

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2149

September Term, 2013

MARIE B. LAROCHE

v.

GREATER CAPITAL AREA ASSOCIATION
OF REALTORS, THORJORN LARSEN, II,
BROKER, RACHEL ADLER, REAL ESTATE
AGENT, AMIR EBRAHIMI, REAL ESTATE
AGENT

Eyler, Deborah S.,
Hotten,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: June 30, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case involves a complaint filed by Marie Laroche with the Greater Capital Area Association of REALTORS, Inc. (GCAAR). Laroche petitioned in the Circuit Court for Montgomery County for judicial review of GCAAR's dismissal of her complaint. Because GCAAR is a private corporation and is not subject to judicial review under the State Government Article of the Annotated Code of Maryland, the circuit court did not have jurisdiction to hear the petition. Therefore, we shall affirm the circuit court's order dismissing the petition.

Proceeding *pro se*, petitioner filed for judicial review of a decision by GCAAR dismissing her complaint against two real estate agents. Respondents in this case are GCAAR, Rachel Adler and Amir Ebrahimi, the real estate agents against whom petitioner made her complaint with GCAAR, and Thorjorn Larsen II, a broker. Petitioner presents the following question for our review:

“Did the Circuit Court have jurisdiction to consider Appellant's Petition for Judicial review of a non-governmental entity?”

We answer this question in the negative and shall affirm.

I.

On March 6, 2006, petitioner filed an ethics complaint with GCAAR, a private corporation, against two real estate agents, Rachel Adler and Amir Ebrahimi. According to GCAAR, petitioner's complaint was held in abeyance from March 2006 until February 2013,

pending the resolution of petitioner's similar complaints to the Maryland Real Estate Commission, the Court of Special Appeals and the United States Supreme Court. On March 19, 2013, Ebrahimi moved to dismiss the complaint. The Ethics Hearing Panel of GCAAR granted Ebrahimi's motion on June 13, 2013 because of the "unusual length of time the case has been held in abeyance" The Board of Directors of GCAAR upheld the decision.

On September 19, 2013, petitioner filed a petition in the Circuit Court for Montgomery County for judicial review of GCAAR's decision. Appellant captioned her petition as a petition for judicial review of GCAAR's decision "IN THE CASE OF MARIE LAROCHE, Claimant vs. ADLER & EBRAHIMI, Respondents." The circuit court modified petitioner's caption such that respondents are GCAAR, Adler, Ebrahimi and Larsen.

On October 10, 2013, GCAAR moved to dismiss the petition, arguing that the circuit court lacked jurisdiction to review the decision of a private corporation. GCAAR alleged as follows:

"1. The Maryland Administrative Procedure Act, addressing contested cases, is codified at Title 10, Subtitle 2, § 10-201, et seq. of the State Government Article of the Annotated Code of Maryland (hereinafter 'APA'). . . . Section 10-202 of the APA defines 'agency' to mean an officer or unit of the State government authorized by law to adjudicate contested cases, or a unit created by general law that operates in at least two (2) counties and is authorized to adjudicate contested cases.

2. Section 10-222 . . . provides for judicial review of a final decision in a contested case rendered by an agency

3. Respondent GCAAR is not and never has been an agency or unit of the State government or of any political subdivision of the State of Maryland or the Client Protection Fund of the Bar of Maryland. Instead, at all times, GCAAR is and was a corporation formed and existing pursuant to the Corporations & Associations Article of the Annotated Code of Maryland. . . .

4. In order for any matter to be brought before a court for judicial review, ‘there generally must be a legislative grant of the right to seek judicial review.’ *Harvey v. Marshall*, 389 Md. 243, 273 (2005). *There is no legislative grant of any right to anyone to seek judicial review pursuant to the APA of the actions of a private corporation which does not act or purport to act as an agency or unit of the State or any political subdivision of the State.*

5. In effect, the petition for judicial review filed in this action by petitioner Marie Laroche fails to state a claim upon which any relief can be granted by this court and, accordingly, must be dismissed.” (emphasis added)

GCAAR attached its Articles of Incorporation and Certificate of Status from the State Department of Assessments and Taxation as exhibits.

Petitioner did not respond to the motion to dismiss.¹ On December 11, 2013, the circuit court dismissed the petition with prejudice.

This timely appeal followed.

II.

Although petitioner admits that GCAAR is a corporation, she argues that it is “like

¹Because respondents do not discuss preservation or waiver in their brief, we need not address whether petitioner’s failure to respond waived her claim.

an agency or political subdivision of the State.” Analogizing to attorneys, petitioner alleges that GCAAR has the power to issue or revoke a realtor’s license. She urges the court to allow judicial review of GCAAR’s decision in order to prevent unfairness and ensure that GCAAR does not abuse its powers.

GCAAR’s argument before us mirrors its argument below. GCAAR submits that its decisions are not reviewable under the State Government Article because it is not, and never has been, an agency or unit of the State government or any other political subdivision of the State.

III.

We review the grant of a motion to dismiss for legal correctness. *Rounds v. Md-Nat’l. Capital Park & Planning Comm’n*, 441 Md. 621, 635 (2015). We assume the truth of all well-pleaded facts and allegations contained in the complaint and draw all inferences in favor of the non-moving party. *Id.* at 636.

Petitioner does not dispute that GCAAR is a private corporation. She contends that we should review its decisions under the State Government Article nonetheless. We decline to do so.

The objective of the contested case subtitle of the Administrative Procedure Act is to “ensure the right of all persons to be treated in a fair and unbiased manner in their efforts to resolve disputes in administrative proceedings . . .” and to promote “prompt, effective, and

efficient government.” § 10-201 of the State Government Article of the Annotated Code of Maryland.² Section 10-222 governs the judicial review of agency decisions in contested cases and provides as follows:

“(a) *Review of final decision.* — (1) Except as provided in subsection (b) of this section, a party who is aggrieved by the final decision in a contested case is entitled to judicial review of the decision as provided in this section.”

A “contested case” is defined as follows:

“(d) *Contested case.* — (1) ‘Contested case’ means a proceeding *before an agency* to determine:

- (I) a right, duty, statutory entitlement, or privilege of a person that is required by statute or constitution to be determined only after an opportunity for *an agency hearing*; or
- (ii) the grant, denial, renewal, revocation, suspension, or amendment of a license that is required by statute or constitution to be determined only after an opportunity for *an agency hearing*.” (emphasis added).

§ 10-202. Therefore, a contested case refers to proceedings “before an agency” to determine matters for which “an agency hearing” is required. The subtitle on contested cases defines an “agency,” in turn, as follows:

“(b) *Agency.* — ‘Agency’ means:

- (1) an officer or unit of the State government authorized by law to adjudicate contested cases; or
- (2) a unit that:
 - (I) is created by general law;

²Unless otherwise indicated, all subsequent statutory references herein to the Maryland Code (1984, 2009 Repl. Vol.) shall be to the State Government Article.

- (ii) operates in at least 2 counties;
- and
- (iii) is authorized by law to adjudicate contested cases.”

§ 10-202.

It is undisputed that GCAAR is not an officer or unit of the State government, nor is it a unit created by general law. Because GCAAR is not an “agency” within the meaning of the subtitle, a proceeding before GCAAR is not a “contested case” for the purposes of § 10-222. Section 10-222 does not apply and the circuit court had no jurisdiction under the State Government Article to review the petition.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO BE
PAID BY APPELLANT.**