

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-001699-MR

JEFFREY STIDHAM

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE LAURANCE B. VANMETER, JUDGE  
ACTION NO. 00-CI-02861

KENTUCKY REAL ESTATE COMMISSION

APPELLEE

OPINION

AFFIRMING

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BEFORE: BUCKINGHAM, COMBS, AND DYCHE, JUDGES.

DYCHE, JUDGE. This matter is before this court for review of an order of the Fayette Circuit Court affirming a decision of appellee, Kentucky Real Estate Commission (Commission).

Where administrative decisions are being considered, our standard of review is the same as the trial court's standard. We are limited to the question of arbitrariness. An administrative decision may be considered arbitrary if: (1) it was not within the scope of the agency's granted powers; (2) the

agency failed to provide procedural due process; or (3) the agency's decision was not supported by substantial evidence. Com., Revenue Cabinet v. Liberty National Bank of Lexington, Ky. App., 858 S.W.2d 199, 201 (1993). "If the findings of fact are supported by substantial evidence of probative value, then they must be accepted as binding and it must then be determined whether or not the administrative agency has applied the correct rule of law to the facts so found.'" Kentucky Unemployment Ins. Commission v. Landmark Community Newspapers of Kentucky, Inc., Ky., 91 S.W.3d 575, 578 (2002) (citing Southern Bell Tel. & Tel. Co. v. Kentucky Unemployment Ins. Commission, Ky., 437 S.W.2d 775, 778 (1969)).

The basic facts of this matter include that appellant, Jeffrey Stidham, failed to renew his real estate brokerage license as required by KRS 324.090(1) due to personal stresses.<sup>1</sup> His license expired on March 31, 1996. Stidham, unaware that his license had expired, continued transacting in the real estate business for the next eighteen months. He then realized that he was not receiving any correspondence from the Commission causing him to question the status of his license. He contacted the Commission, and it was confirmed that his license was indeed expired.

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<sup>1</sup> During the time when Stidham's license had lapsed, his partner had died and Stidham was going through a divorce and custody battle for his children.

This case involves the series of events leading to the renewal of Stidham's license. The hearing officer's Findings of Fact fully set out the detailed facts of this matter, but, in short, Stidham entered into an agreement with the Commission to renew his license. Upon receiving his license, Stidham refused to further comply with the terms of the agreement arguing that he did not receive due process and that, for a variety of reasons, the agreement was not legal.

We have completed a thorough review of the record and conclude that the hearing officer's Findings of Fact and Conclusions of Law are well written and fully supported by the record. Therefore, we agree with the trial court's decision, and we hereby accept the hearing officer's recommendations in full.

Our reasoning for this conclusion is that the record supports a finding that Stidham voluntarily entered into the agreement, against the advice of counsel. In the joint stipulations presented to the hearing officer, Stidham admitted in essence that he was eager to resolve the situation in the most expedient manner possible. This was his main reason for entering into the agreement. However, once he got what he wanted out of the deal, he cried foul. We agree with the hearing officer that Stidham's refusal to adhere to the terms of the agreement upon receipt of his license demonstrated that he

never had any intention of adhering to the agreement. He signed it to induce and manipulate the Commission into issuing a license to him without any intent of fulfilling his end of the bargain.

Both sides surrendered rights they had under KRS Chapter 324 for a quicker resolution to this issue for Stidham's benefit. Stidham's counsel advised him against entering into the agreement, but Stidham refused to follow his advice because he wanted the matter handled quicker than it would have been had he sought strict enforcement of KRS Chapter 324. The Commission could have denied him a license, and Stidham could have had a due process hearing if he had been willing to wait a year for it.<sup>2</sup> Instead, he independently chose not to seek enforcement of rights in exchange for a quicker resolution to his problem.

Although Stidham wanted to enter into a settlement agreement and had his attorney draft the terms of it, he now argues that the Commission had no statutory authority to enter into such. It is true that KRS Chapter 324 does not specifically grant or deny the Commission authority to settle issues before it. While we decline to establish a general rule, we conclude that settling this matter was not contrary to the authority granted to the Commission. See Kruer v. Board of

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<sup>2</sup> At that time, there was a backlog of cases at the Commission. The record supports a finding that it would have taken a year before Stidham could have had a hearing.

Trustees of the Internal Improvement Trust Fund of the State of Florida, 647 So.2d 129, 132-33 (Fla. 1st DCA 1994). Therefore, we find that the Commission did not exceed the specific legislative power delegated to it under the facts of this case.

We likewise agree with the tone of the hearing officer's recommendations that the licensing procedure is more than a mere formality, which Stidham glosses over. While we may sympathize with his personal situation during the time in question, Stidham nonetheless continued in the real estate business. His obligations to his profession and his clients were not lessened due to personal stresses in his life. Licensing requirements are not mere formalities, but protections for agents, brokers, clients, and the public. Being unlicensed for eighteen months, while perhaps unintentional, was nonetheless a serious violation of KRS Chapter 324. The Commission is not to be faulted for taking this matter seriously.

For the reasons as stated, we agree with the trial court and conclude that the Commission's decision was not arbitrary. We hereby affirm.

ALL CONCUR.

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