

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

STEPP MANUFACTURING CO.)

Appellant,)

v.)

SOUTH CAROLINA)
DEPARTMENT OF)
TRANSPORTATION)

Respondent.)
_____)

IN THE CIRCUIT COURT ON APPEAL
FROM THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL

SCPRP Case No. 2005-9

Case No. 2006-CP-40-00432

FILED
2007 JUN 12 PM 1:39
B. R. BRYAN & G.S.
A. SCOTT

ORDER

This matter came before this Court for a hearing on April 25, 2007. This Court heard a request from the Appellant to review the December 26, 2005, Order of the South Carolina Procurement Review Panel. At the hearing before this Court, Michael Montgomery, Esquire, represented Appellant Stepp Manufacturing; Amanda Turbeville Taylor, Esquire, represented Respondent South Carolina Department of Transportation; and Keith McCook, Esquire, represented the Chief Procurement Officer, an intervening party.

JURISDICTION

This Court is granted jurisdiction over the matter by the South Carolina Consolidated Procurement Code and the Administrative Procedures Act. Pursuant to South Carolina Code Section 11-35-4410(6), a portion of the Procurement Code, appeal of a Procurement Review Panel decision is to the Circuit Court and the standard for review of the Panel's decision is governed by the Administrative Procedures Act. Pursuant to the Administrative Procedures Act, South Carolina Code Section 1-23-380(5), the reviewing Court may reverse or modify the decision of, in this case, the

Panel, if the substantial rights of the appellant have been prejudiced because the Panel's findings, inferences, conclusions or decisions are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record (emphasis added).

STANDARD OF REVIEW

This Court may not substitute its judgment for the judgment of the Panel as to the weight of the evidence on questions of fact. Pursuant to the Administrative Procedures Act, this Court's review is limited to deciding whether the appellate panel's decision is unsupported by substantial evidence or is controlled by some error of law. *See Rodriguez v. Romero*, 363 S.C. 80, 610 S.E.2d 488 (2005); *Gibson v. Spartanburg Sch. Dist. #3*, 338 S.C. 510, 526 S.E.2d 725 (Ct.App.2000); S.C. Code Ann. §1-23-380(A)(6) (2005). Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action. *Pratt v. Morris Roofing, Inc.*, 357 S.C. 619, 594 S.E.2d 272 (2004); *Jones v. Georgia-Pacific Corp.*, 355 S.C. 413, 586 S.E.2d 111 (2003). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. *Sharpe v. Case Produce, Inc.*, 336 S.C. 154, 519 S.E.2d 102 (1999); *DuRant v. South Carolina Dep't of Health and Env'tl. Control*, 361 S.C. 416, 604 S.E.2d 704 (Ct.App.2004). The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. *Anderson v. Baptist Med. Ctr.*, 343 S.C. 487, 541 S.E.2d 526 (2001); *Hicks v. Piedmont Cold Storage, Inc.*, 335 S.C. 46, 515 S.E.2d 532 (1999).

HOLDING

The Appellant's chief argument before this Court is that the Respondent never properly revoked the equipment's acceptance, and therefore, the Procurement Review Panel was incorrect in finding that it did. However, the Appellant presented no evidence to indicate that the Panel's ruling for the Respondent was clearly erroneous. The record on appeal contains the testimony of Norma Hall, the Respondent's Director of Procurement. Ms. Hall, in her testimony, explained that it was her intention that the revocation of acceptance of the equipment would stand unless and until the equipment was returned from Minnesota in perfect working order. Because this was not the case, the Respondent never re-accepted the equipment and the original revocation stood (Tr. at 74:22-75:21 and 77:11-21).

The Appellant did not provide any evidence that would dispute Ms. Hall's testimony. In fact, prior to the hearing before the Panel, the parties stipulated to some of the facts of the case. Two of the most pertinent of these facts were that "Mrs. Hall and Mr. Stepp further agreed that, when the asphalt distributor was re-delivered and accepted as working properly, the one-year warranty period would start over" and "After the equipment's return [to Columbia after testing in Orangeburg County], Norma Hall, SCDOT's Procurement Director, telephoned Mr. Stepp and informed him that the asphalt distributor was not functioning properly and the SCDOT wanted him to pick up the equipment and refund the original purchase price of \$74,575" (Ex. B to Appellant's Petition for Appeal at 4).

Further, Mr. Shane Stepp, the Appellant, testified before the Panel that he received a telephone call from Ms. Hall after the re-worked equipment returned from

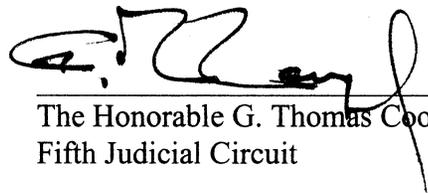


Minnesota. He testified that his understanding of the conversation was that “they [the Respondent] were rejecting acceptance” (Tr. at 129:21-130:5). There should have been no misunderstanding that the Respondent was not satisfied with this equipment and did not accept it. South Carolina law does not require that a revocation of acceptance be in writing. Therefore, the telephone call Ms. Hall made to Mr. Stepp was enough to revoke acceptance, and the Respondent never reaccepted the equipment, so further revocations were unnecessary.

As to this and the other issues the Appellant raised in its Petition for Appeal, I do not find, based on the evidence presented, that the Panel was clearly erroneous in its findings.

I therefore rule that the Procurement Review Panel’s decision is AFFIRMED.

AND IT IS SO ORDERED.



The Honorable G. Thomas Cooper, Jr.
Fifth Judicial Circuit

JUNE 15TH
May ____, 2007

Columbia, South Carolina