STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1129

In the Matter of Safelite Solutions, LLC

Filed April 15, 2019
Reversed and remanded
Connolly, Judge

Minnesota Department of Commerce
OAH Docket No. 60-1004-32440

Richard D. Synder, Fredrickson & Byron, P.A., Minneapolis, Minnesota; and

John E. Iole (pro hac vice), Jones Day, Pittsburgh, Pennsylvania (for relator)

Keith Ellison, Attorney General, Oliver J. Larson, Assistant Attorney General, St. Paul, Minnesota (for respondent commissioner of commerce)

Considered and decided by Bjorkman, Presiding Judge; Connolly, Judge; and Florey, Judge.

U N P U B L I S H E D   O P I N I O N

CONNOLLY, Judge

Relator challenges respondent's designated decision-maker's determination that relator was subject to civil penalties for its conduct of unlicensed insurance adjusting, failing to provide a reasonable level of insurance reimbursement appropriate for the geographical area, and failing to respond to subpoenas pursuant to Minn. Stat. § 45.027, subds. 1-6 (2018). Because we conclude that relator did not engage in unlicensed insurance adjusting, we reverse and vacate the civil penalties pertaining to relator's purported failure to register as an independent licensed adjuster and relator's making of payments that were not fair and reasonable. We also remand for reconsideration, in light of our holding, whether any penalties should be imposed on relator for failing to respond to the subpoenas.

FACTS

Relator Safelite Solutions, LLC (Safelite) is an Ohio limited liability company that manages the replacement and repair of damaged automobile glass on behalf of insurers throughout the country. To assist its insurer clients in Minnesota, Safelite maintains a network of preferred auto-glass repair shops. A preferred auto-glass shop must sign a Network Participation Agreement, in which the shop pre-agrees to an insurance company's price, warranty, and other terms. But not all Minnesota glass-repair shops are "preferred auto-glass shops," and these shops frequently charge more than the shops in the preferred network.

Safelite also operates independent call centers to assist in handling its insurers' clients' claims. When an auto-glass insurance call comes into an insurance agency, it is routed to one of Safelite's call centers. The call is then handled by one of Safelite's customer service representatives (representatives). The representatives' job requirements are minimal. An applicant for the position must be 16 years or older, have a high school diploma or equivalent (or actively enrolled), demonstrate an ability to operate a computer and telephone, have skills in speaking with a pleasant voice and retaining composure, and have skills in building rapport among peers, stores, and customers.

The representatives' responsibilities include gathering information about the damaged auto glass, entering that information into their computers, determining if an insured is covered under a policy, providing information to the insured or glass shop of their choice, or both of them, and informing an auto-glass shop how much the insurer is willing to pay for the repair. Safelite also manages, processes, and forwards payments to glass shops that repair an insured's vehicle.

Safelite's representatives do not tell the insureds where they should get their auto glass replaced, but they do inform the insureds that a preferred vendor can be found. If a nonpreferred vendor is selected by an insured, and the vendor indicates that it is not willing to accept the preferred vendor prices, the representative relays that information back to the insured. The representative will then tell the insured that if the nonpreferred vendor charges more than the price that its insurer has determined it will pay, he or she could be held liable for the difference.

Respondent commissioner of commerce (department) began investigating Safelite and its preferred vendor practices in 2014. In April and June of that year, the department served two administrative subpoenas on Safelite's parent company, Safelite Group Inc. Safelite objected to the department's subpoenas on multiple grounds. Instead of enforcing the subpoenas through a court order, the department began sending information requests to Safelite's insurer clients. The insurers complied with the department's information requests.

The department subsequently initiated the underlying administrative action against Safelite, charging it with (1) unlicensed insurance adjusting activity, (2) failing to provide a reasonable level of insurance reimbursement appropriate for the geographical area, and (3) failing to respond to the department's investigation. Safelite and the department filed cross-motions for summary disposition and the matter was heard before an administrative-law judge (ALJ) in February 2017. The ALJ recommended denying the department's motion for summary disposition and granted Safelite's motion. The ALJ determined that Safelite was not acting as an unlicensed independent insurance adjuster and did not commit any violation of law justifying the department's request for penalties.

The commissioner then delegated his authority to issue a final order to a designated decision-maker. After a hearing, the designated decision-maker determined that Safelite (1) was acting as an unlicensed insurance adjuster, (2) failed to provide payment that was fair and reasonable to insureds' chosen vendors, and (3) failed to respond to the department's subpoenas. After a separate hearing, the decision-maker issued an order imposing the department's requested penalties. The decision-maker issued penalties in the amount of $50,000 for the unlicensed insurance adjusting activity, $50,000 for providing unreasonable payments, and $10,000 for not responding to the subpoenas. This certiorari appeal follows.

D E C I S I O N

On review from an order granting summary disposition, the scope of review is governed by the Minnesota Administrative Procedures Act, Minn. Stat. § 14.63-69 (2018); *Hy-Vee Food Stores, Inc. v. Minnesota Dep't of Health*, 705 N.W.2d 181, 184 (Minn. 2005). An administrative agency decision in a contested case decided on a motion for summary disposition should be affirmed unless the decision violates a constitutional or statutory provision, is unsupported by substantial evidence in view of the entire record submitted, or is arbitrary or capricious. *In re Gillette Children's Specialty Healthcare*, 883 N.W.2d 778, 785 (Minn. 2016).

1. Safelite does not engage in independent insurance adjusting.

Safelite argues that the decision-maker incorrectly determined that its process of administering claims for its insurer clients constitutes unlicensed adjusting in violation of Minn. Stat. § 72B.02, subd. 5(3) (2018) and Minn. Stat. § 72B.03 (2018). Safelite alleges an error of statutory interpretation. *See St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 39-40 (Minn. 1989) ("When a decision turns on the meaning of words in a statute or regulation, a legal question is presented. . . . In considering such questions of law, reviewing courts are not bound by the decision of the agency and need not defer to agency expertise.").

Minn. Stat. § 72B.02, subd. 5(3) defines an independent adjuster as a person who "investigates, negotiates or settles property, casualty, or workers' compensation claims for insurers or for self-insurers." The department alleged that Safelite's unlicensed customer-service representatives both investigate and negotiate claims. The commissioner's designated decision-maker agreed. Safelite contends that the decision-maker both incorrectly interpreted the words "investigate" and "negotiate," and that its conduct does not meet the plain meaning of the words. When this court interprets statutes, our job is "to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2018). When the words of a statute, in their application to an existing situation, are free and clear from ambiguity, "the letter of the law shall not be disregarded under the pretext of pursuing the spirit." *Id.*

a. Investigating claims

The term "investigate" is not defined in Chapter 72B. The decision-maker therefore used Black's Law Dictionary (10th ed. 2014), which defines "investigate" as "to inquire into (a matter) systemically." However, while a dictionary definition may be helpful to effectuate the meaning of a statute's terms, we must also interpret a statute, "whenever possible, to give effect to all of its provisions." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). In doing so, we must review related statutes to determine the meaning of the provision within the entire statutory scheme to avoid conflicting interpretations. *Minn. Transitions Charter Sch. v. Comm'r of Minn. Dep't of Educ.*, 844 N.W.2d 223, 227 (Minn. App. 2014).

The term "investigation" is defined in Chapter 72A.201, which regulates the claims practices of insurers and adjusters. Minn. Stat. § 72A.201, subd. 3(10) (2018) defines an "investigation" in the related statutory section as a "reasonable procedure adopted by an insurer to determine whether to accept or reject a claim." When the related statutory definition is read in conjunction with the dictionary definition of "investigate," and common sense is applied, it becomes clear that the plain meaning of "investigate . . . a claim" in Minn. Stat. § 72B.02, subd. 5(3) is to gather and examine information for the purpose of determining whether to accept or reject a claim.

The undisputed facts clearly show that Safelite's customer service representatives do not gather and examine information for the purpose of determining whether to accept or reject a claim. On the contrary, the representatives *never* reject a claim. We conclude that the decision-maker's broad interpretation of the statute was erroneous. Unlike the decision-maker, we agree with the ALJ's thoughtful and well-reasoned opinion that "this activity fits squarely into one of the statutory exceptions; the definition of "adjuster" does not include "a person employed solely to obtain facts surrounding a claim." Safelite is not investigating claims.

b. Negotiating claims

The term "negotiates" is also undefined in the statute. The decision-maker again applied Black's Law Dictionary (10th ed. 2014) and concluded that the definition of "negotiate" is: "(1) [t]o communicate with another party for the purpose of reaching an understanding; (2) [t]o bring about by discussion or bargaining." The decision-maker then found that "negotiation" is defined by Black's Law Dictionary as: "(1) [a] consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter; (2) [d]ealings conducted between two or more parties for the purpose of reaching an understanding." *Id.*

The decision-maker determined that Safelite and its representatives negotiated claims, because "the object of the telephone conversations with insureds and glass shops is to make arrangements for a service to be provided, by whom and for how much" and that by "providing a list of entities that can provide the service at a set price and noting that other providers may charge more is, by its nature, a negotiation to achieve a result."

Safelite argues that the decision-maker's interpretation failed to consider that (1) the dictionary definitions include bargaining within the meaning of the terms, (2) the common-sense understanding of negotiating implies some give-and-take between parties, and (3) the decision-maker's interpretation of what is considered a negotiation is broad enough to encapsulate nearly every commercial transaction. We agree.

The undisputed facts show that there is *no* give-and-take between the parties, and there is *no* bargaining. Safelite's call center employees merely read scripted language, have no discretion to change the price their insurer clients have predetermined they will pay, and only inform an insured of his or her options for glass repair. Indeed, the record reveals that the one thing the call center employees can *never* do is deviate from the script. While it is true that a representative will sometimes call an auto-glass repair shop on behalf of an insured, and ask if the shop will accept a quoted price, it is also true that the representatives never change the rate offered to the glass shop, and the glass shop never requests a different level of reimbursement. Additionally, the fact that the representatives may inform an insured that he or she may be responsible to pay the difference out-of-pocket (if a glass shop rejects the price), does not indicate bargaining or give-and-take. Safelite does not negotiate insurance claims.

We conclude that the decision-maker's legal conclusions were erroneous and that Safelite does not "investigate[], negotiate[], or settle[] property, casualty, or workers' compensation claims for insurers." *See* Minn. Stat. § 72B.02, subd. 5(3). Consequently, the $50,000 civil penalty is vacated.

2. Safelite did not provide payments that were unfair and unreasonable.

The decision-maker determined that Safelite "fail[ed] to provide payment to the insureds' chosen vendors based on a competitive price that is fair and reasonable within the local industry at large." Minn. Stat. § 72A.201, subd. 6(14) (2018). By its terms, subdivision 6 applies only to an "insurer, adjuster, or a self-insured or self-insurance administrator." *Id.* Because Safelite and its representatives are not adjusters, the decision-maker erroneously concluded that they fell within the subdivision's scope. Although we conclude that Minn. Stat. § 72A.201, subd. 6(14) does not apply to Safelite, even if it did, Safelite was not providing payment to the insureds' chosen glass vendors. *Id.*

The decision-maker determined that although Safelite is not an obligor under the insurance contract—which is between an insured and his or her insurance company—, it was still providing payment because Safelite was "supplying" the payment or "making the payment available." We disagree. It is undisputed, and the decision-maker found that Safelite's insurer clients are responsible for paying the repair or replacement of damaged auto glass. It is also undisputed that, before a shop is reimbursed, (1) Safelite invoices the insured's insurance company for payment; (2) the insurance company provides that reimbursement money to Safelite; and (3) Safelite then forwards the money to the glass shop. But contrary to the decision-maker's determination, Safelite's conduct of forwarding money and administering payments does not equate to "supplying" the payment. Safelite's insurer clients, not Safelite, "make[] the payment available." Thus, although we hold that Safelite is not subject to the requirements of Minn. Stat. § 72A.201, subd. 6(14), we also conclude that the insurers, not Safelite, provided the payments to the glass vendors. For this reason as well, the $50,000 civil penalty is vacated.

3. Safelite's failure to comply with the subpoenas.

Safelite argues that the decision-maker erred when he imposed civil penalties pursuant to Minn. Stat. § 45.027, subds. 1-6 (2018) for Safelite's failure to respond to the department's subpoenas that were sent to Safelite's parent company, Safelite Group Inc. on April 21 and June 24, 2014.

Minn. Stat. § 45.027, subd. 1a, states that "[a]n applicant, registrant, certificate holder, licensee, or other person subject to the jurisdiction of the commissioner shall comply with requests for information, documents, or other requests from the department." Subdivision 6 allows the commissioner to "impose a civil penalty not to exceed $10,000 per violation upon a person who violates any law, rule, or order related to the duties and responsibilities entrusted to the commissioner."

The decision-maker determined that Safelite's failure to comply with the subpoenas was a violation of subdivision 1a because "the only limiting factor in subdivision 1a is that the recipient of the request be 'subject to the commissioner's jurisdiction'" and that "[e]ntities engaged in activity requiring a license are subject to the commissioner's jurisdiction, whether they presently are licensed or not." Because we hold that Safelite was not engaged in independent insurance adjusting, for which no license is required, we reverse and remand for the decision-maker to reconsider in its entirety the imposition of the $10,000 penalty in light of our decision.

Reversed and remanded.