

**Cypress Motors of Ridgewood, Inc. v Delgado**

2007 NY Slip Op 33528(U)

October 9, 2007

Supreme Court, Queens County

Docket Number: 0009017/2007

Judge: Orin R. Kitzes

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## MEMORANDUM

SUPREME COURT : QUEENS COUNTY  
IA PART 17

CYPRESS MOTORS OF RIDGEWOOD, INC. X

- against -

DIANE DELGADO, et al.

INDEX NO. 9017/2007

SEQ. NO. 1

BY: KITZES, J.

DATED: OCTOBER 9, 2007

X

Petitioner Cypress Motors of Ridgewood, Inc. has brought this Article 78 proceeding for the purpose of, inter alia, vacating a New York City Department of Consumer Affairs decision and order dated October 4, 2006 and appeal determination dated January 11, 2007.

The facts as found by the administrative agency are as follows: On April 9, 2004, respondent Diane Delgado shopped for a used car at the petitioner's place of business located at 7903 Cypress Avenue, Ridgewood, New York. She decided to purchase a 1994 Mitsubishi Eclipse which had 92,942 miles on it for \$2,390 plus the trade-in of her vehicle, a 1990 Acura. On April 11, 2004, after paying the balance owed and transferring ownership of the Acura, she started the Mitsubishi only to find that the whole car shook. The petitioner's employee refused to refund her money, stating that the problem was merely due to the Mitsubishi's compressor and that she had bought the car "as is." Believing that she had no choice, Delgado drove the car home. The Mitsubishi

shook, lost power, and stalled out whenever she drove it, and the sunroof leaked. Pat Bonavita, the petitioner's president, did not respond to her calls. Her attempts to repair the car by the installation of a new distributor and a new engine proved to be futile. Toward the end of July 2004, she sold the Mitsubishi to Hector's Transmissions for \$50 after being advised that the car needed a new transmission.

Delgado filed a complaint with the New York City Department of Consumer Affairs ("DCA"), which, after investigating the matter, brought charges against Cypress Motors and scheduled a hearing for August 24, 2006. After conducting the hearing, an administrative law judge issued a single-spaced, seven-page opinion sustaining some of the charges against the dealer, including charge 2 (violation of Title 6 of the Rules of the City of New York § 2-103[a][4] [failure to include in the bill of sale the required description of the vehicle Delgado had traded in]), charge 3 (violation of Title 6 of the Rules of the City of New York § 2-103[f] [failure to draw a line from the last word of the undertaking to the signature of the purchaser]), charge 4 (violation of Title 6 of the Rules of the City of New York § 2-103[g][1][ii] [failure to set forth the "Important Notice to Buyer" provision in 10-point type in the contract of sale]), charge 5 (violation of Title 6 of the Rules of the City of New York § 2-103[g][1][ii] [failure to include clause [d] "Important Notice

to Buyer" provision in the contract of sale)), and charge 7 (violation of New York City Administrative Code § 20-700 [engaging in a deceptive trade practice by making the false representation that the Mitsubishi was roadworthy].) The Administrative Law Judge dismissed charges 1, 6, 8, and 9. The Administrative Law Judge directed Cypress Motors to pay a fine in the amount of \$1,350 to DCA and to make restitution to Delgado in the amount of \$4,421,86. After the Deputy Director of Adjudication approved the recommendation of the Administrative Law Judge, Cypress Motors took an administrative appeal which was unsuccessful.

This Article 78 proceeding ensued. The petitioner contends, inter alia, that "[t]he determination of Consumer Affairs ... was arbitrary, capricious, and unsupported by substantial evidence in view of the conclusory, unsubstantiated and self-serving testimony made by Diane Delgado at the Consumer Affairs hearing regarding the condition of the Mitsubishi Eclipse at the time that the petitioner sold it to her ...." (Emphasis added.)

CPLR 7803, "Questions Raised," provides in relevant part: "The only questions that may be raised in a proceeding under this article are: ... 4. whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial

evidence.” (See, Jennings v New York State Office of Mental Health, 90 NY2d 227; Lahey v Kelly, 71 NY2d 135; Silberfarb v Board of Co-op Educational Services, Third Supervisory Dist., Suffolk County, 60 NY2d 979; Jones v Hudacs, 221 AD2d 531.) The notice of hearing sent by the Department of Consumer Affairs cites, inter alia, New York City Administrative Code § 20-101 et seq., and it appears that the administrative agency gave the dealer a hearing as required by New York City Administrative Code § 20-104(e). The proper standard of review is, therefore, whether the administrative determination is supported by substantial evidence. (See, Jennings v New York State Office of Mental Health, 90 NY2d 227; Abraham v Cuevas, 41 AD3d 840; Torhan v Landi, 39 AD3d 657.) Where, as here, an Article 78 petition raises a substantial evidence question and the other issues raised are not “objections” that can terminate the proceeding within the meaning of CPLR 7804(g), the IAS Part must transfer the entire case to the Appellate Division pursuant to CPLR 7804(g). (See, Royster v Goord, 26 AD3d 503; Matter of Al Turi Landfill v New York State Dept. of Env'tl. Conservation, 289 AD2d 231, aff'd 98 NY2d 758.) Case law indicates that Article 78 challenges to determinations made by the New York City Department of Consumer Affairs after a hearing should be transferred to the Appellate Division. (See, e.g., City Line Auto Mall, Inc. v Mintz, 42 AD3d 407 [car dealership commenced article 78 proceeding seeking review of city department of consumer

affairs finding that dealership had engaged in deceptive trade practices]; V & A Towing, Inc. v City of New York, 197 AD2d 386; 8th Street Parking Corp. v Department of Consumer Affairs of City of New York, 159 AD2d 205; While You Wait Photo Corp. v Department of Consumer Affairs of City of New York, 87 AD2d 46.)

Accordingly, the petition is granted to the extent that this proceeding is respectfully transferred to the first available term of the Appellate Division, Second Department, pursuant to CPLR 7804(g).

Settle order.

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J.S.C.