STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

David Eastman, d/b/a Grading and Landscaping Material Company Appellant, v. South Carolina Department of Labor, Licensing and Regulation, South Carolina Contractor's Licensing Board, Respondents.	)	Docket No. 16-ALJ-11-0239-AP **FINAL ORDER & DECISION**

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed on July 12, 2016 by David Eastman, d/b/a Grading and Landscaping and Material Company (Appellant). On December 17, 2014, the South Carolina Department of Labor, Licensing and Regulation (Department) issued a citation to the Appellant for engaging or offering to engage in contracting work or submitting a bid when not properly licensed. S.C. Code Ann. 40-11-110(A)(5) (1998). The citation included a fine of five-hundred dollars ($500.00). The Appellant appealed his citation to the Department's Contractor's Licensing Board (Board). After an evidentiary hearing was held before the Board's appointed hearing officer, a final order was issued affirming the sanctions against the Appellant. This appeal followed. For those reasons below, the order is affirmed.

BACKGROUND

In 2013 and pursuant to a verbal agreement, the Appellant performed work on approximately seven (7) acres of land surrounding a home owned by Jason Z. Stauter and Faith Stauter (the landowners) in Greenville County, South Carolina. The Appellant was to perform the following scope of work: extend and/or rebuild two (2) earthen dams; replace two (2) concrete spillways; install two (2) PVC drainage pipes; cut and clear approximately one and one-half (1.5) acres of forest; create two (2) culverts with concrete pipes and a dirt road over them for access by trucks and equipment; provide grading and earthmoving for the culverts and concrete spillways;

transport red clay, fill dirt and compost at the property; and remove debris from the property. The Appellant was to be paid $22,500.00 for this work. There was no written contract.

The work commenced on or about June 11, 2013. The homeowners initially paid the Appellant $22,500.00. Later, the Appellant requested and was paid additional increments totaling $14,000.00 for overages. As an example, Mr. Stauter testified that the Appellant told him that dirt washed out and that more rock was needed. The homeowners testified that as the costs continued to escalate, they repeatedly asked the Appellant for receipts. When the receipts were not produced, the project was abandoned on or about November 13, 2013.

Mrs. Stauter testified that she withheld some of the funds claimed to be owed pending project completion. The Appellant testified that he ceased working on the project because he wanted to be paid prior to completion. On December 19, 2013, the homeowners received an invoice from the Appellant totaling $78,398.28 for the entire project leaving a balance owed of $41,898.28.

In January 2014, the Appellant filed a civil action against the landowners claiming that the landowners had not paid in full for the work that the Appellant had performed. The Appellant also filed a mechanics lien against the property. The landowners answered the complaint and counterclaimed. The landowners also moved to dismiss the action essentially claiming that the Appellant was not entitled to bring the civil action on the basis that that he had violated the South Carolina Licensing statute by performing the work without a license. In April of 2014, the court of common pleas denied the motion without prejudice on the basis that it did not have sufficient information at that time.

Thereafter, the landowners filed a complaint against the Appellant with the Department claiming that the Appellant had performed work without the necessary license. The court of common pleas continued the civil action until the licensing issue could be resolved by the Department.

Upon completion of its investigation and on December 17, 2014, the Department issued a Citation and Notification of Penalty for General and Mechanical Contracting of five-hundred ($500.00) to the Appellant for violating Section 40-11-110(A)(5) by contracting or offering to contract for construction work for which the total cost of construction was greater than five-thousand ($5,000.00) without a license. *See also*, S.C. Code Ann. § 40-11-30 (1998). The Appellant appealed to the Department's Contractor's Licensing Board.

An evidentiary hearing was held on June 6, 2016, at which time both parties presented opening and closing statements, called and examined witnesses, introduced evidence, and answered questions posed by the hearing officer. At the conclusion of the hearing, the hearing officer upheld the issuance of the citation, affirmed the penalty of five-hundred dollars ($500.00), and ordered that the Appellant cease and desist from practicing as a contractor without a license.

The Department issued a final order on June 16, 2016 concluding as a matter of law that (1) the Appellant violated Section 40-11-110(A)(5) by engaging in contracted work when not properly licensed in accordance with Section 40-11-30; and (2) the total cost of the Appellant's work on the subject property exceeded $5,000.00, and he was required to have a general contractor's specialty license pursuant to Section 40-11-410(b)(4). The Appellant filed a Notice of Appeal with this court on July 12, 2016.

STANDARD OF REVIEW

The Department is an "agency" under the Administrative Procedures Act (APA). *See Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding that the Employment Security Commission, a predecessor of the Department, was an agency within the meaning of the APA). This court reviews decisions of the Department in an appellate capacity and is "restricted to reviewing the decision[s] below." *Al-Shabazz v. State*, 338 S.C. 354, 377, 527 S.E.2d 742, 754 (2000). According to Section 1-23-600(E) of the South Carolina Code (Supp. 2012), when acting in an appellate capacity, the court must apply the criteria of Section 1-23-380(5)(Supp. 2008) which states:

> (5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

This section requires the ALC to apply the "substantial evidence" rule. *See e.g., Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 467 S.E.2d 913 (1996); *Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 319 S.E.2d 695 (1984). A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion reached by the agency. *Bilton v. Best W. Royal Motor Lodge*, 282 S.C. 634, 321 S.E.2d 63 (Ct. App. 1984). The possibility of drawing two (2) inconsistent conclusions from the evidence does not mean that the agency's conclusion was unsupported by substantial evidence. *Id. See also, Waters*, 321 S.C. at 227, 467 S.E.2d at 917 (*citing Palmetto Alliance, Inc. v. South Carolina Pub. Serv. Comm'n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984). The well-settled case law in this State has also interpreted the rule to mean that a decision will not be set aside simply because reasonable minds may differ on the judgment. *Lark v. Bi-Lo*, 276 S.C. 130, 276 S.E.2d 304 (1981).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct and will be set aside only if unsupported by substantial evidence. *Rodney v. Michelin Tire Co.*, 320 S.C. 515, 518, 466 S.E.2d 357, 358 (1996) (citing *Kearse v. State Health and Human Serv. Fin. Comm'n*, 318 S.C. 198, 456 S.E.2d 892 (1995)). Thus, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917 (*citing Hamm v. AT & T*, 302 S.C. 210, 394 S.E.2d 842 (1994)).

Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant*, 319 S.C. at 353, 461 S.E.2d at 391 (*citing Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984)). However, "[d]etermining the proper interpretation of a statute is a question of law, and [an appellate court] reviews questions of law de novo." *Palmetto Co. v. McMahon*, 395 S.C. 1, 3, 716 S.E.2d 329, 330 (Ct. App. 2011) (citation omitted).

LAW/ANALYSIS

A. The Hearing Officer's Order is Sufficiently Detailed to Allow for Review.

The Appellant argues that the hearing officer's order fails to adequately explain his decision, and that the court should not have to make assumptions[1] about why issues were decided

[1] Interestingly, it is the Appellant on pages 7-8 of his brief, that makes a multitude of assumptions and implications from his viewpoint).1 E.g., "From a factual point of view, the conclusion that Eastman would have assumed the obligation to obtain and pay subcontractors without some understanding or specific agreement with Stauter is extremely unlikely ... With that testimony, and the fact that Stauter did not explain what agreement he allegedly had

below. The court disagrees. The findings in the order clearly support the hearing officer's conclusions.

An administrative body must make findings which are sufficiently detailed to enable this Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings." *Porter v. South Carolina Pub. Serv. Comm'n*, 333 S.C. 12, 21, 507 S.E.2d 328, 332 (1998) (*citing Hamm v. South Carolina Pub. Serv. Comm'n*, 309 S.C. 295, 422 S.E.2d 118 (1992)); S.C. Code Ann. § 58-9-1160 (1976). "Where material facts are in dispute, the administrative body must make specific, express findings of fact." *Porter, supra; Able Communications, Inc. v. South Carolina Pub. Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986); S.C. Code Ann. § 1-23-350 (1977).

An administrative agency is not required to present its findings of fact and reasoning in any particular format, although the better practice is to present them in an organized and regimented manner. A mere "recital of conflicting testimony followed by a general conclusion is patently insufficient to enable a reviewing court to address the issues." *Able, supra.*

Here, however, after reciting the evidence and conflicting testimony presented, the hearing officer sufficiently detailed those facts that he accepted to be the most credible and upon which he based his decision. The underlying reasons for the order are not speculative, and the order is appropriately detailed for purposes of review. As an example, Paragraph 3. below the heading of "Conclusions of Law," the hearing officer's order states as follows:

> The intent of the parties is difficult to determine because of conflicting testimony of the witnesses and the lack of a written contract between the parties. However, balancing the credibility of the testimony and a review of the documents submitted, specifically, Respondent's own invoice number 3543 (State's Exhibit 2), provides sufficient evidence that Respondent's work on the Subject Property was over $5000.00 and that Respondent should have been licenses pursuant to S.C. Code Ann. § 40-11-410(4)(b) (General contractor-Specialty-Concrete). This concrete licensing subclassification requires a license for all work in connection with concrete forming and placing, assembling of forms, molds, slipforms and pans; centering, trenching, excavating, backfill, and grading in connection with concrete construction. The Board has interpreted that the $5,000.00 construction amount in S.C. Code Ann. § 40-11-30 is for the total cost of construction, so

with Eastman on how much the concrete would cost, strongly indicates that neither of the men contemplated Eastman negotiating the price and being responsible for it."

> Respondent's argument that the regulated concrete work was for less than the $5,000.00 construction amount is not accepted. Furthermore, Respondent's testimony of his work and the equipment used on the Subject Property for this project included work in connection with concrete forming and placing including excavating, backfilling and/or grading in connection with concrete construction.

B. <u>Substantial Evidence Exists in the Record to Support the Board's Decision to Uphold the Citation Issued to Appellant</u>.

The Appellant argues that his work consisted primarily of "earth work" such as grading, moving dirt and clearing debris for which a license was not required. The Appellant states that because the only concrete related work he performed was to transport concrete for a concrete subcontractor on his skid steer, he did not perform concrete work that would require a license. He further avers that even if he did perform concrete work, the value of that work was less than $5,000.00 and thus, did not require a license. The court disagrees.

The Board is the entity charged with the implementation and enforcement of Section 40-11-5, et seq. of the South Carolina Code of Laws. When an agency has been designated as the single state agency for the implementation and enforcement of certain statutes and regulations, great deference must be accorded to that agency's interpretation of its laws and regulations. *Hampton Nursing Ctr. v. State Health and Human Servs. Fin. Comm'n*, 303 S.C. 143, 147, 399 S.E.2d 434, 436 (Ct. App. 1990). "The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." *Dunton v. S.C. Bd. of Exam'rs in Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987).

The Appellant was issued a citation on December 17, 2014 pursuant to Section 40-11-110(A)(5) for violating Section 40-11-30. S.C. Code Ann. § 40-11-110(A)(5) (1998); S.C. Code Ann. § 40-11-30 (1998). Section 40-11-110(A)(5) provides that the Board may impose disciplinary action authorized by Chapter 11 as pertains to contractors. Here, the Appellant violated Section 40-11-30 which states:

> No entity or individual may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction is greater than five-thousand dollars for general contracting or greater than five-thousand dollars for mechanical contracting without a license issued in accordance with this chapter.

S.C. Code Ann. § 40-11-30 (1998). While evidence is conflicting, there is clearly substantial evidence to support the Board's decision to uphold the citation issued to Appellant. Not only did the Appellant engage in unlicensed general contracting when he offered to and did perform work at the Stauters' property for which the total cost of construction exceeded five-thousand ($5,000.00) dollars but also, his work falls squarely within the confines of "concrete" work which required him to have a specialty license in accordance with Section 40-11-410(4)(b).

Section 40-11-20(9) defines a "general contractor" as an "entity which performs or supervises **or** offers to perform **or** supervise[2] general construction." S.C. Code Ann. § 40-11-20(9) (1988) (emphasis added). "'General construction' means the installation, replacement, repair of a building, structure, highway, sewer, grading, asphalt or concrete paving, or improvement of any kind to real property." S.C. Code Ann. § 40-11-20(8) (1998).

Under the heading of "general construction," the legislature has delineated several classifications and subclassifications. S.C. Code Ann. § 40-11-410 (2005). General contracting is segmented into four (4) classifications: (1) "General Contractor-Building;" (2) "General Contractors-Highway;" (3) "General Contractors-Public Utility;" and (4) "General Contractors-Specialty." *Id.* S.C. Code Ann. 40-11-270 (2016). "Concrete" is a subclassification under the classification of "General Contractors-Highway." S.C. Code Ann. § 40-11-410(4)(b) (2016).

> (b) "Concrete" which includes all work in connection with concrete forming and placing; assembling of forms, molds, slipforms and pans; centering, trenching, excavating, backfill, and grading in connection with concrete construction; construction of sidewalks,

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[2] The Appellant argues that the hearing officer effectively found the Appellant responsible for the concrete work but without making a finding as to whether the Appellant subcontracted the concrete work. While the hearing officer did not make a specific finding as to whether the Appellant subcontracted the concrete work, there is substantial evidence in the record to conclude that the Appellant not only hired but also, supervised the concrete contractor.

The testimony of the parties was conflicting. The Appellant denied hiring and supervising the concrete company, and testified that he only paid the concrete supplier because the Stauters were out of town. On cross-examination, the Appellant conceded however, that he gave the concrete supervisor directives and that that the supervisor was able to follow the same including communicating the directives to the crew. Mr. Stauter testified that he neither selected nor paid the company that brought in the concrete, and that the Appellant was responsible for everything including the concrete company. When asked whether the Appellant made or formed concrete on the property, Mr. Stauter stated that he observed the Appellant "working with it, you know, building forms, and out there with the concrete crew pouring the concrete..." Mr. Stauter added that the Appellant's crew also participated in making concrete forms.

Regardless of whether the Appellant hired or subcontracted the concrete work, he still acted as a general contractor as defined by Section 40-11-20(9) by actually offering to perform and performing general construction including the installation, replacement and/or repair of structures located on the property, and by making improvements to real property. Moreover, he still performed concrete work as defined by Section 40-11-410(4)(b) irrespective of any concrete work on the same property which may have been performed by others. As such, no specific finding needed to be made on this issue by the hearing officer.

> driveways, curbs, medians, and barrier walls; and installing of embedded items essential to or comprising an integral part of concrete or concrete construction including reinforcing elements and accessories including, but not limited to, concrete chimneys, floors, piers, and foundations when using concrete rebar and other materials common to the concrete industry. This subclassification does not include the General Contractor-Highway- Bridge license subclassification or the construction of streets, roads, parking lots, and highways.

An applicant must designate the license classification(s) and subclassification(s) that will constitute its scope of practice. Provided that all requirements for licensure are met, an applicant may apply for more than one classification or subclassification, and its scope of practice is limited to those areas.

There is substantial evidence in the record to support the finding that Appellant was acting as a general contractor as defined by Section 40-11-20(9) and performing general construction as defined by Section 40-11-20(8) in excess of $5,000.00 when not licensed to do so. This was in violation of Section 40-11-30. Moreover, there is substantial evidence on the record to support that the Appellant engaged in concrete work as defined by Section 40-11-410(4)(b) without the appropriate specialty license.

Specifically, the Appellant's scope of work was to extend or rebuild two (2) earthen dams; replace two (2) concrete spillways that were deteriorating; construct an island with pathways to include a concrete culvert so that the creek could be traversed with heavy machinery and in the future,[3] other vehicles; and dig up existing drain pipes and replace them with culverts for the passage of water.[4] The Appellant was also to transport red clay, fill dirt, and compost to the property, and remove debris from the property.

The Appellant admitted that he brought the concrete drainpipes to the homeowner's property for the culverts, installed them, and then constructed the road that went over them. This work at a minimum, inescapably constitutes improvements to real property and falls within the confines of general construction. *See* S.C. Code Ann. § 40-11-20(8) (1998). There is also

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[3] While the Appellant's attorney insinuated that the culvert in the creek to be used for the transport of heavy equipment to an island in the middle of a creek was to be temporary, the homeowner testified it was supposed to be permanent. The court agrees with the Department's investigator in that the permanency of the culvert is irrelevant as the statutes make no differentiation.

[4] Mr. Stauter testified that the Appellant provided and installed two (2) PVC drainage pipes including one in the lake and one in the pond.

substantial evidence that this work involved the replacement and/or repair of structures. *Id.* The Appellant acted as a general contractor when he offered to perform and did perform this work within the confines of definitions outlined above.

The Appellant claims that he only transported the concrete on a skid steer loader and that this does not constitute concrete work for which a specialty license is needed. Alternatively, the Appellant argues that even if he performed concrete work, the amount paid for the materials and work associated with the concrete did not exceed $5,000.00.[5] The Appellant misconstrues the statutes.

First, "concrete" work as defined Section 40-11-410(4)(b) is not so narrowly limited so as to be confined to the actual pouring of concrete. Second, pursuant to Sections 40-11-20(23) and 40-11-30, "the total cost of construction," is not merely limited to the cost of materials but rather, for the total amount of general construction: not just the concrete materials and/or labor.

The testimony is replete with evidence from both parties that the total cost of construction as defined by Section 40-11-20(23) far exceeded $5,000.00. As of the date of the hearing, the Stauters had paid the Appellant a total of $36,500.00. Mr. Stauter testified that they initially agreed to pay $22,500.00 for the work. The Stauters also incrementally paid the Appellant an additional $14,000.00 because the Appellant told them that dirt had washed out and more rock was needed. By the Appellant's own testimony and evidence (the invoice he submitted to the Stauters), the total cost for the work that performed totaled $78,398.28. The Appellant testified that the Stauters owe him a balance of $42,000.00

While some of the Appellant's arguments are unclear, it appears that he also essentially makes a fairness argument in that there is no requirement that one be licensed to perform less than $5,000.00 worth of work. The court rejects this argument. The legislative intent behind the licensing statutes involved in this case is to protect the public from being imposed upon by persons not qualified to render a professional service. S.C. Code Ann. § 40-1-10 (1996). *See generally, Tesenair v. Professional Plastering & Stucco, Inc.*, 407 S.C. 83, 754 S.E.2d 267 (Ct. App. 2014)

[5] The Appellant argues that even if he did perform concrete work, its total value was less than $5,000.00 given the cost of the concrete. The Appellant wrote two (2) checks to Piedmont Concrete Products for $773.00 and $964.60 for a total of $1,738.40. The Appellant said he paid Pedro a/k/a Basilio Ramirez about $2,000.00 and that he had no other expenses relating to the pouring of concrete. The Appellant's testimony and argument ignore the facts that the Appellant also excavated, graded and backfilled for the concrete, and as found by the hearing officer, assembled concrete forms. In his order, the hearing officer stated, "Furthermore, Respondent's testimony of his work and the equipment used on the Subject Property for this project included work in connection with concrete forming and placing and including excavating, backfilling and/or grading in connection with the concrete construction."

(*citing Kenny v. Graves*, 300 S.W.2d 568 (Ky.App. 1957). Additionally, the legislature specifically provides for certain exceptions to the licensing requirements of Chapter 11 under certain conditions. S.C. Code Ann. § 40-11-360 (2016).

Moreover, substantial evidence in the record indicates that the Appellant needed a specialty concrete license to perform the work. The Appellant testified that he provided pipes that were installed on the property, and constructed the roads that went over the pipes. Mr. Stauter testified that certain existing pipes were dug up (or excavated) by the Appellant. The Appellant conceded that in order to construct the roads, he performed grading work or "earth moving" around the pipes. Although the Appellant testified he did not form the concrete spillways himself, he "graded it the way Mr. Stauter asked us to grade and then put the concrete – had Pedro put the concrete down."[6] This work constitutes excavating and grading in connection with concrete construction as outlined in Section 40-11-410(4)(b). Even though the Appellant testified that he had been grading[7] without a license since he was a teenager, if he did so relative to concrete construction as here, the appropriate licenses were required by statute.[8]

While denied by the Appellant,[9] Mr. Stauter testified that he observed the Appellant building concrete forms.[10] More specifically, Mr. Stauter who was present during the spillway work at the upper pond[11] observed the Appellant build forms with two-by-fours. When asked if the Appellant built forms and poured concrete into them, Mr. Stauter responded affirmatively. Mr. Stauter testified that although a separate company actually brought the concrete to the property, after pouring it in to the Appellant's truck, the Appellant would then pour it after having transported it.

As noted by the hearing officer, much of the testimony offered at the hearing was

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[6] Either the Appellant misspoke or made a Freudian slip.

[7] The Appellant argues that the Board does not offer a license for grading contractors, and that "moving dirt," or "cleaning, grubbing and removing debris" does not require a contractor's license. The Board does in fact, require grading contractors to be licensed under certain circumstances. *See* S.C. Code Ann. §§ 40-11-410(2)(d) and 40-11-410(4)(b) (2005). Here, grading work was clearly performed in connection with concrete construction. *See* S.C. Code Ann. 40-11-410(4)(b) (2016)

[8] Attached to the Appellant's reply brief is a poster issued by the South Carolina Contractor's Licensing Board which states that there are several classifications of work that are exempt from licensing including fencing, landscaping, clearing, grubbing, debris removal, hauling, irrigation, etc. *See* S.C. Code Ann. § 40-11-360 (2016). This does not conflict with the Department's order, this court's order, or the statutes at issue as substantial evidence supports a finding that the Appellant's work did not fall within these exempt classifications.

[9] If substantial evidence is included in the record to support the hearing officer's decision, he will not be reversed whereas here, substantial rights of the Appellant have not been prejudiced

[10] The assemblage of forms constitutes concrete work according to Section 40-11-410(4)(b).

[11] Mr. Stauter was out of town when the spillway work was done on the second spillway at the lake.

conflicted. However, simply because the possibility of drawing two (2) inconsistent conclusions from the evidence exists, does not mean that the agency's conclusion was unsupported by substantial evidence. *Bilton v. Best W. Royal Motor Lodge, supra.* A decision will not be set aside simply because reasonable minds may differ on the judgment. *Lark v. Bi-Lo, supra.*

Appellant cites *Skiba v. Gessner*, 374 S.C. 208, 648 S.E.2d 605 (2007) in support of his argument that an individual performing only landscaping work does not need a contractor's license. In *Skiba*, the South Carolina Supreme Court held that a mechanic's lien could not attach for work that "was completed for the purpose of preparing the land for landscaping and not in connection with the erection, alteration, or repair of a building or structure." The finding in *Skiba* is not inconsistent with the court's findings in this case. Had the Appellant merely moved dirt; cleaned, grubbed and remove debris; or performed other "earth work" solely for the purpose of landscaping, a license would not have been needed. However, by the Appellant's own admissions at the hearing, he performed earth moving and grading for the culverts and concrete spillways, and as such, a license was required.

The Appellant also argues that the Department's unreasonable expanded interpretation of the licensing statutes relevant to the case has the effect of denying individuals with potentially large claims access to the court system. While any underlying civil action is not within this court's purview,[12] it appears that it is the Appellant's interpretation of the relevant statutes that is too narrowly strained.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000) (*citing Charleston County Sch. Distr. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Under the "plain meaning rule," it is not the court's place to change the meaning of a clear and unambiguous statute. *Hodges v. Rainey* (*citing In Re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998). Where statute's language is plain and unambiguous, and conveys a clear and definite meaning, rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Hodges v. Rainey*. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. *Id.* Therefore, the courts are bound to give effect to the expressed intent

[12] Both parties have made reference to an underlying civil action. The Department states that the Appellant has taken inconsistent positions in this matter and the civil action. While the pleadings in the civil action are not part of the record in this case and were not considered in the forming of the court's order in this case, the court reminds the parties that they cannot use both the sword in one action, as a shield in another.

of the legislature. *Id.*

Whereas here, the legislature's intent is clearly apparent from statutory language, a court may not embark upon a search for it outside the statute. *Id.* (*citing Abell v. Bell*, 299 S.C. 1, 91 S.E.2d 548 (1956). When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning. *Id.* (*citing Timmons v. S.C. Tricentennial Comm'n*, 254 S.C. 378, 175 S.E.2d 805 (1970).

C. DHEC's Regulation of Dams Including the Issuance of Permits for Certain Dam Projects Has No Bearing on Whether the Appellant Needs to be licensed by the Board to Perform Contracting Work.

The Appellant posits that the construction of dams is referred to as "heavy construction." The Appellant continues by stating that because the South Carolina Contractor's Licensing Board does not license "heavy contractors," or assert jurisdiction over major dam construction, it is improper for the Board to establish any prerequisites to the performance of work performed or to be performed on dams. Section 40-11-360(A) provides the list of exceptions to which the Contractor's Practice Act does not apply. S.C. Code Ann. § 40-11-360 (2016). There is nothing contained in subsection 40-11-360(A) that expressly or impliedly includes an exception for what the Appellant has deemed as "heavy construction."

The Appellant also contends that for the same reason, the Board is prohibited from making any findings related to work on dams. He asserts that to allow as much could result in the South Carolina Department of Health and Environmental Control (DHEC) (which regulates dam construction when a federal agency does not assume jurisdiction) and the Board creating a "double set of regulations and regulators and creates a potential for conflicting requirements."

The court disagrees. DHEC's issuance of permits for certain dam projects has no bearing on whether the Appellant needs to be licensed by the Board to perform contracting work. The Dams and Reservoirs Safety Act (Act) outlines DHEC's authority and responsibility for maintaining dams and reservoirs in South Carolina. S.C. Code Ann. § 49-11-110 et seq. (2017). The Act's stated declaration of purpose is as follows:

> It is the purpose of this article to provide for the certification and inspection of certain dams in South Carolina in the interest of public health, safety, and welfare in order to reduce the risk of failure of the dams, prevent injuries to persons and damage to property, and confer upon [DHEC] the regulatory authority to accomplish its

purposes.

S.C. Code Ann. § 40-11-130 (1993).

In comparison, the Board's stated purpose is

> [T]o protect the health, safety, and welfare of the public through the regulation of businesses and individuals who identify, assess, and provide contract work to individuals or other legal entities through the administration and enforcement of this chapter and any regulation promulgated under this chapter and Article I, Chapter 1.

S.C. Code Ann. § 40-11-10(A) (2005).

While both the Board and DHEC are charged with protecting the public health, safety and welfare by regulating various entities and operations, it is clear that they oversee and regulate distinctly different realms. DHEC is charged with insuring that dams within its purview[13] are properly designed and engineered to minimize the risk of dam failure, and injuries to people and property. The Board is charged with insuring that that those who provide contracting services in this State are properly doing so. The court agrees with the Department that DHEC's oversight and regulation of certain dams dovetails with the Department's regulation, oversight and licensing of the contracting profession.

In reviewing various regulations promulgated pursuant to the Act, it is clear that the focus of DHEC's regulation is in insuring that the dams that fall within its jurisdiction are properly designed to avoid catastrophic failure. *See e.g.*, S.C. Code Ann. Regs. 72-1 et seq. (1997). As the Appellant properly synopsized, the essential purpose of licensing contractors is to insure that the work done by contractors is performed in proper and workmanlike fashion. To this end, the physical construction performed by contractors on any given project in this state whether it be a dam or otherwise, is regulated in part by the Board.

The only mention of contractors in the Act's regulations governing permitting procedures and requirements, simply provides that with respect to repair permit applications, an engineering design that consists of drawings and specifications must include, "[g]eneral provisions that specify the rights, duties and responsibilities of the applicant, applicant's engineer, *contractor*, and the prescribed order of work." S.C. Code Ann. Regs. 72-3(D)(3)(b)(6) (1997) (*emphasis added*). The Act's regulation's reference to contractors clearly take into account the import of licensed

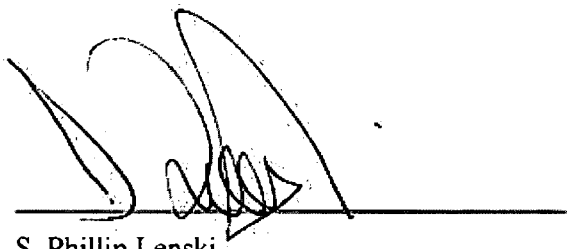
[13] Not all dams are regulated by the Act. *See* S.C. Code Ann. § 49-11-120(4) (1993).

contractors executing the physical construction of related projects.

Based on the forgoing,

IT IS THEREFORE ORDERED that Department's decision is **AFFIRMED**.

AND IT IS SO ORDERED.

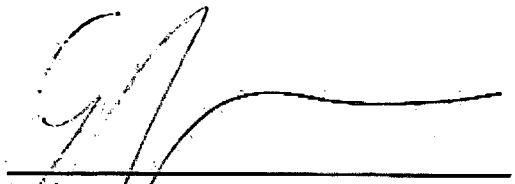


S. Phillip Lenski
Administrative Law Judge

July 28, 2017
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Edye U. Moran, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Edye U. Moran
Judicial Law Clerk

July 28, 2017
Columbia, South Carolina