IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jun 25 2020 04:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY, a Nevada corporation, Appellant(s), v. STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY, DIVISION OF INSURANCE, a Nevada Administrative agency, Respondent(s).	Case No. 80218 First Judicial District Court No. 17 OC 00269 1B

RESPONDENT'S ANSWERING BRIEF

AARON FORD
Attorney General
Joanna N. Grigoriev (Bar. No. 5649)
Senior Deputy Attorney General
Richard P. Yien (Bar. No. 13035)
Deputy Attorney General
State of Nevada
Office of the Attorney General
jgrigoriev@ag.nv.gov
ryien@ag.nv.gov

Attorneys for Respondents

TABLE OF CONTENTS

I. STATEMENT OF THE ISSUES 1

II. STATEMENT OF THE CASE 2

III. STATEMENT FACTS 4

IV. SUMMARY OF THE ARGUMENT 11

V. ARGUMENT 12

A. STANDARD OF REVIEW 12

B. THE ADMINISTRATIVE DECISION WAS LAWFUL, SUPPORTED BY SUBSTANTIAL EVIDENCE AND BY THE GOVERNING PROVISIONS OF THE INSURANCE CODE AND SHOULD BE AFFIRMED 15

1. The Notice Requirements for Administrative Proceedings Were Satisfied 15

a. HWAN Had Adequate Opportunity to Prepare and There Was no Unfair Surprise 17

2. Nevada Law Requires a Certificate of Registration to Issue, Sell, or Offer for Sale Service Contracts 21

a. NRS 690C.150 and 690C.020 Must Be Read in harmony 21

b. HWAN's Interpretation Would Lead to Absurd Results 22

c. The Legislative History Supports the Hearing Officer's Interpretation 29

3. HWAN's Time-Limited Certificate of Registration Expired in 2016 as a Matter of Law 31

a. The Expiration of HWAN's Certificate of Registration in 2016 is a Moot Issue 33

4. The Doctrine of Equitable Estoppel is Inapplicable in This Case as Against the Division 34

5. The Fines Imposed by the Hearing Officer Are Proper and Should be Affirmed 39

a. The Hearing Officer's Imposition of $50 Fine Per Violation for Conducting Business n and Unsuitable Manner Should be Affirmed Unmodified 46

VI. CONCLUSION 48

CERTIFICATE OF COMPLIANCE 49

CERTIFICATE OF SERVICE 51

TABLE OF AUTHORITIES

CASES

Brill v. State Real Estate Division, Dept. of Commerce,
95 Nev. 917, 919, 604 P.2d 113, 114 (1979)……39

Brocas v. Mirage Hotel & Casino,
109 Nev. 579, 585, 854 P.2d 862, 867 (1993).....14

Chanos v. Nevada Tax Com'n,
124 Nev. 232 181 P.3d 675 (2008).....35, 36, 38

Charlie Brown Constr. Co. v. Boulder City,
106 Nev. 497, 502, 797 P.2d 946, 949 (1990).....28

Chock v. Bitterman,
5 Haw. App. 59, 70, 678 P.2d. 576, 583. (Haw. Ct. App. 1984)…….....39

City Plan Development, Inc. v. Office of the Labor Comm'r,
121 Nev. 419, 426, 117 P.3d 182, 187 (2005).....14, 15

Clements v. Airport Auth.,
111 Nev. 717, 722, 869 P.2d 458, 461 (1995).....14

Dutchess Business Services, Inc. v. Nevada State Bd. of Pharmacy,
124 Nev. 701, 709, 191 P3d 1159, 1165 (2008).....14, 15, 19, 48

Elizondo v. Hood Mach. Inc.,
129 Nev. 780, 784, 312 P.3d. 479, 482 (2013).....13

Gaessler v. Sheriff Carson City,
95 Nev. 267, 270, 592 P.2d 955, 957 (1979)……..27, 28

Harris Assocs. v. Clark County School District,
119 Nev. 638, 642, 81 P.3d 532, 534 (2003)……..21

In the Matter of Davis,
113 Nev. 1204, 1214 946 P.2d 1033, 1040 (1997)……40

Int'l Game Technology Inc. v. Second Judicial District Court,
122 Nev. 132, 157, 127 P.3d 1088, 1106 (2006).....14

Kay v. Nunez,
122 Nev. 1100. 1105, 146 P.3d 801,805 (2006)……12

Laird v. State Public Emp. Retirement Bd.,
98 Nev. 42, 45, 639 P.2d 1171, 1173 (1982)……..47

Las Vegas Convention and Visitors Authority v. Miller,
124 Nev. 669, 698, 191 P.3d 1138, 1157 (2008)…….35, 38

Local Gov't Empl.-Mgmt. Relations Bd. v. General Sales Drivers, Delivery Drivers & Helpers, Teamsters Local Union No. 14,
98 Nev. 94, 98, 641 P.2d 478, 480-481 (1982) 15

Nassiri v. Chiropractic Physicians' Bd.,
130 Nev. 245, 250, 327 P.3d 487, 490–91 (2014).....12, 13, 38

Nelson v. Real Estate Commission,
35 Md. App. 334, 339-340, 370 A.2d 608,613
(Md. Ct. Spec App 1977)……...39

Nevada State Apprenticeship Council v. Joint Apprenticeship and Training Committee for Elec. Industry,
94 Nev. 763, 765, 587 P.2d 1315, 1317 (1978).....18

Personhood Nevada v. Bristol,
126 Nev. 599, 602, 245 P.3d 572, 574 (2010).....34

Poole v. Nevada Auto Dealership Investments, LLC,
135 Nev. 280, 281, 449 P.3d 479, 481 (Nev. App. 2019)…….41

Pyramid Lake Paiute Tribe of Indians v. Washoe County,
112 Nev. 743, 747, 918 P2d 697, 700 (1996).....14

Ranieri v. Catholic Cmty. Servs.,
111 Nev. 1057, 1061, 901 P.2d 158, 161 (1995).....13

Rogers v. the Division of Real Estate of Department of Business Regulations of the State of Utah,
790 P.2d 102, 105 (Utah Ct. App. 1990)…….40

Secretary of State v. Tretiak,
117 Nev. 299, 305, 22 P.3d 1134, 1138 (2001).....13

Sinha v. Ambach,
91 A.D.2d 703, 457 N.Y.S.2d 603, (NYAD, 1982)……...39

Southern Nevada Homebuilders Ass'n v. Clark County,
121 Nev. 446, 449, 117 P.3d 171, 173 (2005)…… …...21, 31

State ex rel. Kassabian v. State Bd. of Medical Examiners,
68 Nev.455, 467-468, 235 P.2d 327 (1951)……..19

SITS v. *Snyder,*
109 Nev. at 1227, 865 P.2d at 1170……...48

United Exposition Service Co. v. SIIS,
109 Nev. 421, 423, 851 P.2d 423, 424 (1993).....13, 38

Weaver v. Dept. of Motor Vehicles,
121 Nev. 494, 498, 117 P.3d 193, 196 (2005).....13, 38

STATUTES

NRS 233B.121 18

NRS 233B.127 .....32, 33

NRS 233B.135 .....13, 34

NRS 679B.125 .....5, 46

NRS 679B.185 38

NRS 686A.010 41

NRS 686A.070 ..... 4, 15, 17, 38, 40, 42, 43

NRS 690C.100 26

NRS 690C.020 .....21. 22, 31

NRS 690C.120 25
NRS 690C.150 ..... 1, 21, 22, 23, 24, 25, 28
NRS 690C.160 .....1, 22, 23, 24, 31, 32
NRS 690C.170 23
NRS 690C. 320 .....4, 45
NRS 690C.325 .....passim
NRS 690C.330 .....3, 5, 47, 48, 49

OTHER AUTHORITIES

Black's Law Dictionary 28 (9th ed. 2009) 39
Hearing on A.B. 673 Before the Assembly Committee on Commerce and Labor,
1999 Leg., 70th Sess. (April 5, 1999), Ex C..... 29

I. STATEMENT OF THE ISSUES

B. THE ADMINISTRATIVE DECISION ON REVIEW IN THIS CASE IS VALID, BASED ON SUBSTANTIAL EVIDENCE AND LAW, AND NOT AFFECTED BY ERRORS OF LAW OR UNLAWFUL PROCEDURE AND SHOULD BE AFFIRMED

1. The Notice Requirements for Administrative Proceedings Were Satisfied

    a. HWAN Had Adequate Opportunity to Prepare and There Was No Unfair Surprise

2. Nevada Law Requires a Certificate of Registration to Issue, Sell, or Offer for Sale Service Contracts

    a. NRS 690C.150 and 690C.020 Must Be Read in Harmony

    b. HWAN's Interpretation Would Lead to Absurd Results

    c. The Legislative History Supports the Hearing Officer's Interpretation

3. HWAN's Time-Limited Certificate of Registration Expired in 2016 as a Matter of Law

    a. Expiration of HWAN's Certificate of Registration in 2016 is a Moot Issue

4. The Doctrine of Equitable Estoppel is Inapplicable in This Case as Against the Division.

5. The Fines Imposed by the Hearing Officer Are Proper and Should Be Affirmed

    a . The Hearing Officer's Imposition of $50 Fine Per Violation for Conducting Business in an Unsuitable Manner Should be Affirmed Unmodified

II. STATEMENT OF THE CASE

Protection of the public is the underlying purpose of the statutory licensing schemes, and the Nevada Commissioner of Insurance ("Commissioner") is charged with a duty to protect the public from unscrupulous and unqualified persons subject to the provisions of title 57 of the NRS ("the Insurance Code"), including chapter 690C. The Division of Insurance ("Division") brought an administrative disciplinary action against Home Warranty Administrator of Nevada, dba Choice Home Warranty ("HWAN") for various violations.

After a three-day hearing, the Hearing Officer issued her Findings of Fact and Conclusions of Law, which were signed into order by the Commissioner on December 18, 2017. ("Administrative Decision") HWAN was found to be in violation of various provisions under the Insurance Code and fines were imposed for the violations. It was also determined that HWAN's one-year certificate of registration had expired as a matter of law in November of 2016, as a result of HWAN's failure to complete the renewal requirements under NRS 690C.160(3), prior to the expiration. The Hearing Officer allowed HWAN to submit another renewal application.[1]

[1] After the Administrative Decision was issued, HWAN submitted an application, which was processed and denied after a hearing. HWAN filed a petition for judicial review of said denial in the FJDC, case 19 OC 00015 1B, which is currently stayed pending the outcome of this appeal.

HWAN filed a petition for judicial review of the Administrative Decision in First Judicial District Court ("FJDC"), case No. 17 OC 00269. On November 25, 2019, after a full hearing, the FJDC affirmed the Administrative Decision, as modified.[2] On December 6, 2019, HWAN filed this appeal. On December 31, 2019, the FJDC denied HWAN's Motion to Stay its order, and on February 24, 2020, this Court denied HWAN's Motion to Stay the order of the FJDC as well.

On May 12, 2020, HWAN filed a motion before this Court, attempting to supplement the Appendix with documents that were not part of the record on appeal. The Court denied HWAN's motion, holding that "[a]ny references to the document (a letter dated January 10, 2020, and emails dated November 26, 2019, December 2, 2019, December 4, 2019, and December 12, 2019) in the opening brief shall be disregarded during the disposition of this appeal."[3] HWAN's Opening Brief, however, contains numerous references to the documents and the general inferences therefrom. In particular, Statement of Facts, Section V, pages 26-28 of HWAN's Opening Brief attempts to introduce to this appeal these unestablished facts

[2] The FJDC affirmed the finding of violations, but modified the amount of fine imposed by the Hearing Officer, by applying the cap in NRS 690C.330 to the violations of NRS 690C.325(1) and 679B.125.

[3] Order Denying Appellant's Motion For Leave to File Supplemental Appendix

and related arguments. HWAN's Brief, section III C, pages 52-54 attempts to accomplish the same.

III. STATEMENT OF FACTS

Administrative Decision in Cause 17.0050

On May 9, 2017, the Division filed a Complaint and Application for Order to Show Cause ("Complaint")[4] in administrative Cause 17.0050, against HWAN dba Choice Home Warranty. The Division alleged that HWAN violated provisions of the Insurance Code, including, NRS 686A.070—making a false entry of a material fact; and NRS 690C.325(1)(b)—conducting business in an unsuitable manner.[5]

After conducting a three-day hearing on September 12, 13 and 14, 2017, the Hearing Officer issued her Administrative Decision—Findings of Fact and Conclusions of Law, which were signed into order by the Commissioner on December 18, 2017. The Hearing Officer's findings included six violations of NRS 686A.070 (making false entries of material fact), with a maximum fine of $5,000 per violation allowed under NRS 686A.183 (1)(a); one violation of NRS 690C.320(2) (failure to make records available to the Commissioner upon request), and fined $500 for said

[4] The Division amended its Complaint on September 5, 2017. App. Vol. I 169-177.

[5] App. Vol. I 1:15-17

violation. She also found HWAN to have conducted business in an unsuitable manner under NRS 690C.325 and NRS 679B.125, by allowing an unregistered entity to perform the functions for which a provider certificate of registration is required, and fined HWAN $50 per each of the 23,889 violations.[6]

The Hearing Officer also made a finding, that HWAN's one-year certificate of registration expired as a matter of law in November of 2016, because the annual renewal application received by the Division in 2016 was incomplete—questions on the application were left blank, and the statutory security deposit was insufficient.[7] Despite the Division alerting HWAN to the missing information, HWAN did not provide it prior to the expiration of its certificate of registration.[8] There is no statutory duty to inform an applicant of an automatic expiration due to an incomplete application, nonetheless, the Hearing Officer allowed HWAN to submit another renewal application. She ordered the Division to process HWAN's application, if it wished to submit one after the hearing. HWAN submitted an application, which was

---

[6] App. Vol. XIII 1405:13-21. Affirming the findings of violations and fines, the FJDC applied a cap under NRS 690C.330, resulting in a total fine of $10,000 for these violations. App. Vol. XIII 2519:27-2520:2

[7] App. Vol. VIII 1385:3-5; HWAN November 7, 2016 Application App. Vol. III 476-479

[8] App. Vol. VIII 1385:6-7; Mary Strong Email to HWAN dated February 1, 2017 App. Vol. III 321

processed, and denied after a hearing thereon.[9] HWAN filed a petition for judicial review of the denial in the FJDC, case 19 OC 00015 1B, currently stayed pending the outcome of this appeal.[10]

HWAN, Choice Home Warranty Group ("CHWG"), and HWAN's Concealment of CHWG

According to the testimony of Victor Mandalawi ("Mandalawi"), HWAN, dba Choice Home Warranty, consists of one employee–himself. Mandalawi is the president, sole officer, and sole employee, of HWAN.[11] He is also the president of Choice Home Warranty Group dba Choice Home Warranty ("CHWG"), incorporated in 2009 in New Jersey and doing business as "Choice Home Warranty."[12]

Mandalawi testified, that prior to incorporating in Nevada, CHWG was selling service contracts in various states, including Nevada, and that it had run into problems in some jurisdictions for selling without a license.[13] Mandalawi proceeded to

---

[9] App. Vol. VIII 1404:9 - 1405:8

[10] An Order Granting Motion for Stay of Case No. 19 OC 00015 1B, Pending Final Decision of Case No. 17 OC 00269 1B, was issued on August 5, 2019 in the FJDC.

[11] App.Vol. VI 986:12-13, 987:8-10, 989:2-10; App. Vol. VIII 1380:20-23

[12] App.Vol VI 984:12-16; App. Vol. VIII 1380:1-14

[13] App.Vol VI 992:9 – 993:14; App. Vol. VIII 1380:15-23

set up “Home Warranty Administrator” companies in the states that required a license. In states where no license was required, Mandalawi did not incorporate Home Warranty Administrator entities and CHWG continues to do business solely as CHWG.[14]

Mandalawi testified that it is his role as president of HWAN to oversee the day-to-day activities of CHWG.[15] He also testified that he controls the information that goes onto CHWG's web sites, where HWAN's consumers sign up for services. Mandalawi communicates as president of CHWG from a CHWG email account when addressing complaints against HWAN.[16] During his testimony, he agreed that "there is a common interest between both companies."[17] He did not distinguish when or where he acted as president of HWAN, as opposed to president of CHWG.[18] Mandalawi considered himself "working all the time for both entities."[19] He testified, that he was the sole person with access to both HWAN and CHWG bank accounts and the bank records provided to the Division showed commingling of funds

[14] App.Vol VI 990:3 – 993:14; App. Vol. VIII 1380:17-20

[15] App.Vol.VI 1119:11-13

[16] App.Vol.VI 1094:9 –1095:5

[17] App.Vol.VI 1093:11-14

[18] App.Vol.VI 1093:7–14

[19] App. Vol. VII 1206:16–17

of the two entities.[20] Mandalawi also testified, that he authorizes "goodwill payments" for HWAN to come from the bank accounts of CHWG.[21] Mandalawi would voluntarily step in to resolve the complaints against CHWG on behalf of HWAN.[22]

After HWAN was incorporated, CHWG continued to act in a provider capacity, by performing the very functions for which Nevada law requires a certificate of registration, including sale, solicitation, and advertising.[23] Mandalawi's testimony reflects that all of these functions were performed from the CHWG offices and HWAN's only role was simply to attain and maintain the certificate of registration.[24] Per Mandalawi, the CHWG employees perform "all the actions," including the advertisement, solicitation and sale of service contracts.[25]

[20] App. Vol. VII 1202:4–1204:13

[21] App. Vol. VII 1205:25–1206:3

[22] App.Vol.VI 1092:18–1093:14

[23] App. Vol. VII 1189:4–9, 1207:1–4, App.Vol.VI 988:23 – 989:5

[24] App. Vol. VII 1189:4–9, 1207:1-4

[25] App. Vol. VII 1207:1–4, App.Vol.VI 988:23 – 989:5

Hakim corroborated this in his testimony.[26] HWAN concedes in testimony and in its Brief, that CHWG was selling and offering for sale service contracts on its behalf.[27]

When the Division began receiving consumer complaints against "Choice Home Warranty," it began an investigation, in 2013. The Division had a discussion with Mandalawi, and, as a result of his representations, "it was identified that Choice and HWAN were one and the same entity, that Choice was not selling illegally because HWAN was a licensed entity in Nevada."[28] The Division believed that HWAN and "Choice Home Warranty" were one entity, and, to prevent consumer confusion with different names for, what the Division thought was the same entity, the Division allowed HWAN to register "Choice Home Warranty" as a dba.[29]

Subsequently, when the Division received information about disciplinary actions in other states against "Choice Home Warranty," it filed a Complaint against HWAN dba Choice Home Warranty. In response to the allegations of failure to disclose the out-of-state disciplinary actions, HWAN, in its pre-hearing statement

---

[26] App. Vol. VII 1220:1–1222:13

[27] App. Vol. VI 996:23 – 997:8; App. Vol. VII 1220:22–1221:2, HWAN's Opening Br. 12

[28] App. Vol. VIII 1401:24–27

[29] App.Vol.VIII 1401:24-27

filed on September 8, 2017, for the first time disclosed to the Division, that the disciplinary actions in other states were really actions against a separate entity, CHWG, dba Choice Home Warranty, which was also the "administrator" for HWAN.[30] HWAN had never disclosed the existence of CHWG or its purported function, in its annual renewal applications, from 2011 to the time the administrative hearing. In fact, on each application, when asked to identify "current administrator," Mandalawi, on behalf of HWAN, responded "self."[31] When asked whether there had been any changes to the administrator from the prior year, Mandalawi responded "no."[32] HWAN had also never disclosed any disciplinary action against CHWG. The Hearing Officer found that "[t]here is no evidence that the Division knew that Choice Home Warranty was CHW Group or of the contract between HWAN and CHW Group."[33]

/ / /

/ / /

[30] App.Vol.IV 503:8-13

[31] App.Vol.VIII 1383:1-9, App Vol.II 192-203, App.Vol.III 298-322,

[32] App.Vol.VIII 1383:1-9, App Vol.II 192-203, App.Vol.III 298-322,

[33] App. Vol. VIII 1402:8-11

IV. SUMMARY OF THE ARGUMENT

Despite HWAN's best efforts to construct various purported issues for appeal and, at the same time, create a smokescreen to distract from its unlawful scheme that resulted in disciplinary actions in various states, the Administrative Decision on review in this case is valid, based on substantial evidence and law, and not affected by errors of law or unlawful procedure. It, therefore, should be affirmed.

What is at stake in this case, is the Commissioner's authority and ability to effectively regulate her licensees and to protect the public. This includes the ability to discipline those licensees who, like HWAN, engage in a pattern of deception, violations, and avoidance of regulatory oversight, and then seek to benefit from their own deceit.

Such is the case with the HWAN and CHWG scheme. CHWG is the actual entity conducting business, and HWAN– a one-person entity–is merely a figurehead in the arrangement, enabling an unlicensed entity to engage in the business of service contracts in Nevada under HWAN's certificate of registration. By simply incorporating and registering with the Division, HWAN, for years was able to avoid disclosure of CHWG's disciplinary actions in other states. Such information about the actual entity performing the functions of a provider in Nevada, namely selling, issuing, and offering for sale service contracts, is crucial for a regulator. Despite its

false statements and active concealment of the existence of CHWG, HWAN now argues that the Division should have known of the scheme.

On the issue of the expiration of the certificate of registration, HWAN's assertion, despite clear evidence to the contrary, that its 2016 application was complete, is another example of the dishonest behavior that makes this entity impossible to regulate.

The Hearing Officer's findings of fact in this case are based on substantial evidence, and her legal conclusions and statutory interpretations are consistent with the language of the controlling statutes. HWAN's interpretation of the registration requirements leads to absurd results.

The Administrative Decision and the imposed fees should be affirmed unmodified.

V. ARGUMENT

A. STANDARD OF REVIEW

"[T]his court's function is the same as the district court: to determine, based on the administrative record, whether substantial evidence supports the administrative decision. Thus, this court affords no deference to the district court's ruling in judicial review matters." *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006) (citations omitted); s*ee also Nassiri v. Chiropractic Physicians' Bd.*, 130

Nev. 245, 248, 327 P.3d 487, 489 (2014) (citations omitted). The standard of review is codified in NRS 233B.135(3), and "the burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid." NRS 233B.135(2).

"[F]actual findings will only be overturned if they are not supported by substantial evidence, which, we have explained, is evidence that a reasonable mind could accept as adequately supporting the agency's conclusions." *Nassiri*, 130 Nev. at 248, 327 P.3d at 489, citing *Elizondo v. Hood Mach. Inc.*, 129 Nev. 780, 784, 312 P.3d. 479, 482 (2013). If the administrative decision is based on substantial evidence, the Court may not substitute its judgment for the administrative determination. *Secretary of State v. Tretiak*, 117 Nev. 299, 305, 22 P.3d 1134, 1138 (2001).

The inquiry on appeal is, whether "the evidence on the whole record supports the appeals officer's decision . . ." *Ranieri v. Catholic Cmty. Servs.*, 111 Nev. 1057, 1061, 901 P.2d 158, 161 (1995). The Court may not "go beyond the administrative record or substitute its judgment for that of an administrative agency concerning the weight of the evidence on questions of fact." *Weaver v. Dept. of Motor Vehicles*, 121 Nev. 494, 498, 117 P.3d 193, 196 (2005), citing *United Exposition Service Co. v. SIIS*, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993).

The Court reviews purely legal questions *de novo*; however, a hearing officer's conclusions of law "which will necessarily be closely tied to the hearing officer's view of the facts, are entitled to deference on appeal." *City Plan Development, Inc., v. Office of the Labor Comm'r*, 121 Nev. 419, 426, 117 P.3d 182, 187 (2005) (citations omitted). *See also Clements v. Airport Auth.*, 111 Nev. 717, 722, 869 P.2d 458, 461 (1995).

The Court defers to an agency's interpretation of its statutes, if such interpretation is within the language of the statute. *Dutchess Business Services, Inc. v. Nevada State Bd. of Pharmacy,* 124 Nev. 701, 709, 191 P3d 1159, 1165 (2008) (citations omitted). The Court recognizes the authority and the specialized skill and knowledge of an agency and, thus, the agency's authority to interpret the language of a statute that it is charged with administering. *Int'l Game Technology Inc. v. Second Judicial District Court*, 122 Nev. 132, 157, 127 P.3d 1088, 1106 (2006) ("as long as th[e] interpretation is reasonably consistent with the language of the statute, it is entitled to deference in the courts."). *See also Pyramid Lake Paiute Tribe of Indians v. Washoe County*, 112 Nev. 743, 747, 918 P2d 697, 700 (1996) (citations omitted).

An administrative agency's decision based on a credibility determination is not open to appellate review. *See Brocas v. Mirage Hotel & Casino*, 109 Nev. 579,

585, 854 P.2d 862, 867 (1993). A court may not substitute its judgment for that of an agency acting within its statutory authority. *See Local Gov't Empl.-Mgmt. Relations Bd. v. General Sales Drivers, Delivery Drivers & Helpers, Teamsters Local Union No. 14*, 98 Nev. 94, 98, 641 P.2d 478, 480-481 (1982). *See also City Plan*, 121 Nev. at 426, 117 P.3d at 187.

An administrative agency's imposition of fines "are entitled to great deference to the extent that they were based upon the Board's interpretation of the evidence and testimony." *Dutchess*, 124 Nev. at 723, 191 P.3d at 1173.

B. THE ADMINISTRATIVE DECISION ON REVIEW IN THIS CASE IS VALID, BASED ON SUBSTANTIAL EVIDENCE AND LAW, AND NOT AFFECTED BY ERRORS OF LAW OR UNLAWFUL PROCEDURE AND SHOULD BE AFFIRMED

1. The Notice Requirements for Administrative Proceedings Were Satisfied

In its Complaint, the Division alleged that HWAN dba Choice Home Warranty, failed to disclose various disciplinary actions against "Choice Home Warranty" in other states, thereby violating NRS 686A.070 by "making false entries of material fact in each of [HWAN's] renewal applications in the years

2011, 2012, 2014, and 2015."[34] The Complaint also alleged that HWAN was conducting business in an unsuitable manner, in violation of NRS 690C.325 (1)(b).

As a defense to the allegations of making false entries, HWAN argued that the disciplinary actions belonged to another entity, Choice Home Warranty Group, dba Choice Home Warranty, which was HWAN's administrator.[35] HWAN asserted in its pre-hearing statement:

> However, the Division will be unable to show at the hearing of this matter that it was HWAN that was disciplined in each of those states or was the subject of any negative media. In fact, it was CHW Group, Inc. d/b/a Choice Home Warranty ("CHW"). ***The evidence will unequivocally show that HWAN is an independent and separate entity from CHW***.

[36] (emphasis added). The Hearing Officer accepted HWAN's defense, and held that HWAN and CHGW would be considered by her as two, legally separate entities, and as such, HWAN was not obligated to disclose the administrative disciplinary decisions from other states against CHWG.[37] However, she found, that HWAN had deliberately concealed from the Division the existence of CHWG, and the fact that it was HWAN's administrator, by repeatedly making false entries of material fact in

---

[34] App. Vol. I 174:13-15

[35] App. Vol. IV 503:8-18

[36] App. Vol. IV 503:8-13.

[37] App. Vol.VIII 1397:12-27

its renewal applications, in violation of NRS 686A.070.[38] She expressly found, that Mandalawi repeatedly answered "self" when asked about HWAN's current administrator, and "no" when asked if there had been any changes to the administrator, designated in 2011 as "self."[39]

As a result of its two-entity defense and the false statements on renewal applications pertaining to its administrator, revealed as a result of that defense, HWAN was found to have violated NRS 686A.070, by making false entries in its renewal applications. It was also found to be in violation of NRS 690C.325, for conducting business in an unsuitable manner, by using an unlicensed entity to perform the functions of a provider. HWAN now complains that "the Division failed to include the factual allegations forming the basis for violations ultimately adjudicated against HWAN."[40]

a. **HWAN Had Adequate Opportunity to Prepare and There Was no Unfair Surprise**

[38] App. Vol. VIII 1398:2-19

[39] App. Vol. VIII 1383:1-9; App. Vol. II 192-203; App. Vol. III 298-322.

[40] HWAN's Opening Br. 35

In Nevada, parties in a contested case "must be afforded an opportunity for hearing after reasonable notice." NRS 233B.121(1).[41] This Court has held, that in the context of administrative pleadings, due process requirements of notice are satisfied, where the parties are sufficiently apprised of the nature of the proceedings so that there is no unfair surprise. "The crucial element is ***adequate opportunity to prepare***." *Nev. State Apprenticeship Council v. Joint Apprenticeship & Training Committee for the Electrical Industry,* 94 Nev. 763, 765, 587 P.2d 1315, 1316-17 (1978) (citations omitted) (emphasis added).

Because HWAN first advanced the two-entity theory in response to the allegations of making false entries in failing to disclose its disciplinary actions, it had notice and opportunity to prepare any defense that such a theory would necessitate, especially for those violations that were formally noticed but supported by different facts. HWAN had ample opportunity to prepare, for it was HWAN, who, in its pre-hearing statement, filed on September 8, 2017, announced its intent to prove to the Division that HWAN dba Choice Home Warranty and

[41] The requirements for notice include "[a] reference to the particular sections of the statutes and regulations involved, and "[a] short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, ***upon application***, a more definite and detailed statement must be furnished." *Id.* HWAN never requested a more definite statement.

CHWG dba Choice Home Warranty, are two separate entities. In fact, this assertion first appeared even earlier, in a footnote to HWAN's Motion for Subpoenas, filed on July 14, 2017, two months before the hearing (held on September 12-14, 2017).[42] There certainly was no unfair surprise to HWAN, except perhaps, that the ploy backfired.

In *State ex rel. Kassabian v. State Bd. of Medical Examiners,* 68 Nev.455, 467-468, 235 P.2d 327 (1951), this Court held, that the state board of medical examiners' departure from charge in complaint did not result in surprise or prejudice. "Regardless of the theory upon which the board may, erroneously, have commenced its hearing, its ultimate decision and order . . . was based upon 'the charges made in the complaint.' *"Id.*[43] Similarly, in this case, the Hearing Officer's findings were directly based on the charges formally noticed to HWAN, namely, making false entries in renewal applications, and operating in an unsuitable manner.

---

[42] App. Vol. I 56: footnote 1

[43] *See also Dutchess,* 124 Nev. at 713 191 P.3d at 1167, (the licensees' argument that their due process rights were violated because the Board found them guilty of a charge not listed in the accusation was found to be without merit: "[t]he language in the accusation clearly and unambiguously notified Dutchess that it was charged with failing to provide accurate pedigrees, and the Board found Dutchess guilty of this charge."*Id.*

HWAN was sufficiently apprised of the nature of the administrative proceedings in this matter, had an opportunity to prepare, and "knew and had access to factual data" upon which the action was based. In fact, it knew, better than anyone else, what the true facts were, and it knew the allegations against it. HWAN had adequate opportunity to prepare and cannot claim unfair surprise. There was no due process violation and the findings were lawful and based on substantial evidence. As the Hearing Officer pointed out in her commonsensical conclusion, "Respondent cannot claim that HWAN and Choice Home Warranty are two separate entities and, in the same breath, conclude that Respondent had no notice of the Division's position that HWAN and Choice Home Warranty were considered one and the same entity, to avoid responsibility for violations of law that resulted from the very conclusion they advocated."[44]

2. Nevada Law Requires a Certificate of Registration to Issue, Sell, or Offer for Sale Service Contracts

The Hearing Officer found that HWAN engaged in the practice of allowing its administrator—an unregistered entity—to issue, sell and offer for sale its service contracts in Nevada since 2010. She determined, that this amounted to conducting

[44] App. Vol. VIII 1401:14-19

business in an unsuitable manner, in violation of NRS 690C.325 and 679B.125. HWAN does not dispute that CHWG sold and offered for sale service contracts, but it claims that the Hearing Officer had misinterpreted the law.[45]

a. NRS 690C.150 and 690C.020 Must Be Read in Harmony

NRS 690C.150 provides: "Certificate required to issue, sell or offer for sale service contracts. A provider shall not ***issue, sell or offer for sale*** service contracts in this state unless the provider has been issued a certificate of registration pursuant to the provisions of this chapter." (emphasis added). NRS 690C.020 defines "Administrator" as "a person who is responsible for ***administering*** a service contract ***that is issued, sold or offered for sale by a provider.***" (emphasis added).

The well-settled rules of statutory construction require that the court must, whenever possible, "interpret provisions within a common statutory scheme 'harmoniously with one another in accordance with the general purpose of those statutes' and to avoid unreasonable or absurd results." *Southern Nevada Homebuilders Ass'n v. Clark County,* 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (emphasis added) (citations omitted). " '[T]his court will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the

[45] HWAN's Opening Br.44

legislation.' " *Harris Assocs. v. Clark County School District,* 119 Nev. 638, 642, 81 P.3d 532, 534 (2003) (citations omitted). It is clear, that NRS 690C.020 and 690C.150, read in harmony, establish that the scope of the functions of an administrator, is to ***administer*** contracts that are ***issued***, or ***sold by a registered provider***. In order to ***issue, sell or offer for sale,*** an entity must be ***a registered provider***. CHWG, HWAN's purported administrator and an unlicensed entity, can only "administer" service contracts which are issued, sold and offered for sale by HWAN.

b. HWAN's Interpretation Would Lead to Absurd Results

HWAN's argument that the requirement of obtaining a certificate of registration before selling or offering for sale service contracts in NRS 690C.150, applies only to providers, would produce the absurd result of nullifying the statutory scheme, by effectively allowing anyone (except providers), to sell or offer for sale service contracts without a certificate of registration. HWAN argues, that the sole reason for the registration requirement is to ensure that the provider is vetted by the Division pursuant to NRS 690C.160[46] and posts the financial security required by

[46] Notably, as discussed later in this Brief, the language of NRS 690C.160(1) mirrors that of NRS 690C.150.

NRS 690C.170, and that "[s]uch is not necessary of anyone who sells the service contracts, so long as the obligor of the service contracts, the provider, is registered."[47] This is a policy argument that is unsupported by the language of the governing statutes or the legislative history.

The absurdity of this rationale becomes especially evident, when it is applied to the function of "issuing" of a service contract. If any person, as argued by HWAN, is allowed to "sell" service contracts without a certificate of registration, it would necessarily mean that anyone could also "issue" such without a certificate of registration, as the Legislature did not make a distinction among the functions of "issuing," "selling," and "offering for sale" of service contracts in NRS 690C.150 or other provision containing these terms. In fact, the functions of "issuing," "selling," and "offering for sale" of service contracts appear together in NRS 690C.150, and in numerous other provisions throughout chapter 690C. *See e.g*. NRS 690C.160(1) and (1)(c); .170(1)(a); .200; .310(1)(a) and (1)(c); .320(2). These terms always refer to a provider, because ***only a provider*** can perform these functions.

[47] HWAN's Opening Br. 46

The Legislature's intention to require anyone performing any of these functions, to be issued a provider certificate of registration, is explicit.[48]

If, as HWAN acknowledges, one of the purposes of chapter 690C is to ensure that service contracts sold in Nevada have the necessary financial backing, and (following HWAN's rationale) anyone is allowed to "issue" service contracts without obtaining a certificate of registration, all of chapter 690C requirements are rendered a nullity.

This position is further supported in the application requirements of NRS 690C.160.[49] Should the Court interpret these application requirements the same way HWAN wishes it to interpret registration requirements of NRS 690C.150, namely that only a provider is obligated to comply, it would lead to the result that ***anyone***,

---

[48] Notably, under title 57 of the NRS, the functions of selling, issuing and soliciting an insurance product require some form of licensure. *See e.g*. chapters NRS 683A; 697; 696A; 688C.

[49] A ***provider*** who wishes to ***issue, sell or offer for sale*** service contract in this state must submit to the Commissioner *inter alia*: (a) a registration application on a form prescribed by the Commissioner; (b) proof that the provider has complied with the requirements for financial security . . . ; (c) a copy of each type of service contract the provider proposed to ***issue, sell, or offer for sale***; .

NRS 690C.160

other than "a provider," could be issued a certificate of registration without completing a registration application, or proof of financial security. This is absurd.

HWAN attempts to distort this logic, by arguing that NRS 690C.120(2), differentiates a "person who sells service contracts" from a "provider." It argues that this provision proves that "those who sell service contracts are separate and distinct from providers who are obligors of those service contracts."[50] HWAN's argument regarding NRS 690C.120 is misplaced. This is an applicability provision that makes certain insurance chapters under title 57 applicable to service contracts.[51] It provides that no additional licensure, or "certificate of authority" under chapter 680A, is required for persons in the business of service contracts, other than those

---

[50] HWAN's Opening Br. 45

[51] NRS 690C.120(2) addresses the applicability of chapter 680A (regulating "insurers") requirements to service contracts. In her Administrative Decision, the Hearing Officer explained:

> What NRS 690C.120.2 says is that a certificate of authority is not required in the business of service contracts and, so, anyone involved in service contracts is not required to obtain a certificate of authority. It most certainly does not say that an administrator may issue, sell, or offer to sell service contracts without proper registration pursuant to NRS 690C.150. Such a reading would make the entirety of NRS chapter 690C a nullity.

App. Vol. VIII 1403:1-5.

requirements set forth in chapter 690C of the NRS. HWAN's argument is inapposite, as the reference to "a person who sells service contracts" addresses all persons that deal with service contracts, including those service contracts excluded under NRS 690C.100(1)[52] from the registration requirements. *See* NRS 690C.100 (1)(c)-(f). It certainly does not nullify the requirements of the provisions that follow.

The present case is a perfect example of what the policy behind vetting sellers is intended to prevent. HWAN, by simply registering as a separate one-person entity, for years was able to avoid disclosure to the Nevada regulator, of CHWG's

---

[52] NRS 690C.100(1) provides:

> 1. The provisions of this title ***do not apply to***:
> (a) A warranty;
> (b) A maintenance agreement;
> (c) ***A service contract*** provided by a public utility on its transmission device if the service contract is regulated by the Public Utilities Commission of Nevada;
> (d) ***A service contract*** sold or offered for sale to a person who is not a consumer;
> (e) ***A service contract*** for goods if the purchase price of the goods is less than $250; or
> (f) ***A service contract*** issued, sold or offered for sale by a vehicle dealer on vehicles sold by the dealer . . .

(emphasis added).

disciplinary actions in other states.[53] The Hearing Officer found that "since receiving its COR [certificate of registration], ***HWAN has been merely a figurehead***, ***enabling an unlicensed entity*** to engage in the business of service contracts in Nevada under HWAN's license."[54] (emphasis added).

A disclosure of disciplinary actions would have likely resulted in a denial of HWAN's original application for a certificate of registration. A regulator must be able to vet such information, especially as pertaining to the actual entity performing the functions of a provider in Nevada. A provider application requires such disclosures.

In *Gaessler v. Sheriff Carson City* 95 Nev. 267, 270, 592 P.2d 955, 957 (1979), this Court explained, that it is the conduct and actions of a person or entity

---

[53] HWAN has used this scheme in an attempt to thwart regulation in other states as well, as illustrated from the State of Washington's Office of the Insurance Commissioner:

> [E]ven though the State of California had by then issued at least two separate cease and desist orders against Choice Home Warranty and "its officers, directors, employees, trustees, agents, affiliates and service representatives . . . Mr. Mandalawi's application failed to mention such orders existed . . . ***In fact, the application failed to mention "Choice Home Warranty" of CHW Group, Inc." at all in his application***.

(3' App. Vol. I 2887:4-13) (emphasis added).

[54] App. Vol. VIII 1403:15-17.

that define whether it is required to be licensed under a regulatory licensing scheme. In *Gaessler*, the Court considered the argument by Defendant charged with engaging in business or acting without a license, that he was merely acting as an advertiser rather than as a real estate broker or salesman and, therefore, not required to obtain a license. The Court held that defendant's solicitation and receipt of "advertising fee" for listing a business for sale was the "***type of conduct*** which real estate licensing statutes were designed to regulate . . ." *Id.* (emphasis added). Therefore, the court held, defendant was required to have a real estate license.

Any person who seeks to perform the functions of a provider, must have a certificate of registration. Any other interpretation would lead to the absurd result of allowing entities to perform the functions for which registration and regulatory oversight is required by law, by simply affixing a label of an "administrator," "sales agent," or anything other than "provider." It would render NRS 690C.150 nugatory, and the tenets of statutory construction do not permit that. *Charlie Brown Constr. Co. v. Boulder City,* 106 Nev. 497, 502, 797 P.2d 946, 949 (1990) (overruled on other grounds).

/ / /

/ / /

c. The Legislative History Supports the Hearing Officer's Interpretation

Although HWAN argues that the statutes are "plain and unambiguous on their face"[55], it nevertheless proceeds to argue, for the first time, that the legislative history supports its position. It does not. HWAN is, however, correct to point out that the definition of "Administrator" was amended from the original version of A.B. 673 adopted in 1999. The change in the definition though clearly indicates that it was the intent of the Legislature that the functions of issuing, selling, and offering for sale of service contracts would be solely those of a registered provider. The language in the bill originally provided as follows:

> 'Administrator' means a person with whom a provider contracts to carry out the terms of service contracts issued by the provider, including, without limitation, issuing service contracts, collecting premiums, adjusting claims and performing the duties of the provider under the service contract.[56]

However, it was replaced with the following language: " 'Administrator' means the person responsible for the ***administration of the service contracts issued, sold, or offered for sale by a provider*** . . . " *Hearing on A.B. 673 Before the Assembly Committee on Commerce and Labor*, 1999 Leg., 70th Sess. (April 5, 1999), Ex C

---

[55] HWAN's Opening Br. 43

[56] Resp't. App. Vol. III 3287

(emphasis added).[57] The language of the introduced bill A.B. 673, was further revised, to replace **"*issue*"** as in reference to a provider, with *"**issue, sell, or offer for sale***"—clearly evidencing that each of these functions was that of a registered provider, not just "issue" as HWAN effectively argues.[58] The legislative history also reveals an overwhelming concern with preventing bad actors from selling and issuing policies without financial backing, which requirement, as analyzed earlier, would be defeated if HWAN's interpretation is accepted. Allowing an entity, other than a registered provider to issue, sell, or offer for sale service contracts would also defeat the objective of creating a "one stop shop" mentioned by HWAN in its Brief. As evidenced by the complaints the Division received against 'Choice Home Warranty", consumers are confused whether to assert their claims against the seller, or the obligor.[59] It has also been clearly a problem for the Division, as the regulator.

The Hearing Officer's findings that CHWG had performed on behalf of HWAN all of the functions of a provider for which Nevada law requires a certificate

---

[57] *Id.*

[58] *Id*. at 3289-3291, 3294, specifically, sections 12, 13, 14, 16, and 23.

[59] The Division's list of consumer complaints is compiled in two reports – one for "Home Warranty Administrator of Nevada, Inc, and the other for "Choice Home Warranty." Resp't's App. Vol. II 3025-3029.

of registration, is based on statutory interpretation that is within the statutory language and is harmonious with the general purpose of the statutory scheme. This type of conduct cannot be legally performed without a certificate of registration, and it does not fall within the scope of activities administrators can engage in by definition (NRS 690C.020). Her interpretation avoids unreasonable or absurd results and gives effect to the Legislature's intent. *See Southern Nevada Homebuilders*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005). The Hearing Officer's findings must be affirmed. [60]

3. HWAN's Time-Limited Certificate of Registration Expired in 2016 as a Matter of Law

NRS 690C.160 (3)[61] provides in pertinent part:

> 3. A certificate of registration ***is valid for 1 year*** after the date the Commissioner issues the certificate to the provider. A provider ***may renew*** his or her certificate of registration ***if, before the certificate expires,*** the provider submits to the Commissioner:
>
> • • •
>
> ***(a) An application on a form prescribed by the Commissioner;***
>
> . . .

Id (emphasis added). The statutory language referencing "expiration" is

[60] Consistent with this Court's Order of June 15, 2020, denying HWAN's Motion For Leave to File Supplemental Appendix, the Division will not address HWAN's arguments based on documents that were not part of the administrative record.

[61] The statute was subsequently amended in 2019.

unambiguous. If an entity wishes to renew, there are certain conditions that must be met before the certificate of registration can be renewed, including submitting an application with all of the posed questions answered, and all of the requested information completed. If those conditions are not met before the expiration date, the certificate of registration expires after one (1) year, as a matter of law. HWAN failed to satisfy the ***"if"*** contingency in NRS 690C.160 (3) prior to the automatic expiration, and, as a result, its certificate of registration automatically expired in November of 2016. Contrary to the factual assertions by HWAN in its Brief, the Hearing Officer held that HWAN's 2016 application was incomplete. "The ***statutory security deposit was not sufficient and questions on the application were left blank***. The Division's requests for information were ignored."[62]

HWAN argues that the Hearing Officer's finding regarding the expiration of its certificate, ignores the NRS 690C.325 and 233B.127(3) notice and hearing requirements.[63] Those provisions, however, do not apply to automatic expiration resulting from failure to timely renew a time-limited certificate of registration. NRS 690C.325 (1) requires a hearing, if the Commissioner refuses to renew, suspends or

---

[62] App. Vol. VIII 1385:3-7; HWAN November 7, 2016 Application App. Vol. III 476-479; Mary Strong Email to HWAN dated February 1, 2017 App. Vol. III 321.

[63] HWAN's Opening Br. 41

revokes a certificate of registration for a reason set forth in subsections (a)-(d). None of those provisions is applicable. HWAN's certificate of registration expired as a matter of law, because HWAN failed to timely fulfill the renewal requirements.[64]

a. The Expiration of HWAN's Certificate of Registration in 2016 is a Moot Issue

As the Hearing Officer provided HWAN with subsequent opportunity to submit an application, HWAN's argument is effectively moot.[65] After the Administrative Decision was issued, HWAN submitted an application, as provided in the Administrative Decision, and the Division processed and denied it.[66] By requiring the Division to process HWAN's application and ordering that "the Division cannot

---

[64] Similarly, NRS 233B.127 does not apply. Subsection 3 is not applicable to renewals in general, as it applies to a "revocation, suspension annulment and withdrawal," and .subsection 2 which references renewal, applies "[w]hen a licensee ***has made timely and sufficient application*** for the renewal of a license . . ." *id.* HWAN's application was incomplete, and as such was not sufficient or timely.

[65] The Hearing Officer instructed the Division: "the Division cannot take action against Respondent [HWAN] for issuing, selling, or offering for sale service contracts without a certificate of registration from the date of this Order plus 45 days." (App. Vol. VIII 1405:6-8).

[66] On January 2, 2019, after a hearing, the Commissioner issued an order denying said application. On January 23, 2019, HWAN filed a petition for judicial review in (case 19 OC 00015 1B in FJDC). On August 5, 2019, the FJDC issued an order staying the case pending the outcome of this appeal. (Order Granting Motion for Stay of Case No. 19 OC 00015 1B pending Final Decision of Case No. 17 OC 00269 1B).

take action against Respondent for issuing, selling or offering for sale service contracts without a certificate of registration, from the date of this Order plus 45 days," the Hearing Officer effectively nullified any potential impact of her finding that HWAN's certificate of registration expired in 2016. Mootness is a question of justiciability. *Personhood Nevada v. Bristol,* 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (holding that this Court's function is not "to render advisory opinions but, rather, to resolve actual controversies by an enforceable judgment").

4. The Doctrine of Equitable Estoppel is Inapplicable in This Case as Against the Division.

After incorporating in Nevada in 2010[67] as HWAN, its president, Mandalawi, proceeded to file annual renewal applications with the Division on behalf of HWAN.[68] The Hearing Officer found that Mandalawi/HWAN had actively concealed the existence of CHWG, by repeatedly responding “self,” when asked about its current administrator, and responding “no” when asked about any changes in the administrator from the last application.[69]

---

[67] Prior to incorporating as Home Warranty Administrator of Nevada Inc., HWAN had sold service contracts online as Choice Home Warranty (App. Vol. VIII 1380:15-23).

[68] App. Vol. III 298-322

[69] App. Vol. VIII 1383:1-9, 1398:5-6

Ironically, HWAN now argues, in effect, that despite the repeated false entries on renewal applications meant to conceal the existence of CHWG and its relation to HWAN, the Division should have known of CHWG's existence and that HWAN was using it to perform all of its functions as a provider. HWAN now asks the Court to rule that the Division be estopped from performing its regulatory functions and, presumably, that HWAN be allowed to continue to violate the law. As absurd as it sounds, this is HWAN's estoppel argument.

The argument fails on the law and on the facts. It is well-settled, that "estoppel cannot prevent the state from performing its governmental functions." *Chanos v. Nevada Tax Com'n,* 124 Nev. 232, 238, 181 P.3d 675, 679 (2008); *see also Las Vegas Convention and Visitors Authority v. Miller*, 124 Nev. 669, 698, 191 P.3d 1138, 1157 (2008) The Commissioner cannot be prevented from exercising her duties imposed by the Legislature, including her authority to discipline entities under her jurisdiction. This is so especially in this case, where HWAN had for years concealed from the Division the existence of CHWG, and now wants to benefit from its deceit. "Equitable estoppel" is an equitable doctrine not meant to benefit a party from its own wrongdoing.

HWAN also failed to establish that the Division knew[70] that "Choice Home Warranty," which had the undisclosed disciplinary actions in other states, and HWAN, dba Choice Home Warranty, were not the same entity. The Hearing Officer made an express factual finding that the Division was not aware that there were two entities. Until the hearing, it believed there was a single entity, HWAN dba Choice Home Warranty.[71] She found that it was precisely because the Division thought that HWAN and "Choice Home Warranty" were one entity, ***confirmed in a discussion with Mandalawi***, that the Division requested that HWAN register a dba, as the public already knew HWAN as "Choice Home Warranty."[72]

---

[70] The Court explained in *Chanos:*

> Equitable estoppel operates to prevent a party from asserting legal rights that, in equity and good conscience, [the party] should not be allowed to assert because of [his] conduct. . . . To establish that an opposing party should be equitably estopped, 'the proponent must prove that: (1) ***the party to be estopped must be apprised of the true facts***;
>
> . . .

Chanos, 124 Nev. at 679 (emphasis added).

[71] App. Vol. VIII 1401:4-5.

[72] App. Vol. VIII 1401:24-27

The Hearing Officer considered the whole record, including witness testimony of the former Chief of Property and Casualty[73] and other evidence.[74] Furthermore, a reasonable person would consider the question of why HWAN would set out to prove to the Division at the administrative hearing, as it indicated in its prehearing statement, that HWAN, dba Choice Home Warranty, and CHWG, dba Choice Home Warranty, were two separate entities if the Division already knew of this arrangement?[75]

This Court has held that "factual findings will only be overturned if they are not supported by substantial evidence, which, we have explained, is evidence that a

---

[73] Mr. Jain testified that: "from every documentation that I have seen, from the consumer complaints that we have seen, from the dba's, from the service contract form that is out in the market, from the email advertisements that we have heard consumers receive, in fact, I have received them, there is no doubt in my mind that Choice Home Warranty is the same entity as Home Warranty Administrators of Nevada. (Hr'g Tr. 9/12/17, App. Vol. IV 699:21-700:2);

[74] Hr'g Tr. 09/12/17, App. Vol. IV 699:12 to 700:2; App. Vol. VIII 1401:4-5. Additionally, the excerpt from HWAN's pre-hearing statement, addressed earlier in this brief, clearly negates HWAN's assertion that the Division knew prior to the hearing that it was dealing with two entities, or that there was any kind of arrangement between HWAN and the Division to that effect. In its pre-hearing statement, HWAN, defending against the charges of failing to disclose out-of-state disciplinary actions against Choice Home Warranty, eagerly asserts that "***the evidence will unequivocally show*** that HWAN is an independent and separate entity from CHW." HWAN felt a burden to prove to the Division that HWAN and CHWG were two separate entities (App. Vol. IV 503:10-11).

[75] App. Vol. IV 503:10-11.

reasonable mind could accept as adequately supporting the agency's conclusions." *Nassiri*, 130 Nev. at 248, 327 P.3d 487 at 489. HWAN is asking the Court to substitute its judgment for that of the Hearing Officer on the weight of the evidence on questions of fact, which this Court has consistently declined to do. *See Weaver v. Dept. of Motor Vehicles*, 121 Nev. 494, 498, 117 P.3d 193, 196 (2005), citing *United Exposition Service Co. v. SIIS*, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993). The Hearing Officer's findings, that the Division did not know that HWAN dba Choice Home Warranty and CHWG dba Choice Home Warranty, were two separate entities, should not be disturbed. Equitable estoppel doctrine is not applicable in this case, pursuant to *Chanos* and *Las Vegas Convention,* on the facts and as a matter of law and public policy.

5. The Fines Imposed by the Hearing Officer Are Proper and Should be Affirmed

HWAN disputes the Hearing Officer's findings of the six (6) violations of the NRS 686A.070. The first ground on which HWAN disputes four of them, is that NRS 11.190(4)(b) two-year statute of limitations bars them.[76] Chapter 11 of the NRS, imposing time limitations on "***civil actions,"*** (NRS 11.010), however, does

[76] This is a new argument, as HWAN's previously argued theory based on NRS 679B.185, was found inapplicable.

not apply to administrative proceedings. An administrative disciplinary proceeding is not a "civil action." Black's Law Dictionary 28 (9th ed. 2009) defines "action" as "[a] civil or criminal ***judicial*** proceeding."

As a matter of public policy, courts have held that in the absence of specific time limitations, general statutes of limitations do not apply to disciplinary proceedings under statutory licensing schemes designed to protect the public. The Nevada Supreme Court in *Brill v. State Real Estate Division, Dept. of Commerce*, 95 Nev. 917, 919, 604 P.2d 113, 114 (1979), characterized the statutes relating to licensing of real estate brokers as follows: "the intent of the statute is to protect the public from unscrupulous and unqualified persons." *Id. See also Sinha v. Ambach*, 91 A.D.2d 703, 457 N.Y.S.2d 603, (NYAD, 1982), (case involving disciplinary proceedings against a licensed physician "[t]he licensing of a physician imposes on the licensee an obligation to serve the public's good with concomitant adherence to strict ethics standards. Errant behavior of a physician which contravenes such high calling should not be protected by the shield of a Statute of Limitations.") *Id.*[77]

[77] *See also Chock v. Bitterman*, 5 Haw. App. 59, 70, 678 P.2d. 576, 583. (Haw. Ct. App. 1984); *Nelson v. Real Estate Commission*, 35 Md. App. 334, 339-340, 370 A.2d 608,613 (Md. Ct. Spec App 1977).

Protection of the public is also the underlying purpose of the licensing statutory schemes applicable to other professionals.

[S]tatutory limitation periods are measures of public policy entirely subject to the will of the legislature." *In the Matter of Davis*, 113 Nev. 1204, 1214 946 P.2d 1033, 1040 (1997).[78] The Nevada Legislature has not established a statute of limitations for disciplinary proceedings under the Insurance Code, and specifically under chapter 690C. In the absence of such specific statutory time limitations, general time limitations of chapter 11 do not apply. The Hearing Officer's findings of violations must be affirmed.

HWAN also challenges the finding of the six violations of NRS 686A.070 on the grounds that the "knowingly" requirement of NRS 686A.070[79] had not been

---

[78] *See also Rogers v. the Division of Real Estate of Department of Business Regulations of the State of Utah,* 790 P.2d 102, 105 (Utah Ct. App. 1990) (citations omitted) ("In the absence of specific legislative authority, civil statutes of limitations are inapplicable to administrative disciplinary proceedings." *Id.*)

[79] NRS 686A.070 provides that

> [a] person subject to regulation under this Code shall not ***knowingly*** make or cause to be made any false entry of a material fact in any book, report or statement of any person or knowingly omit to make a true entry of any material fact pertaining to such person's business in any book, report or statement of such person.

Id. (emphasis added).

proven. HWAN characterizes its failure to provide true information on its renewal applications as merely an inadvertent failure to correct pre-populated fields in its application. It asserts that "HWAN simply did not correct the pre-populated field for administrator from "self" to "CHW" on each of its renewal applications following the 2011 approval of the service contract form."[80] This assertion is in conflict with the evidence presented at the hearing. It is simply false. Substantial evidence unequivocally shows deliberate false entries and supports the Hearing Officer's findings.

Despite HWAN's assertion to the contrary, the Court of Appeals of Nevada does, provide guidance as to the term "knowingly" in *Poole v. Nevada Auto Dealership Investments, LLC*, 135 Nev. 280, 281, 449 P.3d 479, 481 (Nev. App. 2019). The Court analyzed the "knowingly" requirement under the Nevada Deceptive Trade Practices Act (NDTPA),[81] and held "[w]e conclude that 'knowingly' means that the defendant is aware that the facts exist that constitute the

[80] HWAN's Br. 64-65

[81] Chapter 686A of the NRS is also a statutory scheme regulating the subject of trade practices in the business of insurance. NRS 686A.010.

act or omission." *Id.* The present case certainly meets and exceeds this standard. Mandalawi's deliberate responses, ***signed under penalty of perjury,***[82] attest to that.

HWAN submitted its original application for a Nevada certificate of registration on or about September 2, 2010.[83]. The application did not designate an administrator.[84] The renewal applications for the years 2011, 2012, 2013 asked, among other questions "have you made any changes in the administrator or designated a new administrator since your last application? On behalf of HWAN, Mandalawi, answered "No" each time. When asked to indicate the current administrator, Mandalawi responded "Self."[85] Based on these findings of fact, the Hearing Officer concluded that HWAN made false entries of material facts in its applications in violation of NRS 686A.070, a noticed charge.

Not only were these entries knowingly made, it appears that they have been a part of a deliberate pattern of deceit that HWAN practiced, as evidenced *e.g.* in

---

[82] 2011 Application App. Vol. II 195; 2012 Application App. Vol. II 199; 2013 Application App. Vol. II 203.

[83] App. Vol. VIII 1380:24-1381:2, HWAN Exhibit P 323-325.

[84] App. Vol. VIII 1381:17-18, HWAN Exhibit P 323.

[85] App. Vol. VIII 1383:1-9; 2011 Application App. Vol. II 192–195; 2012 Application App. Vol. II 196–199; 2013 Application App. Vol. II 200–203

the records of the Washington disciplinary action, discussed earlier in this brief.[86] HWAN' s argument that proof of knowing representation "is lacking here" is quite unabashed, in view of the evidence in the record.

HWAN disputes the finding of one violation of NRS 686A.070, for failing to disclose in its 2015 application, that it had used unapproved contracts. HWAN indicated in all of its applications, that it was using only HWA-NV-0711 service contract approved by the Division. The Hearing Officer found that it was not true. "On at least one occasion, there is evidence that HWAN used a service contract that, in fact, was not approved by the Division.[87]

HWAN asserts that because the Division presented "only one unapproved service contract for the term 2016-2017," the Hearing Officer could not have found that HWAN failed to disclose the use of an unapproved form in its 2015 renewal application. "It is factually impossible for HWAN to have disclosed the use of a

[86] As mentioned earlier in the brief, HWAN has used this scheme in an attempt to thwart regulation in other states as well. State of Washington's Office of the Insurance Commissioner stated that HWA(WA) application" ***failed to mention "Choice Home Warranty" of CHW Group, Inc." at all in his application***. " (Resp. App. Vol. I 2887:4-13) (emphasis added).

[87] App. Vol. VIII 1398:20-22

2016-2017 service contract in its 2015 renewal application."[88] HWAN's argument relies on a presumption that the Hearing Officer only considered the Division's evidence. Under NRS 233B.135 (3)(e), however, to be rejected, an administrative finding must be "clearly erroneous . . . ***on the whole record.***" *Id.* There was other evidence in the record which supported the Hearing Officer's findings.[89]

The Hearing Officer had at her disposal HWAN's exhibit HH,[90], which contained service contracts used by HWAN. Included in HWAN' Exhibit HH, are identical unauthorized contracts used by HWAN, *e.g*., contract number 175317476 (pages 86-89/1672) that cover the period 08/03/2012 – 08/03/2016, which HWAN would have been required to disclose in its 2015 application, but did not. There are many other contracts included in this exhibit, some used as early as 2012, that would amply support the Hearing Officer's finding of one violation. The Hearing Officer's

[88] HWAN's Opening Br. 65 referencing Division's Exhibit 37, App. Vol. II 271–275.

[89] HWAN's exhibit HH, (Resp't' App. Vol. III 3212-3252); Hr'g Tr. 09/13/17 App. Vol. V 874:18 to 876:15.

[90] Exhibit HH was part of the administrative record, however, HWAN inexplicably excluded it from its Appendix. It is, however, a part of the Resp't's App. VIII 3212-325, redacted for brevity and relevancy.

factual findings are supported by substantial evidence on the whole record, and should not be disturbed.

HWAN also argues that the Hearing Officer wrongly fined HWAN $500 for failure to make records available to the Division because, "no evidence was presented that HWAN received any request for this information prior to the subpoena."[91] This too, is in conflict with the evidence in the record, and factually incorrect. The Hearing Officer found that

> [t]he evidence shows that the Division made several requests of Respondent through Mandalawi, including to Mandalawi' s email address of record . . . The parties both state that the requested information was produced, but only after a subpoena was issued, which was at least six months after the renewal application was received.[92]

Her findings are supported by substantial evidence.[93] The fact that the Division had to resort to the issuance of a subpoena to retrieve what was requested, indicates HWAN purposefully failed to make records available, in violation of NRS

[91] HWAN's Opening Br. 65-66

[92] App. Vol. VIII 1399:23-27, Division Request to Examine Reserve Account App. Vol. II 243-244.

[93] Division Request to Examine Reserve Account App. Vol. II 243-244; Hr'g Tr. 09/12/17 App. Vol. IV 646:11 to 650:3; Hr'g Tr. 09/13/17 App. Vol. V 871:7-20.

690C.320(2), until ordered to do so. The Hearing Officer's findings should not be disturbed.

a . The Hearing Officer's Imposition of $50 Fine Per Violation for Conducting Business in an Unsuitable Manner Should be Affirmed Unmodified

HWAN asserts in its Brief that it "seeks reversal of the underlying legal conclusions that it violated NRS 690C.325(1) and NRS 679B125(2), which resulted in the $1,194,450 fines (reduced by the district court to $10,000) . . . Therefore, HWAN seeks reversal of . . . the modified $10,000 fine . . . "[94]. The issue of the fine imposed by the Hearing Officer for conducting business in an unsuitable manner in violation of NRS 690C.325(1) and NRS 679B.125(2) is thus an issue in this appeal.

"When this court examines an order disposing of a judicial review petition, this court's function is the same as the district court: to determine, based on the administrative record, whether substantial evidence supports the administrative decision. Thus, ***this court affords no deference to the district court's ruling in judicial review matters***." *Kay*, 122 Nev. at 1105, 146 P.3d at 805.

[94] HWAN's Opening Br. 62

The Hearing Officer in this case imposed an administrative fine pursuant to NRS 690C.325(1)[95] against HWAN for 23,889 violations, at $50 per violation (of the $1,000 maximum allowed).[96] Questions of statutory construction are subject to

---

NRS 690C.325(1), enacted in 2011, provides:

> 1. The Commissioner may refuse to renew or may suspend, limit or revoke a provider's certificate of registration if the Commissioner finds after a hearing thereon, or upon waiver of hearing by the provider, that the provider has:
>
> (a) Violated or failed to comply with any lawful order of the Commissioner;
>
> *(b) Conducted business in an unsuitable manner;*
>
> . . .
>
> In lieu of such a suspension or revocation, the Commissioner may levy upon the provider, and the provider shall pay forthwith**, an *administrative fine of not more than $1,000 for each act or violation.***

Id.

[96] Upholding the violations, the FJDC erroneously applied NRS 690C.330 as a cap to the above fines. The scope and intent behind each statute are different. The language of NRS 690C.325 clearly establishes that this provision addresses violations by the Division's licensees, namely ***service contract providers possessing a certificate of registration.*** There is no cap on the total sum of fines allowed to be imposed. It is also a more recent provision, if the two provisions are found to be in conflict. "[M]ore recent in time controls over the provisions of an earlier enactment." *Laird v. State Public Emp. Retirement Bd.,* 98 Nev. 42, 45, 639 P.2d 1171, 1173 (1982) (citations omitted). NRS 690C.325 was enacted in 2011, while 697.330 was enacted in 1999.

NRS 690C.330, imposes "a civil penalty" on any "person who violates any provision of this chapter," which allows the imposition of a penalty on a non-licensee. As an example, if the Division chose to bring an administrative action

de novo review by this court. *SITS* v. *Snyder,* 109 Nev. at 1227, 865 P.2d at 1170; however, "[a]n administrative agency . . . charged with the duty of administering an act, is impliedly clothed with power to construe the relevant laws . . . [and] [t]he construction placed on a statute by the agency charged with the duty of administering it is entitled to deference." 109 Nev. at 1228, 865 P.2d at 1170.

The propriety of the findings of the underlying violations are addressed earlier in this Brief. The Hearing Officer properly applied NRS 690C.325 (1) to impose the fine of $1,194,450 (at $50 per violation), and it should be upheld. An administrative agency's imposition of fines is "entitled to great deference to the extent that they were based upon the Board's interpretation of the evidence and testimony." *Dutchess*, 124 Nev. at 723, 191 P.3d at 1173.

VI. CONCLUSION

The Administrative Decision on review in this case is valid, based on substantial evidence and law, and not affected by errors of law or unlawful procedure

/ / /

/ / /

---

against CHWG for selling service contracts without a certificate of registration, NRS 690C.330 would govern, and the amount of fines would indeed be limited to $500 for each act or violation, not to exceed an aggregate amount of $10,000 for violations of a similar nature.

and the findings and fines should be affirmed unmodified.

Respectfully submitted this 25th day of June, 2020.

AARON D. FORD
Attorney General

By: /s/ Joanna N. Grigoriev
JOANNA N. GRIGORIEV
Senior Deputy Attorney General
RICHARD P. YIEN
Deputy Attorney General

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 14 pt. Times New Roman type style.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 10,636 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of

my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: June 25, 2020.

AARON D. FORD
Attorney General

By: /s/ Joanna N. Grigoriev
JOANNA N. GRIGORIEV
Senior Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing in accordance with this Court's electronic filing system and consistent with NEFCR 9 on June 25, 2020.

Participants in the case are registered with this Court's electronic filing system and will receive notice that the document has been filed and is available on the court's electronic filing system.

Constance Akridge, Esq.
clakridge@hollandhart.com

Sydnee Gambee, Esq.

/s/ Marilyn Millam
an employee of the Office of the Attorney General