

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

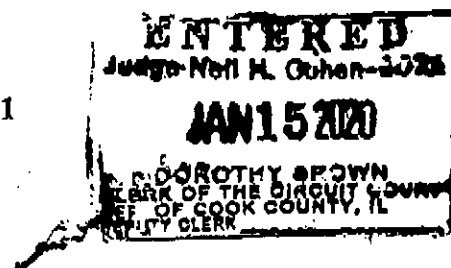
PROTECTIVE PARKING SERVICE)
CORPORATION, d/b/a Lincoln Towing)
Service,)

Plaintiff,)

ILLINOIS COMMERCE)
COMMISSION,)

Defendant.)

18 CH 11531



MEMORANDUM AND ORDER

Plaintiff Protective Parking Service Corporation, d/b/a Lincoln Towing Service, has filed a First Amended Verified Complaint for Administrative Stay and Judicial Review (“First Amended Complaint”). The parties have filed briefs in support of, and in opposition to, the First Amended Complaint.

I. Background

Plaintiff Protective Parking Service Corporation, d/b/a Lincoln Towing Service, was licensed as a Commercial Vehicle Relocator in the State of Illinois. On February 24, 2016, the Illinois Commerce Commission (“the Commission”) initiated a fitness hearing against Plaintiff to determine whether Plaintiff was fit, willing and able to perform the service of a commercial vehicle relocator in conformance with the Illinois Commercial Relocation of Trespassing Vehicles Law (“Relocation Law”) and Commission Rules. The hearing took place before an Administrative Law Judge (“ALJ”) over multiple dates.

On July 2, 2018, the ALJ issued a proposed ruling finding that Plaintiff was fit, willing and able to hold a Commercial Vehicle Relocators license (“license”).

On September 12, 2018, the Commission entered an order rejecting the ALJ’s proposed ruling and revoking Plaintiff’s License (“Revocation Order”). The Commission concluded that Plaintiff’s license should be revoked because Plaintiff had towed 830 vehicles without proper authorization from July 24, 2015 through March 23, 2016. Specifically, the Commission found that Plaintiff: (1) towed vehicles from parking lots where it did not have an active contract with the property owner on file; (2) towed a vehicle on a patrol basis when the contract filed with the Commission was a call-in contract; or (3) utilized tow-truck operators who did not possess an active operator’s permit at the time of towing.

On September 13, 2018, Plaintiff filed a Verified Complaint for Temporary Restraining Order and Preliminary Injunction ("Complaint"). Count I of the Complaint sought to enjoin the Commission from revoking Plaintiff's license pending administrative review of the Revocation Order. Count II sought administrative review.

On September 17, 2018, this court heard argument on Plaintiff's request for injunctive relief. The Commission objected to Plaintiff's request asserting that Plaintiff had failed to exhaust its administrative remedies before the Commission by requesting a rehearing.

On the same date, this court entered an order granting Plaintiff a stay of the Revocation Order pursuant to §3-111 of the Administrative Review Law. 735 ILCS 5/3-111.¹ This court also ordered the Commission to file the administrative record and granted Plaintiff leave to file an amended complaint.

Plaintiff subsequently filed a First Amended Complaint. The First Amended Complaint again asserted a claim for injunctive relief (Count I) and a claim for administrative review (Count II). The Commission filed a motion to dismiss the First Amended Complaint asserting that Plaintiff had failed to exhaust its administrative remedies.

This court granted the Commission's motion to dismiss without prejudice finding that Plaintiff had failed to exhaust its administrative remedies because it had not filed a motion for rehearing. Plaintiff then filed a motion for rehearing before the Commission which was denied.

II. First Amended Complaint for Administrative Review

Plaintiff contends that the Revocation Order should be reversed on numerous grounds. On administrative review, the standard of review applied by the trial court depends upon the issue presented. Questions of law are reviewed *de novo*. Knight v. Village of Bartlett, 338 Ill. App. 3d 892 (1st Dist. 2003). Mixed questions of law and fact are subject to the "clearly erroneous" standard of review. Marconi v. Chicago Heights Police Pension Board, 361 Ill. App. 3d 1, 16 (1st Dist. 2005). Questions of fact are subject to the "manifest weight of the evidence" standard of review. O'Boyle v. Personnel Board of Chicago, 119 Ill. App. 3d 648, 653 (1st Dist. 1983).

A. The Relevant Statutes and Administrative Rules

Commercial towing is governed by the Illinois Commercial Relocation of Trespassing Vehicles Law ("Relocation Law") and its accompanying administrative rules. 625 ILCS 5/18a-101; 625 ILCS 5/18-200(5); 92 Ill. Adm. Code §1710.

¹ While Count I of the Complaint sought injunctive relief, administrative review of ICC proceedings is governed by the Administrative Review Law, 625 ILCS 5/18a-103. Under the Administrative Review Law, §3-111 governs requests to stay the effect of an administrative decision.

Section 18a-401 of the Relocation Law provides that:

All relocator's licenses shall expire 2 years from the date of issuance by the Commission. The Commission may temporarily extend the duration of a license for the pendency of a renewal application until formally approved or denied. Upon filing, no earlier than 90 days nor later than 45 days prior to such expiration, of written application for renewal, verified under oath, in such form and containing such information as the Commission shall by regulation require, and accompanied by the required application fee and proof of security, the Commission shall, unless it has received information of cause not to do so, renew the license. If the Commission has information of cause not to renew such license, it shall so notify the applicant, and shall hold a hearing as provided for in Section 18a-400 [625 ILCS 5/18a-400]. The Commission may at any time during the term of the license make inquiry into the management, conduct of business, or otherwise to determine that the provisions of this Chapter 18A [625 ILCS 5/18a-100 et seq.] and the regulations of the Commission promulgated thereunder are being observed.

625 ILCS 5/18a-401.

While §18a-401 allows the Commission to conduct a fitness inquiry at any time, §18a-401 does not provide that the Commission may revoke a license pursuant to such an inquiry.

Section 18a-307 of the Relocation Law provides that enforcement of the Relocation Law is subject to the provisions governing the enforcement of the Illinois Commercial Transportation Law ("ICTL"). 625 ILCS 5/18a-307. Section 18c-1704 of the ICTL authorizes the Commission to suspend or revoke licenses. 625 ILCS 5/18c-1704(a)(6).

Section 1710.140 of the Illinois Administrative Code provides that:

When the Commission has reason to believe that a person has committed an act which is a violation of the Law or this Part it may conduct an operating practices proceeding to impose sanctions including, but not limited to, the suspension or revocation of the respondent's license and/or the assessment of civil penalties. In deciding whether to conduct an operating practices proceeding, the Commission will consider, among other factors, the severity of the offense, the probability of guilt, and possible effects of sudden suspension or revocation on the relocator's customers.

92 Ill. Adm. Code §1710.140. Section 1710.142 provides that:

- a) An enforcement proceeding shall be initiated by the issuance of a Complaint which shall set forth the alleged violations of the Law. The Complaint shall be served on the respondent by certified mail, return receipt requested, at the last address known to the Commission, or by personal service if the respondent is not licensed by the Commission and service by mail cannot be accomplished.
- b) The respondent shall have 20 days from the date of service of the Complaint to file a responsive pleading with the Commission. Failure to respond within the specified time

shall result in the matter being set for hearing. Notice of the time, date and place for the hearing shall be mailed to the respondent.

c) All matters set for hearing as a result of this Section shall be conducted in accordance with 83 Ill. Adm. Code 200 (Rules of Practice) and with the provisions of Section 18c-1704 of the ICTL.

d) Respondent's failure to appear at a hearing or otherwise respond to a complaint shall constitute a waiver of the respondent's right to contest the alleged violation(s).

Commission staff shall present evidence in support of its allegations and the Commission is authorized, without further notice or hearing, to make findings and may forthwith order the imposition of any applicable sanction.

92 Ill. Adm. Code §1710.142.

Section 18a-103 of the Relocation Law provides that:

A person aggrieved by an order of the Commission under this Chapter is entitled, in addition to any other remedy, to a review thereof by the Circuit Court in accordance with the Administrative Review Law, as amended [735 ILCS 5/3-101 et seq.].

625 ILCS 5/18a-103.

B. Due Process

Plaintiff argues that the proceedings before the Commission did not comply with due process because the Commission failed to follow the requirements of the Relocation Law and its associated administrative rules. The Commission contends that it Plaintiff received all the due process to which it was entitled.

Administrative proceedings are not subject to judicial standards of due process. Abrahamson v. Illinois Dep't of Professional Regulation, 153 Ill. 2d 76, 92 (1992). However, "a court 'has a duty to examine the procedural methods employed at the administrative hearing, to insure that a fair and impartial procedure was used.'" Id. at 92-93 (internal citations omitted).

Procedural due process requires that a charge in an administrative proceeding reasonably inform the respondent of the charges against it so that it will be able to prepare a defense. Abrahamson, 153 Ill. 2d at 94. Procedural due process further requires "[a] fair hearing before an administrative agency includes the opportunity to be heard, the right to cross-examine adverse witnesses, and impartiality in ruling upon the evidence." "If the procedures used by an administrative agency violate fundamental fairness and a party's due process rights, the appellate court should reverse the agency's decision." Kimble v. Illinois State Bd. of Educ., 2014 IL App (1st) 123436, ¶78 (internal citations omitted).

1. *The Notice Provided to Plaintiff*

The proceedings against Plaintiff were instituted with an order issued by the chairman of the Commission dated February 24, 2016. (R. 1-2). That order found that Plaintiff's license should be subject to a fitness hearing pursuant to §18a-401 of the Relocation Law. (Id.).

The order asserted that Plaintiff had violated the provisions of the Relocation Law and its accompanying administrative rules by issuing incomplete or inaccurate towing invoices, using tow trucks to perform relocations without an equipment lease on file with the Commission, and using a dispatcher with an expired relocation towing employment permit. (R. at 1).

Two days later, on February 26, 2016, another order was issued setting a fitness hearing for March 24, 2016. (R. 3). Neither the February 24, 2016 order nor the February 26, 2016 order gave notice of a suspension or revocation proceeding or indicated in any manner that the result of the hearing could be the suspension or revocation of Plaintiff's license. The orders expressly stated that the Commission was conducting a fitness inquiry pursuant to §18a-401 of the Relocation Law.

Section 18a-401 of the Relocation Law is clear that the Commission may conduct a fitness investigation at any time. 625 ILCS 5/18a-401. However, §18a-401 contains no provision allowing the Commission to suspend or revoke a relocator's license pursuant to a fitness inquiry. Rather, upon concluding that a relocator is unfit, the Commission may notify the relocator that it has cause not to renew its license at the time of renewal. Id.

To be sure, the Commission is allowed to enforce the Relocation Law by imposing sanctions against relocators, including suspending or revoking a relocator's license. 625 ILCS 5/18a-307; 625 ILCS 5/18c-1704(a)(6); 92 Ill. Adm. Code §1710.140. However, an enforcement proceeding, unlike a fitness inquiry, requires the filing of a complaint setting forth the alleged violations. 92 Ill. Adm. Code §1710.142. That complaint must also set forth the specific relief sought by the Commission. 92 Ill. Adm. Code §1710.142(c); 83 Ill. Adm. Code §200.100(c),

The Relocation Law and its accompanying administrative rules required the Commission to provide Plaintiff with a formal complaint which specified the relief sought by the Commission. The February 24, 2016 order was not a complaint and did not specify that the Commission sought the revocation of Plaintiff's license. Therefore, informing Plaintiff of the Commission's intent to conduct a fitness inquiry did not constitute notice to Plaintiff of possible revocation of its license.

Due process requires notice that reasonably informs a respondent of the charges against it and allows the respondent to prepare a defense. By failing to provide the required complaint, including the specific violations at issue and the relief sought, the Commission in the first place violated Plaintiff's right to due process, but more significantly, failed to follow the textually demonstrable requirements of the Relocation Law and its administrative rules.

2. The Hearing

Plaintiff further contends that its due process rights were violated at the fitness hearing. At that hearing, Plaintiff's counsel questioned why the Commission was conducting a fitness hearing after already having conducted a fitness hearing in July of 2015 and having found Plaintiff to be fit. (R. 5916-17). Plaintiff's counsel asked the administrative law judge to require the Commission to inform Plaintiff of the basis for the Commission's belief that Plaintiff was now unfit. (R. 5917). However, the ALJ ruled that discovery would occur first. (R. 5918).

At no point during the discovery or the hearing was Plaintiff notified of the specific allegations against it. This failure, compounded the Commission's notice failures, again deprived Plaintiff of procedural due process by requiring Plaintiff to participate in a proceeding without notice of the actual charges.

3. The Revocation Order

The Commission's Revocation Order rejected the ALJ's finding that the evidence showed that Plaintiff was fit, willing and able to provide relocation towing services in accordance with the Relocation Law. However, the Commission went beyond finding Plaintiff to be unfit, and immediately revoked Plaintiff's license.

As discussed above, the proceedings before the ALJ took place pursuant to §18a-401 of the Relocation Law which does not provide that the Commission may suspend or revoke a relocator's license pursuant to a fitness investigation. 625 ILCS 5/18a-401. While the Commission arguably could have ordered that Plaintiff's license not be renewed upon its expiration based on unfitness pursuant to §18a-401, it could not revoke Plaintiff's license pursuant to this section.

The Commission has the authority to impose sanctions on a relocator, including the immediate revocation of its license. 625 ILCS 5/18a-307; 625 ILCS 5/18c-1704; 92 Ill. Adm. Code §1710.140. The imposition of such sanctions, however, requires procedural due process in the form of a written complaint which sets forth the allegations against the relocator and advises the relocator of the sanctions sought by the Commission. 625 ILCS 5/18a-307; 625 ILCS 5/18c-1704(a)(6); 92 Ill. Adm. Code §1710.140; 92 Ill. Adm. Code §1710.142; 92 Ill. Adm. Code §1710.142(c); 83 Ill. Adm. Code §200.10(c). Nothing in the Relocation Law or its associated administrative rules allows the Commission to suspend or revoke a relocator's license without advising the relocator that such sanctions are a possibility.

Regardless of its history and reputation, Lincoln Towing Service was entitled to receive the due process provided for by the Relocation Law and its administrative rules. Because the Commission failed to advise Plaintiff of the charges against it and failed to advise Plaintiff that it was facing revocation of its license, the proceedings against Plaintiff violated fundamental fairness and Plaintiff's due process rights. Therefore, the Revocation Order must be reversed. Kimble v. Illinois State Bd. of Educ., 2014 IL App (1st) 123436, ¶78.

B. Manifest Weight of the Evidence

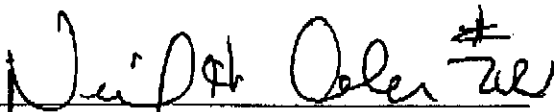
Plaintiff also contends that the Revocation Order was against the manifest weight of the evidence. Because the Revocation Order must be reversed on due process grounds, it is unnecessary to consider this argument.

III. Conclusion

The Commission's final administrative decision of September 12, 2018 is reversed. This order is final and appealable.

The status date of January 24, 2020 is stricken.

Enter: 1-15-20



Judge Neil H. Cohen