

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
JOHN O. PASTORE COMPLEX, BLDG 68-69  
1511 PONTIAC AVENUE  
CRANSTON, RI 02920**

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<b>In the Matter of:</b>	:	
	:	
<b>472 Knight Street, Woonsocket,</b>	:	<b>DBR No.: 14AS007</b>
	:	
<b>Respondent.</b>	:	

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**DECISION**

**I. INTRODUCTION**

This matter arose pursuant to an Order to Show Cause Why Cease and Desist Order Should Not Issue, Notice of Hearing and Appointment of Hearing Officer (“Notice”) issued to 472 Knight Street (“Respondent”) by the Department of Business Regulation (“Department”) on December 11, 2014. A pre-hearing conference was held on January 8, 2015 with a full hearing held on February 26, 2015. The parties were represented by counsel and rested on the record.

**II. JURISDICTION**

The administrative hearing was held pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 42-14.2-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

**III. ISSUE**

Whether the Respondent violated R.I. Gen. Laws § 42-14.2-1 *et seq.* and if so, what is the appropriate sanction.

#### **IV. TESTIMONY AND MATERIAL FACTS**

John Mancone (“Mancone”), Chief Public Protection Officer, testified on behalf of the Department. He testified that he inspected the Respondent property on November 18, 2014 and there were approximately 50 cars on the property in different states of disrepair. He testified that some cars were unregistered, some were covered with debris, and some were rusty. See Department’s Exhibit One (1) (various photographs of the cars). On cross-examination, he testified that he did not observe any ongoing repairs to the cars. He testified that he inspected the property in response to a complaint and he spoke to the complainant who did not indicate that he had seen any disrepair or junking.

Albert Gaffney (“Gaffney”) testified on behalf of the Respondent. He testified that he owns said property and there are vehicles on the property and Mancone’s photographs are accurate. He testified that he maintains the vehicles and might tune them but he has never dismantled or destroyed them and does not consider them junk. He testified he collects vehicles. He testified that he has never sold any of his vehicles and does not intend to sell them. He testified the City of Woonsocket brought action against him for the unregistered vehicles and he purchased temporary garages for them.

On cross-examination, Gaffney testified he has 26 unregistered vehicles and there are approximately two (2) or three (3) that do not run. He testified that he intends to repair the vehicles that do not run by bringing them to an automobile body shop for repair. He testified he changes the spark plugs and performs maintenance on the vehicles. He testified that he does not remove parts while he performs maintenance. He testified that the temporary garages are metal frames with a removable canopies but no flooring which can be seen in the photographs.

## V. DISCUSSION

### A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, “the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

### B. **Standard of Review for an Administrative Hearing**

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts

asserted by the proponent are more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

### **C. Statute**

R.I. Gen. Laws § 42-14.2-3 provides as follows:

License required. – No person shall establish or operate an auto wrecking yard or auto salvage yard without a license therefor as provided in this chapter and in chapter 21 of title 5. The license issued to a licensee for the operation of an auto wrecking yard or auto salvage yard shall be utilized solely at that location specified on the license, and said location shall be used substantially for that operation, and not as a subordinate of a related business. The subordinate or related business, if any, will be separate and apart from the auto wrecking yard and auto salvage yard operation.

R.I. Gen. Laws § 42-14.2-1(b) defines an auto wrecking yard or an auto salvage yard as follows:

(b) "Auto wrecking yard" or "auto salvage yard" , as used in this chapter, means land upon which a person, firm, corporation, or association destroys, junks, dismantles, or stores for later dismantling or destruction motor vehicles or parts thereof, and may engage in the sale of used motor vehicle parts, or scrap therefrom.

### **D. Arguments**

The Department argued that storing 26 unregistered vehicles including non-operational vehicles and storing automobile parts on the property as seen in the first five (5) photographs constitutes junking under the statute.

The Respondent argued that the cars are not junk under the plain ordinary meaning of the junk as Gaffney does not consider his cars junk and he intends to repair them. The Respondent argued that that the Department did not observe Gaffney dismantling or destroying the cars and while the property might look like a salvage yard, it is actually not a salvage yard.

**E. Whether the Respondent Falls Under R.I. Gen. Laws § 42-14.2-2(b)**

The Respondent's answers to interrogatories (Joint Exhibit One (1)) indicates that there are 27 unregistered vehicles<sup>1</sup> stored on the property and that the last time most of them ran were the summer of 2014 with a couple last running in 2013. The interrogatories indicate that a few cars need either to be re-built or restored. Based on the photographs, the cars and parts are stored on the property. The parts that are on the ground include the insides of a car and separately a car axle with attached tires. Several cars are parked within the metal frames but there are no canopies on the frames. Many cars have leaves on top of their hoods and tops or one or the other. There are car batteries stacked on the ground. There are at least ten (10) tires stacked up outside next to cars covered in leaves. Several cars are parked next to trees and on a tree lined path (so not in the frames). One car has a tarp on it. There are several cars with rust. See Department's Exhibit One (1).

The definition of auto wrecking or auto salvage includes land that is being used to destroy, junk, dismantle, or store for later dismantling or destruction motor vehicles or parts thereof. The definition includes that parts or scraps may be sold. The Respondent is not selling any parts or scraps. The Respondent is not destroying or dismantling motor vehicles or parts or storing the motor vehicles or parts for later dismantling or destruction on the land. The issue revolves on whether the land is being used for junking the vehicles.

The Respondent testified that he is a collector and loves his vehicles and does not consider them junk. However, the issue is not the Respondent's subjective belief that his

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<sup>1</sup> Gaffney testified that he has 26 unregistered vehicles. The 27<sup>th</sup> listed in his interrogatories is a plow truck.

storage of unregistered vehicles and parts are not junk but whether they are under the statute. In applying the “ordinary meaning” of a word, the Rhode Island Supreme Court has relied on a dictionary definition. In *Roadway Express, Inc. v. Rhode Island Commission for Human Rights*, 416 A.2d 673 (R.I. 1980), the Court relied on a dictionary definition in applying the “ordinary meaning” of “must.” *Id.*, at 674. As the Court has found, “[i]n a situation in which a statute does not define a word, courts often apply the common meaning given, as given by a recognized dictionary.” *Defenders of Animals, Inc.*, at 543.

*Random House Webster’s Unabridged Dictionary*, 2<sup>nd</sup> Edition (2001) defines “junk” as follows:

1. Any old or discarded material, as metal, paper, or rags.
2. anything that is regarded as worthless, meaningless, or contemptible; trash . . .
6. to cast aside as junk; discard as no longer of use; scrap.
7. cheap, worthless, unwanted, or trashy.

This matter brings to mind two (2) sayings. First, one man’s trash is another man’s treasure. Second, a picture is worth a thousand words. The photographs show many cars parked every which way with some covered with leaves and rust. There are tires and batteries on the ground. The many vehicles have been cast aside and discarded. Testimony from an inspector and photographs of junked and dismantled cars will support the finding of an unlicensed salvage yard. See *P&P Auto Body v. Marques*, 2007 WL 1108552 (R.I. Super.).

The automobile body repair shop statute provides an exemption from auto body repair shop licensing requirements for a person who performs the type of work usually performed in an automobile body shop on a vehicle registered in his or her own name and

the work is uncompensated. See R.I. Gen. Laws § 5-38-20. There are no such personal exemptions in the auto salvage yard statute. The statute is ensuring that vehicles are not junked on property unless it is licensed as a salvage yard.

#### **F. Conclusion**

The Department seeks a cease and desist order<sup>2</sup> so that the Respondent ceases from acting as an unlicensed salvage yard. Such an order would result in the Respondent cleaning up the discarded parts and removing and/or organizing the vehicles so that they are not apparently discarded or cast aside. E.g. garage the cars in a shed or enclosed area.

### **VI. FINDINGS OF FACT**

1. A Notice was issued to the Respondent on December 11, 2014.
2. A hearing was held on February 26, 2015 with the parties represented by counsel and resting on the record.

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<sup>2</sup> R.I. Gen. Laws § 42-14.2-20 provides as follows:

Cease and desist orders. – (a) If the department shall have reason to believe that any person, firm, corporation, or association is violating the provisions of this chapter, the department may issue its order to that person, firm, corporation, or association commanding them to appear before the department at a hearing to be held not sooner than ten (10) days nor later than twenty (20) days after issuance of the order to show cause why the commission should not issue an order to the person to cease and desist from the violation of the provisions of this chapter.

(b) An order to show cause may be served on any person, firm, corporation, or association named therein by any person in the same manner that a summons in a civil action may be served, or by mailing a copy of the order to the person at any address at which he or she has done business or at which he or she lives. If upon the hearing the department shall be satisfied that the person is in fact violating any provision of this chapter, then the department shall order that person, in writing, to cease and desist from the violation. At any hearing, any person subject to an order of the department to cease and desist may be represented by counsel.

(c) The department shall not be bound by common law rules of evidence, but may receive and consider any statements, documents, and things which shall be considered by them necessary or useful in arriving at their decision. If that person shall thereafter fail to comply with the order of the department, the superior court for Providence County shall have jurisdiction upon the complaint of the department to restrain and enjoin that person from violating this chapter. The complaint shall be in the form of a civil action. The findings and order of the department shall constitute prima facie evidence that the person ordered by the department to cease and desist has violated the provisions of this chapter.

(d) The attorney general shall afford the department any necessary assistance in obtaining relief in the superior court.

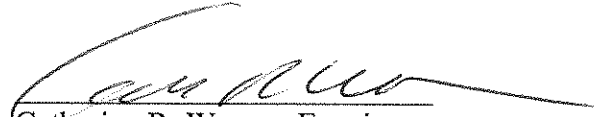
3. The Respondent's property has 27 unregistered vehicles parked outside every which way and many are covered in leaves and rusting. The property also contains parts such as batteries and tires.

4. The facts contained in Section IV and V are reincorporated by reference herein.

**VII. CONCLUSIONS OF LAW**

Based on the forgoing, the hearing officer recommends that pursuant to R.I. Gen. Laws § 42-14.2-20, the Respondent be ordered to cease and desist from violating R.I. Gen. Laws § 42-14.2-1 *et seq.* The Department will work with Respondent in order to implement an acceptable clean-up plan.

Entered this day 19<sup>th</sup> March, 2015.


  
Catherine R. Warren, Esquire  
Hearing Officer

**ORDER**

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

ADOPT  
 REJECT  
 MODIFY

Dated: 3/24/15

  
Macky McCleary  
Director

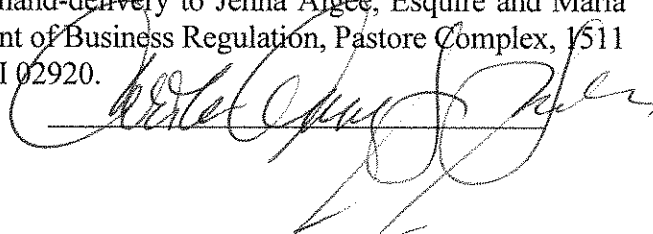


**NOTICE OF APPELLATE RIGHTS**

**THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.**

**CERTIFICATION**

I hereby certify on this 24<sup>th</sup> day of March, 2015 that a copy of the within Decision was sent by first class mail, postage prepaid to Mark L. Smith, Esquire, 128 Dorrance Street, Suite 400, Providence, RI 02903 and by hand-delivery to Jenna Algee, Esquire and Maria D'Allesandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Bldg. 68-69, Cranston, RI 02920.

A handwritten signature in black ink, appearing to read "Charles E. Smith", is written over a horizontal line. The signature is cursive and somewhat stylized.