MASSACHUSETTS SUPREME JUDICIAL COURT

Anawan Insurance Agency, Inc. v. Division of Insurance

459 Mass. 592 (2011) · Decided April 29, 2011

SUMMARY

The Massachusetts Supreme Judicial Court reviews an administrative enforcement action against an insurance agency for paying commissions to an unlicensed broker. The court holds that the four-year limitations period in G. L. c. 260, § 5A, applies to enforcement actions under G. L. c. 175, § 177, and that the discovery rule may toll that period. It further holds that the Commissioner of Insurance may impose penalties under both G. L. c. 175, § 177, and G. L. c. 176D, §§ 2 and 7, and affirms the Superior Court judgment.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Botsford, J.
JURISDICTION	Massachusetts
DECIDED	April 29, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Division of Insurance sought further appellate review of an Appeals Court decision that vacated the Superior Court's affirmance of the agency's enforcement decision and limited the penalties available against Anawan. The Supreme Judicial Court granted further appellate review.
STANDARD OF REVIEW	Under G. L. c. 30A, § 14, the court reviews the agency decision and may set it aside or modify it if substantial rights were prejudiced by, among other things, an error of law, arbitrariness, capriciousness, or abuse of discretion. Questions of statutory interpretation are reviewed de novo, with substantial deference given to a reasonable interpretation by the agency charged with administering and enforcing the statute.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Division of Insurance v. Anawan Insurance Agency, Inc., Stephen G. Michaels

TOPICS

insurance · administrative law · judicial review of agency action · statutory interpretation · consumer protection

PRACTICE AREAS

insurance · administrative law · consumer protection · statutory interpretation · appellate procedure

QUESTIONS PRESENTED

1. Whether the two-year limitations period in G. L. c. 260, § 5, or the four-year period in G. L. c. 260, § 5A, governs a Division of Insurance enforcement action under G. L. c. 175, § 177.
2. Whether the discovery rule applies to the four-year limitations period in G. L. c. 260, § 5A.
3. Whether the Commissioner of Insurance may impose penalties under both G. L. c. 175, § 177, and G. L. c. 176D, §§ 2 and 7, for the same conduct.

HOLDINGS

1. The four-year statute of limitations in G. L. c. 260, § 5A, governs enforcement actions brought under G. L. c. 175, § 177, because that statute protects consumers from unlicensed insurance practitioners and therefore has the characteristics of a consumer-protection statute.
2. The discovery rule applies to the four-year limitations period in G. L. c. 260, § 5A, including when the Division brings an enforcement action seeking civil penalties under G. L. c. 175, § 177.
3. When the same conduct violates both G. L. c. 175, § 177, and G. L. c. 176D, § 2, the Commissioner may impose separate penalties under both statutes.

KEY QUOTATIONS

> *"The essential nature of the right asserted determines the appropriate statute of limitations."* (598)

> *"Where G. L. c. 260, § 5A, draws no distinctions based on (1) the specific nature of the consumer protection claim being brought; (2) who is bringing the consumer protection claim or case; or (3) the nature of the relief being sought (e.g., whether civil penalties, monetary damages, or restitution), and consistent with our interpretation of this statute in the cases just cited, we read § 5A to permit application of the discovery rule in an action brought by the division to enforce G. L. c. 175, § 177, just as it applies to causes of action brought by private individuals under G. L. c. 93A."* (600)

> *"In light of the unambiguous language of c. 176D, § 12, we think it clear that in a case such as this one, where violations have been found of both a specific statute such as c. 175, § 177, regulating one aspect of the insurance industry, and the more general c. 176D, the commissioner, acting through the division, permissibly may impose separate penalties under both statutes."* (601)

FACTUAL BACKGROUND

The Division received anonymous complaints in 1999 concerning Anawan's operations and investigated its relationship with Kuntthy Pram, who had formerly been licensed as an insurance broker but failed to renew his license after May 1997. In response to a 2004 Division inquiry, Anawan disclosed that Pram had brokered insurance through the agency from January 1997 through December 2001 and identified commissions paid to him. The Division commenced enforcement proceedings on October 25, 2004, and the hearing officer found that Anawan had paid at least 300 commissions to Pram after his license expired.

PROCEDURAL HISTORY

The Division commenced an administrative enforcement action alleging that Anawan paid commissions to an unlicensed insurance broker in violation of G. L. c. 175, § 177, and G. L. c. 176D, § 2. The hearing officer found 300 violations and imposed $30,000 in fines under G. L. c. 176D, § 7; the Commissioner of Insurance affirmed, and the Superior Court affirmed under G. L. c. 30A, § 14. The Appeals Court held that the discovery rule did not apply and that penalties could be assessed only under G. L. c. 175, § 177. The Supreme Judicial Court rejected those conclusions and affirmed the Superior Court judgment.

DISPOSITION

affirmed

CASES CITED

- Commerce Insurance Co. v. Commissioner of Insurance, 447 Mass. 478, 481 (2006)
- Attorney General v. Commissioner of Insurance, 450 Mass. 311, 318 (2008)
- Micera v. Neworld Bank, 412 Mass. 728, 731-733 (1992)
- Nantucket v. Beinecke, 379 Mass. 345, 347-349 (1979)
- Commonwealth v. Roswell, 173 Mass. 119, 121 (1899)
- Deluty v. Commissioner of Insurance, 7 Mass. App. Ct. 88, 91 (1979)
- Friedman v. Jablonski, 371 Mass. 482, 484-485, 487 (1976)
- Hendrickson v. Sears, 365 Mass. 83, 91 (1974)
- Anawan Insurance Agency, Inc. v. Division of Insurance, 76 Mass. App. Ct. 447, 451-455 (2010)
- 3M Co. v. Browner, 17 F.3d 1453, 1455, 1460-1463 (D.C. Cir. 1994)
- Unexcelled Chemical Corp. v. United States, 345 U.S. 59, 65 (1953)
- Lambert v. Fleet National Bank, 449 Mass. 119, 126 (2007)
- Albrecht v. Clifford, 436 Mass. 706, 714-715 (2002)
- Reiter Oldsmobile, Inc. v. General Motors Corp., 378 Mass. 707, 711 (1979)
- Zora v. State Ethics Commission, 415 Mass. 640, 642 n.3 (1993)
- Bongaards v. Millen, 440 Mass. 10, 28 (2003)