

NO. UWY-CV-22-6064323-S

BARTON, MARY, LAND USE
INSPECTOR/AGENT FOR THE TOWN
OF PROSPECT

: SUPERIOR COURT

V.

: JUDICIAL DISTRICT OF WATERBURY

REGENCY AT PROSPECT CONDOMINIUM
ASSOCIATION, INC.

: MAY 23, 2024

MEMORANDUM OF DECISION

This is an action brought by the plaintiff, Mary Barton, the Inlands Wetlands Enforcement Officer for the Town of Prospect, against the defendant, Regency at Prospect Condominium Association, Inc., which was responsible for the maintenance of a 171 acre condominium complex consisting of 366 dwelling units, located in the Town of Prospect, to enforce a decision and order of the Prospect Inland Wetlands Commission dated January 20, 2022, and revised January 22, 2022, to remove a salt storage pile located on its property.

The facts leading to the decision of the Prospect Inlands Wetland Commission (Commission) ordering the removal of the salt storage pile located on the defendant's property is as follows: The declarant to the instant community, [redacted] Partnership, submitted an application to the Commission dated

JUDICIAL DISTRICT OF WATERBURY
MAY 23 2024
STATE OF CONNECTICUT
SUPERIOR COURT

*Copies
mailed to
All parties
5-23-24
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April 10, 2006, for regulated activities on the subject property, which was approved by the Commission. The application that was approved included a "Best Management Practices for the Protection of Wetlands" (BMP) document, which included language that "salt shall not be used for deicing of parking lots and roadways." Despite the prohibition from using salt to deice the roads of the complex, both Toll and its successor, the defendant Regency, did use salt to deice its roads and maintained a pile of salt on the premises. In December of 2021, the defendant Regency filed an application with the Commission to build a permanent area for the storage of salt. As a result of the filing of this application and the investigation of the Commission by its inspector, the plaintiff Barton, it was discovered that the defendant Regency was using salt to deice its roads from April 10, 2006, when the regulated activity permit was granted, through the date of the filing of the application in December 2021. On January 12, 2022, the plaintiff Barton, issued a cease and desist order to remove the salt pile and to stop using salt to deice its roads. A show cause hearing was scheduled before the Commission on January 20,

2022. At the conclusion of that hearing, the Commission ordered the defendant to remove the salt pile on or before January 2022, to cease using salt to deice after the 2021-2022 winter season, and to file an application to the Commission to seek permission to deice with salt and to maintain a salt pile on its premises. The defendant did file an application to the Commission for permission to deice with salt and to maintain a salt pile on its premises, as suggested by the Commission in its cease and desist order. It did not remove the salt pile in the storage unit on site. This order was appealed by the defendant on January 26, 2022. After the defendants appealed, the Commission ordered the plaintiff to file this action on February 2, 2022, seeking enforcement of the order.

Prior to the trial in this case, *Regency At Prospect Condominium Association, Inc. v. Inlands Wetlands Commission of Prospect*, Superior Court, judicial district of Waterbury, Docket No. CV-22-6064132-S, was heard in the Waterbury Judicial District before Judge Cordani, who dismissed the appeal and filed his decision dated March 15, 2022, in which he found that Regency had failed to establish that the Commission's decision

was in violation of constitutional or statutory provisions or in excess of its authority or made upon unlawful authority or affected by other error of law or clearly erroneous or arbitrary or capricious. It should be noted that the application filed with the Commission at its behest after issuing the cease and desist order permitted Regency, in the future, to deceive with salt and to allow a salt storage facility on site.

The parties agree that the salt storage facility was removed on April 1, 2022. After the issuance of the cease and desist order by the Commission on January 20, 2022, which ordered the removal of the salt storage facility, the defendant did make an effort to sit down with the Mayor of Prospect to investigate whether the Town had a place that they could move the salt to. The Mayor was unable to find a place, and the defendant, other than making a few phone calls to others who might be able to move the salt, did nothing to comply with the order until April 1, 2022. The defendant, on the other hand, aggressively pursued an avenue to overturn this order by filing an appeal, but did virtually nothing to remove the salt pile in violation of the defendant's existing and enforceable order.


The plaintiff now argues that not only has it incurred attorney's fees to defend the appeal but it also had to institute this action to enforce its orders. It now seeks attorney's fees for the expenses incurred in this action.¹ After further thought and after reading the briefs submitted after trial, I now agree that plaintiff is entitled to reasonable attorney's fees incurred in this action as it now seeks.

The court found the testimony of the plaintiff Barton credible. She did the job she was hired to do. When she discovered the violation, she was duty bound to issue the orders she issued and to send the matter to the Commission for their consideration and action. She did not have the discretion to ignore the violation. Whether the opening to the salt storage unit faced north, south, east or west, or whether it drained into the wetlands was irrelevant, the salt storage was ordered

¹General Statutes § 22a-44(b) states, in relevant part, "The Superior Court, in an action brought by the commissioner . . . shall have jurisdiction to restrain a continuing violation of said sections, to issue orders directing that the violation be corrected or removed and to assess civil penalties pursuant to this section. All costs, fees and expenses in connection with such action shall be assessed as damages against the violator together with reasonable attorney's fees which may be allowed, all of which shall be awarded to the commissioner . . . which brought such action."

to be removed and the defendant spent more time and money to resist the order instead of complying with it.

The court finds that the defendant willfully ignored the order of the Commission and that the Commission is entitled to a reasonable attorney's fees for its enforcement of its order. The court, therefore, will award the plaintiff reasonable fees and will ask the plaintiff to submit, within two weeks from the date of this decision, an affidavit from its attorney for the fees charged in this matter and the court will then ask the clerk to schedule a hearing thereafter so that the court can entertain arguments in connection therewith.


_____, JTR
PELLEGRINO