

STATE OF RHODE ISLAND AND PROVIDENCE PLANTIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE, BLDG. 68-1
CRANSTON, RHODE ISLAND 02920

ALLSTATE INSURANCE COMPANY)
)
Complainant)
)
vs.) DBR No. 11-L-0033
)
KEN ROCHA AUTOMOTIVE GROUP)
)
Respondent)

RECOMMENDED ORDER OF DISMISSAL

Based on the memorandums received by the Complainant and Respondent and oral arguments heard by the Hearing Officer for the Department of Business Regulation (“DBR”) March 31, 2001, the undersigned issues this recommended decision. The complaint is dismissed pursuant to the clear language of R.I. Gen. Laws § 5-38-2(a)(1) that DBR lacks jurisdiction and, therefore, cannot “act on” complaints brought by an insurance company against an auto body repair shop.

FACTS

Allstate filed two complaints with DBR against Ken Rocha Automotive Group (“KRAG”), an auto body shop. On February 11, 2008, Allstate filed a complaint against KRAG regarding its insureds, Aida Escobar and Timothy Sweeney based on events that allegedly occurred in April, May and August 2007 (the “Escobar Complaint”). Allstate withdrew the Escobar Complaint on March 24, 2008 and re-filed it on June 25, 2008. Allstate filed a second against KRAG in 2008, and although the exact date of that filing is not provided on the complaint form, it is based on events that allegedly occurred on June

2, 2008. At the time of this hearing, these complaints are pending before DBR and no decisions have been previously made with respect thereto.

ANALYSIS

DBR's authority, jurisdiction, and its power to "act on" a complaint against an auto body shop is set forth in R.I. Gen. Laws § 5-38-2(a)(1). That statute was consequently amended on June 28, 2008, (effective July 1, 2008) to limit the scope of DBR's duties to include: (1) Acting on complaints from consumers and law enforcement officials; and (2) Revoking, suspending, or taking other disciplinary actions with respect to facilities, corporations or persons licensed under this chapter". Prior to the amendment, DBR was authorized to "act on" complaints from the insurance industry as well. With the enactment of the amendment, the legislature clearly determined that DBR's jurisdiction be limited to complaints by consumers and law enforcement officials. The statute is clear on its face and DBR is bound by its limited jurisdiction.

DBR is to apply the law that is in effect at the time a decision is rendered, even if the said law was enacted or amended after the events that gave rise to the action or complaints. *Landgraf v. Usi Film Prods.*, 511 U.S. 244, 273 (U.S. 1994); *Solas v. Emergency Hiring Council of State*, 774 A.2d 820, 825-26 (R.I. 2001). Rhode Island case history is rich with cases that were decided on an amended law at the time the decision was rendered. *Bassi v. Zoning Board of Review of the City of Providence*, 271 A.2d 210 (1970); *Dunbar v. Tammelleo*, 673 A. 2d 1063, 1067 (R.I. 1996); *Solas*, 774 A.2d 820. In *Bassi*, during the pendency of an appeal of a zoning board decision in the Rhode Island Supreme Court, the controlling statute on judicial review of zoning board matters was amended to substitute the Rhode Island Superior Court for the Rhode Island Supreme

Court as the tribunal having original appellate jurisdiction; accordingly, the Supreme Court determined that it lacked original appellate jurisdiction; accordingly, the Supreme Court determined that it lacked original jurisdiction to hear the appeal even though it was filed and accepted for review prior to the statutory amendment. 271 A.2d 210.

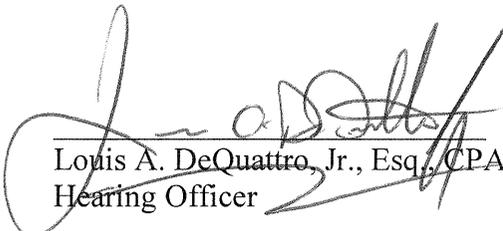
Here, however, DBR is not applying the amended law retrospectively, as Allstate argues, but prospectively because DBR had yet to take any action before the July 1 amendment. The United States Supreme Court held where “the intervening statute authorizes or affects the propriety of the prospective relief, application of the new provision is not retroactive.” *Landgraf*, 511 U.S. 273. Also, DBR did not change its interpretation of the law in mid analysis; it is solely using the amended law from the genesis of its analysis. DBR’s actions comply with legislative intent, and are correct in applying the law in effect at the time it makes a decision. *Solas*, 774 A.2d 826; see also *Dunbar*, 673 A.2d 1063.

DBR is ruling solely on its lack of jurisdiction to “act on” an action instituted by an insurance agency against an auto body repair shop.

Recommendation

For the foregoing reasons, DBR lacks jurisdiction to “act on” Allstate’s complaints as DBR’s jurisdiction is specifically limited to “[a]cting on complaints from consumers and law enforcement officials,” R.I. Gen. Law § 5-38-2(a)(1), and Allstate is neither a consumer nor a law enforcement official. Therefore, it is recommended that the complaints filed by Allstate against KRAG be dismissed for lack of jurisdiction.

Dated: 4/26/2011

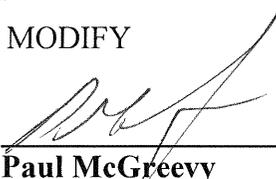

Louis A. DeQuattro, Jr., Esq., CPA
Hearing Officer

ORDER

I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

- ADOPT
- REJECT
- MODIFY

Dated: 26 April 2011


Paul McGreevy
Director

ENTERED as Administrative Order No. 11-026 this 26th day of April, 2011.

THIS ORDER OF DISMISSAL CONSTITUTES A FINAL DECISION OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-1 ET SEQ. AS SUCH, THIS DECISION MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MAY BE COMPLETED BY FILING A PETITION FOR REVIEW IN SAID COURT.

CERTIFICATION

I hereby certify on this 26th day of April, 2011, that a true copy of the within Order was sent by facsimile and first class mail, postage prepaid to:

John A. Tarantino, Esq. and
Patricia K. Rocha, Esq.
Adler Pollock & Sheehan, P.C.
One Citizens Plaza, 8th Floor
Providence, Rhode Island 02903
Fax 401-751-0604

Thomas A. Pursley, Esq.
Lynch & Lynch, P.C.
45 Bristol Drive
South Easton, MA 02375
Fax 508-230-2510

and was sent by electronic mail in pdf. format to the following personnel of the Department of Business Regulation: Maria D'Alessandro, Esq., Deputy Director

