

NO. CV 02 0513768S : SUPERIOR COURT
ROTO ROOTER SERVICES, CO., : JUDICIAL DISTRICT
ALEXANDER GITELMAN AND :
ANDRE GRIGORYN : OF NEW BRITAIN

V.

STATE OF CONNECTICUT,
DEPARTMENT OF CONSUMER
PROTECTION ET AL. : OCTOBER 31, 2002

MEMORANDUM OF DECISION

The plaintiffs, Roto Rooter Services Co. ("Roto Rooter"), Alexander Gitelman and Andre Grigoryn, appeal from January 17, 2002 final decisions of the state plumbing and piping work examining board ("the board"), issuing disciplinary orders and fines against the plaintiffs for performing plumbing work without a license. This appeal is taken pursuant to General Statutes §§ 21a-7 (1) and 4-183 of the Uniform Administrative Procedure Act ("UAPA").

The record indicates that on November 3, 2000, the board issued administrative complaints to the plaintiffs claiming that the plaintiffs had performed plumbing and piping work without a license in violation of General Statutes §§ 20-334, 20-337 and 30-341. (Return of Record ("ROR"), Items 2, 5 and 8.) A statutorily mandated hearing was held on December 20, 2001 before the board. The evidence in the record reflects that Gitelman and Grigoryn were employees of Roto Rooter. In September of 1997, Roto

*copies of
decision mailed
11/13/02 to
Hys Acari;
amer; Geller
& Wilson
C/o*

SUPERIOR COURT
OCT 31 10 58 AM '02
FILED

Rooter sent Gitelman and Grigoryn on a service call to clear a toilet drain at a home in Meriden, Connecticut. In the course of that work, the plaintiffs, who were not licensed plumbers, removed the toilet and then subsequently replaced it.¹ This operation consisted of draining the toilet of water, disconnecting and subsequently reconnecting supply lines and bolts, closing and then opening supply valves, changing the wax gasket around the toilet, and when resealed, testing the toilet for leaks. (ROR, Item 19, Transcript, pp. 16, 19-21, 25, 36-37, 43, 50.)

The board concluded on January 17, 2002, that Roto Rooter had authorized plumbing work by unlicensed personnel and that Gitelman and Grigoryn had performed this work, all in violation of General Statutes §§ 20-334, 20-337, and 20-341. Roto Rooter was ordered immediately to discontinue from permitting unlicensed and/or unregistered employees from performing such plumbing work and was fined \$3500.² Gitelman and Grigoryn were ordered to discontinue performing such plumbing work and were fined \$500 each. (ROR, Items 13, 15, 17.) The plaintiffs have appealed from these

¹ The invoice, (ROR, Item 11), reads in part: "Pulled toilet bowl and cabled out main line. Removed blockage. Customer had a problem after, 40 Ft. Recommend camera inspection."

² On April 9, 2002, the board modified its order to reduce the civil penalty to \$1000 and to require restitution to the homeowner in the amount of \$250.

final decisions.³

Under the UAPA, General Statutes § 4-183 (j), the court must review the claims of the plaintiff under the following test:

Judicial review of an administrative agency's action is governed by the Uniform Administrative Procedure Act . . . and the scope of that review is very restricted. . . . With regard to questions of fact, it is [not] the function of the trial court . . . to retry the case or to substitute its judgment for that of the administrative agency. . . .

Even as to questions of law, the court's ultimate duty is only to decide whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. . . . Conclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . .

Moreover, an agency's interpretation of its own regulations is entitled to deference. . . . When an agency has expertise in a given area and a history of determining factual and legal questions similar to those at issue, its interpretation is granted deference by the courts.

(Brackets omitted; citations omitted; internal quotation marks omitted.) MacDermid, Inc. v. Dept. of Environmental Protection, 257 Conn. 128, 136-39 (2001).

The plaintiffs first claim that the board erred in concluding that their actions

3

The court finds that the plaintiffs are aggrieved by the board's orders requiring them to pay a civil penalty. See Jutkowitz v. State, Superior Court, judicial district of Ansonia-Milford, Docket No. 043936 (August 30, 1996, *Coppeto, J.*); see also Merchant v. State Ethics Commission, 53 Conn. App. 808, 811 (1999) (plaintiff ordered to pay \$1000 civil penalty).

constituted “plumbing and piping work” as defined in General Statutes § 20-330 (3)⁴.

This claim must be resolved through statutory interpretation. “The process of statutory interpretation involves a reasoned search for the intention of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of this case, including the question of whether the language actually does apply. In seeking to determine that meaning, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . . Moreover, our rules of statutory construction apply to administrative regulations. . . .” (Brackets omitted; citations omitted; internal quotation marks.) Anderson Consulting, LLP v. Gavin, 255 Conn. 498, 512 (2001). “In construing a statute, common sense must be used, and courts will assume that the legislature intended to accomplish a reasonable and rational result. . . . King v. Board of Education, 203 Conn. 324, 332-33, 524 A.2d 1131 (1987).” Regency Savings Bank v. Westmark Partners, 70 Conn. App. 341, 345 (2002).

⁴ Section 20-330 (3) provides in relevant part: “‘Plumbing and piping work’ means the installation, repair, replacement, alteration or maintenance of . . . water and associated fixtures . . . sanitary equipment . . . all water systems for human usage, sewage treatment facilities and all associated fittings within a building and includes . . . sanitary lines from buildings to the mains. . . .”

Looking to the term "installation" as used in § 20-330 (3), in relation to "water systems for human usage" and "sewage treatment facilities," the court concludes that the statutory definition of plumbing and piping work is broad enough to cover the removal and reseating of a toilet. According to Webster's Third New International Dictionary, "installation" is "something that is [installed] for use." The example given is "admired the new plumbing installation." The word "install" is defined as "to set up for use or service," and is followed by the example, "the electrician installed the new fixtures." The term "install" also includes the act of "re-installing." Wroblewski v. Grand Trunk Western Railway Co., 276 N.E.2d 567, 574 (Ind. App. 1971). The common usage of "install" means simply to "put in place," and the term does not imply any "special degree of permanence." Crystal Apartments Group v. Cook, 558 N.Y.S.2d 786 (Civ. Ct. 1990).

The action here may be distinguished from the mere use of the "roto-rooter" tool, which, when used to clear a drain, has been held not to be plumbing. For example, in State v. Gottstein, 288 N.W. 221 (Minn. 1939), a city plumbing ordinance prohibited the altering or repairing of a house drainage system by a person not holding a plumbing license. Gottstein, who was unlicensed, was convicted for inserting a "roto-rooter" device into drainage pipes. "[D]efendant removed the clean-out cap or cover in the basement, inserted his Roto-Rooter, and cut and removed the roots that had clogged the house sewer in question. There is no complaint that the obstruction was not efficiently removed or that the clean-out cap or cover was not properly replaced. It clearly appears

that the position of the tiles in the house sewer was not disturbed, nor were any alterations or additions made in the structure of the tiles.” Id., 222.

The court reversed Gottstein’s conviction as “the city ordinance under which defendant was prosecuted cannot be construed as prohibiting anyone but a licensed plumber to free a house sewer from roots obstructing the flow of sewage through it. . . .” Id., 223; see also Rochester v. Sciberras, 56 A.D.2d 726 (N.Y. App. Div. 4th Dept. 1977) (ordinance does not require a plumber’s license for the use of a “roto-rooter” to maintain sewerage system).

Here, by contrast, the plaintiff’s workers are proceeding well beyond using the “roto-rooter” tool to clear a drain, nor are they merely lifting off a “cap or cover” and then replacing it. Their actions call for an initial disconnection of the toilet and then a complete reinstallation. The court’s conclusion, in finding that the definition covers such activity, is no different from the result reached in Bob Rosen Water Conditioning Co. v. Bismarck, 181 N.W.2d 722 (N.D. 1970), where a plaintiff sought a declaratory judgment to determine whether he was required to obtain a plumbing license to install and service water softeners. The North Dakota Supreme Court held as follows:

No doubt it is true that persons who are specially trained to install water softeners are as capable of protecting the public health and welfare in the installation of such equipment as are those who are trained plumbers. However, the term “plumbing,” as defined by the Legislature, includes the installation of water softeners since the definition includes not only the installation of pipes, fixtures, and other facilitating apparatus for bringing water into buildings and for removing liquids and water-carried wastes,

Connecticut State Agencies to justify their position. This regulation provides as follows:

“Plumbing and piping maintenance” means the keeping in a state of repair or efficiency all types or classes of plumbing and piping equipment. The replacement of existing equipment with equivalent materials, or materials substantially equal to existing materials if identical equipment is not available, but excluding any alteration or additional work adversely affecting safety, or change in original design. Change of original function or design is permitted as maintenance only where the existing equipment or system is in a dangerous condition and not in compliance with the present code provisions, provided that the maintenance performed will render the system or equipment safe and in compliance with applicable code provisions. Excluded from the definition of plumbing and piping maintenance is the removal and/or replacement of a vital element of gas, water, or soil pipes, cisterns, tanks, [baths], shower stalls, interior drains connected to soil pipes, water closets and fittings appurtenant thereto, or any sanitary or fire protection apparatus, except the closing of valves to cut off a supply if a dangerous condition exists and the cutting off would render the condition safe, and the removal or rendering safe of equipment in a dangerous condition.

This regulation was issued in 1968, a year after the statutory definition of “plumbing” and “piping work” in § 20-330 (3) was passed by the General Assembly. Relying on the regulation, the plaintiffs argue that the regulation was issued to modify the word “maintenance” as used in § 20-330 (3) to exclude such “maintenance” when “water closets” are “removed.”

The court follows the board’s parsing of this regulation; however, its language does not mean that removal of a “water closet” is no longer “maintenance.” The