

STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX, BLDG 68-69
1511 PONTIAC AVENUE
CRANSTON, RI 02920

In the Matter of:

Cerrito Bros. Inc.,

Respondent.

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DBR No.: 19AS004

DECISION

I. INTRODUCTION

This matter arose pursuant to an Order to Show Cause Why Cease and Desist Order Should Not Issue, Notice of Hearing and Appointment of Hearing Officer (“Order to Show Cause”) issued to Cerrito Bros. Inc. (“Respondent”) by the Department of Business Regulation (“Department”) on November 4, 2019. A pre-hearing conference was held on January 22, 2020. The parties entered into an Interim Consent Agreement on May 1, 2020. On May 21, 2020, the parties filed a joint stipulation of the issues to be determined by the undersigned hearing officer on a joint request for summary judgment. The parties each filed exhibits without objection from the other party. All exhibits are admitted into evidence.¹ All written arguments and submissions were filed by July 31, 2020. Oral arguments were held on September 29, 2020.² The Department was represented by counsel and the Respondent was *pro se*.

¹ This includes the photographs submitted for the September 29, 2020 hearing by the Department to which the Respondent did not object.

² Due to the COVID19 pandemic, the hearing was held by telephone.

II. JURISDICTION

The administrative hearing was held pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 42-14.2-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and 230-RICR-100-00-2 *Rules of Procedure for Administrative Hearing* (“Hearing Regulation”).

III. ISSUE

Whether an order should be issued to the Respondent requiring it to cease and desist from engaging in unlicensed auto wrecking and salvage yard activity in violation of R.I. Gen. Laws § 42-14.2-1 *et seq.* The parties broke down the issue into subparts in their written submissions, but during the hearing the Department indicated it was seeking guidance in terms of criteria to be used in determining whether such unlicensed activity was occurring at a location.³

IV. MATERIAL FACTS

The parties agreed to the following facts:⁴

1. "Respondent" refers to Cerrito Bros. Inc., a R.I. domestic corporation, with Mr. Raymond F. Cerrito (“Cerrito”) serving as the president.
2. "Premises" refers to 75 Mill St. in Johnston, Rhode Island, the entirety of the property, both outdoors and inside the "building."
3. The Respondent holds an auto wrecking and salvage license (“License”) from the Department for the Premises.
4. On the application for said License, Cerrito is listed as the only principal and only employee under the License.

³ The parties agreed to the following subparts in terms of the overall issue: 1) Does the storage of salvage/junk/unregistered vehicles by tenants on a licensed premises constitute auto salvage activity requiring licensure under the applicable laws, even in the absence of proof of dismantling?; 2) Does dismantling and/or storing of salvage junk/unregistered vehicles by tenants on a licensed premises constitute auto salvage activity requiring licensure under the applicable laws, even if such activity is occurring within the four walls of a building structure?; and 3) Does the relevant law permit the holder of an Auto Wrecking and Salvage Yard License to lease the licensed property to third parties to engage in activity that constitutes auto salvage activity requiring licensure, or does such an arrangement constitute an unlawful leasing of a license?

⁴ These are derived from the Interim Consent Agreement dated May 11, 2020.

5. The Respondent provided a list of lessees who occupy the Premises for purposes of various auto-related activities.

6. This matter is the subject of a pending enforcement action initiated by the Order to Show Cause issued against the Respondent on November 4, 2019.

7. The Parties agreed to an Interim Consent Agreement to resolve certain compliance issues arising in this enforcement action. The parties agreed to submit certain remaining legal issues for summary judgment and entered into a corresponding stipulation. The parties agreed to confer after a decision on the motion for summary judgment is issued to determine whether the terms of the Interim Consent Agreement need to be amended and to enter any appropriate final consent agreement or order.

8. The Respondent agreed during the pendency of this action that the current activity at the Premises is limited to the "Scope of Activities" as represented by the Respondent as follows:

Scope of Activities

a. The storage, loading, and shipping unregistered whole vehicles (including damaged vehicles) for the purpose of overseas shipment in their entirety. These vehicles leave the Premises on flatbed trucks or in shipping containers.

b. The storage, loading, and shipping of auto parts that are brought onto the Premises for overseas export. These auto parts arrive containerized and are stored in a neat and orderly manner while awaiting shipment.

c. The storage of unregistered whole vehicles owned by the owner of the Premises, stored for personal use.

d. The storage of unregistered whole vehicles owned by persons/entities other than owner of the Premises for reasons associated with an otherwise licensed business activity, specifically, vehicles stored under the owner's used car sales license.

e. The storage of trailer boxes for (a) the owner's storage of equipment such as jacks and repair tools; and (b) for road transportation in the course vehicle export business by Lessees

f. The storage of unregistered whole antique/classic cars awaiting offsite restoration at an undetermined time.

9. During the pendency of this matter, the Respondent agreed to limit certain activities, e.g. no dismantling of vehicles, and to maintain the site of the Premises in a specified manner.

On September 21, 2020, the parties filed a further stipulation regarding activities at the Premises. While the Department had not independently verified the Respondent's representations, the Department did not contest these stipulated facts:

1. The perimeter of the Premises includes fencing plus planted natural barriers and boulders, and buffer zones, with access points for emergency vehicles. The Respondent has locked the front gates and included signage to indicate that the Premises are not open to the public.

2. There is no activity of dismantling of unregistered vehicles, neither in the shed/garage building nor otherwise on the property.

3. As of a count done by Cerrito in September, 2020, there are approximately 273 unregistered vehicles being stored on the Premises. Cerrito represented that he has directed his tenants that the whole vehicles should be stored in a neat, orderly manner.

A. Of these vehicles, approximately 33 are those belonging to a tenant who stores antique vehicles on the Premises for off-site restoration at an undefined later time.

B. The remainder of these vehicles are stored by the remaining tenants. The list of tenants is the same as previously indicated in the exhibits submitted by Respondent.

i. One of the tenants stores overflow vehicles from a mechanic business he operates nearby.

ii. The remaining tenants store vehicles for purposes of the foreign export business. Cerrito represented that he has directed these "export tenants" that they may no longer store containerized, vacuum sealed, or loose auto parts on the Premises.⁵ These export tenants continue to lease their respective portions of the Premises for the purpose of storing whole motor vehicles for export at some future time, which are all unregistered, and which may or may not be operable.⁶ It is the Respondent's intent to continue to lease the Premises for use by tenants in this manner unless ordered otherwise by the order on the Summary Judgement (or unless sold for another use).

⁵ One such export tenant is still in the process of removing such auto parts, the completion of which was required to occur by September 20, 2020. The Respondent indicated it is willing to account to the Department on the progress of this limited scope clean-up.

⁶ As far as Cerrito understands the export business as relayed to him by the tenants: the vehicles are eventually exported by shipping container or by overland transportation using tow trucks, box trucks, trailer boxes, etc.; the export tenants may either transport the vehicles to their point of export or transfer them to another exporter. One of the "trailer boxes" on the site belongs to one of the export tenants, the remainder belong to Cerrito.

4. The Respondent is seeking to sell the Premises and would be planning on filing for a transfer of the License with the Department in the event of a sale. The Respondent represented that in the event of a sale, it will assure that the buyer is provided with a copy of any final decision on the Summary Judgement (or if the sale predates such issuance, copies of the interim agreements and stipulations).

During the September 29, 2020 hearing, John Mancone (“Mancone”), Chief Public Protection Officer, testified on behalf of the Department. Prior to being sworn in, Mancone indicated that during inspections, he often finds many cars grouped together that often have no license plates and have body damage so he will assume they are not registered.

Mancone testified that the Premises are screened from view and the Respondent has decreased the number of vehicles on the Premises. He testified that in general, the Department receives complaints about unlicensed activities and often receives complaints about places with cars and car parts haphazardly and unsafely strewn around the property. He testified in those situations the Department often works with local authorities because they have more enforcement tools than the Department. He testified that the Department also receives complaints about buyers that buy junk cars but before the buyers transport the junk cars to a junkyard, the buyers will dismantle the car(s) somewhere and take off parts the buyers can resell. Thus, he testified the buyer does not just transport the car to a junkyard but stores it and dismantles some parts, e.g. catalytic converters. He testified that the third type of complaint received is about the exporting of vehicles where the exporters buy many vehicles and ship them out of the country, and that cuts into licensed salvage yards’ businesses. He testified the licensed salvage yards complain because they are being priced out of the market since it takes a while to make money off selling or using parts from a vehicle, and the exporters just buy vehicles and turn them around quickly to sell.⁷

⁷ Presumably the licensed salvage yards feel there are less vehicles to buy for parts.

He testified those vehicles are often stored waiting for shipping without fencing or natural barriers so that can create an eyesore.

Mancone testified that it is rare to see ongoing dismantling of vehicles on site during an inspection. He testified that often cars are in the process of being dismantled and parts are strewn around, and he will talk to and find out from the neighbors about what is going on at the property. He testified that when he finds doors, hoods, wheels missing, parts strewn around, oil spilled everywhere, and/or cracked window shields, that is evidence of past or current dismantling. He testified that when he speaks with the property owners or the people engaged in apparent dismantling, the explanation given is usually that they own all of their cars – even if it is a few hundred - and they can do what they want with the cars and will not give a reason or explanation of what they are doing with the cars. He testified that it is usually hard to contact someone who is unlicensed, and they are often unhelpful and will not give information over who is using the property. He testified that often tenants will not say who owns the property, and he will often have to obtain property records to find out the owners. He testified that licensees are required to list employees.

V. DISCUSSION

A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, “the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret

legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. Summary Judgment

Section 2.11 of the Hearing Regulation provides that any party may file motions that are permissible under the Hearing Regulation or the Superior Court Rules of Civil Procedure. Super.R.Civ.P. Rule 56⁸ allows for the filing a motion for summary judgment whereby a party moves “to show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as matter of law.”⁹ The parties filed a joint motion for summary judgment. The parties agreed to the facts and neither argued that there

⁸ Super. R. Civ. P. Rule 56 provides as follows:

(a) For Claimant. ***

(b) For Defending Party. ***

(c) Motion and Proceedings Thereon. The motion shall be served at least ten (10) days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as matter of law. ***

⁹ Summary judgment is a “drastic remedy and should be cautiously applied.” *Steinberg v. State*, 427 A.2d 338, 339-40 (R.I. 1981) (citation omitted). “Thus, “[s]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the [C]ourt determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law.” *Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Educ.*, 93 A.3d 949, 951 (R.I. 2014). However, only when the facts reliably and indisputably point to a single permissible inference can this process be treated as a matter of law. *Steinberg*, at 340. The party who opposes the motion for summary judgment “carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions.” *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1225 (R.I. 1996).

were material facts in dispute. The undersigned does not need to rely on pleadings and/or discovery and/or affidavits. Rather the decision regarding whether a cease and desist order should issue for unlicensed activity will be made based on the agreed to facts.

C. Standard of Review for an Administrative Hearing

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

D. Relevant Statutes

R.I. Gen. Laws § 42-14.2-3 provides as follows:

License required. – No person shall establish or operate an auto wrecking yard or auto salvage yard without a license therefor as provided in this chapter and in chapter 21 of title 5. The license issued to a licensee for the operation of an auto wrecking yard or auto salvage yard shall be utilized solely at that location specified on the license, and said location shall be used substantially for that operation, and not as a subordinate of a related business. The subordinate or related business, if any, will be separate and apart from the auto wrecking yard and auto salvage yard operation.

R.I. Gen. Laws § 42-14.2-1(b) defines an auto wrecking yard or an auto salvage yard as follows:

(b) "Auto wrecking yard" or "auto salvage yard", (sic) as used in this chapter, means land upon which a person, firm, corporation, or association destroys, junks, dismantles, or stores for later dismantling or destruction motor vehicles or parts thereof, and may engage in the sale of used motor vehicle parts, or scrap therefrom.

R.I. Gen. Laws § 42-14.2-7 provides as follows:

Display and transfer of license. Every license hereunder issued shall specify the location of each wrecking yard or salvage yard and must be conspicuously displayed at that location, or if the licensee wishes to change his or her location, an application shall be filed with the department requesting the change, and the permission of the department shall be necessary for a change of location. The license shall not be transferable or assignable without the express written consent of the department which shall, if it approves the transfer or assignment, issue a new license to the transferee or assignee subject to the terms and conditions of this chapter; provided, however, that the full fee of two hundred fifty dollars (\$250) per annum for each year of the term of license shall be paid in full for the new license regardless of the unexpired term of the license to be transferred. The license number shall appear on all business communications, advertising, estimates, signs, business cards, and other written documentation relating to that business.

E. Arguments and Representations

The Department's position is that storage of cars and/or unregistered cars even without dismantling constitutes a salvage yard. The Department represented that it has taken this position in recent consent agreements and cease and desist orders. The Department represented that it is seeing many fact patterns where the cars are claimed to be for export/import so it is looking for clarification on the statute. The Department represented that an inspection can easily tell if a car is unregistered but not if it is inoperable. The Department indicated that this new business of the export of unregistered vehicles is not contemplated by the auto salvage law.

Cerrito argued on behalf of the Respondent. He represented that all his tenants have titles and paperwork for the cars. He argued that its situation is different from *In the Matter of: 472 Knight Street, Woonsocket*, DBR No.: 14AS007 (3//24/15) since its location is in

an industrial zone with a completely fenced, natural barrier and the cars are being stored for export or for further use. He represented that when the Department originally inspected the Premises, one of the tenants was dismantling cars, but since then he has cleaned it up and eliminated the dismantling and storage of loose parts. He represented he is only storing whole vehicles, some wrecked, some not, and he eliminated dismantling.

During the hearing, Cerrito represented that his export tenants bring in cars to his yard to store before shipping them overseas from Providence or driving them to Texas to take into Mexico and onwards to Guatemala. He represented that sometimes, they will have to wait a month or two months before shipping the cars. Both Mancone and Cerrito explained that damaged cars are exported to other countries since they are cheaper to repair elsewhere so the damaged cars can be fixed in another country and resold there. Thus, there are wrecked cars on the Premises because the wrecked cars are going to be exported.

Cerrito represented that some of his tenants have permission from insurance companies to buy cars from insurance pools for export and some tenants have an export-import license from other countries to send cars there. He represented that his tenants that just buy cars for export will not have such documentation. The Department represented that it took Cerrito's word about the export tenants, and it did not collect evidence about insurance company pools or export-import licenses or the car's titles or paperwork.

The Department argued that *472 Knight* concerned the storage of unregistered vehicles without evidence of dismantling. The Department represented that there are ten (10) tenants on the Premises and if Cerrito was exporting of cars himself, there would not be an issue as his actions would be covered under the Respondent's License. Cerrito agreed

that one cannot sublease an auto wrecking and salvage yard license. He indicated that he never intended to sublease his License to a tenant to run a salvage yard.

The Department represented it cannot verify an export business as there is no license for a car export business. The Department indicated it is concerned about lease arrangements as it is unknown what tenants will do. The Department indicated it was able to obtain a list of tenants from the Respondent, but it not always able to obtain cooperation during an investigation. The Department indicated that if each tenant was licensed as an auto salvage yard, the Department would not have brought an action.

Cerrito argued that the law covers the storage of vehicles for the purpose of dismantling. He argued that the storage of unregistered vehicles does not fall under the intent of the law. He represented that the original auto wrecking law was passed to satisfy the Federal Highway Beautification Act and to obtain Federal funds and expand its applicability beyond Federal highways. He argued that the statute was concerned with safety, so it included the fencing and natural barrier requirement. He argued that if someone was storing unregistered cars that were rotting away in a residential area, zoning would address that problem. Cerrito argued that with unregistered cars, one needs to meet zoning requirements and he does with fencing.

F. Whether the Respondent Falls Under R.I. Gen. Laws § 42-14.2-1(b)

The Department indicated that it is looking for objective criteria for use in evaluating whether auto salvage or auto wrecking is occurring and unregistered cars are a factor it uses. When the auto wrecking and salvage yard law was enacted in 1980, it is most likely that this type of export business of cars was not envisioned by the General

Assembly.¹⁰ Now, the Department receives complaints about possible car export businesses and the question arises whether such businesses could fall under the auto wrecking and salvage yard statute.¹¹ This decision discusses the Respondent and the activities at its Premises. In doing so, it may act to address how activities connected to this newish type of business may or may not fall under the existing licensing statute.

¹⁰ A history of the regulation of junkyards by the State can be found in *John E. Karbowski, d/b/a Western Hills Auto Parts*, DBR No. 00-L-0054 (2/11/03) at pp. 8-10 as follows:

Prior to the enactment of the Automobile Wrecking and Salvage Yards Act by Rhode Island Legislature in 1980 the only statutes which governed automobile wrecking and salvage yards were the Second-Hand Dealers Act (enacted in 1902 and amended thereafter in 1909, 1923, 1938, 1956, 1965, and 1990) and the Junkyard Control Act (enacted in 1966 and amended in 1997). In R.I. Gen. Laws §§ 5-21-3 through to and including 6 which were added in the 1965 amendment, the Second-Hand Dealers Act addresses local requirements for second hand dealers and also includes a definition of "Automobile [J]unkyard" and requirements for Automobile Junkyards.

The Automobile Wrecking and Salvage Yards Act enacted in 1980 is the only statute that expressly gives the Department the authority to license and regulate automobile wrecking and salvage yards. The Second-Hand Dealers Act and the Junkyard Control Act do not provide the Department any enforcement or other regulatory authority. The Automobile Junkyard sections of the Second-Hand Dealers Act is under the jurisdiction of the Rhode Island State Police and the police of the local cities and towns. The Junkyard Control Act while also including automobile junkyards in its definition of "junkyard" falls within the jurisdiction of the Department of Transportation of the State of Rhode Island.

In order to determine legislative intent through statutory interpretation it is necessary to evaluate the statutory and regulatory scheme affecting Respondent. In examining the Junkyard Control Act, the Wrecking and Salvage Yards Act it is clear that the legislature intended to promote and protect the public highways and the land in connection therewith. The legislature in R.I. Gen Laws§ 24-14-2 (footnote omitted) intended to regulate and restrict the junkyard industry in order to safeguard the lands and highways of Rhode Island and protect the public interest and safety. In R.I. Gen. Laws §42-14.2-2(a), the legislature authorized the Department to establish rules and regulations with regard to this industry and in §42-14.2-2(b) it authorized the Department to regulate the industry by conducting statewide verifications of the salvage yards. The legislature in R.I. Gen. Laws § 42-14.2-3 established that the Department shall require each person operating an automobile wrecking yard or automobile salvage yard to obtain a license from both the state and the local municipality.

The legislature through statutory enactments, intended that the automobile salvage industry be heavily regulated and not permitted to operate without a license issued by the Department and the local city or town. Thus, affording the Department as well as the local city or town authorization to regulate and license such entities. Without these statutory requirements, automobile salvage and automobile wrecking yards would be allowed to operate without regulation and thereby compromising the Automobile Wrecking and Salvage Yards Act's very purpose of promoting the public health and safety as well as protecting the land and highways of Rhode Island. ***.

See also *In the Matter of: Angelo Padula & Son, Inc.*, DBR No. 00-L-0041 (4/30/03).

¹¹ Cerrito indicated that it might be prudent to license the car export business. However, the Department represented that there would need to be statutory authorization in order to issue such a license.

The parties agreed that someone licensed as an automobile salvage and wrecking yard cannot “lease” that license or allow someone else to use said license who is not licensed on the licensed premises. That position is clearly consistent with the R.I. Gen. 42-14.2-1 *et seq.* R.I. Gen. Laws § 42-14.2-7 provides that said license is not assignable or transferable without approval of the Department. Thus, an auto wrecking and salvage yard license cannot be leased or used by someone else who does not hold the license.

The statutory definition of “auto wrecking yard” and “auto salvage yard” lists a series of activities that each taken on their own fall under the definition. The list consists of those activities separated by an “or” so that they stand alone. There is also a separate clause at the end after an “and.” Thus, an individual/entity doing one of those activities falls under the statute. Based on the agreed to facts, the Respondent is not destroying or dismantling cars on its Premises and is not storing cars on its Premises for later dismantling or destruction. There are no parts being taken off the cars. It is not destroying cars. E.g. crushing.¹² There is no storage of loose body parts on the ground. All parts were being stored in containers prior to shipping but as of September 21, 2020 stipulated facts, the Respondent’s tenants have now been instructed not to store containerized or vacuum sealed loose auto parts. The Respondent is not engaging in the sale of used motor vehicle parts.

In looking at the statutory definition of an auto wrecking yard or auto salvage yard, the Respondent is not engaging in destroying, dismantling, or storing motor vehicles or motor vehicle parts for later dismantling or destruction and is not selling motor vehicle parts or scrapping vehicles. The only part of the statutory definition that the Respondent

¹² *Mohawk Trucking & Salvage Co., Inc. v. Calderone*, 1981 WL 391024 (R.I. Super.) found that processing a crushed car also falls under the statutory definition of an auto wrecking and salvage yard.

could fall under is “junks.” There is an issue of whether the vehicles on the Respondent’s property are being junked.

The same issue was addressed in *472 Knight*. In that matter, there were 27 unregistered vehicles stored on the property and they had either last run two (2) or three (3) years previously. A few of the cars needed to be re-built or restored. Cars and car parts were stored on the property. There were car batteries stacked on the ground and at least ten (10) tires stacked up outside next to cars covered in leaves. There were several rusted cars. That respondent was not destroying or dismantling motor vehicles or parts or storing the motor vehicles or parts for later dismantling or destruction on the land. Thus, that matter also revolved on whether the land was being used for junking the vehicles.

472 Knight found that in applying the “ordinary meaning” of a word, the Rhode Island Supreme Court has relied on a dictionary definition. In *Roadway Express, Inc. v. Rhode Island Commission for Human Rights*, 416 A.2d 673 (R.I. 1980), the Court relied on a dictionary definition in applying the “ordinary meaning” of “must.” *Id.*, at 674. As the Court has found, “[i]n a situation in which a statute does not define a word, courts often apply the common meaning given, as given by a recognized dictionary.” *Defenders of Animals, Inc.*, at 543.

Random House Webster’s Unabridged Dictionary, 2nd Edition (2001) defines “junk” as follows:

1. Any old or discarded material, as metal, paper, or rags.
2. anything that is regarded as worthless, meaningless, or contemptible; trash . . .
6. to cast aside as junk; discard as no longer of us; scrap.
7. cheap, worthless, unwanted, or trashy.

472 *Knight* found the photographs showed many cars parked every which way with some covered with leaves and rust with tires and batteries on the ground and that the many vehicles had been cast aside and discarded. The decision concluded that testimony from an inspector and the photographs of junked and dismantled cars could support the finding of an unlicensed salvage yard. See *P&P Auto Body v. Marques*, 2007 WL 1108552 (R.I. Super.).

Prior to the licensing of automobile wrecking and salvage yards in 1980 (P.L. 1980, ch. 225, § 4), a Rhode Island Supreme Court case found that 50 useless automobiles on the property along with photographs showing inoperative vehicles, piles of scrap metals, lumber, motors, truck and car bodies, cars without tires, tires without car bodies depicted a classic “junk yard scene.” *Cournoyer v. Sharkey*, 206 A.2d 722 (R.I. 1970).¹³

Mancone’s testimony explained how similar type of evidence – unregistered vehicles, damaged cars, and car parts – can demonstrate that auto wrecking and salvage activities are occurring on a property. The Department does not need to actually see someone dismantling a vehicle to find there is unlicensed auto wrecking and salvage activity occurring on a property. Evidence of unregistered cars and vehicle parts (e.g. hoods, tires, bumpers) on the property can demonstrate or provide for an inference to be made that such evidence constitutes a salvage yard (dismantling or storage for later dismantling). Sometimes the owners might even be advertising salvage services.¹⁴

The Department indicated it relies on a finding of a collection of unregistered cars to show that unlicensed salvage activity is occurring. The Department was concerned that a finding that the Respondent was not engaged unlicensed salvage activity would somehow

¹³ Presumably the licensing of salvage yard and the fencing/barrier requirements worked to limit such scenes or at least the viewing of such scenes.

¹⁴ See *In Re. Bob Gustafson and Ed Young d/b/a “Bob & Sons” Unlicensed Salvage Activity in Rhode Island (including 22 Buck Hill Road Johnston)*, 18AS003 (1/5/19).

prevent it from using evidence regarding unregistered cars to make findings of unlicensed salvage activity in other matters. However, a respondent could not argue that it is only storing cars for export if there is evidence regarding vehicles, vehicle parts, dismantling, and later dismantling or destruction of cars. A respondent could only argue that it was just storing cars for export if it could be found that not only was it not dismantling or storing for dismantling, it was not engaged in “junking” under the statute.

In looking at past Department actions, *In Re: Unlicensed Salvage Yard Activity on Providence Plat #30 Consent Order – Wilber Davis*, DBR No.: 18AS001 (8/14/18), concerned an investigation into a significant number of unregistered automobiles located on a plat in Providence. The initial order to show cause (attached to consent order) indicated the property was owned by a revoked LLC and was leased and/or occupied by several businesses, some known, some unknown, which used the property for motor vehicle related purposes. When the property was inspected on several dates, it was represented that there were about 200 vehicles in various states of disrepair, many with collision damage and parts removed, as well as numerous parts such as bumpers, engines, hoods, and tire rims, etc. A person was also seen putting motor vehicle parts into his car and driving off. Such evidence found via investigation would be evidence of an unlicensed salvage yard in that there were vehicles, damaged vehicles, and vehicles parts all being stored as well as someone leaving with motor vehicles parts from which it can be inferred that dismantling was occurring as well as the cars were being stored for later dismantling. That order to show cause covered the various businesses operating in said plat and indicated the various businesses were storing parts, storing vehicles, transporting vehicles for auction, storing junk cars, and using parts from the vehicles to repair other cars. Nobody who was working

or using the property had an auto wrecking and salvage license. Certainly, the evidence gained during the inspections was enough to demonstrate that there was unlicensed auto salvage wrecking occurring on that property. After the Department issued that order to show cause, various entities entered into consent orders regarding the cleanup and storage of the cars at that location. Certainly, the facts alleged sound like a classic junk yard.

In the Matter of: Peter Wilson d/b/a "Price Auto Sales," DBR No.: 19AS002, (11/8/19) is a default cease and desist order. In that case, the first inspection showed various dismantled vehicles and vehicles parts on the property with the owner informing the inspector that his son scrapped cars but not fully explaining who owned the cars on the property. An inspection seven (7) months later showed no ongoing dismantling of cars but a number of unregistered cars on the property and a third inspection four (4) months later showed there were still a number of unregistered cars. No one appeared at the hearing to explain otherwise so based on the Hearing Regulation, the conclusion was made that unlicensed salvage yard activity was occurring.

In *P&P Auto Body*, there was testimony that the property looked like a salvage yard and photographs showed that some of the partially dismantled cars had remained on the property for years. The appellant argued that the Department hearing officer did not give enough weight to the appellant's assertions that it intended to repair or sell the vehicles on its premises and that the vehicles were only there temporarily as part of its towing operations. The appellant argued that the Department's administrative decision unduly shifted the burden to the appellant to prove that it intended to repair or resell the vehicles instead of using them for salvage. The Court found that there was evidence to support the hearing officer's decision and that the hearing officer had relied on the substantial evidence

before him to find unlicensed salvage activity. The Court found the appellant had ample time to produce documentation that the vehicles were on the property for licensed purposes.

Thus, evidence that the cars have been the property in a state of disrepair for a period of time can demonstrate it is a salvage yard. Such evidence could include that the owner did not move cars and/or the cars were rusting and covered in leaves and stored with motor vehicle parts. In other words, the cars had become junk or were being junked. Indeed, once a car is dismantled and its parts sold, it is most likely junk. So those remaining cars that have been dismantled have been junked. In other words, the evidence showed the property had the characteristics of a salvage yard. *P&P Auto Body*; and *472 Knight*.

Mancone testified that in many cases, he will find a number of unregistered cars as well as parts (e.g. hoods, tires, bumpers) strewn around the property. There may even be oil or gas on the ground (evidence of the draining of the gas tank or removal of an engine). Clearly that would appear to be evidence of the dismantling or storage for later dismantling of cars. Mancone also comes across situations where the property owner is hard to locate. If the owner or tenants can be located, they often will not explain the purpose for the cars on the premises and/or will be uncooperative. The owner or the tenant often will say they own all of the cars and can do what they like. Mancone will not be able to obtain a tenant list or names of the tenant or owner. Lack of cooperation or explanation or ability to contact the property owner in conjunction with a group of unregistered cars could lend itself to a finding of unlicensed activity.

Here, the Respondent's tenant that appeared to be dismantling cars no longer is dismantling. All the vehicles are stored on the Premises. No one is taking them apart. They are not being crushed. The Respondent has provided a tenant list to the Department as well

as copies of all leases and a copy of the towing tenant's local license. The Respondent has explained in what business each tenant is engaged. In contrast to Mancone's testimony about many of his inspections, this Respondent has cooperated and explained and worked with the Department to remove any dismantling work by a tenant and to clean up its Premises.

The Respondent eliminated the dismantling shed and eliminated dismantling on the Premises. The Respondent submitted photographs showing the clean up of the Premises undertaken since the Department's inspection. The piles of car parts and cars are gone and parts being shipped overseas are gone. Wrecked cars stored on the dirt haphazardly are gone. The July, 2020 photographs show the cars neatly parked awaiting shipment. The September 29, 2020 photographs show cars parked in a line along with the trucks. The cars do not look like they have been discarded as in *P&P Auto Body* and *472 Knight*.

In this situation, if the Respondent's tenants were junking cars then they would need a license. The Department represented that if the Respondent was engaged in this activity then it would be suitable under its license. If the cars stored on the Premises do not constitute "junking," then the Respondent's tenants do not need a license and the Respondent is not engaged in unlicensed auto wrecking by allowing his tenants to engage in such activity.

The *472 Knight* decision stated that its order ordering that respondent to cease and desist from acting as an unlicensed salvage yard "would result in the [r]espondent cleaning up the discarded parts and removing and/or organizing the vehicles so that they are not apparently discarded or cast aside. E.g. garage the cars in a shed or enclosed area." p. 7 of the decision.

Unlike the *P&P Auto Body* or *472 Knight* respondents, the Respondent cleaned up the discarded parts and organized the vehicles. The Respondent's vehicles are not discarded

or cast aside and are in an enclosed area. Unlike the *P&P Auto Body* respondent who claimed his discarded junked cars had a legitimate purpose but failed to provide documentation to the Department, the Respondent provided information about the activities on its Premises. Unlike *472 Knight* or *P&P Auto Body*, the cars stored on the Respondent's Premises will not be there for a long time. They are mostly being exported with some being stored in order to be fixed. Unlike many of the subjects of a Department investigation, this Respondent explained his business and provided relevant information about all of tenants. The Respondent also eliminated the storage and shipment of all loose parts even those being containerized and brought on site so that no type of sale (either overseas or within the State) of motor vehicle parts is occurring.

Certainly a collection of unregistered cars is often evidence of unlicensed wrecking or salvage activity. The longer the vehicles have been stored the more likely there could be unlicensed activity. Such a collection of cars could be rusting away or have plants growing in them. Cars stored higgledy-piggledy without fencing or a barrier could indicate junking even if it was claimed that the cars being held for export.¹⁵ These kinds of collections of cars often indicate that the vehicles have been discarded or cast aside. Unregistered cars coupled with body parts strewn around is often evidence of dismantling or storage for later dismantling. The refusal by the owner or tenant to explain what is being done with the cars could lead to an inference of unlicensed activity.

¹⁵ The Department statute requires fencing and/or a natural barrier. While R.I. Gen. Laws § 24-14-1 *et seq.*, *Junkyard Control Act*, is not a Department statute as it falls under the jurisdiction of the Rhode Island State Police, it prohibits junkyards including automobile junkyards near interstate or primary highway unless screened. From these requirements, it can be concluded that a "classic" pre-licensing junkyard is unscreened and that leads to findings of being "eyesores." Thus, if the tenants were storing their cars in the middle of a field without screening, that type of storage could lend itself to a finding of being junk as the property is not cleaned up and has the characteristics of a junkyard per *P&P Auto Body*. Indeed, *472 Knight* indicated that a clean up including the storage of the vehicles in a shed or enclosed area could overcome the finding in the decision that the cars were junked.

The Department need not just take a person's word that it is involved in the export of cars business. Such a claim could require some kind of documentation. *P&P Auto Body* (no documentation provided regarding respondent's claimed towing business). This Respondent provided leases and names of his tenants and cleaned up the Premises. Cerrito also indicated that such businesses often have permission from insurance companies to purchase from insurance pools or import licenses from other countries. Failure to provide such information when requested could lead to the inference that the non-cooperation means unlicensed activity is occurring.

Finding that this Respondent on its Premises is not junking cars does not mean that another collection of unregistered cars are not junk or junked. A group of unregistered cars could have been dismantled and left for junk or they could have been discarded or cast aside. *Supra*. These cases rely on a variety of factors. Indeed, suppose the Department returned in a year to the Respondent's Premises and found all or most or many of the same vehicles were still parked there covered in leaves and had not been exported or repaired by the auto body shop or antique restorer then there could be an inference made that the cars were junk or being junked as they were not being exported (or fixed) but rather had just been discarded and cast away.

The Department's order to show cause requested that the undersigned recommend that the Respondent cease and desist from permitting unlicensed third parties from conducting auto salvage activity on the Premises including the storage of unregistered motor vehicles, motor vehicle parts, tires, metals, storage containers, liquids, solids, sludge, hazardous substances, and other related materials regardless if storage is inside a building

or outside and regardless of whether such storage is accompanied by dismantling unregistered vehicles.

In reviewing the steps taken by the Respondent, his tenants are now only storing unregistered vehicles and all other types of materials have been cleaned up and removed. There are no loose vehicle parts (nor containerized vehicle parts). The unregistered cars are not junk and have not been junked. Therefore, what is left on the Premises after the clean up does not fall under the definition of an auto wrecking yard auto salvage yard.¹⁶

VI. FINDINGS OF FACT

1. The Order to Show Cause was issued to the Respondent on November 4, 2019.
2. A pre-hearing conference was held on January 22, 2020. The parties entered into an Interim Consent Agreement on May 1, 2020. On May 21, 2020, the parties filed a joint stipulation and a joint request for summary judgment. Written arguments and submissions were filed by July 31, 2020. On September 21, 2020, the parties filed a further stipulation regarding activities at the Premises. Oral arguments were held on September 29, 2020.
3. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the foregoing, the hearing officer recommends that pursuant to R.I. Gen. Laws § 42-14.2-1 *et seq.*, this matter is dismissed and no cease and desist order be entered.

¹⁶ In terms of the subissues identified by the parties, the parties agreed that an auto wrecking yard or auto salvage yard license cannot be leased. If it is found that the vehicles are junk or being junked then there does not need to be evidence of dismantling to fall under said statute. Based on the agreed to facts, the issue regarding dismantling or storage inside or outside is not applicable to this matter; however, it should be noted that the issue of fencing can play a role in whether it is found that vehicles have been discarded or cast aside/junked.

Entered: November 30, 2020

/s/ Catherine R. Warren

Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

 X ADOPT
 REJECT
 MODIFY

Dated: November 30, 2020

Elizabeth M. Tanner

Elizabeth M. Tanner, Esquire
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 20 day of December, 2020 that a copy of the within Decision was sent by first class mail, postage prepaid to Mr. Raymond Cerrito, Cerrito Brothers, 75 Mill Road, Johnston, R.I. 02919 and Raymond Cerrito, 39 Cedar Pond Drive, Warwick, R.I. 02886 and also by electronic delivery to Mr. Cerrito and by electronic delivery to Jenna Giguere, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Bldg. 68-69, Cranston, RI 02920.

[Signature]
