

Administrative: CODE ENFORCEMENT—Competent substantial evidence—Construction Licensing Board’s finding that Appellant was advertising paver sealing services without a license was supported by competent substantial evidence. The record showed that the substance Appellant was using as a sealer fell under the definition of “paint” and required a competency license. Order affirmed. *D’Amore v. Pinellas County Construction Licensing Bd.*, No. 12-000034AP-88B (Fla. 6th Cir. App. Ct. June 19, 2013).

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

**MICHAEL J. D’AMORE, JR. d/b/a
COOL BREEZE PRESSURE CLEANING**

Appellant,

v.

Ref. No.: 12-000034AP-88B

**PINELLAS COUNTY CONSTRUCTION
LICENSING BOARD**

Appellee.

UCN:522012AP000034XXXXCV

_____ /

ORDER AND OPINION

Appellant, Michael J. D’Amore, appeals the Pinellas County Construction Licensing Board’s order finding him in violation of Pinellas County Code Section 22-14(6) and (7) – advertising painting services without being properly licensed. Because we find that the Board afforded Appellant procedural due process and its decision was supported by competent substantial evidence, we affirm.

Background

Appellant was cited for advertising paver sealing services without being licensed. An administrative hearing was held before a Pinellas County Construction Licensing Board Special Magistrate. The Special Magistrate heard evidence from Mr. Fischer, Safety director of the Pinellas County Construction Licensing Board, and who is familiar with the licensing classifications for contracting in Pinellas County. Mr. Fischer testified that a painting license is required for the application of any kind of coating, paint, stain, sealer, or waterproofing material.

Mr. Fischer also testified that, because the product Appellant was using in connection with his paver sealing work was a clear coating applied to repel water, a painting license was required. Mr. Fischer also reviewed a chemist's report identifying the paver sealant as a xylene-based compound, and testified that the compound was considered a paint product. Appellant argued that he was not required to have a painting license for his paver sealing services because the product he was using to seal the pavers was not "paint." Appellant claimed that the sealing product he uses is not paint because it is clear, and because its main use is as a water repellent rather than waterproofing. At the close of the hearing, the Special Magistrate found Appellant in violation of the Pinellas County Code and ordered Appellant pay \$634.41 in fines and costs. It is this order from which Appellant appeals.

Standard of Review

When the circuit court in its appellate capacity reviews local governmental administrative action, there is a three-part standard of review: (1) whether procedural due process was accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative agency's findings and judgment are supported by competent substantial evidence. *Lee County v. Sunbelt Equities, II, Ltd. P'ship*, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993).

Discussion

On Appeal, Appellant argues that procedural due process was violated when the Special Magistrate considered hearsay evidence, and that the Special Magistrate's findings were not supported by competent substantial evidence. Appellant's complaint that he was not afforded procedural due process because the chemist report, which was hearsay, was relied upon by the Special Magistrate is without merit. First, formal rules of evidence do not apply in the administrative hearing context. § 162.07, Fla. Stat. Second, even if formal rules of evidence did apply, the appellant waived any objection he might have had on appeal by not objecting to the report at the hearing. *See Lineberger v. Domino Canning Co.*, 68 So 2d357, 359 (Fla. 1953).

Appellant's argument that the Special Magistrate's findings were not supported by competent substantial evidence also fails. On review of an administrative hearing, it is not the job or function of the circuit court to reweigh evidence and make findings of fact. *Dep't of Highway Safety & Motor Vehicles v. Satter*, 643 So. 2d 692, 695 (Fla. 5th DCA 1994). The hearing officer is the trier of fact and in the best position to evaluate the evidence. *Dep't of Highway Safety & Motor Vehicles v. Favino*, 667 So. 2d 305, 309 (Fla. 1st DCA 1995). In the instant case, the Special Magistrate heard evidence from the Pinellas County Construction Licensing Board's safety director that the substance Appellant was using fell under the definition of a "paint," and the application of that material required a competency license. The Special Magistrate also considered a chemist's report identifying the substance as xylene, which Mr. Fischer stated is used as a sealant and falls under the painting classification. The Special Magistrate also heard evidence from the appellant himself.

Conclusion

After considering the evidence presented, the Special Magistrate found Appellant to be in violation of the Pinellas County Code for advertising work which requires a contractor's competency license without being licensed. This finding was supported by competent substantial evidence.

Accordingly, it is

ORDERED AND ADJUDGED that the order of the Pinellas County Construction Licensing Board is **AFFIRMED**.

DONE AND ORDERED in Chambers, at St. Petersburg, Pinellas County, Florida, on this ____ day of _____ 2013.

Original order entered on June 19, 2013 by Circuit Judges Amy M. Williams, Peter Ramsberger, and Pamela A.M. Campbell.

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