IN THE COURT OF APPEALS OF IOWA

FILED
JAN 2 1 1984
CLERK SUPREME COURT

GORDON K. STOWELL,	)	
Petitioner-Appellee,	)	Filed January 24, 1984
vs.	)	
BOARD OF EXAMINERS FOR LICENSING AND REGULATION OF HEARING AID DEALERS,	)	3-398 83-505
Respondent-Appellant.	)	

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Appeal from Dubuque District Court - L. John Degnan.

Respondent agency appeals from the district court decision on judicial review remanding to the agency for further proceedings allowing petitioner to present additional evidence. AFFIRMED AS MODIFIED.

William T. Connery, Dubuque, Iowa, for petitioner-appellee.

Thomas J. Miller, Attorney General, and Susan Barnes Brammer, Assistant Attorney General, for respondent-appellant.

Heard by Oxberger, C.J., Donielson, and Sackett, JJ.

SACKETT, J.

The Board of Examiners for Licensing and Regulation of Hearing Aid Dealers appeals from a district court decision on judicial review remanding the matter to the agency for further proceedings to allow Stowell to present further evidence. Affirmed as modified.

Stowell was a licensed hearing aid dealer in the state of Iowa. He was personally served with notice of disciplinary hearing scheduled for Saturday, November 6, 1982. Stowell did not appear at the hearing, request a continuance, or otherwise contact the board. In a decision dated November 29, 1982, the board found:

> 1. That the Respondent was timely served with the Notice of Hearing (State Exhibit 2) as indicated by the Return of Service (State Exhibit 1) showing service of the Notice of Hearing on the Respondent on October 1, 1982.
> 2. That the Board of Examiners for the Licensing and Regulation of Hearing Aid Dealers has jurisdiction over the subject matter and the Respondent. . . .

Based upon evidence showing that Stowell's license had been revoked in Wisconsin, the board voted to revoke Stowell's Iowa license.

Stowell filed a petition for rehearing alleging in part that he had no notice that he was required to appear. The agency denied the petition for rehearing, and in doing so found that the notice served on Stowell informed him that the purpose of the hearing was to determine whether his license should be suspended or revoked.

Stowell filed a petition for judicial review on the same day the board entered its order denying a rehearing. In the petition for rehearing Stowell alleged, inter alia, that the final decision was made upon unlawful procedure and in violation of the 14th Amendment to the United States Constitution.

The trial court, after a hearing, determined that the action of the board was not arbitrary or capricious. The court found that equity required that Stowell be given an opportunity to meet or come before the board, upon written notice to

Stowell of the time and place of said hearing, served upon him as required for the service of original notices in this state.

The board contends that the trial court erred in remanding the case for another hearing. The appellee has suggested, in his petition and argument, that the agency had no jurisdiction to enter an order revoking Stowell's license. We agree and quash the order.

Section 154.A23 of the Iowa Code sets forth the procedures the board should follow in revoking a license. That section provides in part:

> **154A.23 Complaints.** Any person wishing to make a complaint against a licensee or holder of a temporary permit shall file a written statement with the board within twelve months from the date of the action upon which the complaint is based. If the board determines that the complaint alleges facts which, if proven, would be cause for the suspension or revocation of the license of the licensee or holder of a temporary permit, it shall make an order fixing a time and place for a hearing and requiring the licensee or holder of a temporary permit complained against to appear and defend. The order shall contain a copy of the complaint, and the order and copy of the complaint shall be served upon the licensee or holder of a temporary permit at least twenty days before the date set for hearing, either personally or as provided in section 154A.21. Continuance or adjournment of a hearing date may be made for good cause. At the hearing the licensee or holder of a temporary permit may be represented by counsel.

The record indicates that Stowell was personally served on October 11, 1982, with a notice of hearing. The notice provided as follows:

> You are hereby notified that a disciplinary hearing has been scheduled concerning your license as a hearing aid dealer in the State of Iowa. The hearing will be conducted in the third floor conference room of the Lucas State Office Building, East 12th and Grand, Des Moines, Iowa on Saturday, November 6, 1982 beginning at 2:00 p.m.
>
> The hearing will be conducted pursuant to the authority of Section 154A.23 of the Iowa Code and Rules 470-145.208(258A) of the Iowa Administrative Code.
>
> The hearing will concern whether there are grounds for disciplinary action concerning your license as a hearing aid dealer because of an order of the State of Wisconsin Hearing Aid Dealers and Fitters Examining Board issued September 13, 1982 which revoked your license to practice as a hearing aid dealer in the State of Wisconsin. Attached

is a copy of the administrative record of the State of Wisconsin Hearing Aid Dealers and Fitters Examining Board.

Rule 145.212(5) of the Iowa Administrative Code states that suspension or revocation of license by another state is grounds for the Board to revoke or suspend a license, or place a licensee on probation.

The return of service attached indicates that, in addition to the Notice of Hearing, Stowell was also served with a complaint, answer, request for production of documents pursuant to Section 804.09, first set of interrogatories, answer to interrogatories and response to request for production, exhibits, findings of fact, conclusions of law, order and stipulation. No such documents are attached to the return of service. We assume, however, from a careful examination of the file, that the documents referred to in the return of service were documents from the state of Wisconsin with reference to the claim filed against Stowell, there.

The record is clear that the board failed to follow the procedure of Iowa Code section 154A.23 in proceeding to a hearing to revoke Stowell's license. The file as certified shows that no written statement was filed with the agency. While the certified copy of the action of the Wisconsin Dealers would be sufficient to meet the requirements of a written statement, there is no evidence that the statement was actually filed with the agency. There is also no evidence that the board followed the dictate of the statute in making a determination that the complaint alleged facts which, if proven, would be cause for suspension or revocation, or that they entered an order requiring Stowell to appear and defend. See Iowa Code §154A.23. The board's only action was to serve Stowell with a notice indicating that they had scheduled a hearing to consider whether there were grounds for a disciplinary action.

The following proposition regarding sufficiency of notice in administrative proceedings was set forth in 73AC.J.S. Public Administrative Law and Procedure §135:

> Statutory provisions as to giving notice of contemplated administrative action and of a hearing thereon must be at

> least substantially complied with, although it has been held that the requirements of notice of a hearing before an administrative agency are to be strictly followed. Accordingly, under some authorities, compliance with statutory provisions as to notice is a prerequisite to any valid action by an administrative tribunal, and failure to give proper notice is a jurisdictional defect. [emphasis added]

The annotation "Revocation or Suspension of License to Practice Architecture" found at 58 A.L.R. 3d 543 (1974) is also instructive. That annotation, at page 546, provides:

> **§2. Summary and comment**
>
> **[a] Generally**
>
> Although constitutional due process protects an individual's freedom to engage in any legitimate employment or business activity, it has been widely recognized that the state may, in the exercise of its police power, require a license to practice a particular calling, if the general welfare demands that the public be protected against ignorance, incompetence, or fraud by practitioners of this calling. Concomitantly, it has been generally held that licenses granted by the state may be suspended or revoked upon a showing of sufficient cause. It has frequently been acknowledged that the state's licensing powers may be validly delegated to administrative agencies, so long as sufficient guidelines are provided and procedural due process requirements are met. . . .

73AC.J.S. Public Administrative Law and Procedure §117 at pp. 16-17 provides:

> Where a board exercises judicial powers, the same rules apply to it as to courts generally and its jurisdiction will not be defeated by rigid construction where the matter is fairly doubtful; it has also been held that jurisdiction must be affirmatively shown and will not be presumed. An administrative body may not acquire jurisdiction by estoppel or consent. An administrative body cannot act effectually where it lacks jurisdiction, and, when it does so, its orders are void.

The general rule is that courts will not disturb administrative orders unless error has been made in the face of an objection made at appropriate time. United States v. L. A. Trucker Truck Lines, 344 U.S. 33, 73 S. Ct. 67, 97 L. Ed. 54 (1952). However, if the defect is one "which deprives the Commission of power or

jurisdiction, even in the absence of timely objection, its order should be set aside as a nullity." Guenther v. Morehead, 272 F. Supp. 721 ( ).

In City of Des Moines v. Civil Service Commission of Des Moines, 334 N.W. 2d 133, 135 (Iowa 1983) the supreme court said:

> "Jurisdiction is unquestionably essential to the validity of any proceeding undertaken by a public administration tribunal, without which its actions are void." Antrim v. Civil Service Commission of City of Des Moines, 261 Iowa 396, 401, 154 N.W. 2d 711, 714 (1967). The commission's argument that the city should have objected to the signatures at some prior time is without merit. A challenge to subject matter jurisdiction may be raised at any stage of the proceedings. Recker v. Gustafson, 271 N.W. 2d 738, 739 (Iowa 1978); accord Qualley v. Chrysler Credit Corp., 261 N.W. 2d 466, 468 (Iowa 1978).

"Jurisdiction is unquestionably essential to the validity of any proceedings undertaken by a public administrative tribunal, without which its actions are void." Antrim v. Civil Service Commission, 261 Iowa 396, 401, 154 N.W. 2d 711, 714 (1967). See 73 C.J.S. Public Administrative Bodies and Procedure §66 at page 392, and 2 Am. Jur. 2d Administrative Law §§321 at page 146, §§327-28 at pages 149-51, and §489 at page 295.

The agency here was not acting in accordance with its statutory authority. The board failed to follow the procedures outlined in section 154A.3 with reference to filing a complaint.

The notice of hearing sent to Stowell fails to comply with section 154A.3 and, furthermore, contains no language setting forth his rights to appear and defend.

Because we find that the board failed to adhere to the statutory requirements, we affirm the decision of the trial court ordering a re-hearing.

We modify the order, however, to provide that the order issued be quashed and that the matter be remanded to the agency for proceedings in accordance with the statute.

AFFIRMED AS MODIFIED.