

Circuit Court for Baltimore City
Case No. 24-C-18-006397

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0849

September Term, 2019

ALLAN MYERS, L.P.

v.

MAYOR AND CITY COUNCIL OF
BALTIMORE

Berger,
Wells,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: June 11, 2020

*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 appeal arises from a dispute between Allan Myers, L.P. (“Myers”), Appellant, and the Mayor and City Council of Baltimore (“the City”), Appellee. Myers entered into a contract (“the Contract”) with the Baltimore City Department of Public Works (“DPW”) for the construction of a concrete reservoir. During construction of the reservoir, several problems arose which necessitated extra work by Myers. Myers requested change orders for additional compensation relating to the work it completed, which were denied. Myers challenged the denial of its claims through the administrative process afforded to it pursuant to the Contract. Myers’ claims were denied three times including a denial by the Chief of the Bureau of Water and Wastewater, Rudolph S. Chow (“Chow”).

Myers requested to proceed to the final level of administrative review pursuant to the Contract. The Contract provided for a hearing before the Director of DPW. In the interim, however, Chow had become the Director of DPW. As a result, Myers’ hearing proceeded before the Deputy Director of DPW, S. Dale Thompson (“Hearing Officer” or “Thompson”), who denied its claims. Myers petitioned for judicial review in the Circuit Court for Baltimore City. On June 5, 2019, the circuit court affirmed DPW’s decision. This appeal by Myers followed and the City moved to dismiss Myers’ appeal.

Myers presents the following issues on appeal, which we have rephrased for clarity:¹

¹ Myers’ questions are stated in his brief as follows:

1. Was Myers denied due process of law where (1) the Hearing Officer was the Deputy Director of Public Works, acting in place of the Director (her immediate superior), whose denial of Myers’ claim was the decision being appealed, (2) the Hearing

1. Whether Myers was denied due process of law where the Hearing Officer was the Deputy of the DPW, acting in place of the Director.

Officer refused to acknowledge her own implicit bias having to potentially overturn her immediate superior's previous decision, and (3) the City refused to agree to have an independent, third-party engineer advise the Hearing Officer at the Final Hearing?

2. Did the Hearing Officer, and consequently the Circuit Court, err as a matter of law when they interpreted an unambiguous Contract to read out the phrase "for design loads indicated on this drawing" and held that the Contract, as interpreted (and without the foregoing limitation), required Myers to consider thermal loads, despite the fact that thermal loads were nowhere indicated on the drawings?

3. Under *U.S. v. Spearin* and Maryland's adoption and recognition of the Spearin Doctrine in *Dewey Jordan, Inc. v. Maryland Nat'l Capital Park & Planning Comm'n*, did the Hearing Officer, and consequently the Circuit Court, err as a matter of law in failing to find that Baltimore City impliedly warranted Dhillon's original design specification requiring Myers to use rigid, welded connections as the method for connecting the Project's individual concrete roof members?

4. Did the Hearing Officer, and consequently the Circuit Court, err as a matter of law when they denied Myers a change order for engineering and installing slip joints to correct the defectively-designed rigid, welded connections originally specified by Dhillon, which work was outside of the scope of the original contract?

a. Did the Hearing Officer, and consequently the Circuit Court, err as a matter of law when they failed to find that the change in connection method (from Dhillon's originally-specified fixed, welded connections to "slip joints") was so fundamental and significant as to constitute a cardinal change entitling Myers to extra-contractual remedies?

2. Whether the Hearing Officer erred as a matter of law in interpreting the contract to require Myers to consider thermal loads.
3. Whether the Hearing Officer erred in finding that Myers was liable for designing the reservoir roof and in failing to apply the *Spearin* Doctrine.
4. Whether the Hearing Officer erred as a matter of law in finding that Myers was not entitled to additional compensation for work that was outside the scope of the original contract.

For the reasons stated herein, we grant the City’s motion to dismiss. In light of our holding, we need not address the merits of Myers’ claims.

FACTS AND PROCEDURAL HISTORY

On November 18, 2009, the City awarded Allan Myers, L.P. Water Contract 1160-R for Montebello Plant 2, Finished Water Reservoir Cover. The Contract was administered by DPW and required the construction of a 665 by 490 foot cast-in-place reinforced concrete reservoir with a precast-prestressed concrete cover. This included “a cast-in-place concrete slab base, cast-in-place concrete walls that connect to precast concrete double tee roof panels that are supported by precast concrete inverted tee girders, and cast-in-place columns.” The structure would house millions of gallons of finished water from the City’s Montebello 2 water treatment facility. Construction began in January 2010 and was scheduled to be completed in October 2013.

In early July 2011, issues arose concerning the concrete roof, which necessitated a change in the manner in which the roof members were interconnected. These issues were investigated and determined to be the result of movement between the concrete roof

members, which was caused by thermal forces. Following discussions between the City and Myers, Myers began to make alterations to the roof system. On August 20, 2012, Myers submitted a proposed change order for \$4,699,735.00 of additional work that was undertaken to remediate the cracking in the roof. In January of 2014, Myers was informed that leaks were identified in the walls and slabs of the reservoir's base, which exceeded the maximum leakage allowed by the contract specifications. Myers subsequently remediated the leaks. Thereafter, Myers submitted another proposed change order for its remedial work in the amount of \$167,265.00.

The Contract incorporated and was governed by the City of Baltimore Department of Public Works Specifications for Materials, Highways, Bridges, Utilities, and Incidental Structures (2006) (the "Green Book") and the Baltimore City Charter ("the Charter"). The Green Book and the Charter established the administrative process available to Myers. The Green Book provided for an initial review heard by an appropriate agency employee, a review by the head of the appropriate Bureau, and a final administrative review by the Director of the applicable City agency. Baltimore City Charter Article II, § 4A governs disputes that arise from construction contracts with the City. Section 4A(e) prohibits the City from requiring in a construction contract "that a dispute between the parties involving \$10,000 or more over the terms of the contract or performance under the contract be subject to final binding or conclusive determination by an officer or official body of Baltimore City."

This provision provides two procedural options to resolve disputes arising from construction contracts. First, it allows the City to make a final decision by utilizing a neutral party or arbitration panel, pursuant to § 4A(f), which provides the following:

(f) Construction contracts – Decision by neutral party or arbitration panel. With regard to a construction contract to which it is a party, Baltimore City may provide or require that if there is a dispute over the terms of the contract or performance under the contract, the questions involved in the dispute shall be subject to a determination that is final and conclusive on all parties, made either by:

(1) a neutral person or entity selected by or in accordance with a procedure established by the Mayor of Baltimore City; or

(2) if the other party does not accept as neutral a person or entity selected under paragraph (1) of this subsection, by an arbitration panel composed of the following:

(i) one member designated by the Mayor of Baltimore City;

(ii) one member designated by the other party to the dispute; and

(iii) one member selected by mutual agreement of the 2 designated members from lists to be submitted by the parties to the dispute.

Second, the Charter allows the City to utilize an officer or official body of Baltimore City to render a decision that is subject to judicial review. Section 4A(g) provides:

Notwithstanding the provisions of subsections (e) and (f) of this section, with regard to a construction contract to which it is a party, Baltimore City may provide or require that if there is a dispute between the parties involving \$10,000 or more over the terms of the contract or performance under the contract, the

dispute is subject to a determination of questions of fact by an officer or official body of Baltimore City, subject to review on the record by a court of competent jurisdiction.

Section 7384 of the Green Book supplements this procedure and provides that the “Director of the applicable department shall act as the Hearing Officer.” The City elected to pursue this option in the proceedings below.

Baltimore City Charter Article VII also establishes DPW and its personnel. Critically, it defines the roles of the Director and the Deputy Director. Pursuant to Article VII, § 28, “[t]he Director of Public Works shall supervise and direct the Department. The Director shall have had substantial administrative experience in the construction and maintenance of public works, public improvements and the delivery of related public services or ten years experience as an engineer.” Section 29(a) provides that the Director shall select a Deputy Director. Further, § 29(b) provides that “[w]henver a vacancy shall occur in the office of Director or whenever the Director shall be incapacitated or otherwise unavailable for duty for any cause, the Deputy Director shall be the Acting Director, until the Director is again available for duty or the vacancy is filled.”

Myers’ first administrative hearing occurred on September 10, 2012 before the Construction Project Supervisor. Its claim was denied on September 14, 2012. Myers exercised its right to have a second-level hearing before the Division Chief of Construction Management, who similarly denied its claim. On January 16, 2013 Myers had its third administrative hearing before the Chief of the Bureau of Water and Wastewater, Chow, who denied Myers’ claim on February 11, 2013. The Contract and Charter provided for a

final administrative hearing before the Director of DPW. Myers requested to proceed to this level on March 7, 2013.

The final hearing did not occur until 2017. Between Myers' third administrative hearing and the final hearing, Chow was promoted to Director of DPW. Myers raised due process concerns to DPW because Chow had denied its claim at the third-level hearing. Myers proposed that the parties proceed through arbitration, but the City elected to proceed with a hearing before the Deputy Director of DPW, Thompson. Hearings were conducted by the Hearing Examiner on November 28- 29, 2017. Five witnesses testified on behalf of Myers and six witnesses testified on behalf of the City. Additionally, several hundred exhibits were introduced. On November 19, 2018 the Hearing Officer denied both change orders seeking additional compensation. Preliminarily, she addressed Myers' objection to the form of the administrative proceedings and found that she was properly able to conduct the hearing pursuant to the Contract and the Charter. The Hearing Officer determined that the City properly denied Myers' claim regarding additional compensation for work done to the roof:

The contract unambiguously placed the responsibility on Allan Myers to calculate and consider thermal loads in its design of the roof members. Allan Myers failed to meet his burden. Allan Myers' failure led to the cracking and spalling in the Montebello roof reservoir. These non-conforming components constitute defective work and materials, which Allan Myers was solely responsible for remediating at its own expense.

Further, the Hearing Officer determined that the City properly denied Myers' claim regarding the leaks because "the leaks were either the result of a clear design issue [Myers]

failed to identify and report to the City, or it was the result of deficient workmanship on behalf of Allan Myers.”

Myers petitioned for judicial review in the Circuit Court for Baltimore City. Following a hearing, the circuit court affirmed the Hearing Officer’s decision and denied Myers’ claims.

DISCUSSION

I. Myers does not have statutory authorization to bring this appeal.

The City argues in its motion to dismiss that this Court lacks jurisdiction to hear this appeal. It contends that there is no statutory authority granting Myers the right to appeal the circuit court’s decision to this Court. In response, Myers asserts that its claim should be treated as a common law mandamus action and, therefore, this Court has jurisdiction to entertain its appeal.

“It is an often stated principle of Maryland law that appellate jurisdiction, except as constitutionally authorized, is determined entirely by statute, and that, therefore, a right of appeal must be legislatively granted.” *Prince George's Cty. v. Beretta U.S.A. Corp.*, 358 Md. 166, 173 (2000) (quoting *Gisriel v. Ocean City Elections Board*, 345 Md. 477, 485 (1997)). “If no statutory authorization exists, ‘this Court does not have jurisdiction,’ and ‘we must dismiss the case *sua sponte*.’” *Ross Contracting, Inc. v. Frederick Cty.*, 221 Md. App. 564, 575 (2015) (quoting *Madison Park N. Apartments, Ltd. P'ship v. Comm'r of Hous. & Cmty. Dev.*, 211 Md. App. 676, 690 (2013)).

Md. Code (1974, 2013 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings

Article (“CJ”) provides the general right to appeal from the decision of a circuit court:

Except as provided in § 12-302 of this subtitle, a party may appeal from a final judgment entered in a civil or criminal case by a circuit court. The right of appeal exists from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law.

CJ § 12-302, however, defines appeals that are not permitted to this Court, including appeals from a final judgment of a court that has exercised appellate jurisdiction in reviewing the decision of an administrative agency. CJ § 12-302(a) provides the following:

(a) Unless a right to appeal is expressly granted by law, § 12-301 of this subtitle does not permit an appeal from a final judgment of a court entered or made in the exercise of appellate jurisdiction in reviewing the decision of the District Court, an administrative agency, or a local legislative body.

It is well-settled that a circuit court may exercise appellate jurisdiction when reviewing the decision of an administrative agency:

Although in a technical or constitutional sense, a circuit court never exercises “appellate jurisdiction” when “reviewing the decision of . . . an administrative agency, or a local legislative body,” we have held that the above-quoted language refers to an original circuit court action, authorized by statute, judicially reviewing an adjudicatory decision of an administrative agency or an adjudicatory decision of a local legislative body when it acts in a quasi-judicial capacity. *Gisriel v. Ocean City Elections Board*, *supra*, 345 Md. at 486–496, 693 A.2d at 762–767, and cases there discussed.

Beretta, *supra*, 358 Md. at 175. Thus, when a circuit court judicially reviews an adjudicatory decision of an administrative agency, it exercises appellate jurisdiction.

Accordingly, an appeal from such a decision, is not authorized by CJ § 12-301.

The City relies on *Ross, supra*, 221 Md. App. 564, in support of its motion to dismiss. Indeed, the procedural path taken by the Appellant in *Ross* is much like the procedural path in the instant case. *Ross* involved a dispute between Frederick County (the “County”) and Ross Contracting, Inc. (“Ross”) regarding a construction contract. *Id.* at 567. Following issues that arose during construction, Ross requested an equitable adjustment in the contract price. *Id.* at 571. The County, however, rejected Ross’s claim. *Id.* Ross then submitted a revised claim, which was rejected by the County as well. *Id.* Ross subsequently invoked the following provision of the contract:

Pursuant to [Art. 25 § 1A(g)], in the event of a dispute between the parties to this contract involving \$10,000.00 or more regarding the terms of the contract or performance under the contract, the question involved in the dispute shall be subject to a determination of questions of fact by one of the following County Directors: Director of Public Works, Director of Utilities and Solid Waste Management, Finance Director or Director of Management Services. The County Manager, in his sole discretion, shall select one of these Directors to make this determination. The decision of the Director or other official is subject to review on the record by the Circuit Court for Frederick County.

Id. Pursuant to the contract, the County appointed the Director of the Frederick County Division of Utilities and Solid Waste Management to serve as the hearing officer. *Id.* Following evidentiary hearings and a review of the written submissions by the parties, the hearing officer granted, in part, and denied, in part, Ross’s claim. *Id.* at 572. Ross filed a petition for judicial review in the Circuit Court for Frederick County. *Id.* at 574.

This Court provided a lengthy analysis on whether Ross had statutory authorization to appeal from the circuit court. We explained the following regarding whether the circuit court was exercising appellate jurisdiction pursuant to CJ § 12–302(a):

A circuit court exercises “appellate jurisdiction” when it reviews an administrative agency’s decision pursuant to statutory authorization. *Gisriel*, 345 Md. at 492, 693 A.2d 757; *see also Rogers v. Eastport Yachting Ctr., LLC*, 408 Md. 722, 733–34, 971 A.2d 322 (2009); *Dvorak v. Anne Arundel Cnty. Ethics Comm’n*, 400 Md. 446, 452–53, 929 A.2d 185 (2007). And when a circuit court reviews a decision of an administrative agency pursuant to CJ § 12–302(a), any right of appeal to this Court must arise under a statute *other than* CJ § 12–301; if no other statutory right to an appeal exists, we must dismiss the appeal. *Madison Park*, 211 Md. App. at 690, 66 A.3d 93.

Id. at 576. We determined that the circuit court was exercising appellate jurisdiction pursuant to CJ § 12–302(a) because the circuit court reviewed the hearing officer’s decision pursuant to the following a statutory right of review:²

(g) Resolution of dispute in construction contract— Determination by county officer subject to court review.— Notwithstanding the provisions of subsections (e) and (f) of this section, a county governed by county commissioners may provide or require, with regard to a construction contract to which it is a party, that a dispute between the parties involving \$10,000 or more regarding the terms of the contract or performance under the contract, be subject to a determination of questions of fact by an officer or official body of a county governed by county commissioners, *provided that the decision of the officer or official body of a county governed by county*

² “The parties adopted Md. Code (1957, 2011 Repl. Vol.), § 1A of Article 25 (the predecessor of current Md. Code (1974, 2013 Repl. Vol.), § 5–5A–02(e) of the Courts & Judicial Proceedings Article) to govern the resolution of disputes arising from the contract.” *Ross, supra*, 221 Md. App. at 567, n.1.

commissioners is subject to review on the record by a court of competent jurisdiction.

Id. at 580. We further held that there was no statutory basis for appellate jurisdiction in this Court. *Id.* at 582.

We are persuaded by the City’s reliance on *Ross*. Like the Appellant in *Ross*, Myers requested equitable adjustments to the Contract following several issues that arose during the course of construction. Its claims, however, were denied at four different levels of administrative review. Following the denial of its claims by the Deputy Director of DPW, Ross petitioned for judicial review in the circuit court for Baltimore City. The provision of the Charter and Contract which allowed him to obtain judicial review are indeed very similar to the provision in *Ross*:

Notwithstanding the provisions of subsections (e) and (f) of this section, with regard to a construction contract to which it is a party, Baltimore City may provide or require that if there is a dispute between the parties involving \$10,000 or more over the terms of the contract or performance under the contract, the dispute is subject to a determination of questions of fact by an officer or official body of Baltimore City, subject to review on the record by a court of competent jurisdiction.

Balt. City Charter, Art. II, § 4A(g). Because the circuit court judicially reviewed an adjudicatory decision of an administrative agency, DPW, pursuant to its statutory authority, it was exercising appellate jurisdiction when it reviewed Myers’ claims. Any right to appeal to this Court, therefore, must arise under a statute other than CJ § 12–301. *Ross, supra*, 221 Md. App at 576. Myers does not cite to any statutory authority, which gives him the right to appeal to this Court. Instead, Myers argues that this Court has jurisdiction

because his appeal is a common law mandamus action, which is not precluded by CJ § 12-302.

II. Myers has not asserted a common law mandamus action.

CJ § 12-302(a) does not preclude “appeals in actions, however styled or captioned, which are essentially common law mandamus actions.”³ *Murrell v. Mayor & City Council of Baltimore*, 376 Md. 170, 192, (2003); *see also Gisriel, supra*, 345 Md. at 499 (“the principle embodied in § 12–302(a) has no application to common law actions. Both before and after the enactment of § 12–302(a), this Court has regularly exercised appellate jurisdiction in mandamus actions against administrative agencies and officials.”).

Indeed, the common law writ of mandamus is an “extraordinary remedy” and “is proper where a party would otherwise have no avenue for legal recourse.” *Dep’t of Human Res., Baltimore City Dep’t of Soc. Servs. v. Hayward*, 426 Md. 638, 647-48 (2012). The common law writ of mandamus is used “to compel inferior tribunals, public officials or administrative agencies to perform their function, or perform some particular duty imposed upon them” *Town of La Plata v. Faison-Rosewick LLC*, 434 Md. 496, 511, (2013) (quoting *Goodwich v. Nolan*, 343 Md. 130, 145 (1996)). [T]he party against whom enforcement is sought must have an imperative, ‘ministerial’ duty to do as sought to be

³ Although Myers characterizes his claims as a common law mandamus action for the first time in his reply brief, we acknowledge that “even where a particular action against an administrative agency was allegedly brought under a statutory judicial review provision, and did not purport to be a mandamus action, this Court has looked to the substance of the action, has held that it could be treated as a common law mandamus or certiorari action, and has exercised appellate jurisdiction.” *Gisriel, supra*, 345 Md. at 500.

compelled i.e., “a duty prescribed by law” *Baltimore Cty. v. Baltimore Cty. Fraternal Order of Police Lodge No. 4*, 439 Md. 547, 571 (2014). Moreover, “the party seeking enforcement of that duty must have a clear entitlement to have the duty performed.” *Id.*

“Ministerial acts are ‘duties in respect to which nothing is left to discretion [and are] distinguished from those [allowing] freedom and authority to make decisions and choices.’” *Id.* at 397 (quoting *State, Use, Clark v. Ferling*, 220 Md. 109, 113 (1959)). “Only when an official’s duties are ‘absolute, certain, and imperative, involving merely the execution of a set task’ can they be fairly defined as ministerial.” *Talbot Cnty. v. Miles Point Prop., LLC.*, 415 Md. 372, 397 (2010) (quoting *James v. Prince Georges’s Cnty.*, 288 Md. 315, 326 (1980) (abrogated on other grounds)). The Court of Appeals has explained that only “in rare cases, a court may review a discretionary act of a public official when there is ‘both a lack of an available procedure for obtaining review and an allegation that the action complained of is illegal, arbitrary, capricious or unreasonable.’” *Falls Rd. Cmty. Ass’n, Inc. v. Baltimore Cty.*, 437 Md. 115, 140 (2014) (quoting *Goodwich v. Nolan*, 343 Md. 130, 145 (1996)). The Court of Appeals has ruled that tasks such as the duty to comply with “voter qualification terms and procedures for validating a referendum petition,” *Town of La Plata, supra*, 434 Md. at 512 (citing *Gisriel, supra*, 345 Md. at 500), and a town manager’s statutory duty to decide upon a referendum petition, *Town of La Plata, supra*, 434 Md. at 512, are appropriate for a common law mandamus action.

Myers argues that its appeal should be treated as a common law mandamus action because the City had a nondiscretionary duty to perform a review conducted by the Director

of DPW, pursuant to the Contract and the Charter. The City argues that Myers cannot classify its claim as one for common law mandamus because the DPW performed all nondiscretionary duties required by the Contract and the Charter. We agree.

Myers' attempt to characterize its claim as an action for common law mandamus is unavailing. A common law mandamus action seeks to compel an administrative agency to perform a mandatory duty. *Town of La Plata, supra*, 434 Md. at 511. Myers does not allege that the DPW failed to perform specific duties. Rather, he alleges that the wrong person performed the duties. *Assuming arguendo* that Myers' claim could somehow be classified as a common law mandamus action, its assertion that the incorrect person presided over the administrative hearing is faulty and factually inaccurate. Critically, Baltimore City Charter, Article VII, § 29(b) explicitly authorizes the Deputy Director to be acting Director of DPW "whenever the Director shall be incapacitated or otherwise unavailable for duty for any cause." Myers himself raised due process concerns over the Director serving as the hearing officer, as Chow had denied his claim at a previous level. Here, Chow was unavailable due to the very conflict that Myers objected to. The Deputy Director, therefore, was authorized pursuant to Article VII, Section 29(b) of the Baltimore City Charter to serve as the Hearing Officer.⁴

⁴ In support of this mandamus argument, Myers cites to a recent unreported opinion of this Court, *In Re ProVen Management, Inc.*, No. 610, Sept. Term 2018 (Filed Jan. 10, 2020), *cert. granted, Mayor & City Council of Baltimore v. ProVen Management, Inc.*, Case No. 8, Sept. Term 2020 (Apr. 20, 2020). Generally, "[t]his Court will not consider unreported opinions for their substance." *Oliveira v. Sugarman*, 226 Md. App. 524, 553 (2016), *aff'd*, 451 Md. 208, 152 A.3d 728 (2017). We, however, acknowledge that the unreported opinion involves very similar circumstances, that is, the appeal of an administrative decision by Director Chow regarding a construction contract with DPW and

In support of its argument that the Deputy Director should not have served as the Hearing Officer, Myers also contends that the Deputy was not qualified to render a decision concerning the dispute. Myers asserts that the Director must meet certain qualifications in order to hold that position, including significant experience administering public works contracts and/or a decade or more of engineering experience. Balt. City Charter, Art. VII, § 28(a). The Deputy Director, according to Myers, was unqualified to act as the Director because she did not meet these qualifications. We are unpersuaded. Indeed, the Charter specifically authorizes the Deputy Director to act as Director when he or she is unavailable. Balt. City Charter, Art. VII, § 29(b).⁵

We recently addressed a similar jurisdictional issue in *Victoria Gray v. Claire Fenton, et al.*, _____ Md. App. _____, No. 3478, Sept. Term 2018 (Ct. of Spec. App. Apr. 2020). In *Gray*, we contemplated whether an appeal from a circuit court’s judicial review of an administrative agency could correctly be classified as a common law mandamus action. *Gray*, slip op. at 6-7. We explained that the relief sought by Gray when she filed

a motion to dismiss for lack of jurisdiction by the City. Myers uses *ProVen* to support its argument that the City’s failure to comply with the procedures set forth in the Charter and Contract warrant that this appeal to be treated as a mandamus action. The instant case is distinguishable from *ProVen*. In the case before us, the City complied with the procedures set forth in the Charter and the Contract. In *ProVen*, a panel of this Court determined that the “Director failed to conduct a procedurally adequate hearing and failed to provide adequate reasons for his decision.” *ProVen*, slip op. at 23. Here, however, Myers contends that the wrong individual conducted the hearing, not that the individual failed to perform certain duties relating to the hearing.

⁵ Myers additionally argues that he was entitled to arbitration pursuant to Charter’s Art. II, § 4A(f), however, this provision clearly is discretionary not mandatory.

her petition for judicial review “was not to order the Commission to decide the issue it allegedly failed to resolve, which is the only relief that could have been afforded in a common law mandamus action, but rather for the circuit court to decide the issue itself.” *Gray*, slip op. at 7. We further observed that relief requested by Gray in this Court was “to decide the substantive issues she raises, not to order the Commission to do so.” *Id.* Thus, we held that “the substance of Ms. Gray’s action as she has pursued it before the circuit court and this Court is for judicial review, not common law mandamus.” *Id.* Similarly, here, before the circuit court, Myers requested that the circuit court reverse the decision of the DPW and award it damages directly. Further, in its brief, Myers asks this Court for the following relief:

At a minimum, justice requires that this matter be remanded to the administrative level, and that Myers be afforded an opportunity to present its claims to an impartial and unbiased decision-maker consistent with the procedures outlined in the parties’ Contract, the Green Book and the Charter. This Court should go one step further, however, and not only reverse the existing judgment, but substitute judgment in Myers’ favor for the full amount of its claims in its place, as the issues presented may all be determined as matters of law.

Thus, Myers is seeking that this Court afford it relief that goes well beyond the scope of a common law mandamus action.

Myers further avers that it was denied due process because the Hearing Officer acted outside of her legal authority by making legal conclusions. Although Myers was free to argue this before the circuit court, we need not address it as this challenge falls outside of

the scope of its common law mandamus claim.⁶ In our view, Myers did not demonstrate that the Hearing Officer failed to perform a mandatory duty, rather that her duties were performed in an improper manner. In sum, there is no statutory authority entitling Myers to appeal to this Court. Further, this appeal cannot be characterized as a common law mandamus action. We, therefore, grant the City's motion to dismiss the appeal.

**APPEAL DISMISSED. COSTS TO BE PAID
BY APPELLANT.**

⁶ Although Myers challenges the Hearing Officer's authority to make legal conclusions, it also argues on appeal that the Hearing Officer failed to apply the *Spearin Doctrine* and follow Maryland's adoption of the doctrine in arriving at her decision.