

Nos. 1-11-1415, 1-11-1416 and 1-11-1436  
(Consolidated)

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

---

SEARS ROEBUCK AND COMPANY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant and Cross-Appellee,	)	Cook County
	)	
v.	)	Nos. 08 M1 450338
	)	08 M1 450404
CITY OF CHICAGO, Department of Administrative	)	08 M1 450907
Hearings, and CITY OF CHICAGO, Department of	)	
Business Affairs and Licensing and Department of	)	
Revenue,	)	Honorable
	)	Patrick T. Rogers,
Defendants-Appellees and Cross-Appellants.	)	Judge Presiding.

---

JUSTICE PALMER delivered the judgment of the court.  
Justice Howse and Taylor concurred in the judgment.

### ORDER

- ¶ 1 Held: Circuit court's order reversing decisions and fines issued by the City of Chicago department of administrative hearings against Sears Roebuck and Company is affirmed. Sears did not engage in the business of home repair and was not required to hold a home repair license for its activities in selling and facilitating the installation of hot water heaters.
- ¶ 2 The City of Chicago department of administrative hearings (the agency) issued three decisions finding Sears in violation of section 4-204-020 of the Chicago Municipal

1-11-1415) 11-1416) 11-1436)

Code (the Code) (Chicago Municipal Code § 4-204-020 (added Dec. 9, 1992) (repealed eff. May 9, 2012)) for engaging in the business of installing hot water heaters without a home repair license. On administrative review, the circuit court reversed the agency's decisions. It found Sears was engaged in the business of home repair as required under the ordinance but was not required to hold a home repair license because no actual transactions for the sale of the installation service took place between Sears and the investigators.

¶ 3 Sears appeals, arguing the court erred in agreeing with the agency that Sears was engaged in the business of home repair because the City failed to present any evidence that Sears' conduct in facilitating and selling the installation service was "home repair" under the ordinance. The City cross-appeals, arguing the court erred in reversing the agency's decision because the ordinance does not condition its applicability on the occurrence of a transaction or payment for an individual home repair as the court held. Sears' consolidated appeals are dismissed. On the City's consolidated cross-appeals, we affirm.

¶ 4 Background

¶ 5 Sears is a retail store operator. On three occasions between October 24, 2007, and February 15, 2008, a City investigator went to a Sears store and spoke with a Sears sales person about the sale and installation of a hot water heater. The sales people provided the investigators with estimates of the cost of a water heater and installation of the heater. Each investigator then went to the relevant store's office or

1-11-1415) 11-1416) 11-1436)

manager requesting to see Sears' home repair license. Because Sears did not hold a home repair license, the investigators issued citations against Sears for (1) installing water heaters without a home repair license in violation of section 4-204-020 of the Code and (2) failing to display the required license in violation of section 4-4-210 of the Code.

¶ 6 Section 4-204-020 of the Chicago Municipal Code (the Code) provided in pertinent part:

"No person shall engage in the business of home repairs within the City of Chicago without having obtained a license pursuant to this chapter in addition to any other license that may be required by law." Chicago Municipal Code § 4-204-020 (added Dec. 9, 1992) (repealed eff. May 9, 2012).<sup>1</sup>

Section 4-204-010(a) of the Code defined "home repair" as follows:

*"Home repair* means the fixing, replacing, altering, converting, modernizing, improving of or the making of an addition to any real property primarily designed or used as a residence.

(1) *Home repair shall include* the construction, *installation*, replacement or improvement of driveways, swimming pools, porches, kitchens, bathrooms, basements, chimneys, chimney liners, garages, fences, fallout shelters, central air conditioning, central heating, boilers,

---

<sup>1</sup> On May 9, 2012, the Chicago city council repealed Chapter 4-4 of the Code and replaced it with chapter 4-6. As part of this legislation, section 4-204-020 was replaced with section 4-6-010.

1-11-1415) 11-1416) 11-1436)

furnaces, *hot water heaters*, electrical wiring, sewers, plumbing fixtures, storm doors, storm windows, roofs, awnings and other improvements to structures within the residence or upon the land adjacent thereto.

(2) *Home repair shall not include the sale, installation, cleaning or repair of carpets; the sale of goods or materials by a merchant who does not directly or through a subsidiary perform any work or labor in connection with the installation or application of the goods and materials; the repair, installation, replacement or connection of any home appliance, including but not limited to disposal, refrigerators, ranges, garage door openers, television antennas, washing machines, telephones or other appliances when the persons replacing, installing, repairing or connecting such home appliance are employees or agents of the merchant that sold the home appliance; television repair; or landscaping.*" (Emphasis added.) Chicago Municipal Code § 4-204-010(a) (added Dec. 9, 1992) (repealed eff. May 9, 2012).<sup>2</sup>

¶ 7 Sears challenged the three citations. The agency held hearings on each of the citations, docket numbers 07RV007612, 08RV001476 and 08RV002566. In each case, the City argued that the section 4-204-010(a)(1) definition of home repair specifically included the installation of hot water heaters and, therefore, Sears was engaged in the

---

<sup>2</sup> On May 9, 2012, the Chicago city council repealed Chapter 4-4 of the Code and replaced it with chapter 4-6. As part of this legislation, section 4-204-010 was replaced with section 4-6-280.

1-11-1415) 11-1416) 11-1436)

business of home repair and required by section 4-204-020 to hold a home repair license. Sears responded that the citations should be dismissed because the City did not show that a Sears' employee or subsidiary had done any work or labor in connection with the cited installations, let alone that an installation had actually been performed. It asserted that, pursuant to section 4-204-010(a)(2), home repair does not include the sale of hot water heaters by a merchant such as Sears who does not directly or through a subsidiary perform any work or labor in connection with the installation of the water heaters, and, therefore, Sears was not required to hold a home repair license under section 4-204-020.

¶ 8 In each case, the agency heard testimony from the investigators who had issued the citations. Each investigator testified that, posing as a customer, they had received a written estimate from a Sears' salesperson for the purchase and installation of a hot water heater. Each testified that the salesperson to whom they spoke told them that "Sears" would install the water heater. The investigators presented written estimates prepared by the Sears' salespeople for the sale and installation of the water heaters. They presented photographs of the relevant hot water heaters showing stickers advertising Sears' installation services. The stickers stated variously "Let the pros install it for you! Ask us about professional installation" and "Sears will gladly arrange for the Professional Installation."

¶ 9 The investigators also presented printouts of pages from Sears' website. Text on the pages included the following:

1-11-1415) 11-1416) 11-1436)

"installation and assembly? we do it"

"Let the pros from Sears do it"

\*\*\*\* we have experience in both. We can install and assemble any item \*\*. With Sears doing the work, you'll know your product will perform properly \*\*."

"Our professional installers are skilled, trained, experienced, \*\*."

"All Sears authorized installers are insured, licensed where applicable, and undergo a strict background check."

"To schedule a Sears professional installation or assembly, call \*\*."

The investigators testified that no sale or installation of a hot water heater was performed in conjunction with their investigations and they did not witness any installation.

¶ 10 The agency admitted affidavit testimony from Sears' managers and employees and of employees of affiliated companies who testified variously that no employee or subsidiary of Sears had installed any hot water heaters in Chicago or performed any work in connection with such installation. Each of the Sears' salespeople from whom the investigators had obtained the estimates testified that he/she did not tell any customer or investigator that a Sears' employee would install a hot water heater in Chicago. Other witnesses testified that authorized independent contractors perform the installations, and the independent contractors are licensed and insured to perform the installation of hot water heaters as required by their city or state of residence. Sears referred to the independent contractors as "Sears authorized installers" or "Sears

1-11-1415) 11-1416) 11-1436)

authorized licensed contractors."

¶ 11 The witnesses testified that Sears' sales associates ring up sales of hot water heaters and, if a customer chooses the installation service, also rings up the cost of installation. They testified that Sears routes the installation fee to another firm which maintains a national register of independent contractors from which it selects a contractor to perform a particular installation. The witnesses testified that Sears' sales associates are trained to inform customers that any installation is performed by appropriately licensed independent contractors.

¶ 12 In case number 07RV007612, the agency found Sears liable for violating the section 4-204-020 license requirement and section 4-4-210 display requirement. It found the City established by a preponderance of the evidence that Sears was engaged in the business of home repair and was required to have and display a home repair license. It held that Sears' conduct in selling installation services took Sears out of the section 4-204-010(a)(2) exception and the conduct was within the definition of "engage in the business of home repairs" as contemplated in section 4-204-020. The agency explained that Sears' selling of the installation service was the selling of a "labor" service. It stated that the exception in section 4-204-010(a)(2) was for the selling of goods or materials and there was no exception for the selling of installation/labor. The agency held that the selling or offering for sale of hot water heaters and installation of hot water heaters was "the business of home repairs." It fined Sears \$400 in penalties and \$40 in costs.

1-11-1415) 11-1416) 11-1436)

¶ 13 In case number 08RV001476, the agency also found Sears liable for failing to have and display a home repair license in violation of sections 4-204-020 and 4-4-210. It found the City established by a preponderance of the evidence that Sears was engaged in the business of home repair and was required to have and display a home repair license. The agency found it more likely true than not that "engage in the business" as used in section 4-204-020 would include the providing of estimates, marketing of sales, pricing and Sears' employees' representations that Sears does the installations. It held that, no matter whether Sears' employees or Sears' authorized agents performed the installations, Sears was still holding itself out as the entity which installed the hot water heaters and, to do that, it was required to have the home repair license. The agency fined Sears \$5,500 in penalties and \$40 in costs.

¶ 14 In case number 08RV002566, the agency found the City established a *prima facie* case for finding Sears liable for failing to have a home repair license in violation of section 4-204-020. The agency stated that Sears' website showed Sears did installation and assembly work and the website contained no indication that an independent contractor actually did the work. The agency stated the website "indicates that \*\*\* Sears is the one that actually do[es] the work" and Sears' evidence that independent contractors actually performed the work was inadequate. The agency issued fines of \$5,000 for failure to have a home repair license and \$40 in costs. It dismissed the failure to display count as "no license ha[d] been issued to display."

¶ 15 In May 2008, Sears filed complaints in the circuit court of Cook County for

1-11-1415) 11-1416) 11-1436)

administrative review of the agency's decisions in 07RV007612 and 08RV001476. In December 2008, Sears filed a complaint for administrative review of the agency decision in 08RV002566.<sup>3</sup> The circuit court consolidated the three cases, circuit court case numbers 08 M1 450338, 08 M1 450907 and 08 M1 450404.

¶ 16 The court initially considered the legal question of whether sections 4-204-020 and 4-204-010 of the Code required Sears to obtain and hold a City of Chicago home repair license. On September 9, 2010, the court issued an order holding:

\*\*\*\* the acts of Sears in offering to facilitate and arrange the installation of hot water heaters (or similarly defined appliances under 4-204-010(a)(1)) it sells and for which it accepts payment fall within the Code's definition of 'home repair' and requires that Sears hold and display a City of Chicago Home Repair License."

The court explained that, because Sears controlled the process of selling, receiving payment for and scheduling the installations, Sears was "engaged in the business of home repair" and, therefore, was required to hold a home repair license.

¶ 17 On November 19, 2010, the court reversed the three agency decisions and vacated the fines and costs. The court restated its earlier finding that Sears was engaged in the business of installing hot water heaters because it did more than simply sell the water heaters. The court then explained that, because no actual transaction,

---

<sup>3</sup> In November 2008, Sears filed a complaint for declaratory judgment and other relief in the chancery court. It requested a declaration that it was not obligated to obtain and display a home repair license under sections 2-204-010, 4-204-020 and 4-4-210 of the Code. The declaratory judgment action has been stayed pending the outcome of the administrative review cases and our review thereof on appeal.

1-11-1415) 11-1416) 11-1436)

sale or installation had taken place, the City had not met its burden of proof on the three citations and the agency's decisions were, therefore, against the manifest weight of the evidence.

¶ 18 Both Sears and the City filed motions to reconsider. On April 15, 2011, the court issued an order denying the motions to reconsider. It denied Sears' motion because

"the benefits that Sears receives as a result of facilitating the installation of its hot water heaters and accepting payments for said installations constitute 'engag[ing] in the business of home repair' under [section 4-204-020 of the Code], for which it must hold and display a City of Chicago home repair license."

The court denied the City's motion because

"the facts presented in each of the consolidated cases in this matter do not show that Sears both offered to facilitate the installation of water heaters *and* accepted payment for said installation. Both parties agree that no installations of payments took place in any of the consolidated cases."

The court also clarified its September 9, 2010, order, stating that it had determined that Sears "is required to hold a home repair license for offering the facilitate the installation of water heaters *and* accepting payment for said installation." (Emphasis in original.)

¶ 19 Sears filed a timely appeal in each of the three cases, appeal numbers 1-11-1415 (08 M1 450338), 1-11-1416 (08 M1 450907) and 1-11-1436 (08 M1 450404). The City timely cross-appealed in each case. In June 2, 2011, we granted Sears' motion to consolidate the appeals.

1-11-1415) 11-1416) 11-1436)

¶ 20

#### Analysis

¶ 21 Sears requests this court to reverse the circuit court's September 9, 2010, order finding that Sears was required to hold a home repair license; the court's April 15, 2011, clarification of that order; and its April 15, 2011, denial of Sears' motion for reconsideration. It argues that the City failed to show that a Sears' employee or subsidiary performed any work or labor in connection with the installation of hot water heaters and, therefore, Sears' activities fell within the exception to "home repair" stated in section 4-204-010(a)(2) and it was not required to hold a home repair license under section 4-204-020.

¶ 22 On cross-appeal, the City requests this court to reverse the court's November 19, 2010, order, which reversed the Board's decisions and fines on the basis that no transaction had occurred in any of the three cases, and its April 15, 2011, order denying the City's motion to reconsider. It agrees with the circuit court and the agency that Sears' offering to facilitate and arrange the installation of hot water heaters constitutes "engag[ing] in the business of home repairs" as stated in section 4-204-020. It argues, however, that the court erred in reversing the agency's decisions on the ground that a violation of the ordinance occurs only when a person offers to facilitate the installation of water heaters and accepts payment for said installation and no such transaction occurred here. The City asserts that the ordinance applies to every person who "engages in the business of home repairs" and does not condition its applicability on the occurrence of a "transaction" or "payment" for an individual home repair.

1-11-1415) 11-1416) 11-1436)

¶ 23

1. Standing

¶ 24 Sears has no standing to appeal. "A party cannot complain of error that does not prejudicially affect it, and one who has obtained by judgment all that has been asked for in the trial court cannot appeal from the judgment." *Argonaut-Midwest Insurance Co. v. E.W. Corrigan Construction Co.*, 338 Ill. App. 3d 423, 427 (2003). Here, Sears asked the circuit court to reverse the three agency decisions finding Sears was required to have a home repair license and fining Sears for engaging in the business of home repair without a home repair license. As requested, the circuit court reversed those decisions and fines. Sears obtained by judgment all that it sought in the circuit court and, therefore, has no standing to appeal. *Argonaut-Midwest Insurance Co.*, 338 Ill. App. 3d at 427-28; *Evans v. Lima Lima Flight Team, Inc.*, 373 Ill. App. 3d 407, 418 (2007).

¶ 25 Sears, however, disagrees with the findings the court made in reaching its decision. It asserts on appeal that the court erred in agreeing with the agency that, under the ordinance, Sears was required to have a home repair license for its conduct in selling the installation of hot water heaters. "The forum of appellate courts should not be afforded to successful parties who may not agree with the reasons, conclusion, or findings of the trial court." *Argonaut-Midwest Insurance Co.*, 338 Ill. App. 3d at 427.

"Where a trial court's judgment is entirely in favor of a party, specific findings of the trial court that may have been adverse to the party, do not give rise to an appeal. [Citations.] It is the trial court's judgment, not its reasoning, that is

1-11-1415) 11-1416) 11-1436)

reviewed on appeal." *Argonaut-Midwest Insurance Co.*, 338 Ill. App. 3d at 427. Sears won the reversals it sought in the circuit court and has no standing to appeal the court's decisions merely because it does not agree with the court's reasoning. "It is the judgment and not what else may have been said by the lower court that is on appeal to a court of review." *Material Service Corp. v. Department of Revenue*, 98 Ill. 2d 383, 387 (1983).

¶ 26 Sears asserted during oral argument that it had standing because of its risk of future prosecution under the agency's incorrect interpretation of the ordinance. "It is axiomatic that the existence of an actual controversy is an essential prerequisite to appellate jurisdiction, and courts of review will generally not decide abstract, hypothetical, or moot questions." *Adams v. Bath and Body Works, Inc.*, 358 Ill. App. 3d 387, 399 (2005). Sears' appeal presents no actual controversy. It poses a hypothetical question that we have no jurisdiction to consider. Sears' appeal is dismissed.

¶ 27 2. Mootness

¶ 28 The City argues that Sears' appeal has become moot given that section 4-204-020 of the Code was repealed during the pendency of the appeal and the replacement ordinance, section 4-6-010, eliminated the provision on which the agency and the court had based their decisions. Both the circuit court and the agency had found that Sears was required to have a home repair license because it "engage[d] in the business of home repairs" as set forth in section 4-204-020. On May 9, 2012, the Chicago city council repealed Chapter 4-4 of the Code and replaced it with new chapter 4-6. As part

1-11-1415) 11-1416) 11-1436)

of this legislation, section 4-204-020 was replaced with section 4-6-010.

¶ 29 Section 4-6-010 provides:

"(a) A regulated business license shall be required for the business activities set forth in this chapter. A separate license shall be required for each separate business location.

\* \* \*

(c) Business activities requiring a regulated business license under this chapter shall include the following: \*\*\* (27) home repair; \*\*\*." Chicago Municipal Code § 4-6-010 (added May 9, 2012; amended November 8, 2012).

In short, section 4-6-010 eliminated the section 4-204-020 requirement that "no person shall *engage in the business of* home repairs within the City of Chicago without having obtained a license" upon which the court and the agency had relied to find Sears was required to have a home repair license.

¶ 30 A case on appeal becomes moot "where no actual controversy exists" (*City of Chicago Day School v. City of Chicago*, 289 Ill. App. 3d 55, 56 (1997) or "when the issues involved in the circuit court no longer exist because events occurring after the filing of the appeal make it impossible for the appellate court to grant effective relief" (*In the Interest of R.V.*, 288 Ill. App. 3d 860, 865 (1997)). Sears asserted that it brought its appeal because it feared future prosecution under the agency's incorrect interpretation of section 4-204-020. Clearly, any question regarding the prospective application of section 4-204-020 after May 9, 2012, is moot given that section 4-204-020 no longer

1-11-1415) 11-1416) 11-1436)

exists. Accordingly, had we not already dismissed Sears' appeal for lack of standing, we would dismiss its appeal as moot.

¶ 31 The City's cross-appeal is not moot. The cross-appeal is not concerned with a prospective application of section 4-204-020. Instead, the City seeks reinstatement of the fines the agency imposed on Sears for engaging in the business of home repair without a home repair license in 2007 in violation of section 4-204-020, fines imposed prior to repeal of the ordinance in December 2012. The question of whether the agency properly fined Sears for its failure to hold a home repair license in connection with its 2007 activities presents an actual controversy on which we can grant effective relief. Accordingly, we will proceed on the City's cross-appeal. We make no finding regarding the applicability of the present ordinance to Sears' conduct, past or present.

¶ 32 3. Cross-Appeal

¶ 33 In an administrative review case, we review the decision of the agency, not that of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). We are limited to considering the evidence submitted in the administrative hearing and may not hear additional evidence for or against the agency's decision. *Marconi*, 225 Ill. 2d at 532.

¶ 34 The standard of review we use to consider administrative decisions depends on the question presented. *Marconi*, 225 Ill. 2d at 532; *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill.2d 191, 205 (1998). We review a question of fact under the manifest weight of the evidence standard, a question of law *de novo* and a mixed

1-11-1415) 11-1416) 11-1436)

question of law and fact under the clearly erroneous standard. *Marconi*, 225 Ill. 2d at 532. Under any standard of review, the burden of proof in an administrative proceeding lies with the plaintiff. *Marconi*, 225 Ill. 2d at 532-33. To determine the standard of review, we look at the questions presented.

¶ 35 The City argues that the court erred in reversing the agency's decisions that Sears violated section 4-204-020 on the basis that no actual transaction, sale or installation had taken place. It argues that the agency's interpretation of the ordinance was correct because the ordinance does not condition the licensing requirement on "payment" for a specific home repair. It claims that the court's interpretation of the ordinance improperly narrowed the ordinance by regulating only individual transactions for home repair rather than the business of home repair.

¶ 36 This issue requires interpretation of the ordinance and application of disputed facts to that interpretation, a combined question of law and fact that we review under the clearly erroneous standard. *Rose v. Board of Trustees of Mount Prospect Police Pension Fund*, 2011 IL App (1<sup>st</sup>) 102157, ¶69. Under this standard, we afford some deference to the agency's experience and expertise and must accept the agency's findings unless, after reviewing the record, we are left with the " 'definite and firm conviction that a mistake has been committed.' " *AFM Messenger Service Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 391-95 (2001) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). Although this standard is largely deferential, it does not require a reviewing court to "blindly defer to

1-11-1415) 11-1416) 11-1436)

the agency's decision." *AFM Messenger*, 198 Ill. 2d at 395. After a consideration of all of the evidence before the agency, we are left with the firm and definite impression that the agency erred in finding Sears was engaged in the business of home repairs and was, therefore, required to have a home repair license under section 4-204-020. We affirm the trial court's reversal of the agency's decisions, albeit on a different basis than that used by the court.<sup>4</sup>

¶ 37 At the time relevant to this appeal, section 4-204-020 provided that: "No person shall *engage in the business of home repairs* within the City of Chicago without having obtained a license pursuant to this chapter in addition to any other license that may be required by law." (Emphasis added.) Chicago Municipal Code § 4-204-020 (added Dec. 9, 1992) (repealed eff. May 9, 2012). If Sears "engage[d] in the business of home repairs," under section 4-204-020, it would be required to hold a home repair license.

¶ 38 Courts have interpreted "engaged in the business" as "activity which occupies the time, attention and labor of the person for the purpose of profit." *People v. Taylor*, 138 Ill. 2d 204, 215-16 (1990). Sears is a merchant. It makes its money selling goods and services. Everything Sears does, whether advertising, operating retail stores and a website or maintaining and training a sales staff, is done to drive those sales. Clearly Sears is "engaged in business." The question is whether Sears is engaged in "the business of home repairs" under the ordinance. To make this determination, we turn to

---

<sup>4</sup> We note that the City's cross-appeal causes us to consider the issues raised in Sears' appeal which Sears had no standing to raise on its own.

1-11-1415) 11-1416) 11-1436)

the definition of "home repair" stated in section 4-204-010 of the ordinance.

¶ 39 Section 4-204-010(a) defines "home repair" in relevant part as follows:

*"Home repair* means fixing, replacing, altering, converting, modernizing, improving of or the making of an addition to any real property primarily designed or used as a residence.

(1) Home repair shall include the construction, installation, replacement or improvement of \*\*\* hot water heaters \*\*\* and other improvements to structures within the residence or upon the land adjacent thereto.

(2) Home repair shall not include \*\*\* the sale of goods or materials by a merchant who does not directly or through a subsidiary perform any work or labor in connection with the installation or application of the goods and materials; \*\*\*." (Emphasis in original.) Chicago Municipal Code § 4-204-010(a) (added Dec. 9, 1992) (repealed eff. May 9, 2012).

¶ 40 It is undisputed that Sears advertises and sells hot water heaters and the installation of those hot water heaters. It is also undisputed that the actual installation of the hot water heaters is performed by independent contractors and not directly by Sears, its employees or subsidiaries. Section 4-204-010(a)(1) specifically provides that the "installation \*\*\* of \*\*\* hot water heaters" in a residence is "home repair." Chicago Municipal Code § 4-204-010(a)(1). Under section 4-204-010(a)(1), since the independent contractors perform installation of hot water heaters, they perform home

1-11-1415) 11-1416) 11-1436)

repair. Since Sears does not perform installation of hot water heaters, it arguably does not perform home repair.

¶ 41 However, section 4-204-010(a)(2) specifically provides that "the sale of goods or materials by a merchant who does not directly or through a subsidiary perform any work or labor in connection with the installation or application of the goods and materials" is not included in the definition of "home repair." Chicago Municipal Code § 4-204-010(a)(2). Necessarily, therefore, if a merchant directly or through a subsidiary does perform any work or labor in connection with the installation of goods or materials, the sale of those goods or materials by the merchant *is* home repair. If Sears' marketing, selling and facilitating of the installation service constitutes performing work or labor *in connection with* the installation of the hot water heaters, its activities in this regard are home repair and Sears would be required to hold a home repair license for those activities.

¶ 42 It is undisputed that Sears is performing work and/or labor when it advertises, offers for sale, sells and facilitates the installation of hot water heaters. However, these activities are not done "in connection with the installation" of the hot water heaters. Rather, they are performed in connection with the *sale* of the installation service and then only to drive the sale of hot water heaters. Everything Sears does in connection with the hot water heaters is intended to facilitate the sale of the hot water heaters. This includes offering the installation of the hot water heaters. A customer is more likely to purchase a hot water heater if the merchant can also offer the installation of

1-11-1415) 11-1416) 11-1436)

that product, if the merchant is a "one-stop shop" for the customer. Sears, therefore, offers and sells this installation service. It advertises the service, trains its sales people to suggest it, has its sales people ring up the cost of the installation at the same time as the cost of a hot water heater and coordinates with an outside vendor to supply the independent contractors, the "Sears authorized installers," who hold the necessary home repair license and insurance for the performance of these installation services.

¶ 43 Sears performs all of its installation-related work or labor in connection with the *sale* of the installation, and then only in order to facilitate the sale of the hot water heaters. Sears' work and labor activities are not performed in connection with the installation of the hot water heaters. Therefore, pursuant to section 4-204-010(a)(2), Sears' activities in facilitating the sale of the installation service are specifically excluded from the definition of home repair. As these activities are not "home repair" under section 4-204-010, Sears cannot be engaged in "the business of home repair" and, therefore, cannot be required to hold a home repair license for these activities under section 4-204-020.

¶ 44 The agency's decision finding Sears was required to hold a home repair license because it was engaged in the business of home repairs is clearly erroneous. The agency erred in assessing fines against Sears for engaging in the business of home repair without a license in violation of section 4-204-020 and for failing to display the requisite license in violation of section 4-4-210.

¶ 45 Given our determination that Sears did not engage in the business of home

1-11-1415) 11-1416) 11-1436)

repairs, we need not address the City's argument that the court erred in interpreting the ordinance to apply only when payment for a specific home repair changes hands.

¶ 46 Conclusion

¶ 47 For the reasons stated above, we affirm the decision of the circuit court reversing the agency's decisions.

¶ 48 Affirmed.