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FILED

IN THE IOWA DISTRICT COURT IN AND FOR BLACK HAWK COUNTY

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CLERK OF DISTRICT COURT
BLACK HAWK COUNTY, IOWA

PANDA ENGINEERING,)
)
 Petitioner,)
)
 vs.)
)
 ENGINEERING AND LAND)
 SURVEYING EXAMINING BOARD OF)
 THE STATE OF IOWA,)
)
 Respondent.)

Case No. LACV081193

RULING

FEB 11 1999

The above-captioned matter came before the Court for hearing on the Petitioner's Request for Judicial Review on the 11th day of January, 1999. The Petitioner appeared through counsel, Mr. Hugh Field. The Respondent appeared through Assistant Attorney General Pamela Griebel.

FINDINGS OF FACT

PanDa Engineering is a corporation whose only employee is Larry Dettmer. Mr. Dettmer describes his occupation as a tool and fixture designer. Mr. Dettmer is a high school graduate who completed in excess of 10,000 hours of apprenticeship since his high school graduation. Although Mr. Dettmer attended an out-of-state university majoring in engineering, he did not complete his engineering degree and is not a licensed engineer.

Mr. Dettmer returned to the state of Iowa and was employed by various companies, including John Deere, in designing and building fixtures. As a result of economic problems experienced by Deere & Company in the 1980s, Mr. Dettmer opened PanDa Engineering.

Mr. Dettmer's corporation came to the attention of the Engineering and Land Surveying Examining Board of the State of Iowa by complaint of an Iowa citizen after reviewing an article in the local newspaper. As a result, an investigation was initiated by the Engineering and Land

Surveying Examining Board, and the Board determined that Mr. Dettmer was engaged in the practice of engineering as defined in Chapter 542B.2(8), Code of Iowa.

Mr. Dettmer appealed the decision of the Board and asks this Court to reverse the Engineering and Land Surveying Examining Board and hold that he does not practice engineering as defined by law. Mr. Dettmer claims that the agency erred in its ruling and that the ruling is not supported by substantial evidence. It is also alleged by Mr. Dettmer that the statute, specifically 542B.2(8), is unconstitutional as it is void for vagueness.

CONCLUSIONS OF LAW

The Court finds that it has jurisdiction over this matter and that both the Petitioner and Respondent have complied with the provisions of Chapter 17A, Code of Iowa.

The parties must first understand that the district court acts as an appellate court in this matter. As the case of Burns v. Board of Nursing, 495 N.W.2d 698 (1993) states:

A Court's review of agency action is severely circumscribed. The administrative process presupposes that judgment calls are to be left to the agency. Thus, the Court may reverse, modify, or grant other appropriate relief only if agency action is affected by error of law, is unsupported by substantial evidence in the record, or is characterized by an abuse of discretion.

The test for substantial evidence is set forth in the case of Peoples Memorial Hospital v. Iowa Civil Rights Commission, 322 N.W.2d 87 (Iowa 1982), which provides as follows:

Evidence is substantial if a reasonable person would find it adequate for reaching a decision. The question is not whether there is sufficient evidence to warrant a decision the agency did not make; rather, whether there is substantial evidence to warrant the decision which was made.

Iowa law provides that though two inconsistent conclusions may be drawn from the record, this does not prevent an agency's finding being supported by substantial evidence. Ray v.

Iowa Dept. Job Service, 398 N.W.2d 191 (Iowa App. 1986).

Even if there is a conflict in the evidence as reasonable minds might disagree about the inferences to be drawn, the agency's findings of fact are binding unless contrary findings are dictated as a matter of law. Sioux City Brick & Tile v. EAB, 449 N.W.2d 634 (Iowa 1989).

Finally, a Court's review of agency action must consider all of the evidence, including that offered in opposition to the agency's finding, but support for the evidence can be gathered from any part of the evidence. However, since the weight of the evidence remains exclusively within the agency's domain, the Court is not free to reassess the weight of such evidence. Burns v. Board of Nursing, 495 N.W.2d 698 (Iowa 1993).

RULING

The Court finds specifically that Mr. Dettmer is an accomplished, experienced, and professional tool and fixture designer. Mr. Dettmer, according to the testimony, has never engaged in tool or fixture designing which has resulted in damage to persons or property. Mr. Dettmer provides a valuable service to members of Black Hawk County and surrounding communities.

Given all of these factors, however, the Court must determine whether or not Mr. Dettmer's actions are such that the Engineering and Land Surveying Examining Board of the State of Iowa was wrong as a matter of law that his actions constitute engineering.

First, the Court determines that there is substantial evidence to support the ruling of the Engineering and Land Surveying Examining Board. The testimony presented at the hearing, which the Court has reviewed, could have led the Board to reach a different ruling. However, the Board has ruled that Mr. Dettmer's actions do constitute engineering, and as there is substantial evidence to support their finding, the Court affirms the Board's decision.

The second argument made by Mr. Dettmer is that the Board erred as a matter of law, finding him to be engaged in the practice of engineering. Iowa Chapter 542B.2(8) defines the practice of engineering. The pertinent part of the above Code section is made up of one hundred fifty individual words with the use of thirty-two commas. The definition of practice of engineering is broad and encompasses several items. The Court determines that there is substantial evidence to support in the record that Mr. Dettmer has engaged in many of the items listed in Chapter 542B.2(8). The Court determines further that on several occasions Mr. Dettmer's work required training and experience in the application of special knowledge of a mathematical, physical, and engineering sciences, such as evaluation, planning, design, and design coordination of engineering works and systems. The Court cannot hold, based upon the present law, that the agency erred in determining as a matter of law, that Mr. Dettmer engaged in the practice of engineering.

The last issue discussed somewhat by Mr. Dettmer, although technically waived in the Court's opinion, is the constitutionality of the Code section in question. The Court, in reviewing the record, determines that the constitutional claim was not raised before the agency in order to allow the Court to review its constitutionality. See Shell Oil Co. v. Bair, 417 N.W.2d 425 (Iowa 1987).

Further, a constitutional issue must be done by pleadings, motions, or testimony during an administrative hearing. Fisher v. Board of Optometry Examiners, 478 N.W.2d 609 (Iowa 1991).

Even assuming that the issue had been preserved for judicial review, the Court determines that the purpose of the law is to protect the public interest from individuals who are unlicensed in practicing engineering. As the Board is cloaked with an obligation to determine what is in the

public's best interest and must investigate and resolve the complaints of the unauthorized practice of engineering, and as the Court determines that although one could argue that the statute is poorly written, the Court finds that it is not void for vagueness and further determines that this portion of the Iowa Code is constitutional. The Court has been advised that this provision of Iowa law may be reviewed by the legislature so that changes can be made. The Court is hopeful this will occur.

ORDER

Based upon a review of the arguments of counsel, the ruling of the Engineering and Land Surveying Examining Board, a review of the testimony from the hearing, and the applicable law, the Court affirms the Ruling of the Engineering and Land Surveying Board of the State of Iowa.

The Clerk of Court shall furnish a copy of this Ruling to counsel of record.

Done and Ordered this 10th day of February, 1999.

TS

THOMAS N. BOWER, JUDGE
FIRST JUDICIAL DISTRICT OF IOWA

Copy hereof mailed, or delivered to

Pltf/Pel Atty
Defn/Resp Atty

County Atty

Sheriff

Ct Adm

Others

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