2016 IL App (1st) 151282-U

SIXTH DIVISION
March 31, 2016

No. 1-15-1282

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SANAA HACHEM, Plaintiff-Appellee, v. CITY OF CHICAGO, a municipal corporation, and ANDREW J. MOONEY, in his official capacity as Commissioner of the Department of Housing and Economic Development, Defendants-Appellants (Commission On Chicago Landmarks and Rafael M. Leon, in his official capacity as Chair, Commission on Chicago Landmarks; Defendants).	)	Appeal from the Circuit Court of Cook County. No. 13 CH 15119 Honorable Kathleen Kennedy, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 ***Held:*** The Commission on Chicago Landmarks' decision to deny plaintiff a demolition permit was not clearly erroneous.

¶ 2 Following an administrative hearing, defendant Commission on Chicago Landmarks (Commission) issued an order denying plaintiff Sanaa Hachem a permit to demolish her century-

old house in the Longwood Drive Historic District (District) in the Beverly neighborhood. Hachem filed a petition for administrative review, and the circuit court reversed the Commission's decision. We find that the Commission's decision to deny the demolition permit was not clearly erroneous. We therefore reverse the circuit court and confirm the Commission's order.

¶ 3 BACKGROUND

¶ 4 In her petition for administrative review, Hachem alleged that she purchased the house without doing a thorough pre-sale inspection, because the previous owner was a "hoarder" and "lived in squalor," which made such an inspection impractical. Upon taking ownership, Hachem and her family discovered that the house was thoroughly infested with mold and required other substantial repairs.

¶ 5 On December 21, 2012, Hachem filed an application with the City of Chicago Department of Buildings (Department) to demolish the house. Section 2-120-740 of the Chicago Municipal Code (City Code) provides that the Landmarks Commission must issue a written approval for any demolition permits of a property in a landmark district. Chicago Municipal Code § 2-120-740 (amended Feb. 26, 1997). On January 10, 2013, the Commission preliminarily denied the application, based on its finding that the house was a "contributing building or structure" in the District and that such a demolition "will adversely affect and destroy significant historical and architectural features of the property and the district." Pursuant to section 2-120-800 of the City Code (Chicago Municipal Code § 2-120-800 (amended Feb. 26, 1997)), this preliminary denial triggered a further review process which ultimately culminated in a formal public hearing on the permit application.

¶ 6 Before the public hearing was held, the Chicago Fire Department determined that the house was vacant and open. On February 25, 2013, a building inspector with the city of Chicago (City) and Marlene Hopkins, the Managing Deputy Commissioner of the Department, visited the property in response to the Fire Department's request. The same day, the Department sent Hachem a letter stating that, pursuant to section 11-31-1 of the Illinois Municipal Code (65 ILCS 5/11-31-1 (West 2012)) and section 13-12-130 of the City Code (Chicago Municipal Code § 13-12-130 (amended Oct. 2, 1991)), the house was "hazardous in that it is dangerous and unsafe or uncompleted and abandoned." Section 13-12-130 of the City Code provides in part: "If any building shall be found in a dangerous and unsafe condition or uncompleted and abandoned, the building commissioner or the fire commissioner shall notify in writing the owner or owners thereof, directing the owner or owners to put such building in a safe condition, to enclose or to demolish it." *Id.* Section 11-31-1 of the Illinois Municipal Code requires municipalities to give 15 days' written notice by mail to owners of properties which are abandoned before taking legal action to abate hazards on the property. 65 ILCS 5/11-31-1 (West 2012). The letter stated that Hachem was required to bring the house into a safe condition or demolish it in 15 days. If she did neither, the letter warned, the City "may" sue her to obtain a court order for demolition.

¶ 7 On March 19, 2013, still before the public hearing, Hachem filed a lawsuit against the City requesting an order requiring the City to issue a demolition permit. *Hachem v. City of Chicago*, No. 13 CH 7549 (Cir. Ct. Cook County, IL). The lawsuit cited section 2-120-780 of the City Code (Chicago Municipal Code § 2-120-780 (amended Feb. 26, 1997)), which allows demolition of landmark properties if the Department determines, "in writing," that demolition could "remedy conditions imminently dangerous to life, health, or property," and contended that because the Department issued the February 25 letter, that letter sufficed as the Department's

determination "in writing" and thus required the Department to allow the demolition. The circuit court denied Hachem's request for injunctive relief and she later voluntarily dismissed the lawsuit.

¶ 8 On April 1, 2013, Hopkins wrote a letter to the Commission for submission at the public hearing explaining that the February 25 letter did not constitute a determination under section 2-120-780 that the house had "imminently dangerous" conditions requiring demolition.

¶ 9 On April 8, 2013, the Commission held a public hearing on Hachem's application. The Department presented two expert witnesses who testified that the house contributed to the historic character of the District and that its demolition would adversely affect the District's character. James Peters, an architect, urban planner, and past president of Landmarks Illinois, testified that he had visited the property and determined that the house contained numerous architectural characteristics common to the District, which he recited in detail. Dr. Kevin Harrington, an architectural historian, testified in a similar manner. The local alderman stated that he opposed issuing a demolition permit, citing communications he had received from constituents on the matter interested in preserving the District's historic character.

¶ 10 Hopkins testified regarding the February 25 letter and her April 1 clarification letter. She stated that despite the January 4 inspection, the Department did not, in fact, ever state or determine the house was imminently dangerous or should be demolished. She explained that the February 25 letter was a computer-generated form letter, automatically issued when a property is inspected and found to be vacant. Hopkins stated the same letter is always issued regardless of the property's condition. She also explained that if, in fact, a property is found to be imminently dangerous, the Department sends a different type of letter to that effect to the Commission, not to the property owner.

¶ 11 As her defense, Hachem relied almost exclusively on the February 25 letter, claiming that it constituted a written finding under City Code section 2-120-780 which required the Commission to issue the demolition permit. Her architect, Michael Messerle, explained that the building had deteriorated significantly due to water infiltration and poor maintenance. He opined that the cost of correcting the deficiencies in the home would exceed the benefits of keeping the existing structure. He also stated he had drawn up plans to replace the existing structure with a new one designed to match the historic district's overall character.

¶ 12 The Commission's hearing officer recommended that the Commission deny a demolition permit, finding in part that the February 25 letter was not "a writing" within the meaning of section 2-120-780 of the City Code.

¶ 13 Upon review of the hearing officer's recommendations, the full Commission issued a detailed decision unanimously denying the application. In its decision, the Commission reviewed each of six factors applicable to consideration of demolition of a structure in a landmark district. Among other things, the Commission found that: (1) the property's exterior elevations and rooflines were significant historical or architectural features typical of the District; (2) the property was an example of Dutch Colonial Revival architecture which was common in the District, by virtue of its cross-gambrel roof, dormers, and enclosed front porch; (3) the property's exceptionally large lot size "reflected the larger architectural character" of the District; (4) the property's spaciousness, shingle siding, open space, rectilinear plan, walls, and roof planes were each typical of the District, as was their correlative arrangement with each other; and (5) the property had not been previously remodeled to such a degree that would hinder its restoration to its original style. The Commission concluded that demolition of the house would, "by definition, be inconsistent and contrary to the proposed designation, the spirit and

purposes of the Chicago Landmarks Ordinance, and the Applicable Standards." The Commission's order did not specifically address the February 25 letter, but it did indicate that it reached its conclusion "[a]fter careful consideration of the evidence, testimony, and the entire record."

¶ 14 Hachem appealed the Commission's denial of a demolition permit to the circuit court of Cook County. The court found that the Commission's decision was clearly erroneous, based solely on the premise that the February 25 letter triggered section 2-12-780. The court acknowledged Hopkins's explanation that the February 25 letter served a distinct purpose which did not implicate section 2-120-780, but it discounted that explanation. The court disagreed with the Commission's implicit finding that the letter was not a "writing within the meaning" of that section, stating that "[i]t does not make sense that such a strongly worded notice which expressly includes the term 'demolish' would serve as anything less than a determination by the Department of Buildings within the meaning of Section 2-120-780."

¶ 15 The court reversed the Commission's decision and remanded the case for the Commission to approve the demolition permit "at its first regular meeting more than 30 days from entry of this order." This appeal followed.

¶ 16 ANALYSIS

¶ 17 We first address the issue of jurisdiction. Section 2-120-810 of the City Code provides that decisions of the Commission are final administrative decisions appealable under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)). Chicago Municipal Code § 2-120-810 (amended Mar. 31, 2004). As a general matter, when the trial court reverses the decision of an administrative agency and remands the matter to the agency for further proceedings, the trial court's order is not final for purposes of appeal. *Williams v. Industrial*

Comm'n, 336 Ill. App. 3d 513, 516 (2003). However, if, on remand, the agency has only to act in accordance with the directions of the court , then the order is final for purposes of appeal. *Id.* Since the remand to the Commission was for the sole purpose of implementing the court's specific order to issue a permit, we find that the court's order was appealable.

¶ 18 We review the Commission's decision, not that of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). Where, as here, the issue presented is whether the facts meet a statutory standard, the case presents a mixed question of law and fact, and we review the agency's decision to determine if it was clearly erroneous. *Id.* at 532. Under any standard of review, the plaintiff in an administrative proceeding has the burden of proof, and a court will deny relief is she fails to sustain that burden. *Id*. at 532-533. A decision is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been committed. *AFSCME Labor Council 31 v. Illinois State Labor Relations Board*, 216 Ill. 2d 569, 577-78 (2005).

¶ 19 Hachem does not contest the Commission's factual findings that her home had architectural features which made it a "contributing building or structure" in the District and thus protected from demolition. The only dispute between the parties centers on the effect of the February 25 letter. Hachem argues that the letter required the City to issue her a demolition permit, because of the command in section 2-120-780 "that if the *** demolition of any improvement could remedy conditions imminently dangerous to life, health or property, as determined in writing by the department of buildings, or the board of health, or the fire department, the commission shall approve the work notwithstanding other considerations relating to its designation as a 'Chicago Landmark.' " Chicago Municipal Code § 2-120-780 (amended Feb. 26, 1997). In support of the Commission's decision, the City relies on Hopkins'

testimony in which she explained that the letter was computer-generated, did not use the words "imminently dangerous," and was not intended to trigger the mandatory permit issuance requirement in section 2-120-780.

¶ 20 In the words of an apt and ancient aphorism, this case presents a textbook example of the City's left hand not knowing what its right hand was doing. While Hachem's frustration at receiving conflicting directions from different City departments was fully justified, we find that the Commission's decision was not clearly erroneous. In doing so, we follow our supreme court's direction that we should give "substantial weight" to the Commission's interpretation of its own governing ordinance, since it is the agency charged with its administration and enforcement. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 98 (1992). "Such an interpretation expresses an informed source for ascertaining the legislative intent. A significant reason for this deference is that agencies can make informed judgments upon the issues, based on their experience and expertise." *Id.*

¶ 21 As the trier of fact, the Commission was fully entitled to assess Hopkins' credibility and determine what level of weight to give her testimony. *Marconi*, 225 Ill. 2d at 540. Hopkins' unrefuted testimony regarding the computer-generated origin of the February 25 letter was supported by an examination of the letter itself. The inside address of the letter was set in all capital letters. The letter was "signed" with a pixellated facsimile signature, and it had awkward spacing, all making it clear that the letter was not personally drafted or customized for Hachem. Most importantly, the letter did not state that the property was "imminently dangerous," as required by section 2-120-780 of the City Code, or even cite that section. The Commission's decision to deny the permit was also supported by Hopkins' explanations that no pertinent City

agency had, despite the letter, made any of the determinations set forth in section 2-120-780, and that when such a determination is made, the City takes different actions than it did here.

¶ 22 CONCLUSION

¶ 23 For these reasons, we find that the February 25 letter was not a "writing" within the scope of section 2-120-780 of the City Code, and that the Commission's decision was not clearly erroneous. We reverse the circuit court's judgment and confirm the Commission's order.

¶ 24 Circuit court judgment reversed; Commission order confirmed.