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IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

JUN 10 2002

JOHN M. VARGO,

Appellant

vs.

OHIO STATE BOARD OF
BUILDING STANDARDS

Appellee

CASE NO. 01CVF-11-11581

JUDGE CONNOR

BUSINESS & GOVERNMENT
REGULATION

CLERK OF COURTS
2002 JUN 11 PM 3:17
FRANKLIN COUNTY COURT

DECISION AFFIRMING THE ORDER OF
THE OHIO BOARD OF BUILDING STANDARDS

Rendered this 14TH day of JUNE, 2002

CONNOR, JUDGE

This case is before the Court on an appeal under R.C. 119.12 from an Order of the Ohio Board of Building Standards (hereinafter the "Board").

Appellant John M. Vargo (hereinafter "Appellant") filed an application to be certified as a Building Official. The Board denied the application on the grounds that Appellant lacked the experience for that certification as required by Ohio Admin. Code 4101:2-1-79 (C)(2). Appellant filed this appeal from the Board's Order.

History of this Matter

Ohio Admin. Code 4101:2-1-79 (C)(2) provides, in pertinent part, that an applicant for a building official certification shall meet the following requirement:

At least ten years experience as a construction contractor, general superintendent of building construction for buildings or structures within the scope of use groups regulated by the OBBC, ten years experience as specified in paragraph (A)(2) of this rule, or equivalent experience that provided the required knowledge as determined by the board of building

standards. **The experience must provide knowledge of different construction methods, processes, and types.** (emphasis added)

On June 13, 2001, the Board received Appellant's application for certification as a Building Official. (Exhibit 1). On the application, Appellant indicated that he had 8 years and nine months experience as an electrical inspector with the City of Loraine Building Department. Appellant also indicated experience in the field of electrical contracting work.

On June 22, 2001, the Board's Personnel Committee recommended to the Board that it deny Appellant's request for certification because he did not meet the experience requirements set forth in Ohio Admin. Code 4101:2-1-79 (C)(2) (hereinafter the "Rule"). The full Board adopted that recommendation. (Exhibit 2).

On June 26, 2001, the Board provided notice of its decision to Appellant. (Exhibit 3). The Board's letter stated that "The Board voted to deny approval of your qualifications for failure to meet the requisite experience : 'At least ten years experience as a construction contractor, general superintendent of building construction for buildings or structures within the scope of use groups regulated by the OBBC, ten years experience as specified in paragraph (A)(2) of this rule, or equivalent experience that provided the required knowledge as determined by the board of building standards. *The experience must provide knowledge of different construction methods, processes, and types.*" (Exhibit 3; emphasis in original).

Pursuant to Appellant's request for a hearing, a formal hearing was conducted by the Board on September 28, 2001. At the hearing, John W. Brant, the Board's executive secretary, testified regarding the reasons for denial of Appellant's application. Mr. Brant noted that the last sentence of the pertinent rule states that "[t]he experience must provide

knowledge of different construction methods, processes, and types.” (Tr. 9). Mr. Brant stated that “the basic reason that Mr. Vargo was turned down was because his experience is all as an electrical contractor.” (Tr. 12). Mr. Brant stated that the rule was adopted to have a “broad experience requirement” (Tr. 11). He stated that the Board interpreted the rule to mean that the required experience as a “construction contractor” must be experience as a general contractor rather than as a specialty contractor. (Tr. 11). A general contractor would be “responsible for all phases of construction.” (Tr. 10). Mr. Brant stated that Appellant’s experience is solely as an electrical contractor, which is a specialty type of contracting. (Tr. 11).

Mr. Vargo also testified at the September 28, 2001 hearing. Mr. Vargo testified that he has nine years of experience as chief electrical inspector for the City of Lorain, and thirteen years of experience as an electrical contractor. (Tr. 15). Mr. Vargo stated that he believes the term “construction contractor” in the Rule can mean a contractor in any trade, such as an electrical contractor. (Tr. 14).

On November 2, 2001, the Board issued its Order denying Appellant’s application on the grounds that

he lacks the required experience of at least ten years experience as a construction contractor or general superintendent of building construction or general superintendent of building construction, or the equivalent experience that provided the required knowledge as determined by the Board of Building Standards of different construction methods, processes, and types to qualify to serve in that position pursuant to the requirements of rule 4101:2-1-79(C)(2) of the Administrative Code.

(Exhibit D). From that Order, Appellant filed this appeal.

Standard of Review

This court must affirm the order of the Board if the order is supported by reliable, probative and substantial evidence and the order is in accordance with law. R.C. 119.12; *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108, 111.

That quality of proof was defined by the Ohio Supreme Court in *Our Place v. Liquor Control Comm.* (1992), 63 Ohio St. 3d 570:

- (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true.
- (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue.
- (3) "Substantial" evidence is evidence with some weight; it must have importance and value.

The Court's Findings and Conclusions

At the time Appellant filed his application for certification as a Building Official, he had 8 years, 9 months experience as an electrical inspector with the City of Lorain Building Department. As acknowledged in Appellee's brief, the Rule provides that experience as an inspector for a building department counts toward the ten-year experience requirement. However, the Board denied Appellant's application because he did not have at least an additional one year and three months experience as a "construction contractor". The Board interpreted the Rule to require that the additional experience be experience as a general contractor, in order to provide the required knowledge of different construction methods, processes, and types. The Board concluded that Appellant's additional experience as an electrical contractor did not suffice, because it was experience as a specialty contractor.

Appellant argues that experience as an electrical contractor meets the Rule's requirement of experience as a "construction contractor". Appellant argues that by requiring that the experience be as a general contractor rather than a specialty contractor, the Board is arbitrarily imposing requirements in addition to those contained in the Rule.

The Court concludes that Appellant's argument fails because of the last sentence of O.A.C. 4101:2-1-79(C)(2). Regardless of how the term "construction contractor" as used in the Rule is interpreted, the Rule goes on to provide expressly in the last sentence that "The experience must provide knowledge of different construction methods, processes, and types." By interpreting the Rule to require experience as a general contractor rather than as a special contractor, the Board was giving effect to this provision of the Rule.

As explained during the hearing by the Board's executive secretary, a general contractor would be "responsible for all phases of construction." (Tr. 10). Appellant's experience is solely as an electrical contractor, which is a specialty type of contracting. (Tr. 11). Appellant admitted, for example, that he had no experience in the plumbing or HVAC phases of construction. (Tr. 15).

The Board's preference for a broad range of construction experience for certification of a Building Official is certainly understandable and is supported by the language of the Rule. It is well-settled that a decision of an administrative agency is entitled to proper deference from the court because agencies are specially equipped to make decisions which require the application of administrative law by virtue of their knowledge, expertise, and experience in a particular field. *Farrand v. State Medical Board* (1949), 151 Ohio St. 222; *Pons v. State Medical Board* (1993), 66 Ohio St. 3d 619.

For the foregoing reasons, the Court finds that the Board's Order is supported by reliable, probative, and substantial evidence and is in accordance with law. The Order of the Board is AFFIRMED. Counsel for Appellee shall prepare and submit an appropriate Judgment Entry reflecting this Decision pursuant to Local Rule 25.01.



JOHN A. CONNOR, JUDGE

Copies to:
John M. Vargo, Appellant *pro se*
Richard M. Scott, Counsel for Appellee