IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

CLOUT CONSTRUCTION, LLC, *Appellant*,

v.

L. B. CONTRACTING, LLC, et al., *Appellees*.

No. 1 CA-CV 24-0581

FILED 07-01-2025

Appeal from the Superior Court in Maricopa County
No. LC2023-000219-001
The Honorable Joseph P. Mikitish, Judge

VACATED AND REMANDED

COUNSEL

Holden Willits, PLC, Phoenix
By Kevin M. Estevez, Ian Balitis
Counsel for Appellant Clout Construction, LLC

Arizona Attorney General's Office, Phoenix
By Mona Baskin
Counsel for Appellee Arizona Registrar of Contractors

MEMORANDUM DECISION

Judge Angela K. Paton delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Samuel A. Thumma joined.

P A T O N, Judge:

¶1 Clout Construction, LLC ("Clout") appeals the Arizona Registrar of Contractors' ("ROC") suspension of Clout's contractor's license. We vacate the superior court's order affirming the suspension and remand for a trial de novo.

FACTS AND PROCEDURAL HISTORY

¶2 In February 2022, Clout, a general contractor, subcontracted with L.B. Contracting, LLC ("L.B."). L.B. did not complete the work.

¶3 L.B. filed a complaint with the ROC in January 2023, claiming Clout violated Arizona Revised Statutes ("A.R.S.") Section 32-1154(A)(10) by not paying L.B. $69,786.04 for work it completed. After an evidentiary hearing in April 2023, an administrative law judge ("ALJ") found that L.B. did not complete its work and Clout owed L.B. $36,988.99. The ALJ determined Clout violated Section 32-1154(A)(10) by failing to pay L.B. that amount and recommended the ROC suspend Clout's license until it paid L.B. $36,988.99. The ROC adopted the ALJ's recommendation.

¶4 Clout appealed the ROC's final administrative decision to the superior court and timely requested a trial de novo in the notice of appeal. A.R.S. § 12-910(D). The superior court ordered briefing and affirmed the ROC's decision without conducting a trial de novo. Clout filed a motion for rehearing, for a new trial, and/or to alter or amend the judgment arguing, among other things, that it was entitled to a trial de novo. The court denied Clout's motion.

¶5 Clout timely appealed. We have jurisdiction under Sections 12-120.21(A)(1), 12-2101(A)(1), and 12-913.

DISCUSSION

¶6 Clout raises several arguments on appeal, including that the superior court erred in failing to conduct a trial de novo. L.B. did not file an answering brief. Although we could treat this failure to respond as a confession of reversible error, in the exercise of our discretion, we decline to do so. *Michaelson v. Garr*, 234 Ariz. 542, 544, ¶ 4 n.3 (App. 2014).

¶7 "For review of final administrative decisions of agencies that regulate a profession or occupation pursuant to title 32, title 36, chapter 4, article 6, title 36, chapter 6, article 7 or title 36, chapter 17, *the trial shall be de novo if trial de novo is demanded* in the notice of appeal or motion of an appellee other than the agency." A.R.S. § 12-910(D) (emphasis added). Title 32, chapter 10, article 1 governs the ROC, meaning Section 12-910(D) applies to review of ROC final administrative decisions.

¶8 Clout requested a trial de novo in its notice of appeal to the superior court. The court, however, did not conduct a trial de novo.

¶9 Section 12-910(D) requires that "if trial de novo is demanded," then "the trial shall be de novo." The word "shall" typically designates a mandatory provision in a statute. *Garcia v. Butler in & for Cnty. of Pima*, 251 Ariz. 191, 195, ¶ 15 (2021). The statute thus provides that Clout was entitled to a trial de novo in the superior court upon demand. We therefore vacate the court's order and remand for a trial de novo. *See Mills v. Ariz. Bd. of Tech. Reg.*, 253 Ariz. 415, 419, ¶ 6 (App. 2022) ("The scope of that review is governed by A.R.S. § 12-910, which the legislature amended . . . to require de novo review of final decisions by agencies regulating professions if demanded."); *see also Duncan v. Mack*, 59 Ariz. 36, 40-41 (1942) ("on a trial de novo . . . the case should be tried in all manners as though the superior court were the court of original jurisdiction."). Because we are vacating and remanding the underlying order to the superior court, we do not address the other arguments Clout raises on appeal.

¶10 Clout requests attorneys' fees and costs under Sections 41-1001.01 and 12-348, and the private attorney general doctrine. In our discretion, we deny Clout's request for fees, but as the successful party, Clout may recover its taxable costs upon compliance with Rule 21 of the Arizona Rules of Civil Appellate Procedure.

CONCLUSION

¶11 We vacate the superior court's order and remand with instructions for it to conduct a trial de novo.

MATTHEW J. MARTIN • Clerk of the Court
FILED: JR