

SUPREME COURT OF NEW HAMPSHIRE

Ruel v. New Hampshire Real Estate Appraiser Board

163 N.H. 34 (2011) · Decided December 15, 2011

SUMMARY

The New Hampshire Supreme Court affirmed a superior court order remanding a disciplinary matter involving a licensed real estate appraiser to the New Hampshire Real Estate Appraiser Board for a new hearing. The court held that the grievance process properly became a formal disciplinary proceeding, that statutory time-limit violations did not deprive the Board of authority absent material prejudice, and that the Board could accept the investigator's testimony. The court also rejected dismissal as the remedy for the quorum-related due process issue and denied attorney's fees.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Lynn, J.; Duggan, J.; Hicks, J.; Conboy, J.
JURISDICTION	New Hampshire
DECIDED	December 15, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a superior court order remanding an administrative disciplinary matter to the New Hampshire Real Estate Appraiser Board for a new hearing.
STANDARD OF REVIEW	Certiorari review is limited to whether the agency unsustainably exercised its discretion or acted arbitrarily, unreasonably, or capriciously; review of the superior court's decision is limited to determining whether it made an error of law or reached a result unsupported by the record. An agency evidentiary ruling is reviewed for arbitrariness or capriciousness.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of New Hampshire.
PARTIES	Christopher Ruel v. New Hampshire Real Estate Appraiser Board

TOPICS

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QUESTIONS PRESENTED

1. Whether LeMay had standing to file a grievance against Ruel.
2. Whether the Board's failure to comply with statutory ninety-day time limits deprived it of jurisdiction to conduct the disciplinary proceeding.
3. Whether the Board's delay materially prejudiced Ruel.
4. Whether conducting the disciplinary hearing and issuing the final order without a five-member quorum violated due process and required dismissal rather than remand.
5. Whether the Board improperly admitted investigator Barry Shea's testimony and report because he allegedly lacked the qualifications to testify as an expert.
6. Whether Ruel was entitled to attorney's fees.

HOLDINGS

1. Once the Board abandoned informal settlement efforts and initiated a formal adjudicative disciplinary hearing, the grievance was converted into a complaint and the complaint procedures governed thereafter.
2. The governing statute and administrative rules did not limit who could file a grievance; a written grievance was sufficient, so LeMay was permitted to initiate the Board's investigation.
3. The Board retained authority to conduct the disciplinary proceeding despite assuming, without deciding, that it failed to comply with the statutory ninety-day deadlines.
4. Ruel failed to demonstrate material prejudice from the Board's delay, so the delay did not warrant reversal or dismissal.
5. Even assuming due process required a five-member quorum to complete the disciplinary hearing, Ruel identified no authority requiring dismissal as the remedy; remand for a new hearing was permissible.
6. The Board did not act arbitrarily or capriciously in admitting Shea's testimony and report because agencies have broad discretion over admissibility and Shea was a certified appraisal instructor with relevant investigation and appraisal experience.

KEY QUOTATIONS

"Rather, the more reasonable construction of the statute is that once the Board has abandoned its efforts to resolve a grievance informally through settlement and has determined to initiate a formal disciplinary hearing, such action has the effect of converting the grievance into a complaint." (163 N.H. at 40)

"Our inquiry focuses upon two factors: consideration of the statutory goals and whether the party seeking relief has shown prejudice as a result of the statutory violation." (163 N.H. at 42)

"A court will not set aside an agency's decision for a procedural irregularity, however, unless the complaining party shows material prejudice." (163 N.H. at 44)

FACTUAL BACKGROUND

Christopher Ruel, a licensed real estate appraiser, appraised property owned by Kenneth Frederick, whose land the New Hampshire Department of Transportation sought to acquire by eminent domain. After a DOT appraisal valued the property approximately \$50,000 less than Ruel's appraisal, DOT appraisal supervisor George LeMay filed a grievance against Ruel with the Board. Following an investigation and rejected settlement proposal, the Board held a disciplinary hearing and imposed a fine and educational requirements; one Board member left during Ruel's testimony and did not participate in the decision.

PROCEDURAL HISTORY

The Board investigated a grievance against Ruel, conducted a disciplinary hearing, and ordered him to pay a \$500 fine and attend two appraisal courses. Ruel sought certiorari review in the superior court, which rejected most of his claims but remanded for a new hearing because the Board conducted part of the hearing and issued its final order without a quorum. Ruel appealed, arguing that the proceedings should instead have been dismissed and raising additional standing, delay, due process, evidentiary, and attorney-fee issues.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The superior court's remand to the New Hampshire Real Estate Appraiser Board for a new disciplinary hearing was affirmed; the opinion does not provide additional remand instructions.

CASES CITED

- Appeal of Geekie, 157 N.H. 195, 202 (2008)
- Nautilus of Exeter v. Town of Exeter, 139 N.H. 450, 452 (1995)
- Consolidated Edison Co. of New York v. O'Leary, 131 F.3d 1475, 1481 (Fed. Cir. 1997)
- McCarthy v. Wheeler, 152 N.H. 643, 645 (2005)
- In re Cierra L., 161 N.H. 185, 188 (2010)
- State v. Fournier, 158 N.H. 441, 446-47, 449, 453 (2009)
- Smith v. N.H. Bd. of Psychologists, 138 N.H. 548, 550-51 (1994)
- Barnet v. Warden, N.H. State Prison for Women, 159 N.H. 465, 469-70 (2009)
- Appeal of Martino, 138 N.H. 612, 616 (1994)
- In re Robyn W., 124 N.H. 377, 380-81 (1983)
- Skilling v. United States, 130 S. Ct. 2896, 2916 (2010)
- State v. Locke, 149 N.H. 1, 10 (2002)
- Citizens of E. Derry Fire Precinct v. Town of Derry, 148 N.H. 510, 512 (2002)
- Attitash Mt. Service Co. v. Schuck, 135 N.H. 427, 429 (1992)
- Appeal of Concord Natural Gas Corp., 121 N.H. 685, 691 (1981)

- Appeal of Comm. to Save the Upper Androscoggin, 124 N.H. 17, 27 (1983)
- Appeal of Omega Entm't, 156 N.H. 282, 288 (2007)
- McLaughlin v. Fisher Eng'g, 150 N.H. 195, 199 (2003)
- Arbaugh v. Y&H Corp., 546 U.S. 500, 510 (2006)

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