

No. 1-14-0927

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LAWRENCE GOLDSTEIN and)	
GENOA MOTORSPORTS, Inc.,)	Appeal from the
)	Circuit Court of
Plaintiffs-Appellants,)	Cook County.
)	
v.)	No. 12 CH 28066
)	
JESSE WHITE, Secretary of State of the State of Illinois,)	Honorable
)	Kathleen M. Pantle,
Defendant-Appellee.)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held:* Secretary of State's denial of renewal of used-car dealer license affirmed where plaintiff had previously violated provisions of Illinois Vehicle Code. Plaintiffs were not deprived of due process where they were given notice of Secretary's basis for denying renewal and they lacked constitutionally-protected property interest in renewal of license. Section 5-501(a) of Illinois Vehicle Code is not unconstitutionally vague.

¶ 2 Plaintiff Genoa Motorsports, Inc. (Genoa), a used car dealer, applied for a renewal of its dealership license with defendant, the Illinois Secretary of the State (the Secretary). In its renewal application, Genoa sought to add plaintiff Lawrence Goldstein as a partner owning more than 10 percent of the corporation. The Secretary denied the application because Goldstein had

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previously violated the Illinois Vehicle Code (the Code) (625 ILCS 5/1-100 *et seq.* (West 2008)) by failing to transfer the titles to vehicles his prior car dealership, Largo Automotive (Largo), had sold. Plaintiffs filed a complaint for administrative review in the circuit court of Cook County. The circuit court affirmed the Secretary's decision.

¶ 3 Plaintiffs appeal from the circuit court's order, raising three issues. First, they assert that the Secretary's denial of the renewal application was erroneous because it based its decision on the strength of Genoa's finances, which is not a proper basis for the denial of a used-car dealership license. Second, they claim that they were denied their due-process right to notice of the basis for the Secretary's denial, where the Secretary initially said it was denying the renewal based on Goldstein's prior Code violations, but later denied it on the basis that Genoa was financially unsound. Third, plaintiffs claim that the provision permitting the Secretary to deny a license application because of prior Code violations is unconstitutionally vague because it grants the Secretary unfettered discretion to deny applications without affording any guidance.

¶ 4 Plaintiffs' first argument stems from a misreading of the Secretary's decision. Contrary to plaintiffs' assertion, the Secretary did not deny their application on the basis that they were financially unsound. Rather, the Secretary denied the application because Goldstein had failed to transfer the certificates of title for numerous cars he had sold in violation of the Code. Thus, the Secretary did not err in denying the license. With respect to plaintiffs' due-process argument, plaintiffs were afforded proper notice of the Secretary's basis for denying Genoa's application. Moreover, they have failed to identify a constitutionally protected interest that was impacted by the Secretary's actions and, therefore, they cannot state a due-process claim. Finally, we conclude that the Code is not unconstitutionally vague because it provides sufficient guidance to the Secretary on when license applications may be denied. We affirm the circuit court's order.

¶ 5

I. BACKGROUND

¶ 6 On April 7, 2011, Genoa filed a used-car dealer renewal application with the Secretary. It sought to add Goldstein as a partner having a 10 percent or greater interest in Genoa. The Secretary denied the application on July 18, 2011, listing its reason as, "The owner attempting to be added has violated a provision of this Act." Goldstein requested a formal hearing on the denial.

¶ 7 At the hearing, Goldstein testified that he began to run Largo, a sole proprietorship, in 2005. Goldstein said that his license to operate Largo had been revoked in 2009 because he had been issued citations for failing to transfer certificates of title to automobiles. Goldstein explained that Largo had floor plan financing deals with three financiers. Floor plan financing is a credit arrangement where a dealer—in this case, Largo—obtains loans using its retail inventory as collateral. As Largo sold its cars, the proceeds from the sales would be used to pay down the loans. As part of this arrangement, Largo's financiers held title to the cars used to secure the loans. According to Goldstein, the reason that he had failed to transfer the vehicle titles to the new purchasers was that his financiers "would not release [the] titles to us, we had issues finalizing the paperwork." These problems first arose in late 2008 and extended into early 2009.

¶ 8 Goldstein testified that both he and Largo filed for bankruptcy in 2009. He testified that the bankruptcy court ordered Largo's financiers to turn over any outstanding titles to the vehicles' purchasers. On cross-examination, Goldstein testified that the financiers refused to comply with the bankruptcy court's order. He did not know whether the financiers were held in contempt by the bankruptcy court. He denied that the financiers refused to turn over the titles because he had not paid them, but acknowledged that they had participated in his bankruptcy proceedings as creditors.

¶ 9 Goldstein testified that he had been employed with Genoa since 2008 and was involved in its day-to-day operations. He testified that, during his tenure, Genoa had been issued one ticket for failing to transfer title of a vehicle it had sold. Goldstein said that ticket was still pending at the time of the hearing.

¶ 10 Goldstein also explained the process of transferring title to a used vehicle. He testified that, when he sells a used car, he notifies the Secretary and the Illinois Department of Revenue of the sale, then sends the certificate of title to the Secretary. The Secretary then transmits the title to the vehicle's purchaser. If there is a lender involved, the title is sent to the lender.

¶ 11 The Secretary presented several exhibits, which were admitted without objection, to support its case. The Secretary introduced the findings and recommendations of the hearing officer in the denial of Largo's application for a license renewal in 2009. The hearing officer found that Largo had "failed to transfer approximately 70 titles within 20 days in violation of the Act," including 17 titles that had not been transferred at the time of the hearing. However, the hearing officer stated that Largo "appear[ed] to have continued to use its best efforts to fulfill its obligations regarding the transfer of titles," because the title-transfer problems resulted from Largo's financial difficulties and disputes with its financiers. The hearing officer also found that Largo had "engaged in the sale of vehicles while not licensed in violation of the Act." The Secretary also introduced its order, dated April 14, 2009, adopting the hearing officer's recommendations and findings of fact, and affirming the denial of Largo's license renewal.

¶ 12 The Secretary also introduced certified reports of the dispositions of 12 citations the Secretary had issued to Goldstein for failing to transfer the titles to vehicles. The violations occurred between October 7, 2008 and April 29, 2009. Goldstein had been found guilty of each violation.

¶ 13 In closing argument, Goldstein's counsel noted that he had not violated the Code for years and that his violations of the Code resulted from financial hardship and from Largo's financiers refusing to release the titles to vehicles that had been sold. Counsel argued that "[a]t some point it has to stop," and that Goldstein should be able to regain his license to make a living. The Secretary argued that Goldstein should not be issued a license because he had "a history of mismanagement, of not paying his floor plan entities, of selling vehicles without having the title, and causing a situation where there's *** multiple failure to transfer title violations." The Secretary also argued that Goldstein had offered no assurances that, "should he become an owner again, *** that these financial problems that resulted in the dispute with the floor plan entities would not happen."

¶ 14 On June 7, 2012, the hearing officer issued his findings of fact and recommendations. The hearing officer, noting that the burden of proof rested on Genoa, found that, while Goldstein owned Largo, "Largo failed to transfer numerous vehicle titles to purchasers as more fully set forth in the Recommendation related to Secretary of State Order dated April 14, 2009." He found that Largo had failed to transfer titles to its customers "due to financial problems with its floor plan companies." Noting that plaintiffs had presented no evidence "regarding the financial strength of Goldstein or Genoa," the hearing officer found that Genoa had failed "to show that the same financial problems that Goldstein encountered at Largo that resulted in the failure to transfer titles would not arise again." The hearing officer recommended that the denial be affirmed. On June 14, 2012, the Secretary adopted the findings and recommendations of the hearing officer, and affirmed the denial of Genoa's application.

¶ 15 On June 23, 2012, plaintiffs filed their complaint for administrative review. The complaint claimed that the Secretary's decision was erroneous because it "fail[ed] to inform

Plaintiffs of the basis for the original denial of their request and *** bas[ed] the decision upon requirements beyond those set forth in *** the Code." Plaintiffs also argued that they were denied due process at the hearing and that the statute providing for the denial of the renewal application (625 ILCS 5/5-501(a) (West 2012)) was unconstitutionally vague. The circuit court affirmed the Secretary's decision. Plaintiffs appeal.

¶ 16

II. ANALYSIS

¶ 17

A. Denial Of License

¶ 18 Plaintiffs' first contention is that the Secretary erred in denying Genoa's renewal application because the basis for its denial was not authorized by the Code. The Code requires that used-car dealerships be licensed. 625 ILCS 5/5-102(a) (West 2010). Section 5-501(a) of the Code provides that the Secretary may deny an application for a license for one of 20 enumerated reasons, one of which is that the dealership, or one of its officers or directors, has previously violated the Code. 625 ILCS 5/5-501(a) (West 2010). The Secretary's decision to deny a license under section 5-501(a) is subject to judicial review under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)). *People ex rel. Carpentier v. Goers*, 20 Ill. 2d 272, 277 (1960).

¶ 19

Under the Administrative Review Law, our standard of review depends on the question presented to us. *American Federation of State, County and Municipal Employees, Council 31 v. State Labor Relations Bd.*, 216 Ill. 2d 569, 577 (2005). We review questions of law *de novo*. *Id.* We will reverse an agency's resolution of a question of fact only if it is against the manifest weight of the evidence. *Id.* We review a mixed question of law and fact—*i.e.*, whether a settled set of facts satisfy the statutory standard—for clear error. *Id.* Clear error occurs when we are "left with the definite and firm conviction that a mistake has been committed." *Id.* at 577-78. We need

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not resolve which standard of review applies in this case because, under any standard, plaintiffs' claim fails.

¶ 20 Plaintiffs allege that the Secretary's denial of Genoa's renewal application was erroneous because it was premised on their failure to prove Goldstein's and Genoa's financial strength, which is not one of the reasons the Secretary may deny an application under section 5-501(a). 625 ILCS 5/5-501(a) (West 2010). Plaintiffs have misapprehended the basis for the Secretary's decision. The Secretary did not deny the application based on plaintiffs' financial strength or lack thereof. He denied the application because of Goldstein's admitted, repeated previous violations of the Code. Section 3-113(a) of the Code provides that, after a dealer sells a car, the dealer must "within 20 days execute the assignment and warranty of title by a dealer, *** and mail or deliver the certificate to the Secretary of State with the transferee's application for a new certificate." 625 ILCS 5/3-113(a) (West 2008). Any violation of that provision is a petty offense. 625 ILCS 5/3-113(c) (West 2008). Goldstein admitted to numerous such violations in his past.

¶ 21 The issue of financial soundness was raised by Goldstein, as an excuse for his past violations. He testified that his financiers improperly withheld the titles to the vehicles because of Largo's financial problems. In taking up that argument, and in noting that plaintiffs failed to present evidence of Goldstein's or Genoa's "financial strength," the Secretary was simply indicating that there was no basis in the record to believe that the financial-distress excuse that allegedly caused the past violations would not recur going forward.

¶ 22 But whether the Secretary gave full or partial, sufficient or insufficient credence to Goldstein's excuse for past violations is not the critical issue. The salient point is that the Secretary was not required to accept Goldstein's excuse at all, no matter how credible it may have been. The Code provides no exception for inadvertent failures to transmit the certificate of

title, or violations that occur as a result of the dealership's financial difficulties. 625 ILCS 5/3-113(a) (West 2008). The Secretary was under no obligation to assure himself that the problems would not happen again; to deny the application, all the Secretary was required to find was that Goldstein had committed previous violations of the Code, a fact which is undeniably true. We find no error in the Secretary's decision.

¶ 23 Moreover, even if the Secretary had erroneously denied the application for reasons other than Goldstein's prior violations of the Code—a proposition which is not supported by the record—that error would be harmless. In *Jim M'Lady Olds, Inc. v. Secretary of State of Illinois*, 162 Ill. App. 3d 959, 961-62 (1987), the court held that the Secretary erred in revoking the plaintiff's dealership license for a reason other than one listed in the charges brought by the Secretary. However, the court held that this error was harmless because the evidence "amply support[ed]" the charged violations. *Id.* at 962. Likewise, in this case, even had the Secretary denied Genoa's application because plaintiffs failed to demonstrate their current financial soundness, there was ample, *undisputed* evidence that Goldstein had previously violated the Code. Thus, any error would have been harmless.

¶ 24

B. Procedural Due Process

¶ 25 Plaintiffs next contend that the Secretary's decision violated their due-process right to notice because the Secretary initially notified them that Genoa's application had been denied because of Goldstein's prior Code violations, but then affirmed the denial of their license because they failed to prove Goldstein's or Genoa's financial well-being. As we have just explained, the Secretary did not deny the renewal application because Goldstein or Genoa was financially unsound. The Secretary denied it because of Goldstein's past failures to transfer title in violation of the Code, which, according to Goldstein, resulted from his financial difficulties. The

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fundamental premise underlying plaintiffs' procedural-due-process argument is flawed. The Secretary notified plaintiffs that it had denied the renewal application because of Goldstein's prior violations, provided a hearing at which plaintiffs were given an opportunity to be heard on this issue, and then affirmed the decision on that basis. Plaintiffs cannot claim that they did not have notice of the reasons for the Secretary's denial.

¶ 26 Nor can plaintiffs demonstrate that they had a protected property interest in the renewal of the used-car dealership license they sought. The requirements of procedural due process only apply to deprivations of constitutionally-protected liberty or property interests. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972); *Chicago Teachers Union, Local No. 1 v. Board of Education of City of Chicago*, 2012 IL 112566, ¶ 12. While the due process clause protects licenses to do business before they are revoked, a license holder does not have a protected property interest in a license's renewal. *Tomm's Redemption, Inc. v. Hamer*, 2014 IL App (1st) 131005, ¶ 11; *Las Fuentes, Inc. v. City of Chicago*, 209 Ill. App. 3d 776, 770 (1991). Here, the Secretary did not revoke Genoa's license after it had been issued; it rejected Genoa's application for a renewed license with Goldstein as a 10% shareholder. Plaintiffs had no protected property interest in the renewal of this license. We reject plaintiffs' due-process challenge.

¶ 27 C. Vagueness

¶ 28 Finally, plaintiffs claim that section 5-501(a) is unconstitutionally vague. The notice requirement of the due process clause prohibits the enforcement of vague statutes. *Wilson v. County of Cook*, 2012 IL 112026, ¶ 21. Vagueness is found in two circumstances: (1) where the law fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits so that they may act accordingly; or (2) where the law fails to provide

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reasonable standards to the officials charged with enforcing it to protect against arbitrary and discriminatory enforcement. *Id.* The constitutionality of a statute is a question of law we review *de novo*. *Village of Lake Villa v. Stokovich*, 211 Ill. 2d 106, 121-22 (2004). We presume the constitutionality of statutes; plaintiffs bear the heavy burden of establishing a clear constitutional defect. *Bernier v. Burris*, 113 Ill. 2d 219, 227 (1986).

¶ 29 Plaintiffs first contend that section 5-501(a) is vague because it permits the Secretary to deny an application for a used-car dealership license for any violation of the Code. According to plaintiffs, in light of the size of the Code, "[i]t is simply impossible for one to have the ability to know of every conceivable 'violation' that might exist under the entire Code."

¶ 30 Essentially, plaintiffs' argument boils down to a claim that the Code is too long and, as such, they should not be expected to know what conduct will prevent them from obtaining a dealership license. But we do not deem statutes unconstitutionally vague simply because they are long or complex. *People v. Bocclair*, 202 Ill. 2d 89, 105 (2002). Moreover, plaintiffs' argument is particularly inappropriate in this case, as Goldstein testified extensively as to the necessary procedures for transferring title to a vehicle. As the hearing officer found, Goldstein was aware of his duty to transfer title under the Code. Goldstein had been found guilty of failing to carry out this responsibility several times and was denied a new dealership license in 2009 for these violations. Thus, plaintiffs cannot seriously claim that they were not on notice that the failure to transfer title was a violation of the Code, or that such violation could preclude them from obtaining a dealership license.

¶ 31 Plaintiffs' speculation that an individual could be denied a license for "a solitary citation for speeding" lacks legal and factual relevance. A statute is not unconstitutionally vague "merely because one can conjure up a hypothetical which brings the meaning of some terms into

question." *Gem Electronics of Monmouth, Inc. v. Department of Revenue*, 183 Ill. 2d 470, 481 (1998). In this case, plaintiffs' application was not denied because of a single speeding ticket. It was denied because Goldstein had violated the Code numerous times in the past. There is no question that Goldstein knew of these violations and that they could prevent him from obtaining a license in the future.

¶ 32 Plaintiffs also contend that section 5-501(a) is vague because it vests the Secretary with too much discretion. According to plaintiffs, because the Secretary "may" deny a license application for one of the 20 reasons enumerated in section 5-501(a) (625 ILCS 5/5-501(a) (West 2010)), the Secretary could "punish some offenders while completely disregarding the transgressions of others," leading to arbitrary and discriminatory enforcement. Plaintiffs' are incorrect. Section 5-501(a) does not lack standards to guide the Secretary in its enforcement. To the contrary, it lists 20 specific reasons why the Secretary may deny an application for a license. 625 ILCS 5/5-501(a) (West 2010). If none of those reasons are present, and the application is in the proper form, the Secretary must issue the license. 625 ILCS 5/5-102(e) (West 2010). The Code provides ample guidance to the Secretary to prevent the arbitrary and discriminatory application of the law.

¶ 33 Finally, plaintiffs claim that section 5-501(a) is unconstitutional because it authorizes the Secretary to punish the same individual more than once for a single violation of the Code. However, plaintiffs cite no authority for the proposition that the denial of a dealership license even constitutes punishment, let alone that the double-jeopardy principle they advance has any relevance to this case. Consequently, they have forfeited this claim. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *BorgWarner, Inc. v. Kuhlman Electric Corp.*, 2014 IL App (1st) 131824, ¶ 32.

¶ 34

III. CONCLUSION

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¶ 35 For the reasons stated above, we affirm the circuit court's order affirming the Secretary's denial of plaintiffs' application for a renewed license. The Secretary did not err in denying plaintiffs a license based upon Goldstein's previous violations of the Code. Plaintiffs were not deprived of any constitutionally protected property interest by the Secretary's denial of their application and, in any event, they were afforded sufficient notice of the reasons for the Secretary's denial. Section 5-501(a) is not unconstitutionally vague.

¶ 36 Affirmed.