complaint to the department, ROR, at 59, and the department investigated. ROR, at

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[1] Mr. Mazur alleges that he was in effect forced to hire Mr. Boguski by Ms. Brown. ROR, at 72. The department is not required to credit Mr. Mazur's allegation and there is no indication in the record that the department did credit Mr. Mazur's allegation. See ROR, at 22; 95-96 (final decision's findings of fact; making no finding regarding Mr. Mazur's allegation). Moreover, even if Mr. Mazur's allegation is true, there is no principle of law allowing Ms. Brown to authorize Mr. Mazur to violate Connecticut law. In other words, even if Ms. Brown did insist that Mr. Mazur hire an unlicensed subcontractor, that does not relieve Mr. Mazur of his obligation to comply with Connecticut law or make Mr. Mazur's decision to hire Mr. Boguski somehow not willful.

8. Mr. Mazur responded to department requests for information during the investigation. ROR, 69-78; 55-56. In a November 18, 2015, telephone conversation with a department investigator, Mr. Mazur admitted that he hired an unlicensed person to perform work on the subject contract. ROR, at 79. On March 17, 2016, the department sent Mr. Mazur an Assurance of Voluntary Compliance (AVC) in which the department agreed to cease further enforcement proceedings against Mr. Mazur in exchange for Mr. Mazur agreeing to comply with Connecticut law in the future and Mr. Mazur paying a $1,500 civil penalty. ROR, at 80-84. Mr. Mazur did not sign the AVC. In a written statement dated October 26, 2016, Mr. Mazur identified the "unlicensed contractor" he had used on Ms. Brown's HVAC installation as Mr. Boguski. ROR, at 72.

On October 9, 2020, the department notified Mr. Mazur of the results of its investigation and requested that Mr. Mazur participate in a virtual compliance meeting on October 29, 2020. ROR, at 55-56. Mr. Mazur did not attend the October 29, 2020 compliance meeting. ROR, at 12.

On July 18, 2022, the department notified Mr. Mazur in writing that it had scheduled a virtual hearing to be held August 10, 2022 (the hearing) on a complaint drafted by the department alleging that Mr. Mazur had violated Connecticut law by hiring Mr. Boguski. ROR, at 39. The notice was sent by email and certified mail, return receipt to Mr. Mazur's proper business address. Id. The notice included a copy of the department's complaint and instructions on how to participate in the virtual hearing. ROR, at 40-51. The notice was

delivered to the proper address and left with an individual. ROR, at 51; see also ROR at 52. Mr. Mazur does not contend that he did not receive notice of the hearing.

On August 10, 2022, the department held a virtual hearing on Ms. Brown's complaint against Mr. Mazur. ROR, at 1-38. On January 30, 2023, the department issued a final decision concluding that Mr. Mazur had violated eight provisions of Connecticut law and imposed a $20,500 civil penalty. ROR, at 95-98.

LEGAL STANDARD

"Judicial review of [PURA's] action is governed by the Uniform Administrative Procedure Act . . . and the scope of that review is very restricted. . . . [R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither this court nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Internal quotation marks omitted.) *Wheelabrator Lisbon, Inc.* v. *Dept. of Public Utility Control*, 283 Conn. 672, 690-91, 931 A.2d 159 (2007).

"Substantial evidence exists if the administrative record affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . Such a standard of review allows less room for judicial scrutiny than does the 'weight of the evidence' rule or the

'clearly erroneous' rule. . . . In conducting its review, a court must defer to the agency's assessment of the credibility of the witnesses and to its right to believe or disbelieve the evidence presented by any witness, even an expert, in whole or in part." (Citations omitted; internal quotation marks omitted.) *Connecticut Light & Power Co.* v. *Dept. of Public Utility Control*, 216 Conn. 627, 639-40, 583 A.2d 906 (1990) *(CL&P I)*. Nevertheless, "[a] conclusion of the commission not legally supported by the evidence would constitute an abuse of its powers." (Internal quotation marks omitted.) *Woodbury Water Co.* v. *Public Utilities Commission*, 174 Conn. 258, 263, 386 A.2d 232 (1978).

LEGAL ANALYSIS

a. Notice

Mr. Mazur first contends that he did not receive proper notice of the August 10, 2022 hearing because the hearing notice did not provide a "place" for the hearing as set forth in General Statutes § 4-177 because the hearing was scheduled as a virtual hearing. See Docket Entry No., 111.00, at 5-8. The court is not convinced.

The purpose of administrative notice requirements is to allow parties to prepare intelligently for the hearing. *Goldstar Med. Servs., Inc.* v. *Dep't of Soc. Servs.*, 288 Conn. 790, 823-24, 955 A.2d 15, 36 (2008); see also *Fleischman* v. *Board of Examiners in Podiatry*, 22 Conn. App. 181, 191, 576 A.2d 1302 (1990) (stating that "[t]he test of whether one is given adequate notice is whether it apprises him of the claims to be defended against, and on the basis of the notice given, whether [the] plaintiff could anticipate the possible effects of the proceeding" [internal quotation marks omitted]). "Due process in the

administrative hearing context requires that the notice given must . . . fairly indicate the legal theory under which such facts are claimed to constitute a violation of the law. The fundamental reason for the requirement of notice is to advise all affected parties of their opportunity to be heard and to be apprised of the relief sought." (Citations omitted; internal quotations marks omitted.) *Goldstar Med. Servs.*, 288 Conn. at 823.

Here, the department's notice plainly notified Mr. Mazur of the claims the department was making against him, the facts and law underlying those claims, and the possible consequences of the department's actions. See ROR, at 39-44. Indeed, the department included a copy of the complaint against Mr. Mazur and plain instructions on how Mr. Mazur could attend the virtual hearing. See ROR, at 40-50. The court concludes that the department's notice to Mr. Mazur provided him with all the relevant information necessary for Mr. Mazur to prepare intelligently for the hearing. There is no indication in the record that Mr. Mazur misunderstood the department's notice, sought additional information or assistance from the department, or informed the department that he objected to or would have any difficulty in participating in a virtual hearing.

b. Fundamental fairness; calculation of penalties

Mr. Mazur next asserts that the department's virtual hearing was fundamentally unfair because it created an unreliable record and Mr. Mazur (or his counsel) cannot verify that the exhibits referred to in the hearing are in fact the exhibits included in the record. See Docket Entry No. 111.00, at 8-13. Mr. Mazur also challenges that department's calculation of civil penalties as set forth during the hearing and as reflected in the final decision. See id. at 22-29.

The court concludes that Mr. Mazur has not preserved these issues for appeal because he did not first raise them before the department.[2]

"Our appellate courts, as a general practice, will not review claims made for the first time on appeal." *White* v. *Mazda Motor of America, Inc.*, 313 Conn. 610, 619, 99 A.3d 1079 (2014). "This rule applies to appeals from administrative proceedings. . . ." *Ferraro* v. *Ridgefield European Motors, Inc.*, 313 Conn. 735, 759, 99 A.3d 1114 (2014). Thus, "[t]he failure to raise [a] claim . . . at the time of the [administrative] hearing precludes [a party] from raising the issue on appeal." *Berka* v. *Middletown*, 205 Conn. App. 213, 218, 257 A.3d 384, cert. denied, 337 Conn. 910, 253 A.3d 44 (2021), cert. denied, __U.S. __, 142 S. Ct. 351, 211 L. Ed. 2d 186 (2021). "Our Supreme Court has explained that, within the context of administrative appeals, appellate courts 'shall not be bound to consider a claim unless it was *distinctly* raised at the administrative hearing or arose subsequent to the hearing. . . . Indeed, it is the appellant's responsibility to present such a claim clearly to the administrative board so that the board may consider it and, if it is meritorious, take appropriate action.' The requirement that [a] claim be raised distinctly means that it must be so stated as to bring to the

[2] For clarity, the court concludes that the hearing complied with fundamental fairness because Mr. Mazur had notice of the hearing and, had Mr. Mazur attended the hearing, he would have had the opportunity to call witnesses and present evidence in his defense and cross examine the witnesses presented by the department. See *Grimes* v. *Conservation Commission of the Town of Litchfield*, 243 Conn. 266, 273, 703 A.2d 101 (1997) ("The only requirement [in administrative proceedings] is that the conduct of the hearing shall not violate the fundamentals of natural justice. Fundamentals of natural justice require that 'there must be due notice of the hearing, and at the hearing no one may be deprived of the right to produce relevant evidence or to cross-examine witnesses produced by his adversary. . . .'") (Internal quotation marks omitted.)

attention of the court the *precise* matter on which its decision is being asked." (Citations omitted; emphasis in original; internal citations omitted.) *O'Rourke* v. *Dep't of Labor*, 210 Conn. App. 836, 854, 271 A.3d 700, 713 (2022).

Here, Mr. Mazur's claims with respect to the conduct of the hearing, or any difficulties with respect to Microsoft Teams, or the virtual nature of the hearing, plainly could have been raised at the time of hearing. Raising these matters at the hearing or prior to the hearing would have provided the department with the opportunity to address, and perhaps resolve, any complaints expressed by Mr. Mazur. Mr. Mazur failed to raise any of the issues complained of in his brief at the hearing or prior to the hearing. The court reaches the same conclusion with respect to Mr. Mazur's claims regarding the calculation of civil penalties in this matter. The complaint sent to Mr. Mazur on July 18, 2022, expressly stated that the department was seeking civil penalties under eight separate statutes. ROR, at 42-44. At the hearing, the department's witness explicitly stated that the department was seeking civil penalties for eight separate violations of Connecticut law and what the total amount of the penalties sought would be. ROR, 28-30. Mr. Mazur could have raised any issues with respect to the calculation of civil penalties at the hearing. Mr. Mazur did not do so and, therefore, the court concludes that this issue was not properly preserved for appellate review.

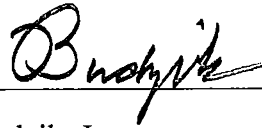
c. Substantial evidence in the record.

Mr. Mazur argues there is not substantial evidence in the record that Mr. Mazur willfully hired an unlicensed subcontractor. The court concludes that there plainly is such evidence in the record. Mr. Mazur himself stated in writing that he hired Mr. Boguski, ROR,

at 72, and there is a signed agreement reflecting that fact in the record. ROR, at 75-76. A department witness testified that Mr. Boguski does not hold any licenses from the department. ROR, at 22-23. With respect to Mr. Mazur's argument that he was in effect forced to hire Mr. Boguski by Ms. Brown, there is no indication in the record that the department credited Mr. Mazur's allegation. This court is bound by the department's factual conclusions.

CONCLUSION

For all the foregoing reasons, the court dismisses this appeal.



Budzik, J.