

2019 N.J. AGEN LEXIS 806

State of New Jersey Department of Transportation

July 19, 2019

OAL DKT. No. TRP-13916-18; AGENCY DKT. NO. 2017-25, 2017-26, 2017-27

New Jersey Office of Administrative Law

Reporter

2019 N.J. AGEN LEXIS 806

AristaCare At Manchester, Petitioner.

v.

New Jersey Department of Transportation, Respondent. AND Manchester Pediatric Daycare, Petitioner.

v.

New Jersey Department of Transportation, Respondent.

Core Terms

right-of-way, outdoor advertising, abutting property owner, discretionary authority, specifically authorized

Counsel

[NO COUNSEL IN ORIGINAL]

Panel: Diane Gutierrez Scaccetti, Commissioner of Transportation

Opinion

FINAL DECISION

These consolidated matters involve the New Jersey Department of Transportation's ("NJDOT") issuance of Outdoor Advertising violations to AristaCare at Manchester ("AristaCare") and Manchester Pediatric Daycare ("Manchester PED") (collectively referred to as "petitioners") for maintaining outdoor advertising signs within the NJDOT's right-of-way on Route 70 and displaying the signs without a permit. The violations were issued pursuant to [N.J.A.C. 16:41C-4.1\(c\)](#), which prohibits the display of an outdoor advertising sign within the NJDOT's right-of-way except where specifically authorized by the NJDOT, and [N.J.A.C. 16:41C-6.1\(a\)](#), which prohibits the display of an outdoor advertising sign without a valid permit issued by the NJDOT. In addition, the NJDOT proposed the removal of the signs pursuant to [N.J.A.C. 16:41C-12.3](#).

Prior to issuing this final agency decision, I have reviewed and considered the Initial Decision of the Administrative Law Judge (ALJ), the letter of exceptions to the Initial Decision tiled by petitioners in this matter, as well as the reply to exceptions filed on behalf of the NJDOT. Based upon a de novo review of the record presented, I hereby accept and adopt the findings and conclusions contained in the Initial Decision.

In the Initial Decision, the ALJ properly granted the NJDOT's motion for summary decision because there are no material facts in dispute regarding whether the NJDOT properly exercised its authority by prohibiting the signs from remaining in its right-of-way and without a permit. There is no dispute that the signs are located in the NJDOT right-of-way. Nor is there any dispute that petitioners do not have a valid permit for the signs. The petitioners also do not dispute that they are ineligible for the NJDOT's right-of-way program. Instead, petitioners claim that [N.J.A.C. 16:41C-4.1\(c\)](#) does not contain any restriction on when the NJDOT may "specifically authorize" signs to exist within the NJDOT's right-of-way. However, as the ALJ properly found, the issue of the NJDOT's exercise of its regulatory authority and its regulatory interpretation of a regulation within its implementing authority, are not issues of fact, but are issues of law. Accordingly, the ALJ properly concluded that summary decision was appropriate.

I also adopt the ALJ's conclusion that the NJDOT acted within its statutory and regulatory authority by ordering the removal of the non-compliant signs. An administrative agency, like the NJDOT, must adhere to and uniformly apply its regulations. See *Dougherty v. Dept of Human Services*, 91 N.J. 1, 9 (1982); See also *Cnty. of Hudson v. Dep't of Corr.*, 152 N.J. 60, 70 (1997) (stating that "[b]ecause administrative regulations that apply to the required public have the force and effect of statutory law, an administrative agency ordinarily must enforce and adhere to, and may not disregard, the regulations it has promulgated."). As the agency charged with review authority over applications for the erection and/or maintenance of outdoor advertising signs ¹, the NJDOT has promulgated regulations, which specifically address signs located within the NJDOT's right-of-way. [N.J.A.C. 16:41C-4.1\(c\)](#) provides, "[e]xcept where specifically authorized by the Department, no sign shall be erected or maintained within the Department's right-of-way of any portion of limited access or non-limited access highways within the State of New Jersey." [N.J.A.C. 16:41C-6.1\(a\)](#) further addresses the issue of permit requirements, and provides, "[e]xcept where a permit is not required by this chapter, each person shall obtain a permit from the Department for each sign before its erection or use."

Petitioners do not dispute that they do not have a valid permit for their signs or that they are located within the NJDOT's right-of-way. Instead, they contend that approximately 165 adults with serious medical conditions reside in AristaCare's long-term care facility and approximately 35 children with serious medical conditions use Manchester PED's pediatric medical daycare facility. They assert that the signs serve an important wayfinding function and enable emergency vehicles to locate the facilities, which are set back from Route 70 in a heavily wooded area. They contend the signs are absolutely imperative based on the medically sensitive nature of the patients who reside in and utilize the facilities. Petitioners acknowledge that while they may be ineligible for the DOT's right-of-way program for abutting property owners, [N.J.A.C. 16:41C-4.1\(c\)](#) does not contain any restriction on when the NJDOT may "specifically authorize" signs to exist within the NJDOT's right-of-way.

However, while ALJ Olgiati observed the important function served by these facilities, I agree with her conclusion that these equitable arguments do not justify waiving the uniform enforcement of the administrative regulations. As ALJ Olgiati recognized, the fact that the NJDOT did not decide in petitioners' favor does not mean that NJDOT failed to exercise its discretionary authority. Moreover, the NJDOT exercised its discretionary authority when it specifically authorized a right-of-way program for abutting property owners.

In its exceptions, petitioners argue that the ALJ's narrow interpretation of [N.J.A.C. 16:41C-4.1\(c\)](#) erroneously limits the discretion of NJDOT to only authorize signs within its right-of-way if they fall within the DOT's specifically authorized right-of-way program for abutting property owners. However, petitioners' argument misconstrues the ALJ's analysis of the NJDOT's discretionary authority under the regulation. The ALJ refers to the specifically authorized right-of-way program for abutting property owners to demonstrate that the NJDOT has exercised its discretionary authority to allow signs within its right-of-way pursuant to the regulation. The ALJ's reference to this program for abutting property owners in no way limits the NJDOT's discretion to only allow signs within the right-of-way that are eligible for this program.

¹ The NJDOT is statutorily charged through the Federal Highway Beautification Act ("FHBA"), [23 U.S.C. § 131](#), the Roadside Sign Control and Outdoor Advertising Act ("State Act"), [N.J.S.A. 27:5-1](#) to -32, and its implementing regulations, [N.J.A.C. 16:41C-1.1](#) to -12.4 with review authority over outdoor advertising regulations.

Instead, the regulation authorizes the NJDOT, through the Office of Outdoor Advertising, as the agency with specialized expertise in traffic safety and enforcement of the FHBA and the State Act, with the discretionary authority to decide when exceptions to the regulation should be made. In this case, the NJDOT has chosen to strictly adhere to the regulatory requirement and not allow petitioners' signs to remain in the NJDOT right-of-way. Notably, the NJDOT's uniform enforcement of the regulation prevents its arbitrary and capricious enforcement. Moreover, the NJDOT's uniform enforcement of the regulation by not allowing signs within its right-of-way comports with the underlying purpose of the FHBA, the State Act and regulations ¹ because they all seek to curb the proliferation of signs along the highways and to "protect the public investment in such highways, promote the safety and recreational value of public travel and to preserve natural beauty." 23 U.S.C. g 131(a); See also N.J.S.A. 27:56(a) (noting that the purpose of the State Act is to promote the safety and enjoyment of travel on the highways, while protecting and enhancing their scenic beauty, and promoting economic vitality and free speech and expression through roadside signs and outdoor advertising).

Petitioners also argue that [N.J.A.C. 16:41C-4.1\(c\)](#) should be interpreted broadly to allow the NJDOT to permit petitioners' signage within the right-of-way for the safety and benefit of the people utilizing petitioners' facilities. However, as discussed above, the NJDOT's uniform enforcement of the regulation serves to protect the safety and enjoyment of public travel for the motoring public on Route 70 in line with the FHBA and the State Act, rather than the limited motorists utilizing the petitioners' facilities.

also adopt the ALJ's imposition of a one-time \$ 50 penalty for the remaining violations, and reject the NJDOT's request to impose a higher penalty. The regulations permit the imposition of both a one-time penalty of not less than \$ 50 for all violations, [N.J.A.C. 16:41C-12.4\(b\)](#), and a per diem penalty of \$ 50 to \$ 500 dollars for each day a sign remains in violation, [N.J.A.C. 16:41C-12.4\(b\)](#). However, pursuant to [N.J.A.C. 16:41C-12.4\(c\)](#), the Commissioner has the authority to abate "all or any portion of penalties." In determining the amount of any penalty assessed, the Commissioner shall consider among other facts, the gross income of the sign, the egregiousness of the violation, whether the violation was intentional or accidental, and whether the violator has a history of repeated violations.

Here, ALJ Olgiati correctly found the violations were not egregious. Further, the signs do not generate any additional income for petitioners, but only serve to direct emergency vehicles to their facilities. I further find that the petitioners do not have a history of repeated violations, and it does not appear the violations were intentional since the signs already existed when the petitioners purchased the facilities in March 2014. Therefore, a one-time \$ 50 penalty for the remaining violations is appropriate.

For the foregoing reasons, the ALJ in the Initial Decision properly granted the NJDOT's motion for summary decision as a matter of law, and imposed a one-time \$ 50 penalty upon petitioners for these consolidated violations.

It is, therefore, on this 19th day of July, 2019, ORDERED that the petitioners remove the signs which were the subject of violations 2017-725, 2017-726, 2017-727, 2017-728, 2017-729, and 2017-730 that have not yet been removed, and pay a one-time \$ 50 penalty to the NJDOT.

This FINAL AGENCY DECISION may be appealed in accordance with [Rule 2:4-1\(b\)](#) by filing a Notice of Appeal with the New Jersey Superior Court, Appellate Division, within 45 days from the date of service or notice of this decision.