

1 No: CV10-5010538 S : SUPERIOR COURT
2 LISA TAYLOR-AUSTIN : JUDICIAL DISTRICT
3 v. OF NEW BRITAIN
4 CONNECTICUT, STATE : AT NEW BRITAIN, CONNECTICUT
5 DEPARTMENT OF PUBLIC HEALTH
6 : August 12, 2010

7
8 **B E F O R E**: The Honorable Henry S. Cohn, Judge

9 **A P P E A R A N C E S**:

10 Representing the Plaintiff

11 Attorney John W. Mills
12 Mills Law Firm, LLC
13 One Whitney Avenue
New Haven, CT 06510

14 Also Present: Lisa Taylor-Austin, Self Rep.

15 Representing the Defendant:

16 Attorney Daniel Shapiro
17 Assistant Attorney General
55 Elm Street
P.O. Box 120
18 Hartford, CT 06141

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1 (In open court).

2 THE COURT: Good afternoon. May I have your name, sir?

3 MR. MILLS: Your Honor, my name is John Mills. I
4 represent the plaintiff who also has a pro se appearance.

5 THE COURT: And your name, please?

6 MS. TAYLOR-AUSTIN: Lisa Taylor-Austin.

7 THE COURT: And your name, please.

8 MR. SHAPIRO: Good afternoon, Your Honor. Dan Shapiro
9 from the AG's office.

10 THE COURT: If you'd like to sit down, you may.

11 MR. MILLS: Thank you.

12 THE COURT: It's your motion, Mr. Shapiro.

13 MR. SHAPIRO: Thank you, Your Honor. In this case, the
14 plaintiff is appealing the dismissal of her complaint
15 against a vet in Connecticut.

16 THE COURT: She came to -- now, I was doing some
17 research. 20-204a is -- the veterinary board has an office
18 somewhere?

19 MR. SHAPIRO: The veterinary board will only get a case
20 if the Department determines that it has probable cause --

21 THE COURT: Well, but --

22 MR. SHAPIRO: -- and issues charges.

23 THE COURT: -- where, how do you make the complaint?
24 You go to the veterinary board?

25 MR. SHAPIRO: No, Your Honor. You file a complaint
26 with the Department of Public Health --

27 THE COURT: All right. Because --

1 MR. SHAPIRO: Who conducts an investigation.

2 THE COURT: -- two -- 20-204a says that the veterinary
3 board has the jurisdiction to consider complaints.

4 But you have to satisfy 19a or 19a-14a, I believe it
5 is. Right? Is that how it works? In other words, it says
6 -- what does it say?

7 MR. SHAPIRO: Your Honor, it says the Department shall
8 investigate each allegation --

9 THE COURT: Right. But we have to go to -- it starts
10 with 204, 20-204a.

11 MR. SHAPIRO: Right. And the first sentence says
12 that --

13 THE COURT: 20-204a says that the Department shall
14 investigate each allegation of act or omission by a
15 veterinarian specified in 20-202. The investigation shall
16 be conducted in accordance with the provisions of 19a-14.

17 So, in other words, the veterinary board is the one
18 that's going to make the -- conduct some kind of a hearing
19 or some kind of a process against a veterinarian, but they
20 don't do it until they receive a report under 19a-14.

21 Right?

22 MR. SHAPIRO: It's not a report, Your Honor. The
23 Department, if it determines that there's probable cause,
24 will issue a statement of charges.

25 THE COURT: All right. Statement of charges. But then
26 also under (c) of 20-204a, it says if the Department makes a
27 finding of no probable cause, then the investigation remains

1 confidential and the matter lapses.

2 MR. SHAPIRO: That's right.

3 THE COURT: So there's a -- so the whole thing, while
4 it is under the veterinary board, it turns for the first
5 instance on what happens by the Department of Public Health.
6 Right?

7 MR. SHAPIRO: That's correct.

8 THE COURT: And so the Department of Public Health took
9 a look at this complaint. And the complaint essentially
10 said that the -- and that's what's alleged in the complaint
11 in this court, the administrative appeal, as I understand
12 it, the pro se plaintiff here Ms. Taylor-Austin complained
13 that the veterinarian, whoever he is, had held himself out
14 to be an expert in dental problems of cats. And that he
15 was, in fact, puffing or wasn't very good at it or had done
16 something wrong with the cat.

17 MR. SHAPIRO: That's right, Your Honor.

18 THE COURT: And, therefore, she was entitled to some
19 kind of relief.

20 MR. SHAPIRO: For the purposes of this complaint, the
21 most important thing is that she filed a complaint, the
22 Department conducted an investigation and the Department
23 determined that there was no violations of the statutes. At
24 that --

25 THE COURT: In other words, you agree with me that that
26 was the sum and substance of the charge that she made that
27 there was some faulty work done by the veterinarian?

1 MR. SHAPIRO: That's correct.

2 THE COURT: And having received that material, someone
3 who is on the staff of the Department of Public Health,
4 checked it out.

5 MR. SHAPIRO: That's right.

6 THE COURT: And came to the conclusion of no probable
7 cause?

8 MR. SHAPIRO: That's right. And she was informed of
9 that.

10 And the point of the motion to dismiss is that this
11 court doesn't have jurisdiction over this matter. It's not
12 an appeal from a final decision in a contested case.

13 THE COURT: So contested case. To be a contested case
14 you have to -- now they've expanded 1-66 -- 4-166. So it
15 isn't just a -- the definition of a contested case being a
16 hearing required by statute. It's also a hearing -- or it
17 could be a hearing required by a regulation. Right?

18 MR. SHAPIRO: That's correct, Your Honor. And there's
19 no regulation that requires a hearing.

20 In this case, without the statutory authority, there is
21 no right to appeal. The contested case --

22 THE COURT: So we have to look both at 20-204a and
23 19a-14, and see if either one of them, in the process of
24 investigating the complaint, required to hold a hearing.

25 MR. SHAPIRO: That's correct, Your Honor.

26 THE COURT: Or if there were a regulation to that
27 effect too?

1 MR. SHAPIRO: That's right, Your Honor.

2 THE COURT: And, and I don't think there is anything
3 here, is there?

4 MR. SHAPIRO: That's correct.

5 THE COURT: Now the only other thing that was said in
6 the brief of the plaintiff was that regardless of whether
7 there's an administrative appeal under 4-183(a) because it
8 was a contested case, they have a due process right to a
9 hearing; and, therefore, they have a constitutional right to
10 a hearing and that overrides the appeal, the limit on the
11 appeal.

12 Do you have a -- and you didn't -- that was done in
13 their brief. You did not put in a reply brief. So I want
14 to give you the opportunity to answer that reply.

15 MR. SHAPIRO: Your Honor, I think that, first of all,
16 the appeal was filed under 4-183(a). And our Supreme Court
17 has held that the legislature has the primary and continuing
18 role in deciding which cases, which class of proceedings
19 enjoy the full panoply of procedural protections afforded by
20 the UAPA to contested cases, including the right to
21 appellate review by the judiciary. Deciding which class of
22 cases qualify for contested case --

23 THE COURT: Are you reading from something important
24 there?

25 MR. SHAPIRO: I am, Your Honor. I'm reading from
26 *Summit Hydropower*.

27 THE COURT: *Summit*. Okay.

1 MR. SHAPIRO: Which is on page 7 of my brief. Deciding
 2 which class of cases qualify for contested case status
 3 reflects an important matter of public policy and the
 4 primary responsibility for formulating public policy must
 5 remain with the legislature. And that's our Supreme Court
 6 in 1987.

7 In this particular case, because the general assembly
 8 did not include a specific statutory requirement of a
 9 hearing under 19a-14, this matter is not a contested case
 10 and not within the jurisdiction of the court.

11 THE COURT: Right. And we're on the same page there.
 12 I'm just wondering if you want to say something about the
 13 idea that -- now if this had been the veterinarian --

14 MR. SHAPIRO: In terms of --

15 THE COURT: -- let me just give you the example that
 16 I'm thinking of. If it had been the veterinarian, if they
 17 had said there's probable cause. There had been -- and for
 18 one reason or another there was no statutory right to a
 19 hearing; they just said once there's probable cause, we
 20 automatically suspend the license, or maybe in some minor
 21 cases we can suspend the license for two weeks.

22 MR. SHAPIRO: Right.

23 THE COURT: And we don't have to give a hearing.
 24 Wouldn't there be a constitutional right for the
 25 veterinarian at that point?

26 MR. SHAPIRO: There may be, Your Honor, because --

27 THE COURT: Even though there wasn't a statutory right

1 to a hearing?

2 MR. SHAPIRO: First of all, there is a statutory right
3 to a hearing in that case.

4 THE COURT: Right.

5 MR. SHAPIRO: But, in addition, both the United States
6 Supreme Court and our Connecticut Supreme Court have held
7 that a license, there's a property interest --

8 THE COURT: All right. So in other words --

9 MR. SHAPIRO: -- in a license.

10 THE COURT: -- if there is going to be some sort of
11 override of our 4-183(a) approach, which, as we've said,
12 requires a statutory right, or a regulation, to a hearing.
13 If you're going to say, well, constitutionally, there's more
14 than that. There has to be a due process property or
15 liberty interest at stake --

16 MR. SHAPIRO: Right.

17 THE COURT: -- in addition. So that's the other --

18 MR. SHAPIRO: And this, Your Honor, is also -- this is
19 a case against the Department of Public Health. She's
20 certainly free, and I think she in fact has done --

21 THE COURT: Right.

22 MR. SHAPIRO: -- brought a civil case --

23 THE COURT: Uh-huh.

24 MR. SHAPIRO: -- against the vet for monetary damages.
25 And that's, that's her remedy in terms of seeking monetary
26 damages. We're talking about a suit against the Department
27 of Public Health.

1 We have thousands and thousands of complaints against
2 institutions; individuals; some we dismiss, some we move
3 forward on all the time. Certainly, there's nothing in the
4 statutes or regulations that would indicate the
5 legislature's intent to have judicial review over the
6 thousands of decisions that are made all the time by the
7 Department to close out cases after an investigation.

8 THE COURT: Is there something more that you want to
9 add?

10 MR. SHAPIRO: Your Honor, I believe that my brief fully
11 addresses it.

12 I will point out that the case that -- you know, in
13 plaintiff's one-page brief -- the argument is one page in
14 his brief. The *Altholtz* case that he cites. That's a case
15 where there's a dentist who had his license suspended, and
16 he was appealing that. It's completely --

17 THE COURT: So we agree on that --

18 MR. SHAPIRO: Absolutely.

19 THE COURT: -- that the dentist --

20 MR. SHAPIRO: Has a right to appeal a decision.

21 THE COURT: -- regardless of whether it's 4-183 or
22 constitution, he's being disciplined or suspended or what
23 have you --

24 MR. SHAPIRO: Right.

25 THE COURT: -- he has the right to appeal. There's no
26 question about it.

27 MR. SHAPIRO: He has the right to appeal because the

1 statute says he has the right to appeal.

2 THE COURT: All right. Or you could -- I don't know if
3 your case says it, but I think you could stretch it to say
4 that constitutionally if someone is losing their license or
5 is being --

6 MR. SHAPIRO: You may be, you may be able to --

7 THE COURT: -- their income is being deprived.

8 MR. SHAPIRO: -- say that. In this case, in that
9 situation, you don't have to because the legislature has
10 said you may appeal a final decision of the agency
11 disciplining your license.

12 THE COURT: Okay. All right. Well, let's hear -- now,
13 Mr. Mills, are you going to talk or Ms. Taylor or both?

14 MR. MILLS: Your Honor, I'd like to speak first. And,
15 if Your Honor -- I don't know if you'd like to say anything,
16 if Your Honor will indulge -- Your Honor, the problem that I
17 have is that, number one, there has been no due process at
18 all here.

19 THE COURT: Wait a minute. We don't get to due process
20 until we go to the statute.

21 MR. MILLS: Okay. So --

22 THE COURT: Let's talk about, about -- to be honest
23 with you, sir, there's at least 50 cases that hold against
24 you.

25 MR. MILLS: I understand. But the thing I, I don't
26 understand, Your Honor, is when you look at 20-204a, which
27 is really the statute that controls --

1 THE COURT: Let's, let's take a look at that now. You
2 say that's 22 --

3 MR. MILLS: 20-204a.

4 THE COURT: Oh, 204 --

5 MR. MILLS: Yes, sir.

6 THE COURT: -- a. Okay.

7 MR. MILLS: And that is the statute that --

8 THE COURT: Okay.

9 MR. MILLS: -- says what the Department has to do in
10 terms of investigation if there is a complaint filed.

11 THE COURT: Okay.

12 MR. MILLS: Right above that section --

13 THE COURT: Which one?

14 MR. MILLS: The top of the page is 20-203.

15 THE COURT: Right.

16 MR. MILLS: And I think they're part of the same --

17 THE COURT: Right.

18 MR. MILLS: -- you know, grouping as to how, what should
19 happen here.

20 THE COURT: Wait. Let's look at the statute. Let's
21 look at the language. It says any person aggrieved by a
22 final decision of said board taken under 19a-17 --

23 MR. MILLS: Right.

24 THE COURT: -- may appeal under one -- 4-183. So let's
25 take 19a-17, and see what it says. It's headed,
26 "Disciplinary action by departments, boards and
27 commissions".

1 MR. MILLS: Right.

2 THE COURT: So here they say revoke a person's license;
3 suspend a license; censure; issue a letter of reprimand;
4 place a practitioner under some kind of limited practice and
5 so forth and so on.

6 MR. MILLS: But the way --

7 THE COURT: Is there anything in here in -- again,
8 that's the conversation I was having with Mr. Shapiro. If
9 your client was the vet, you'd be all set.

10 MR. MILLS: Well, that just doesn't seem fair to me
11 just as an attorney or just as a citizen. And, in fact,
12 Your Honor, I think -- and I understand the argument that's
13 being made, but it seems to me --

14 THE COURT: You know, to be honest with you, sir, it's
15 not an argument that's being made. It's settled law in the
16 state of Connecticut from at least *Summit* days. *Summit* was
17 decided -- oh, back in the '80s. And this *Rybinski* case,
18 which is right on point. We can get to that in a minute.
19 That was decided in 1977. It's been the law of the state
20 for 30 years.

21 I know you can say that you'd like to have something
22 different. Back when they amended 4-183 -- I was mentioning
23 that -- 4-183 back in -- they amended 4-183 -- or 4-166.
24 Excuse me. 4-166. The last time, which was I think back in
25 '04, there was a whole discussion of whether to increase the
26 definition of consent -- contested case.

27 And it -- and the AG came in and said don't do, because

1 we're going to have a lost of extra cases. We're going to
2 have a lot of people that are going to get their right to
3 appeal, and the other side's -- other people came in and
4 said it's unfair. It's not a good idea. Let's give
5 everybody a shot.

6 The legislature didn't -- in fact, there was an effort
7 to -- where it says -- a state statute. There was an effort
8 to make it state or federal statute because people that lose
9 their, their food-stamp license were all upset, because they
10 didn't have the right to appeal because food stamps are a
11 federal program. And it wasn't a state statute that
12 required a hearing. It was a federal statute that required
13 a hearing. And the supreme court of our state said that
14 that didn't allow for an appeal from somebody, a grocery
15 store, the loss of their license. So people came in and
16 said, well, let's change -- let's add the word "federal," --
17 required by federal or state statute or -- the only thing
18 they did was add the word or regulation, and they didn't add
19 -- they could have done -- we could do a lot, but they
20 don't. They don't.

21 MR. MILLS: I think it comes down to how, Your Honor,
22 statutory construction. The way that I looked at 20-203
23 saying that any person aggrieved by a final decision taken
24 under 19a-17. When I looked at 19a-17, that's all the
25 possible remedies that could have been used in this case.
26 But I, I interpreted that to mean that if my client is
27 asking for any of these sanctions that are available to her

1 under 19a-17.

2 In other words, if she were going to prevail --

3 THE COURT: That's not what it says though.

4 MR. MILLS: -- in the case --

5 THE COURT: It's, it's not whether she asked for them.
6 It's whether they were imposed. And that's what 203 says.
7 It says any final decision taken under 19a-17.

8 MR. MILLS: Oh.

9 THE COURT: So it has to be one of the imposed things.
10 And, again, I, if -- if you were representing the
11 veterinarian, and the veterinarian had had any one of these
12 things, which are listed in the 19a-17, happen to him or
13 her, you'd have no question. And I think Mr. Schwartz (sic)
14 would agree with me that there would be no question that you
15 could have an appeal. It's Shapiro. Excuse me.

16 MR. MILLS: It just seems entirely unfair to me, Your
17 Honor. So if we're done with the statutory analysis, and I
18 respectfully understand and accept your ruling that, that --
19 that you disagree with my interpretation of that statute.

20 I'd still think that the record is very clear. My
21 client didn't get any due process, Your Honor. Not only did
22 she not get a hearing, but if you look at the decision
23 itself it's not a decision. It's just a letter. It doesn't
24 say why. She did a lot of due diligence and provided a very
25 substantive record --

26 THE COURT: Where do you get -- let me ask you
27 something about this. Due process. If you look into what

1 due process means, it means that -- it doesn't just say due
2 process. It says that there has to be due process in the
3 depriving of -- I guess we can get out the US Constitution
4 and see what the fourteenth amendment says. The fourteenth
5 amendment says. It's a long section here. Fourteenth
6 amendment says that nor shall any statute deprive any person
7 of life, liberty, or property without due process of law.

8 So you've got to show that you have a property right or
9 a liberty right. I guess a life doesn't apply in this
10 instance.

11 MR. MILLS: I think she does have a property claim,
12 Your Honor.

13 THE COURT: And what's your property right?

14 MR. MILLS: Thousands and thousands of dollars of
15 veterinarian bills to have all the cat's teeth removed by
16 someone who was not a licensed dental --

17 THE COURT: I don't think that that arises to the
18 property right. Yes?

19 MR. SHAPIRO: Your Honor, if there's any remedy in
20 terms of the financial implications of this, that certainly
21 has nothing to do with the Department.

22 THE COURT: No.

23 MR. SHAPIRO: They're not go to award damages. That's
24 a civil case, which they are authorized to bring. And I
25 think --

26 THE COURT: They have a -- you have to have a property
27 right --

1 MR. SHAPIRO: That the state has deprived them of.

2 THE COURT: Yes.

3 MR. SHAPIRO: A state action. We conducted an
4 investigation and closed it without probable cause. It's
5 not the state action --

6 THE COURT: You see, I would -- I would call your
7 attention to the case of *Rybinski v. State Employees'*
8 *Retirement Commission*, which was decided back in 1977. It's
9 173 Conn. 462. It came to the same conclusion, as I've been
10 saying, on the statute. Appeals to the courts from
11 decisions of administrative officers and boards exist only
12 under statutory authority without statutory authorization, a
13 court lacks jurisdiction to entertain such an appeal.
14 Moreover, there is ordinarily no constitutional right to
15 judicial review of administrative action. As the court has,
16 this court has stated, The right of appeal exists only under
17 statute ... and the parties have no vested right thereto ...
18 So far as the fourteenth amendment to the constitution is
19 concerned, it suffices for due process that the law shall
20 not be unreasonable, arbitrary or capricious. That's,
21 that's the law.

22 MR. MILLS: And, Your Honor, the -- we also raised the
23 right to take an appeal under 4-183, which simply says that
24 a person who has exhausted all administrative remedies
25 available within the agency, and it was aggrieved by a final
26 decision, may appeal to the superior court.

27 THE COURT: You've got to look at that word final

1 decision. Because the definition of "final decision" is
2 defined in 4-166(3). And 4-166(3) says that -- final
3 decision. It means an agency determination in a contested
4 case. Contested case in 4-166(2) is where I've been talking
5 about. It has to be a statute or a regulation. State
6 statute or regulation that requires a hearing, which you
7 don't have here.

8 MR. MILLS: Well, then I guess, Your Honor, we are left
9 without a remedy which just seems unfortunate.

10 THE COURT: Not necessarily. There are two remedies
11 that you have. Mr. Shapiro mentioned one, which is suing
12 the veterinarian.

13 And the other, if you read over that statute -- I'm not
14 going to give legal advice. But I suggest if you read over
15 4-166(2), you -- (3) and (2) together, you may see other
16 opportunities in there. I'm not going to say anything more
17 about that.

18 MR. MILLS: All right.

19 THE COURT: I'm not going to give any legal advice.
20 But, as things stand now -- the other problem you have with
21 the constitutional argument, and you might want to read this
22 case is *Townsend v. Hogan*, 115 Conn. App. 671. A prisoner
23 was suing under 4-183(a). And there's a provision right in
24 4-183, somewhere in there that says prisoners can't bring --
25 he was suing over a parole or something that he didn't get.
26 And the court held that that applied in this instance. So
27 he couldn't use 4-183.

1 So he said in a -- he said as an alternative, just like
2 you did, I'd like to claim that I have a due process right
3 to take this case on appeal to the superior court. And in a
4 footnote, take a look at Footnote 1. They said you have to
5 take a look before the court will rule on whether or not you
6 have that due process right -- you have to look at the
7 complaint itself and see how it's framed.

8 And everything in your complaint is that this is an
9 appeal under 4-183. So there's nothing in your complaint at
10 all which says anything about due process. So it's
11 identical. So that's another problem that you have.

12 MR. MILLS: All right.

13 THE COURT: So I just don't see it. But did you want
14 to say something, ma'am?

15 MS. TAYLOR-AUSTIN: Well, Your Honor -- I'm sorry --
16 I'm not an attorney. But I can just say that we have an
17 individual here who has held himself out to be something
18 that he is not in numerous places. I proved that in my
19 complaint to the Department of Public Health without any
20 shadow of a doubt. It was black and white originating from
21 numerous places.

22 The fact that they came to a conclusion that there were
23 no violations of state statutes is absolutely false because
24 the state statute says a publication or circulation of any
25 statement of a character tending to deceive or mislead the
26 public is punishable by discipline. They did not do that.

27 As a person who owns property -- the property is my

1 cat -- and as a taxpayer, it seems as though there is --
2 basically, the Department of Public Health does not have to
3 do their job. And if they don't, there's no recourse for
4 me. That's what I'm understanding at this point.

5 THE COURT: None by administrative appeal under
6 4-183(a). I told your attorney to take a look at one of
7 those sections.

8 MS. TAYLOR-AUSTIN: Okay.

9 THE COURT: There might be a remedy for you other than
10 that, but it's not, not that particular statute.

11 MS. TAYLOR-AUSTIN: Okay. Thank you.

12 THE COURT: All right.

13 MR. MILLS: Thank you.

14 THE COURT: At this point, I'm going to dismiss the
15 appeal. Okay.

16 MR. MILLS: Thank you, Your Honor.

17 (Court adjourned.)
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2 LISA TAYLOR-AUSTIN : JUDICIAL DISTRICT OF
3 v. : NEW BRITAIN
4 CONNECTICUT, STATE OF : AT NEW BRITAIN, CONNECTICUT
5 DEPARTMENT OF PUBLIC HEALTH :
6
7

8 C E R T I F I C A T E
9

10 I hereby certify that electronic version is/the foregoing
11 pages are a true and correct transcription of the audio
12 recording of the above-referenced case, heard in Superior Court,
13 Judicial District of New Britain, New Britain, Connecticut,
14 before the Honorable Henry S. Cohn, on the 18th day of August,
15 2010.
16

17 Dated this 26th of August, 2010, in New Britain,
18 Connecticut.
19
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21
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23 
24 _____
25 Donna L. Peluso,
26 Court Recording Monitor
27

Disclaimer:

“Lisa Taylor-Austin believes there was merit to her claims that Dr. Deforge negligently cared for her cat, Simba, and that he misrepresented whether he was a Board-certified dental specialist. Dr. Deforge denies these claims and asserts that the Department of Public Health’s veterinary board cleared him of any wrong doing. However, Dr Deforge agreed to pay \$7,500.00 to compensate Ms. Taylor-Austin because he believed the risks inherent in any lawsuit and the cost of missing two weeks from his practice made it imprudent to go to trial.”

Note: My guardian’s costs for my medical care and all legal avenues exceeded \$20,000.